46 Full
– Partial
46 Total

DO NOT SEPARATE PACKET

7 Email
✓ Emailed
✓ Accela

CERTIFICATE OF MAILING

509-PA23-05321/05322/05323
KING/KLOOS
08/16/2023

SCANNED
Date: 31524
Initials: MSV

This is to certify that I, David Ruiz-Maya, mailed

Notification of Public Hearing

to the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Eugene, Oregon.

SCANNED
Date: 9/8/23
Initials: MSV

Date Mailed: AUG 16 2023

End of Comment Period:

Appeal Deadline:

Hearing Date: SEP 07 2023

David Ruiz-Maya

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses, then the tax records have not been updated; therefore, these property owners were not notified.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecountv.org/lmd

NOTICE OF PUBLIC HEARING
DEVELOPMENT PERMITS PROPOSED IN YOUR AREA

Department File:	**509-PA23-05321**
Department File:	**509-PA23-05322**
Department File:	**509-PA23-05323**
Owner/Applicant:	Edward J. King
Agent:	Bill Kloos, Law Office of Bill Kloos
Assessor's Map & Tax Lot:	21-25-12-00-00843, 21-35-07-30-02900, 21-35-07-30-02800
Address:	NA (adjacent to the Oakridge State Airport)
Acreage:	+/- 13.34 acres, 12.05 acres, 13.28 acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zones:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Rural Comprehensive Plan (/RCP)

509-PA23-05321 Proposal: A request for Type II Planning Director Approval of a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4, House Bill 2225, and RCP Flora & Fauna Policy 11.

509-PA23-05322 Proposal: A request for Type II Planning Director Approval of a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4 and House Bill 2225, and RCP Flora & Fauna Policy 11.

509-PA23-05323 Proposal: A request for Type II Planning Director Approval of a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4 and House Bill 2225, and RCP Flora & Fauna Policy 11.

The Lane County Planning Director has elected to process the above Type II applications through a Type III Hearings Official procedure in accordance with Lane Code 14.030(1)(b)(ii)(cc).

The Lane County Hearings Official will conduct an evidentiary public hearing in accordance with Lane Code Chapter 14. **The hearing will be held in hybrid format on Thursday, September 7, 2023, at 9:30 AM** in the Lane County Customer Service Center, Goodpasture Room, 3050 North Delta Highway, Eugene, OR 97408 **and** through the Zoom video conferencing platform. Information for the Zoom attendance option is as follows:

Zoom Download Link: https://zoom.us
Meeting ID: 896 7404 3984
Passcode: 901976
Telephone Dial-in Number Info:
Telephone Number: 1 206 337 9723 US (Seattle)
Mobile AutoDial: 12063379723,,89674043984# US (Seattle)

Join Zoom Video conference Info:
URL: https://us06web.zoom.us/j/89674043984?pwd=NWQ1VFBGaDBIN1Nyd1RqbTNRSDRHUT09

You received this notice because you own property located near the property that is the subject of this notice. Per Lane Code 14.060, Lane County is required to notify you of the evidentiary public hearing of the above-cited proposals so that you have the opportunity to comment and/or participate in the evidentiary public hearing. Lane County is required only to notify the applicant, owner, owners of record of property of adjacent properties per the most recent property tax assessment roll, and other persons identified. You may want to share this notice with others in your neighborhood as some may not be aware of the proposal.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

Enclosed is a vicinity map and site plan for the subject property.

The order of procedure for the conduct of the hearing will generally be as follows:

a. Announcement of the nature and purpose of the hearing
b. Announcement of opportunities for submission of information and appeal.
c. Disclosure of ex parte contacts
d. Report by the Director
e. Applicant's testimony
f. Testimony of persons in favor
g. Testimony of other persons
h. Any additional comments by the Director
i. Applicant rebuttal
j. Conclude the hearing

Failure to raise an issue in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

The application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at no cost at the Land Management Division. A copy of the staff report will be available for inspection at no cost at least one week prior to the public hearing. Copies of these materials will be provided at a reasonable cost upon request.

The Land Management Division representatives for these applications and hearing are **Julia Dobberstein** (regarding Department File No. **509-PA23-05321**), who may be contacted by telephone at **541-682-3958** or by email at **julia.dobberstein@lanecountyor.gov** and **Shawna Adams** (regarding Department File No. **509-PA23-05322** & **509-PA23-05323**), who may be contacted by telephone at **541-682-8904** or by email at **shawna.adams@lanecountyor.gov**, for more information or to request a courtesy copy of the Hearings Official decision. Please submit written materials to: Lane County Land Management Division, Attn. Shawna Adams and Julia Dobberstein, 3050 North Delta Highway, Eugene, Oregon 97408. Written materials may be submitted prior to, or during the public hearing.

The meeting location is wheelchair-accessible. Persons needing special accommodation (e.g., hearing impaired, language translation, chemical sensitivity needs, and large print copies of the agenda) are instructed to submit their request at least 48 hours prior to the meeting by calling David Ruiz-Maya at 541-682-6768.

Date: _____

From: _____

_____

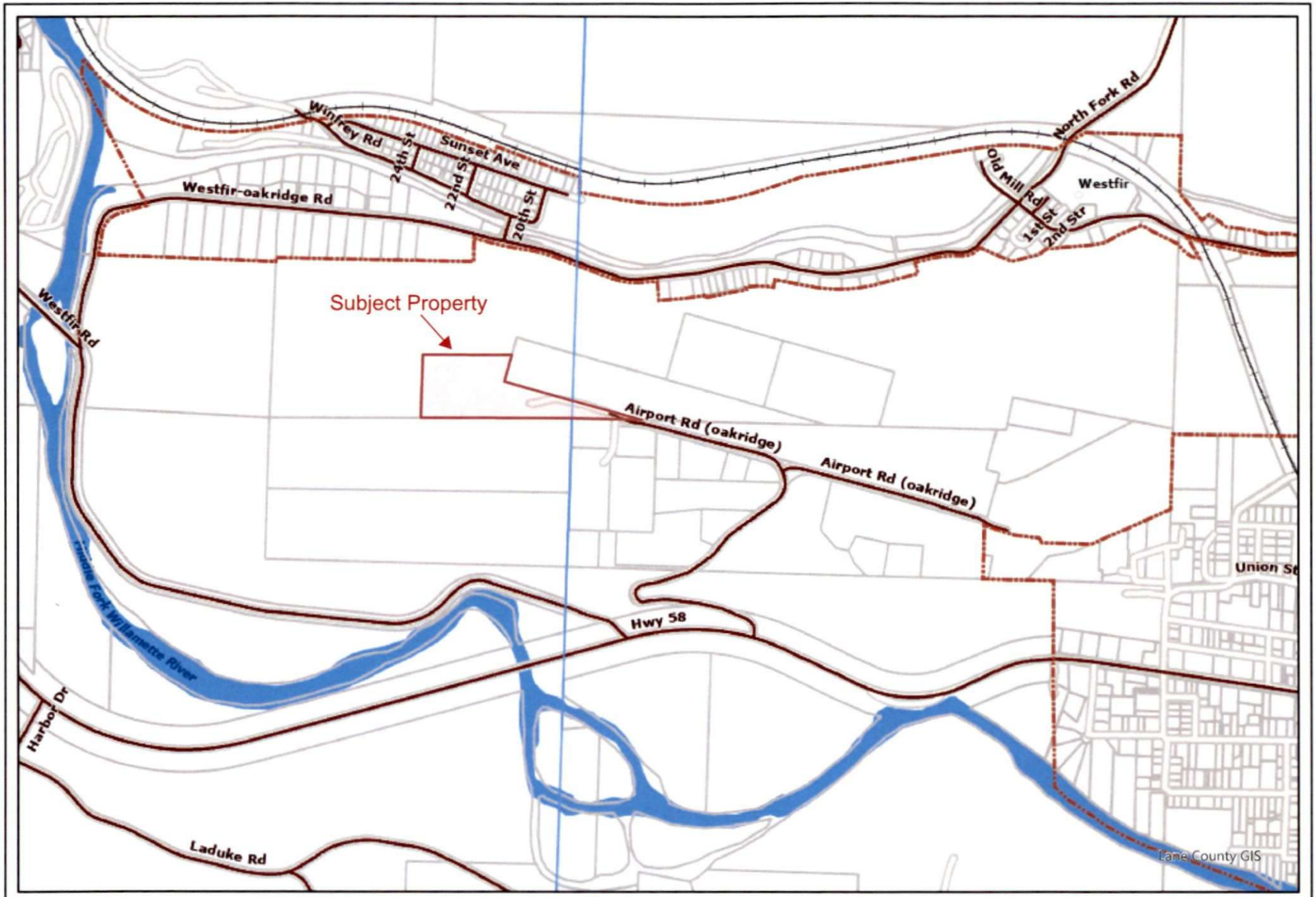
_____

Regarding Department File: 509-PA23-05321, 509-PA23-05322, 509-PA23-05323
Applicant: EDWARD J KING

Staff: Julia Dobberstein (Department File. 509-PA23-05321
Shawna Adams (Department File. 509-PA23-05322 &
509-PA23-05323)

Comments:

Return to: **Shawna Adams and Julia Dobberstein**
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

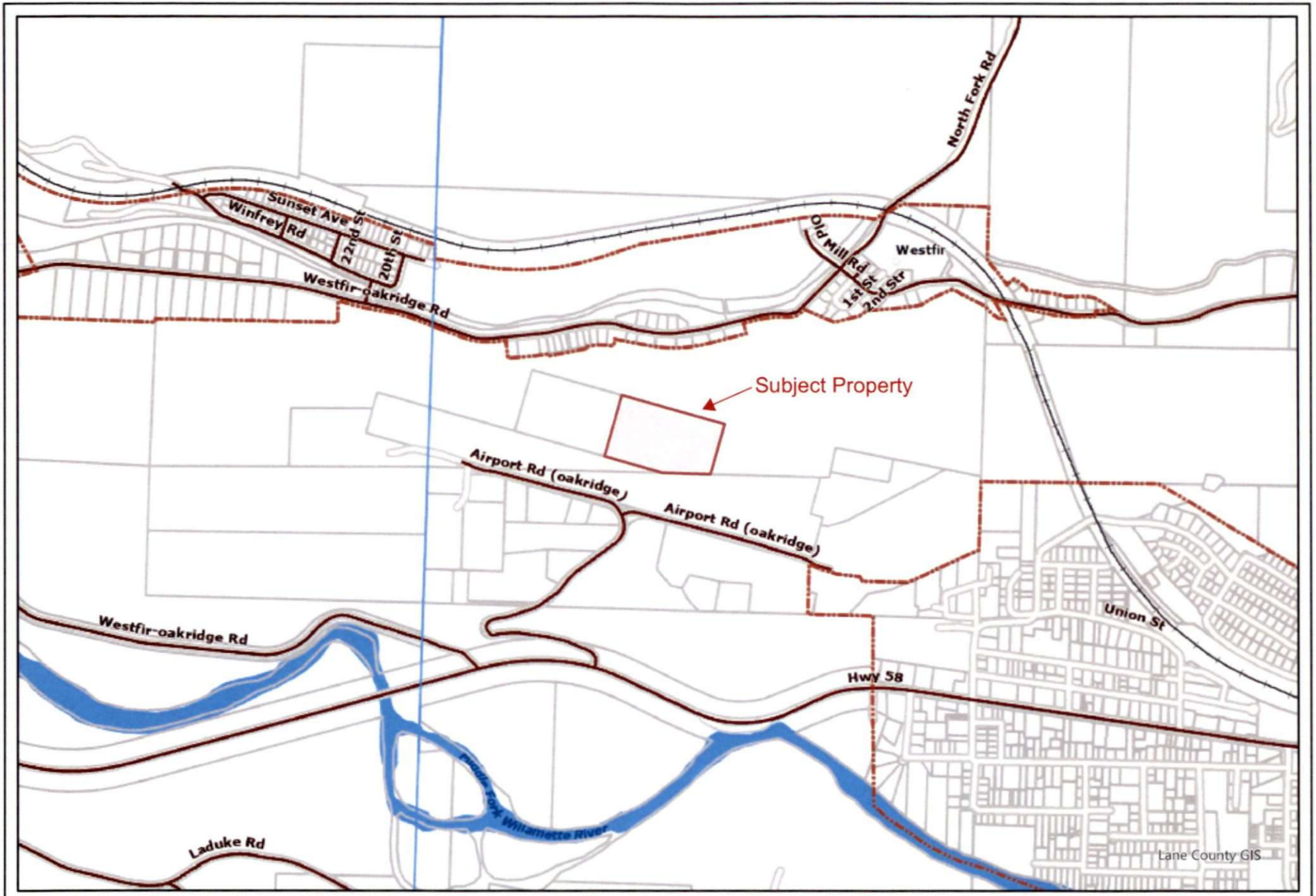
N

0 500 1,000 2,000 Feet

Vicinity Map

509-PA23-05321

Lane County, Oregon



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

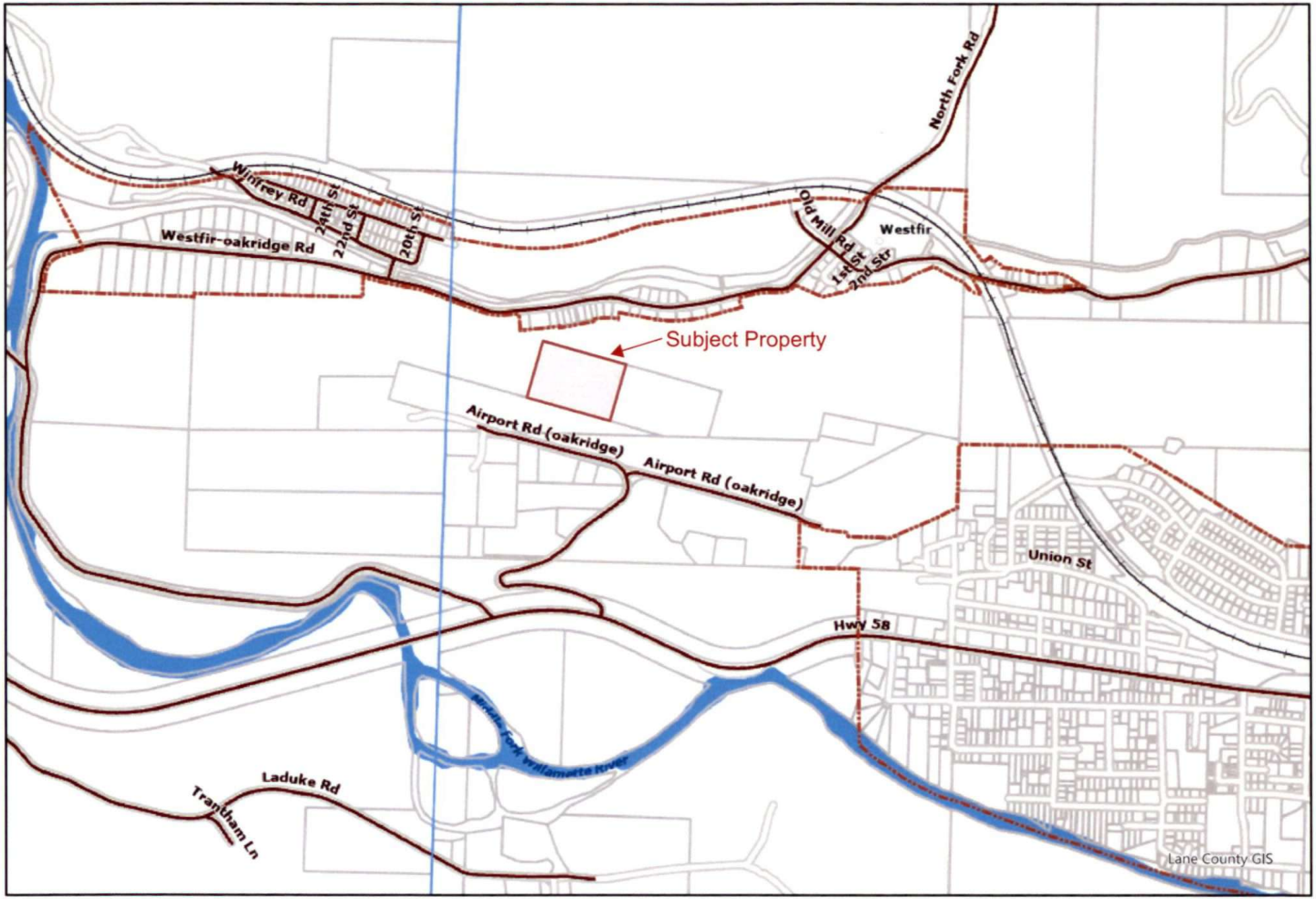
N

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Vicinity Map

509-PA23-05322

Lane County, Oregon



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

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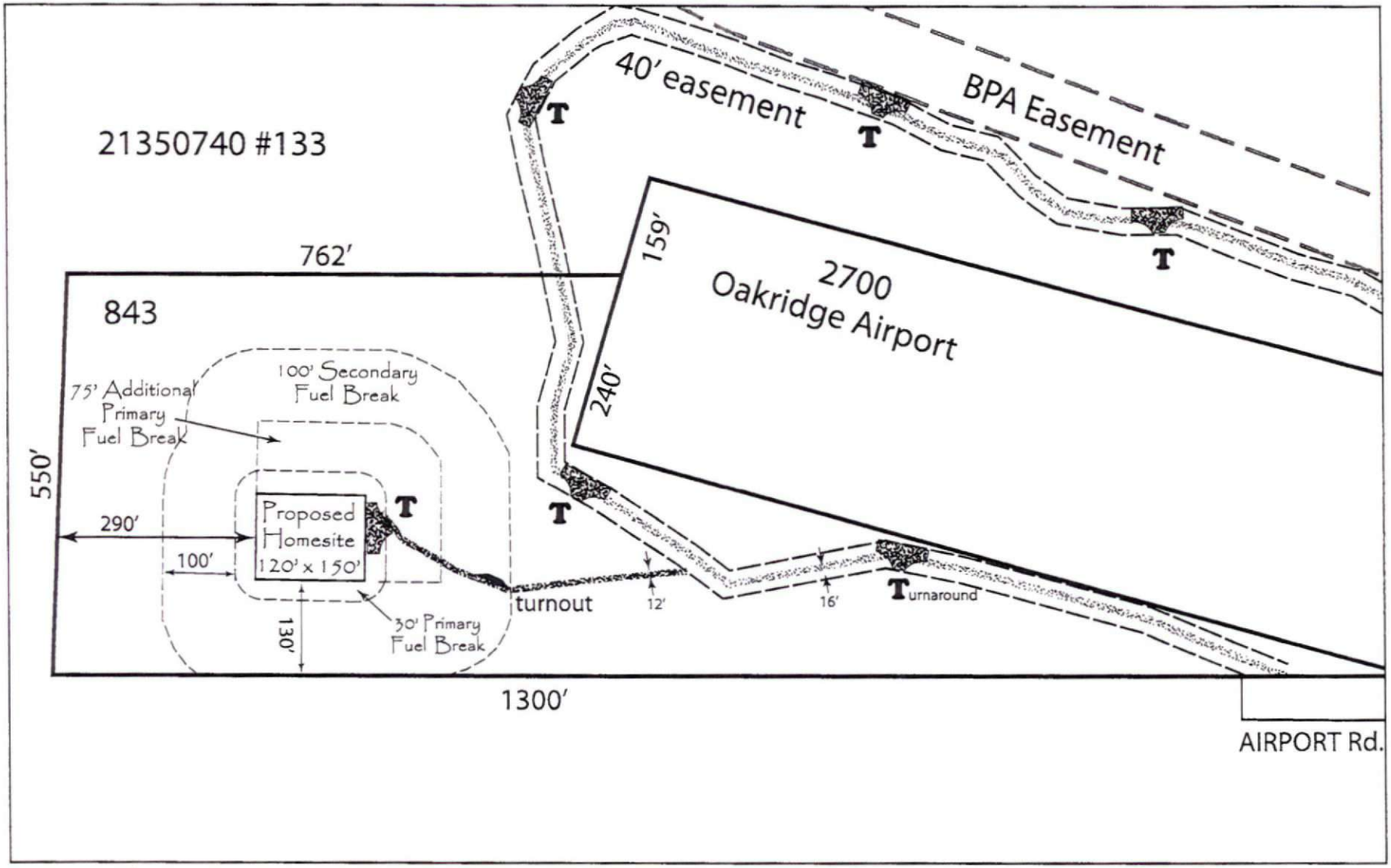
Vicinity Map

509-PA23-05323

Lane County, Oregon

Site Plan

509-PA23-05321
Proposed Site Plan



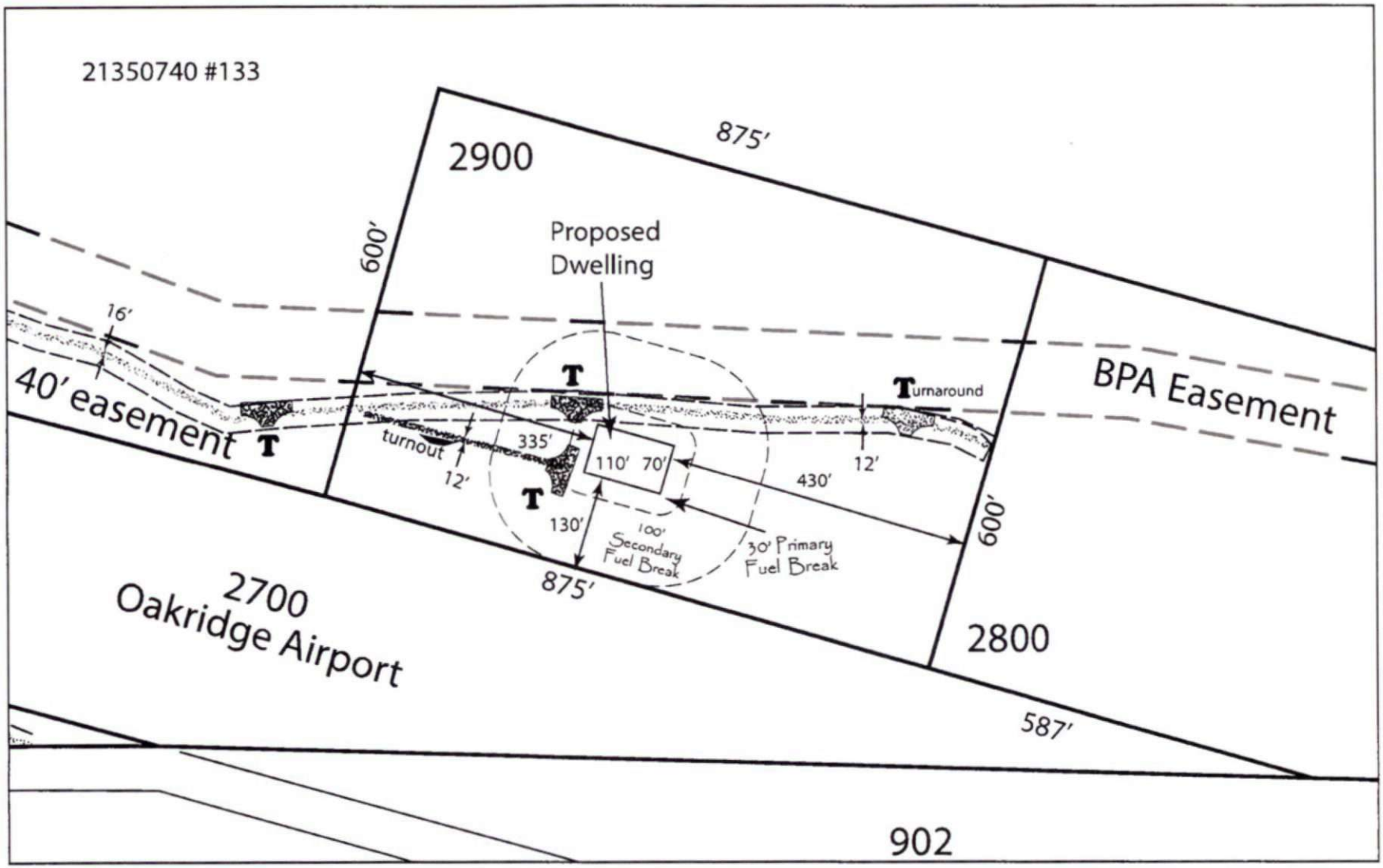
scale 1" = 200'
0 50 100 200 Feet
NTS

Subject Property Map 21-25-12 Taxlot 843

EXHIBIT A 2

Site Plan

509-PA23-05322
Proposed Site Plan



scale 1" = 200'
Feet
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NTS

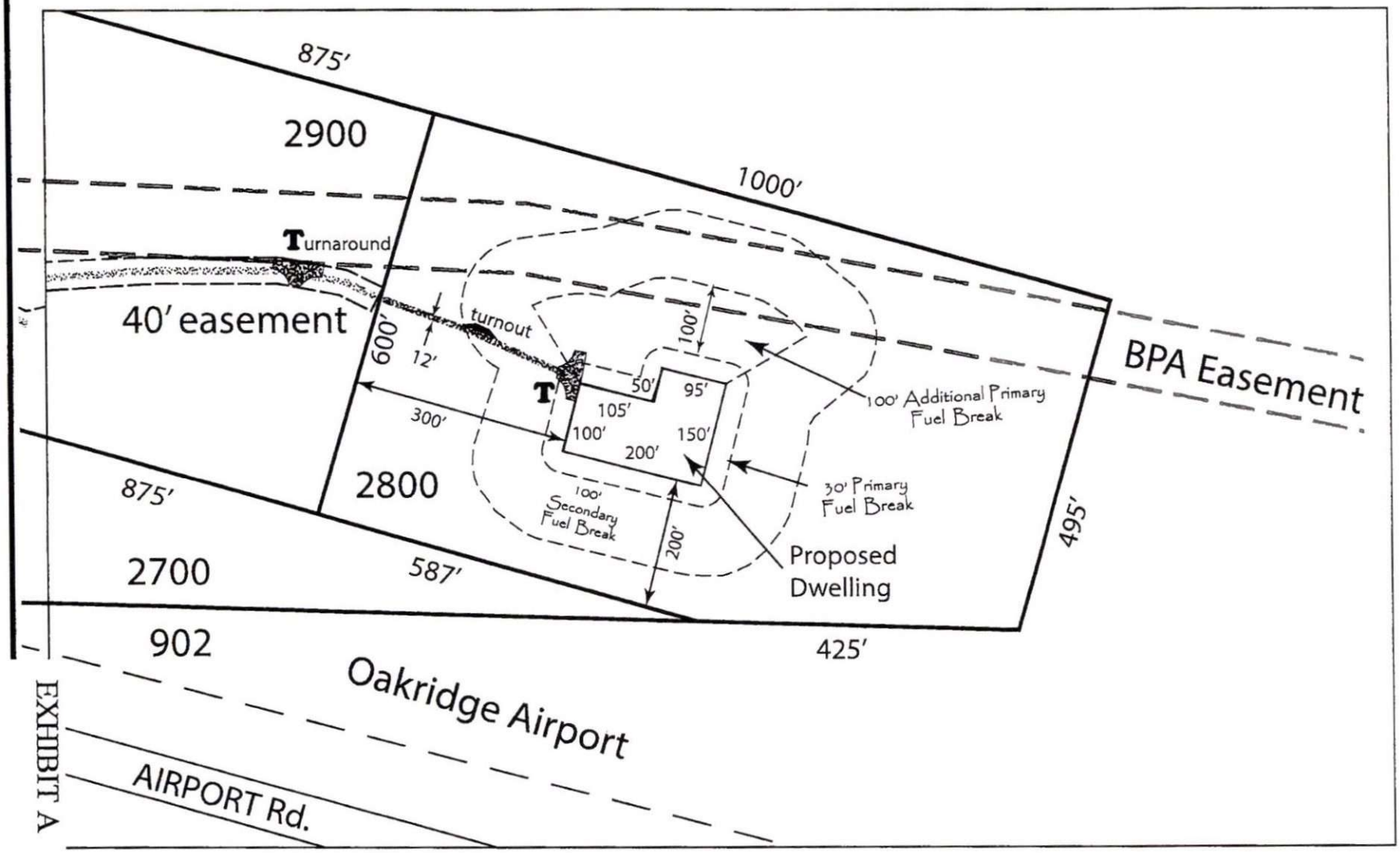
N

Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT A

Site Plan

509-PA23-05323
Proposed Site Plan



Subject Property Map 21-35-07-30 Taxlot 2800

MAPPING & REFERRAL INSTRUCTIONS

509-PA23-05321, 509-PA23-05322, 509-PA23-05323

MAP NO. 21-25-12-00-00843, 21-35-07-30-02900, 21-35-07-30-02800

APPLICANT/OWNER:
EDWARD J KING
30414 LEBLEU RD
EUGENE, OR 97405

AGENT:
BILL KLOOS - LAW OFFICE OF BILL KLOOS
375 WEST 4TH ST, SUITE 204
EUGENE, OR 97401

BASE ZONE: IMPACTED FOREST LANDS (F-2)

COMBINING ZONE: AIRPORT SAFETY COMBINING ZONE (/AS)

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral/Decision Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral		Referral	
☐	Building	☒	State Fish & Wildlife (ODFW):
☐	Sanitation	☐	State Highway (ODOT)
☐	Final Legal Lot	☒	State Forestry: E
☐	Rural Addressing	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	Lane County Animal Services	☐	Dept. Land Conservation & Development (DLCD)
☐	Flood Management	☐	Lane Regional Air Protection Agency (LRAPA)
☐	Easement Review	☐	Dept. of Environmental Quality (DEQ)
☐	Compliance	☐	Dept. of Environmental Quality (DEQ) 1200-C
☐	Surveyors	☐	Oregon Health Division
☒	Transportation Planning	☐	Water Master
☒	County Road Maintenance	☐	Division of State Lands (DSL)
☐	Water Quantity/Quality	☐	State Parks (Certified mail)
☐	Assessment &Taxation	☒	Dept. of Aviation
☒	State Fire Marshal	☐	CenturyLink
☐	Community Organization NONE	☐	Northwest Natural Gas
☒	Watershed Council Middle Fork Willamette Watershe	☐	Port of Siuslaw
☒	Land Watch	☐	Power Company Lane Electric
☐	School District OAKRIDGE	☐	US Army Corps. of Engineers (ACOE)
☐	Water District	☒	US Fish & Wildlife (USF&W)
☒	Fire District Hazeldell Rural Fire District	☐	Confederated Tribes
☒	City Area of Interest (20-day notice) Westfir	☐	State Historic Preservation Office (SHPO)
☐	METRO Area of Interest NONE	☐	EWEB
☐	Environmental Health	☐	Other
☒	Law Office of Bill Kloos		US Dept. of Agriculture
	EWEB		

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:

- ☒ Vicinity Map
- ☒ Site Plan
- ☐ Flagged Applicant's Material

Copy and Attach Materials to Referral Notices as Instructed Above and Below:

_____

_____

PARTIES OF RECORD

509-PA23-05321/05322/05323
KING/KLOOS
08/16/2023

2135073001100
ADAMSON VALERIE M
209 BONVIEW ST
SAN FRANCISCO, CA 94110

2135180000902
ALTEMUS MATTHEW
77601 HIGH PRAIRIE RD
OAKRIDGE, OR 97463

2135073001400
ALTEMUS OLIVIA & JOSEPH
47118 WESTFIR-OAKRIDGE RD
WESTFIR, OR 97492

2135073000100
ANTHONY JAY
PO BOX 1507
GOLD BEACH, OR 97444

2135180000918
CATHEY CHRISTY D & MIKE A
PO BOX 892
OAKRIDGE, OR 97463

2135073001500
DAMEWOOD JAMES S
47114 WESTFIR RD
WESTFIR, OR 97492

2135180000908
DANIELS REVOCABLE LIVING TRUST
PO BOX 1412
OAKRIDGE, OR 97463

2135180000914
DEBOER KENNETH J & BRIDGETT M
46979 AIRPORT RD
OAKRIDGE, OR 97463

2135073000800
DEW DEBRA
47222 WESTFIR-OAKRIDGE RD
WESTFIR, OR 97492

2135180000922
FLACK KEITH F & JANICE M
PO BOX 434
OAKRIDGE, OR 97463

2135073001600
GIPPLE JEAN L & OLIVER DOUGLAS A
2695 WINDSOR CIRCLE E
EUGENE, OR 97405

2135180000911
HANKINS RICHARD P & JANICE I
47070 AIRPORT RD
OAKRIDGE, OR 97463

2135180000912
HAYDEN JEANNE A & STEVEN EUGENE
10916 FENTON CIR
WESTMINISTER, CO 80020

2135073000300
HENDERSON LEON EARL
47155 WESTFIR RD
WESTFIR, OR 97492

2135073000600
JOHNSTONE EDWARD K III
47175 WESTFIR RD
WESTFIR, OR 97492

2135073001300
KIDWELL KIRSTIN & NOAH ASH & LOEBACH HEIDI & SARAH
11806 SE CORA ST
PORTLAND, OR 97266

2135073000100
MATHER JULIE
4550 PATRIOT CT SE
SALEM, OR 97302

2135073000100
MATHER JULIE A 1-3
1624 LAUREL WAY NW
ALBANY, OR 97321

2135073000500
MCCAFFREY JASON BLEU & SALCIDO JESSICA
210 N VENTURA AVE

OAK VIEW, CA 93022

2135073002100
MIKKOLA CHERYL J
47066 WESTFIR RD
WESTFIR, OR 97492

2135180000913
MILLER MARVIN
47022 AIRPORT RD
OAKRIDGE, OR 97463

2135073001700
NEIL & SALLY FRIEDMAN JOINT TRUST
47094 WESTFIR RD
WESTFIR, OR 97492

2135073000400
NEWLAND INVESTMENTS LLC
3895 VINE MAPLE
EUGENE, OR 97405

2135073001000
NIBBLETT NORMAN D & BONNIE J
47198 WESTFIR RD
WESTFIR, OR 97492

2135073002000
PETERSON ALAN D & JODI M
PO BOX 50245
EUGENE, OR 97405

2135073000900
PRZYBYSZ CHRIS P & JAMIE L
47202 WESTFIR RD
WESTFIR, OR 97492

2135180000903
REYNOLDS BERNARD R & C J
76579 AIRPORT RD
OAKRIDGE, OR 97463

2135073000200
SHEARER RICHARD A & AMY J
47147 WESTFIR-OAKRIDGE RD
WESTFIR, OR 97492

2135073001900
SNYDER WILLIAM J & TERESA A

PO BOX 353
WESTFIR, OR 97492

2135073002400
STONE JOEL F & RUTHANNE
PO BOX 361
WESTFIR, OR 97492

2125130000900
STUBBLEFIELD JAMES
48480 ROGERS LN
OAKRIDGE, OR 97463

2135180000906
SULLIVAN FAMILY TRUST
3602 JEFFERSON AVE
REDWOOD CITY, CA 94062

2135074000132
SUNSET INVESTMENTS LLC
PO BOX 10667
EUGENE, OR 97440

2135180000901
TOMLIN LIVING TRUST
47634 TELLER RD
OAKRIDGE, OR 97463

2135073002300
WATTERS COLIN B
47054 WESTFIR RD
WESTFIR, OR 97492

2135073002200
WEBER PENNY L & STEPHEN H
PO BOX 243
WESTFIR, OR 97492

2135073001200
WILLEY JAMES M & BARBARA A
47158 WEST FIR RD
WESTFIR, OR 97492

MIDDLE FORK WILLAMETTE WATERSHED COUNCIL
ATTN: SARAH DYRDAHL
PO BOX 27
LOWELL, ORB97452

HAZELDELL RURAL FIRE DISTRICT

PO BOX 717
OAKRIDGE OR 97463

CITY RECORDER
CITY OF WESTFIR
PO BOX 296
WESTFIR OR 97492-9999

STATE DEPT OF FORESTRY
EASTERN LANE DISTRICT OFFICE
3150 MAIN ST.
SPRINGFIELD, OR 97478-5808

US DEPT OF AGRICULTURE FOREST SERVICE
WILLAMETTE NATIONAL FOREST
3106 PIERCE PARKWAY SUITE D
SPRINGFIELD, OR 97447

*2135073002800
KING EDWARD J
30414 LE BLEU RD
EUGENE, OR 97405

*LAW OFFICE OF BILL KLOOS
ATTN: BILL KLOOS
375 W 4TH ST, SUITE 204
EUGENE, OR 97401

*LANDWATCH LANE COUNTY
PO BOX 5347
EUGENE, OR 97405

*LANDWATCH LANE COUNTY
ATTN: BOB EMMONS
40093 LITTLE FALL CREEK RD
FALL CREEK, OR 97438

EMAIL
TRANSPORTATION PLANNING
COUNTY ROAD MAINTENANCE
STATE FIRE MARSHAL
EWEB
DEPARTMENT OF AVIATION
USF&W
ODFW

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

July 10, 2023

Notice of Complete Land Use Application

Applicant:	**Owner:**	**Agent:**
Edward J. King	E.J.K. Investements	Bill Kloos, Law Office of Bill Kloos
30414 Lebleu Rd.	30414 Lebleu Rd.	375 West 4th St. Suite 204,
Eugene, OR 97405	Eugene, OR 97405	Eugene, OR 97401

File No.:	509-PA23-05321
Received:	May 8, 2023
Deemed Complete:	June 7, 2023
Assessor's Map & Taxlot:	21-25-12-00-00843

Proposal: A request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4 and House Bill 2225.

The land use application referenced above has been deemed complete and accepted for processing pursuant to Lane Code (LC) 14.050(1). The Lane County Planning Director has elected to process the above Type II applications through a Type III Hearings Official procedure in accordance with Lane Code 14.030(1)(b)(ii)(cc). Acceptance as a complete application does not involve determining if the application is approvable based on the applicable approval criteria. It is the responsibility of the applicant to demonstrate that the application meets the approval criteria. The information provided by the applicant may or may not be adequate for this purpose.

Staff are required by LC 14.050(1)(d) to mail this written notice to the applicant when an application is deemed complete. Staff will process your application according to LC Chapter 14 Type III procedures. A formal notice of hearing will be sent to the applicant, owner and surrounding property owners in which a hearings official will make a determination about the land use proposal. The tentative hearing date is September 7, 2023.

A land use decision with findings of fact and conditions of approval will then be mailed to the applicant, parties of record and surrounding property owners. Absent an appeal and upon expiration of the 12 day appeal period, your land use decision becomes final.

I am the staff contact for this application unless notice is provided otherwise. If you have any questions concerning this letter or your application, please feel free to contact me, at 541-682-3958 or julia.dobberstein@lanecountyor.gov.

Sincerely,

Julia Dobberstein

Julia Dobberstein, Planner

Date Received:
RECEIVED MAY 08 2023

LAND MANAGEMENT DIVISION

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only. FILE # 509-PA23-05321 FEE: 3,841.76 LES.

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: See Owner Authorization

Agent (print name): Bill Kloos, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-1260 Email: billkloos@landuseoregon.com

Agent Signature: Bill Kloos

Land Owner (print name): E.J.K. Investments

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: See Owner Authorization

LOCATION

21-25-12 Taxlot 843

Assessor's Map and Taxlot Number

Airport Road (no address assigned)

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

REQUIRED SUBMITTALS (Also reference the Application Standards handout)

Lane Code 14.020 (3)(b) Electronic Materials.

(i) When application or appeal materials submitted in hard copy format are over five pages in length, an applicant or appellant must provide an identical electronic version of the submitted materials in addition to a hard copy. Any other party submitting written materials into the record that are over five pages is also encouraged to submit an identical electronic copy. Any electronic materials must be in a format acceptable to the Director. This provision should not be interpreted to prohibit electronic submittals of materials less than five pages in length. The County will scan submitted materials upon request for fee. The County cannot be held responsible for electronic submittals that are not received by the Director or not confirmed by the Director to have been received.

(ii) When electronic materials over five pages in length are submitted by any party for inclusion in an application record, an identical hard copy of the materials must also be submitted unless this requirement is waived by the Director.

Lane Code 14.040 Application Requirements

(1) Minimum Submittal Requirements. Applications for a Type I through Type IV procedure must be submitted on a form provided by the Director, address all applicable standards and criteria, and include the following materials and information:

(a) Applications must include at least one hard copy of all application materials, no larger than 11 inch x 17 inch in size;

(b) All applicable information requested on the application form;

(c) Required filing fee, except that the required filing fee may not be required when Lane County initiates an application;

(d) Signature of each applicant;

(e) Signature of a property owner or property owner's authorized representative;

(f) Proof of property ownership by providing a certified or recorded copy of a deed, or land sale contract, or Lane County Tax Assessor's records;

(g) Assessor's map and tax lot number of the subject property;

(h) A site plan drawn to a standard engineer's scale, and conforming to the County's site plan submittal standards;

A site plan must be included. Refer to the handout entitled "How to prepare your plot plan." Identify nearby driveways. Driveways spacing standards are contained in Lane Code 15.138.

(i) Information demonstrating compliance with any applicable prior decisions and conditions of approval for the subject property;

(j) A written narrative clearly indicating what action is requested and addressing all applicable standards and criteria;

(k) Supporting information required to evaluate the application and address the applicable standards and criteria;

(l) A written statement indicating whether a railroad-highway crossing provides or will provide the only access to land that is the subject of an application; and

Does a railroad-highway crossing provide the only access to the subject property?

Yes ___ No X

(m) Additional information needed to evaluate applicable standards and criteria.

(2) **Fees Required. In addition to any other applicable approval criteria, an approvable Type II or III application must be accompanied by the appropriate filing fee unless the Director authorizes a waiver or reduction to filing fees pursuant to Lane Manual Chapter 60.850.**

(3) **Determination of Application Requirements. The Director may waive any of the requirements of subsection (1) above if deemed to be inapplicable to the application.**

(4) **Applicant's Burden. It is the applicant's responsibility to provide evidence demonstrating that the application complies with all applicable standards and criteria.**

ADDITIONAL INFORMATION REQUESTED FOR THIS APPLICATION:

ZONING F-2 **ACREAGE:** 13.34 acres

DESCRIBE THE ACCESS TO THE PROPERTY (circle the answer):

State Hwy (County Rd) Public Rd Private Easement

Road name: Airport Road

NUMBER OF EXISTING DWELLINGS ON PARCEL: None

EXISTING IMPROVEMENTS: What structures or improvements does the property contain (i.e., outbuildings, roads, driveways, wells, septic tanks, drainfields)? Will any structure or improvement be removed/demolished?

None

PHYSICAL FEATURES: Describe the site.

- The Vegetation on the property: The parcel is mostly open with scattered vegetation of fir, oak and maple trees.
- The Topography of the property: The parcel slopes downhill to the northeast.
- Any Significant Features of the property (steep slopes, water bodies, etc.): None.

APPROVAL CRITERIA

Lane Code 16.211(2) contains the Impacted Forest Lands (F-2) Zone Table of Permitted Uses. Use 2.4, the template dwelling, is subject to (3)(c), (3)(q), (3)(r), (5), and (6).

(3) Use Standards

(c) **A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:**

The subject property must be a lawfully established unit of land:

- Was the property created by a partition or subdivision? List plat number _____
- If not, a final legal lot verification is required prior to submittal of this application. What is the file number for the legal lot verification?

LLV PA08-6330 Notice PA08-6329

(i) If the lot or parcel is predominantly composed of soils that are:

The minimum number of parcels within the template depends on the productivity of the soil type. At least 51% of the acreage of the parcel is composed of soils capable of producing:

____ (1) Less than 50 cubic feet per acre per year: See subsection (aa)

____ (2) 50 to 85 cubic feet per acre per year: See subsection (bb)

__X__ (3) More than 85 cubic feet per acre per year: See subsection (cc)

Soil Type	(Cubic ft/acre/yr)	% of Parcel
Total (must equal 100 %)		

(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>three</u> other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>seven</u> other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>11</u> other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

Include a scaled map and the template used to verify the requirements in (aa), (bb), or (cc) showing the 1993 configuration of the parcels.

How many lots or parcels existed on January 1, 1993? 12

How many dwellings existed on January 1, 1993 and continue to exist? 5

Complete the following table to support your answers on the previous page.

	map and tax lot	deed & date	dwelling date
1.			
2.			
3.			
4.			
5.	See Exhibit K		
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			

Include property description cards, which you can obtain from Lane County Assessment & Taxation.

If necessary, see the Planner on Duty for prior partitions/subdivision/legal lot status of surrounding properties. If a property was created via a partition or subdivision, please list that above in the deed/date column. If a legal lot verification was completed on a property, please include the PA# along with the year of creation.

If the dwelling is a manufactured dwelling, provide evidence it was placed on the property prior to January 1, 1993.

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

(iv) Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(v) The following applies where a tract 60 acres or larger abuts a road or perennial stream:

(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;

(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

Will you be using the 160 acre rectangle template aligned with the road? Yes X No ___

If yes, is least one of the dwellings used in the dwelling count located on the same side of the road as the proposed dwelling? NA Yes ___ No ___ (If no, you cannot use the rectangle template)

(vi) A proposed "template" dwelling under this section is not allowed:

(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(c)(vii) for the other lots or parcels that make up the tract are met; or

(bb) If the tract on which the dwelling will be sited includes a dwelling;

Does the tract contain any other dwellings? Yes ___ No X

(vii) Where other lots or parcels that make up a tract in Subsection (vi):

(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and

restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(q) For single-family dwellings, the landowner must sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

If this application is approved, this will be made a condition of approval.

(r) For single-family dwellings, the approval is valid for four years from the date of approval, unless otherwise specified in the approval or by other provisions of Lane Code. Notwithstanding the requirements of LC Chapter 14, an application for a two year extension of the timelines for the permit approval can be made and approved pursuant to LC Chapter 14.

Pursuant to ORS 215.417, this application, if approved, will be valid for four years from the date of approval and one two year extension of the timelines can be made. This will be made a condition of approval.

SITING CRITERIA

(5) Siting Standards for Uses, Activities, and Structures

The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The Director must consider the criteria in this section together with the requirements of Section (6) to identify the building site.

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);

Explain the reason for the proposed location. You must address the following issues:

- How is the new dwelling close to other dwellings on adjacent property? Explain.
  See attached Applicant's Statement
- How is the dwelling near existing roads?
  See attached Applicant's Statement
- Will a new driveway be constructed or will an existing driveway be extended?
  See attached Applicant's Statement
- What is the most level part of the property?
  See attached Applicant's Statement

- What is the area that is least suitable for forest use based on the soil productivity, forest management and forest harvesting practices?

  See attached Applicant's Statement

- Is there a ravine, ridge or slope greater than 40% within 30 feet of the new dwelling?

  See attached Applicant's Statement

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses;

Will the dwelling encroach into a forested area? Or will it be located in an existing developed or open area? Explain how the dwelling location will cause minimal intrusion to forested areas:

See attached Applicant's Statement

(iii) Where possible, when considering LC 16.210(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

Is the dwelling within 500 feet of adjoining property zoned F-1? Yes X No ___

If yes, explain:

See attached Applicant's Statement

Is the dwelling within 100 feet of adjoining property zoned F-2 or EFU? Yes ___ No X

If yes, explain:

See attached Applicant's Statement

(iv) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

Explain how the location of the dwelling and driveway minimize intrusion into the forest. Attach additional pages if necessary.

See attached Applicant's Statement

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).

(iii) **The minimum distance necessary to comply Sections (5)(a) and (6).**

Does the property front County Right-of-way? Yes X No ___

If yes, what is the distance from the proposed dwelling to the County Right-of-way? 1200 Feet

How far is the proposed dwelling from the northern property line? 300 Feet

How far is the proposed dwelling from the eastern property line? 400 Feet

How far is the proposed dwelling from the southern property line? 300 Feet

How far is the proposed dwelling from the western property line? 130 Feet

Are these setbacks at least the minimum distance to comply with (5)(a) and (6)?

Yes

(iv) **Riparian Setback Area. A riparian setback area applies to the area (iv) between a line that is 100 feet from and parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with LC 16.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.**

Is there a designated Class 1 stream on the property? Yes ___ No X

If yes, how far will the dwelling be from the Class 1 stream? _____ Feet

(c) **Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:**

(i) **Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;**

(ii) **A water use permit issued by the Water Resources Department for the use described in the application; or**

(iii) **Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.**

What is your proposed water source (check the answer):

Private Well X Community System ___ Public system ___

Describe: Existing wells on nearby properties show adequate supply of water available for parcel. See attached Exhibit M

For a community or public system, do you have written verification the provider can serve your dwelling?

Yes ___ No ___ If yes, include a copy with this application.

Do you have a water use permit (well log) for an existing well, issued by the Water Resources Department? Yes ___ No X

If yes, include a copy with this application. Copies can be obtained by searching for groundwater data at the following website: https://www.oregon.gov/OWRD/pages/index.aspx

(d) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(e) Approval of a dwelling is subject to the following requirements:

(i) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.

(ii) The Director must notify the County Assessor of the above condition at the time the dwelling is approved.

(iii) Stocking survey report:

(aa) If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(bb) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.

If this proposal is approved, (d) and (e) above will be made conditions of approval.

(6) Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings, manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:

Is the property within a fire district? Yes X No ___ If yes, go to (b) below.

If the property is not within a fire district, you have two options (choose one):

____ (A) Submit evidence of a long term services contract with the nearest fire district and request annexation into the fire district, or

____ (B) Develop a Fire Protection Plan. It must comply with standards in (i) - (v) below. The Fire Protection Plan will be verified as a Condition of Approval, but it is recommended that you submit the plan with this application.

(i) The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;

(ii) If a water supply is required for fire protection, it must be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;

(iii) The applicant must provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use;

(iv) Road access must be provided to within 15 feet of the water's edge for firefighting pumping units. The road access must accommodate the turnaround of firefighting equipment during the fire season. Permanent signs must be posted along the access route to indicate the location of the emergency water source; and

(v) A 100-foot wide primary safety zone and a 100-foot wide secondary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures must be provided and maintained in perpetuity in compliance with the standards in (6)(c).

(b) Fire Safety Design Standards for Roads and Driveways.

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Attach to this application objective information demonstrating compliance or feasibility of compliance with Lane Code 16.211(6)(b)(i), including:

X Itemized list of firefighting equipment. Obtain from the fire district (if applicable).

X Description and evidence of physical nature of access or driveway route. Topography maps, photos, or other evidence may be included in the application.

See attached Applicant's Statement

X Description of proposed improvements to access or driveway route. Design drawings may be included in the application.

See attached Applicant's Statement

In addition to the above items, the application may also include:

____ A preliminary written verification of compliance from the agency providing fire protection, or a preliminary written certification of compliance from an Oregon Registered Professional Engineer. However, please note that such certification will also be made a condition of approval to verify final access and/or driveway construction.

The standards below will be a condition of approval and will be verified by staff.

(ii) Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and must have a vertical clearance of 13 feet 6 inches.

Will an existing driveway be extended to serve the new dwelling? Yes X No ___

Will there be a new driveway in a new location? Yes X No ___

(iii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Are you proposing a dead-end road? Yes ___ No X

Is it over 200 feet long? Yes ___ No ___

If yes, it must contain turnouts. Explain: _____

See attached Applicant's Statement

(iv) Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width

surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Will the new driveway or extension of the driveway contain any culverts or bridges? Yes ___ No X

If yes, explain: _____

_____

(v) **Road and Driveway Grades. Road and driveway grades cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.**

Will the road or driveway contain any slopes in excess of 8%? Yes ___ No X

If yes, explain: _____

_____

(vi) **Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.**

Please be advised that staff will evaluate the route of the road serving your dwelling, from the homesite back to the public road to which it connects. Staff will determine if the road is to be named, per LC 15.312 and LM 15.015(3).

(vii) **Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.**

The driveway must be 12 feet wide. How wide is the driveway? 12'

Is it over 200 feet long? Yes X No ___

If yes, it must contain turnouts. Turnouts are not required if the driveway is 16 feet wide.

Will the driveway have turnouts? Yes X No ___

Will the driveway be 16 feet wide? Yes ___ No X

(viii) **Modifications and Alternatives. The standards in (6)(b)(i) through (6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.**

Are you proposing any modifications or alternatives to the road or driveway standards? If yes, explain. Attach additional pages of necessary.

None.

(c) **Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.**

(i) **Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.**

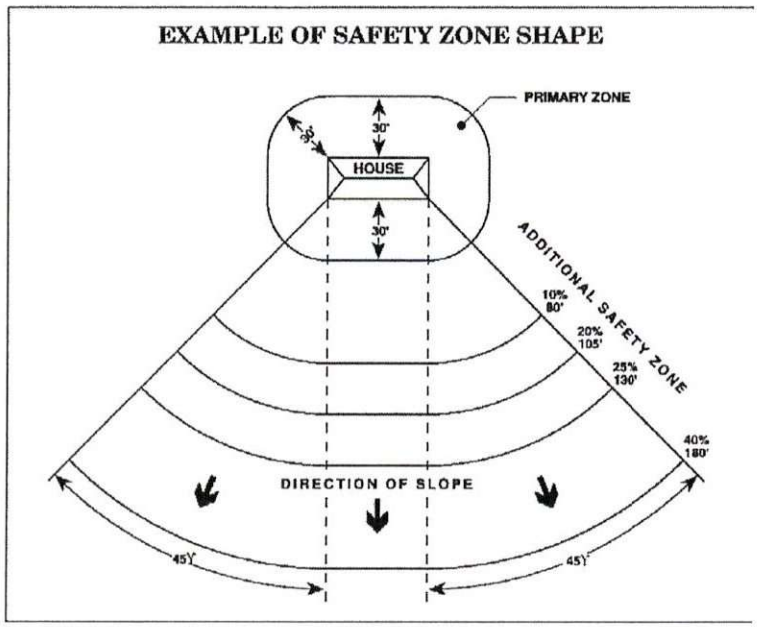
(aa) **As slope increases, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:**

The new dwelling must be surrounded by a 30 foot primary safety zone. If the dwelling is on a slope, the safety zone will increase, as shown in the table.

Table 16.211-2 Minimum Primary Safety Zone

Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Figure 16.211-1



(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.

The secondary fuel break must be established an additional 100 feet from the primary safety zone, but only on property you own.

* Show the fuel breaks on the site plan. If approved, the primary safety zone and the secondary fuel break will be verified as a condition of approval. Contact staff (541-682-3577) or visit the Planning website (www.lanecounty.org/planning) for details regarding fire break standards.

* The establishment and maintenance of fuel breaks within the Riparian Setback Area must comply with the applicable requirements of Lane Code 16.253.

(d) The dwelling must have a fire retardant roof.

(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.

Substantial evidence may need to be submitted with the application to determine slope. This could include photos, slope calculations, and/or evidence from a private engineer or surveyor such as a stamped site plan. What is the slope of the land within 30 feet of the dwelling? less than 10%

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

If the proposal is approved, (d) and (f) above will be made conditions of approval and will be verified by staff.

Applicant's Supplemental Narrative

LC 16.211(3)(c) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

(i) If the lot or parcel is predominantly composed of soils that are:
(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

RESPONSE: Not applicable.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

RESPONSE: Not applicable.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

RESPONSE: Not applicable. The subject property is predominately comprised of soils capable of producing more than 85 cubic feet per acre per year of wood fiber. 75% of the subject property is comprised of soil map unit 63D Jory capable of producing 178 cubic feet per acre per year of wood fiber as documented in the Lane County Soil Ratings for Forestry August 2011 Update. Exhibits G & T.

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

RESPONSE: No parcels used to satisfy the eligibility requirements are within the Urban Growth Boundary of Oakridge – Westfir. Exhibit B.

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

RESPONSE: The 5 dwellings relied upon for eligibility are on parcels that are at least partially in the boundaries of the 160-acre template.

(iv) ***Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;***

RESPONSE: The subject property abuts a County Road, Airport Road. The applicant has chosen to use a 160-acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road. An alternate road alignment template map is also provided to demonstrate conformance with the requirements. Exhibit J1 and J2.

(v) ***The following applies where a tract 60 acres or larger abuts a road or perennial stream:***
(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:
(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or
(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;
(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

RESPONSE: Not applicable. The subject property is less than 60 acres in size.

(vi) ***A proposed "template" dwelling under this section is not allowed:***
(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(a)(iii) for the other lots or parcels that make up the tract are met; or
(bb) If the tract on which the dwelling will be sited includes a dwelling;

RESPONSE: Not applicable. The subject property is vacant. The tract consists of only one parcel.

(vii) ***Where other lots or parcels that make up a tract in Subsection (vi):***
(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

RESPONSE: Not applicable. The subject tract consists of only one parcel.

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

RESPONSE: Not applicable. The subject tract consists of only one parcel.

OAR 660-006-0027 (6)(h) If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.

RESPONSE: The subject property was not part of a tract on January 1, 2019. Exhibit H.

LC 16.211(5) Siting Standards for Uses, Activities, and Structures
The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The Director must consider the criteria in this section together with the requirements of Section (6) to identify the building site.

RESPONSE: The above provision requires that the standards of subsections (a) through (b) below be weighed together with the requirements of Section (6) below to determine the building site. As discussed below, placement of the dwelling at the site is the building site that best meets the above objectives.

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracks, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent (40%);

RESPONSE:
Near other dwellings: The dwelling site is located in the west portion of the parcel. The area is sparsely settled with dwellings. The proposed dwelling site is located approximately 1000 feet from the house to the east which is the nearest in any direction on Map 21-35-18 Tax lot 914. The site is as close to dwellings on other tracts as it can be while respecting the configuration of the parcel and the proximity of the airport.

Near existing roads: The homesite is located immediately adjacent to an existing timber road extending through the parcel from Airport Road. See Exhibits A & D – Site Plan and Aerial.

On the most level part of the tract. The tract slopes down to the northeast. See Exhibits S & X. Based on these materials, the dwelling site is on the most level portion of the tract, especially when this provision is balanced with other provisions, such as setbacks, access, slopes, and minimal intrusion into forested areas.

On the least suitable portion of the tract for forest use: The entire area of the parcel not underneath the approach surface of the Oakridge airport is comprised of Soil Map Unit Jory (63D) with a forest productivity ratings of at least 178 cu.ft./ac/yr. There is no ability to construct the home within an area of less forest productivity. Exhibit T. Soils are not determinative of forestry suitability, but are relevant. When balanced with other standards, the dwelling site is located on the least suitable portion of the tract for forest use.

At least 30 feet from any ravine, ridge or slope greater than 40%. There are no ravines, ridges or slopes greater than 40% within 30 feet of the site. See Exhibit S –LIDAR

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses;

RESPONSE: The size and configuration of the parcel, combined with the proximity of the Oakridge Airport with the accompanying Approach Surface, severely limit the available locations for the homesite. The placement has been determined by the necessity for adequate fuel breaks and access. The dwelling site accomplishes this.

(iii) Where possible when considering LC 16.211(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

RESPONSE: The subject property is bordered by property zoned F-1 to the west and south. Property to the north is zoned F-2 and AO. The dwelling site is setback 130 feet and 290 feet from the south and west property lines respectively (the directions of the F-1 properties). The north-south dimension of the parcel is only 550 feet which limits the ability to achieve a setback of 500 feet from the south property line and still achieve an adequate area for fuel breaks. The homesite is centered in the east-west direction below the area impacted by the Airport Approach Surface restrictions.

(iv) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

RESPONSE: The site will be accessed in part by an existing access road that serves the BPA power line easement and will be shared by easement by two parcels to the northeast, Map 21-35-07-30 Tax lots 2800 and 2900. The roadway will be constructed to county standards. Service corridors for utilities will run adjacent to the proposed roadway and driveway. Thus, the use of the existing roadway assures the amount of forestland used to site roads and services will be

minimized.

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).

(iii) The minimum distance necessary to comply Sections (5)(a) and (6).

RESPONSE: The dwelling site is at least 30 feet from all property lines and more than 20 feet from Airport Road. See Site Plan. (5)(a) and (6). See Site Plan.

(iv) Riparian Setback Area. A riparian setback area applies to the area between a line that is 100 feet from and parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with LC 16.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.

RESPONSE: No Class I Stream is within 100 feet of the subject property. See Exhibit R.

(c) Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.

RESPONSE: The applicant will drill a new well. Based on well log data for nearby wells, particularly well LANE 4467 located on the adjacent property Map 21-35-18 Tax lot 914, Exhibit M – Water Resources Well Records, there is sufficient proof to make a conclusion that

there is a feasible domestic water supply available. The subject property is exempt under ORS 537.545, and agrees to submit the required report once the well is complete.

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(d) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

RESPONSE: Road access to the subject property is provided by a Rural Local County Road – Airport Road.

(e) Approval of a dwelling is subject to the following requirements:

(i) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.

(ii) The Director must notify the County Assessor of the above condition at the time the dwelling is approved.

(iii) Stocking survey report:

(aa) If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(bb) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.

RESPONSE: It is feasible to demonstrate \conformance with this requirement as a condition of approval.

(f) Signs.

(i) Signs cannot extend over a public right-of-way or project beyond the property line;

(ii) Signs cannot be illuminated, flashing, blinking, contain scrolling images, or capable of movement; and

(iii) Signs are to be limited to 200 square feet in area.

RESPONSE: No signs are proposed.

(6) Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings,

manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:

(i) The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;

(ii) If a water supply is required for fire protection, it must be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;

(iii) The applicant must provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use;

(iv) Road access must be provided to within 15 feet of the water's edge for firefighting pumping units. The road access must accommodate the turnaround of firefighting equipment during the fire season. Permanent signs must be posted along the access route to indicate the location of the emergency water source; and

(v) A 100-foot wide primary safety zone and a 100-foot wide secondary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures must be provided and maintained in perpetuity in compliance with the standards in (6)(c).

RESPONSE: The parcel is located within the Hazeldell Rural Fire Protection District which has an intergovernmental agreement (IGA) with the Oakridge Fire Protection District to respond to all emergency calls. The proposed shared road and driveway will be improved to the applicable Lane Code 16.211 fire standards. See Exhibit A. The route of access from the Fire District located at 47592 Hwy 58 is by way of a State Highway (58) for a distance of 1 mile to Airport Road (County road). Airport Road is paved for the entire ¾ mile length to get to the subject property.

(b) Fire Safety Design Standards for Roads and Driveways.

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to

the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

RESPONSE: The subject property is within a fire district. The proposed shared road and driveway will be improved to the applicable Lane Code 16.211 fire standards. See Exhibit A. The route of access from the Fire District located at 47592 Hwy 58 is by way of a State Highway (58) for a distance of 1 mile to Airport Road (County road). Airport Road is paved for the entire ¾ mile length to get to the subject property.

(ii) Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and must have a vertical clearance of 13 feet 6 inches.

RESPONSE: Access to the site is from Airport Road via an existing shared easement road and a driveway that will be improved to Lane Code 16.211 standards. Exhibit A. It is feasible to construct the road and driveway to the above county standards.

(iii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:
(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or
(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and
(cc) No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the

chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

RESPONSE: Turn arounds within the road portion of the shared access are illustrated on Exhibit A at intervals of not more than 500 feet. A turn around will be provided at the dwelling,

(iv) Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

RESPONSE: No bridges are required or existing. No new culverts are proposed. However, if any are needed, the applicant agrees to install per the above.

(v) Road and Driveway Grades. Road and driveway grades cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

RESPONSE: The proposed shared roadway and driveway can be constructed on slopes not exceeding 16%.

(vi) Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.

RESPONSE: This is instructional.

(vii) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

RESPONSE: The driveway portion of the access is roughly 450 feet in length to the home site. See site plan, Exhibit A. Based on topography, it is possible to provide the necessary 1 turnout. A turn around will be provided at the dwelling, Exhibit A.

(viii) Modifications and Alternatives. The standards in (6)(b)(i) through

(6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

RESPONSE: Not applicable.

(c) Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.

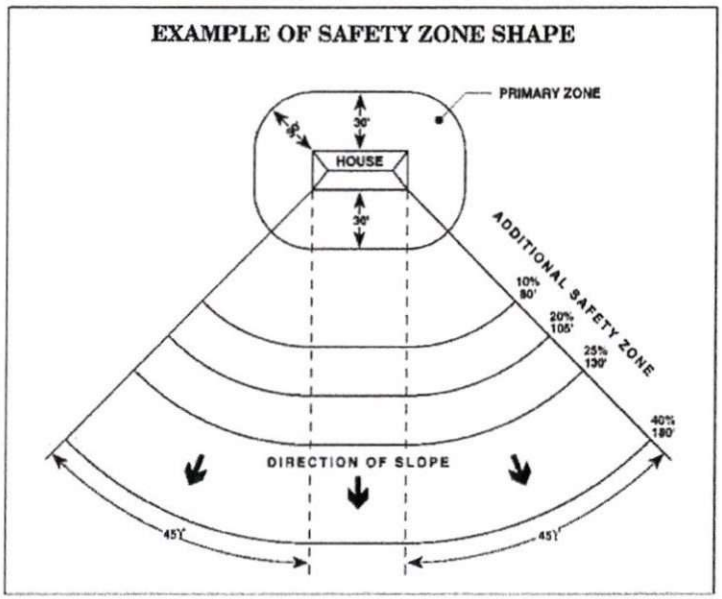
(i) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.

(aa) As slope increases, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:

Table 16.211-2 Minimum Primary Safety Zone

Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Figure 16.211-1



RESPONSE: The site slopes downward to the northeast. There are slopes greater than 20% within 30 feet of the dwelling site. The applicant has provided a 30-foot primary fuel break, plus an additional 75' primary fuel break in the northeast direction. See Exhibit A - Site Plan. There are no slopes in excess of 40% within 30 feet of the home site.

> ***(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.***

RESPONSE: The proposed dwelling site will have a full secondary fuel break in all directions around the primary safety zone.

> ***(d) The dwelling must have a fire retardant roof.***

RESPONSE: This is instructional.

> ***(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.***

RESPONSE: There are no slopes in excess of 40% within 30 feet of the home site. See Exhibit S.

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

RESPONSE: This is instructional.

EXHIBITS

A. Site Plan
B. Vicinity Map
C. Current Deed 2009-018700
D. Aerial Photos
E. Assessment & Taxation Maps
F. Owner Authorization
G. RLID Detailed Property Report
H. Contiguous Ownership Records
I. Legal Lot Verification
J. Template Maps
K. Template Parcels & Dwellings Data
L. Centroid Map
M. Water Resources Well Records
N. Big Game Range Map
O. Zoning Map
P. Airport Map
Q. Wetlands Map
R. Class I Streams Map
S. LIDAR Map
T. Soils Map
U. Flood Hazard Map
V. Landslide Susceptibility Map
W. Dwellings Map
X. Contour Map
Y. USGS Topo Map
Z. PA10-5485
AA. RFPD Information
BB. Airport Combining Zone Information
CC. BPA Information
DD. FAA Information

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.1260
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

May 8, 2023

Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: Forest Template Dwelling Application
E.J. King Investments
Map 21-25-12, TL 00843

Dear Lane County:

This is an application for a forest template dwelling. This same application was filed several years ago. However, prior to a decision by the Planning Director, the Land Use Board of Appeals (LUBA) interpreted RCP Goal 5 Policy 11. Based on that LUBA decision, the application was withdrawn, along with many others.

LUBA was forced to interpret Policy 11 on its own in the absence of an interpretation of Policy 11 by the County Board. LUBA interpreted Policy 11 to mean that the ODFW recommended minimum acreages for Big Game Habitat must be applied directly to forest template dwelling applications. See *King v. Lane County*, __ Or LUBA __ (LUBA Nos. 2021-047/052, Oct. 15, 2021), *aff'd without opinion* 317 Or App 136, 501 P3d 1058 (2022). The interpretation by LUBA was required because Policy 11 is ambiguous – that is, it is subject to multiple, plausible interpretations. LUBA explained: "[T]he text of Policy 11 is ambiguous and requires interpretation to determine how to apply the ODFW density limitations* * * *" Slip op 22.

Recent decisions by LUBA and the Court of Appeals have determined that, based on a statute relating to housing, ambiguous standards in county plans and codes may not be applied at all in reviewing applications related to housing, such as this one. The relevant statute is ORS 197.307(4) which provides: "Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing."

There are several recent cases involving this statute. The decision that is most directly on point is *Community Participation Organization 4M v. Washington County*, __ Or LUBA __ (No. 2020-110, Sept. 29, 2021), which confirmed that the requirement in ORS 197.307(4) to apply only clear and objective standards applies to <u>all housing</u>, including housing outside of UGBs. LUBA explained, Slip op 16-17:

> "The county contends that ORS 197.307(4) does not require clear and objective standards for the development of housing outside a UGB. The county Is mistaken. As we explained above, SB 1051 amended ORS 197.307 and enlarged the clear and objective requirement by removing the previous requirements that the

> proposed development of housing be on buildable land" and that it be for "needed housing." By its terms, the clear and objective requirement applies to "the development of housing, including needed housing." ORS 197.307(4). The applicability of ORS 197.307(4) is not confined to areas within a UGB by the definition of needed housing in ORS 197.303(1)."

A more comprehensive treatment of how this statute now applies, including to this application, is found in *Warren v. Washington County*, __ Or LUBA __ (No. 2018-089, Nov, 14, 2018), *aff'd* 296 Or App 595, 439 P3d 581 (March 20, 2019), which involved county approval of a six-lot subdivision on rural land with a Goal 5 resource protection. Both LUBA and the Court of Appeals discussed the 2017 amendments to the statute in detail and concluded that the statute now applies to any housing proposal, whether or not the land is inventoried as "buildable land." As the Court of Appeals concluded, *id.* at 598:

> "Thus, ORS 197.307(4) no longer refers to "buildable land," and, by its terms, provides that local government can regulate the development of housing only through clear and objective standards, conditions, and procedures."

This is a proposal to develop housing on rural resource land. Based on ORS 197.307(4), the County is prohibited from applying any standard that is not clear and objective. That includes RCP Plan Goal 5 Policy 11, which LUBA has correctly determined is ambiguous. As a final note, opponents of this application may say that the Policy is no longer ambiguous because LUBA stated an interpretation. That view is fatally facile. LUBA interpreted the policy because it is ambiguous; picking one among multiple plausible interpretations does not make the policy clear and objective. It remains ambiguous on its face. It is the ambiguity that drives the need for an interpretation; the interpretation does not negate the ambiguous character of the policy.

As a final note, this application should be treated by the County the same way that the Hearings Official treated an application for a Relative Farm Help Dwelling on EFU land. See *Helsel*, PA 21-05928 (March 30, 2023). There the Hearing Official approved the dwelling use over the objections of LandWatch for the reason that none of the standards pressed by LandWatch for a denial is clear and objective and, thus, were not a basis for denial.

> "LandWatch contends that the application fails to satisfy the following approval criteria: that the farm operation qualifies as a 'commercial' farm operation; whether the operation is 'existing.' As opposed to planned; and that help on the farm from the relative is 'necessary' or 'needed.' As asserted by the applicants, all of the approval criteria that form the basis of these arguments are not clear and objective. Accordingly, pursuant to state law and the needed housing statute, they

cannot be applied to the subject application." *Helsel* at 6.

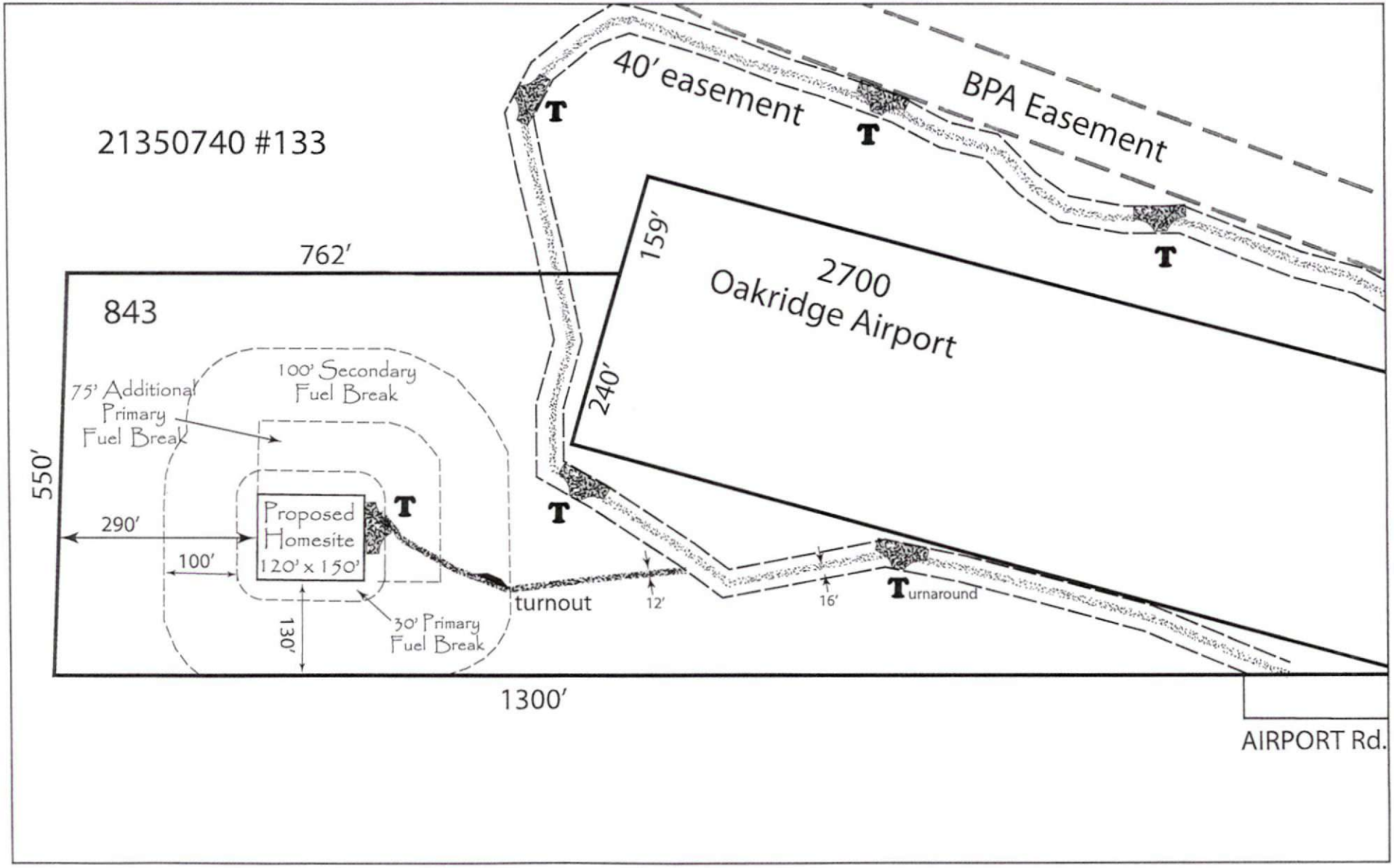
Sincerely,

Bill Kloos

Bill Kloos

Cc: Client

Site Plan



scale 1" = 200'

0 50 100 200 Feet

N

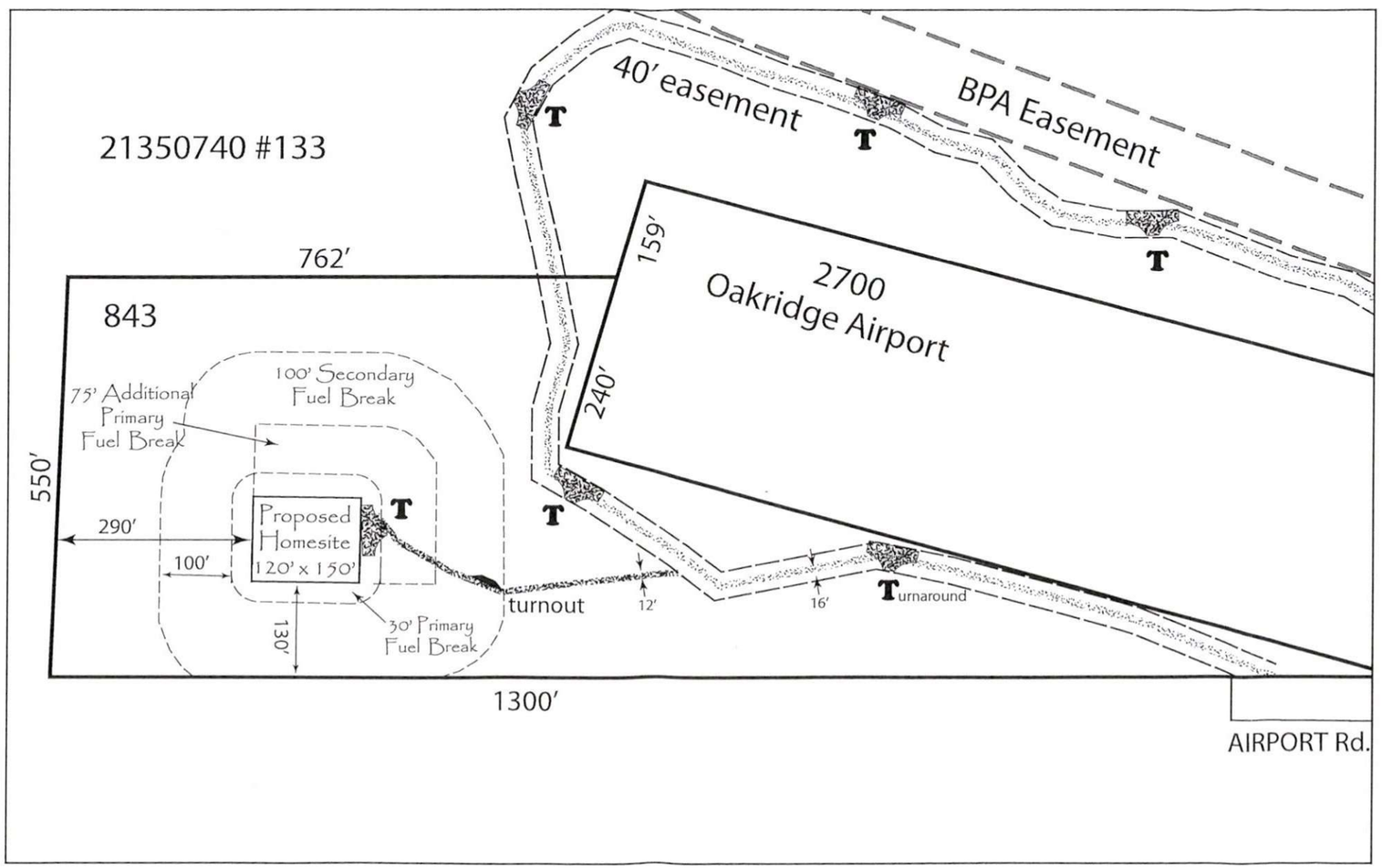
Subject Property Map 21-25-12 Taxlot 843

EXHIBIT A 2

SITE PLAN SUBMITTAL FORM

OWNER NAME: E.J.K. Investments **PHONE #** **ADDRESS:** 30414 Lebleu Road Eugene, OR 97405	**Map and Taxlot #:** 21-25-12 Tax Lot 843 **Scale:** ! inch = 200 feet	**APPLICANT NAME:** Edward J. King **PHONE #** **ADDRESS:** 30414 Lebleu Road Eugene, OR 97405

Site Plan

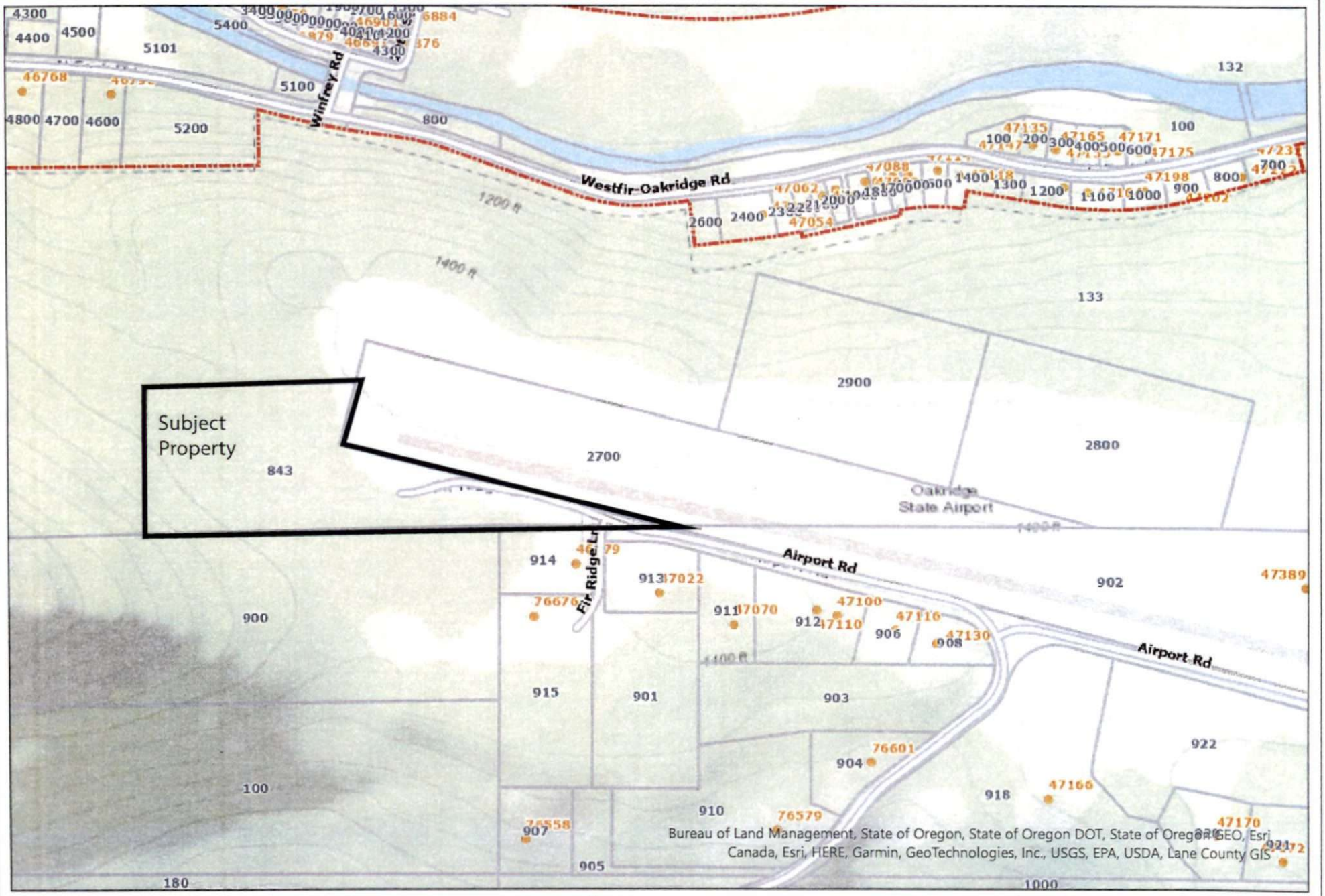


scale 1" = 200'
0 50 100 200 Feet

N

Subject Property Map 21-25-12 Taxlot 843

EXHIBIT A



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 325 650 1,300 Feet

Vicinity Map

Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT B

FORM No. 961 – BARGAIN AND SALE DEED – STATUTORY FORM. STEVENS NESS LAW PUBLISHING CO., PORTLAND, OR www.stevensness.com

EOB NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

CROWN PROPERTIES
30414 LEBLEU ROAD
EUGENE, OR 97405
Grantor's Name and Address

E.S.K. INVEST. LLC
30414 LEBLEU ROAD
EUGENE, OR 97405
Grantee's Name and Address

After recording, return to (Name, Address, Zip):
E.S.K. INVESTMENTS
30414 LEBLEU RD
EUGENE OR 97405

Until requested otherwise, send all tax statements to (Name, Address, Zip):
SAME AS ABOVE

Division of Chief Deputy Clerk
Lane County Deeds and Records

2009-018700

$31.00

01064791200900187000020021

04/10/2009 03:32:11 PM

RPR-DEED Cnt=1 Stn=6 CASHIER 07
$10.00 $11.00 $10.00

SPACE FOR RECORDER'S USE

No. _____, Records of this County.

Witness my hand and seal of County affixed.

NAME TITLE

By _____, Deputy.

BARGAIN AND SALE DEED – STATUTORY FORM

CROWN PROPERTIES, LLC, Grantor,

conveys to E.S.K. INVESTMENTS, LLC, Grantee,

the following real property situated in _____ County, Oregon, to-wit:

SEE EXHIBIT "A"

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE)

The true consideration for this conveyance is $ _____. (Here, comply with the requirements of ORS 93.030.)
OTHER VALUE CONSIDERATIONS

DATED _____; if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Member
Ed King for E.S.K. Investments LLC
Crown Properties

STATE OF OREGON, County of Lane) ss.

This instrument was acknowledged before me on April 10, 2009

by Ed King.

This instrument was acknowledged before me on _____,

by _____

as _____

of _____.

OFFICIAL SEAL
KRISTIN REMINGTON
NOTARY PUBLIC - OREGON
COMMISSION NO. 406994
MY COMMISSION EXPIRES AUG. 23, 2010

Notary Public for Oregon
My commission expires August 23, 2010

EXHIBIT C

PUBLISHER'S NOTE: If using this form to convey real property subject to ORS 92.027, include the required reference.

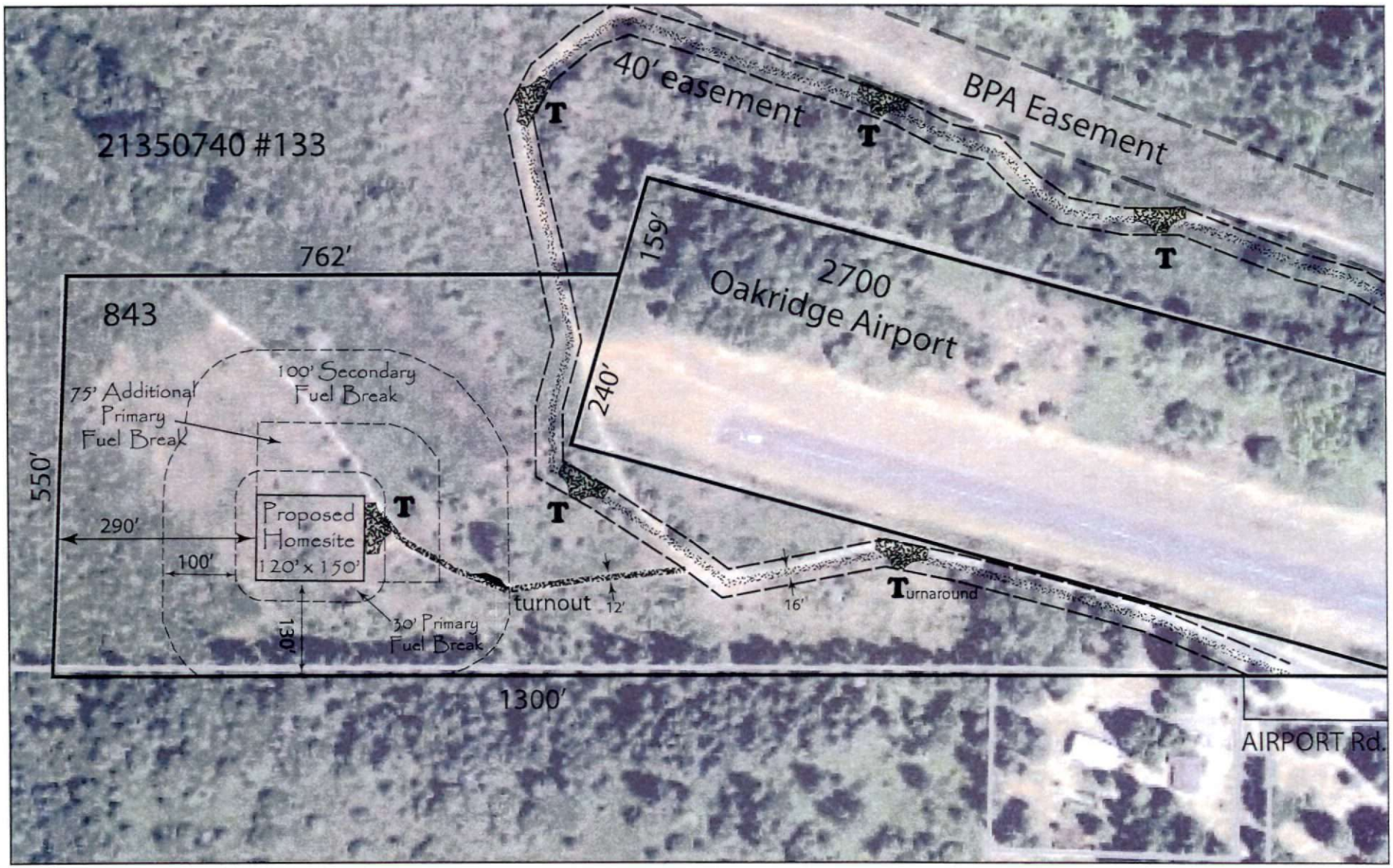
EXHIBIT "A"

Beginning at the Southeast Corner of Section 12 of Township 21 South Range 2 East of the Willamette Meridian, in Lane County Oregon; Thence along the South Line of said Section 12 South 89* 03 23" West 1300.00 feet to a point. Said point also being North 89* 03' 23" East 1302.31 feet from the South One Quarter of said Section 7; Thence leaving the South Line of said Section 12, North 0* 51' 49" East 550.00 feet; Thence North 89* 03' 23" East 762.23 feet more or less to the West Line of a parcel of land that was conveyed by deed to the Oakridge Airport, see Reel 360-R/ 96687, dated May 1 1967, as recorded within the Lane County Deeds and Records; Thence along the West Line of said Oakridge Airport, South 14* 46' 43" West 240.92 feet to the Southwest Corner of said Oakridge Airport; Thence along the South Line of said Oakridge Airport South 75* 13' 17" East 1229.42 feet more or less to the South Line of Section 7 of Township 21 South Range 3 East of the Willamette Meridian in Lane County Oregon; Thence along the South Line of said Section 7, North 89* 28' 35" West 597.91 feet to the Point of Beginning, all is Lane County Oregon.

Being Approximately 13.29 acres in size.

Site Plan

Aerial Photo



scale 1" = 200'

0 50 100 200 Feet

N

Subject Property Map 21-25-12 Taxlot 843

EXHIBIT D_1



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 200 400 800 Feet

2021 Aerial Photo

Map 21-25-12 Tax Lot 843

EXHIBIT D2

Lane County, Oregon

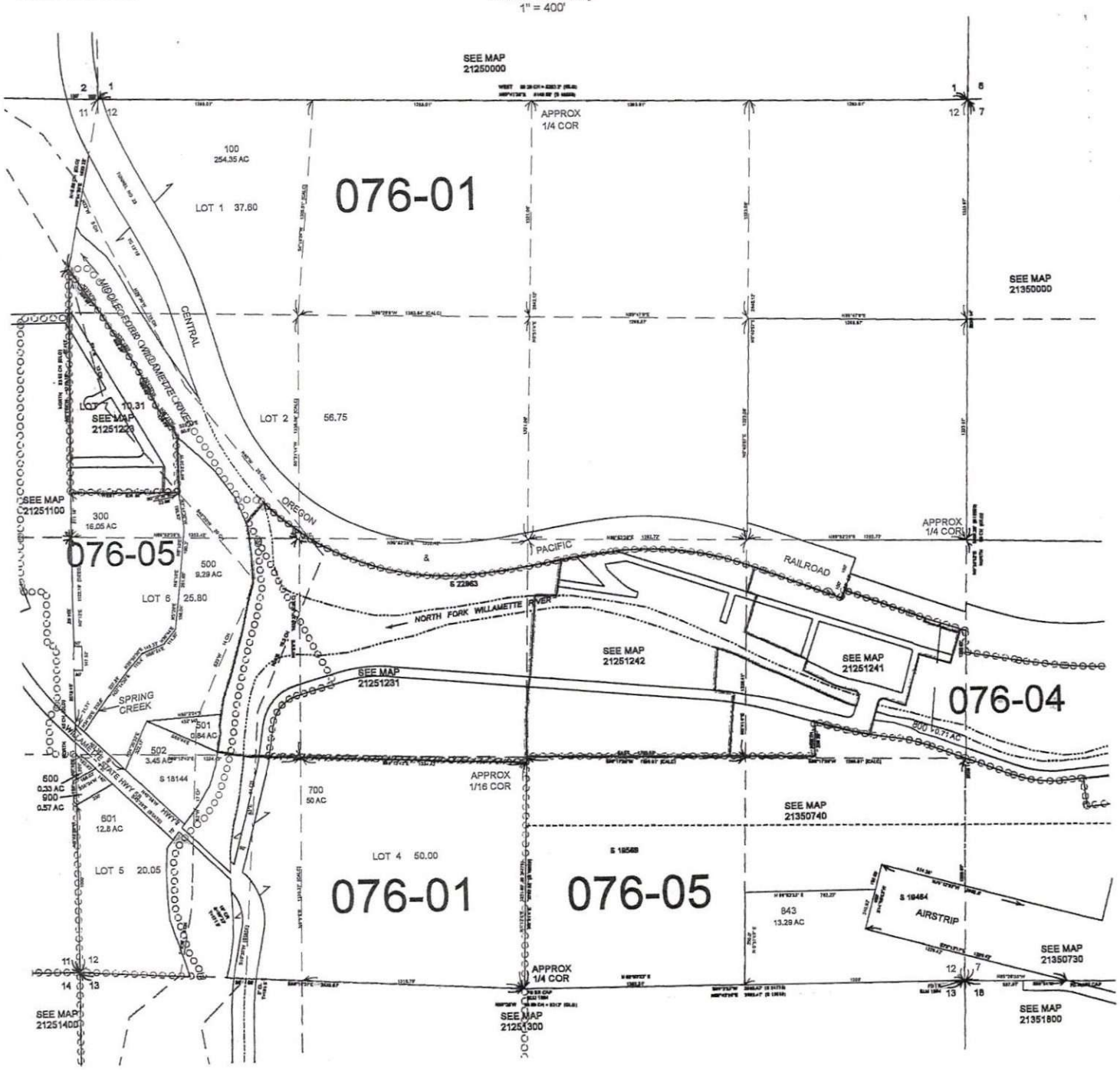
FOR ASSESSMENT AND TAXATION ONLY

SECTION 12 T.21S. R.2E. W.M.
Lane County
1" = 400'

WESTFIR

GIS DATA
12/16/2009 3:44:06 PM : lcatdwc

CANCELLED:
100
843
844
822
807
823
837
824
825
838
826
808
827
839
840
828
841
829
842
809
810
830
831
811
812
813
814
832
802
803
804
805
806
815
816
817
818
819
820
821
833
834
835
836



REVISIONS:
11/03/2008 - LCAT155 - CONVERT MAP TO GIS
12/17/2008 - LCAT155 - NTL 843 OUT OF 800 & 2135074000100
12/17/2008 - LCAT155 - NTL 844 OUT OF 800
12/17/2008 - LCAT155 - LLA BETWEEN TL 844 & 2135074000133
12/17/2008 - LCAT153 - REMAP TL 844 TO 2135073003900
12/28/2009 - LCAT113 - CORR TL 400 BNDRY

EXHIBIT E

WESTFIR
21251200

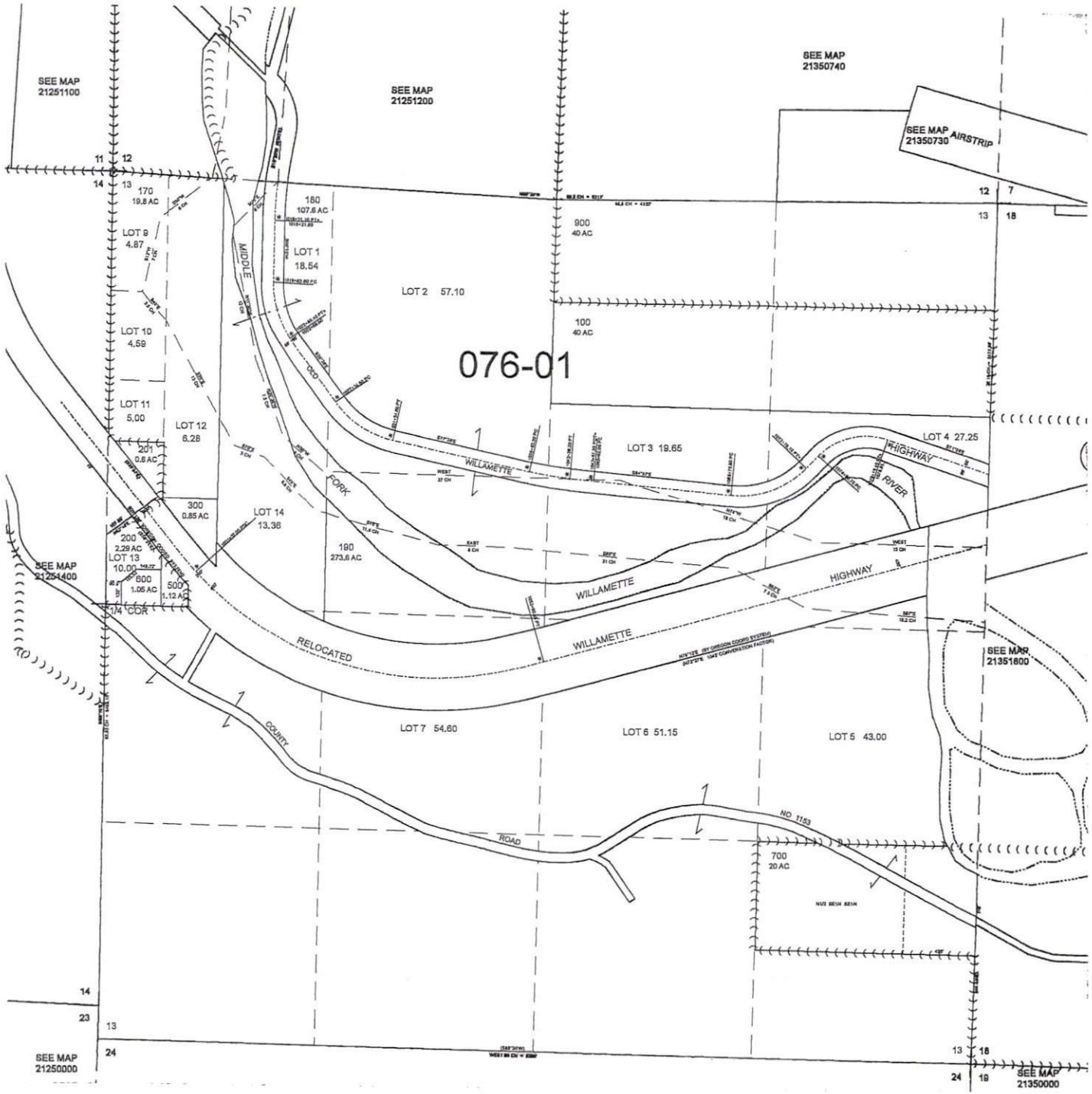
FOR ASSESSMENT AND TAXATION ONLY

SECTION 13 T.21S. R.2E. W.M.
Lane County
1" = 400'

21251300

GIS DATA
10/2/2009 1:45:46 PM : lcatlr

CANCELLED:



REVISIONS:
6/8/2006 - LCAT115 - CONVERT MAP TO GIS
10/2/2009 - LCAT157 - LLA'S BETWEEN TL 200/500

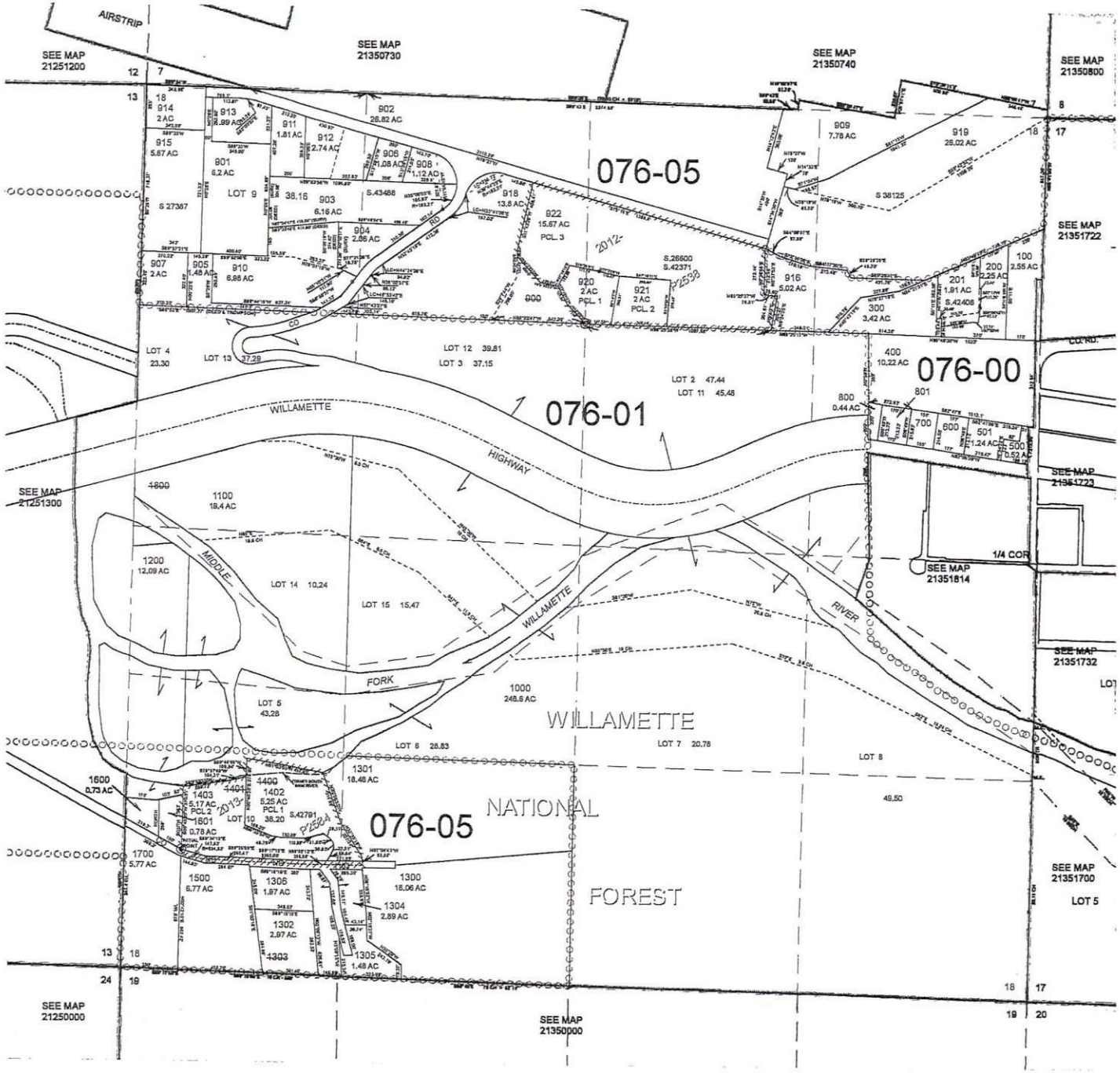
21251300

FOR ASSESSMENT AND TAXATION ONLY

SECTION 18 T.21S. R.3E. W.M.
Lane County
1" = 400'

21351800
OAKRIDGE

LCATJCG - 2016-01-28 09:31



CANCELLED
1303
1400
1800
900
1401

REVISIONS
05/17/2009 - LCAT115 - CONVERT MAP TO GIS
01/01/2012 - LCAT115 - ADDED HISTORIC LINE TO TL 800
05/18/2012 - LCAT155 - PTN TL 900 INTO 2013-P2538
05/18/2012 - LCAT155 - LLA BETWEEN 900 & 918, CANC 900
10/30/2013 - LCAT115 - CANC TL 1401 INTO 2013-P2584
07/23/2014 - LCAT119 - LLA BETWEEN TLS 200 & 201
01/13/2016 - LCAT174 - LLA BETWEEN TL 903 & TL 910

OAKRIDGE
21351800

FOR ASSESSMENT AND TAXATION ONLY

S.W.1/4 SEC. 7 T.21S. R.3E. W.M.
Lane County
1" = 200'

REVISIONS
12/17/2008 - LCAT155 - NTL 2800 OUT OF 21350740000100
12/17/2008 - LCAT155 - LLA BETWEEN TL 2800 & 21350740000133
12/17/2008 - LCAT155 - NTL 2900 REMAPPED FROM 21251200000844
01/26/2009 - LCAT155 - CONVERT MAP TO GEO
04/10/2013 - LCAT155 - CANC 2500 INTO 2400

21350730
WESTFIR
lca[jrg - 2013-04-10 11:52

CANCELLED
2500

SOUTHERN PACIFIC RAILROAD

SEE MAP
21251241

SEE MAP
21251242

SEE MAP
21350740

076-04

NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE RIVER

WESTFIR ROAD COUNTY ROAD No. 1323

PONEY ROAD

2400
0.79 AC

2900
12.05 AC

2800
13.26 AC

076-05

AIRSTRIP

2700

SEE MAP
21251200

SEE MAP
21251300

SEE MAP
21351800

WESTFIR
21350730

FOR ASSESSMENT AND TAXATION ONLY

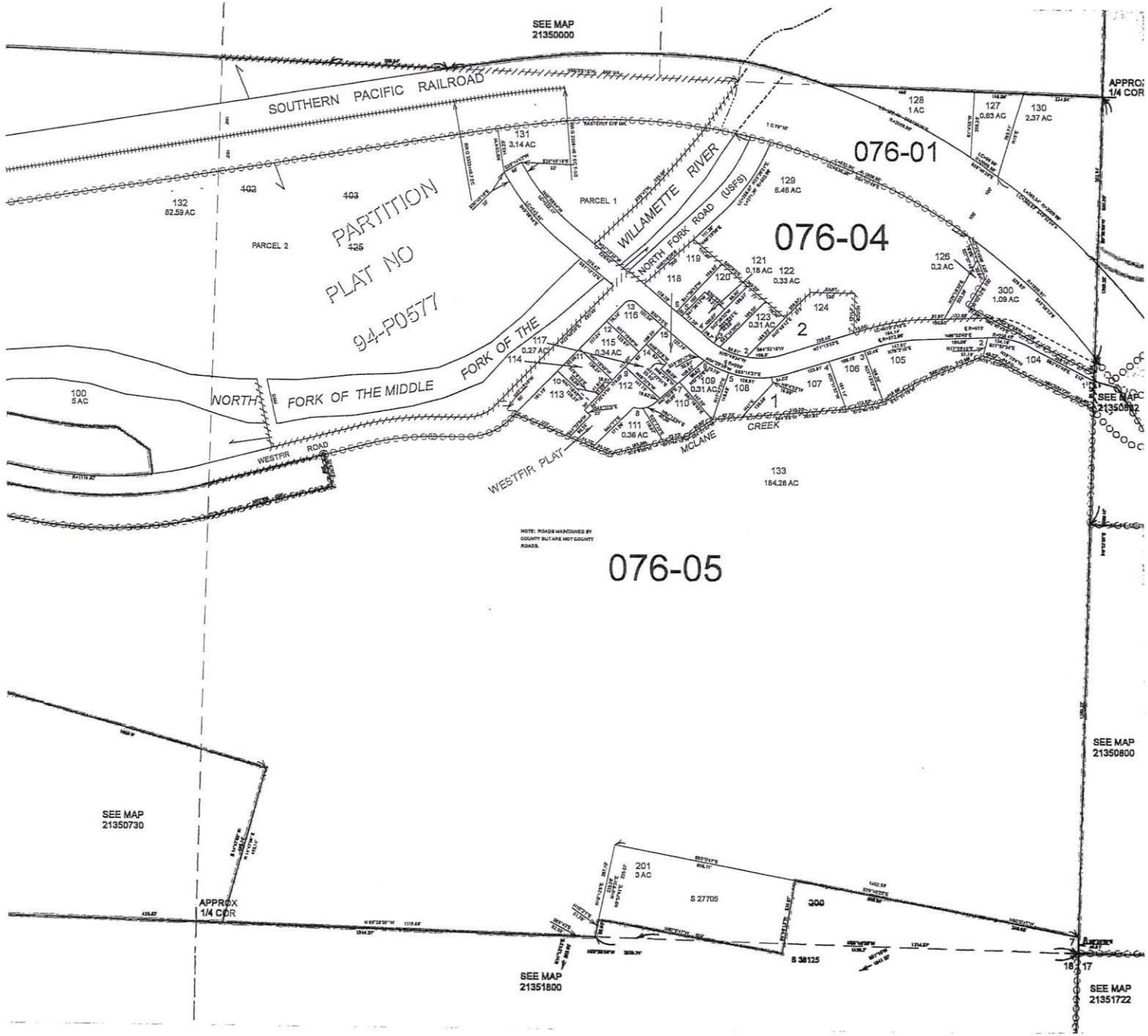
S.E.1/4 SEC. 7 T.21S. R.3E. W.M.
Lane County
1" = 200'

REVISIONS
12/05/2003 - LCAT115 - CONVERT MAP TO GIS
12/17/2008 - LCAT153 - PTN TL 100 INTO NTL 21251200006A3
12/17/2008 - LCAT155 - PTN 100 TO NTL 133 & NTL 21350730002B2D
12/17/2008 - LCAT156 - LLA BETWEEN TL 133 & 21350730002B00
12/17/2008 - LCAT165 - LLA BETWEEN TL 133 & 21251200003B44
10/30/2018 - LCAT174 - PTN OF RAILROAD TO NTL 300
09/24/2021 - LCAT148 - MAP CORRECTION TL 129 & 100

21350740
WESTFIR

LCATSKP - 2021-08-24 08:58

CANCELLED
102
103
200
100
133
125



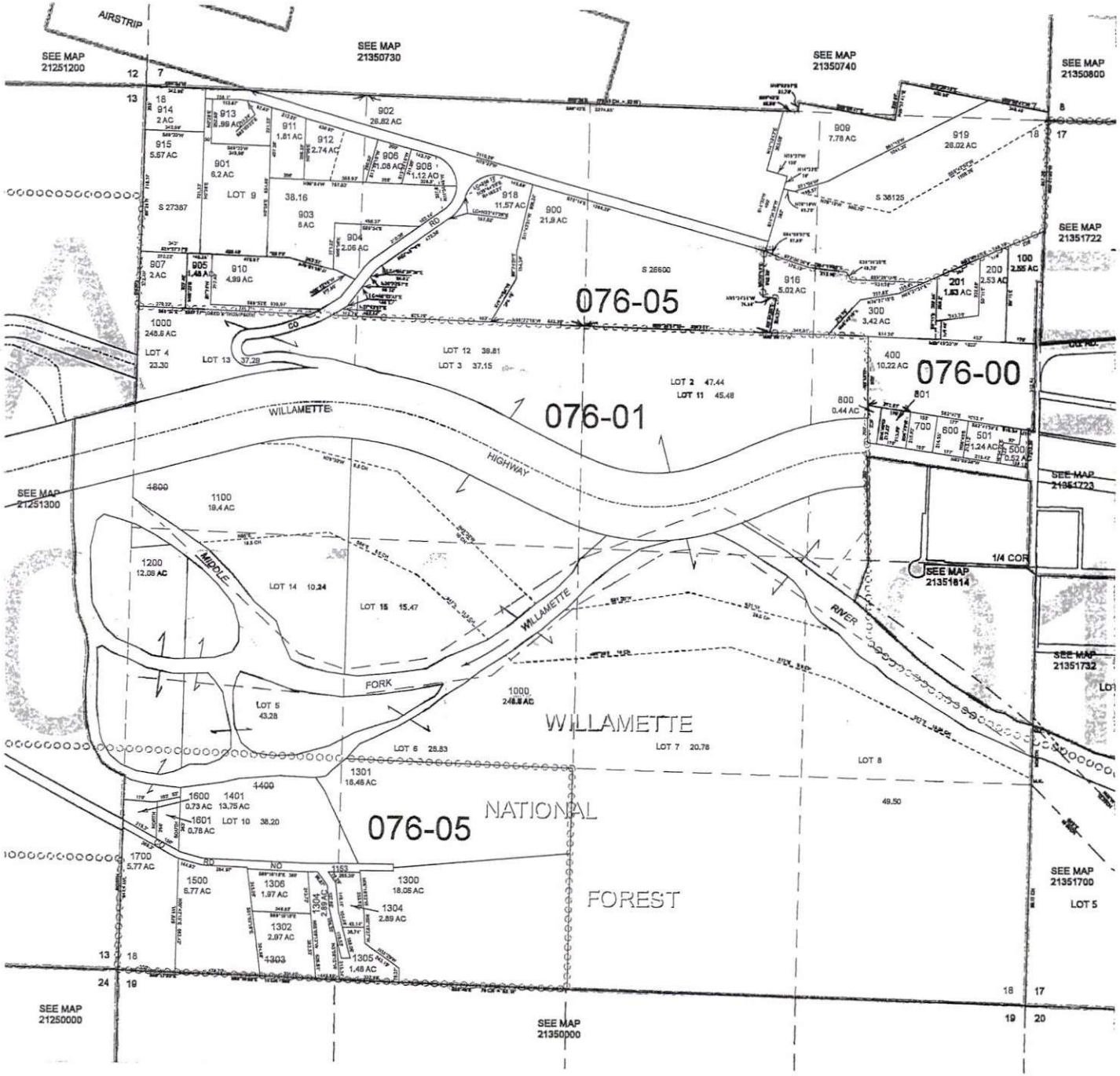
WESTFIR
21350740

TAXATION ONLY

SECTION 18 T.21S. R.3E. W.M.
Lane County
1" = 400'

21351800
OAKRIDGE

lcalcab - 2012-01-31 14:27



REVISIONS
05/17/2009 - LCAT115 - CONVERT MAP TO GIS
01/01/2012 - LCAT115 - ADDED HISTORIC LINE TO TL 300

OAKRIDGE
21351800

DocuSign Envelope ID: CE6A5E5D-8A13-4736-B7BB-62BBEE970218

LANE COUNTY PUBLIC WORKS

Property Owner Authorization Form

LAND MANAGEMENT DIVISION *3050 N. DELTA HWY, EUGENE OR 97408*

I hereby affirm that I am the owner of the property located at:

Property Address/Location: N/A

City: Oakridge State: OR Zip Code: 97463

Tax Map and Parcel Number: 21-25-12 #843

By signing below, I authorize the individual identified in the following section to act as my authorized agent with regard to any and all application(s) made to Lane County Land Management Division for the activities described. The individual identified below shall remain in this capacity with regard to any applications and subsequently issued permits related to these activities indefinitely unless an express written request to terminate this authorization, signed by me, is submitted to Lane County Land Management Division.

Project/Activity for which Application is being made: F-2 Template Dwelling

Signature of Owner: DocuSigned by: Ed King D1100000E084408... Date: 4/21/2023

Printed Owner Name: E.J.K. Investments

Printed Name of Permit Applicant/
Owner's Authorized Agent: Bill Kloos, Law Office of Bill Kloos

Address: 375 West 4th St. Suite 204

City: Eugene State: OR Zip Code: 97401

Telephone Number: 541-954-1260

Signature of Applicant/Agent: Date: 5/8/23

Once completed, please return this form to Lane County Land Management Division.

Detailed Property Report

Site Address N/A
Map & Taxlot# 21-25-12-00-00843
SIC N/A
Tax Account# 1829678

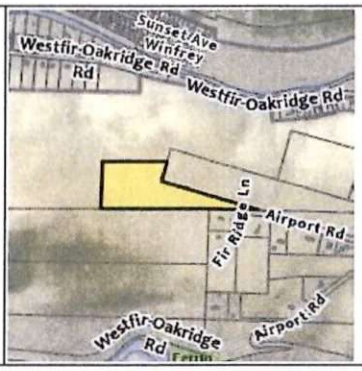
Property Owner 1
E J K Investments LLC
30414 Le Bleu Rd
Eugene, OR 97405

Tax account acreage 13.29
Mapped taxlot acreage† 13.34

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 21-25-12-00-00843







Business Information

RLID does not contain any business data for this address

Improvements

No assessor photos, assessor sketches or building characteristic information is available for this tax account.

Site Address Information

No site address associated with this tax account number

General Taxlot Characteristics

□ Geographic Coordinates

X 4389584 **Y** 766911 (State Plane X,Y)
Latitude 43.7534 **Longitude** -122.5125

□ Zoning

Zoning Jurisdiction Lane County
Lane County
Parent Zone F2 Impacted Forest
Overlay CAS Commercial Airport Safety Zone

□ Land Use

General Land Use

Code	Description
data not available	data not available

Detailed Land Use

Code	Description
data not available	data not available

Taxlot Characteristics

Incorporated City Limits	none
Urban Growth Boundary	none
Year Annexed	N/A
Annexation #	N/A
Approximate Taxlot Acreage	13.34
Approx Taxlot Sq Footage	581,090
Plan Designation	Forest
Eugene Neighborhood	N/A
Metro Area Nodal Dev Area	No
Septic	data not available
Well	data not available
Landscaping Quality	data not available
Historic Property Name	N/A
City Historic Landmark?	No
National Historical Register?	No

Service Providers

Fire Protection Provider	Hazeldell Rural Fire District
Ambulance Provider	Oakridge Fire & EMS
Ambulance District	SE
Ambulance Service Area	South/East
LTD Service Area?	No
LTD Ride Source?	No

Environmental Data

EXHIBIT G

FEMA Flood Hazard Zone

Code	Description
X	Areas determined to be outside of 500-year flood.

FIRM Map Number	41039C2194F
Community Number	039C
Post-FIRM Date	data not available
Panel Printed?	Yes

Soils

Soil Map Unit#	Soil Type Description	% of Taxlot	Ag Class	Hydric %
63D	Jory Silty Clay Loam, 12 to 20 Percent Slopes	75%	3	0
52D	Hazelair Silty Clay Loam, 7 to 20 Percent Slopes	24%	4	3
63C	Jory Silty Clay Loam, 2 to 12 Percent Slopes	1%	2	0

Schools

	Code	Name
School District	76	Oakridge
Elementary School	600	Oakridge
Middle School	601	Oakridge
High School	602	Oakridge

Political Districts

Election Precinct	765	State Representative District	12	Emerald PUD Board Zone	N/A
City Council Ward	N/A	State Representative	Charlie Conrad	Heceta PUD Board Zone	N/A
City Councilor	N/A	State Senate District	6	Central Lincoln PUD Board Zone	N/A
County Commissioner District	5 (East Lane)	State Senator	Cedric Hayden	Soil Water Cons. Dist/Zone	Upper Willamette / 4
County Commissioner	Heather Buch			Creswell Water Control District	data not available
EWEB Commissioner	N/A				
LCC Board Zone	4				
Lane ESD Board Zone	data not available				

Census Information

Census data have been removed from this report. To obtain Census data, please visit **www.census.gov**. For questions or concerns, please contact **support@rlid.org**.

Liens

None. RLID displays liens issued by Cottage Grove, Florence, and Springfield Utility Board. Additional liens can be found in Deeds and Records.

Building Permits

Please check the **State of Oregon ePermitting System**.

Land Use Applications

RLID does not contain any landuse application data for this jurisdiction

Petitions

RLID does not contain any petition data for this jurisdiction

Tax Statements & Tax Receipts

Account#: 1829678
View tax statement(s) for: **2022** **2021**

Tax Receipts

Receipt Date	Amount Received	Tax	Discount	Interest	Applied Amount
11/15/2022	$680.86	$680.86	$21.06	$0.00	$701.92
11/15/2021	$540.67	$539.01	$16.03	$1.66	$556.70
12/01/2020	$586.59	$583.63	$0.00	$2.96	$586.59
12/03/2019	$691.27	$688.20	$0.00	$3.07	$691.27
11/15/2018	$648.14	$648.14	$20.05	$0.00	$668.19

Data source: Lane County Assessment and Taxation

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
E J K Investments LLC	30414 Le Bleu Rd	Eugene, OR 97405

Taxpayer

Party Name	Address	City/State/Zip
E J K Investments LLC	30414 Le Bleu Rd	Eugene, OR 97405

Data source: Lane County Assessment and Taxation

Account Status

Status Active Account Current Tax Year

Account Status	none
Remarks	none
Special Assessment Program	N/A

Data source: Lane County Assessment and Taxation

General Tax Account Information

Tax Account Acreage	13.29
Fire Acres	13.29
Property Class	400 - Tract, vacant
Statistical Class	N/A
Neighborhood	764500 - Oakridge / Westfir Rural
Category	Land and Improvements

Data source: Lane County Assessment and Taxation

Township-Range-Section / Subdivision Data

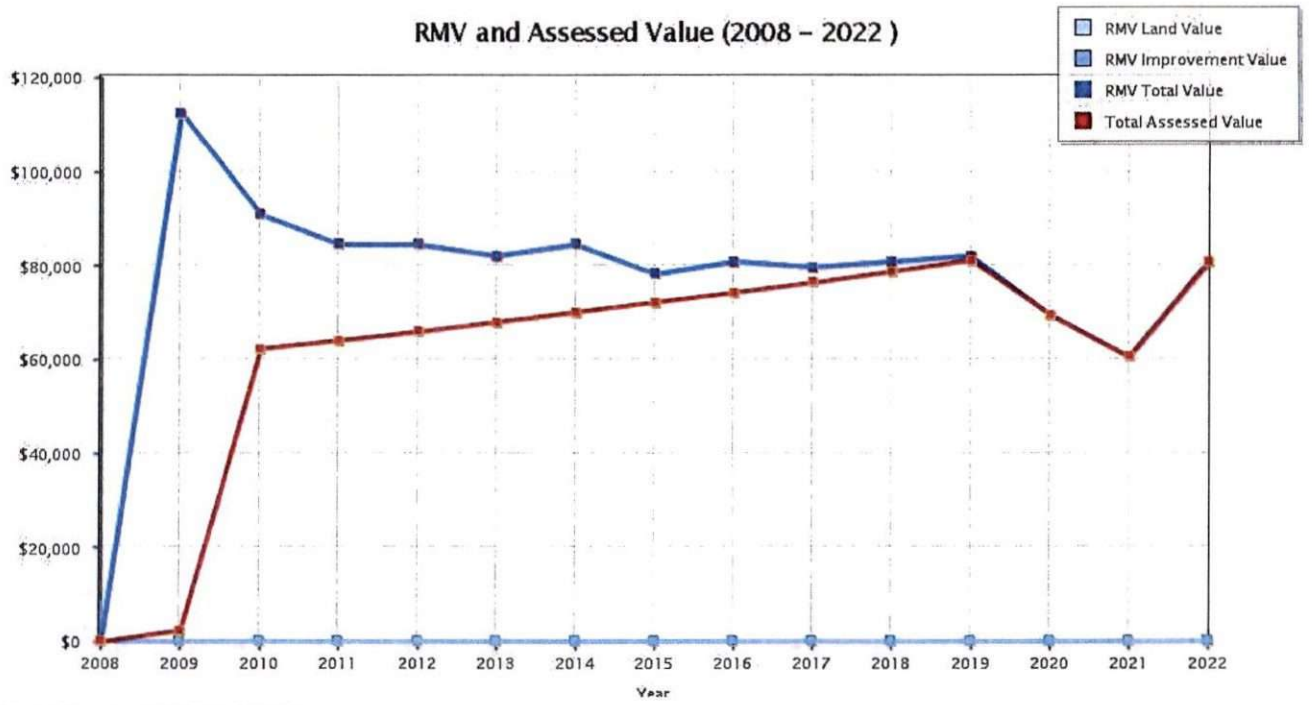
Subdivision Type	N/A	Subdivision Name	N/A	Subdivision Number	N/A
Phase	N/A	Lot/Tract/Unit #	TL 00843	Recording Number	N/A

Data source: Lane County Assessment and Taxation

Property Values & Taxes

The values shown are the values certified in October unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The tax shown is the amount certified in October. This is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing or previous years owing. It also does not reflect any value changes.

	Real Market Value (RMV)			Total Assessed Value	Tax
Year	Land	Improvement	Total		
2022	$80,779	$0	$80,779	$80,779	$ 701.92
2021	$60,584	$0	$60,584	$60,584	$ 534.29
2020	$69,419	$0	$69,419	$69,419	$ 601.31
2019	$82,041	$0	$82,041	$81,079	$ 691.27
2018	$80,779	$0	$80,779	$78,718	$ 668.19
2017	$79,517	$0	$79,517	$76,425	$ 637.22
2016	$80,779	$0	$80,779	$74,199	$ 655.21
2015	$78,255	$0	$78,255	$72,038	$ 643.72
2014	$84,565	$0	$84,565	$69,940	$ 647.15
2013	$82,041	$0	$82,041	$67,903	$ 642.13
2012	$84,565	$0	$84,565	$65,925	$ 590.94
2011	$84,565	$0	$84,565	$64,005	$ 541.76
2010	$90,876	$0	$90,876	$62,141	$1,898.27
2009	$112,333	$0	$112,333	$2,156	$ 38.14
2008	$0	$0	$0	$0	$ 0.00



Current Year Assessed Value	$80,779
Less Exemption Amount *	N/A
Taxable Value	**$80,779**

* Frozen Assessed Value

Data source: Lane County Assessment and Taxation

Tax Code Area & Taxing Districts

Tax Code Area (Levy Code) for current tax year 07601

Taxing Districts for TCA 07601
- Lane Community College
- Lane County
- Lane Education Service District
- Oakridge School District 76
- Upper Willamette Soil & Water

****NOTE** Lane County Assessment and Taxation Tax Code Area & Taxing Districts reflect the current certified year. The **Billing Rate Document** may still reference the prior year's rates and details until we receive the current report from Lane County.

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

Sale Date	Sale Price	Doc #	Image	Analysis Code	Multiple Accts?	Grantor(s)	Grantee(s)
04/10/2009	$0	2009-18700		8	No	Crown Properties LLC	E J K Investments LLC

Data source: Lane County Assessment and Taxation

January 1, 2019 Contiguous Ownerships

Map	Taxlot	Direction	Owner	Deed
21-25-12	843	subject	EJK Investments LLC	2009-018700
21-35-07-3	2700	Northeast	Oregon State Board of Aeronautics	R360/96687
21-35-07-4	133	North	Crown Properties LLC	2008-059425
Airport Road		South	Lane County	
21-25-13	900	South	Stubblefield	2010-016015
21-35-18	914	South	Deboer	2008-057875
21-35-18	902	East	State of Oregon	R382/16860

Current Contiguous Ownerships

Map	Taxlot	Direction	Owner	Deed
21-25-12	843	subject	EJK Investments LLC	2009-018700
21-35-07-3	2700	Northeast	Oregon State Board of Aeronautics	R360/96687
21-35-07-4	133	North	Crown Properties LLC	2008-059425
Airport Road		South	Lane County	
21-25-13	900	South	Stubblefield	2010-016015
21-35-18	914	South	Deboer	2008-057875
21-35-18	902	East	State of Oregon	R382/16860

EXHIBIT H

Detailed Property Report

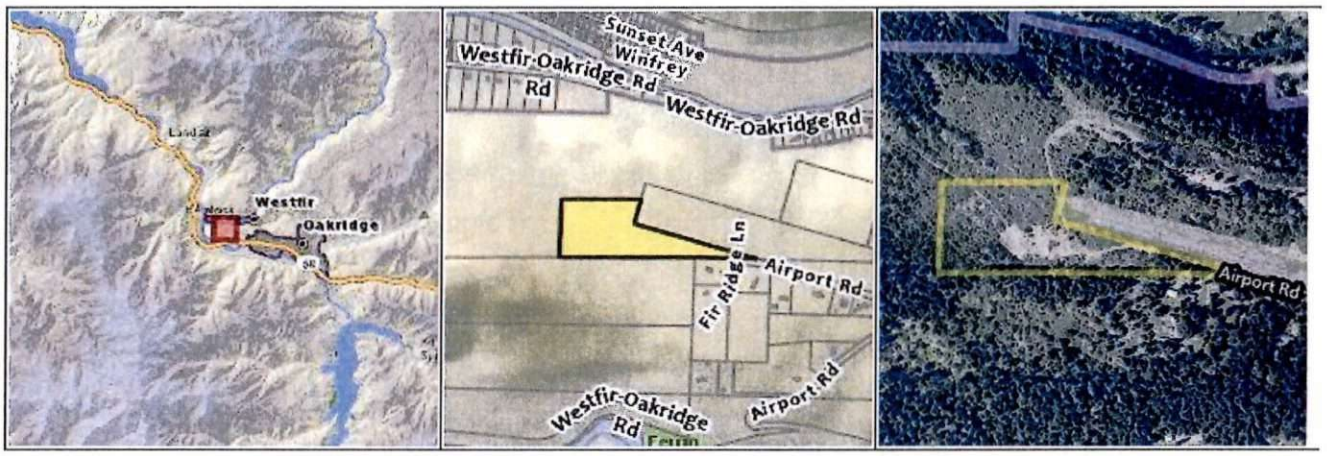
Site Address N/A
Map & Taxlot# 21-25-12-00-00843
SIC N/A
Tax Account# 1829678

Property Owner 1
E J K Investments LLC
30414 Le Bleu Rd
Eugene, OR 97405

Tax account acreage 13.29
Mapped taxlot acreage† 13.34

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 21-25-12-00-00843



Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
E J K Investments LLC	30414 Le Bleu Rd	Eugene, OR 97405

Taxpayer

Party Name	Address	City/State/Zip
E J K Investments LLC	30414 Le Bleu Rd	Eugene, OR 97405

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

Sale Date	Sale Price	Doc #	Image	Analysis Code	Multiple Accts?	Grantor(s)	Grantee(s)
04/10/2009	$0	2009-18700		8	No	Crown Properties LLC	E J K Investments LLC

Data source: Lane County Assessment and Taxation

FORM No. 961 – BARGAIN AND SALE DEED – STATUTORY FORM. STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR www.stevensness.com

EOB

NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

CROWN PROPERTIES
30414 LEABLED ROAD
EUGENE, OR 97405
Grantor's Name and Address

EJK INVEST. LLC
30414 LEABLED ROAD
EUGENE, OR 97405
Grantee's Name and Address

After recording, return to (Name, Address, Zip):
EJK INVESTMENTS
30414 LEABLED RD
EUGENE OR 97405

Until requested otherwise, send all tax statements to (Name, Address, Zip):
SAME AS ABOVE

Division of Chief Deputy Clerk
Lane County Deeds and Records

2009-018700

$31.00

01064791200900187000020021

04/10/2009 03:32:11 PM
RPR-DEED Cnt=1 Stn=6 CASHIER 07
$10.00 $11.00 $10.00

SPA

FOR RECORDER'S USE

No. _____, Records of this County.

Witness my hand and seal of County affixed.

NAME TITLE

By _____, Deputy.

BARGAIN AND SALE DEED – STATUTORY FORM

CROWN PROPERTIES, LLC, Grantor,

conveys to E.J.K. INVESTMENTS, LLC, Grantee,

the following real property situated in _____ County, Oregon, to-wit:

SEE EXHIBIT "A"

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE)

The true consideration for this conveyance is $ OTHER VALUABLE CONSIDERATIONS. (Here, comply with the requirements of ORS 93.030.)

DATED _____; if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Member
Ed King for ~~Ed King~~ EK Crown ~~Investments~~ LLC
Properties

STATE OF OREGON, County of LANE) ss.

This instrument was acknowledged before me on ~~Ed King~~ April 10, 2009,

by Ed King.

This instrument was acknowledged before me on _____,

by _____

as _____

of _____.

OFFICIAL SEAL
KRISTIN REMINGTON
NOTARY PUBLIC - OREGON
COMMISSION NO. 406994
MY COMMISSION EXPIRES AUG. 23, 2010

Notary Public for Oregon
My commission expires August 23, 2010

PUBLISHER'S NOTE: If using this form to convey real property subject to ORS 92.027, include the required reference.

WEST PARCEL

EXHIBIT "A"

Beginning at the Southeast Corner of Section 12 of Township 21 South Range 2 East of the Willamette Meridian, in Lane County Oregon; Thence along the South Line of said Section 12 South 89* 03 23" West 1300.00 feet to a point. Said point also being North 89* 03' 23" East 1302.31 feet from the South One Quarter of said Section 7; Thence leaving the South Line of said Section 12, North 0* 51' 49" East 550.00 feet; Thence North 89* 03' 23" East 762.23 feet more or less to the West Line of a parcel of land that was conveyed by deed to the Oakridge Airport, see Reel 360-R/ 96687, dated May 1 1967, as recorded within the Lane County Deeds and Records; Thence along the West Line of said Oakridge Airport, South 14* 46' 43" West 240.92 feet to the Southwest Corner of said Oakridge Airport; Thence along the South Line of said Oakridge Airport South 75* 13' 17" East 1229.42 feet more or less to the South Line of Section 7 of Township 21 South Range 3 East of the Willamette Meridian in Lane County Oregon; Thence along the South Line of said Section 7, North 89* 28' 35" West 597.91 feet to the Point of Beginning, all is Lane County Oregon.

Being Approximately 13.29 acres in size.

WEST PARCEL

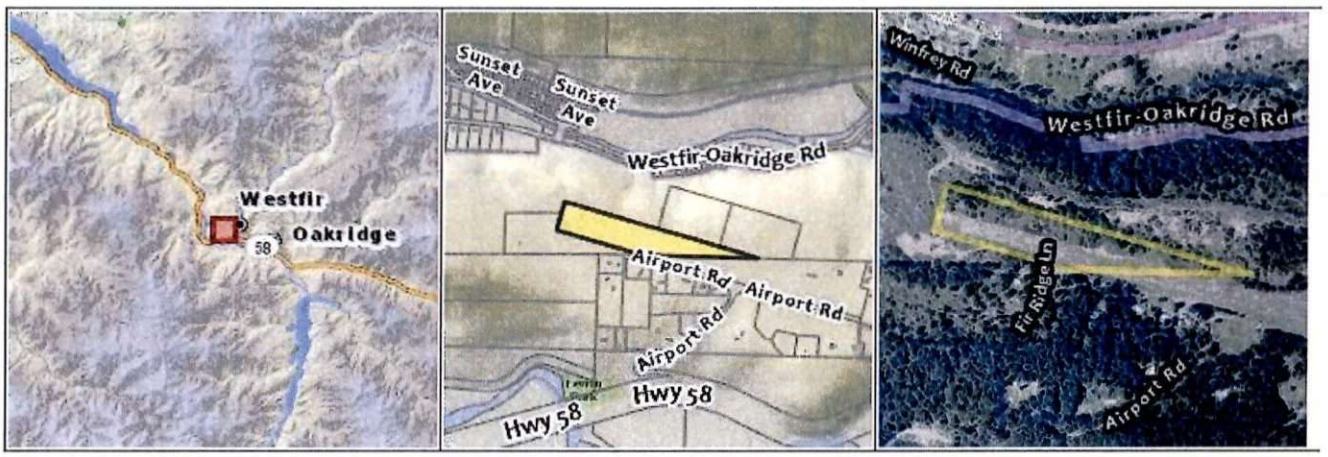
Detailed Property Report

Site Address N/A	**Property Owner 1**
Map & Taxlot# 21-35-07-30-02700	Oregon State Board of Aeronautic
SIC N/A	3040 25th Ave SE
Tax Account# 1059177	Salem, OR 97310
	Tax account acreage 5.00
	Mapped taxlot acreage† 18.30

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Code Split - Other land tax account(s) associated with this taxlot 1696861

Map & Taxlot # 21-35-07-30-02700



Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Oregon State Board of Aeronautic	3040 25th Ave SE	Salem, OR 97310

Taxpayer

Party Name	Address	City/State/Zip
Oregon State Board of Aeronautic	3040 25th Ave SE	Salem, OR 97310

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

96687

THIS INDENTURE WITNESSETH, That the Grantor, EDWARD HINES LUMBER CO., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oregon, and pursuant to authority given by the Board of Directors of said corporation, conveys unto the State of Oregon, through its Board of Aeronautics, for public purposes and as a gift, all that property situated in Lane County, Oregon, for an airport to be known as the Oakridge Airport and described as:

> Edward Hines Lumber Co. property in Section 7, Township 21 South, Range 3 East and Section 12, Township 21 South, Range 2 East of the Willamette Meridian, Lane County, Oregon; Beginning at a point formed by the intersections of the Centerline of the proposed Oakridge Airport Runway and the South Line of Section 7, Township 21 South, Range 3 East of the Willamette Meridian, Lane County, Oregon, said point being 1409.02 feet South 89° 43' East from the Southwest Corner of said Section 7; thence South 89° 43' East 811.56 feet along the South Line of said Section 7; thence North 75° 27' West 2802.12 feet; thence South 14° 33' West 400.00 feet; thence South 75° 27' East 1229.04 feet to the South Line of said Section 7; thence South 89° 43' East along the South Line of said Section 7, 811.56 feet to the place of beginning, containing 18.51 acres more or less. All the bearings above referred to are based on true bearings as obtained from solar observations. (See attached map),

and covenants that GRANTOR is the owner of the above described property free and clear of all encumbrances, and will warrant and defend the same against all persons who may lawfully claim the same; provided however that if said property is not utilized for airport purposes it shall revert to the GRANTOR or its assigns.

IN WITNESS WHEREOF, said GRANTOR has caused its corporate seal to be hereto affixed and has caused its name to be signed to these presents by its Executive Vice President and attested by its Assistant Secretary this 1st day of May, 1967.

EDWARD HINES LUMBER CO.

ATTEST:

R. F. Bredl
Assistant Secretary

BY Joseph J. Fitzgerald
Executive Vice President

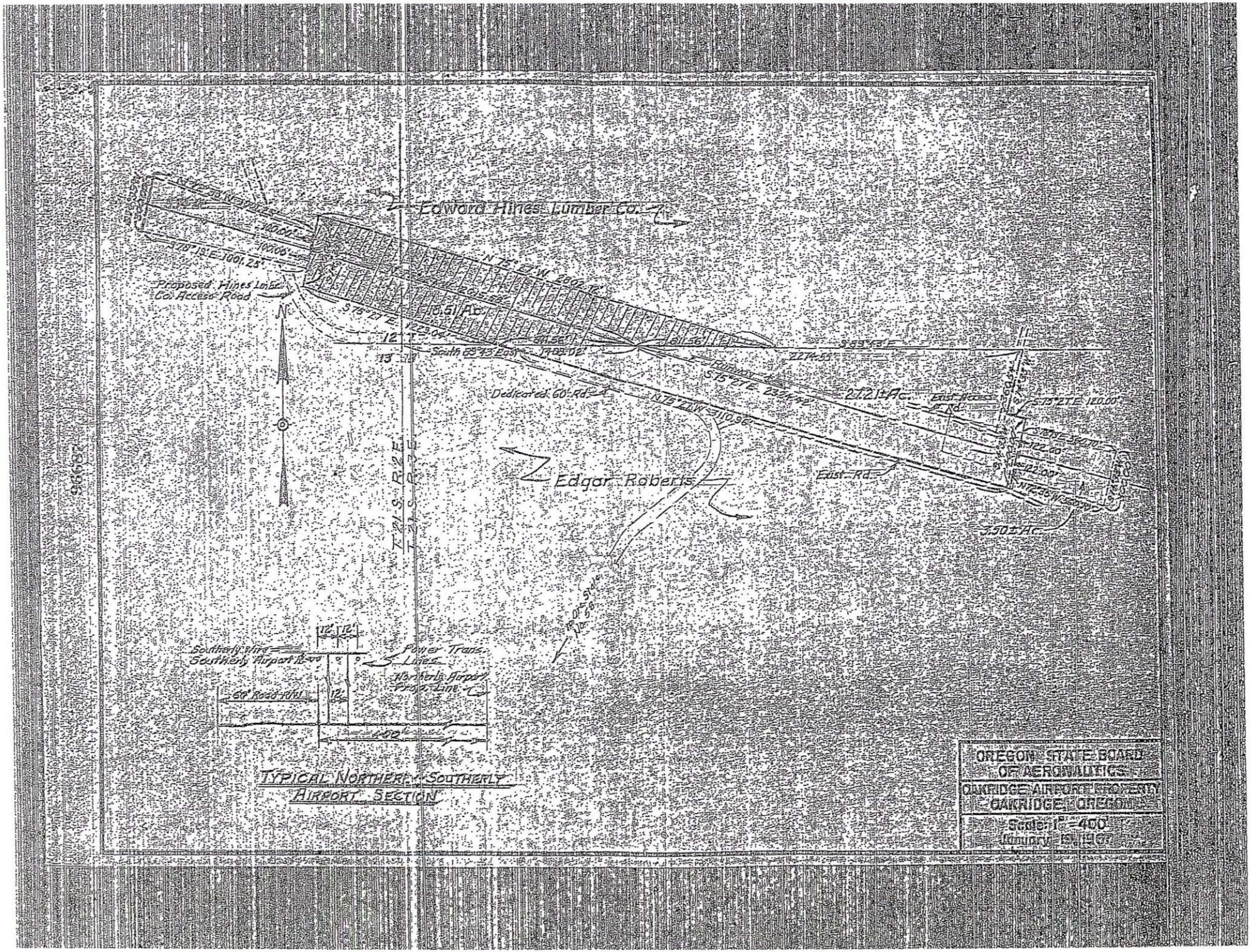
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Estelle D. Koehn, a Notary Public in and for said county, in the state aforesaid, do hereby certify that Joseph J. Fitzgerald, personally known to me to be the Exec. Vice President of Edward Hines Lumber Co., a Delaware corporation, and R. F. Bredl, personally known to me to be the Asst. Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Exec. Vice President and Asst. Secretary, they signed and delivered the said instrument as Exec. Vice President and Asst. Secretary of said corporation, and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of May, 1967.

Estelle D. Koehn
Notary Public for Illinois

My commission expires 6-23-68


Edward Hines Lumber Co.
Edgar Roberts
Proposed Hines Lumber Co. Access Road
Dedicated 60' Rd.
East Rd.
East Rd.
Runway
18.51 Ac.
21.21± Ac.
3.50± Ac.
N 75° E.-W 2802.7'
S 75° 27' E 1229.04'
South 68° 43 East 1403.02'
S 75° 27' E 2374.55'
S 75° 27' E 232.92'
N 75° E.-W 3110.96'
S 75° 27' E 120.00'
N 72° 28' W 560.00'
S 79° 18' E 1001.25'
N 79° 18' W 1001.25'
100.00'
100.00'
122.20'
122.00'
T. 21 S. R. 2 E.
T. 21 S. R. 2 E.
12½'
12½'
Southerly Wire
Southerly Airport Road
Power Trans. Lines
Northerly Airport Property Line
60' Road R/W
12½'
400'
TYPICAL NORTHERLY - SOUTHERLY AIRPORT SECTION
OREGON STATE BOARD OF AERONAUTICS
OAKRIDGE AIRPORT PROPERTY
OAKRIDGE OREGON
Scale: 1" = 400'
January 15, 1962

30647

1 W-Ore

AUG 30 4 47 PM '67

Edward Hines Pkr. Co.

1-3

Hwy 99W

State of Oregon,
County of Lane—ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

AUG 30 1967

4:30 P.M.

Reel 360

Lane County OFFICIAL Records.

INA RANDOLPH, Director of the Department of Records & Elections.

By Lucile Blakeslee
Deputy

C29-083-05

Edward Hines Pkr Co.
Westfir, Ore
4 50

Detailed Property Report

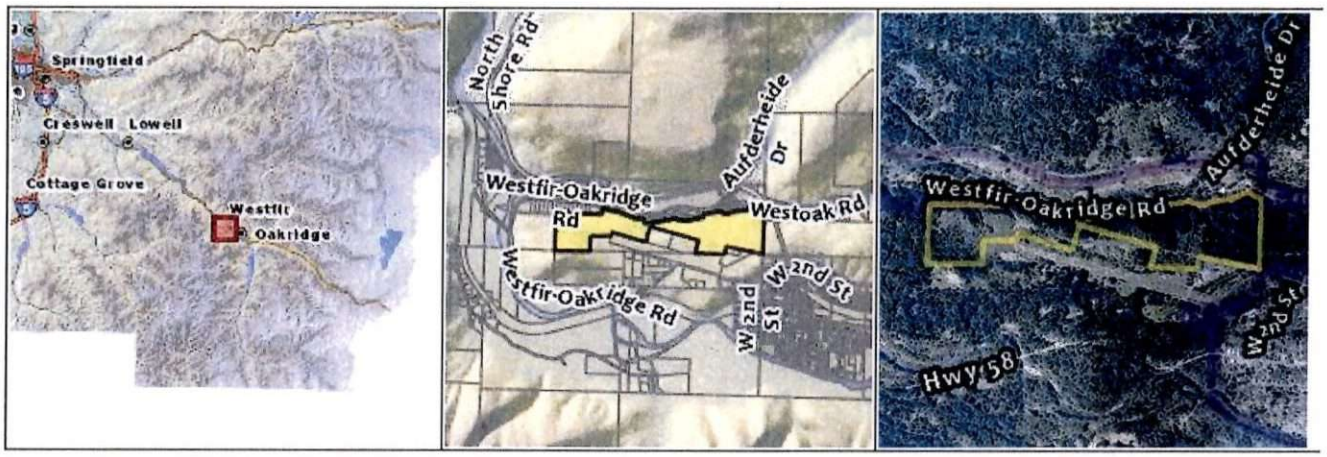
Site Address N/A
Map & Taxlot# 21-35-07-40-00133
SIC N/A
Tax Account# 1829702

Property Owner 1
Crown Properties LLC
30414 Le Bleu Rd
Eugene, OR 97405

Tax account acreage 184.28
Mapped taxlot acreage† 184.25

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 21-35-07-40-00133



Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Crown Properties LLC	30414 Le Bleu Rd	Eugene, OR 97405

Taxpayer

Party Name	Address	City/State/Zip
Crown Properties LLC	30414 Le Bleu Rd	Eugene, OR 97405

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Oct 25, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135074000133
Status Active

Current Parcel/Account	Current TCA
1829702	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			184.28

Comments:

PARCEL RECORD – Cartographic Unit

1829702 Page of

Township	Range	Section	¼	1/16	Parcel Number	Type	Number
21	35	07	4	0	00133		

Formerly part of **21-35-07-40-00100 / 21-25-12-00-00800**

Map Number

Tax Lot Number

Special Interest

History of Parcel Prior to Re-mapping

Previous Account Number	Previous Tax Lot Number

Remarks

History of Parcel

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
New Parcel	**2009 LLA**	**2008**	**059422**	**105.74**
Acreage Correction	**2009**			**105.77**
New Description	**2009 LLA**	**2008**	**059423**	**130.19**
Acreage Correction	**2009**			**130.20**
New Description	**2009 LLA**	**2008**	**059424**	**135.08**
Acreage Correction	**2009**			**130.07**
New Description	**2009 LLA**	**2008**	**059425**	**184.28**

Division of Chief Deputy Clerk
Lane County Deeds and Records

2008-059425

$61.00

01033897200800594250080085

10/29/2008 02:38:46 PM

RPR-DEED Cnt=1 Stn=1 CASHIER 04
$40.00 $11.00 $10.00

After Recording Return To:
Ed King
30414 Lebleu Road
Eugene, Oregon 97405

Send Tax Statements To:
Same as above

DECLARATION OF PROPERTY LINE ADJUSTMENT

Crown Properties, LLC, is the owner of several tracts of land, which where conveyed to Crown Properties LLC, by a deed conveyance as recorded on Document Number 2006-038355, with the Lane County Oregon Deeds and Records, Lane County Oregon. One of the Tracts within the conveyance is the MITCHELL TRACT, which contain 4 parcels of land. Each of the 4 parcels of land have been previously determined to be a legal lot for building purposes by the governing authority, being Lane County Planning Department, with the office at the Lane County Oregon County Courthouse, in Eugene, Oregon.

Crown Properties, LLC, being the owners of the MITCHELL TRACTS are going to record 5 consecutive property line adjustment deeds to show the movement of the common line between the 4 parcels of land.

This is the fifth of the five consecutive deeds.

The True Consideration for this conveyance is NONE.

This Declaration of Property Line Adjustment is recorded to relocate the common boundary between two parcels of land, the owner of Parcel 2 being a portion of Tax Lot 800 of Tax Map 21-25-12-00, which by a previous property line adjustment is a portion of the Southeast ¼ of Section 12 of Township 21 South Range 2 East of the Willamette Meridian, in Lane County Oregon and a portion of the a portion of Tax Lot 100 of Tax Map 21-35-07-40, which is a portion of the Government Lot 4 and a portion of the Southeast ¼ of the Southwest ¼ of Section 7 of Township 21 South Range 3 East of the Willamette Meridian, in Lane County Oregon, that is South of County Road No. 836 and County Road No. 1323 and north of the Oakridge Airport and north of the revised Parcel 3 of the previous property line adjustment.
And the owner of Parcel 4 being a portion of Tax Lot 100 of Tax Map 21-35-07-40, which is a portion of the Government Lot 4 and a portion of the Southeast ¼ and the Southeast ¼ of the Southwest ¼ of Section 7 of Township 21 South Range 3 East of the Willamette Meridian, in Lane County Oregon, that is South of County Road No. 836 and County Road No. 1323 and north of the Oakridge Airport and north of the revised Parcel 3 of the previous property line adjustment and a portion of Tax Lot 800 of Tax Map 21-25-12-00, which by a previous property line adjustment is a portion of the Southeast ¼ of Section 12 of Township 21 South Range 2 East of the Willamette Meridian, in Lane County Oregon.

The purpose of the property line adjustment is to move a common boundary line between Parcels 2 and 4 according to Lane County Land Use Regulations and ORS 92.190.

After the forth property line adjustment Parcel 2 is described as follows;

Beginning at the South One Quarter Corner of Section 12 of Township 21 South Range 2 East of the Willamette Meridian, in Lane County Oregon, Thence along the North-South One Quarter Line of said Section 12, North 1* 12' 01" East 976.47 feet; Thence leaving the North-South One Quarter Line of said Section 12, East 3541.42 feet; Thence South 75* 12' 52" East 875.00 feet; Thence South 14* 47' 08" West 600.00 feet more or less to the North Line of a parcel of land that was conveyed by deed to the Oakridge Airport as recorded on Reel 360-R/ 96687, within the Lane County Oregon Deeds and Records; Thence along the North and West Line of said Oakridge Airport, North 75* 12' 52" West 2215.00 feet more or less to the Northwest Corner of said Oakridge Airport; Thence South 14* 46' 43" West 159.08 feet; Thence leaving the said Oakridge Airport South 89* 03' 23" West 762.23 feet; Thence South 0* 51' 49" West 550.00 feet more or less to the South Line of said Section 12; Thence along the South Line of said Section 12 South 89* 03' 23" West 1302.31 feet to the Point of Beginning, all in Lane County Oregon.

After the forth property line adjustment Parcel 4 is described as follows;

Beginning at the Southeast Corner of Section 7 of Township 21 South Range 3 East of the Willamette Meridian, in Lane County Oregon, Thence along the East Line of said Section 7, North 0* 36' 50" East 46.61 feet to the TRUE POINT OF BEGINNING; Thence leaving the East Line of said Section 7, North 79* 46' 22" West 1402.58 feet; Thence South 10* 12' 06" West 287.10 feet more or less to the South Line of said Section 7; Thence along the South Line of said Section 7, North 89* 28' 35" West 1119.68 feet; Thence leaving the South Line of said Section 7, North 14* 47' 08" East 495.14 feet; Thence North 75* 12' 52" West 1875..00 feet; Thence West 3541.42 feet more or less to the North-South One Quarter Line of Section 12 Township 21 South Range 2 East of the Willamette Meridian, in Lane County Oregon; Thence along the North-South One Quarter Line of said Section 12, North 1* 12' 01" East 410.43 feet; Thence leaving the North-South One Quarter Line of said Section 12 East 1702.65 feet: North 206.25 feet more or less to the South Line of County Road No. 836 (commonly known as Westfir Road); Thence along the South Line of said County Road on the following bearing and distances; Thence South 74* 36' 18" East 81.07 feet; Thence 404.91 feet along the arc of a 2576.48 foot radius curve to the left (the long chord of which bears South 79* 06' 26" East 404.49 feet); Thence 218.94 feet along the arc of a 924.93 foot radius curve to the right (the long chord of which bears South 76* 49' 48" East 218.43 feet); Thence South 70* 02' 51' East 512.73 feet; Thence 304.10 feet along

the arc of a 666.62 foot curve to the left (the long chord of which bears South 83* 07' 01" East 301.47 feet); Thence North 83* 48' 49" East 111.78 feet more or less to the West Line of Roney Road Subdivision as Platted and Recorded on Book 41 Page 6 within the Lane County Oregon Plat Records; Thence leaving the South Line of said County Road and going along the West, South and East Plat boundary of said Roney Road Subdivision the following bearing and distances; Thence South 6* 10' 53" East 167.99 feet; Thence North 83* 48' 49" East 224.56 feet; Thence along the arc of a 1630.39 foot curve to the left (the long chord of which bears North 80* 51' 40" East 167.93 feet); Thence South 12* 04' 56" East 20.00 feet; Thence North 77* 55' 14" East 369.32 feet; Thence North 12* 04' 56" West 20.00 feet; Thence along the arc of a 620.51 foot curve to the right (the long chord of which bears North 88* 54' 37" East 236.49 feet); Thence North 9* 52' 37' East 67.99 feet; Thence South 80* 06' 10" East 315.62 feet; Thence along the arc of a 1275.92 foot curve to the left (the long chord of which bears North 87* 01' 10" East 568.50 feet); Thence North 74* 04' 15" East 366.03 feet; Thence North 15* 51' 27" West 100.00 feet to a point being the Northeast Corner of said Roney Road Subdivision, said point also being on the South Line of County Road No. 1323 (commonly known as Westfir Road); Thence leaving the said Roney Road and going along the South Line of said County Road No. 1323 the following bearing and distances; Thence North 74* 06' 24" East 0.04 feet; Thence 293.90 feet along the arc of a 1057.15 foot radius curve to the right (the long chord of which bears North 82* 02' 08" East 292.96 feet); Thence East 46.08 feet; Thence 260.40 feet along the arc of a 315.25 foot radius curve to the left (the long chord of which bears North 66* 20' 10" East 253.06 feet) more or less to a point on the West Line of Westfir Plat as Plated and Recorded on File 73, Slide 399 within the Lane County Plat Records; Thence leaving the South Line of said County Road No. 1323 and going along the Southerly Boundary of said Westfir Plat the following bearing and distances; Thence South 67* 41' 21" East 304.50 feet; Thence North 75* 06' 55" East 165.30 feet; Thence North 73* 42' 15" East 73.23 feet; Thence North 54* 21' 57" East 90.30 feet; Thence North 84* 03' 18" East 397.93 feet; Thence North 78* 49' 55" East 113.52 feet; Thence North 57* 21' 19" East 115.89 feet; Thence North 66* 18' 00" East 212.98 feet; Thence South 76* 16' 38" East 48.22 feet; Thence South 59* 18' 04" East 54.65 feet; Thence South 64* 20' 47" East 263.90 feet more or less to the East Line of said Section 7; Thence leaving the South Boundary of said Westfir Plat and going along the West Line of said Section 7, South 0* 36' 50" West 1608.39 feet to the TRUE POINT OF BEGINNING, all in Lane County Oregon.

Following this property line adjustment the adjusted Parcel 2 is described on the attached Exhibit "A" and the adjusted Parcel 4 is described on the attached Exhibit "B".

The new common boundary between Parcels 2 and 4 is underlined in the description of Parcel 1 attached as Exhibit "A".

A sketch of this adjustment is attached as Exhibit "C".

The below described parcels are based upon a survey of the parcels done by Keith Leavett for Westfir Land & Development Co., see CSF# 24775 dated Feb. 18 1981, at the Lane County Surveyors Office.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352."

Date: 10/7/08 Declarant: Ed King

STATE OF OREGON)
)ss.
County of Lane)

On October 7, 2008 personally appeared before me the above named Ed King III and acknowledged ~~the foregoing~~ instrument to be a voluntary act and deed.

OFFICIAL SEAL
KRISTIN REMINGTON
NOTARY PUBLIC - OREGON
COMMISSION NO. 406994
MY COMMISSION EXPIRES AUG. 23, 2010

Notary Public for Oregon
My Commission Expires: August 23, 2010

EXHIBIT "A"

The new description of Parcel 2 is as follows:

Beginning at the Southeast Corner of Section 7 of Township 21 South Range 3 East of the Willamette Meridian, in Lane County Oregon, Thence along the East Line of said Section 7, North 0* 36' 50" East 46.61 feet; Thence leaving the East Line of said Section 7, North 79* 46' 22" West 1402.58 feet; Thence South 10* 12' 06" West 287.10 feet more or less to the South Line of said Section 7; Thence along the South Line of said Section 7, North 89* 28' 35" West 1119.68 feet; Thence leaving the South Line of said Section 7, North 14* 47' 08" East 495.14 feet; Thence North 75* 12' 52" West 1000.00 feet to the TRUE POINT OF BEGINNING; Thence North 75* 12'52" West 875.00 feet; Thence South 14* 47' 08" West 600.00 feet more or less to the North Line of a parcel of land that was conveyed by deed to the Oakridge Airport as recorded on Reel 360-R/ 96687, within the Lane County Oregon Deeds and Records; Thence along the North Line of said Oakridge Airport parcel South 75* 12' 52" East 875.00 feet; Thence leaving the North Line of said Oakridge Airport parcel North 14* 47' 08" East 600.00 feet to the TRUE POINT OF BEGINNING, all in Lane County Oregon.

Being Approximately 12.05 acres in size.

EXHIBIT " B"

The new description of Parcel 4 is as follows;

Beginning at the Southeast Corner of Section 7 of Township 21 South Range 3 East of the Willamette Meridian, in Lane County Oregon, Thence along the East Line of said Section 7, North 0* 36' 50" East 46.61 feet to the TRUE POINT OF BEGINNING; Thence leaving the East Line of said Section 7, North 79* 46' 22" West 1402.58 feet; Thence South 10* 12' 06" West 287.10 feet more or less to the South Line of said Section 7; Thence along the South Line of said Section 7, North 89* 28' 35" West 1119.68 feet; Thence leaving the South Line of said Section 7, North 14* 47' 08" East 495.14 feet; Thence North 75* 12' 52" West 1875.00 feet; Thence South 14* 47' 08" West 600.00 feet more or less to North Line of a parcel of land that was conveyed by deed to the Oakridge Airport as recorded on Reel 360-R/ 96687, within the Lane County Oregon Deeds and Records; Thence along the North and West Line of said Oakridge Airport, North 75* 12' 52" West 1340.01 feet more or less to the Northwest Corner of said Oakridge Airport; Thence South 14* 46' 43" West 159.08 feet; Thence leaving the said Oakridge Airport South 89* 03' 23" West 762.23 feet; Thence South 0* 51' 49" West 550.00 feet more or less to the South Line of Section 12 Township 21 South Range 2 East of the Willamette Meridian, in Lane County Oregon; Thence along the South Line of said Section 12 South 89* 03' 23" West 1302.31 feet to the South One Quarter Corner

of Section 12; Thence along the North-South One Quarter Line of said Section 12, North 1* 12' 01" East 1386.90 feet; Thence leaving the North-South One Quarter Line of said Section 12, East 1702.65 feet: North 206.25 feet more or less to the South Line of County Road No. 836 (commonly known as Westfir Road); Thence along the South Line of said County Road on the following bearing and distances; Thence South 74* 36' 18" East 81.07 feet; Thence 404.91 feet along the arc of a 2576.48 foot radius curve to the left (the long chord of which bears South 79* 06' 26" East 404.49 feet); Thence 218.94 feet along the arc of a 924.93 foot radius curve to the right (the long chord of which bears South 76* 49' 48" East 218.43 feet); Thence South 70* 02' 51' East 512.73 feet; Thence 304.10 feet along the arc of a 666.62 foot curve to the left (the long chord of which bears South 83* 07' 01" East 301.47 feet); Thence North 83* 48' 49" East 111.78 feet more or less to the West Line of Roney Road Subdivision as Platted and Recorded on Book 41 Page 6 within the Lane County Oregon Plat Records; Thence leaving the South Line of said County Road and going along the West, South and East Plat boundary of said Roney Road Subdivision the following bearing and distances; Thence South 6* 10' 53" East 167.99 feet; Thence North 83* 48' 49" East 224.56 feet; Thence along the arc of a 1630.39 foot curve to the left (the long chord of which bears North 80* 51' 40" East 167.93 feet); Thence South 12* 04' 56" East 20.00 feet; Thence North 77* 55' 14" East 369.32 feet; Thence North 12* 04' 56" West 20.00 feet; Thence along the arc of a 620.51 foot curve to the right (the long chord of which bears North 88* 54' 37" East 236.49 feet); Thence North 9* 52' 37' East 67.99 feet; Thence South 80* 06' 10" East 315.62 feet; Thence along the arc of a 1275.92 foot curve to the left (the long chord of which bears North 87* 01' 10" East 568.50 feet); Thence North 74* 04' 15" East 366.03 feet; Thence North 15* 51' 27" West 100.00 feet to a point being the Northeast Corner of said Roney Road Subdivision, said point also being on the South Line of County Road No. 1323 (commonly known as Westfir Road); Thence leaving the said Roney Road and going along the South Line of said County Road No. 1323 the following bearing and distances; Thence North 74* 06' 24" East 0.04 feet; Thence 293.90 feet along the arc of a 1057.15 foot radius curve to the right (the long chord of which bears North 82* 02' 08" East 292.96 feet); Thence East 46.08 feet; Thence 260.40 feet along the arc of a 315.25 foot radius curve to the left (the long chord of which bears North 66* 20' 10" East 253.06 feet) more or less to a point on the West Line of Westfir Plat as Plated and Recorded on File 73, Slide 399 within the Lane County Plat Records; Thence leaving the South Line of said County Road No. 1323 and going along the Southerly Boundary of said Westfir Plat the following bearing and distances; Thence South 67* 41' 21" East 304.50 feet; Thence North 75* 06' 55" East 165.30 feet; Thence North 73* 42' 15" East 73.23 feet; Thence North 54* 21' 57" East 90.30 feet; Thence North 84* 03' 18" East 397.93 feet; Thence North 78* 49' 55" East 113.52 feet; Thence North 57* 21' 19" East 115.89 feet; Thence North 66* 18' 00" East 212.98 feet; Thence South 76* 16' 38" East 48.22 feet; Thence South 59* 18' 04" East 54.65 feet; Thence South 64* 20' 47" East 263.90 feet more or less to the East Line of said Section 7; Thence leaving the South Boundary of said Westfir Plat and going along the West Line of said Section 7, South 0* 36' 50" West 1608.39 feet to the TRUE POINT OF BEGINNING, all in Lane County Oregon.

Being Approximately 184.28 acres in size.

EXHIBIT "C"

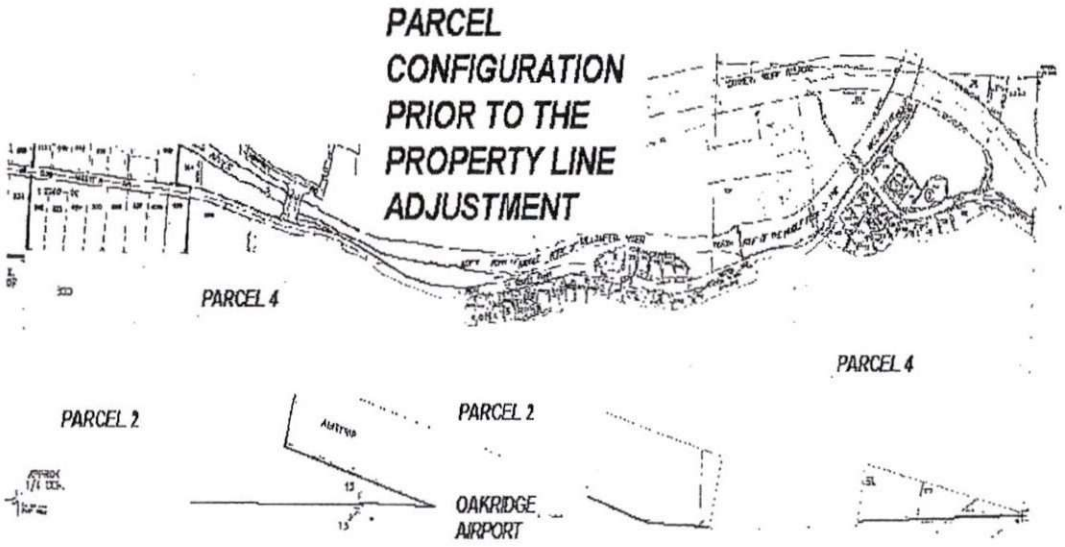
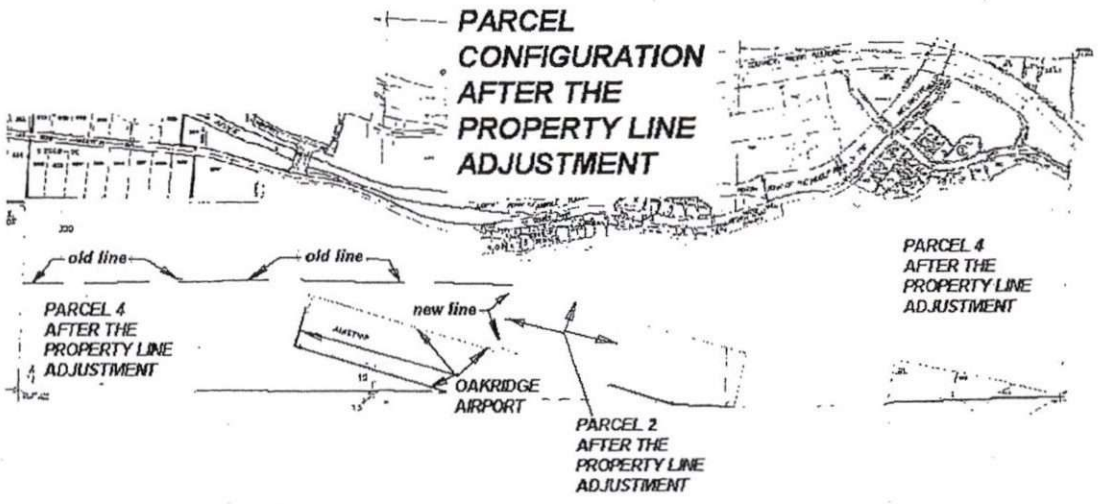

PARCEL
CONFIGURATION
PRIOR TO THE
PROPERTY LINE
ADJUSTMENT
PARCEL 4
PARCEL 4
PARCEL 2
PARCEL 2
OAKRIDGE
AIRPORT

EXHIBIT "C"


PARCEL CONFIGURATION AFTER THE PROPERTY LINE ADJUSTMENT
old line
old line
new line
PARCEL 4 AFTER THE PROPERTY LINE ADJUSTMENT
OAKRIDGE AIRPORT
PARCEL 2 AFTER THE PROPERTY LINE ADJUSTMENT
PARCEL 4 AFTER THE PROPERTY LINE ADJUSTMENT

Detailed Property Report

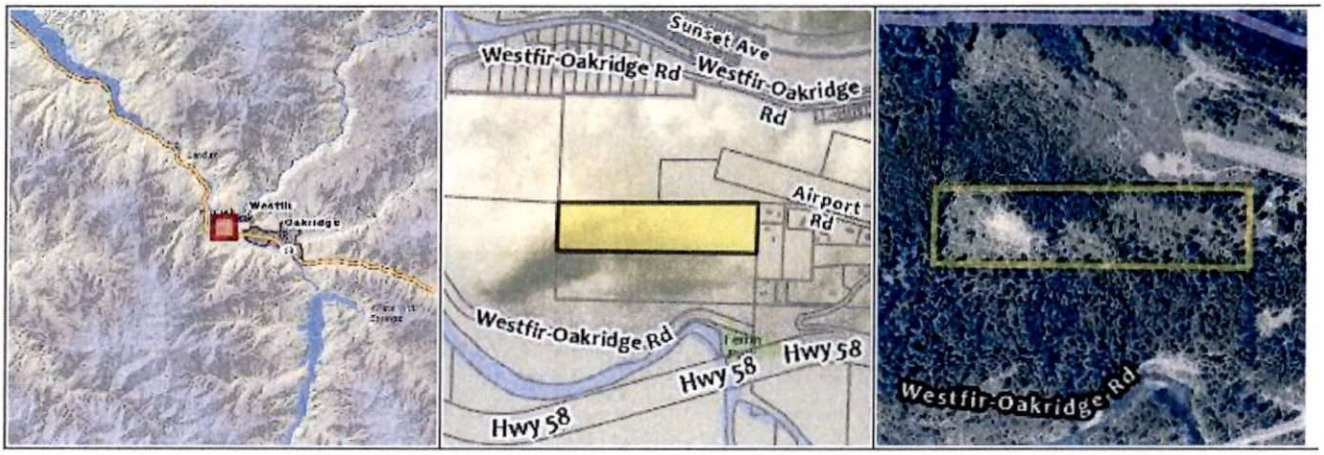
Site Address N/A
Map & Taxlot# 21-25-13-00-00900
SIC N/A
Tax Account# 0998607

Property Owner 1
Stubblefield James
48480 Rogers Ln
Oakridge, OR 97463

Tax account acreage 40.00
Mapped taxlot acreage† 37.70

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 21-25-13-00-00900



Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Stubblefield James	48480 Rogers Ln	Oakridge, OR 97463

Taxpayer

Party Name	Address	City/State/Zip
Stubblefield James	48480 Rogers Ln	Oakridge, OR 97463

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

Sale Date	Sale Price	Doc #	Image	Analysis Code	Multiple Accts?	Grantor(s)	Grantee(s)
04/02/2010	$175,000	2010-16015		K	Yes	Swanson Family Trust	Stubblefield James
01/22/1997	$0	1997-12363		6	data not available	Swanson, Gustav Albin	data not available
05/01/1991	$17,500	1991-20145		N	data not available	Murphy Tbr Co	data not available
04/22/1991	$500	1991-20141		2	data not available	Pope & Talbot Inc	data not available

Data source: Lane County Assessment and Taxation

57

After Recording Return To
First American Title
PO Box 10146
Eugene, OR 97440

Division of Chief Deputy Clerk
Lane County Deeds and Records

2010-016015

$57.00

01141133201000160150040040

04/05/2010 01:40:19 PM

RPR-DEED Cnt=1 Stn=9 CASHIER 06
$20.00 $11.00 $16.00 $10.00

After recording return to:
James Stubblefield
48480 Rogers Lane
Oakridge, OR 97463

Until a change is requested all tax statements shall be sent to the following address:
James Stubblefield
48480 Rogers Lane
Oakridge, OR 97463

File No.: 7194-1545675 (SMJ)
Date: March 26, 2010

STATUTORY WARRANTY DEED

Marie Elizabeth Swanson, Surviving Trustee of the Swanson Family Trust under trust agreement dated January 22, 1997, Grantor, conveys and warrants to **James Stubblefield** , Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

Subject to:

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **$175,000.00.** (Here comply with requirements of ORS 93.030)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, OF CHAPTER 424, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, OF CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Dated this 2 day of April, 2010.

The Swanson Family Trust

Marie Elizabetti Swanson

Marie Elizabeth Swanson, Surviving Trustee

STATE OF Oregon)
)ss.
County of Lane)

This instrument was acknowledged before me on this 2 day of April, 2010 by ~~as of The Swanson Family Trust, on behalf of the~~ Mary Elizabeth Swanson, Surviving Trustee of the Swansom Family Trust.

Diane R Williams

OFFICIAL SEAL
DIANE R WILLIAMS
NOTARY PUBLIC - OREGON
COMMISSION NO. 420023
MY COMMISSION EXPIRES AUG. 6, 2011

Notary Public for Oregon
My commission expires:

EXHIBIT A

LEGAL DESCRIPTION: Real property in the County of Lane, State of Oregon, described as follows:

PARCEL I:

THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 21 SOUTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, IN LANE COUNTY, OREGON.

PARCEL II:

A PORTION OF THE NORTHWEST ONE-QUARTER OF SECTION 18, TOWNSHIP 21 SOUTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, LANE COUNTY, OREGON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 18; THENCE SOUTH 00° 28' 00" WEST ALONG THE WEST LINE OF SAID SECTION 18, 255.00 FEET TO THE TRUE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED BY INSTRUMENT RECORDED SEPTEMBER 13, 1982, REEL 1210, RECEPTION NO. 82-27205, OFFICIAL RECORDS OF LANE COUNTY, OREGON; THENCE CONTINUE SOUTH 00° 28' 00" WEST ALONG SAID WEST SECTION LINE 718.37 FEET, MORE OR LESS, TO THE MOST WESTERLY NORTHWEST CORNER OF THE TRACT OF LAND DESCRIBED BY INSTRUMENT RECORDED APRIL 5, 1979, REEL 984, RECEPTION NO. 79-19449, OFFICIAL RECORDS OF LANE COUNTY, OREGON; THENCE SOUTH 89° 57' 21" EAST ALONG THE NORTH LINE OF SAID TRACT A DISTANCE OF 343.00 FEET, MORE OR LESS, TO A 5/8" IRON ROD; THENCE NORTH 00° 28' 00" EAST 721.33 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF A TRACT OF LAND DESCRIBED BY INSTRUMENT RECORDED SEPTEMBER 13, 1982, REEL 1210, RECEPTION NO. 82-27205, OFFICIAL RECORDS OF LANE COUNTY, OREGON; THENCE SOUTH 89° 33' 00" WEST ALONG THE SOUTH LINE OF SAID TRACT 342.99 FEET TO THE TRUE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

CERTIFICATION OF VITAL RECORD

OREGON DEPARTMENT OF HUMAN RESOURCES
HEALTH DIVISION
CENTER FOR HEALTH STATISTICS
CERTIFICATE OF DEATH

I.D. TAG NO. 303513
Local File Number 1888
138 State File Number

1. DECEDENT'S NAME (First / Middle / Last)	Gustav A. Swanson
2. SEX	Male
3. DATE OF DEATH (Month, Day, Year)	Sept. 1, 2001
4. SOCIAL SECURITY NUMBER	540-56-2642
4a. AGE (Last Birthday) (Years)	87
5a. Under 1 Year: Mos. / Days	
5c. Under 1 Day: Hours / Mins.	
6. BIRTHPLACE (City and State or Foreign Country)	Oakdale, Washington
7. DATE OF BIRTH (Month, Day, Year)	July 7, 1914
8. WAS DECEDENT EVER IN U.S. ARMED FORCES?	☐ Yes ☐ No
8a. PLACE OF DEATH (Check only one)	☐ HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DOA; ☐ OTHER: ☐ Nursing Home ☒ Decedent's Home ☐ Other (Specify)
9b. FACILITY NAME (If not institution, give street and number)	76676 Fir Ridge Lane
9c. CITY, TOWN, OR LOCATION OF DEATH	Oakridge, Oregon
9d. COUNTY OF DEATH	Lane
10a. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.)	Woodsman
10b. KIND OF BUSINESS/INDUSTRY	Lumber Companies
11. MARITAL STATUS - Married, Never Married, Widowed, Divorced (Specify)	Married
12. SPOUSE (If Married, Widowed)	Marie E. Swanson
13a. RESIDENCE - STATE	Oregon
13b. COUNTY	Lane
13c. CITY, TOWN OR LOCATION	Oakridge 97463
13d. STREET AND NUMBER	76676 Fir Ridge Lane
13e. INSIDE CITY LIMITS?	☐ Yes ☒ No
13f. ZIP CODE	97463
14. WAS DECEDENT OF HISPANIC ORIGIN? (Specify No or Yes - If yes, specify Cuban, Mexican, Puerto Rican, etc.) Specify	☒ No ☐ Yes
15. RACE - American Indian, Black, White, etc. (Specify)	White
16. DECEDENT'S EDUCATION - (Specify only highest grade completed) Elementary/Secondary (0-12)	8th Grade
16. DECEDENT'S EDUCATION - College (1-4 or 5+)	
17. FATHER - NAME first middle last	Gustav A. Swanson
18. MOTHER - NAME first middle maiden	Ella Rickman
19. INFORMANT - NAME and relationship to deceased	Marie E. Swanson, Wife
20a. METHOD OF DISPOSITION	☐ Mausoleum ☐ Burial ☐ Cremation ☐ Removal from State ☐ Donation ☐ Other (Specify)
20b. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place)	Forestvale Memorial Park
20c. LOCATION - City or Town, State	Oakridge, Oregon
21a. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH	[signature]
21b. OREGON LICENSE NO. (Or Licensee)	3638
22. NAME, ADDRESS AND ZIP OF FACILITY	Oakridge Chapel of the Woods Funeral Hm 76478 Ash St., Oakridge, OR 97463
23. DATE FILED (Month, Day, Year)	SEP 10 2001
24. REGISTRAR'S SIGNATURE	Victoria Kay Deane

RESERVED FOR REGISTRAR'S USE:

TO BE COMPLETED BY CERTIFYING PHYSICIAN

27. TIME OF DEATH	5:34 A.M.
28. WAS MEDICAL EXAMINER NOTIFIED?	☒ Yes ☐ No
29. To the best of my knowledge, death occurred at the time, date, place and due to the cause(s) and manner stated. (Signature)	[signature] MD
30. DATE SIGNED (Month, Day, Year)	9/4/01

TO BE COMPLETED ONLY BY MEDICAL EXAMINER

31a. TIME OF DEATH	M
31b. DATE PRONOUNCED DEAD (Month, Day, Year, Hour)	M
32. On the basis of examination and/or investigation, in my opinion death occurred at the time, date, place and due to the cause(s) and manner stated. (Signature)	
33. DATE SIGNED (Month, Day, Year)	COUNTY

34. NAME, TITLE, ADDRESS AND ZIP OF CERTIFIER/MEDICAL EXAMINER (Type or Print)
Jonathan Stout, MD 47815 Hwy 58, P. O. Box 735, Oakridge, OR 97463

35. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)

CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE (A) STATING THE UNDERLYING CAUSE LAST

36. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).) Do not enter mode of dying, e.g. Cardiac or Respiratory Arrest

PART I (a)	Severe cardiomyopathy.	Interval between onset and death
DUE TO, OR AS A CONSEQUENCE OF: (b)	Coronary Artery Disease	Interval between onset and death
DUE TO, OR AS A CONSEQUENCE OF: (c)		Interval between onset and death

PART II OTHER SIGNIFICANT CONDITIONS - Conditions contributing to death but not resulting in the underlying cause given in PART I.

37. Did tobacco use contribute to the death? ☐ Yes ☐ Probably ☐ No ☒ Unknown

38. AUTOPSY ☐ Yes ☐ No

39. If YES were findings considered in determining cause of death? ☐ Yes ☐ No

40. MANNER OF DEATH: ☐ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Other ☐ Pending Investigation ☐ Undetermined Manner ☐ Legal Intervention

41a. DATE OF INJURY (Month, Day, Year)

41b. TIME OF INJURY M

41c. INJURY AT WORK? ☐ Yes ☐ No

41d. DESCRIBE HOW INJURY OCCURRED

41e. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify)

41f. LOCATION (Street and Number or Rural Route Number, City or Town, State)

RESERVED FOR REGISTRAR'S USE:

SEE DEATH INSTRUCTIONS REVERSE SIDE / OREGON MED PAK COPY

THIS IS A TRUE AND EXACT REPRODUCTION OF THE DOCUMENT OFFICIALLY REGISTERED AT THE OFFICE OF THE LANE COUNTY REGISTRAR

DATE ISSUED: SEP 10 2001

ADA M. NOBLE
COUNTY REGISTRAR
LANE COUNTY, OREGON

THIS COPY NOT VALID WITHOUT INTAGLIO STATE SEAL AND BORDER

STATE OF OREGON 1859

HEALTH AND HUMAN SERVICES LANE COUNTY

Detailed Property Report

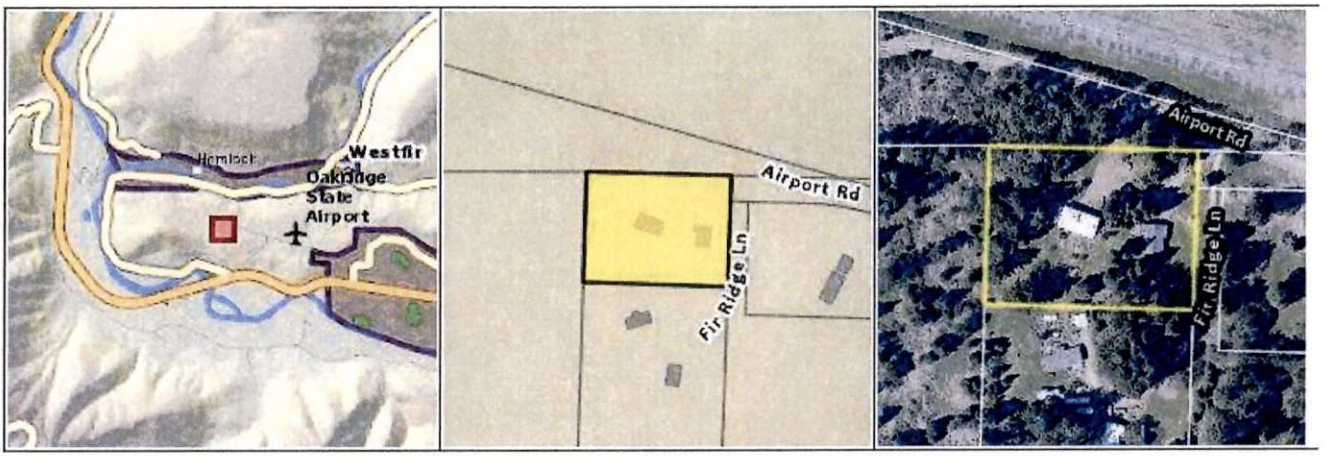
Site Address 46979 Airport Rd Oakridge, OR 97463-9715
Map & Taxlot# 21-35-18-00-00914
SIC N/A
Tax Account# 1393360

Property Owner 1
DeBoer Kenneth J & Bridgett M
46979 Airport Rd
Oakridge, OR 97463

Tax account acreage 2.00
Mapped taxlot acreage† 2.01

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 21-35-18-00-00914



Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
DeBoer Kenneth J & Bridgett M	46979 Airport Rd	Oakridge, OR 97463

Taxpayer

Party Name	Address	City/State/Zip
DeBoer Kenneth J & Bridgett M	46979 Airport Rd	Oakridge, OR 97463

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

Sale Date	Sale Price	Doc #	Image	Analysis Code	Multiple Accts?	Grantor(s)	Grantee(s)
10/17/2008	$255,000	2008-57875		V	No	Herscher John & Lynne M	DeBoer Kenneth J & Bridgett M
04/11/2004	$0	2004-89145		8	Yes	Heggen Henry Russell	Whom
09/01/2003	$156,000	2005-58090		C	No	Heggen Neil B	Herscher John & Lynne M
08/09/1999	$120,000	1999-70859		Y	No	Boyson Henrietta E & Lamb Jerry L	Heggen Henry R & Nell B
02/12/1998	$0	1998-10909		6	data not available	Boyson, Henrietta E	data not available
06/02/1997	$0	1997-36895		6	data not available	Boyson, Henritta E	data not available
01/06/1994	$52,500	1994-1756		Q	data not available	Goldman, Alexander S	data not available

Data source: Lane County Assessment and Taxation

JOHN HERSCHER
46979 AIRPORT RD
OAKRIDGE, OR 97463
Grantor's Name and Address

KENNETH J. DEBOER
46979 Airport Rd,
~~OR~~ Oakridge, OR 97463
Grantee's Name and Address

After recording return to:
EVERGREEN LAND TITLE CO.
P.O. BOX 931
SPRINGFIELD, OR 97477

Until a change is requested, all tax statements shall be sent to the following address.
SAME AS GRANTEE

Division of Chief Deputy Clerk
Lane County Deeds and Records
2008-057875

$31.00

01032190200800578750020028

10/21/2008 10:25:44 AM

RPR-DEED Cnt=1 Stn=6 CASHIER 07
$10.00 $11.00 $10.00

TITLE NO. ELT-56234
ESCROW NO. SP08-20984
TAX ACCT. NO. 1393360
MAP NO. 21 35 18 00 00914

WARRANTY DEED - STATUTORY FORM
(INDIVIDUAL OR CORPORATION)

KNOW ALL MEN BY THESE PRESENTS, That JOHN HERSCHER and LYNNE M. HERSCHER, husband and wife
hereinafter called grantor, for the consideration hereinafter stated, to grantor paid by
KENNETH J. DEBOER and BRIDGETT M. DEBOER, husband and wife
hereinafter called grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of LANE and State of Oregon, described as follows, to-wit:

SEE EXHIBIT A WHICH IS MADE A PART HEREOF BY THIS REFERENCE

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.
And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances

Subject to any and all easements, restrictions and covenants of record ~~XXXX

Legal Description

EXHIBIT A

Beginning at the Section corner common to Sections 12 and 13, Township 21 South, Range 2 East of the Willamette Meridian, and Sections 7 and 18, Township 21 South, Range 3 East of the Willamette Meridian; thence North 89° 54' 00" East, a distance of 342.96 feet; thence South 00° 28' 00" West, a distance of 252.94 feet; thence South 89° 33' 00" West, a distance of 342.99 feet to a point on the Section line of said Section 18, Township 21 South, Range 3 East of the Willamette Meridian; thence Northerly along said Section line North 00° 28' 00" East, a distance of 255.00 feet to the Point of Beginning, in Lane County, Oregon.

Detailed Property Report

Site Address 47385 Airport Rd Oakridge, OR 97463-9771
Map & Taxlot# 21-35-18-00-00902
SIC N/A
Tax Account# 0965168 [a]
[a] Additional site address(es) are associated with this tax account

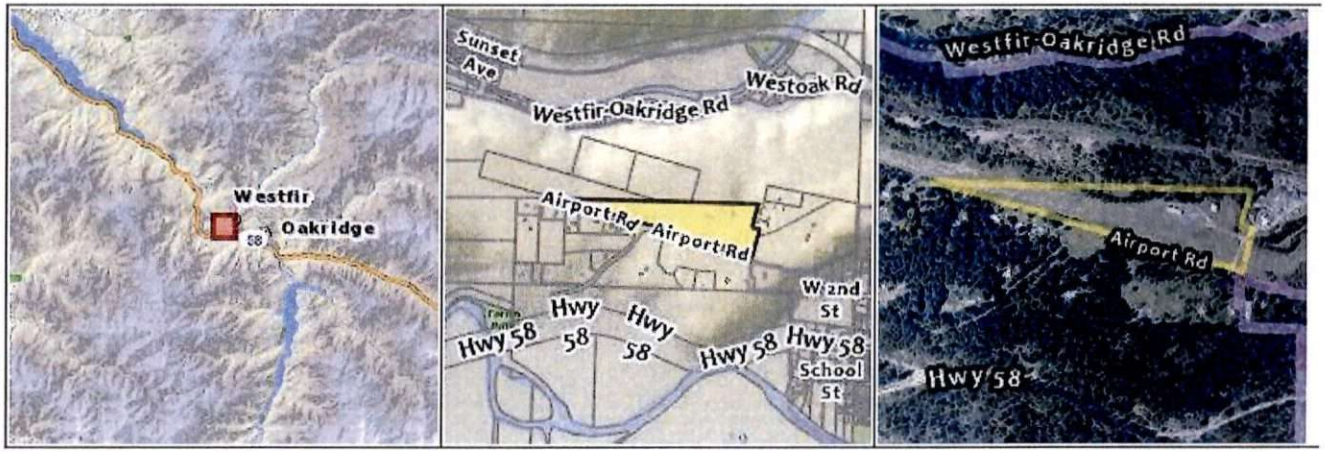
Property Owner 1
Oregon State of
3040 25th S E
State Board of Aeronautics
Salem, OR 97302

Tax account acreage 26.82
Mapped taxlot acreage[†] 27.09

[†] Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Related Accts 1083110 1355435

Map & Taxlot # 21-35-18-00-00902



Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Oregon State of	3040 25th S E State Board of Aeronautics	Salem, OR 97302

Taxpayer

Party Name	Address	City/State/Zip
Oregon State of	3040 25th S E State Board of Aeronautics	Salem, OR 97302

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Oct 27, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000902
Status Active

Current Parcel/Account	Current TCA
0965168	07605
1083110	07601
1355435	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			26.82

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 965 168

MAP NO. 21 35 18 ACCOUNT NUMBER	TAX LOT NO. 902	SECTION 18	TOWNSHIP 21 S.	RANGE 3W W.M

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION	DEED RECORD		ACRES REMAINING
	DATE OF ENTRY	DEED NUMBER	
Edgar Roberts property in Sec.18,21S,R. 3E,WM. LCO. Beg. at a point formed by the centerline of the proposed Oakridge Airport Runway intersecting with the North line of Sec.18,21S,R.3E,WM. LCO. said point being 1409.02 ft. S.89°43'E. of the NW. corner of said Sec.18, thence S.89°43'E. 2274.55 ft. along the North line of Sec.18, thence S.14°33'W. 360.54 ft. thence S.75°27'E. 120.00 ft. " S.14°33'W. 400.00 ft. to a point 12.0 ft S.14°33'W. of the centerline of the Bonneville Power Line, thence N.75°27'W. 3110.96 ft. parallel with the Bonneville Power Line to the North line of Sec.18, thence S.89°43'E. 811.56 ft. to the POB. Cont 27.21 ac m/l. All the bearings referred to in the above desc. are based on true bearings as obtained from solar observations.	1968	R382/16860	
Cont. m/l			26.82

16860

OAKRIDGE AIRPORT
WARRANTY DEED

EDGAR N. ROBERTS AND FAUNA DOLORES ROBERTS, husband and wife, hereinafter called GRANTOR, conveys to the STATE OF OREGON through its BOARD OF AERONAUTICS all that property situated in Lane County, Oregon, for Oakridge Airport and described as:

Edgar Roberts property in Section 18, Township 21 South, Range 3 East of the Willamette Meridian, Lane County, Oregon; Beginning at a point formed by the Centerline of the proposed Oakridge Airport Runway intersecting with the North Line of Section 18, Township 21 South, Range 3 East of the Willamette Meridian, Lane County, Oregon, said point being 1409.02 feet South 89° 43' East of the Northwest Corner of said Section 18; thence South 89° 43' East along the North Line of Section 18 2274.55 feet; thence South 14° 33' West 360.54 feet; thence South 75° 27' East 120.00 feet; thence South 14° 33' West 400.00 feet to a point 12.00 feet South 14° 33' West of the Centerline of the Bonneville Power Line; thence North 75° 27' West 3110.96 feet parallel with the Bonneville Power Line to the North Line of Section 18; thence South 89° 43' East 811.56 feet to the place of beginning containing 27.21 Acres more or less. All the bearings referred to in the above description are based on true bearings as obtained from solar observations. (See attached Map)

and covenants that GRANTOR is the owner of the above described property free of all encumbrances, and will warrant and defend the same against all persons who may lawfully claim the same. If said property is not utilized for airport purposes it shall revert to the GRANTORS or their heirs or assigns.

Dated this 8th day of March, 19 67.

Edgar N. Roberts

Edgar N. Roberts

Fauna Dolores Roberts

State of Oregon
County of Lane

March 8 19 67

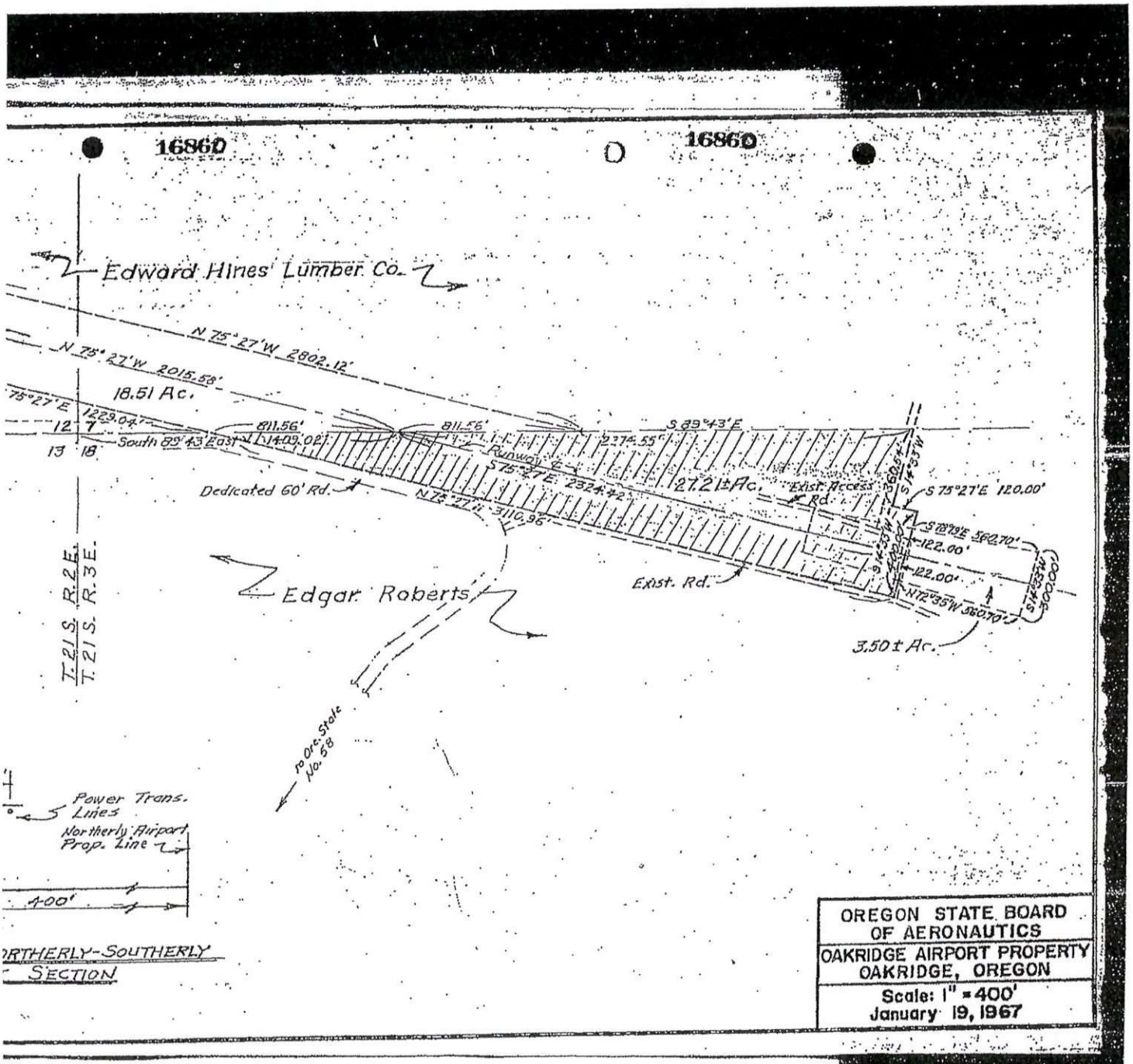
Personally appeared the above named Edgar N. Roberts and Fauna Dolores Roberts, husband and wife, and acknowledged the foregoing instrument to be their voluntary act. Before me:

Dale E. Helikson

Notary Public for Oregon

My Commission expires 11/12/67

1-23-67


16860
16860
Edward Hines Lumber Co.
N 75° 27' W 2802.12'
N 75° 27' W 2015.58'
18.51 Ac.
75° 27' E 1229.04'
12
13
18
South 89° 43 East 1409.02'
811.56'
811.56'
S 89° 43' E
2274.55'
Runway ℄
S 75° 27' E 2324.42'
27.2± Ac.
Exist. Access Rd.
S 14° 33' W 360.54'
S 75° 27' E 120.00'
S 78° 29' E 560.70'
122.00'
122.00'
N 12° 35' W 560.70'
3.50± Ac.
Dedicated 60' Rd.
N 75° 27' W 3110.96'
Edgar Roberts
Exist. Rd.
T. 21 S. R. 2 E.
T. 21 S. R. 3 E.
To Ore. State No. 58
Power Trans. Lines
Northerly Airport Prop. Line
400'
RTHERLY-SOUTHERLY
SECTION
OREGON STATE BOARD OF AERONAUTICS
OAKRIDGE AIRPORT PROPERTY
OAKRIDGE, OREGON
Scale: 1" = 400'
January 19, 1967

16860

4229 Roberts

4 3 Dairy Queen thru easement
thru East end of Co roadway

State of Oregon,
County of Lane—ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

1968 MAR 8 PM 2 43 B

Reel 382 R

Lane County OFFICIAL Records.

INA RANDOLPH, Director of the Department of Records & Elections.

By [signature] Deputy

C29-083-05

Rogfee

NOTICE OF A LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date: 11/20/2008

Department Files: PA08-6329 (Notice)
PA08-6330 (Legal Lot Verification TL 100 Revised 13.29 acres)
PA08-6332 (Legal Lot Verification TL 800 Revised 12.05 acres)
PA08-6333 (Legal Lot Verification TL 100 Revised 13.28 acres)
PA08-6344 (Legal Lot Verification TL 100 Revised 184.28 acres)

Property Owner: Crown Properties, LLC
Applicant: Nickell Land Surveying & Planning, LLC
Assessor's Map & Tax Lot: 21-25-12-00-00800 & 21-35-07-40-00100
Contiguous Ownership: NONE

You own or occupy property near the above referenced property which is the subject of a land use application and pending decision for conditional **Approval** by the Lane County Planning Director.

PROPOSAL: To make the Director's Legal Lot Verification final and granting this unit legal lot status in accordance with Lane Code Chapter 13.020.

PLEASE NOTE: An approval of this proposal does not create a new unit of land and is not used with the intention of extinguishing written or unwritten real estate rights. Furthermore, Lane County makes no claim as to the property's ownership, title or boundary location. Additionally, this legal lot decision does not approve development or improvement of the subject unit of land beyond what is allowed by current zoning.

Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals. You may receive more information, including requirements to appeal this pending decision, by the Director to the Lane County Hearings Official.

Attached to this Notice are a Staff Report and a Legal Lot Verification. The application, the Lane County Planning Director's report, all documents provided by the applicant, and any applicable criteria used to make the determination are available for inspection at the Lane County Land Management Division. The Lane County Land Management Division representative is **Brandon J. Callister** who can be contacted at **541-682-4650**. Other Information can be obtained through the Lane County Web Site at **http://www.lanecounty.org/Planning/**.

ATTENTION: **Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.**

EXHIBIT I

NOTICE OF A LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR

Enclosed is a vicinity map of the subject property and surrounding properties.

This decision will become final at 5 P.M. on 12\2\2008 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: Brandon Callister **Date:** 11/19/2008
Brandon J. Callister, Engineering Tech. 2

Authorized by: _____ **Date:** 11·19·2008
for Kent Howe, Planning Director

PLANNING DIRECTOR REVIEW OF A LEGAL LOT VERIFICATION

Staff Report

Report Date:	November 19, 2008
Department Files:	**PA08-6329 (Notice)** **PA08-6330 (Legal Lot Verification TL 100 Revised 13.29 acres)** **PA08-6332 (Legal Lot Verification TL 800 Revised 12.05 acres)** **PA08-6333 (Legal Lot Verification TL 100 Revised 13.28 acres)** **PA08-6344 (Legal Lot Verification TL 100 Revised 184.28 acres)**
Property Owner:	Crown Properties, LLC
Applicant:	Nickell Land Surveying & Planning, LLC
Tax map and lot:	21-25-12-00-00800 & 21-38-07-40-00100
Acreage:	13.29 acres (TL 100, P-1); 12.05 acres (TL 800, P-2); 13.28 acres (TL 100, P-3); 184.28 acres (TL 100, P-4)
Property Location:	vacant
Staff:	Brandon J. Callister, Eng. Tech. 2, 682-4650

I. PROPOSAL

Applications requesting Legal Lot Verification on one or more units of land were made. In accordance with Lane Code 13.020, the purpose of these applications was to determine if the identified units of land complied with the state and county laws that were in effect when it was created.

II. BACKGROUND INFORMATION

On 11/06/2008, applications for legal lot verifications were submitted to Lane County Land Management Division. The applications were reviewed and accepted as complete on 11/19/2008.

III. LOCATION AND DESCRIPTION

The subject properties are in the F-2 zone with the minimum parcel size being 80 acres. The locations of these properties are as identified above along with the corresponding acreages.

IV. APPROVAL CRITERIA & FINDINGS OF FACT

The identified units of land are legal lots in accordance with LC 13.020. Additionally, the following criteria apply:

- The units of land were created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances.
- The adjustment was limited to the relocation of a common boundary between lawfully created units of land where no additional units of land were created and the existing unit of land reduced in size complied with applicable zoning ordinances. All units of land complied.

V. DECISION

These units of land were created in conformance with applicable land division and zoning regulations and are legal lots in accordance with Lane Code 13.020.

VI. ATTACHMENTS

Legal Lot Verification information with Map

LAND MANAGEMENT DIVISION

LEGAL LOT VERIFICATION REPORT

PUBLIC WORKS DEPARTMENT *125 E 8th AVENUE, EUGENE OR 97401 PLANNING: 682-3807*

DATE: November 19, 2008
STAFF: Brandon J. Callister

Notice: PA08-6329

1) Unit 1 Legal Lot verification Report: PA08-6330
   Tax Map and Lot Number: 21-35-07-40-00100 (P-1)
2) Unit 2 Legal lot Verification Report: PA08-6332
   Tax Map and Lot Number: 21-25-12-00-00800 (P-2)
3) Unit 3 Legal Lot verification Report: PA08-6333
   Tax Map and Lot Number: 21-35-07-40-00100 (P-3)
4) Unit 4 Legal lot Verification Report: PA08-6334
   Tax Map and Lot Number: 21-35-07-40-00100 (P-4)

These legal lot verification reports are based upon information provided by the applicant and County records on the above referenced properties. Based upon our findings, these units of land conformed to applicable regulations that existed at the time they were created. Please refer to Lane Code 13.010 (4) for the definition of a legal lot or parcel.

A legal lot is a unit of land (lot or parcel) that conforms to the applicable regulations that existed at the time the parcel or lot was first created. It remains a legal lot unless the parcel or lot lines are changed, the lot lines are vacated, or the unit of land is further divided as provided by law LC 13.010

FINDINGS

A. Land Division information
   1) Unit 1: The unit of land was created as a separate parcel on 07/14/1913
      - Instrument from which the unit of land was divided or separately described: DEED Book 1103 Page 122 dated 07/14/1913
      - The unit of land was reconfigured on 10/07/2008
        Documentation: Declaration of Property Line Adjustment 2008-059421 dated 10/07/2008

   2) Unit 2: The unit of land was created as a separate parcel on 02/09/1901
      - Instrument from which the unit of land was divided or separately described: DEED Book 51 Page 627 dated 02/09/1901
      - The unit of land was reconfigured on 10/07/2008
        Documentation: Declarations of Property Line Adjustment 2008-059421, 2008-059424, & 2008-059425

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

3) Unit 3: The unit of land was created as a separate parcel on 07/14/1913

- Instrument from which the unit of land was divided or separately described: DEED Book 103 Page 122 dated 07/14/1913
- The unit of land was reconfigured on 10/07/2008
  Documentation: Declarations of Property Line Adjustment 2008-059422 & 2008-059423

4) Unit 4: The unit of land was created as a separate parcel on 08/01/1945

- Instrument from which the unit of land was divided or separately described: DEED Book 293 Page 240 dated 08/01/1945
- The unit of land was reconfigured on 10/07/2008
  Documentation: Declarations of Property Line Adjustment 2008-059422, 2008-059423, 2008-059424, & 2008-059425

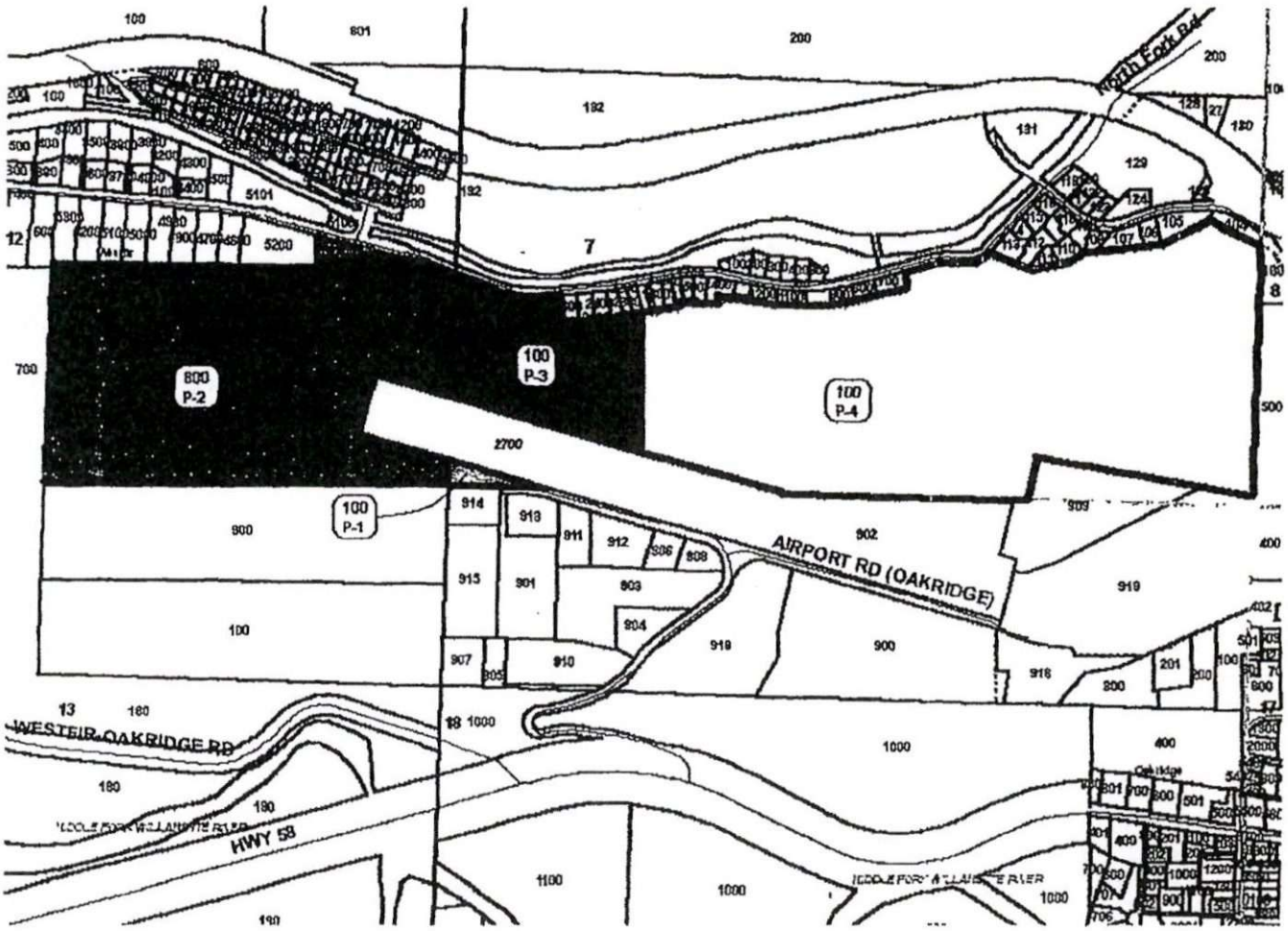
B. Zoning and Land Division information

Land division laws effective on: ☐ May 2, 1962 ☐ June 4, 1970 ☒ March 26, 1975
Criteria: The units of land were created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances. The adjustment was limited to the relocation of a common boundary between lawfully created units of land where no additional units of land were created and the existing unit of land reduced in size complied with applicable zoning ordinances. All units of land complied.

Original zoning ordinance date: 08/29/1978 & 08/22/1979 Zoning effective on 02/29/1984
Criteria: The units of land were created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances. The adjustment was limited to the relocation of a common boundary between lawfully created units of land where no additional units of land were created and the existing unit of land reduced in size complied with applicable zoning ordinances. All units of land complied.

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

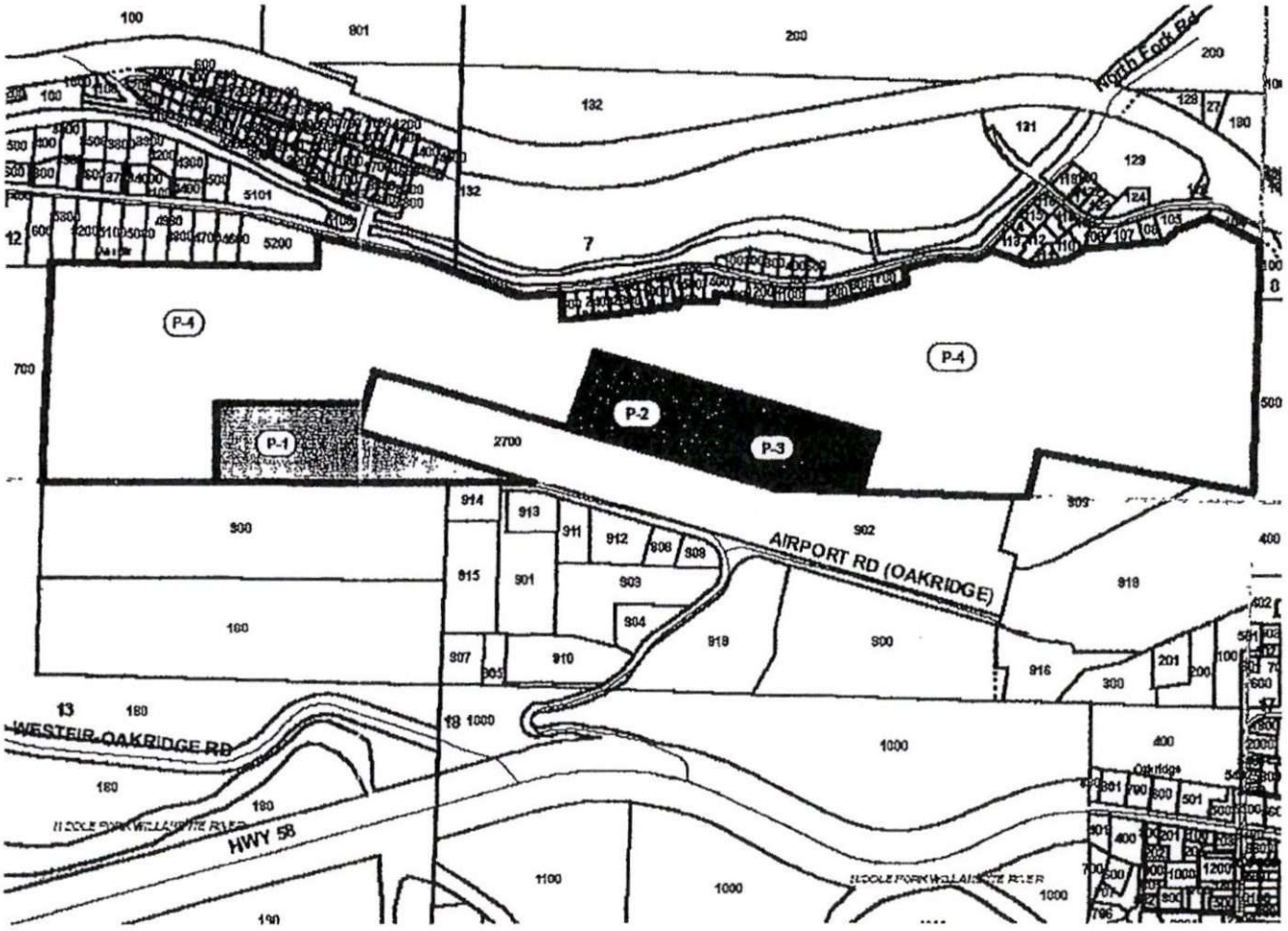
DIAGRAM OF THE UNIT OF LAND PRIOR TO ADJUSTMENT



** Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

DIAGRAM OF THE UNIT OF LAND AFTER ADJUSTMENT



**Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

LAND MANAGEMENT DIVISION

LEGAL LOT VERIFICATION REPORT

PUBLIC WORKS DEPARTMENT *125 E 8th AVENUE, EUGENE OR 97401 PLANNING: 682-3807*

Date: 11/19/2008

Applicant: Nickell Land Surveying & Planning, LLC
33225 Craig Lp.
Cottage Grove, Or. 97424

Owner: Crown Properties, LLC
30414 LeBleu Rd.
Eugene, Or. 97405

RE: Report and Verification of a Legal Lot, PA08-6330
Tax Map and Lot Number: 21-35-07-40-00100 (Revised 13.29 acres)
More exactly described: Declaration of Property Line Adjustment 2008-059421 P-1 dated 10/07/2008

This legal lot verification report is based upon information provided by the applicant and County records on the above referenced property. Based upon our findings, this unit of land **conformed** to applicable regulations that existed at the time it was created.

Findings (Refer to Lane Code 13.010 for the definition of a legal lot, lot and parcel)

1. The unit of land was created before being reconfigured as a separate parcel on or before 07/14/1913. Information on the instrument(s) from and by which this unit of land was reconfigured is as follows:

   a) Information on the instrument from which the unit of land was divided or separately described: Deed Book 103 Page 122 dated 07/14/1913 (See LLV PA06-6078)

   b) Information by which the subject property was reconfigured: Declaration of Property Line Adjustment 2008-059421 P-1 dated 10/07/2008 (See LLV PA08-6332 for the other affected parcel, being P-2)

2. Based upon the above information, the creation of this unit of land as a separate parcel **complied** with all effective land division laws and zoning regulations for size and shape and therefore meets the criteria for a legal lot:

   a) Land division regulations:
   When the unit of land was created, there were no land division laws regulating its creation. Lane County adopted applicable land division regulations on March 26, 1975. This unit of land **complied** with land division laws because the unit of land was created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances. The unit of land was reconfigured by the adjustment of the common property line which is authorized by ORS 92. The adjustment is limited to the relocation of a common boundary between two lawfully created units of land where an additional unit of land is not created.

   b) Zoning regulations:
   When the unit of land was created, there were no zoning laws regulating its creation. Lane County adopted applicable zoning regulations on 08/22/1979, however the reconfiguration fell under the current F-2 zoning which was adopted on 02/29/1984. This unit of land **complied** with this zoning because the adjustment of common property lines is authorized by ORS 92. The adjustment is limited to the relocation of a common boundary where the existing unit of land reduced in size by the adjustment complies with applicable zoning ordinances.

EXHIBIT "D"

Notes:
Tax Lot 100 (Revised 13.29 acres), Map 21-35-07-40, as described in Declaration of Property Line Adjustment 2008-059421 P-1 dated 10/07/2008, as depicted on the enclosed map complies with applicable land division and zoning requirements.

FOR INFORMATIONAL PURPOSES ONLY: This unit of land appears to have legal access.

PLEASE NOTE: THIS IS A PRELIMINARY LEGAL LOT DETERMINATION AND IS NOT A FINAL LEGAL LOT DETERMINATION.

Legal Lot Information:

A. A legal lot verification by the Director is considered final when it is made and noticed and shall occur when:
   1. Submit an application: An application is submitted and reviewed for a legal lot verification on a lot or parcel resulting from a property line adjustment; or
   2. Notice is sent: If notice is requested by the property owner for any legal lot verification, upon submitting an application for review

PLEASE NOTE: Please be aware that if the boundary of this preliminary legal lot changes by the time a permit or application requiring a legal lot is submitted, a new Legal Lot Verification will be required.

B. If your land is found to be a legal lot, then:
   1. Ownership in this property may be conveyed with the assurance that it will not require approval by Lane County under its land division regulations; and
   2. Lane County will recognize this property as a legally separate unit of land for the purposes of development. Nevertheless, development will still be subject to applicable zoning, sanitation, access, and building regulations.

PLEASE NOTE: A Legal Lot Determination and Decision affirms the legal creation of this unit of land, it does not create a new unit of land and is not used with the intention of extinguishing written or unwritten real estate rights. Furthermore, Lane County makes no claim as to the property's ownership, title or boundary location. Additionally, legal lot verification does not approve development or improvement

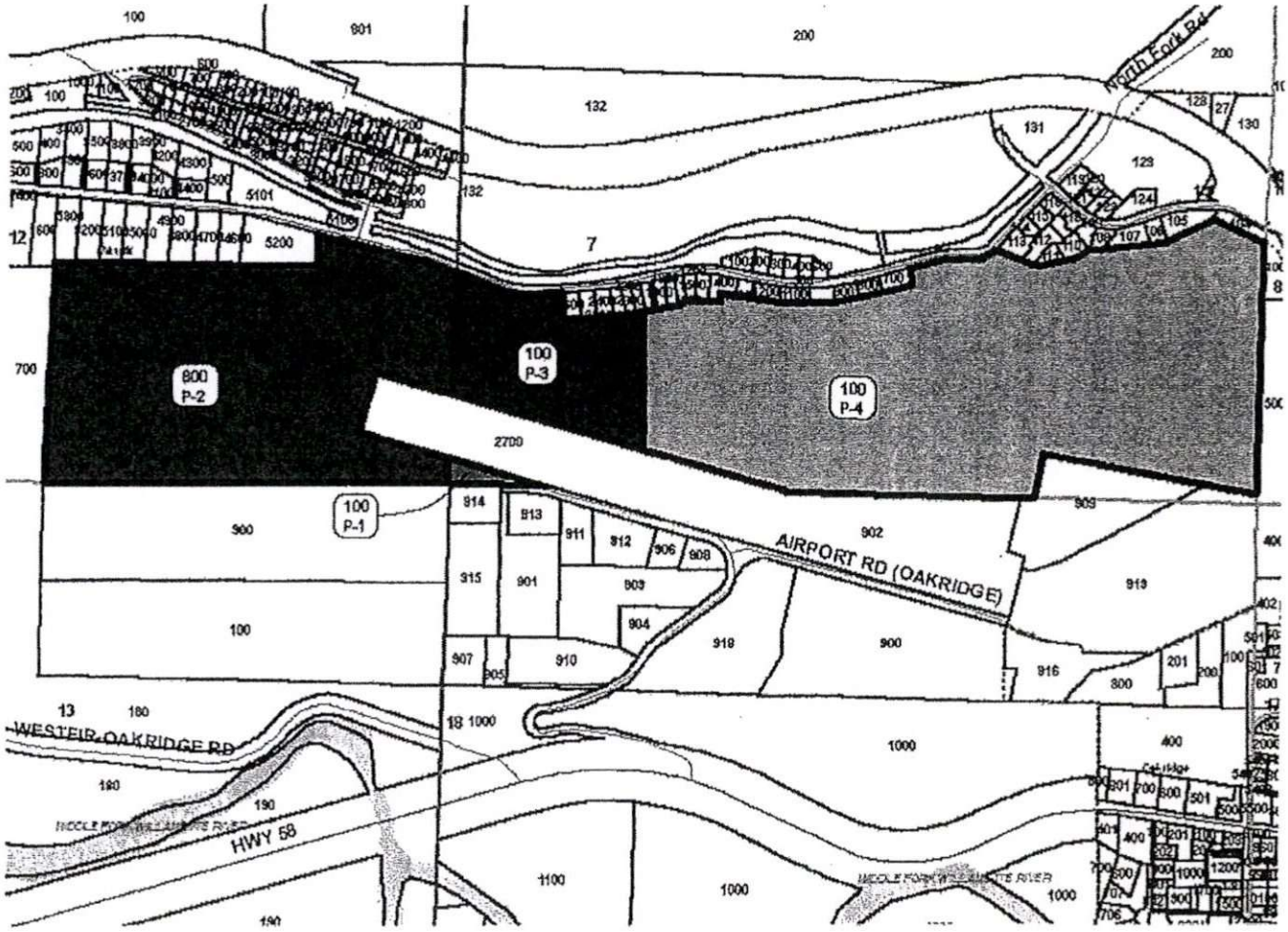
Sincerely,

Brandon J. Callister

Brandon J. Callister
Engineering Tech. 2
541-682-4650

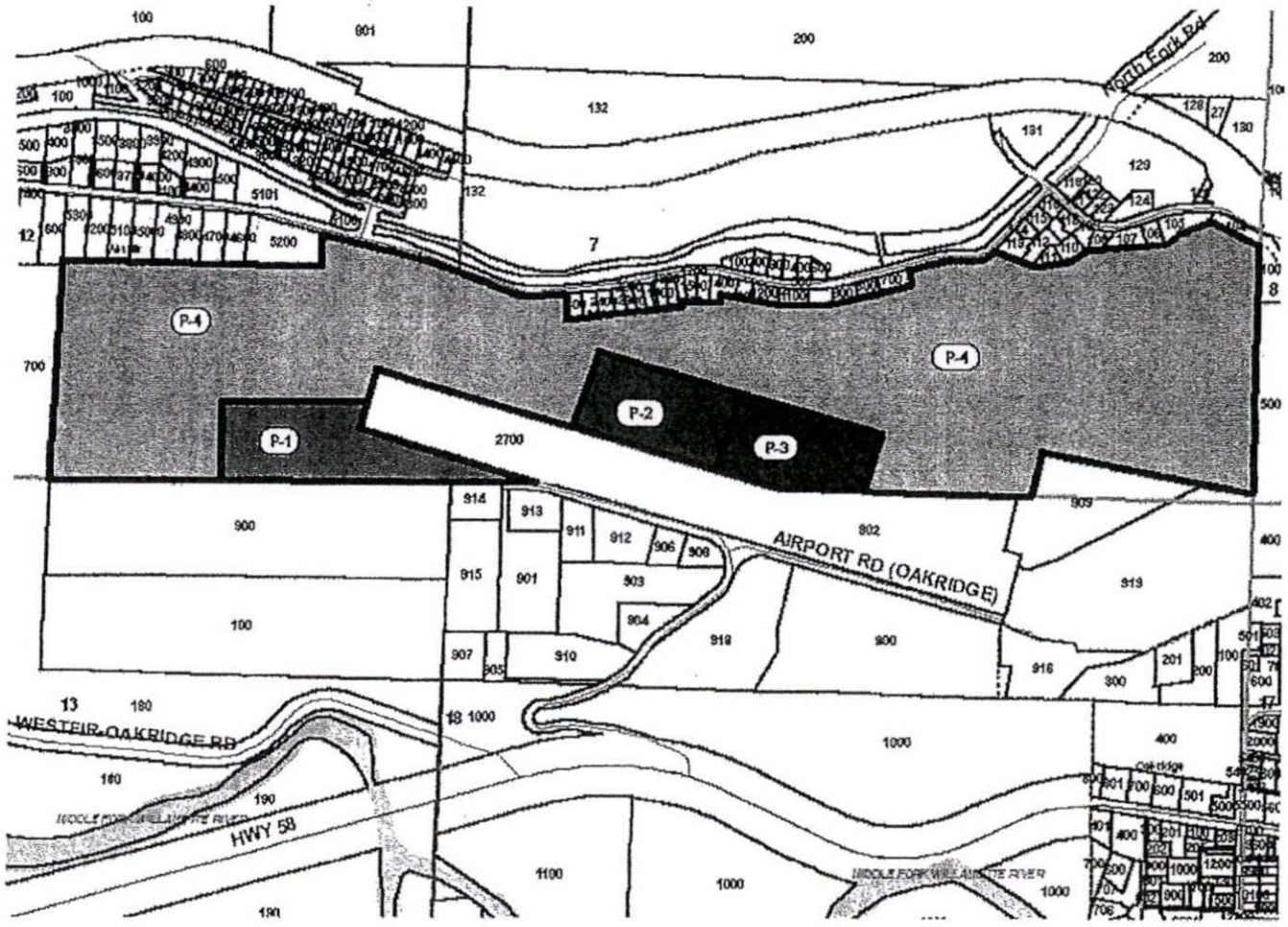
ATTACHMENTS: Map & Deeds
CC: TRS File and DocView

PARCEL CONFIGURATION PRIOR TO ADJUSTMENT



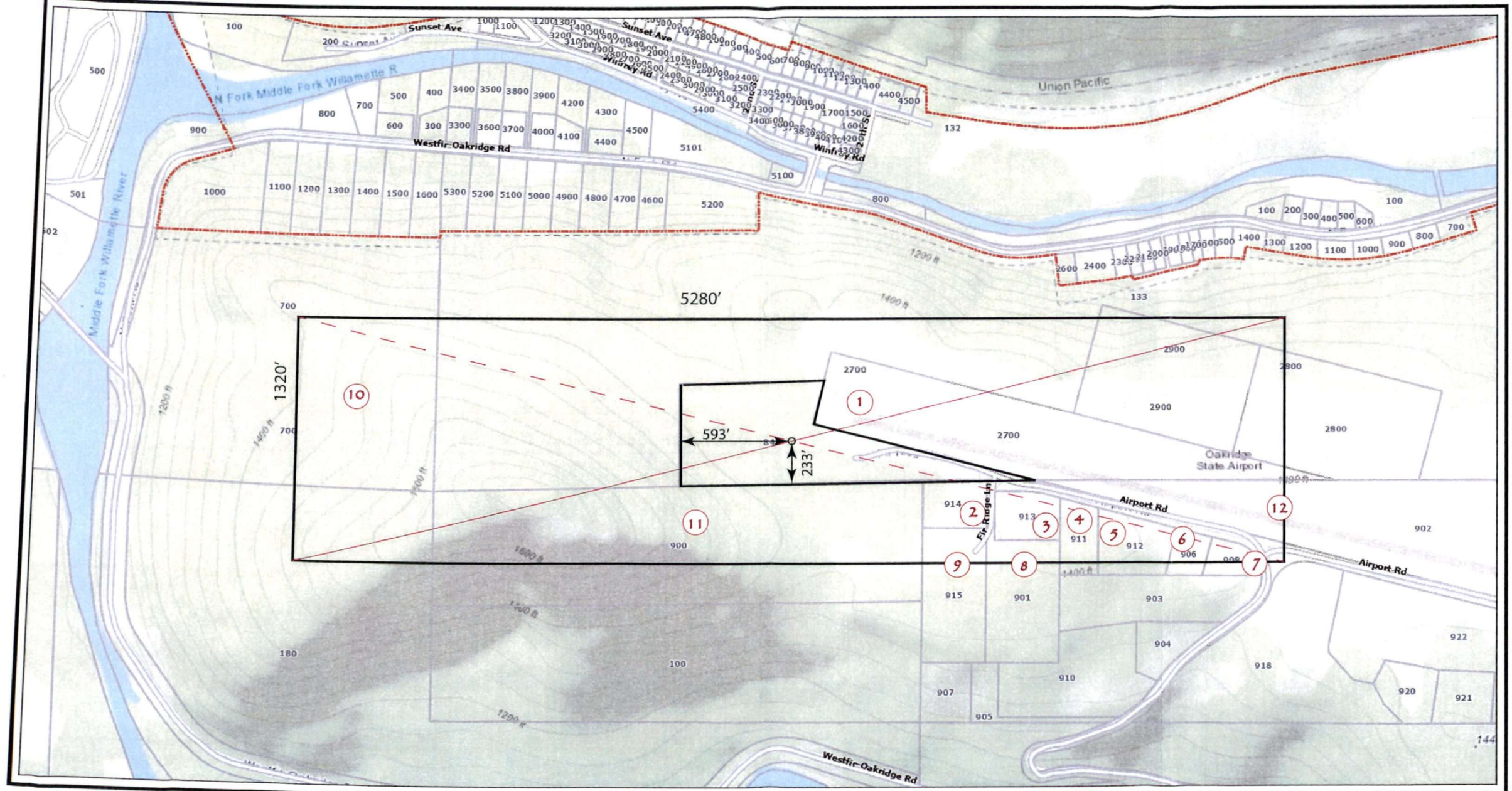
** Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

PARCEL CONFIGURATION AFTER ADJUSTMENT



** Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

Parcel Template Map



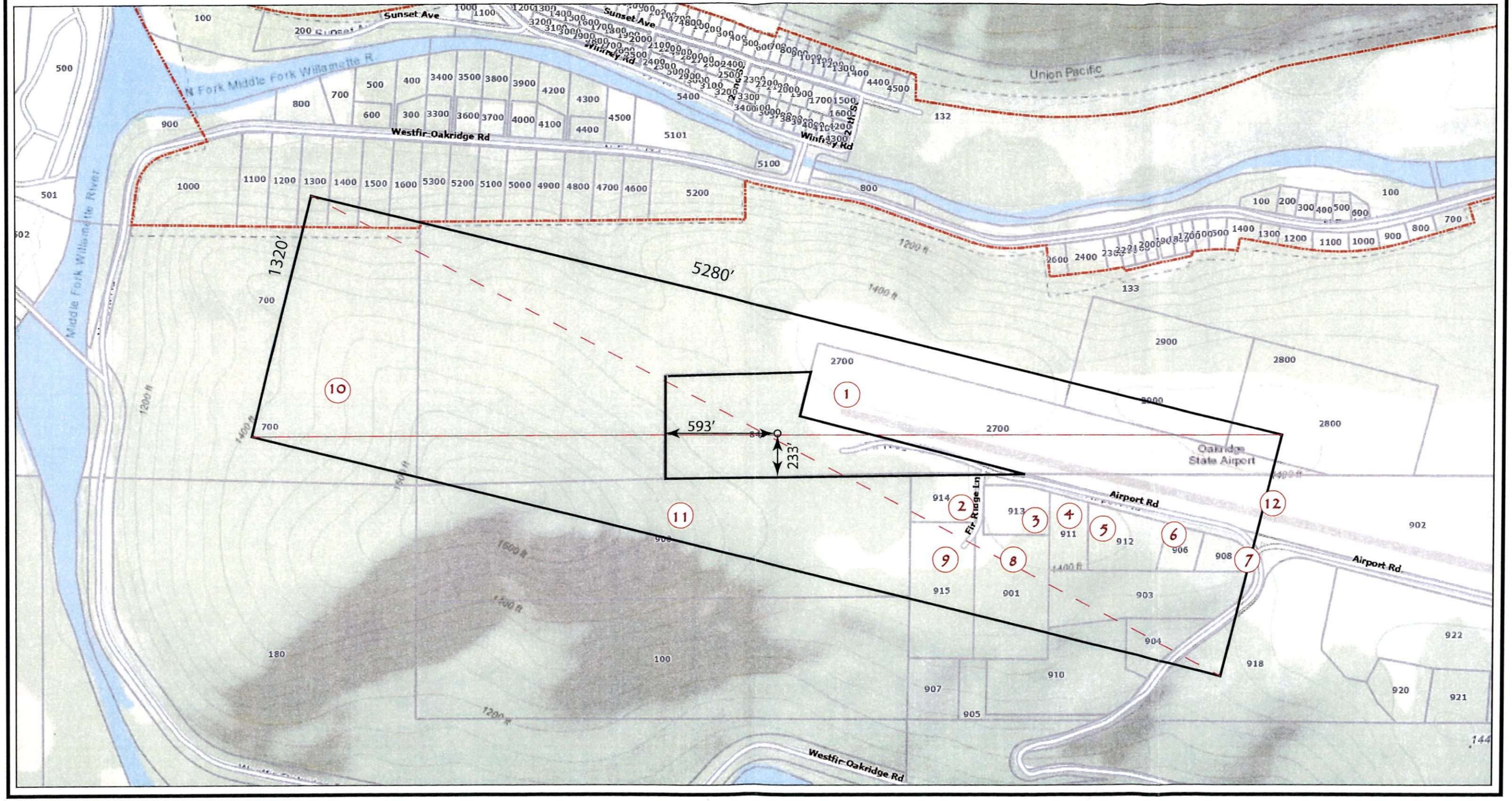
Subject Property
Map 21-25-12 Tax Lot 843

scale 1" = 500'

N

EXHIBIT J

Parcel Template Map - Alternate Alignment



Subject Property
Map 21-25-12 Tax Lot 843

scale 1" = 500'

N

EXHIBIT J2

Parcels and Dwellings Within Template

Parcel No.	Map	Taxlot	Parcel created	Year	Site Address	dwelling established
1	21-35-07-30	2700	R360D / 96687	1972		
2	21-35-18	914	P1 of M463-79	1980		
3	21-35-18	913	p2 of M463-79	1980	47022 Airport Rd.	1980
4	21-35-18	911	P2 of M316-78	1979		
5	21-35-18	912	P1 of M316-78	1979	47100 Airport Rd.	1965
6	21-35-18	906	R469D / 95859	1970	47116 Airport Rd.	1985
7	21-35-18	908	LSC R1437/8652701; Deed R484/10186; LL PA87-02870 Part 2	1970	47130 Airport Rd.	1954
8	21-35-18	901	P2 of PA3201-86	1986		
9	21-35-18	915	P1 of PA3201-86	1986	76676 Fir Ridge Ln.	1987
10	21-25-12	700	USDA	1848		
11	21-25-13	900	R517/34757	1971		
12	21-35-18	902	R382/16860	1968		

Template Parcel Data
Subject Tract
Mao 21-25-12 Tax Lot 843

EXHIBIT K

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135073002700
Status Active

Current Parcel/Account	Current TCA
1059177	07605
1696861	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			18.51

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

1 059 177
ACCOUNT NUMBER

TAX LOT
MAP NO. 21 35 07 3 | PARCEL NO. 2700 | SECTION 7 | TOWNSHIP 21 S. | RANGE 3 E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Edward Hines Lumber Co Property in Sec 7, T 21 S, R 3 E and Sec 12, T 21 S, R 2 E of the WM, Lane County, Oregon; Beginning at a point formed by the intersections of the centerline of the proposed Oakridge Airport Runway and the South line of Sec 7, T 21 S, R 3 E of the WM, Lane County, Oregon, said poin being 1409.92 ft S 89*43' E from the SW corner of said Sec 7; thence	1979	R360/96687 (1973)	
	S 89*re' E 811.56 ft along the South line of said SEc 7; thence			
	N 75*27' W 2802.12 ft; thence			
	S 14*33' W 400.00 ft; thence			
	S 75*27' E 1229.04 ft to the South line of said Sec 7; thence			
	S 89*43' E along the South line of said Sec 7, 811.56 ft to the plact of beginning.			
	All the bearings above referred to are based on true bearings as obtained from solar observations.			
	eont m/1			18.51

96687

THIS INDENTURE WITNESSETH, That the Grantor, EDWARD HINES LUMBER CO., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact business in the State of Oregon, and pursuant to authority given by the Board of Directors of said corporation, conveys unto the State of Oregon, through its Board of Aeronautics, for public purposes and as a gift, all that property situated in Lane County, Oregon, for an airport to be known as the Oakridge Airport and described as:

> Edward Hines Lumber Co. property in Section 7, Township 21 South, Range 3 East and Section 12, Township 21 South, Range 2 East of the Willamette Meridian, Lane County, Oregon; Beginning at a point formed by the intersections of the Centerline of the proposed Oakridge Airport Runway and the South Line of Section 7, Township 21 South, Range 3 East of the Willamette Meridian, Lane County, Oregon, said point being 1409.02 feet South 89° 43' East from the Southwest Corner of said Section 7; thence South 89° 43' East 811.56 feet along the South Line of said Section 7; thence North 75° 27' West 2802.12 feet; thence South 14° 33' West 400.00 feet; thence South 75° 27' East 1229.04 feet to the South Line of said Section 7; thence South 89° 43' East along the South Line of said Section 7, 811.56 feet to the place of beginning, containing 18.51 acres more or less. All the bearings above referred to are based on true bearings as obtained from solar observations. (See attached map),

and covenants that GRANTOR is the owner of the above described property free and clear of all encumbrances, and will warrant and defend the same against all persons who may lawfully claim the same; provided however that if said property is not utilized for airport purposes it shall revert to the GRANTOR or its assigns.

IN WITNESS WHEREOF, said GRANTOR has caused its corporate seal to be hereto affixed and has caused its name to be signed to these presents by its Executive Vice President and attested by its Assistant Secretary this 1st day of May, 1967.

EDWARD HINES LUMBER CO.

ATTEST:

R. F. Brodl
Assistant Secretary

By Joseph J. Fitzgerald
Executive Vice President

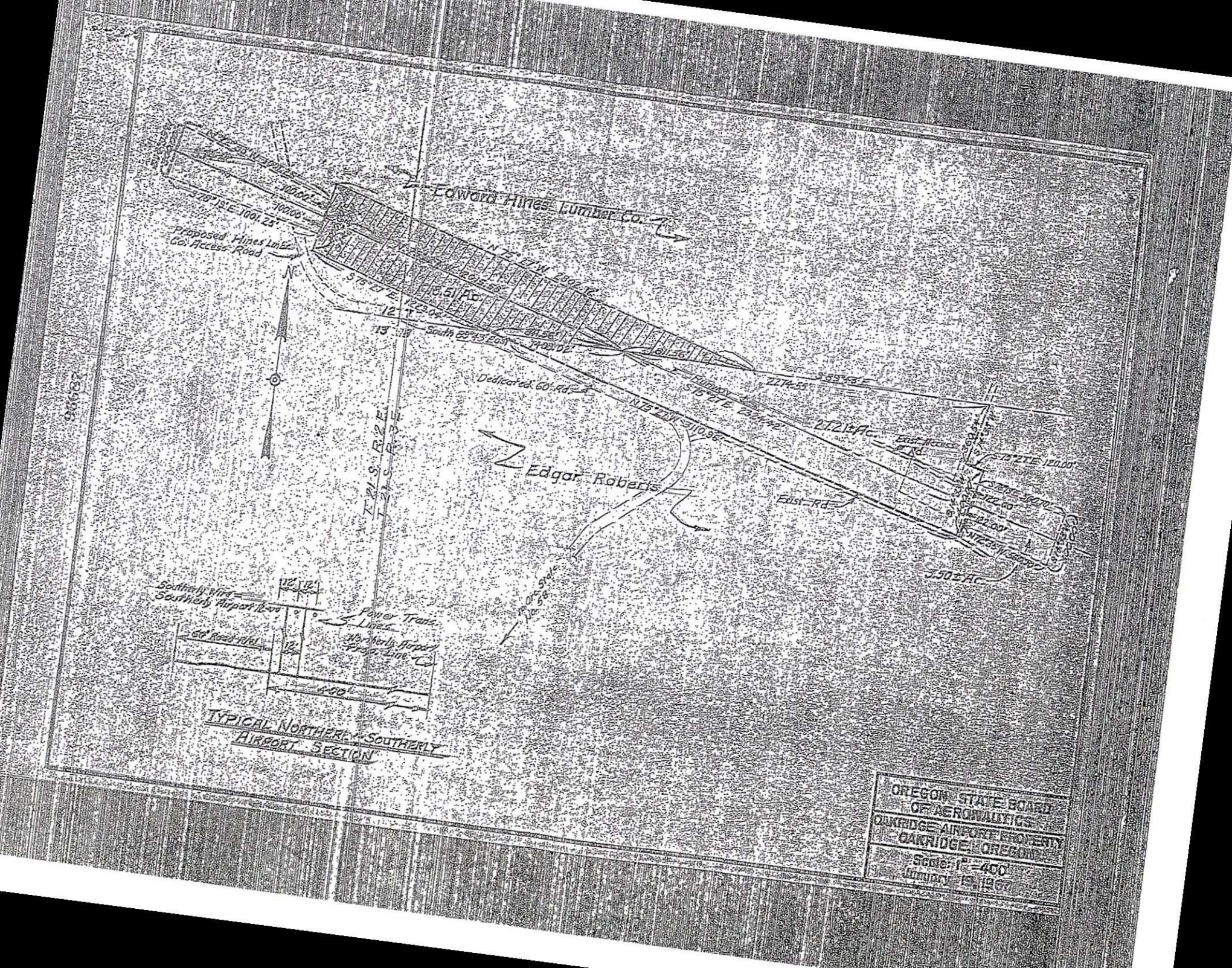
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Estelle D. Koehn, a Notary Public in and for said county, in the state aforesaid, do hereby certify that Joseph J. Fitzgerald, personally known to me to be the Exec. Vice President of Edward Hines Lumber Co., a Delaware corporation, and R. F. Brodl, personally known to me to be the Asst. Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Exec. Vice President and Asst. Secretary, they signed and delivered the said instrument as Exec. Vice President and Asst. Secretary of said corporation, and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 1st day of May, 1967.

Estelle D. Koehn
Notary Public for Illinois

My commission expires 6-23-68


Edward Hines Lumber Co.
Edgar Roberts
Proposed Hines Lumber Co. Access Road
Dedicated 60' Rd.
Exist. Rd.
Railroad
Power Trans. Line
Southerly Airport R-W
Southerly Airport Sfty. Line
60' Road R/W
TYPICAL NORTHERLY - SOUTHERLY AIRPORT SECTION
OREGON STATE BOARD OF AERONAUTICS
OAKRIDGE AIRPORT PROPERTY
OAKRIDGE, OREGON
Scale: 1" = 400'
January 19, 1967

AUG 30 67 E 7 14 38 M-Ore

9067

7177 Edward Hines Lbr Co.

43

State of Oregon,
County of Lane—ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

AUG 30 1967

4:30 P.M.

Reel 360

Lane County OFFICIAL Records.

INA RANDOLPH, Director of the Department of Records & Elections.

By Ruth Blakeslee Deputy

C29-083-05

Edward Hines Lbr Co.
Westfir, Ore

450

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

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The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000914
Status Active

Current Parcel/Account	Current TCA
1393360	07605

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			2.00

Comments:

21.35.18.0.0 00914

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

11 393 360

OLD NUMBER | ACCOUNT NUMBER

TAX LOT: MAP NO. 21.35.18.0.0 | PARCEL NO. 914 | SECTION 18 | TOWNSHIP 21 S. | RANGE 35 W.M.

INDENT EACH NEW COURSE TO THIS POINT

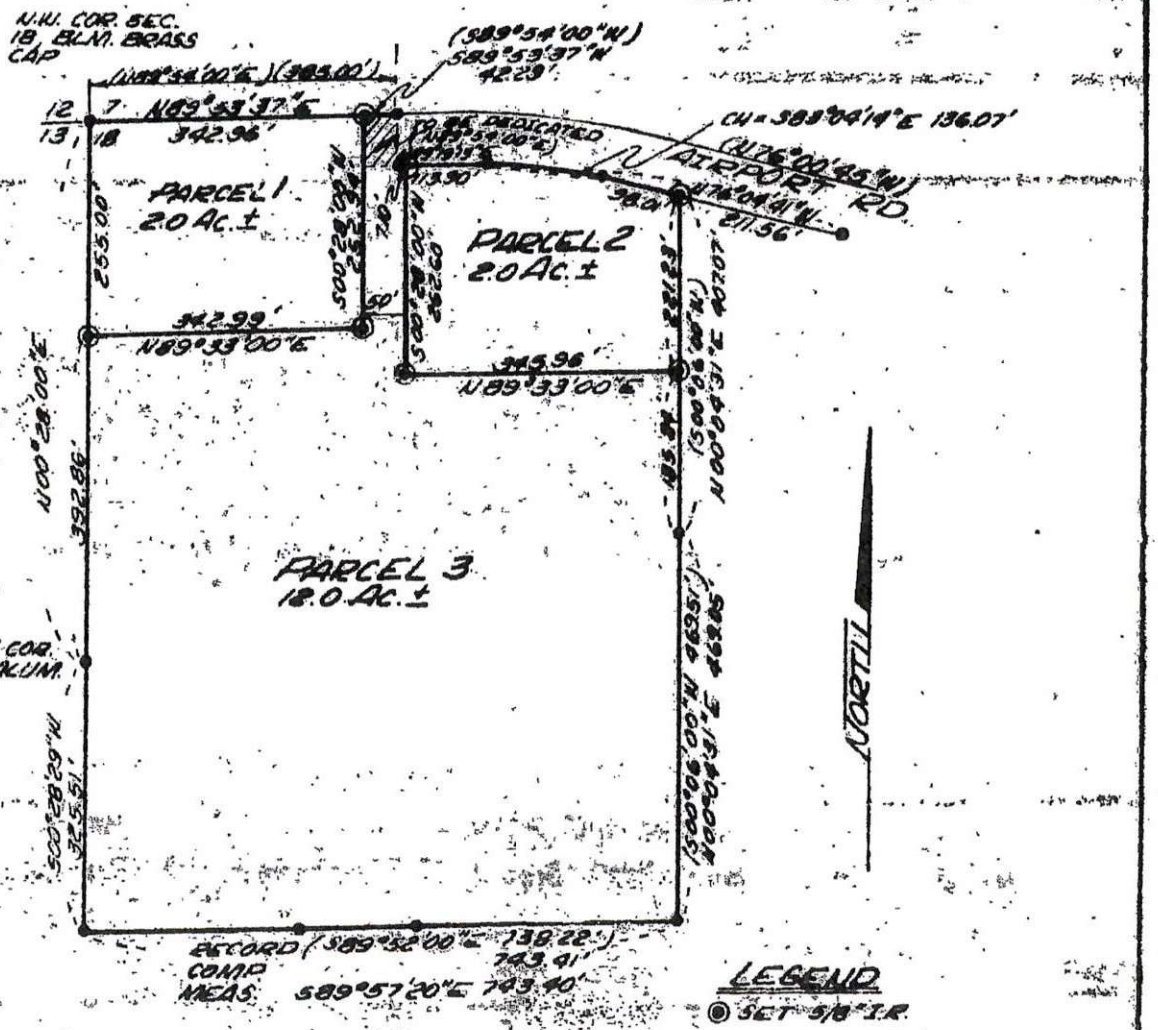
LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
(Out of 901) Beginning at the section corner common to Sections 12 and 13, Township 21 South, Range 2 East, Willamette Meridian and Sections 7 and 18, Township 21 South, Range 3 East, Willamette Meridian, thence	1983 1983 1985 1986	1210/82-27205 1210/82-27206 1307/84-30279 1392/86-08714	
North 89.54.00 East a distance of 342.96 feet, thence	1993wd	R1911/9401756	
South 00.28.00 West a distance of 252.94 feet, thence	1997DC wd	R2300/9736894 9736895	
South 89.33.00 West a distance of 342.99 feet, to a point on the Section line of said Section 18, Township 21 South, Range 3 East,, thence	1997wd	R2386/9810909	
Northerly along said Section line	1999wd	R2580/99070859	
North 00.28.00 East a distance of 255.00 feet to the Point of Beginning.	2004dc	2004-089145	
Containing more or less			2.00
	2005wd	2005-058080	
	2009 WD	2008-057875	

8006742

MINOR
MAJOR

partition

lane county



LEGEND

- SET 5/8" I.R.
- FOUND MONUMENT
- ( ) DATA OF RECORD

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
MARCH 1, 1966
DONALD R. STONE

2503 18 CORNERS

SCALE: 1"=800'

FILE NO: [illegible]

lane county

February 22, 1980

Kenneth D. Boyce
47100 Airport Road
Oakridge, OR 97463

RE: Final Approval -- Partition Application M 463-79

21-35-18 tax lot 901

Final approval is hereby granted to the above referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours,

Acting Chairman
Land Development Review Committee

cc: [redacted], Public Works
Jim Smrum, Surveyors

Enclosure: Copy of recorded map

2503 16

8006742 Approved

lane county

PARTITIONER:

NAME: KENNETH D. BOYCE

ADDRESS: 97100 AIRPORT ROAD

OAKRIDGE, OREGON 97463

PHONE: 782-2606

INTEREST IN PROPERTY: OWNER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: SAME

ADDRESS:

PHONE:

TAX LOT: 90 MAP #: 21-36-17

WATER SUPPLY: WELLS
PERMIT #:
SEWAGE DISPOSAL: SUB-SURFACE
S.I. #:
ELECTRIC SERVICE: LANE ELECTRIC COOP
ZONING: [redacted] RR-2

DATE SUBMITTED: 9-14-79
RECEIVED BY: Eugene
FEE PAID: 87.00
HEARING DATE: 10-25
for office use only

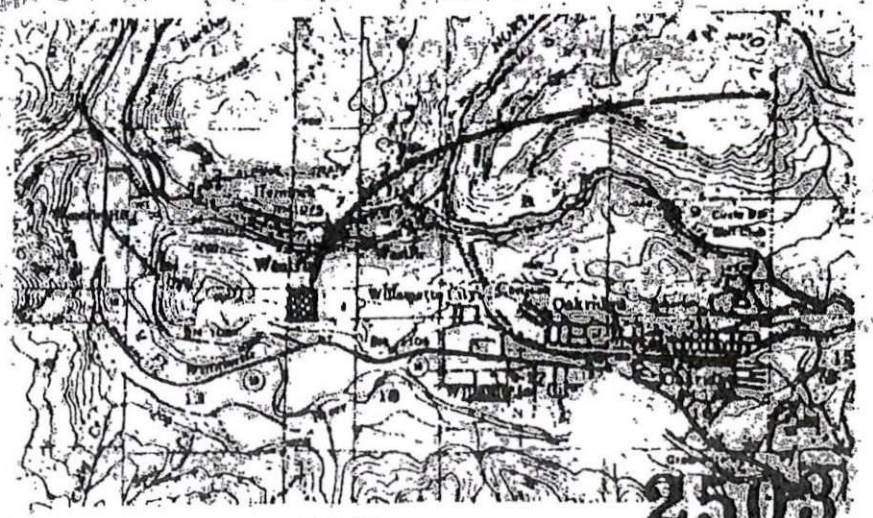
approval

BY: [signature]
Acting Chairman, Land Development Review Committee — 12/31/79 Date

[signature]
Lane County Surveyor — 1-8-80 Date

[signature]
Chairman, Lane County Board of Commissioners — 1-16-80 Date

vicinity map


Harrisburg
Junction City
Monroe
Coburg
Eugene
Springfield
Creswell
Cottage Grove
Oakridge
Westfir
Lowell
Dexter
Pleasant Hill
Willamette R.
Row R.
Coast Fork Willamette R.
Middle Fork Willamette R.
Fall Creek Reservoir
Dorena Reservoir
Cottage Grove Reservoir
Hills Creek Reservoir
Lookout Point Reservoir
Fall Creek Lake
Dexter Reservoir
Fern Ridge Reservoir
Siuslaw National Forest
Willamette National Forest
Umpqua National Forest
Deschutes National Forest
Diamond Peak Wilderness
Mount Fairview
Mount June
Mount Ray
Mount Pisgah
Mount Hagan
Mount Ben Irving
Mount Bohemia
Mount Hardesty
Mount Yoran
Mount Ben Harrison
Mount Ben Lowe
Mount Ben Stanton
Mount Ben Cone
Mount Ben Hall
Mount Ben Hall
Mount Ben Hall

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

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The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000913
Status Active

Current Parcel/Account	Current TCA
1310299	07605

Document #	Type	Date	Effective Year	Tax Lot Acres
2014-012793	Warranty Deed	04/07/2014	2014	1.99
Comments:				
2013-036328	Death Certificate	05/01/2013	2013	1.99
Comments:				
	Description Card			1.99
Comments:				

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

201 310 299
ACCOUNT NUMBER

TAX LOT

MAP NO. 21-35-18 | PARCEL NO. 913 | SECTION 18 | TOWNSHIP 21 S. | RANGE 3 E W.M.

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION

Beginning at the section corner common to Sections 12 and 13, Township 21 South, Range 2 East, Willamette Meridian and Sections 7 and 18, Township 21 South, Range 3 East, Willamette Meridian; thence
N 89° 54' 00" E 385.00 feet; thence
S 00° 28' 00" W 60.00 feet; thence
N 89° 54' 00" E 7.10 feet to the TRUE POINT OF BEGINNING; thence continuing
N 89° 54' 00" E 113.87 feet; thence following a 542.96 foot radius curve right a distance of 133.57 feet, the chord of which bears
S 83° 03' 22 1/2" E 133.24 feet; thence
S 76° 00' 45" E 97.45 feet; thence
S 00° 06' 00" W 221.23 feet; thence
S 89° 33' 00" W 345.96 feet; thence
N 00° 28' 00" E 262.60 feet to the TRUE POINT OF BEGINNING in Lane County, Oregon
Containing more or less

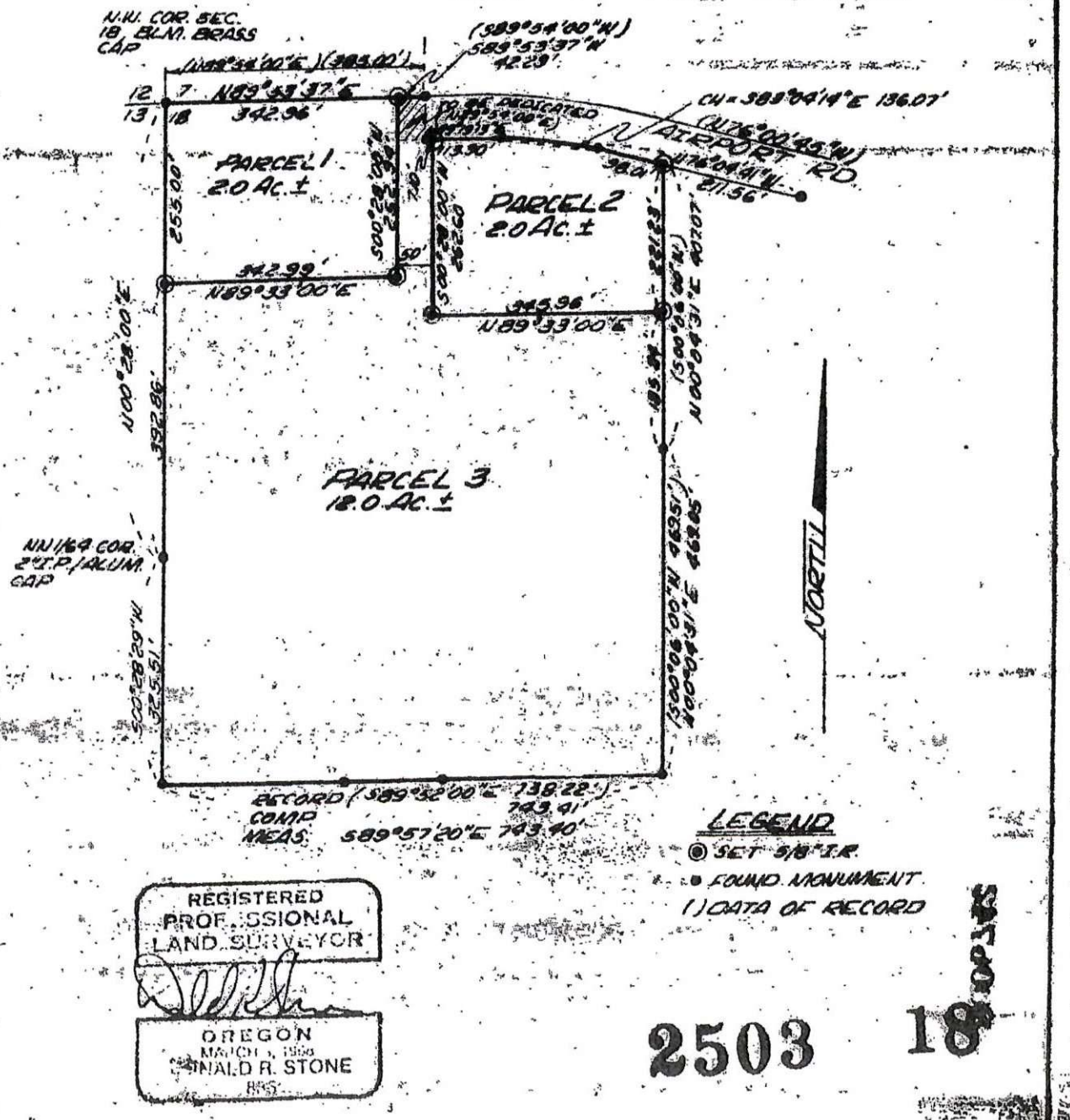
DEED RECORD		ACRES REMAINING
DATE OF ENTRY	DEED NUMBER	
1980	R1077/8028874	
1986	R1392/8608714	
1980	R1077/8028875	
1988	R1502/8807839	
1987	R1432/8648759	
1988	R1502/8807838	
1993WD	R1909/9386608	
2006WD	2006-005672	
		1.99

8000742

MINOR
MAJOR

partition

lane county



REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
MARCH 3, 1980
DONALD R. STONE
RLS

2503 18

SCALE: 1"=800'

FILE NO:

PLANNING DIVISION / ENVIRONMENTAL MANAGEMENT DEPARTMENT / 125 EAST 8TH AVE. / EUGENE, OR 97401 / PHONE (503) 687-4065

Sheet 2 of 2

lane county

February 22, 1980

Kenneth D. Boyce
47100 Airport Road
Oakridge, OR 97463

RE: Final Approval -- Partition Application M 463-79

21-35-18 tax lot 901

Final approval is hereby granted to the above referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours,

Acting Chairman
Land Development Review Committee

cc: [redacted], Public Works
Jim Smrum, Surveyors

Enclosure: Copy of recorded map

2503 16

8006742 APPROVED

lane county

PARTITIONER:

NAME: KENNETH D. BOYCE

ADDRESS: 97100 AIRPORT ROAD

OAKRIDGE, OREGON 97463

PHONE: 782-2606

INTEREST IN PROPERTY: OWNER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: SAME

ADDRESS:

PHONE:

TAX LOT: 90 MAP #: 21-35-19

WATER SUPPLY: WELLS
PERMIT #:
SEWAGE DISPOSAL: SUB-SURFACE
S.I. #:
ELECTRIC SERVICE: LANE ELECTRIC COOP
ZONING: [redacted] RR-2

DATE SUBMITTED: 9-14-79
RECEIVED BY: Eugene
FEE PAID: 87.50
HEARING DATE: 10-25
for office use only

approval

BY: [signature]
Acting Chairman, Land Development Review Committee — 12/31/79 Date

[signature]
Lane County Surveyor — 1-8-80 Date

[signature]
Chairman, Lane County Board of Commissioners — 1-16-80 Date

vicinity map



2503

17

FILE NO: MA 63-79 MAP PREPARED BY: [illegible]

Detailed Property Report

Site Address	47022 Airport Rd Oakridge, OR 97463-9715
Map & Taxlot#	21-35-18-00-00913
SIC	N/A
Tax Account#	4136055

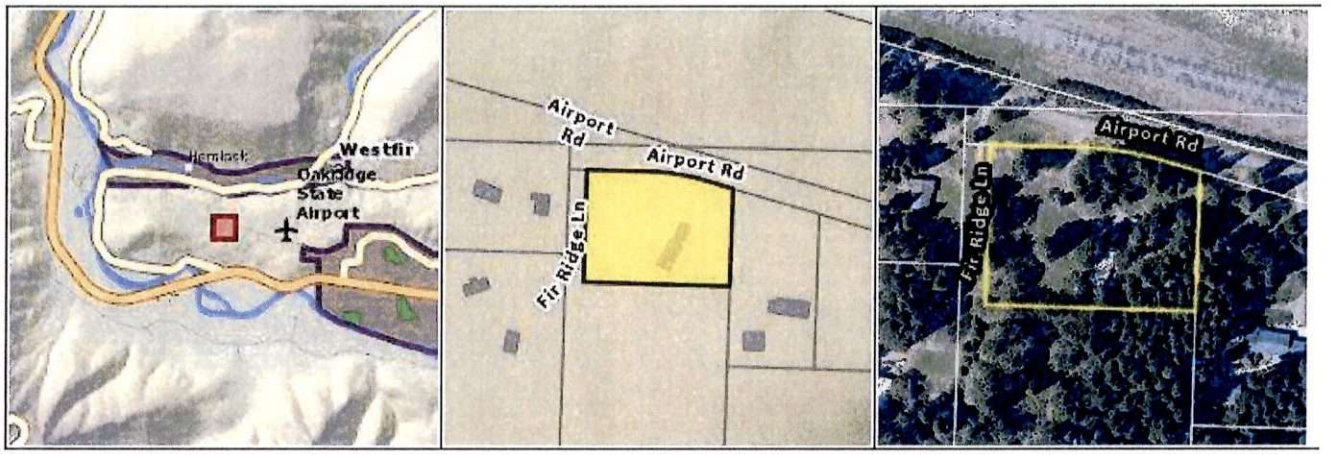
Property Owner 1
Miller Marvin
47022 Airport Rd
Oakridge, OR 97463

Tax account acreage data not available
Mapped taxlot acreage† 2.02

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Related Accts 1310299

Map & Taxlot # 21-35-18-00-00913



Improvements

Dwelling 1 / Building Type » Manufactured structure

Assessor Photo



Click to enlarge photo

Assessor Sketch



Inspection Date	09/12/2014	Effective Year Built	1980
Year Built	1980	LOIS Number	L234338
Make	Sunnybrook	Length	66
Model	data not available	Width	37
Plate #	X172252	Quality	5
Serial #	SB4173A & B & C		

Square Footage

Garage	data not available	Carport	data not available
Paved Patio	data not available	Driveway	data not available

21-35-18

#913

LANE COUNTY BUILDING PERMIT

lane county

POST THIS PERMIT ON MAIN BUILDING AT SITE

CONSTRUCTION PERMIT # LC 2322-80 (MH)

JOB ADDRESS: 47022 Airport Road, Oakridge

TRS, TL: 21-35-18 TLN 1 901 Now #913

SUBDIVISION: N/A

CONSTRUCTION APPROVED BY THIS PERMIT: Double wide mobile home 1980 Sunnybrook, 28 x 66 and install Sewage Disposal System

CONDITIONS OF APPROVAL: Minimum Structural Setbacks: center line of road, front-60', interior property lines-15', rear property lines-20'

Footings and piers to comply with State foundation requirements for mobile homes or as recommended by the manufacturer. Provide skirting per enclosure, skirting shall be installed and ready for inspection within at least 30 days of occupancy.

Maintain 100' setback (minimum) from drainlines and well. Septic tank must be 50' from well. Install in area shown on plot plan (approved 9/15/80). Use equal distribution.

PERMITTEE: Gloria Nelson

DATE ISSUED: September 22, 1980

BY: Carol Dyal/John Smeed/Colleen Allison

DIRECTIONS TO SITE: See Don Stewart, this application was taken in the field.

Setbacks - Subsurface Sewage Disposal

From:	Septic Tank	Drainfield
Interior property lines	10'	10'
Edge of road right-of-way	10'	10'
Building foundation	5'	10'
Wells, other water sources	50'	100'

Existing or new SDS specifications:

1000 gal. min. tank;

450 feet of drainfield

24-30" max. depth of trenches

****

SETBACKS AND OTHER CONDITIONS OF APPROVAL MUST BE STRICTLY OBSERVED. VIOLATION CAN RESULT IN REVOCATION OF THIS PERMIT, CITATION UNDER PROVISIONS OF LANE COUNTY'S INFRACTION ORDINANCE, AND/OR OTHER REMEDIES ALLOWED BY LAW.

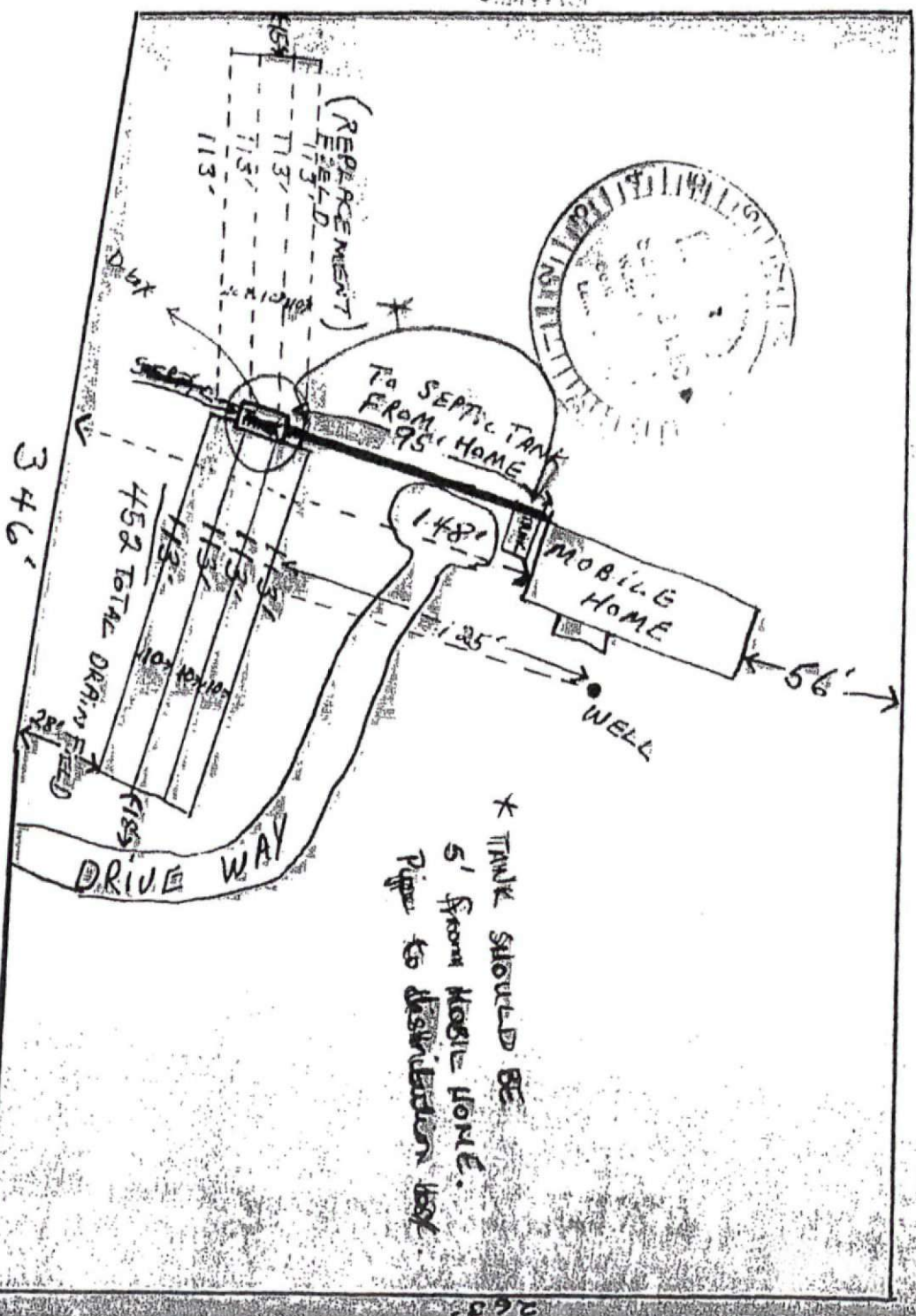
WHEN READY FOR INSPECTION (see reverse side) call 687-4066. Have the following information ready: Permit number, job address, type of inspection, when it will be ready, your name and phone number, and any special directions to site.

Environmental Management Department
125 East 8th Avenue / Eugene, Oregon 97401

Section 12 & 13
Township 21
South Range
2 East Willamette Meridian

Approved
Callison
9-15-80

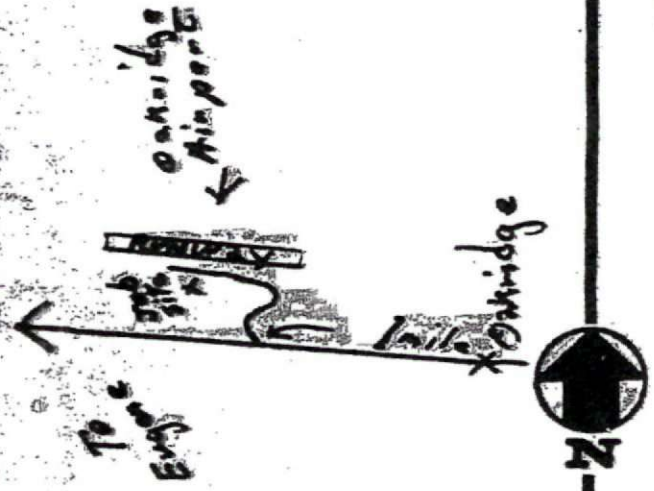
221'



AIRPORT ROAD

form c55-11

VICINITY MAP



Permit No. 2322-80 MH MUST BE IN BLACK INK Twnshp. 21 Range 3 Section 18 Tax Lot

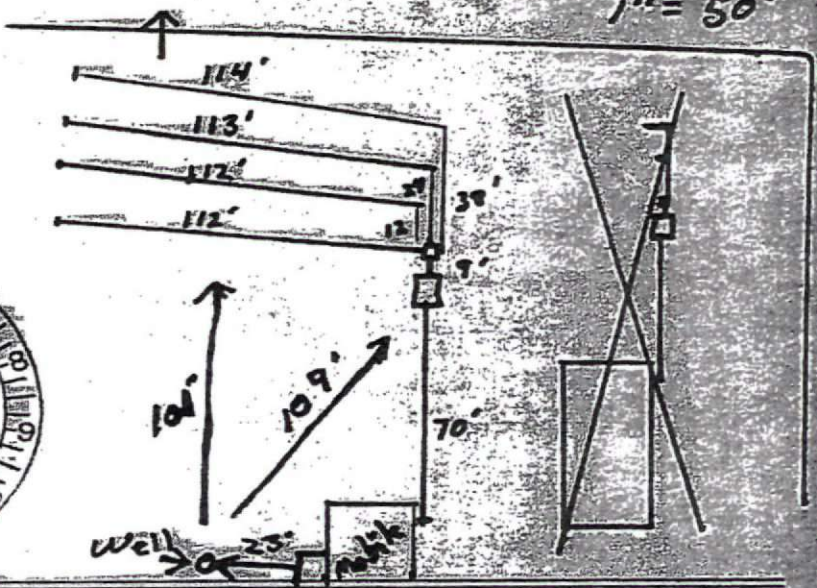
Standard System ☒ Alternative System ☐ (Specify Type)

Job Location (Street Address) Airport Rd. Oakridge Ore. 97463

Subdivision / Partition # M423-79 Parcel 2 Lot Block

DETAIL SYSTEM PLOT PLAN AS CONSTRUCTED

Scale 1" = 50'





Installer Cris Tamlin Backhoe Service
(Name as shown on DEQ license)

Telephone 782-4587

License No. 3521

Bonding Company United Pacific Ins.

Cris E. Tamlin Date 9-28-80
(Signature of Licensee)

If Installed By Owner –

(Signature of Owner) Date

Applicant's Name & Address

Tom Nelson

46332 Rebel Rd.

Oakridge, Or. 97463

Ph. 782-2481

USE BLACK INK ONLY

FOR INSTALLER'S USE: Trench Depth 24" Gravel Depth Below Tile 6 To 8"

Tank Capacity 1500 Manufacturer Willamette Greystone Inc.

Measured Distance from Well to Tank 109' From Drainfield 101' Total Length of Lines 451'

COMPLETE THE FOLLOWING IF A PUMP WAS USED ON THIS INSTALLATION:

I (installer's name) certify that a (Mfg) (Model No.) Pump

and Mercury Float Switch (Mfg. and No.) have been installed with this sewage installation.

Signature Date 9-30

FOR SANITARIAN'S USE ONLY: ☒ System Approved ☐ System Disapproved ☐ Needs Correction

COMMENTS:

System Capacity 450 gal./day Signature ☐ System Corrected Date

Date 10-1-80

INSTALLATION RECORD & CERTIFICATE OF SATISFACTORY COMPLETION. When signed by the County Sanitarian, this certificate is evidence as per ORS 454.665 of satisfactory completion of a subsurface sewage disposal system at the above location.

Return this form to: Water Pollution Control Div., Dept. of Enivronmental Management, located in the basement of the Public Service Building, 125 E. 8th Avenue, Eugene 97401.

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

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The legal descriptions contained herein are for tax lot purposes only.

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2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000911
Status Active

Current Parcel/Account	Current TCA
1302395	07605

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			1.81

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

1 302 395
ACCOUNT NUMBER

TAX LOT				
MAP NO. 21 35 18	PARCEL NO. 911	SECTION 18	TOWNSHIP 21 S.	RANGE 3 E W.M

INDENT EACH NEW COURSE TO THIS POINT

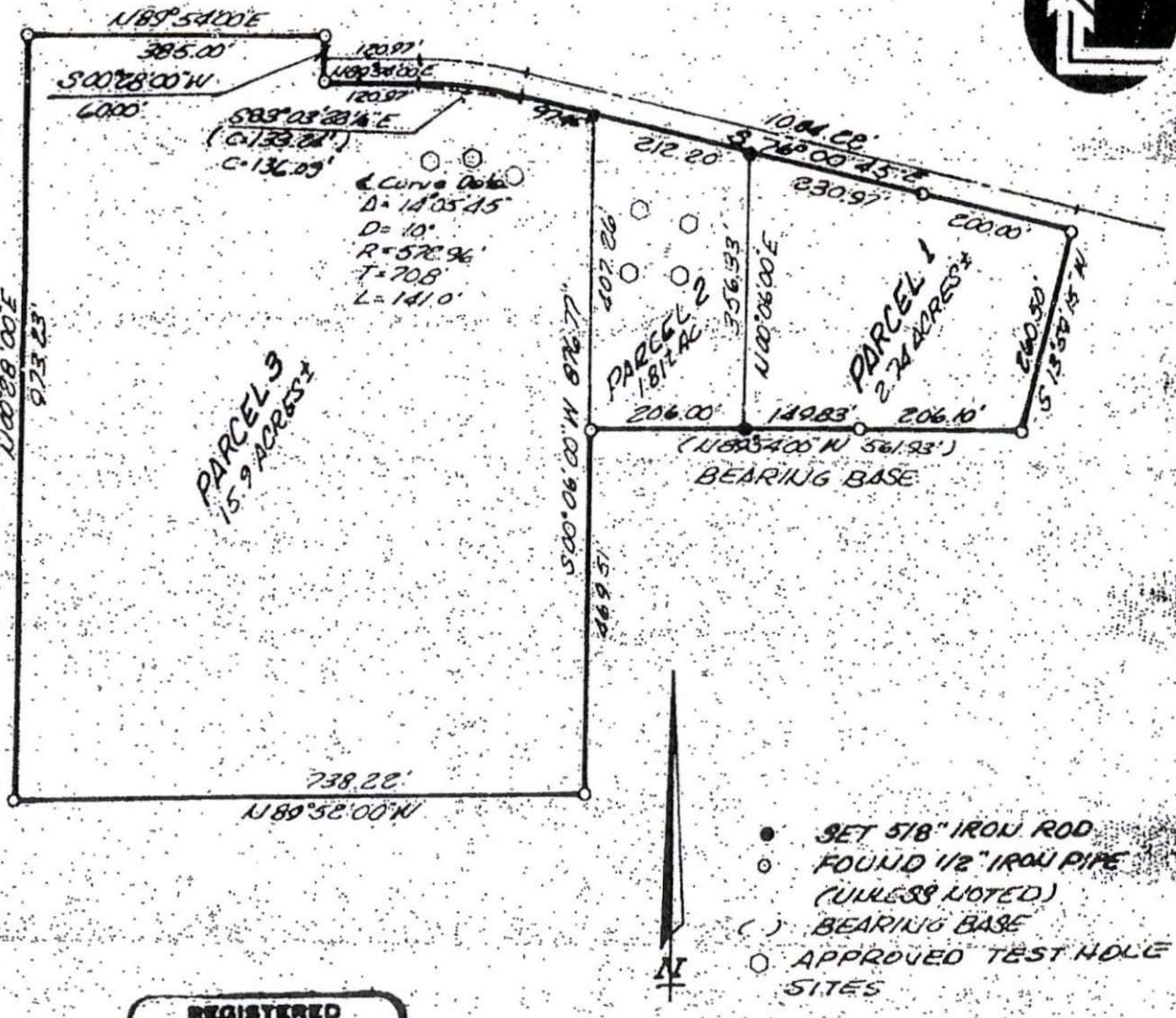
LEGAL DESCRIPTION	DEED RECORD		ACRES REMAINING
	DATE OF ENTRY	DEED NUMBER	
Beginning at the section corner common to Secs 12 and 13 T 21 S, R 2 E, WM, and Sections 7 and 18, T 21 S, R 3 E, WM; thence N 89°54'00" E a distance of 385 ft; thence	1980	R1020/53579 R1020/53580	
S 00°28'00" W a distance of 60.0 ft; thence	1982	R1189/82-11442	
N 89°54'00" E a distance of 120.97 ft; thence following a 542.96 ft radius curve right a distance of 133.57 f, the chord of which bears S 83°03'22 1/2E a distance of 133.24 ft; thence S76°00'45" E a distanc of 97.45 ft to the TRUE POINT OF BEGINNING thence	1986 1988 1989	R1392/86-08714 R1513/8818115 R1573/8921245	
S 00"06'54'00" E a distance of 206.00 ft; thence			
N 00°06'00" E a distance of 356.33 ft thence			
N 76°00'45" W a distance of 212.20 ft to the true point of beginning, in Lane County, Oregon.			
by DMD cont m/l			1.81

7902361

☑ MINOR
☐ MAJOR

partition

lane county



- SET 5/8" IRON ROD
- FOUND 1/2" IRON PIPE (UNLESS NOTED)
- ( ) BEARING BASE
- APPROVED TEST HOLE SITES

N

REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
MARCH 8, 1968
DONALD R. STONE
835

1719 11

Assessor

SCALE: 1"=200'

FILE NO: MS16-78

lane county

January 25, 1979

Kenneth D. Boyce
47100 Airport Rd.
Oakridge, OR 97463

RE: Final Approval -- Partition Application # 316-78

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

Joe Hudzikiewicz

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

1719 9

7902361

lane county

PARTITIONER:

NAME: KENNETH D. BOYCE

ADDRESS: 47100 AIRPORT ROAD
OAKRIDGE, OREGON 97463

PHONE: 782-2606

INTEREST IN PROPERTY: OWNER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: SAME

ADDRESS:

PHONE:

TAX LOT: 901 MAP #: 21-35-16

WATER SUPPLY: WELLS
PERMIT #:
SEWAGE DISPOSAL: SUB-SURFACE
S.I. #: 78-544 + 78-545
ELECTRIC SERVICE: LANE ELECTRIC COOP
ZONING: UNZONED

DATE SUBMITTED: 5-3-78
RECEIVED BY: tdj
FEE PAID: $10.00
HEARING DATE: 5-25-78
for office use only

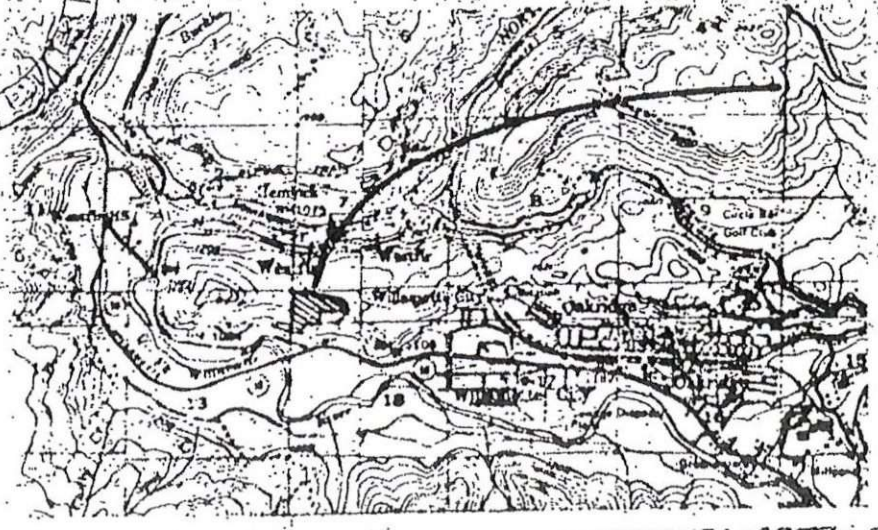
approval

BY: Gregg Hildebrand
Acting Chairman, Land Development Review Committee

January 11, 1979
Date

RECEIVED JAN 24 1979 LANE COUNTY PLANNING

vicinity map



FILE NO: M316-78

MAP PREPARED BY: CHICKERING-MORRIS EMPIRE

1719 10

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000912
Status Active

Current Parcel/Account	Current TCA
1309085	07605

Document #	Type	Date	Effective Year	Tax Lot Acres
2021-055456	Warranty Deed	08/20/2021	2021	2.74
Comments:				
2017-021909	Warranty Deed	05/04/2017	2017	2.74
Comments:				
	Description Card			2.74
Comments:				

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

201 309 085
ACCOUNT NUMBER

TAX LOT
MAP NO. 21-35-18 PARCEL NO. 912

SECTION 18 TOWNSHIP 21 S. RANGE 3 E W.M.

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION

DEED RECORD		ACRES REMAINING
DATE OF ENTRY	DEED NUMBER	
1980	R1075/802685	

Beginning at the Section corner common to Sections 12 and 13, Township 21 South, Range 2 East, Willamette Meridian, and Sections 7 and 18, Township 21 South, Range 3 EAst, Willamette Meridian; thence
N 89°54" E 385.00 ft; thence
S 00°28' W 60.00 ft; thence
N 89°54' E 195.40 ft; thence
S 76°00'45"E 607.30 ft to the TRUE POINT OF BEGINNING; thence
S 76°00'45" E 200.00 ft; thence
S 13°59'15" W 260.50 ft; thence
N 89°54'00" W 206.10 ft
N 13°59'15" E 310.00 ft to the point of beginning, all in Lane County, Oregon.
Containing more or less 1.31

1988	R1409/8625709	
2005 WS	2005-015735	

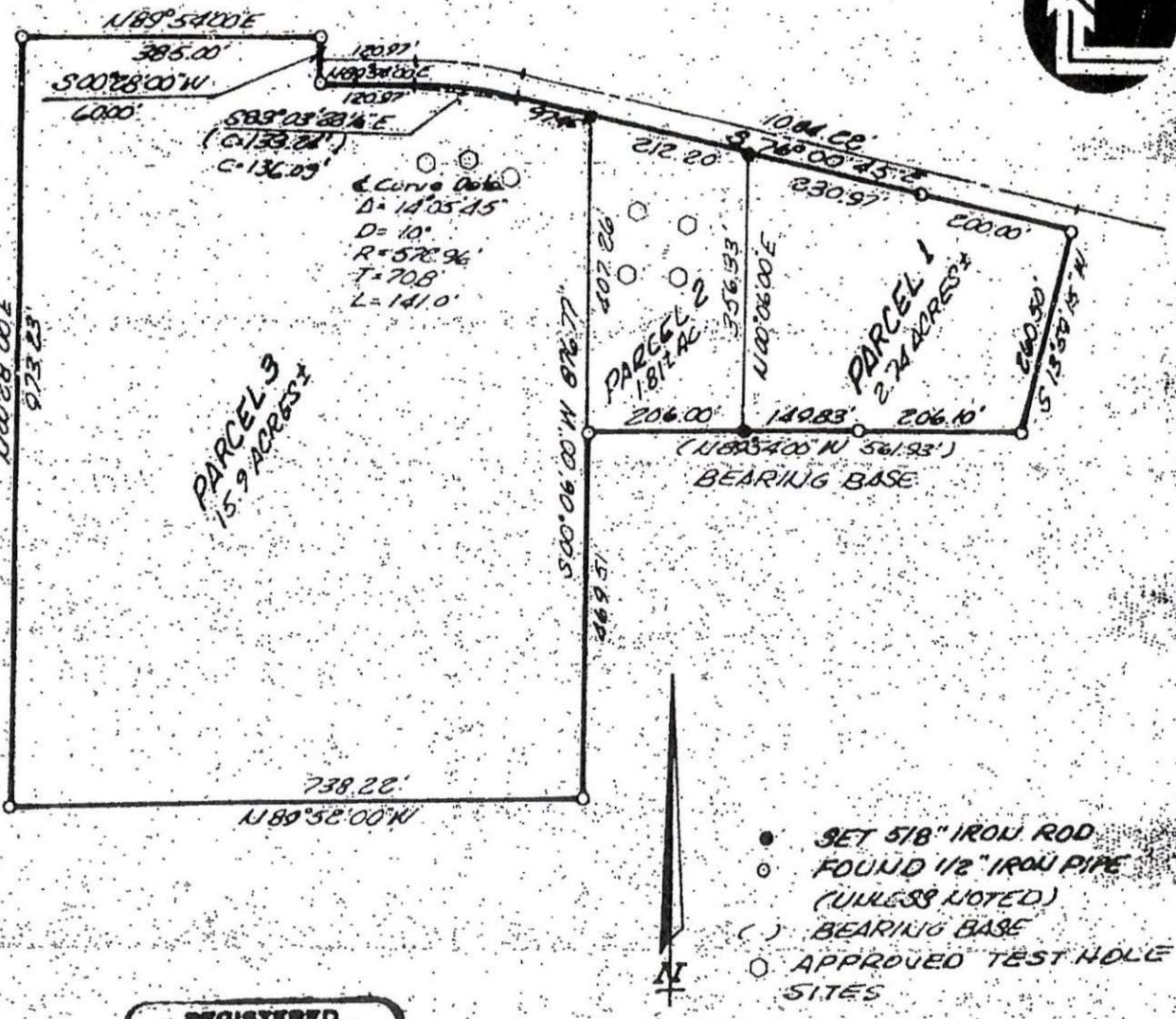
A parcel of land in the NW 1/4 of Section 18 T 21 S, R 3 E of the WM, described as follows:
Beginning at the section corner common to Sections 12 and 13, T 21 S, R 2 E WM, and Sections 7 and 18, T 21 S, R 3 E, WM; thence N 89°54'00" E a distance of 385.00 ft; thence S 00°28'00" W a distance of 60.00 ft; thence N 89°54'00" E a distance of 120.97 ft; thence following a 542.96 ft radius curve right a distance of 133.57 ft, the chord of which bears S 83°03'22 1/2" E a distance of 133.24 ft; thence S 76°00'45" E a distnace of 309.65 ft to the TRUE POINT OF BEGINNING: said point also being the NE corner of that tract of land described by Instrument recorded September 6, 1979, R1020, Recepition #79-53579, Official Records of Lane County, Oregon; thence continuing
S 76°00'45" E a distance of 430.97 ft to the NW corner of that tract of land described by Instrument recorded August 29, 1985, R1364, Reception #85-30761, Official Records of Lane County, Oregon; thence
S 13°59'15" W along the WEst line of said tract 260.50 ft; thence
N 89°54'00" W 355.93 ft to the SE corner of tha tract of land described by Instrument recorded September 6, 1979, R 1020, Reception #79-53579, Official Records of Lane County, Oregon; thence

7902361

partition

☑ MINOR
☐ MAJOR

lane county



- SET 5/8" IRON ROD
- FOUND 1/2" IRON PIPE (UNLESS NOTED)
- ( ) BEARING BASE
- APPROVED TEST HOLE SITES

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
MARCH 8, 1968
DONALD R. STONE
835

1719 11

SCALE: 1"=200'

FILE NO: M316-78

PLANNING DIVISION / ENVIRONMENTAL MANAGEMENT DEPARTMENT / 125 EAST 8TH AVE. / EUGENE, OR 97401 / PHONE (503) 687-4166

Sheet 2 of 2

lane county

January 25, 1979

Kenneth D. Boyce
47100 Airport Rd.
Oakridge, OR 97463

RE: Final Approval -- Partition Application # 316-78

Final approval is hereby granted to the above-referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours

Joe Hudzikiewicz

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors

Enclosure: Copy of recorded map

1719 9

7902361

lane county

PARTITIONER:

NAME: KENNETH D. BOYCE

ADDRESS: 47100 AIRPORT ROAD
OAKRIDGE, OREGON 97463

PHONE: 782-2606

INTEREST IN PROPERTY: OWNER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: SAME

ADDRESS:

PHONE:

TAX LOT: 901 MAP #: 21-35-18

WATER SUPPLY: WELLS
PERMIT #:
SEWAGE DISPOSAL: SUB-SURFACE
S.I. #: 78-544 + 78-545
ELECTRIC SERVICE: LANE ELECTRIC COOP
ZONING: UNZONED

DATE SUBMITTED: 5-3-78
RECEIVED BY: taj
FEE PAID: $10.00
HEARING DATE: 5-25-78
for office use only

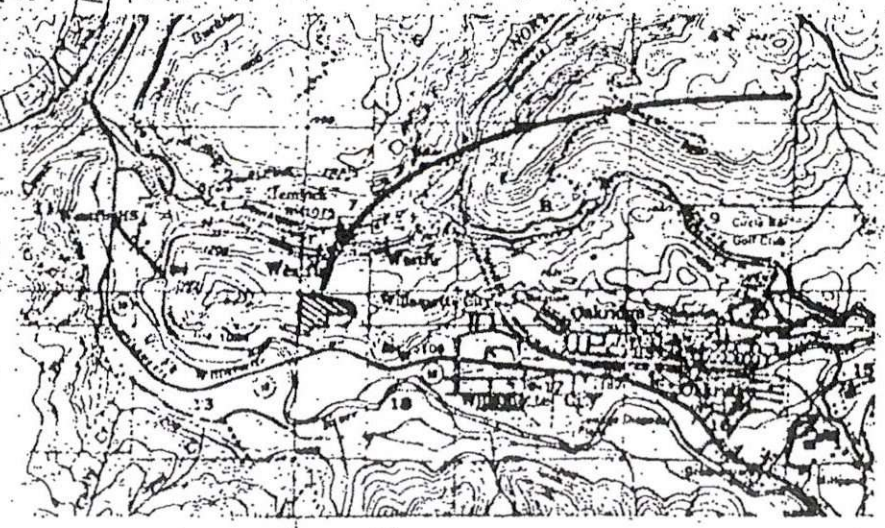
approval

BY: Joseph Vadheim
Acting Chairman, Land Development Review Committee

January 11, 1979
Date

RECEIVED
JUN 24 1979
LANE COUNTY PLANNING

vicinity map



FILE NO: M316-78

MAP PREPARED BY: CHKLEPIAN-LEGU EMPLOYEE

1719 10

Detailed Property Report

Site Address 47100 Airport Rd Oakridge, OR 97463-9470
Map & Taxlot# 21-35-18-00-00912
SIC N/A
Tax Account# 1309085 [a]
[a] Additional site address(es) are associated with this tax account

Property Owner 1
Hayden Jeanne A
10916 Fenton Cir
Westminister, CO 80020

See **Owner/Taxpayer section** for additional owners

Tax account acreage 2.74
Mapped taxlot acreage[†] 2.75

[†] Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 21-35-18-00-00912



Improvements

Dwelling 1 / Building Type » Class 4 dwelling

Assessor Photo Assessor Sketch

image not available



Inspection Date	09/13/1990	Bedrooms	3	Roof Style	Gable
Building Class	4-	Full Bath(s)	3	Roof Cover	Comp shingle medium
Year Built	1965	Half Bath(s)	0	Masonry Fireplace(s)	No
Effective Year Built	1970	Depreciation	24%	Percent Complete as of Jan 1st	100 %
				Heat	Forced hot air

Floor Characteristics

	Base Sq Ft	Finished Sq Ft	Exterior
1st Floor	1576	1576	T 111 plywood
Total Sq Ft	1576	1576	

Other Square Footage

Detached Garage	N/A	Attached Garage	984
Basement Garage	N/A	Carport	N/A
Paved Patio	400	Paved Driveway	420

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

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Map & Tax Lot 2135180000906
Status Active

Current Parcel/Account	Current TCA
0977627	07605

Document #	Type	Date	Effective Year	Tax Lot Acres
2016-034739	Warranty Deed	07/06/2016	2016	1.08

Comments:

	Description Card			1.08

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 977 627

MAP NO. 21.35.18	TAX LOT NO. 906	SECTION 18	TOWNSHIP 21 S.	RANGE 3E W.M
ACCOUNT NUMBER				

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION	DEED RECORD		ACRES REMAINING
	DATE OF ENTRY	DEED NUMBER	
Beginning at the Sec. corner common to Sec. 12 and 13, T21S, R2E, WM, and Sec. 7 and 18, T21S, R3E WM, thence N.89°54'E. a distance of 385.0 feet thence S.00°28'W. a distance of 60.0 feet, thence N.89°54'E. a distance of 195.4 feet, thence S.76°00'45"E. a distance of 807.3 feet to the true point of beginning, thence	1970	R469/95859	
	1986	1364/85-30760	
	1986	1364/85-30761	
	1990wd	R1643/9033774	
	1995wd	R2095/9551282	
S.76°00'45"E. a distance of 200.0 feet thence S.13°59'15"W. a distance of 211.1 feet thence N.89°54'00"W. a distance of 206.0 feet, thence N.13°59'15"W. a distance of 260.5 feet to the point of beginning, all lying in Lane County, Oregon.			
Containing more or less			1.08

FORM No. 702—WARRANTY DEED.

95859

KNOW ALL MEN BY THESE PRESENTS, That H. E. DICK and E. B. BANGS, DBA BANGS & DICK LOGGING CO.

in consideration of Two Thousand Five Hundred ($2,500.00) *Dollars,*

to them paid by EUGENE S. TOMLIN and AUDREY C. TOMLIN, husband and wife

do hereby grant, bargain, sell and convey unto said EUGENE S. TOMLIN and AUDREY C. TOMLIN

heirs and assigns, all the following real property, with the tenements, hereditaments and appurtenances situated in the County of Lane *and State of Oregon, bounded and described as follows, to-wit:*

Beginning at the section corner common to Sections 12 and 13, Township 21 South, Range 2 East, W.M., and Sections 7 and 18, Township 21 South, Range 3 East, W.M., thence North 89° 54' East a distance of 385.0 feet, thence South 00° 28' West a distance of 60.0 feet, thence North 89° 54' East a distance of 195.4 feet, thence South 76° 00' 45" East a distance of 807.3 feet to the true point of beginning; thence South 76°00' 45" East a distance of 200.0 feet; thence South 13° 59' 15" West a distance of 211.1 feet; thence North 89° 54' 00" West a distance of 206.0 feet; thence North 13° 59' 15" West a distance of 260.5 feet to the point of beginning, containing 1.2 acres, all lying in Lane County, Oregon

To Have and to Hold, the above described and granted premises unto the said Eugene S. Tomlin and Audrey C. Tomlin, *their heirs and assigns forever.*

And H. E. Dick and E. B. Bangs *the grantors above named do covenant to and with the above named grantees, their heirs and assigns that* they are *lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all encumbrances,*

and that they *will and* their *heirs, executors and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever,*

Witness our *hands and seals this* 28th *day of* June, 1969.

H E Dick (SEAL)

Eleanor Dick (SEAL)

E B Bangs (SEAL)

Leah Bangs (SEAL)

95859

STATE OF OREGON,
County of Douglas } ss.

BE IT REMEMBERED, That on this 24th day of June, 1969, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named H. E. Dick, Loanna Dick, his wife, E. B. Bangs and Ruth Bangs, his wife

known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

NOTARY PUBLIC — STATE OF OREGON

Notary Public for Oregon.
My Commission expires 4/30/70

95859

WARRANTY DEED

(FORM No. 23)

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

4 1706 Dick H.
4 3411 Bangs
4 1416

State of Oregon,
County of Lane—ss.

I, D.M. Penfold, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

1970 FEB 6 PM 1 30.0

Reel 469-R

Lane County OFFICIAL Records.

D. M. PENFOLD, Director of the Department of Records & Elections.

By Judith Mueller Deputy

C29-053-05

Grantee
PO 1412 B
Cottage Gr

3.00

FEB--6-70 75452 — 8 Mfe 3.00

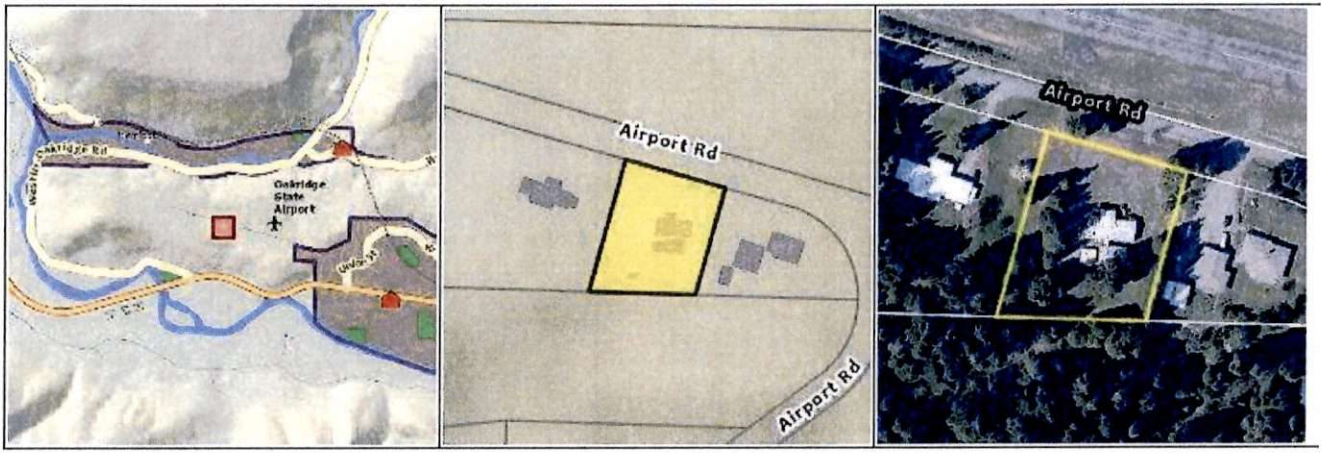
Detailed Property Report

Site Address	47116 Airport Rd Oakridge, OR 97463-9470	**Property Owner 1**	
Map & Taxlot#	21-35-18-00-00906	2003 Sullivan Family Trust	
SIC	N/A	3602 Jefferson Ave	
Tax Account#	4182885	Redwood City, CA 94062	
		Tax account acreage data not available	
		Mapped taxlot acreage† 1.08	

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Related Accts 977627

Map & Taxlot # 21-35-18-00-00906



Improvements

Dwelling 1 / Building Type » Manufactured structure

Assessor Photo Assessor Sketch

image not available



Inspection Date	data not available	Effective Year Built	1991
Year Built	1991	LOIS Number	L247813
Make	Fleetwood	Length	66
Model	data not available	Width	39
Plate #	X189663	Quality	7
Serial #	09376		

Square Footage

Garage	data not available	Carport	data not available
Paved Patio	data not available	Driveway	data not available

66
7/3

Lane County Authorization for: Mobile Home Placement (Replace)

FOR OFFICE USE ONLY
Application/Permit # 1755-85

TOWNSHIP	RANGE	SECTION	TAX LOT	OUT OF
21	35	18	906	☐

SUBDIVISION/PARTITION (if applicable) | LOT/PARCEL | BLOCK

PROPOSED USE OF PROPERTY: ☑ Residential ☐ Industrial ☐ Commercial ☐ Public

LOCATION ADDRESS: STREET 47116 Airport Road, CITY Oakridge, Oregon 97463

STRUCTURES CURRENTLY ON PROPERTY: Existing Double wide Mobile Home (to be removed)

DIRECTIONS TO SITE: Oakridge exit off of I-5 to Hwy #58, travel 35 mile turn left on Airport Rd. follow Rd. to top of hill, left side

DESCRIPTION OF PROPOSED WORK - BE SPECIFIC: Mobile Home Placement (1985 Liberty 50x28) DECLARED $ VALUE

# OF BEDROOMS	# OF STORIES	# OF EMPLOYEES	WATER SUPPLY	
Three	One	none	Existing well	☐ Proposed ☐ Existing

OWNER'S NAME AND ADDRESS: Chris + Betty Tomlin — TELEPHUNE NUMBER: 782-2266

CONTRACTOR'S NAME AND ADDRESS: Post Office Box 145 — TELEPHONE NUMBER: 782-3827

PERMIT TO BE MAILED TO (NAME AND ADDRESS): Oakridge, Oregon 97463 — TELEPHONE NUMBER

I HAVE CAREFULLY EXAMINED THE COMPLETED APPLICATION FOR PERMIT, and do hereby certify that all information hereon is true and correct, and that I have the following legal interest in the property: ☐ owner of record; ☑ contract purchaser; ☐ authorized agent with evidence of authority attached. I further certify that any and all work performed shall be done in accordance with the Ordinances of Lane County and the Laws of the State of Oregon pertaining to the work described herein, and that NO OCCUPANCY will be made of any structure without the permission of the Building Division. I further certify that registration with the Builder's Board is in full force and effect as required by ORS 701.055, that if exempt the basis for exemption is noted hereon, and that only subcontractors and employees who are in compliance with ORS 701.055 will be used on this project. I HAVE READ AND CHECKED THIS APPLICATION THOROUGHLY.

Betty J. Tomlin (NAME (please print)) — Betty J. Tomlin (SIGNATURE) — 7-2-85 (DATE)

READ THIS SECTION CAREFULLY. YOUR AUTHORIZATION HAS BEEN BASED ON THE FOLLOWING CONDITIONS:

☑ PLANNING/ZONING: Zone RR-5/RCP Partition # _____ Parcel # _____ Parcel Size _____

Minimum Setbacks: C L, front 60' (or) L, side _____ interior 10' rear 10'

COMMENTS: FP/NA

Date: 7-2-85 mbl

☑ SANITATION: S. I. # _____ B. P. # _____ Installation Record Issued? ☐ Yes ☐ No

Installation Specifications: _____ Gallon Tank _____ Lineal Feet of Drainfield _____ Maximum Depth of Trenches

COMMENTS: Mobile home may be connected to the existing sewage disposal system. Do not drive over drainfield. Reserve drainfield replacement area.

Date: 7-11-85

☐ PLANS EXAMINATION: Type — Group — Use MH

COMMENTS: PERMITS FOR ALL ELECTRICAL WORK SHALL BE SECURED FROM THE STATE OF OREGON, DEPARTMENT OF COMMERCE, ELECTRICAL SECTION. CALL FOR INSPECTIONS.

SEE REVERSE SIDE OF PERMIT AND ENCLOSURES FOR INSTALLATION REQUIREMENTS.

Date: 7/12/85

White 7/12/85

PERMIT APPROVED BY BUILDING OFFICIAL/DESIGNEE (per ORS 456.805(1)) DATE

LANE COUNTY DEPARTMENT OF PUBLIC WORKS LAND MANAGEMENT DIVISION, 687-4061,
125 EAST 8TH AVENUE, EUGENE, OREGON 97401

SEE REVERSE FOR INSPECTION INFORMATION

C14-25 R84

TRS, TL 21-35-18
TL 906

Plot Plan

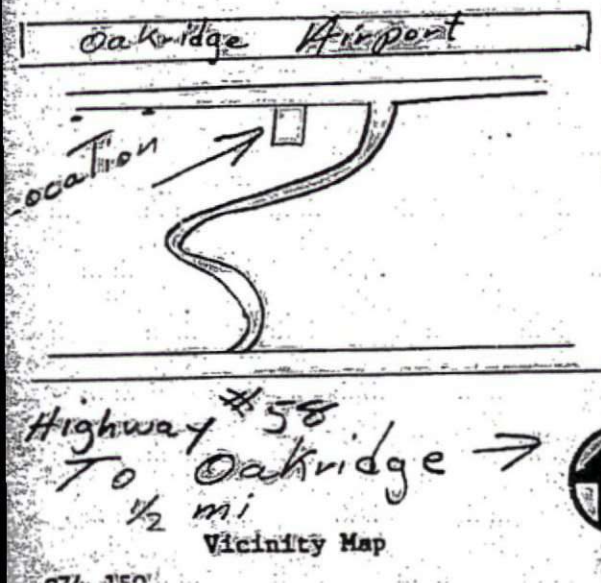
Subdivision _____

Lot _____ Block _____

Job Location (Address) 47116 Airport Road Oakridge, Or.

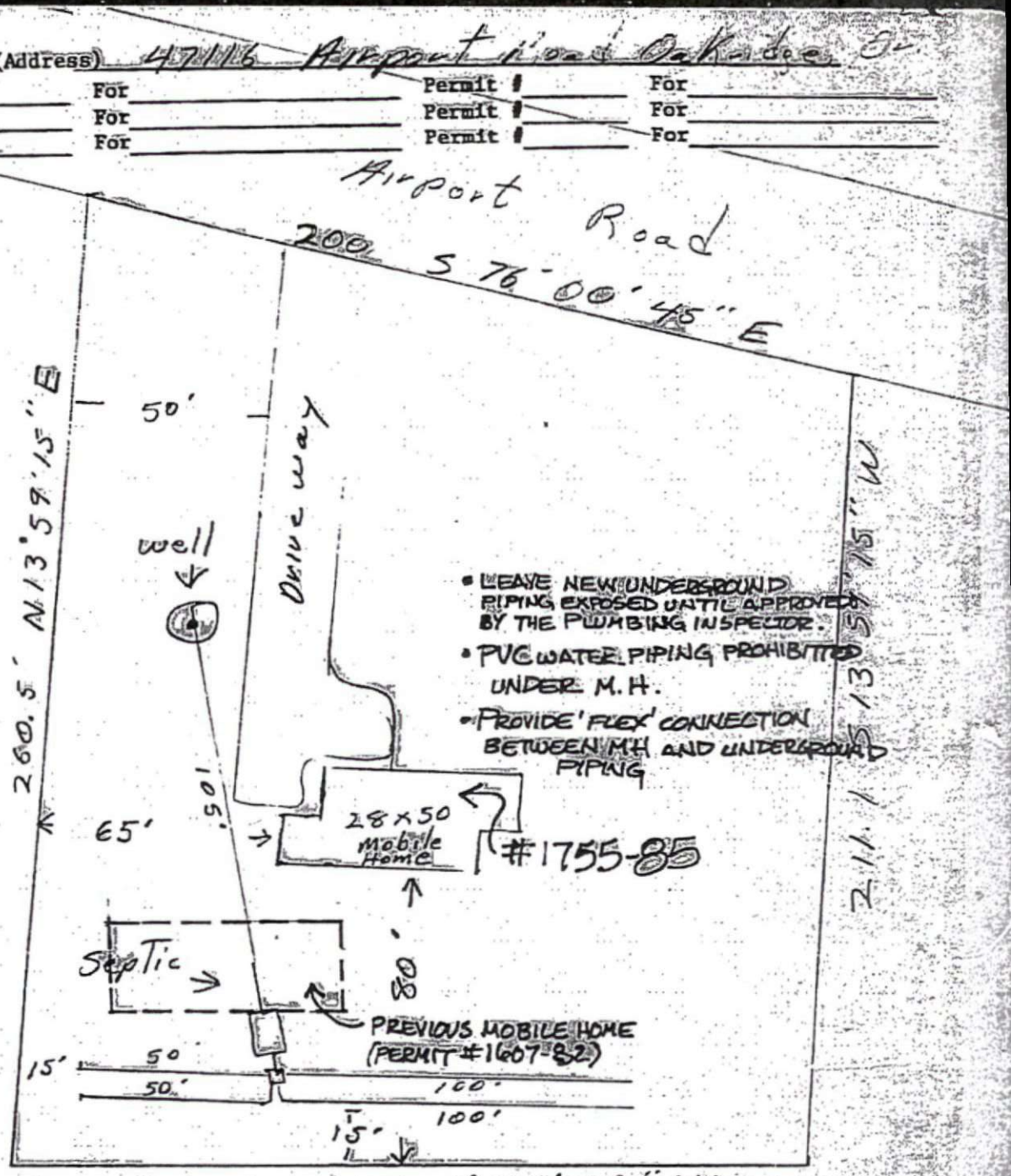
Permit # _____ For _____
Permit # _____ For _____
Permit # _____ For _____

Permit # _____ For _____
Permit # _____ For _____
Permit # _____ For _____



Vicinity Map





Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

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Map & Tax Lot 2135180000908
Status Active

Current Parcel/Account	Current TCA
0982270	07605

Document #	Type	Date	Effective Year	Tax Lot Acres
2022-029860	Warranty Deed	06/30/2022	2022	1.12

Comments:

	Description Card			1.12

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 982 270

MAP NO. 21 35 18	TAX LOT NO. 908	SECTION 18	TOWNSHIP 21 S.	RANGE 3E W.M.
ACCOUNT NUMBER				

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	Beg. at the Sec. cor. common to Secs. 12 & 13, T21S., R2E WM., and Secs. 7 & 8, T21S., R3E., WM., th N89°54'E a dist. of 385.0 ft., th S00°28'W a dist. of 60.0 ft., th N89°54'E a dist. of 195.4 ft., th S76°00' 45"E a dist. of 1007.3 ft. to the true POB, th	1970	R484/10186	
		1987	R1437/8652701	
		1991dc	R1727/9154709	
	S13°59'15"W a dist. of 211.05 ft., th S89°54'E a dist. of 328.5 ft. to the W'ly r/w ln. of a 60.0 ft. r/w., th fol. alg. sd. r/w ln. in a NW'ly direction alg. a 212.21 ft. ctln. Rad. curve Left a dist. of 276.7 ft. (the long chord of which bears N38°58'30"W a dist. of 219.5 ft.), th N76°00'45"W a dist. of 143.7 ft. to the true POB, LCO.	1993wd	R1849/9330156	
		1999 BS 2000 BS	R2548/9904146 2000-051450	
		2002	2002-034251 TD	
		2002 WD	2002-048621	1.12
	D.M.D Cont. m/l			

DEED - CREATING ESTATE IN ENTIRETY (Husband and Wife)

After recording return to:
Daniels Alfred L
47130 Airport RD
Oakridge OR 97463
NAME, ADDRESS, ZIP

Until a change is requested, mail all tax statements to:
Dept Of Veterans' Affairs
P. O. Box 14004
Salem OR 97309-5017
NAME, ADDRESS, ZIP

8652701

State of Oregon,
County of Lane---ss.

I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at

26 DEC 86 9:39

Real 1437R

Lane County OFFICIAL Records.
Lane County Clerk

By: Deputy

C 30-53

FOR VALUE RECEIVED - With love and affection
I Alfred L Daniels

herein referred to as grantor, hereby grants, bargains, sells and conveys unto

Agnes Daniels

herein referred to as grantee, and undivided one-half interest in all the following bounded and described real property, retaining to myself a like undivided one-half interest therein, for the purpose of creating an estate in entirety between the grantor and grantee:

Beginning at the section conner common to Section 12 and 13, Township 21 South, Range 2 East, of the Willamette Meridian, and Section 7 and 18, Township 21 South, Range 3 East, of the Willamette Meridian, thence North 89° 54' East a distance of 385.0 feet; thence South 00° 28' West a distance of 60.0 feet; thence North 89° 54' East a distance of 195.4 feet; thence South 76° 00' 45" East a distance of 1007.3 feet to the true Point of Beginning; thence South 13° 59' 15" West a distance of 211.05; thence South 89° 54' East a distance of 328.5 feet to the Westerly right of way line of a 60.0 foot right of way; thence following along said right of way line in a Northwesterly direction along a 212.21 foot centerline radius curve left a distance of 276.7 feet (chord of which bears North 38° 58' 30" West a distance of 219.5 feet); thence North 76° 00' 45" West a distance of 143.7 feet to the true point of beginning, in Lane County, Oregon.

8652701

9512A001 12/26/86 REC 4.00
0001

To have and to hold, the above described and granted premises unto the said grantee, grantee' heirs and assigns forever.

Alfred L. Daniels

STATE OF OREGON)
ss.
COUNTY OF LANE)

On this 17th day of December, 19 86, before me, personally appeared the within named Agnes Daniels and acknowledged the foregoing instrument to be her voluntary act.

Notary Public for Oregon

My Commission Expires: 8-16-90

CASCADE TITLE COMPANY · 1075 Oak Street, Eugene

Form No. 111

10186

(12) 18-2-3E WARRANTY DEED CT-16085

FOR VALUE RECEIVED H. E. DICK and E. B. BANGS, dba BANGS AND DICK LOGGING CO., a partnership

herein referred to as grantors, hereby grant, bargain, sell, and convey unto ALFRED L. DANIELS and MITTIE F. DANIELS, husband and wife

herein referred to as grantees, the following described real property, with tenements, hereditaments, and appurtenances, to wit:

Beginning at the section corner common to Section 12 and 13, T 21S, R2E, WM; and Section 7 and 8, T21S, R3E, WM; thence N. 89° 54' E. a distance of 385.0 feet; thence S. 00° 28' W. a distance of 60.0 feet; thence N. 89° 54' E. a distance of 195.4 feet; thence S. 76° 00' 45" E. a distance of 1007.3 feet to the true point of beginning; thence S. 13° 59' 15" W. a distance of 211.05 feet; thence S. 89° 54' E. a distance of 328.5 feet to the Westerly right of way line of a 60.0 foot right of way; thence following along said right of way line in a Northwesterly direction along a 212.21 foot centerline radius curve left a distance of 276.7 feet (the chord of which bears N. 38° 58' 30" W. a distance of 219.5 feet); thence N. 76° 00' 45" W. a distance of 143.7 feet to the true point of beginning, in Lane County, Oregon.

TO HAVE AND TO HOLD the said premises unto said Grantees, their heirs and assigns forever. And the said Grantors hereby covenant that they are lawfully seized in fee simple of said premises; that they are free from all incumbrances, except easements of record.

and that they will warrant and defend the above granted premises against all lawful claims whatsoever, except as above stated.

The true and actual consideration for this transfer is $ 19,300.00

Dated May 20 19 70

BANGS & DICK LOGGING CO.

(Seal) By E. B. Bangs (Seal)

(Seal) By H. E. Dick (Seal)

LEO J. CARY NOTARY PUBLIC STATE OF OREGON

STATE OF OREGON, County of ~~XXXX~~ Douglas ss.

Personally appeared the above named E. B. BANGS

and acknowledged the foregoing instrument to be his voluntary act and deed. Before me:

Dated May 20 A.D. 19 70

Leo J. Cary

My Commission Expires 4/30/70 Notary Public for Oregon

STATE OF OREGON, County of LANE } ss.

FORM NO. 23 — ACKNOWLEDGMENT STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

BE IT REMEMBERED, That on this 21st day of May, 19 70, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named H. E. DICK

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public for Oregon.

My Commission expires Nov 12, 1971

10186

4 1706 Fick

4 341 Lanier
Bangor Fick Logging Co.

4 1938 Daniels

JUN-23-70 94965 --- A Mfe... 1.50

State of Oregon,
County of Lane—ss.

I, D. M. Penfold, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

1970 JUN 23 AM 11 38.2

Reel 484-R

Lane County OFFICIAL Records.

D. M. PENFOLD, Director of the Department of Records & Elections.

By [signature] Deputy

C29-083-05

A. L. Daniels
POB 674
Oakridge Oregon

152

Lane County

Legal Lot Determination

LMD
LAND MANAGEMENT DIVISION
Department of Public Works

FILE NO. 2870-87
ACTION PD

$50
SSH

General Land Use Application

I. PROPERTY LOCATION

Township 21 Range 35 Section 18 Tax Lot 903 908 Zoning RR-5 Plot #

Site Address _____ Size _____ Tax Code _____

II. REQUEST/PROPOSAL LEGAL LOT DETERMINATION

Specific section of Lane Code requiring this application _____

III. IDENTIFICATION & OWNERSHIP

Applicant:	Owner:
1. Name ALFRED DANIELS	Name ALFRED DANIELS
Address 47130 AIRPORT RD.	Address 47130 AIRPORT RD.
City OAKRIDGE Zip 97463	City OAKRIDGE Zip 97463
Phone 782-3469	Phone 782-3469

2. Legal Interest Title Holder SELF Contract Purchaser _____ Lessee _____

Present Use BRUSH + TREES

Existing Structures NONE

Do you own any adjoining property? YES Acreage 1.62

Map 18-21-3E Tax Lot(s) 90085

Road Status:
State STATE County _____ Public ___ Easement ___

Water Supply:
Public ___ On-site Well ___ Community System _____

Sewage:
Public ___ On-site Septic ___ Community System _____

Fire Dist. LANE

Power Company LANE ELECTRIC

School Dist. OAKRIDGE

Telephone Co. PACIFIC NORTHWEST BELL

I (we) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

3. Signatures:

Alfred Daniels 9-10-87 Alfred Daniels 9-10-87
Applicant Date Owner Date

Agent _____ Date _____

Agent Address _____ Zip _____ Phone _____

4. Staff Comments 782-3335 Mr Daniels

Public Works Dept. Land Management Div. Courthouse/PSB 125 E. 8th Ave. Eugene, OR 97401

PA 2870-87 part 2
Alfred Daniels
47130 Airport Rd.
Oakridge, Or. 97463

file note: (tax lot 903 some also) 47 see T.R.S

DATE 10-28-87

ADDRESS:

RE: Report and Verification of a Legal Lot Described as Lane County Assessment & Taxation Map # 21-35-18 /TL 908.
A more exact description by reference to Deed or Land Sales Contract is RF1437/865 2701.

Based upon the information provided in this report, a description of the above referenced property has been examined, and it has been determined that this property constitutes a legal lot, which means:

1. Ownership to this property may be conveyed with the assurance that such a conveyance would comply with Lane County land division regulations; and
2. Lane County recognizes this property as a legally separate unit of land for the purposes of development. Development would still be subject to applicable zoning, sanitation, and building regulations.

Finding #1: Legal Lot Standard

The definition of 'legal lot' and 'parcel' in Lane Code Chapter 16.090 are the standards to be used to measure whether or not a unit of land constitutes a legal lot. A 'legal lot' is defined by Lane Code Chapter 16.090 as, "a lawfully created lot or parcel". A 'parcel', lawfully created, is further defined by Lane Code Chapter 16.090 as a unit of land created "by deed or land sales contract if there are no applicable planning, zoning, or partitioning ordinances or regulations." "No applicable planning, zoning, or partitioning ordinances or regulations" is interpreted to mean that, at the time the unit of land was created by deed or land sales contract, its creation:

1. Complied with any existing Lane County land division regulations; and
2. Complied with any existing Lane County zoning requirements for dividing property; and
3. Complied with any existing Lane County comprehensive plan requirements for dividing property.

The term 'creation' is interpreted to mean the date:

1. on which, by deed or land sales contract, the parcel was first segregated out of its parent parcel; or
2. on which, by deed or land sales contract, the parcel was first given a separate metes and bounds description.

Finding #2: Evaluation of the Referenced Property

Based upon the following factual information about the creation of the above referenced property as a parcel by deed or land sales contract, and based upon an evaluation of this factual information against the standard for a legal lot mentioned above in Finding #1, the above referenced property constitutes a legal lot:

1. Based upon the following information, the subject property was created as a separate parcel on 5-20-70.

   a. Information for the deed or land sales contract which created the subject property as a separate parcel:

      Recording # R 484/10186

      *Date 5-20-70 (Place this date in the space provided above in #1.)

      Grantor Bangs & Dick Logging Co.

      Grantee Daniels, Alfred E. & Hettie

   b. Information for the deed or land sales contract from which the subject property was segregated or separately described:

      Recording # R 477/3455

      Date 3-23-70

      Grantor Mims, Lee H. & Libby

      Grantee Bangs & Dick Logging Co.

2. Based upon the following information, the creation of the subject property as a separate parcel complied with all effective land division, zoning, and comprehensive plan regulations, and it therefore constitutes a legal lot:

   a. Land division regulations:

      [X] When the subject parcel was created, there were no land division regulations in affect to govern its creation. Lane County did not adopt applicable regulations for this kind of division until 3-26-75.

      [ ] There were land division regulations in effect governing the creation of this parcel, and the creation of this parcel was specifically exempted by these regulations from compliance because _____

b. Zoning regulations:

[X] When the subject parcel was created, there were no zoning regulations in affect at the time. The zoning for this property was adopted on 8-22-79.

[ ] When the subject parcel was created, there were the following zoning regulations in affect which the parcel complied with because _____

_____

_____

c. Comprehensive Plan regulations:

[X] When the subject parcel was created, there was no comprehensive plan in affect at the time. The first comprehensive plan for this property was _____ upper Middle Fork which was adopted on 6-29-77.

[ ] When the subject parcel was created, there was the following comprehensive plan in affect which the parcel complied with because _____

_____

_____

If you have any questions or comments, you may contact the Land Management Division during public assistance hours, Monday thru Friday, 10:00-12:00 & 1:00-3:00,and discuss this with the planner at the assistance counter.

Jerry Kendall 10-28-87.
Lane County Planners

c.c. Property File

Detailed Property Report

Site Address	47130 Airport Rd Oakridge, OR 97463-9470
Map & Taxlot#	21-35-18-00-00908
SIC	N/A
Tax Account#	0982270

Property Owner 1
Daniels Revocable Living Trust
PO Box 1412
Oakridge, OR 97463

Tax account acreage 1.12
Mapped taxlot acreage† 1.07

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 21-35-18-00-00908







Improvements

Dwelling 1 / Building Type » Class 4 dwelling

Assessor Photo Assessor Sketch

image not available

Inspection Date	09/13/1990	Bedrooms	3	Roof Style	Hip
Building Class	4	Full Bath(s)	1	Roof Cover	Cedar shake med
Year Built	1954	Half Bath(s)	1	Masonry Fireplace(s)	Yes
Effective Year Built	1954	Depreciation	27%	Percent Complete as of Jan 1st	100 %
				Heat	Heat pump

Floor Characteristics

	Base Sq Ft	Finished Sq Ft	Exterior
1st Floor	2207	2207	Wood siding
Total Sq Ft	2207	2207	

Other Square Footage

Detached Garage	759	Attached Garage	N/A
Basement Garage	N/A	Carport	N/A
Paved Patio	N/A	Paved Driveway	1368

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000901
Status Active

Current Parcel/Account	Current TCA
0965150	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			6.20

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 965 150

MAP NO. 21-35-18	TAX LOT NO. 901	SECTION 18	TOWNSHIP 21 S.	RANGE 3E W.M.
ACCOUNT NUMBER				

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	A parcel of land lying in the N½ NW¼ of section 18, Twp.21S, R3E, W.M. said parcel being described as follows: Beginning at the section corner, which is an 1½" galvanized iron pipe, common to section 12 and 13, Twp.21S, R2E, W.M. and sections 7 and 8, Twp.21S, R3E, W.M, thence	1967	R283/40157	
	N00°28'W a distance of 1287.65 feet to the North 1/16 section corner between section 13, Twp.21S, R2E, W.M. and section 18, Twp.21S, R3E, W.M., thence			
	S89°52'E a distance of 1082.0 feet, more or less, along the South boundary of the N½ NW¼, section 18,Twp.21S, R3E, W.M. to the westerly line of a 60.0 foot right-of-way, thence following the westerly and southerly edge of the above said right-of-way, the centerline of the above said right-of-way being described as follows: Beginning at a point			
	S89°52'E a distance of 1082.0 feet from the above said 1/16 corner, thence along a tangent			
	N57°10'30"E a distance of 131.5 feet, thence along a 16° curve left(radius 358.10 feet) a distance of 135.4 feet, thence along a tangent			
	N35°31'30"E a distance of 95.3 feet, thence along a 16° curve right (radius 358.10 feet) a distance of 135.4 feet, thence along a tangent			
	N35°31'30"E a distance of 95.3 feet, thence along a 16° curve right (radius 358.10 feet) a distance of 104.2 feet, thence along a tangent			
	N52°11'15"E a distance of 472.5 feet, thence along a 27° curve left (radius 212.71 feet) a distance of 474.8 feet, thence along a tangent			
	N76°00'45"W a distance of 1080.0 feet, thence along a 10° curve left (radius 572.96 feet) a distance of 138.9 feet, thence along a tangent			
	S89°54'W a distance of 158.1 feet to a point, said point being the end of the described centerline, thence			
	N00°28'E a distance of 60.0 feet from the southerly right-of-way of the above described centerline to the Section line between sections 7 and 18, Twp.21S, R3E, W.M., thence following said section line			
	S89°52'W a distance of 385.0 feet, more or less, to the point of beginning Cont. 41.2 ac.			
	Containing more or less (OVER)			41.20

CANCELLED CANCELLED CANCELLED CANCELLED

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

MAP NO. 21 35 18 ACCOUNT NUMBER	TAX LOT NO. 901	SECTION 18	TOWNSHIP 21 S.	RANGE 3E. W.M.

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION page 2:

DEED RECORD		ACRES REMAINING
DATE OF ENTRY	DEED NUMBER	

Except: 9.12 ac. to T.L.(903) per "Riled Contract" (1968)

Cont. m/l — 32.08

Except: 2.06 ac. to T.L.(904) per R423/52735 (1969)

Except: 8.47 ac. to T.L.(905) R451/79366 (1969)

Cont. m/l — 21.55

EXCEPT: 1.08 acre to Tax Lot 906 per R469/85859 in 1970.

Containing more or less — 20.47

EXCEPT: 1.81 ac to parcel 911 per WD R102;/53579 for 1980-81

cont m/l — 18.66

EXCEPT: 0.06 acre out to County Road #1347 for 1980 by R1052/03833

Containing more or less — 18.60

Beginning at a section corner which is a 1 3/5 inch galvanized iron pipe common to Section 12 and 13, Township 21 South, Range 2 East of Willamette Meridian, and Sections 7 and 8, Township 21 South, Range 3 East of Willamette Meridian; thence — 1980 R1075/26885 1986 wd R1392/86-03714

N 89° 54' 00" E 385.00 feet; thence
S 00° 28' 00" W 60.00 feet; thence
N 89° 54' 00" E 120.97 feet; thence following a 542.96 foot radius curve right a distance of 133.57 feet, the chord of which bears
S 83° 03' 22 1/2" E 133.24 feet; thence
S 76° 00' 45" E 540.62 feet; thence
S 13° 59' 15" W 309.95 feet; thence
N 89° 54' 00" W 355.83 feet; thence
S 00° 06' 00" W 469.51 feet; thence
N 89° 52' 00" W 738.22 feet; thence
N 00° 28' 00" E 973.23 feet more or less to the above mentioned section corner, all in Lane County, Oregon

(continued)

CANCELLED CANCELLED CANCELLED CANCELLED

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

200 965 150
ACCOUNT NUMBER

TAX LOT | MAP NO. 21-35-18 | PARCEL NO. 901 | SECTION 18 | TOWNSHIP 21 S. | RANGE 3 E W.M.

INDENT EACH NEW COURSE TO THIS POINT — LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
EXCEPT: 1.81 acres to parcel 911 for 1980 by WD R1021/53579			
Containing more or less			18.66
EXCEPT: 0.06 acres out to County Road #1347 for 1980 by R1052/03833			
Containing more or less			18.60
EXCEPT: 1.31 acres out to TL 912 for 1980 by R1075/26885			
Containing more or less			17.29
EXCEPT: 1.99 acres out to TL 913 for 1980 by R1077/28875			
Containing more or less			15.30
EXCEPT: 2.00 ac to parcel 914 per WD R1210/82 27205 for 1983-84			
cont m/l			13.30
EXCEPT: ~~5.67 ac to parcel 901-002 per WD R1437/8653099 and 8653998 for 1987~~			
cont m/l			~~7.63~~
A portion of the NW 1/4 of Section 18, T 21 S, R 3 E of the WM, Lane County, Oregon, described as follows:	1986 Co	R1392/8608716	
Commencing at the NW corner of Section 18; thence S 00°28'00" W along the West line of said Section 18, 255.00 ft to the TRUE POINT OF BEGINNING of the tract to be described, said point also being the SW corner of a tract of land described by instrument recorded September 13, 1982, R1210, Reception #82-27205, Official Records Lane County, Oregon; thence continue	1987 wd 1995 wd	R1443/8705845 R2096/9551643	
S 00°28'00" W along said West Section line 718.37 ft, more or less to the most Westerly NW corner of the tract of land described by instrument recorded April 5, 1979, R984, Reception #79-19449, Official Records Lane County, Oregon; thence			
S 89°52'00 " E along the north line of said			

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

965 150

OLD NUMBER | ACCOUNT NUMBER

TAX LOT | MAP NO. 21 35 18 | PARCEL NO. 901 | SECTION ____ | TOWNSHIP ____ S. | RANGE ____ W.M.

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION pg 4

DEED RECORD: DATE OF ENTRY | DEED NUMBER

ACRES REMAINING

tract and its Easterly extentions thereof 743.40 ft, more or less, to its point of intersection with the West line of a tract of land described by instrument recorded November 2, 1977, R371, Reception #77-70102, Official Records Lane County, Oregon; thence

N 00°06'00" E along the WEst line of said tract and its Northerly extention thereof 654.89 ft, more or less, to the SE corner of a tract of land described by instrument recorded June 10, 1980, R1077, Reception #80-28374, Official Records Lane County, Oregon; thence

S 89°33'00" W along the South line of said tract 345.96 ft to its SW corner; thence

N 00°28'00" E along the West line of said tract 262.60 ft to its NW corner; thence

S 89°54'00" W 7.10 ft to the SE corner of a tract of land described by instrument recorded January 23, 1980, R1052. Reception #80!03833, Official Records Lane County, Oregon; thence continuing S 89°54'00" W along the South line of said tract 42.04 ft to a point on the EAst line of a tract described by instrument recorded Septimber 13, 1982, R1210, Reception #82-27205, Official Records Lane County, Oregon; thence

S 00°28'00" W along said East line 192.94 ft, more or less, to its SE corner; thence

S 89°33'00" W along the South line of said tract 342.99 ft to the true point of beginning.

cont m/l 13.20

EXCEPT: 1.43 ac consol with 912 per R1409/3625709 for 1988

cont m/l 11.87

EXCEPT: 5.67 ac to 915 per WD R1437/8653099 and 8653998 for 1987 *set-up as 901-002 - pro-rated*

cont m/l 6.20

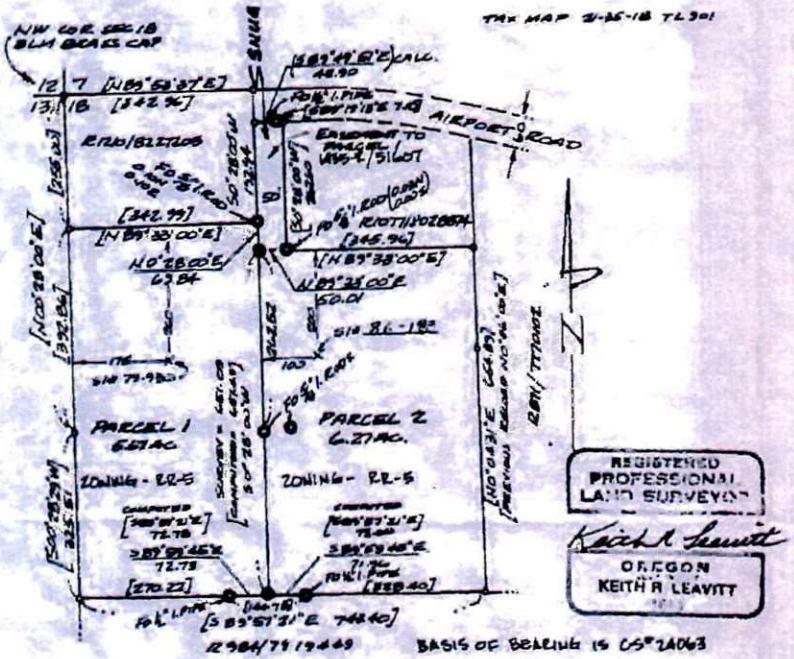
8653003

APPROVED FOR RECORDING
DATE 12-24-86 LANE COUNTY
Jack Thomas
LAND MANAGEMENT DIVISION

PARTITION MAP FOR GENE TOMLIN

NW¼, SEC 18, T21S, R3E, WM.
LANE COUNTY, OREGON
DEC. 17, 1986 SCALE 1"=200'

TAX MAP 21-03-18 TL 301


SILVER HARBOR DRIVE
AIRPORT ROAD
NW COR. SEC 18 BLM BRASS CAP
PARCEL 1
6.67 AC.
PARCEL 2
6.27 AC.
ZONING - RR-5
ZONING - RR-5
EXCEPTION TO PARCEL 1 VOL 2, 51 LOT
S10 86-18E
S10 79-18E
N0°28'00"E
[342.99]
[N89°33'00"E]
[N89°33'00"E]
N89°33'00"E
50.01
[270.22]
[S89°57'31"E 748.40]
[N89°57'31"E 748.40]
[342.99]
[255.00]
[332.84]
[325.61]
[N89°58'30"E 1344]
[S89°49'E 42.90]
[N89°49'51"W 42.90]
[N89°19'13"E 7.10]
[N0°04'31"E 654.89]
[N0°28'00"E 654.89]
[N89°33'00"E 345.96]
[N0°28'00"E 262.60]
[N0°28'00"E 192.94]
[N89°33'00"W 345.96]
[S0°28'00"W 255.00]
[S0°28'00"W 332.84]
[S0°28'00"W 325.61]
[S89°57'31"E 748.40]
[S89°57'31"E 748.40]
[S89°57'31"E 748.40

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000915
Status Active

Current Parcel/Account	Current TCA
1417920	07605
1697315	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			5.67

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

1417 920
ACCOUNT NUMBER

TAX LOT
MAP NO. 21 35 18 | PARCEL NO. 915 | SECTION | TOWNSHIP S. | RANGE W.M.

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION

DEED RECORD: DATE OF ENTRY | DEED NUMBER

ACRES REMAINING

(out of 901)

A portion of the NW 1/4 of Section 18, T 21 S, R 3 E of the WM, Lane County, Oregon, described as follows:

Commencing at the NW corner of Section 18; thenc S 00°28'00" W along the WEst line of said Section 18 255.00 ft to the TRUE POINT OF BEGINNING of the tract to be described, said point also being the SW corner of a tract of land described by instrument recorded September 13, 1982, R1210, Reception #82-27205, Official Records of Lane County, Oregon; thence continue

S 00°28'00" W along said West Section line 718.37 ft, more or less, to the most WNW corner of the tract of land described by instrument recorded April 5, 1979, Reel 984, Reception #79 19449, Official Records Lane County, Oregon; thence

S 89°57'21" E along the North line of said tract a distance of 343.00 ft, more or less, to a 5/8 inch iron rod; thence

N 00°28'00" E 721.33 ft, more or less, to the SE corner of a tract of land described by instrument recorded September 13, 1982, R1210, Reception #82-27205, Official Records Lane County, Oregon; thence

S 89°33'00" W along the South line of said tract 342.99 ft to the true point of beginning, all in Lane County, Oregon.

DATE OF ENTRY	DEED NUMBER
1987wd	R1437/8653099
1995wd	R2096/9551643
1987wd	R1437/8653998
1997wd	R2268/9712364
2010wd	2010-016015

cont m/l

5.67

8653003

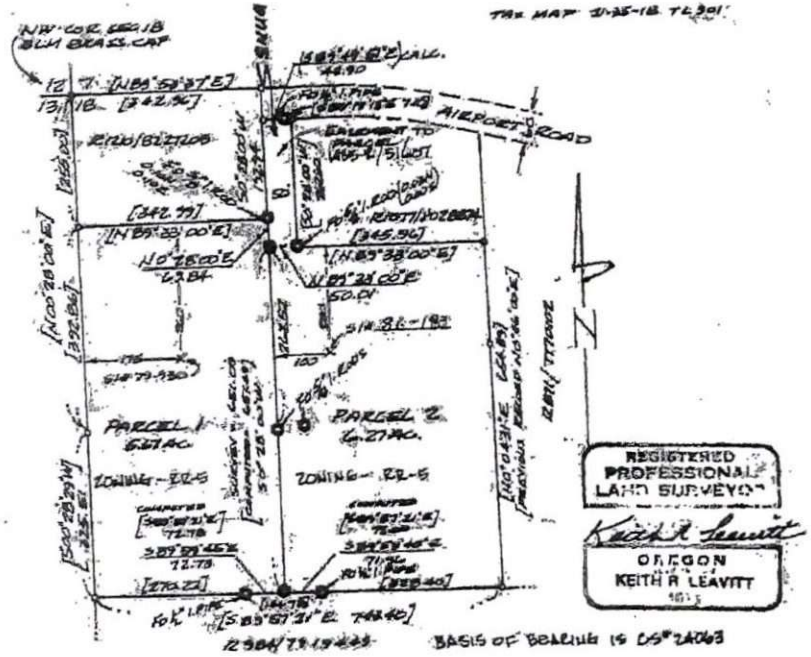
APPROVED FOR RECORDING
DATE 12-24-86 LANE COUNTY
LAND MANAGEMENT DIVISION

PARTITION MAP FOR GENE TOMLIN

NW¼, SEC. 18, T21S, R3E, W.M.
LANE COUNTY, OREGON

DEC. 17, 1986 SCALE 1"=200'

TAX MAP 21-3E-18 TL 301



BASIS OF BEARING IS CS#24063

PARCEL 1

A portion of the Northwest one-quarter of Section 18, Township 21 South, Range 3 East, of the Willamette Meridian, Lane County, Oregon, described as follows :

Commencing at the Northwest corner of Section 18, thence South 00° 28' 00" West along the West line of said Section 18 a distance of 255.00 feet to the True Point of Beginning of the tract to be described, said point also being the Southwest corner of a tract of land described by Instrument recorded September 13, 1982, Reel 1210, Reception No. 82-27205, Official Records Lane County, Oregon; thence continue South 00° 28' 00" West along said West Section line 718.37 feet, more or less, to the most Westerly Northwest corner of the tract of land described by Instrument recorded April 5, 1979, Reel 984, Reception No. 79-19449, Official Records Lane County, Oregon; thence South 89° 57' 21" East along the North line of said tract a distance of 343.00 feet, more or less, to a 5/8" iron rod, thence North 00° 28' 00" East 721.33 feet, more or less, to the Southeast corner of a tract of land described by Instrument recorded September 13, 1982, Reel 1210, Reception No.82-27205, Official Records Lane County, Oregon; thence South 89° 33' 00" West along the South line of said tract 342.99 feet to the Point of Beginning, containing 5.67 acres, more or less, all in Lane County, Oregon.

8653003

FINAL PARTITION MAP PARTITION NO. PA 1201-86 OWNER-PETITIONER
GENE TOMLIN
47634 TELLER RD.
OAKRIDGE, OR 97463

DATE SUBMITTED 12-18-86

APPROVALS: Jack Thomas — 12-18-86
Acting Chairman, Land Development Comm. — Date

E. Right Ewell — 12-24-86
Lane County Surveyor — Date

THIS PARTITION MAP IS A COPY OF A SURVEY I DID FOR GENE TOMLIN IN MARCH 1986, BASICALLY THE SURVEY FOR TOMLIN SALE PARCEL 2 (INSTRUMENT No. 80-07148) INTO 2 PARCELS.
THE BOUNDARIES OF THIS PARTITION WAS PREVIOUSLY SURVEYED AND MONUMENTED BY COUNTY SURVEY NO. 24063

ALL BEARINGS AND DISTANCES SHOWN IN BRACKETS ARE FROM A SURVEY FILED IN THE LANE COUNTY SURVEYORS OFFICE — CS FILE No. 24063

State of Oregon, County of Lane ss. 8653003
I, the County Clerk, do and for the aforesaid County, do hereby certify that the within instrument was received for record on
20 DEC 86 12: 54
and Supplemental Partitioning Reel #5
Lane County OFFICIAL Records.
Lane County Clerk
By: DM Deputy

LEGEND

- SET 5/8" x 30" IRON ROD WITH YELLOW PLASTIC CAP, STAMPED "KEITH LEAVITT RLS 1418"
- FOUND THE MONUMENTS INDICATED
- POINT NOT SET OR FOUND BUT FROM CS FILE NO. 24063
[ ] RECORD BEARINGS & DISTANCES FROM CS FILE NO. 24063

PARCEL 2

A portion of the Northwest one-quarter of Section 18, Township 21 South, Range 3 East, of the Willamette Meridian, Lane County, Oregon, described as follows:

Commencing at the Northwest corner of Section 18, thence South 00° 28' 00" West along the West line of said Section 18 a distance of 255.00 feet to the Southwest corner of a tract of land described by instrument recorded September 13, 1982, Reel 1210, Reception No. 82-27205, Official Records Lane County, Oregon; thence North 89° 33' 00" East along the south line of said tract 342.99 feet to the Southeast corner of said tract marked by a 5/8" iron rod and also being the True Point of Beginning of the following described parcel of land, thence South 00° 28' 00" West 69.84 feet to a 5/8" iron rod, thence South 00° 28' 00" West 651.49 feet, more or less, to a 5/8" iron rod marking the North line of a parcel described by instrument recorded April 5,1979, Reel 984, Reception No. 79-19449, Official Records Lane County, Oregon, thence South 89° 57' 21" East 400.40 feet, more or less, to the intersection with the West line of a tract of land described by instrument recorded November 2, 1977, Reel 871, Reception No. 77-70102, Official Records Lane County, Oregon, thence North 00° 04' 31" East along the West line of said tract and its Northerly extention thereof 654.89 feet, more or less, to the Southeast corner of a tract of land described by instrument recorded June 10, 1980, Reel 1077, Reception No. 80-28874 Official Records Lane County, Oregon, thence South 89° 33' 00" West along the South line of said tract 345.96 feet to its Southwest corner, thence North 0° 28' 00" East 262.60 feet to the Northwest corner of said tract, thence North 89° 19' 13" West 7.10 feet to a 5/8" iron rod, thence North 89° 49' 51" West 42.90 feet to that previously mentioned tract described by Reception No. 82-27205, thence South 0° 28' 00" West 192.94 feet to the Point of Beginning, containing 6.27 acres, more or less, Lane County, Oregon.

LEAVITT, NESS & CO.
47538 Hwy. 58 — Ph: 782-3389
Oakridge, Oregon 97463

Detailed Property Report

Site Address	76676 Fir Ridge Ln Oakridge, OR 97463-2025	**Property Owner 1**	
Map & Taxlot#	21-35-18-00-00915	Stubblefield James	
SIC	N/A	48480 Rogers Ln	
Tax Account#	1417920	Oakridge, OR 97463	
		Tax account acreage	5.00
		Mapped taxlot acreage†	5.64

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Code Split - Other land tax account(s) associated with this taxlot 1697315

Map & Taxlot # 21-35-18-00-00915



Improvements

Dwelling 1 / Building Type » Manufactured structure

Assessor Photo



Click to enlarge photo

Assessor Sketch



Inspection Date	10/20/2010	Effective Year Built	1986
Year Built	1986	LOIS Number	L253293
Make	Stratford	Length	56
Model	data not available	Width	24
Plate #	X196837	Quality	6
Serial #	AB7SC34090R		

Square Footage

Garage	data not available	Carport	data not available
Paved Patio	data not available	Driveway	data not available

RURAL ADDRESSING CHECKED MAY 13

GG 5-13 PCK 5-18

Lane County Authorization for: ~~Mobile~~ Home + Install SDS

FOR OFFICE USE ONLY
Application/Permit # 1419-87

TOWNSHIP	RANGE	SECTION	TAX LOT	OUT OF	PROPOSED USE OF PROPERTY
21	35	18	901		☒ Residential ☐ Industrial ☐ Commercial ☐ Public

SUBDIVISION/PARTITION (if applicable): PA 3201-86 | LOT/PARCEL: 1 | BLOCK:

LOCATION ADDRESS: 76676 STREET: Fir Ridge Lane CITY: Oakridge ZIP: OR

STRUCTURES CURRENTLY ON PROPERTY: No Existing Structures (RV on Site)

DIRECTIONS TO SITE: Hwy 58, 1 Of. on Forest Lane, Top of Hill, Last Home on Right Side of Road

DESCRIPTION OF PROPOSED WORK - BE SPECIFIC: ~~Mobile~~ Home and Install SDS | DECLARED $ VALUE:

# OF BEDROOMS	# OF STORIES	# OF EMPLOYEES	WATER SUPPLY	
2	N/A	N/A		☐ Proposed ☐ Existing

OWNER'S NAME AND ADDRESS: Mark Swanson, PO Box # 775 Oakridge Oregon 97463 | TELEPHONE NUMBER: None

CONTRACTOR'S NAME AND OSK #: | TELEPHONE NUMBER: None

PERMIT TO BE MAILED TO (NAME AND ADDRESS): Same As Above ~~782-2204~~ | TELEPHONE NUMBER: None

I HAVE CAREFULLY EXAMINED THE COMPLETED APPLICATION FOR PERMIT, and do hereby certify that all information hereon is true and correct, and that I have the following legal interest in the property: ☒ owner of record; ☐ contract purchaser; ☐ authorized agent. I further certify that any and all work performed shall be done in accordance with the Ordinances of Lane County and the Laws of the State of Oregon pertaining to the work described herein, and that NO OCCUPANCY will be made of any structure without the permission of the Building Division. I further certify that registration with the Builder's Board is in full force and effect as required by ORS 701.055, that if exempt the basis for exemption is noted hereon, and that only subcontractors and employees who are in compliance with ORS 701.055 will be used on this project. I HAVE READ AND CHECKED THIS APPLICATION THOROUGHLY.

Mark Swanson | David A. Swanson | DATE

NAME (please print) | SIGNATURE

READ THIS SECTION CAREFULLY. YOUR AUTHORIZATION HAS BEEN BASED ON THE FOLLOWING CONDITIONS:

☐ PLANNING/ZONING: Zone RR5/RCP Partition # PA 3201-86 Parcel # [redacted]01 Parcel Size

Minimum Setbacks: P/L, front 10 P/L, side 10 Interior 10 rear 10

COMMENTS: Single family residence is permitted on a vacant legal lot as per attached plot plan pursuant to LC 16.231 Date: 4-30-87 KH

☒ SANITATION: S. I. # 86-183 B. P. # Installation Record Issued? ☐ Yes ☐ No

Installation Specifications: 1000 Gallon Tank 375 Lineal Feet of Drainfield 24" Maximum Depth of Trenches

COMMENTS: Install a serial distribution system according to the approved plot plan of SI 86-183, Reserve Area. Stay 10' from well. Date: 5-18-87

☐ PLANS EXAMINATION: Type Group Use MOBILE HOME

COMMENTS: SEE ENCLOSED SHEETS FOR MINIMUM SET-UP REQUIREMENTS

Date: 3 JUNE 87

FEES: 228.00

PERMIT APPROVED BY BUILDING OFFICIAL/DESIGNEE (per ORS 456.805(1)) | DATE: 3 JUNE 87

LANE COUNTY DEPARTMENT OF PUBLIC WORKS LAND MANAGEMENT DIVISION, 687-4061,
125 EAST 8TH AVENUE, EUGENE, OREGON 97401

SEE REVERSE FOR INSPECTION INFORMATION

TRS, TL

Plot Plan

Subdivision

Lot Block

Swanson, Gustav A. & Marie E.

Partition #PA 3201-86

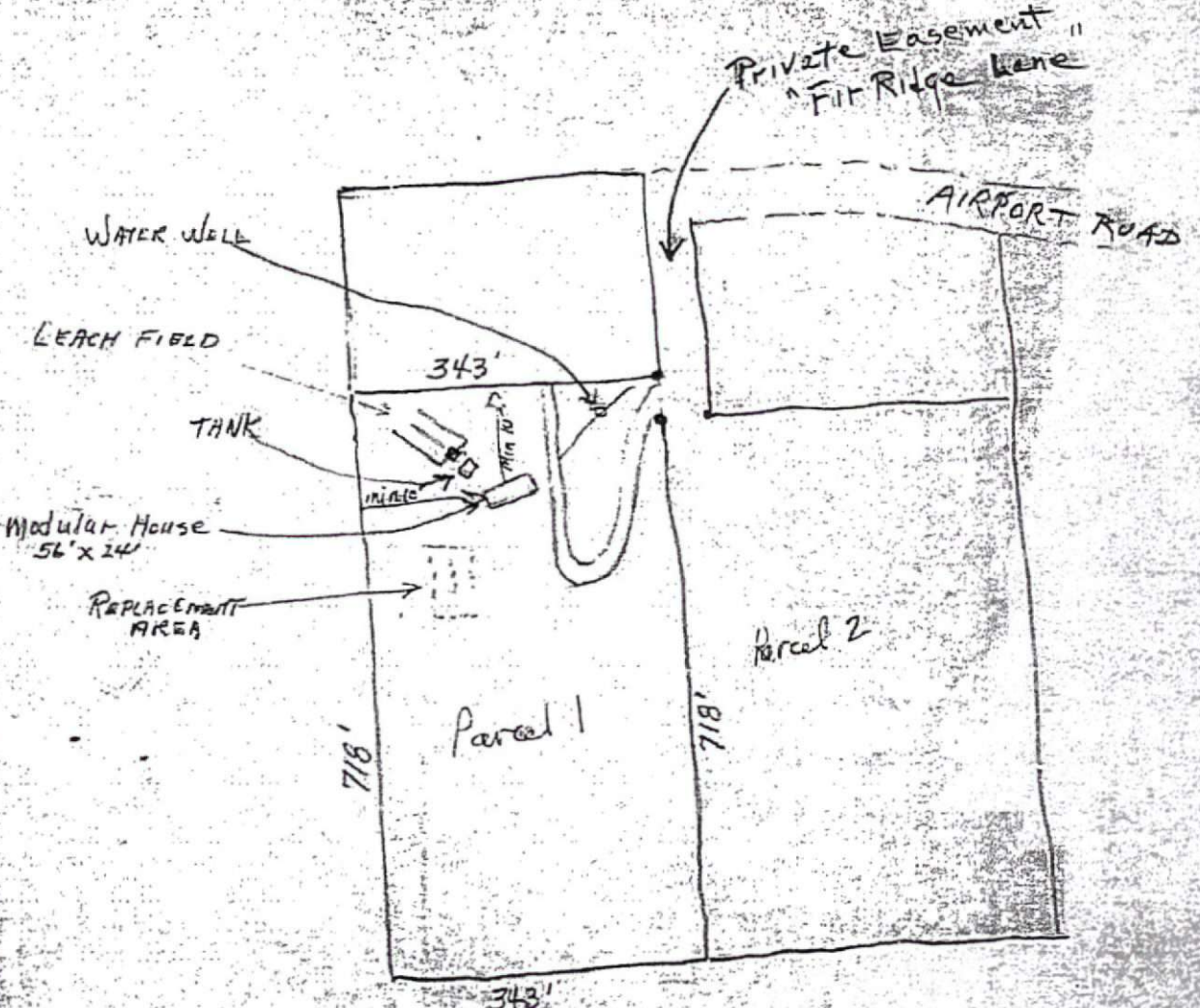
Parcel #3 of M463-79

Job Location (Address) Fir Ridge Ln, Oakridge, Or. 97463

Permit # For Permit # For

Permit # For Permit # For

Permit # For Permit # For



Partition PA 3102-86

LAND USE APPROVED
4-30-87 KH

Vicinity Map

N

Scale 1" = 200'

C74-150

LANE COUNTY INSPECTION RECORD

TRS# 21-35-18-901 DATE ISSUED: 6-10-87 PERMIT# 1419-87

OWNER'S NAME Swanson, Marie PHONE NUMBER 782-2204

CONTRACTOR'S NAME PHONE NUMBER

SET BACK REQUIREMENTS # PLUMBING FIXTURES
C L, FRONT 10 C L, SIDE 10' INTERIOR 10' REAR 10'

WORK AUTHORIZED BY PERMIT MH & SDS ☐ SDS APPROVAL REQUIRED

DIRECTIONS TO SITE Hwy 58, L on Airport Rd, top of hill, last hs on R

GUSTAV A + MARIE G

SITE ADDRESS 76676 Fir Ridge Ln., Oakridge

FOOTING / FOUNDATION ☐ /MOBILE HOME PLACEMENT ☒ INSPECTION
Approved ✓ Date 7 JULY 87 /Correction ____ Date ____ Inspector GW

PLUMBING GROUNDWORK INSPECTION
Approved X Date 7 JULY 87 /Correction ____ Date ____ Inspector GW

UNDERSLAB PLBG. ☐ /UNDERFLR PLBG. ☐ INSPECTION
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

OTHER INSPECTION
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

ROUGH PLUMBING (TOP OUT) INSPECTION
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

ROUGH MECHANICAL
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

FRAMING INSPECTION
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

INSULATION / VAPOR BARRIER INSPECTION
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

LATH / GYPSUM BOARD INSPECTION
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

FINAL MECHANICAL ☐ /WOOD STOVE ☐
Approved ____ Date ____ /Correction ____ Date ____ Inspector ____

FINAL PLUMBING INSPECTION
Approved ✓ Date 4 JAN 88 /Correction ____ Date ____ Inspector Wirt

FINAL INSPECTION BUILDING ☐ /MOBILE HOME ☒ /AG PLACEMENT ☐
Approved ✓ Date 4 JAN 88 /Correction ____ Date ____ Inspector Wirt

CERTIFICATE OF OCCUPANCY ☐ TEMPORARY CERTIFICATE OF OCCUPANCY ☐
Approved ____ Date ____ Insp. ____ Approved ____ Date ____ Insp. ____

GW 12/8/88

M74-197

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Oct 27, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2125120000700
Status Active

Current Parcel/Account	Current TCA
0945624	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			50.00

Comments:

1874-D part of 712-E
OLD NUMBER

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

CODE NO. 580

part of Tax Lot 1

MAP NO. 21.25.12	TAX LOT NO. 700	945 624 12			AERIAL PHOTO
ACCOUNT NUMBER		SECTION	TOWNSHIP 21 S.	RANGE 2E W.M.	

LOT NO.	BLOCK NO.	ADDITION	CITY

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD		ACRES REMAINING
		DATE OF ENTRY	DEED NUMBER	
	Lot 4 F.T.L.P.O.			
	The above described parcel of land is a segregation out of the following:	1941	110/177	
	N½ NE¼; SW¼ NE¼; NE¼ NW¼; Lots 1,2 & 4	1941	114/185	50.00
	These Volume & Pages are Excepts rather than descriptions This origional may & May Not be Land that became Forest Services through purchase. — No Time for research.			

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Oct 27, 2022

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2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2125130000900
Status Active

Current Parcel/Account	Current TCA
0998607	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			40.00

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

998 607

OLD NUMBER

MAP NO. 21 25 13	TAX LOT NO. 900	SECTION 13	TOWNSHIP 21 S.	RANGE 2E W.M
ACCOUNT NUMBER				

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	N ½ of N ½ of NE ¼ of Sec. 13, T21S., R2E, WM., LCO. Cont. m/l	1971 1975	R517/34757 R706/38276	40.00
		1991qc wd	R1693/9120141 9120145	
		1997wd	R2268/9712363	
		2010wd	2010-01605	

Form 1860–9
(March 1965)
(formerly 4–1043)

OR 4748

34757

The United States of America

To all to whom these presents shall come, Greeting:

WHEREAS,

The Murphy Company,

being the owner of a certain tract of land situated and included within the limits of the Mount Hood National Forest, Oregon, has, under the provisions of the Act approved March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485), reconveyed and relinquished the said tract to the United States and has, under the provisions of said Act, selected in lieu thereof the following described tracts of land:

Willamette Meridian, Oregon.

T. 21 S., R. 2 E.,
Sec. 13, N½N½NE¼;

T. 21 S., R. 3 E.,
Sec. 8, NE¼SE¼;
Sec. 9, W½NW¼;
Sec. 15, S½SE¼;
Sec. 22, NE¼NE¼;
Sec. 23, NE¼NE¼NW¼, E½W½NE¼NW¼,
SW¼SW¼NE¼NW¼, and N½NW¼NW¼;

Aggregating 322.50 acres;

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the said claimant the lands above described; TO HAVE AND TO HOLD the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, its successors and assigns, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES from the lands so granted:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

2. The following three easements, in accordance with the provisions of the Act of February 28, 1925 (43 Stat. 1090):

   a. An easement for existing T.V. Butte Road No. 2163, 66 feet in width, being 33 feet on each side of the centerline thereof, with as much additional width as required for adequate protection of cuts and fills, said centerline being more particularly described as: Beginning at a point on

Patent Number 36-71-0015

GPO 847 - 946

34757

County Road No. 1076 which is N. 45° W., 364 feet from the section corner common to Sections 14, 15, 22, and 23, T. 21 S., R. 3 E., W.M. and traversing in a northwesterly direction over and across the SE¼SE¼ of said Section 15 to a point which is N. 19° E., 1,059 feet from the east 1/16 corner on the south section line of said Section 15, T. 21 S., R. 3 E., W.M.

b. An easement for the existing Westfir Road No. 2115, 66 feet in width, being 33 feet on each side of the centerline thereof, with as much additional width as required for adequate protection of cuts and fills, said centerline being more particularly described as: Beginning at a point 1,558.9 feet south of the section corner common to Sections 4, 5, 8, and 9, T. 21 S., R. 3 E., W.M. and traversing in a southeasterly direction over and across the SW¼NW¼ of said Section 9 to a point on the north right-of-way line of County Road No. 360, said point being N. 5°36' W., 515 feet from the southeast corner of the SW¼NW¼ of said Section 9, T. 21 S., R. 3 E., W.M.

c. An easement for the proposed Aubrey Mountain Road No. 2172, being of variable width on either side of the centerline thereof, with as much additional width as required for adequate protection of cuts and fills, said centerline being more particularly described as: Beginning at a point on the south right-of-way line of County Road No. 1076, which said point is 2,238.70 feet east and 257.25 feet south of the section corner common to Sections 14, 15, 22, and 23, T. 21 S., R. 3 E., W.M.; thence with a right-of-way width 50 feet each side of centerline, S. 7°40'46" W., a distance of 222.57 feet; thence with a right-of-way width 33 feet each side of centerline, along the arc of a right hand curve of 48°, a distance of 146.63 feet; thence with a right-of-way width of 33 feet each side of centerline, S. 78°03'39" W., a distance of 38.81 feet; thence with a right-of-way width of 33 feet each side of centerline, along the arc of a left hand curve of 48°, a distance of 104.52 feet; thence with a right-of-way width of 33 feet on each side of centerline, S. 27°53'34" W., a distance of 474.89 feet; thence with a right-of-way width of 33 feet each side of centerline, along the arc of a right hand curve of 14°, a distance of 243.49 feet; thence with a right-of-way width of 33 feet each side of centerline, S. 61°58'52" W., a distance of 73.56 feet; thence with a right-of-way width of 50 feet each side of centerline, along the arc of a left hand curve of 54°, a distance of 293.51 feet to a point which is 1,601.88 feet east and 1,470.82 feet south of the section corner common to Sections 14, 15, 22, and 23, T. 21 S., R. 3 E., W.M.;

Form 1860–10
(March 1965)
(formerly 4–1044)

OR 4748

34757

Provided that if for a period of 5 years, the United States of America, or its assigns, shall cease to use, or preserve for prospective future use, the said roads, or any segments thereof, for the purposes reserved, or if at any time the United States of America determines that the roads, or any segments thereof, are no longer needed for the purposes reserved, the easements traversed thereby shall terminate. In the event of such nonuse or of such determination by the United States of America, the United States of America shall furnish to the patentee, its successors and assigns, a statement in recordable form evidencing termination.

SUBJECT TO:

1. A prior reservation of all minerals, including but not limited to oil and gas, to Pope & Talbot, Inc., in that certain warranty deed dated August 22, 1950, and recorded in Book 424 at Page 645, Deed Records of Lane County, Oregon, as to the N½N½NE¼ of said Sec. 13, T. 21 S., R. 2 E.; and

2. Such rights for railroad right-of-way purposes as Central Pacific Railway Company or its successors in interest may have as to the SW¼SE¼ of said Sec. 15, T. 21 S., R. 3 E., pursuant to the Act of March 3, 1875 (18 Stat. 482) and the Act of March 3, 1899 (30 Stat. 1233) under right-of-way, serial number Roseburg 010872, approved December 3, 1917.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SEAL

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Portland, Oregon the TWENTY-FIFTH day of JANUARY in the year of our Lord one thousand nine hundred and SEVENTY-ONE and of the Independence of the United States the one hundred and NINETY-FIFTH.

By _____
Manager, Oregon Land Office

Patent Number 36-71-0015

GPO 847-947

State of Oregon,
County of Lake ss.

I, D. M. Pierce, Director of the Department of Records and Elections and for the Clerk of Lake County, do hereby certify that the within instrument was received for record at

[illegible]

Fee [illegible]

Recorded in BOOK [illegible]

D. M. Pierce, Director of the Department of Records & Elections

By [illegible]
Deputy

Principal $
936 Pacific Bldg.
Portland 9/1/04

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Aug 31, 2022

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

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Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 2135180000902
Status Active

Current Parcel/Account	Current TCA
0965168	07605
1083110	07601
1355435	07601

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			26.82

Comments:

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 965 168

MAP NO. 21 35 18 ACCOUNT NUMBER	TAX LOT NO. 902	SECTION 18	TOWNSHIP 21 S.	RANGE 3W W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Edgar Roberts property in Sec.18,21S,R. 3E,WM. LCO. Beg. at a point formed by the centerline of the proposed Oakridge Airport Runway intersecting with the North line of Sec.18,21S,R.3E,WM. LCO. said point being 1409.02 ft. S.89°43'E. of the NW. corner of said Sec.18, thence S.89°43'E. 2274.55 ft. along the North line of Sec.18, thence S.14°33'W. 360.54 ft. thence S.75°27'E. 120.00 ft. " S.14°33'W. 400.00 ft. to a point 12.0 ft S.14°33'W. of the centerline of the Bonneville Power Line, thence N.75°27'W. 3110.96 ft. parallel with the Bonneville Power Line to the North line of Sec.18, thence S.89°43'E. 811.56 ft. to the POB. Cont 27.21 ac m/l. All the bearings referred to in the above desc. are based on true bearings as obtained from solar observations.	1968	R382/16860	
	Cont. m/l			26.82

16860

OAKRIDGE AIRPORT
WARRANTY DEED

EDGAR N. ROBERTS AND FAUNA DOLORES ROBERTS, husband and wife, hereinafter called GRANTOR, conveys to the STATE OF OREGON through its BOARD OF AERONAUTICS all that property situated in Lane County, Oregon, for Oakridge Airport and described as:

Edgar Roberts property in Section 18, Township 21 South, Range 3 East of the Willamette Meridian, Lane County, Oregon; Beginning at a point formed by the Centerline of the proposed Oakridge Airport Runway intersecting with the North Line of Section 18, Township 21 South, Range 3 East of the Willamette Meridian, Lane County, Oregon, said point being 1409.02 feet South 89° 43' East of the Northwest Corner of said Section 18; thence South 89° 43' East along the North Line of Section 18 2274.55 feet; thence South 14° 33' West 360.54 feet; thence South 75° 27' East 120.00 feet; thence South 14° 33' West 400.00 feet to a point 12.00 feet South 14° 33' West of the Centerline of the Bonneville Power Line; thence North 75° 27' West 3110.96 feet parallel with the Bonneville Power Line to the North Line of Section 18; thence South 89° 43' East 811.56 feet to the place of beginning containing 27.21 Acres more or less. All the bearings referred to in the above description are based on true bearings as obtained from solar observations. (See attached Map)

and covenants that GRANTOR is the owner of the above described property free of all encumbrances, and will warrant and defend the same against all persons who may lawfully claim the same. If said property is not utilized for airport purposes it shall revert to the GRANTORS or their heirs or assigns.

Dated this 8th day of March, 19 67.

Edgar N. Roberts
Edgar N. Roberts

Fauna Dolores Roberts
Fauna Dolores Roberts

State of Oregon
County of Lane

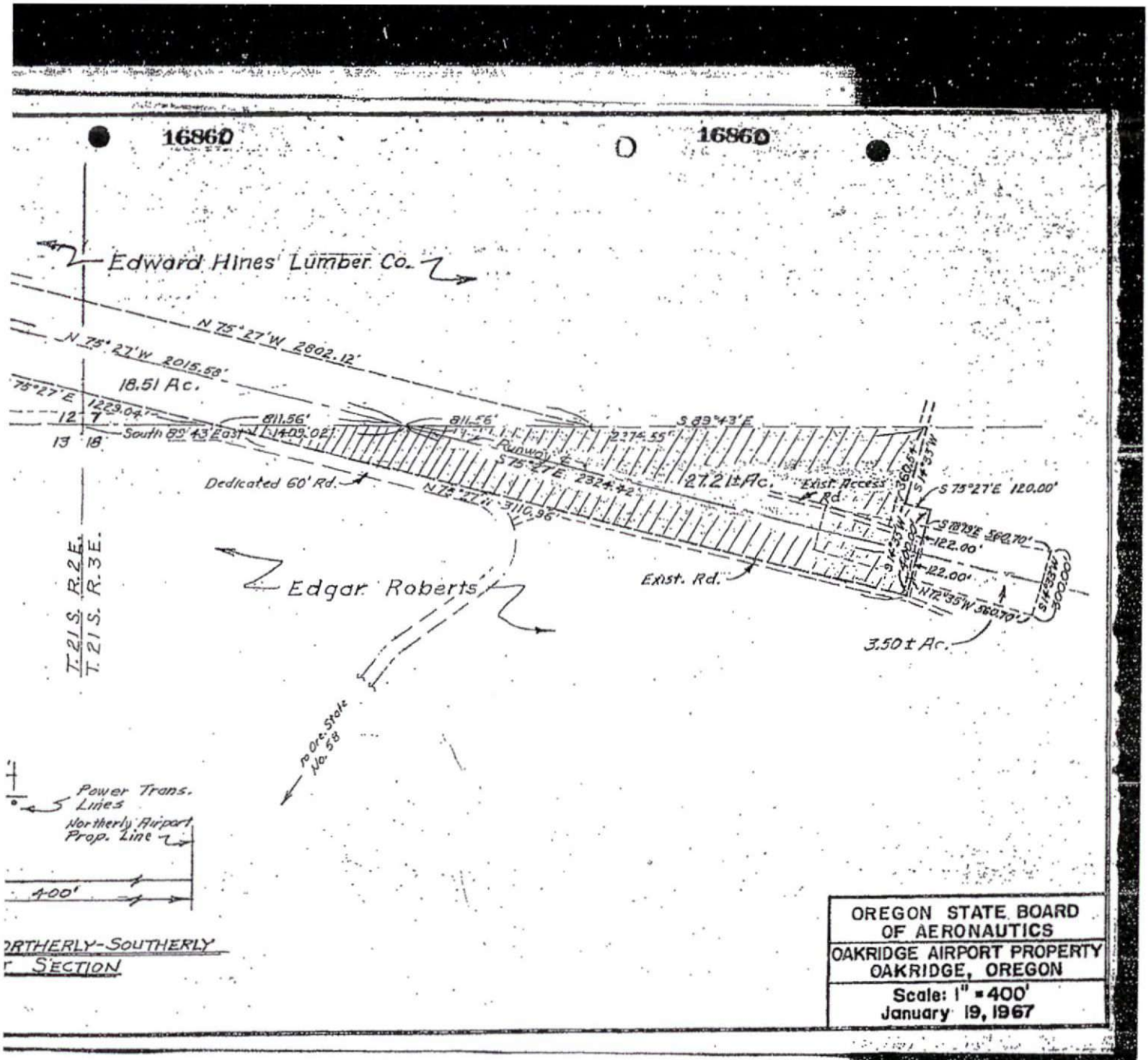
March 8 19 67

Personally appeared the above named Edgar N. Roberts and Fauna Dolores Roberts, husband and wife, and acknowledged the foregoing instrument to be their voluntary act. Before me:

Dale E. Helikson
Notary Public for Oregon

My Commission expires 11/12/67

1-23-67


16860
16860
Edward Hines Lumber Co.
N 75° 27' W 2802.12'
N 75° 27' W 2015.58'
18.51 Ac.
75° 27' E 1229.04'
12 7
13 18
South 89° 43 East
811.56'
1409.02'
811.56'
Runway "E"
S 89° 43' E
2274.55'
S 75° 27' E 2324.42'
27.21± Ac.
Dedicated 60' Rd.
N 75° 27' W 3110.96'
Exist. Access Rd.
S 75° 27' E 120.00'
S 14° 33' W 360.00'
S 75° 27' E 560.70'
122.00'
122.00'
N 75° 27' W 560.70'
S 14° 33' W 360.00'
3.50± Ac.
Exist. Rd.
Edgar Roberts
T. 21 S. R. 2 E.
T. 21 S. R. 3 E.
to Ore. State No. 58
Power Trans. Lines
Northerly Airport Prop. Line
400'
ORTHERLY-SOUTHERLY
SECTION
OREGON STATE BOARD OF AERONAUTICS
OAKRIDGE AIRPORT PROPERTY
OAKRIDGE, OREGON
Scale: 1" = 400'
January 19, 1967

16860

4229 Roberts

4 3 [illegible]

State of Oregon,
County of Lane—ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

1968 MAR 8 PM 2 43 B

Reel 382 R

Lane County OFFICIAL Records.

INA RANDOLPH, Director of the Department of Records & Elections.

By [signature] Deputy

C29-083-05

[signature]

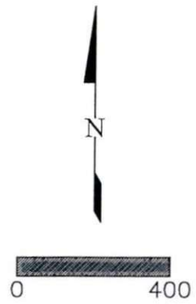
CENTROID EXHIBIT MAP

MAP 21-25-12-00 TL 843
LANE COUNTY, OREGON
01 SEPTEMBER 2022

NOTES:
THE PURPOSE OF THIS EXHIBIT IS TO DENOTE THE CENTROID OF MAP 21-25-12-00 TAX LOT 843.

THE CENTROID WAS COMPUTED USING THE CENTROID MASSPROPERTIES OF THE TAX LOT IN CIVIL3D 2022. THE TAX LOT REGION IS FROM THE LANE COUNTY TAX LOT LAYER SHAPEFILE OBTAINED IN 2022.





REGISTERED
PROFESSIONAL
LAND SURVEYOR

DIGITALLY SIGNED

OREGON
JANUARY 14, 2003
RYAN M. ERICKSON
55524
RENEWS: 12/31/23

EGR & Associates, Inc.
Engineers, Geologists, and Surveyors
2535B Prairie Road
Eugene, Oregon 97402
(541) 688-8322
Fax (541) 688-8087

EXHIBIT L

INFO | Main File S:\Projects\6433 Kloos\Centroids\King Oakridge\843 Centroid.dwg LAYOUT=Centroid

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JAN 31 1994

WATER RESOURCES DEPT.
SALEM, OREGON

LANE 4467

21S/3E/18ba

STATE OF OREGON
WATER WELL REPORT
(as required by ORS 537.765)

(START CARD) # W61685

(1) OWNER: Well Number #1

Name Wesley R. Boyson

Address P.O. Box 565

City Oakridge State OR Zip 97463

(2) TYPE OF WORK:

☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

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MAR - 7 1994

WATER RESOURCES DEPT.
SALEM, OREGON

(3) DRILL METHOD:

☒ Rotary Air ☐ Rotary Mud ☐ Cable

☐ Other

(4) PROPOSED USE:

☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation

☐ Thermal ☐ Injection ☐ Other

(5) BORE HOLE CONSTRUCTION:

Special Construction approval ☐ Yes ☒ No Depth of Completed Well 355 ft.

Explosives used ☐ Yes ☒ No Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Amount sacks or pounds
10"	0	38'	Cement	0	38'	15 sacks
6"	38'	355'				

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E

☐ Other

Backfill placed from ft. to ft. Material

Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+2'	38'	.250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:	4½"	0	355'	PVC	☐	☒	☒	☐
					☐	☐	☐	☐

Final location of shoe(s) 38'

(7) PERFORATIONS/SCREENS:

☒ Perforations Method SAW

☐ Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
215'	235'	1/8x2	200	4½"		☐	☒
275'	295'	1/8x2	200	4½"		☐	☒
335'	355'	1/8x2	200	4½"		☐	☒
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
9 3/4	305'	355'	1 hr.
Could flucuate			

Temperature of Water 56° Depth Artesian Flow Found

Was a water analysis done? ☐ Yes By whom not tested

Did any strata contain water not suitable for intended use? ☐ Too little

☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other

Depth of strata:

(9) LOCATION OF WELL by legal description:

County Lane Latitude Longitude

Township 21S N or S, Range 3E E or W. WM.

Section 18 NE ¼ NW ¼

Tax Lot 914 Lot Block Subdivision

Street Address of Well (or nearest address) End of Airport Rd. Oakridge, OR

(10) STATIC WATER LEVEL:

50 ft. below land surface. Date 12-22-93

Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:

Depth at which water was first found 169'

From	To	Estimated Flow Rate	SWL
169'	170'	2 gpm	50'
277'	278'	3 gpm	50'
289'	290'	4 3/4 gpm	50'

(12) WELL LOG:

Ground elevation

Material	From	To	SWL
Topsoil	0	3'	
Brown clay	3'	32'	
Brown white conglomerate	32'	128'	
White, brown conglomerate	128'	153'	
Gray, white conglomerate	153'	293'	50'
Gray, white sandstone	293'	355'	

Date started 12-20-93 Completed 12-22-93

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my best knowledge and belief.

WWC Number 1617

Signed John P. James Date 12-22-93

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 1541

Signed Casey D. James Jr. Date 12-22-93

ORIGINAL & FIRST COPY - WATER RESOURCES DEPARTMENT SECOND COPY - CONSTRUCTOR THIRD COP

EXHIBIT M

STATE OF OREGON

WATER WELL REPORT

(as required by ORS 537.765)

SEP 25 1987

WATER RESOURCES DEPT.
SALEM, OREGON

LANE 023724 21S/3E-18

(1) OWNER:

Well Number

Name GUS SWANSON

Address 76676 FIR RIDGE LANE

City OAKRIDGE State OR Zip 97463

(2) TYPE OF WORK:

☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD

☒ Rotary Air ☐ Rotary Mud ☐ Cable

☐ Other

(4) PROPOSED USE:

☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation

☐ Thermal ☐ Injection ☐ Other

BORE HOLE CONSTRUCTION:

Special Construction approval Yes ☐ No ☐ Depth of Completed Well 260 ft.

Explosives used Yes ☐ No ☐ Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Amount sacks or pounds
10	0	52	cement	0	52	14
6	52	260				

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E

☐ Other

Backfill placed from ft. to ft. Material

Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6	+1	52	250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:					☐	☐	☐	☐
					☐	☐	☐	☐

location of shoe(s)

(7) PERFORATIONS/SCREENS:

☐ Perforations Method

☐ Screens Type Material

m	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
						☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
6		260	1 hr.

Temperature of water Depth Artesian Flow Found

Was a water analysis done? ☐ Yes By whom

Did any strata contain water not suitable for intended use? ☐ Too little

☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other

Depth of strata:

(9) LOCATION OF WELL by legal description:

County LANE Latitude Longitude

Township 21 N or S, Range 3E E or W, WM.

Section 18 ¼ ¼

Tax Lot 901 Lot Block Subdivision PA3201-86

Street Address of Well (or nearest address)

(10) STATIC WATER LEVEL:

50 ft. below land surface, Date 8/3/87

Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:

Depth at which water was first found

From	To	Estimated Flow Rate	SWL

(12) WELL LOG:

Ground elevation

Material	From	To	SWL
brown clay	0	12	
yellow clay	12	47	
red rock	47	70	
yellow rock	70	95	
gray rock	95	165	
blue rock	165	215	
gray rock	215	260	50

Date started 7/31/87 Completed 8/28/87

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my best knowledge and belief.

WWC Number

Signed Date

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. all work performed during this time is in compliance with Oregon well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 1276

Signed James J. Cook Date 9/23/87

WHITE COPIES - WATER RESOURCES DEPARTMENT YELLOW COPY - CONSTRUCTOR PINK COPY - CUSTOMER 9809C 10/86

LANE 52317

Well ID# LO8932

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)

(START CARD) # 94628

Instructions for completing this report are on the last page of this form.

(1) OWNER: Well Number 1

Name Eric Rassmussen

Address 47379 Airport Rd.

City Oakridge, State OR Zip 97443

(2) TYPE OF WORK

[X] New Well [ ] Deepening [ ] Alteration (repair/recondition) [ ] Abandonment

(3) DRILL METHOD:

[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger

[ ] Other

(4) PROPOSED USE:

[X] Domestic [ ] Community [ ] Industrial [ ] Irrigation

[ ] Thermal [ ] Injection [ ] Livestock [ ] Other

(5) BORE HOLE CONSTRUCTION:

Special Construction approval [ ] Yes [X] No Depth of Completed Well 300 ft.

Explosives used [ ] Yes [X] No Type ____ Amount ____

HOLE Diameter	From	To	SEAL Material	From	To	Sacks or pounds
10"	0	48	cement	0	48	19 sacks
6"	50	300				

How was seal placed: Method [ ] A [ ] B [X] C [ ] D [ ] E

[ ] Other

Backfill placed from ____ ft. to ____ ft. Material ____

Gravel placed from ____ ft. to ____ ft. Size of gravel ____

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+3	111	.250	[X]	[ ]	[X]	[ ]
					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]
Liner:					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]

Final location of shoe(s) 111'

(7) PERFORATIONS/SCREENS:

[ ] Perforations Method ____

[ ] Screens Type ____ Material ____

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]

(8) WELL TESTS: Minimum testing time is 1 hour

[ ] Pump [ ] Bailer [X] Air [ ] Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
5	211	300	1 hr.

Temperature of water 56 Depth Artesian Flow Found ____

Was a water analysis done? [X] Yes By whom Analytical Lab

Did any strata contain water not suitable for intended use? [ ] Too little

[ ] Salty [ ] Muddy [ ] Odor [ ] Colored [ ] Other ____

Depth of strata: ____

(9) LOCATION OF WELL by legal description:

County Lane Latitude ____ Longitude ____

Township 21S N or S Range 3E E or W. WM.

Section 18 NE 1/4 NE 1/4

Tax Lot 900 Lot ____ Block ____ Subdivision ____

Street Address of Well (or nearest address) same

(10) STATIC WATER LEVEL:

89 ft. below land surface. Date 4-23-97

Artesian pressure ____ lb. per square inch. Date ____

(11) WATER BEARING ZONES:

Depth at which water was first found 177 ft.

From	To	Estimated Flow Rate	SWL
177	179	5	89

(12) WELL LOG:

Ground Elevation ____

Material	From	To	SWL
top soil	0	2	
red brown clay	2	10	
wood	10	14	
red brown clay	14	34	
blue green clay	34	42	
brown sandstone	42	105	
blue green sandstone	105	129	
brown sandstone	129	136	
blue green sandstone	136	168	
brown sandstone	168	181	89
blue green white sandstone	181	276	
red gray green claystone	276	300	

MAY - 6 1997

WATER RESOURCES DEPT.
SALEM, OREGON

Date started 4-21-97 Completed 4-23-97

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

WWC Number 1617

Signed ____ Date 4-23-97

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 1541

Signed ____ Date 4-23-97

ORIGINAL & FIRST COPY-WATER RESOURCES DEPARTMENT SECOND COPY-CONSTRUCTOR THIRD COPY-CUSTOMER

RECEIVED

MAY 1 6 2000

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)
Instructions for completing this report are on the last page of this form.

lane 58136

WELL I.D. # L 34376
START CARD # 120831

(1) OWNER: Well Number
Name Gerald Rice
Address PO Box 933
City Oakridge State Ore. Zip 97463

(2) TYPE OF WORK
☒ New Well ☐ Deepening ☐ Alteration (repair/recondition) ☐ Abandonment

(3) DRILL METHOD:
☒ Rotary Air ☐ Rotary Mud ☐ Cable ☐ Auger
☐ Other

(4) PROPOSED USE:
☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation
☐ Thermal ☐ Injection ☐ Livestock ☐ Other

(5) BORE HOLE CONSTRUCTION:
Special Construction approval ☐ Yes ☒ No Depth of Completed Well 513 ft.
Explosives used ☐ Yes ☒ No Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Sacks or pounds
10"	0	38	Bentonite	38	0	13 sacks
6"	38	513				

How was seal placed: Method ☐A ☐B ☐C ☐D ☐E
☒ Other Bentonite Poured DRY!
Backfill placed from ft. to ft. Material
Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+2	38	250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:	4"	0	513	cl. 160	☐	☒	☐	☐
					☐	☐	☐	☐

Final location of shoe(s) N/A

(7) PERFORATIONS/SCREENS:
☒ Perforations Method SKILSAW
☐ Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
33'	513'	4"	288	1/8"	4"	☐	☒
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
9		513'	1 hr.

Temperature of water 59° Depth Artesian Flow Found
Was a water analysis done? ☐ Yes By whom
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other
Depth of strata:

(9) LOCATION OF WELL by legal description:
County Lane Latitude Longitude
Township 21 N or (S) Range 03 (E) or W. WM.
Section 16 NW 1/4 NW 1/4.
Tax Lot 905 Lot Block Subdivision
Street Address of Well (or nearest address) 76558 Airport Rd
Oakridge, OR 97463

(10) STATIC WATER LEVEL:
71 ft. below land surface. Date 4/15/00
Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:
Depth at which water was first found 71'

From	To	Estimated Flow Rate	SWL
71'	74'	5 1/2 GPM	71'
281'	285'	1 1/2 GPM	71'
442'	445'	2 GPM	71'

(12) WELL LOG:
Ground Elevation

Material	From	To	SWL
Topsoil	0	2	
Red-Brown Clay	2	17	
Hard Brown Sandstone	17	24	
Gray, Green Brown Conq.	24	42	
Gray Green Conq.	42	65	
Gray Green Brown Conq.	65	74	71'
Gray Green Conq.	74	124	
Brown Gray Conq.	124	134	
Brown White Conq.	134	168	
White Green Conq.	168	193	
Basalt Gray	193	198	
Gray Green Conq.	198	238	
Gray Basalt	238	266	
Softer Gray White Conq.	266	272	
Gray Green Brown Conq.	272	372	71'
Purple Sandstone	372	385	
Gray Green Brown Conq.	385	409	
Basalt Gray	409	426	
Gray Green Brown Conq.	426	513	71'

Date started 4/10/00 Completed 4/15/00

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.
WWC Number
Signed Date

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.
WWC Number 1562
Signed Sean Oldham Date 5/15/00

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RECEIVED LANE 58808

OCT 1 1 2000

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)
Instructions for completing this report are on the back of this form.

WELL I.D. # L 36043
START CARD # us i25892

(1) OWNER: Well Number L 36043
Name DICK HANKINS
Address 92379 RATTLESNAKE RD
City DEXTER State ORE Zip 97431

(2) TYPE OF WORK
[X] New Well [ ] Deepening [ ] Alteration (repair/recondition) [ ] Abandonment

(3) DRILL METHOD:
[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger
[ ] Other

(4) PROPOSED USE:
[X] Domestic [ ] Community [ ] Industrial [ ] Irrigation
[ ] Thermal [ ] Injection [ ] Livestock [ ] Other

(5) BORE HOLE CONSTRUCTION:
Special Construction approval [ ] Yes [X] No Depth of Completed Well 320 ft.
Explosives used [ ] Yes [X] No Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Sacks or pounds
10"	0	43	BENTONITE	0	43	15 SACKS
6"	43	320				

How was seal placed: Method [ ] A [ ] B [ ] C [ ] D [ ] E
[X] Other POURED + TAMPED
Backfill placed from ft. to ft. Material
Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+18	43	.25	[X]	[ ]	[X]	[ ]
					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]
Liner:	4½	-4	320	#160	[ ]	[X]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]

Final location of shoe(s)

(7) PERFORATIONS/SCREENS:
[X] Perforations Method SKILL SAW
[ ] Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
-40	320	4x⅛	546	4½	#160	[ ]	[X]
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]

(8) WELL TESTS: Minimum testing time is 1 hour
[ ] Pump [ ] Bailer [X] Air [ ] Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
5 GPM	320'	320'	1 hr.

Temperature of water 52 Depth Artesian Flow Found
Was a water analysis done? [ ] Yes By whom
Did any strata contain water not suitable for intended use? [ ] Too little
[ ] Salty [ ] Muddy [ ] Odor [ ] Colored [ ] Other
Depth of strata:

(9) LOCATION OF WELL by legal description:
County LANE Latitude Longitude
Township 21-S N or S Range 03-E E or W. WM.
Section 18 NW 1/4 NW 1/4
Tax Lot 911 Lot Block Subdivision 47100
Street Address of Well (or nearest address) ADJ TO AIRPORT RD. OAK RIDGE ORE 97463

(10) STATIC WATER LEVEL:
58 ft. below land surface. Date 10-7-00
Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:
Depth at which water was first found 130

From	To	Estimated Flow Rate	SWL
130	290'	5 GPM	58'

(12) WELL LOG:
Ground Elevation

Material	From	To	SWL
TOP SOIL BROWN	0	3	
CLAY BROWN	3	36	
SAND STONE GREY	36	70	
CLAY STONE BROWN	70	170	58'
CLAY STONE GREY	170	290	
BASALT GREY	290	320	

Date started 10-4-00 Completed 10-6-00

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.
WWC Number
Signed Date

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.
WWC Number 1248
Signed Glen Nilute Date 10-9-00

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STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765 & OAR 690-205-0210)

LANE 72335

3/13/2013

WELL I.D. LABEL# L 110877
START CARD # 208851
ORIGINAL LOG #

(1) LAND OWNER

Owner Well I.D.
First Name EDDIE Last Name ROBERTS
Company
Address PO BOX 696
City OAKRIDGE State OR Zip 97463

(2) TYPE OF WORK

[X] New Well [ ] Deepening [ ] Conversion [ ] Alteration (complete 2a & 10) [ ] Abandonment(complete 5a)

(2a) PRE-ALTERATION

	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
Casing:									

	Material	From	To	Amt	sacks/lbs
Seal:					

(3) DRILL METHOD

[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger [ ] Cable Mud
[ ] Reverse Rotary [ ] Other

(4) PROPOSED USE

[X] Domestic [ ] Irrigation [ ] Community
[ ] Industrial/ Commericial [ ] Livestock [ ] Dewatering
[ ] Thermal [ ] Injection [ ] Other

(5) BORE HOLE CONSTRUCTION

Special Standard [ ] (Attach copy)
Depth of Completed Well 205.00 ft.

BORE HOLE Dia	From	To	SEAL Material	From	To	Amt	sacks/ lbs
10	0	58	Bentonite	0	58	27	S
6	58	205					

How was seal placed: Method [ ] A [ ] B [ ] C [ ] D [ ] E
[X] Other POURED AND TAMPED
Backfill placed from ft. to ft. Material
Filter pack from ft. to ft. Material Size
Explosives used: [ ] Yes Type Amount

(5a) ABANDONMENT USING UNHYDRATED BENTONITE

Proposed Amount Actual Amount

(6) CASING/LINER

Casing	Liner	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
●	○	6	X	2	58	.250	●	○	X	
○	●	4.5		5	205	sdr26	○	●	X	
○	○						○	○		
○	○						○	○		
○	○						○	○		

Shoe [ ] Inside [X] Outside [ ] Other Location of shoe(s) 58
Temp casing [ ] Yes Dia From To

(7) PERFORATIONS/SCREENS

Perforations Method saw
Screens Type Material

Perf/ Screen	Casing/ Screen Liner	Dia	From	To	Scrn/slot width	Slot length	# of slots	Tele/ pipe size
Perf	Liner		145	205	.125	2	600	

(8) WELL TESTS: Minimum testing time is 1 hour

○ Pump ○ Bailer ◉ Air ○ Flowing Artesian

Yield gal/min	Drawdown	Drill stem/Pump depth	Duration (hr)
7		205	1

Temperature 56 °F Lab analysis [ ] Yes By
Water quality concerns? [ ] Yes (describe below) TDS amount

From	To	Description	Amount	Units

(9) LOCATION OF WELL (legal description)

County LANE Twp 21.00 S N/S Range 3.00 E E/W WM
Sec 18 NW 1/4 of the NE 1/4 Tax Lot 921
Tax Map Number Lot
Lat ° ' " or DMS or DD
Long ° ' " or DMS or DD
○ Street address of well ◉ Nearest address
NEXT TO 47312 AIRPORT ROAD OAKRIDGE

(10) STATIC WATER LEVEL

	Date	SWL(psi)	+	SWL(ft)
Existing Well / Pre-Alteration				
Completed Well	3/11/2013			75

Flowing Artesian? [ ] Dry Hole? [ ]

WATER BEARING ZONES Depth water was first found 97.00

SWL Date	From	To	Est Flow	SWL(psi)	+	SWL(ft)
3/11/2013	97	98	2			75
3/11/2013	161	162	5			75

(11) WELL LOG

Ground Elevation

Material	From	To
topsoil	0	1
red brown clay	1	21
yellow clay	21	52
yellow claystone	52	78
gray brown green conglomerate	78	205

Date Started 3/11/2013 Complete 3/11/2013

(unbonded) Water Well Constructor Certification

I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

License Number 1344 Date 3/12/2013

Signed ROBERT J MURPHY (E-filed)

(bonded) Water Well Constructor Certification

I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

License Number 1541 Date 3/13/2013

Signed CASEY JONES JR (E-filed)

Contact Info (optional) Casey Jones Well Drilling Co., Inc. 541-747-2920

ORIGINAL - WATER RESOURCES DEPARTMENT

THIS REPORT MUST BE SUBMITTED TO THE WATER RESOURCES DEPARTMENT WITHIN 30 DAYS OF COMPLETION OF WORK Form Version:

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765 & OAR 690-205-0210)

LANE 72118

12/5/2012

WELL I.D. LABEL# L 109921
START CARD # 208844
ORIGINAL LOG #

(1) LAND OWNER

Owner Well I.D.
First Name EDDIE Last Name ROBERTS
Company
Address PO BOX 696
City OAKRIDGE State OR Zip 97463

(2) TYPE OF WORK

[X] New Well [ ] Deepening [ ] Conversion [ ] Alteration (complete 2a & 10) [ ] Abandonment(complete 5a)

(2a) PRE-ALTERATION

	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
Casing:									

	Material	From	To	Amt	sacks/lbs
Seal:					

(3) DRILL METHOD

[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger [ ] Cable Mud
[ ] Reverse Rotary [ ] Other

(4) PROPOSED USE

[X] Domestic [ ] Irrigation [ ] Community
[ ] Industrial/ Commericial [ ] Livestock [ ] Dewatering
[ ] Thermal [ ] Injection [ ] Other

(5) BORE HOLE CONSTRUCTION

Special Standard [ ] (Attach copy)
Depth of Completed Well 202.00 ft.

BORE HOLE Dia	From	To	SEAL Material	From	To	Amt	sacks/ lbs
10	0	84	Bentonite	0	50	41	S
6	84	202					

How was seal placed: Method [ ] A [ ] B [ ] C [ ] D [ ] E
[X] Other POURED AND TAMPED
Backfill placed from 50 ft. to 84 ft. Material BENTONITE
Filter pack from ft. to ft. Material Size
Explosives used: [ ] Yes Type Amount

(5a) ABANDONMENT USING UNHYDRATED BENTONITE

Proposed Amount Actual Amount

(6) CASING/LINER

Casing	Liner	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
(•)	( )	6	[X]	2	84	.250	(•)	( )	[X]	[ ]
( )	(•)	4.5	[ ]	2	202	sdr26	( )	(•)	[X]	[ ]
( )	( )		[ ]				( )	( )	[ ]	[ ]
( )	( )		[ ]				( )	( )	[ ]	[ ]
( )	( )		[ ]				( )	( )	[ ]	[ ]

Shoe [ ] Inside [ ] Outside [ ] Other Location of shoe(s)
Temp casing [ ] Yes Dia From To

(7) PERFORATIONS/SCREENS

Perforations Method saw
Screens Type Material

Perf/ Screen	Casing/ Liner	Screen Dia	From	To	Scrn/slot width	Slot length	# of slots	Tele/ pipe size
Perf	Liner		142	202	.125	2	600	4.5

(8) WELL TESTS: Minimum testing time is 1 hour

( ) Pump ( ) Bailer (•) Air ( ) Flowing Artesian

Yield gal/min	Drawdown	Drill stem/Pump depth	Duration (hr)
15		202	1

Temperature 59 °F Lab analysis [ ] Yes By
Water quality concerns? [ ] Yes (describe below) TDS amount

From	To	Description	Amount	Units

(9) LOCATION OF WELL (legal description)

County LANE Twp 21.00 S N/S Range 3.00 E E/W WM
Sec 18 NE 1/4 of the NW 1/4 Tax Lot 922
Tax Map Number Lot
Lat ° ' " or DMS or DD
Long ° ' " or DMS or DD
(•) Street address of well ( ) Nearest address
47312 AIRPORT ROAD OAKRIDGE

(10) STATIC WATER LEVEL

	Date	SWL(psi)	+	SWL(ft)
Existing Well / Pre-Alteration			[ ]	
Completed Well	12/4/2012		[ ]	63

Flowing Artesian? [ ] Dry Hole? [ ]

WATER BEARING ZONES Depth water was first found 56.00

SWL Date	From	To	Est Flow	SWL(psi)	+	SWL(ft)
12/3/2012	56	57	1		[ ]	50
12/4/2012	180	195	15		[ ]	63
					[ ]	
					[ ]	
					[ ]	

(11) WELL LOG

Ground Elevation

Material	From	To
topsoil	0	1
brown clay	1	38
gray brown conglomerate	38	90
gray sandstone	90	118
gray brown conglomerate	118	180
brown gray claystone	180	202

Date Started 12/3/2012 Complete 12/4/2012

(unbonded) Water Well Constructor Certification

I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

License Number Date

Signed

(bonded) Water Well Constructor Certification

I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

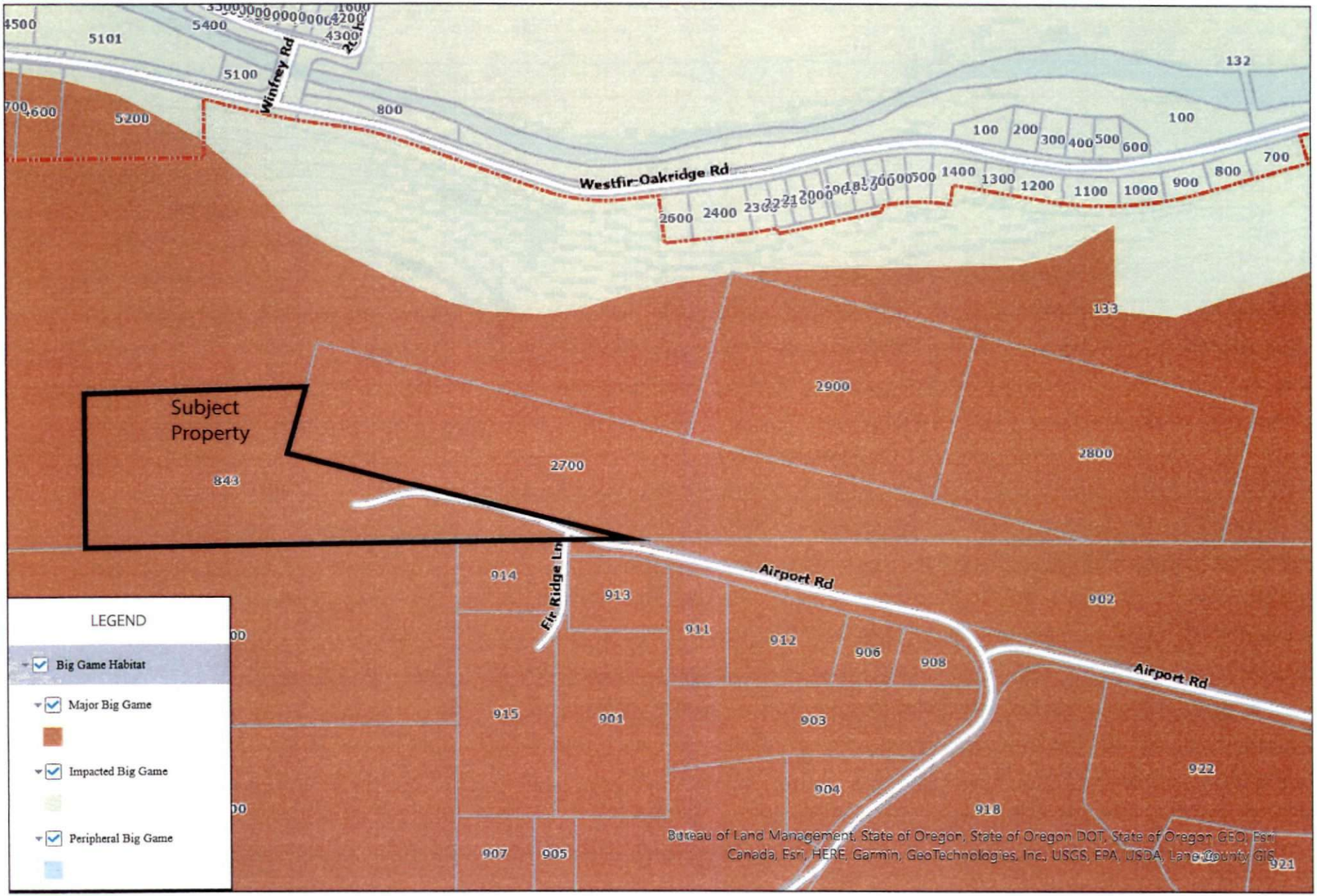
License Number 1541 Date 12/5/2012

Signed CASEY JONES JR (E-filed)

Contact Info (optional) Casey Jones Well Drilling Co., Inc. 541-747-2920

ORIGINAL - WATER RESOURCES DEPARTMENT

THIS REPORT MUST BE SUBMITTED TO THE WATER RESOURCES DEPARTMENT WITHIN 30 DAYS OF COMPLETION OF WORK. Form Version:



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

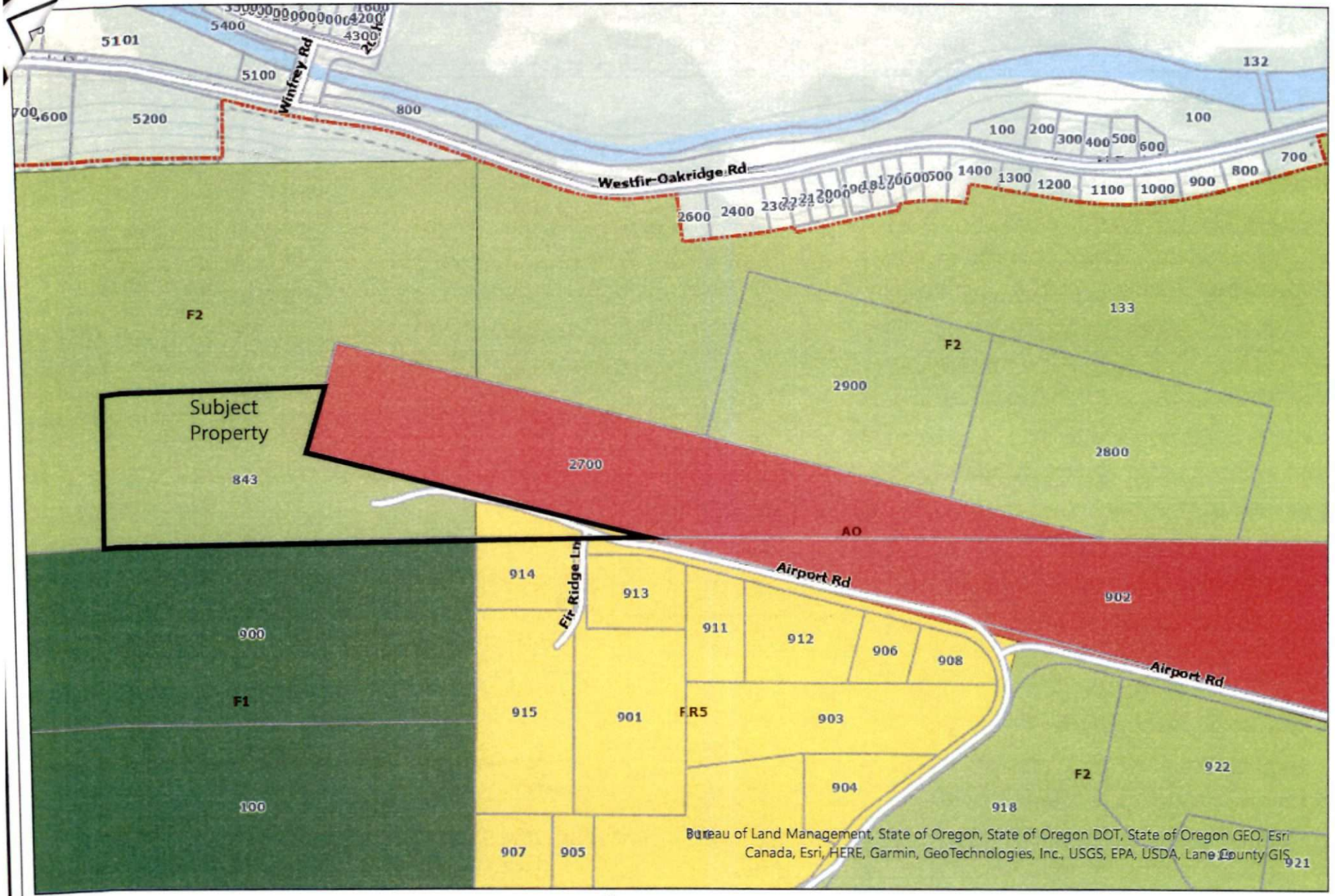
0 310 620 1,240 Feet

Wildlife Habitat

Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT N



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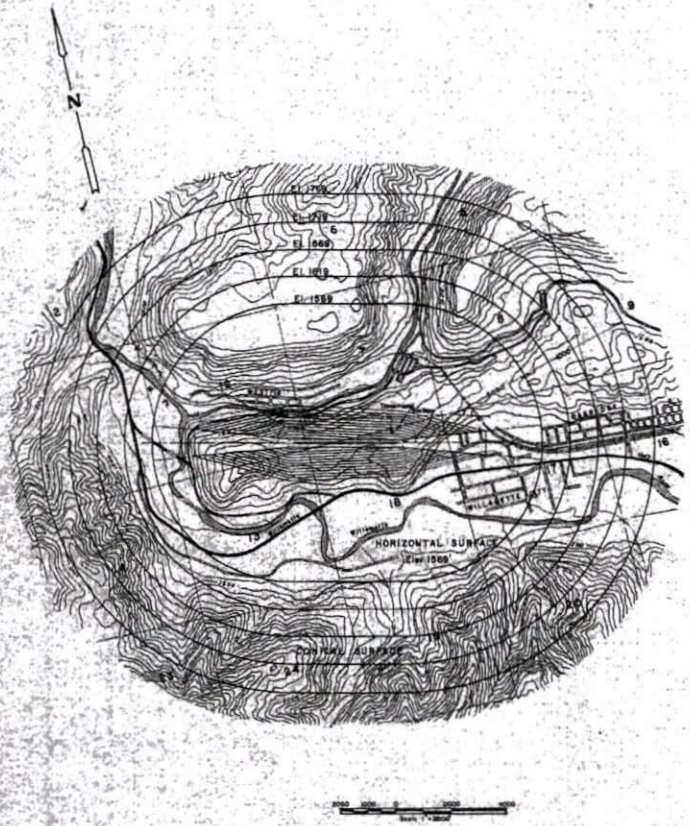
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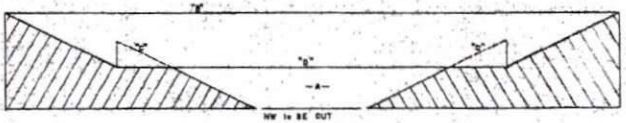
Zoning

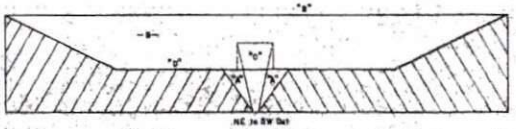
Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT O

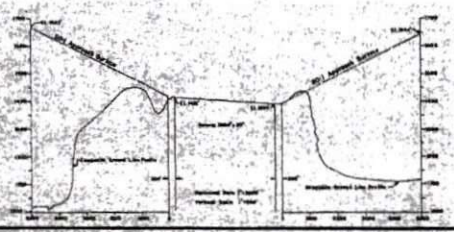






DEFINITIONS

1. PRIMARY SURFACE – The portion longitudinally centered on the runway, extending 200 feet beyond each end of a runway prepared hard surfaced runway. The width of the primary surface is equal to the width of the beginning of the runway's most precise approach surface.
2. "B" TRANSITIONAL SURFACE – The surface that extends upward and outward at right angles to the runway centerline and the runway centerline extended at a slope of 7:1 from the sides of the primary surface and from the sides of the approach surfaces to the horizontal and conical surfaces.
3. "C" HORIZONTAL SURFACE – The horizontal plane 150 feet above the established airport elevation beginning at its intersection with the transitional surfaces and extending to the beginning of the conical surface.
4. "D" CONICAL SURFACE – The surface extending upward and outward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4000 ft.
5. "E" APPROACH SURFACE – The surface longitudinally centered on the extended runway centerline and extending upward and outward from each end of the primary surface.
6. AIRPORT REFERENCE POINT – The point established at approximate geographical center of the airport landing area.
7. AIRPORT ELEVATION – The highest point on the usable landing area, which elevation is to be considered the elevation of the horizontal surface.



No.	Revision	By	Appr.	Date

OAKRIDGE STATE AIRPORT
OAKRIDGE, OREGON

APPROACH & CLEAR ZONE and ZONING PLAN

Prepared & Submitted By:
OREGON STATE AERONAUTICS DIVISION
SALEM, OREGON

Computed by	Date	Entered by	Date
Drawn by G.B.S.	Date	Checked by	Date
Traced by Stamps	Township 22S	Range 5E & 6E	W.M.
Sheet of	Section 13, 18 & 19	County Lane	Dwg. No. B-70

APPROVAL APPROVAL BLOCK

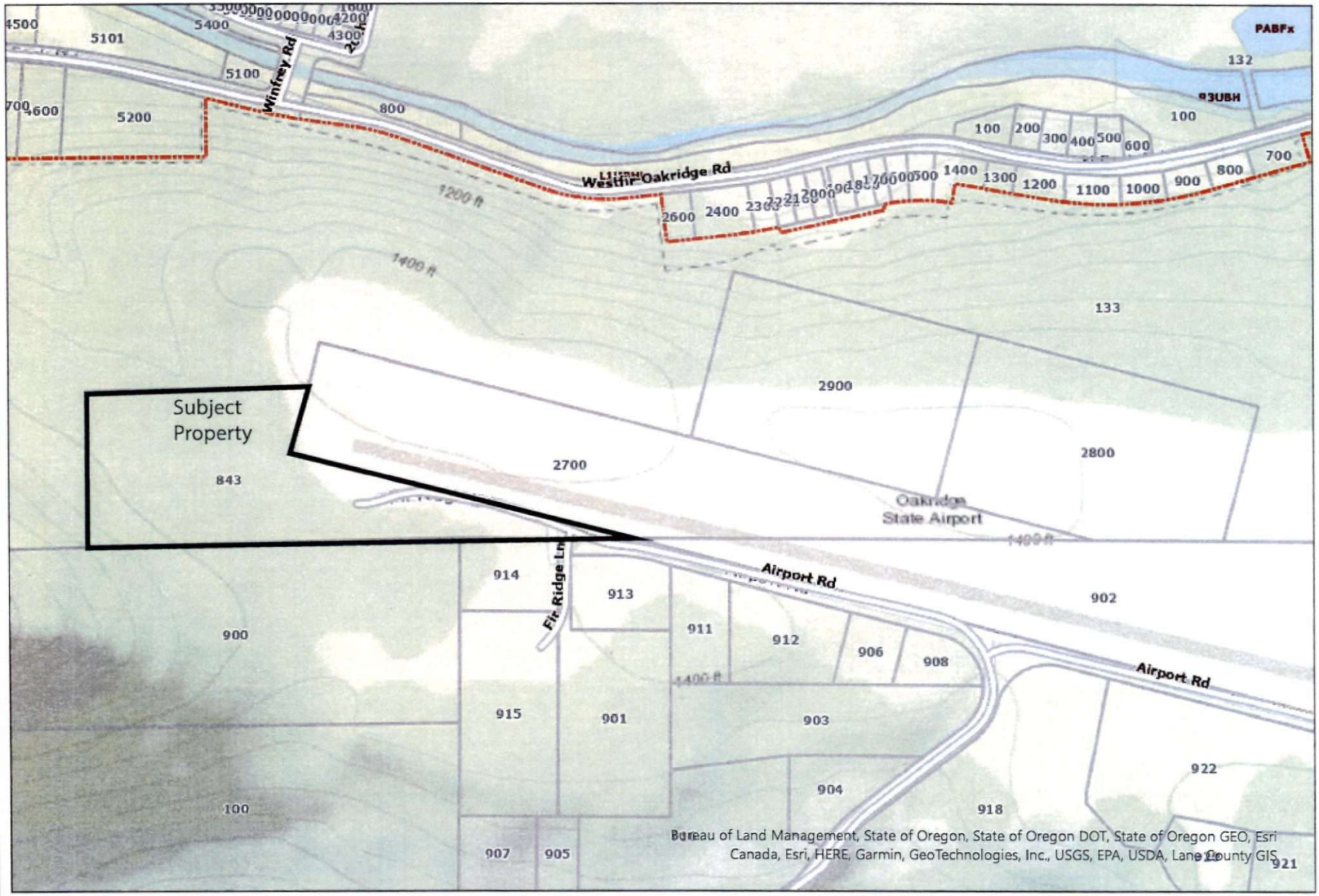
Project Engineer

Administrator

EXHIBIT P,

El. 1769
El. 1719
El. 1669
El. 1619
El. 1569
WESTFIR
Transitional Surface
OAKRIDGE
Hwy
River
WILLAMETTE CITY
Willamette
Willamette
HORIZONTAL SURFACE
Elev. 1569'
CONICAL SURFACE
M. Fk.
1200
1400
1600
2000
4000'
5000'
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EXHIBIT P2



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N

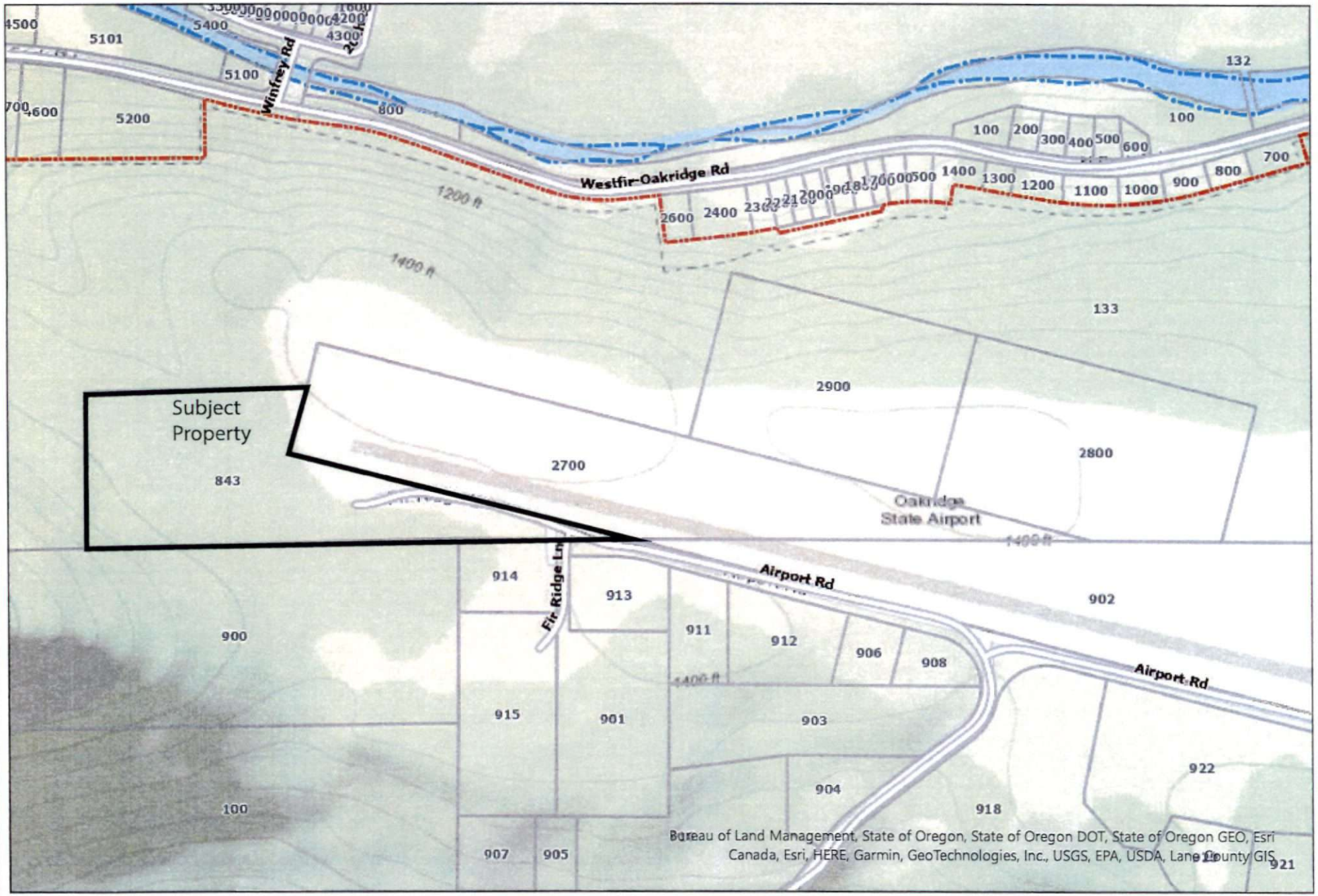
0 310 620 1,240 Feet

Wetlands

Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT Q



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N

0 310 620 1,240 Feet

Class I Streams

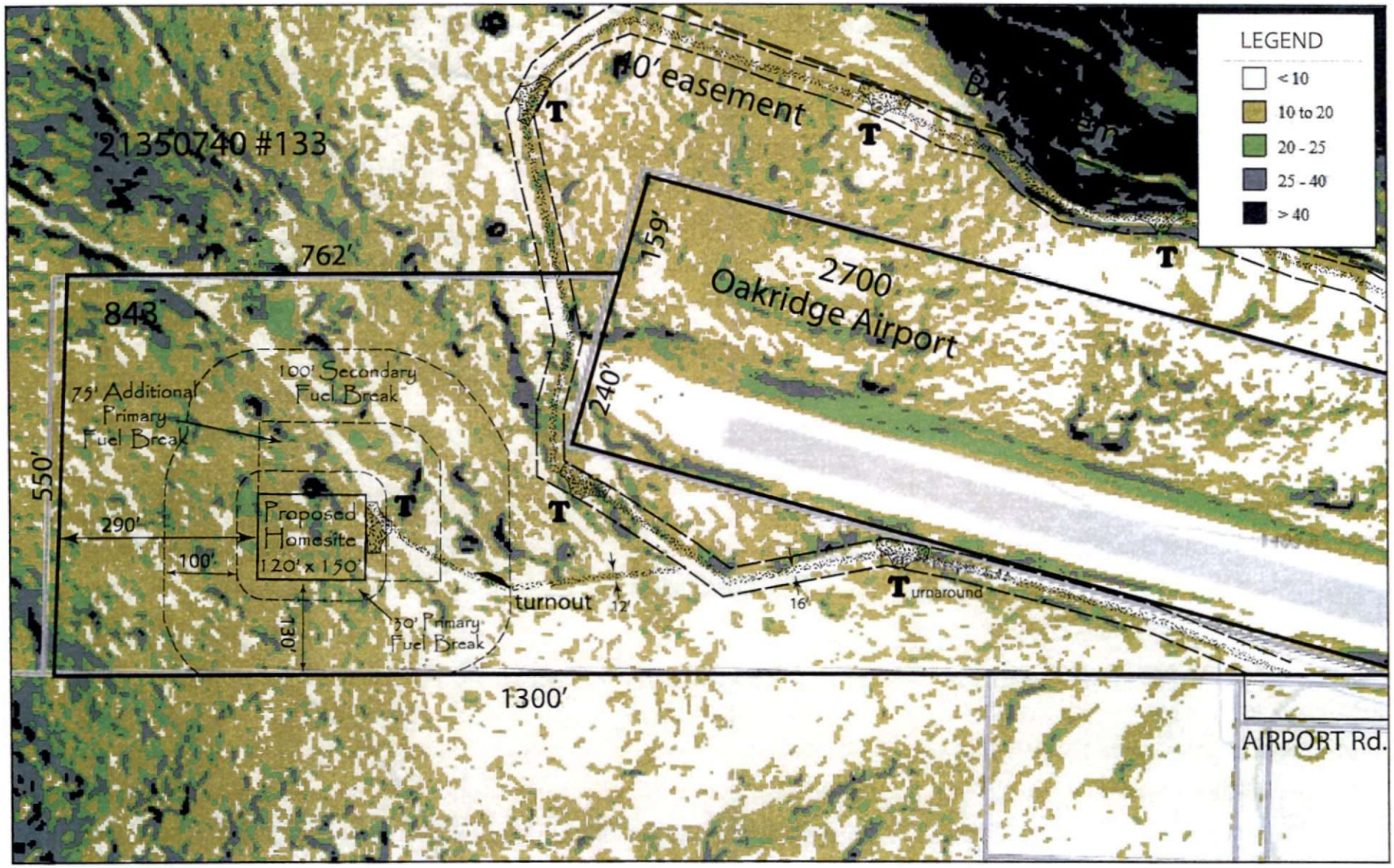
Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT R

Site Plan

LIDAR Data



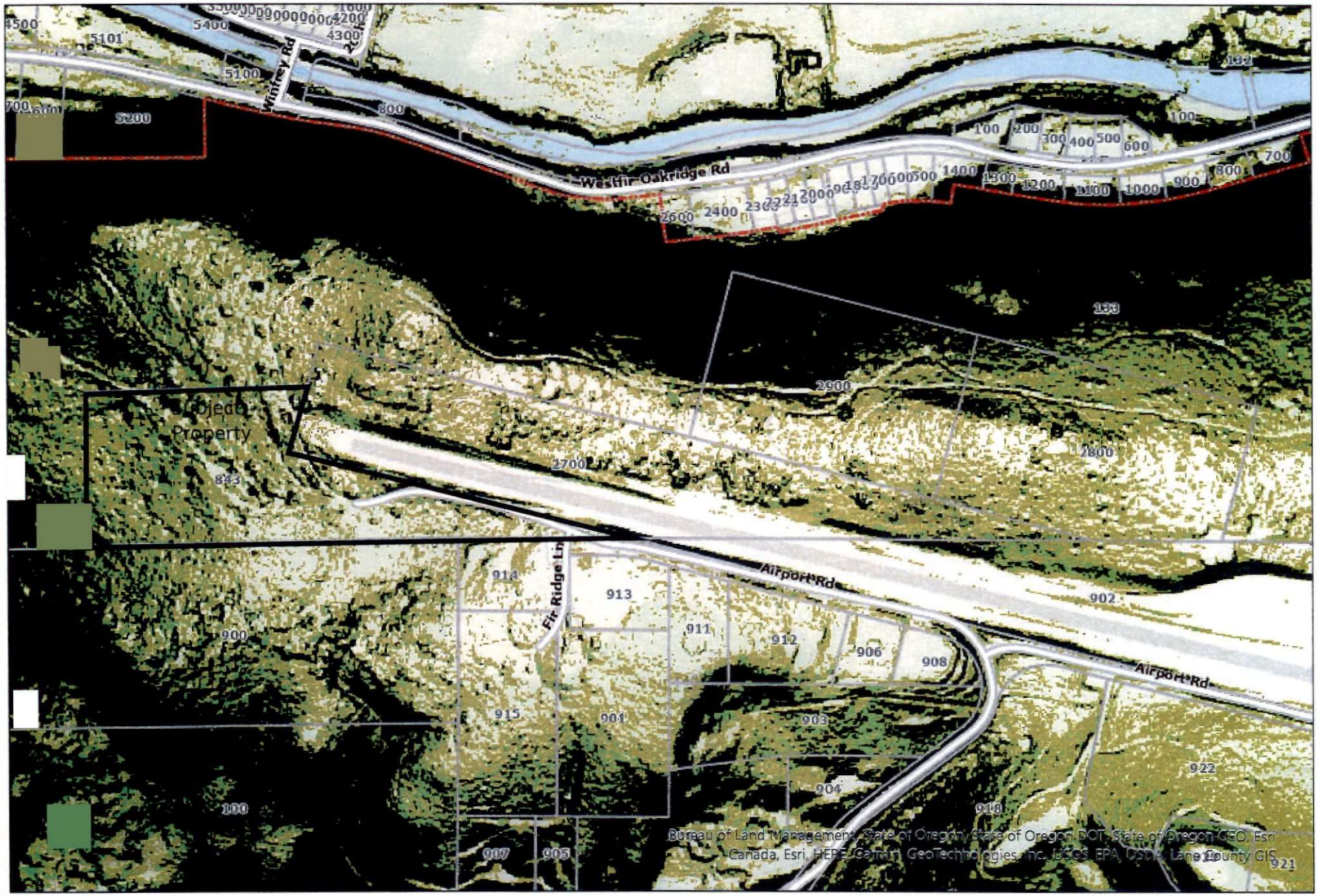
scale 1" = 200'

0 50 100 200 Feet

N

Subject Property Map 21-25-12 Taxlot 843

EXHIBIT S1



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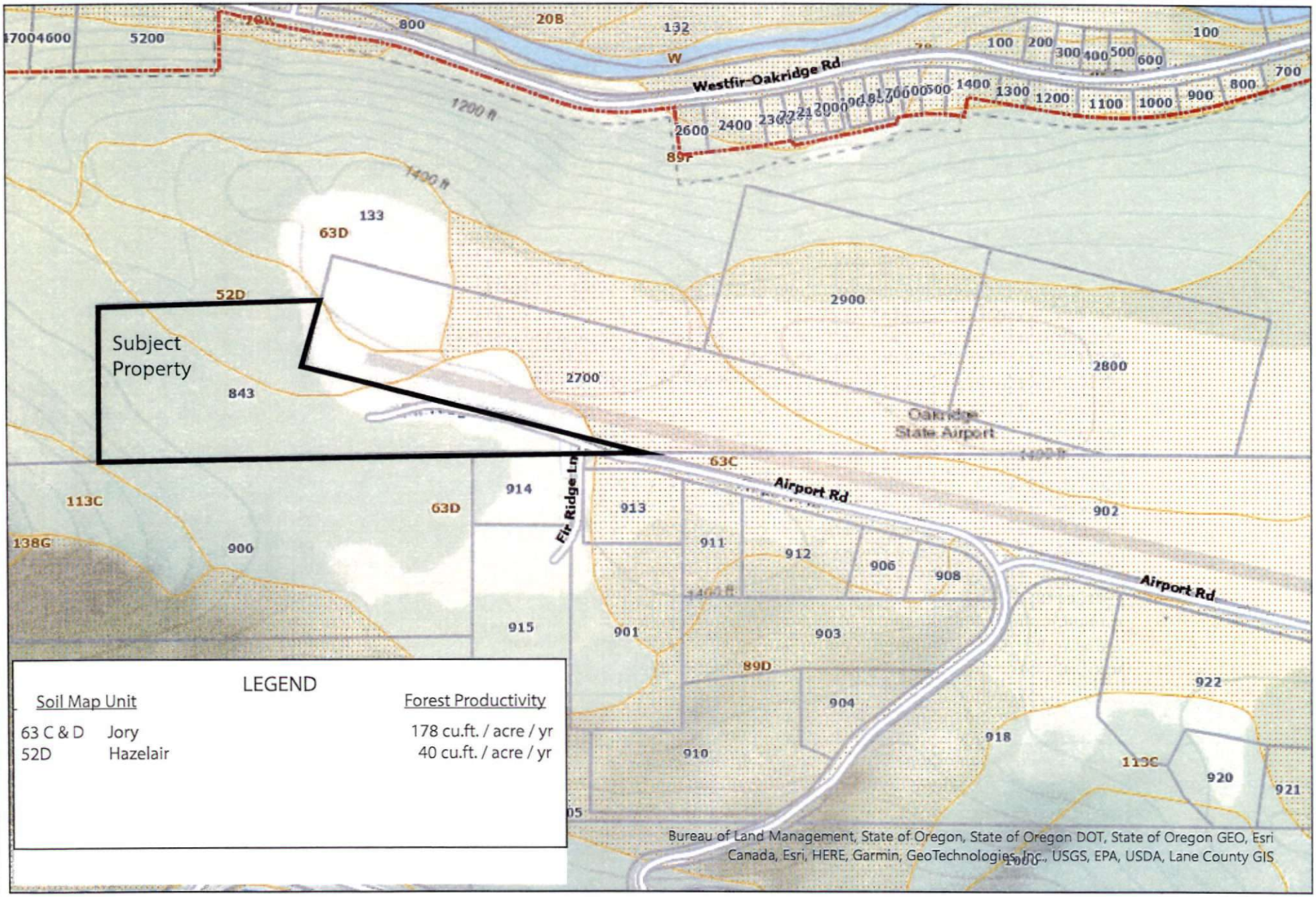
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LIDAR 8-16-20%

Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT S_2



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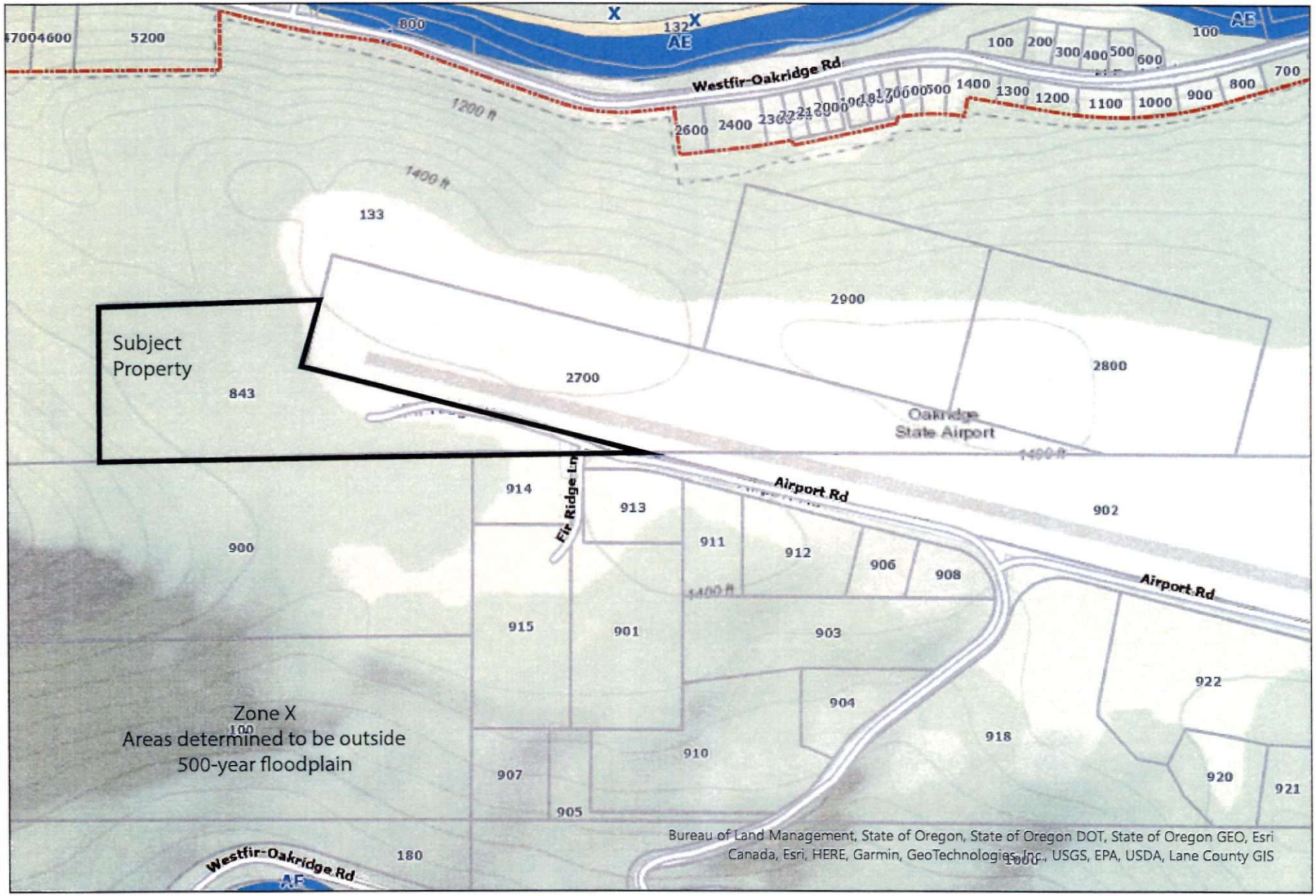
0 310 620 1,240 Feet

Soils

Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT T



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N

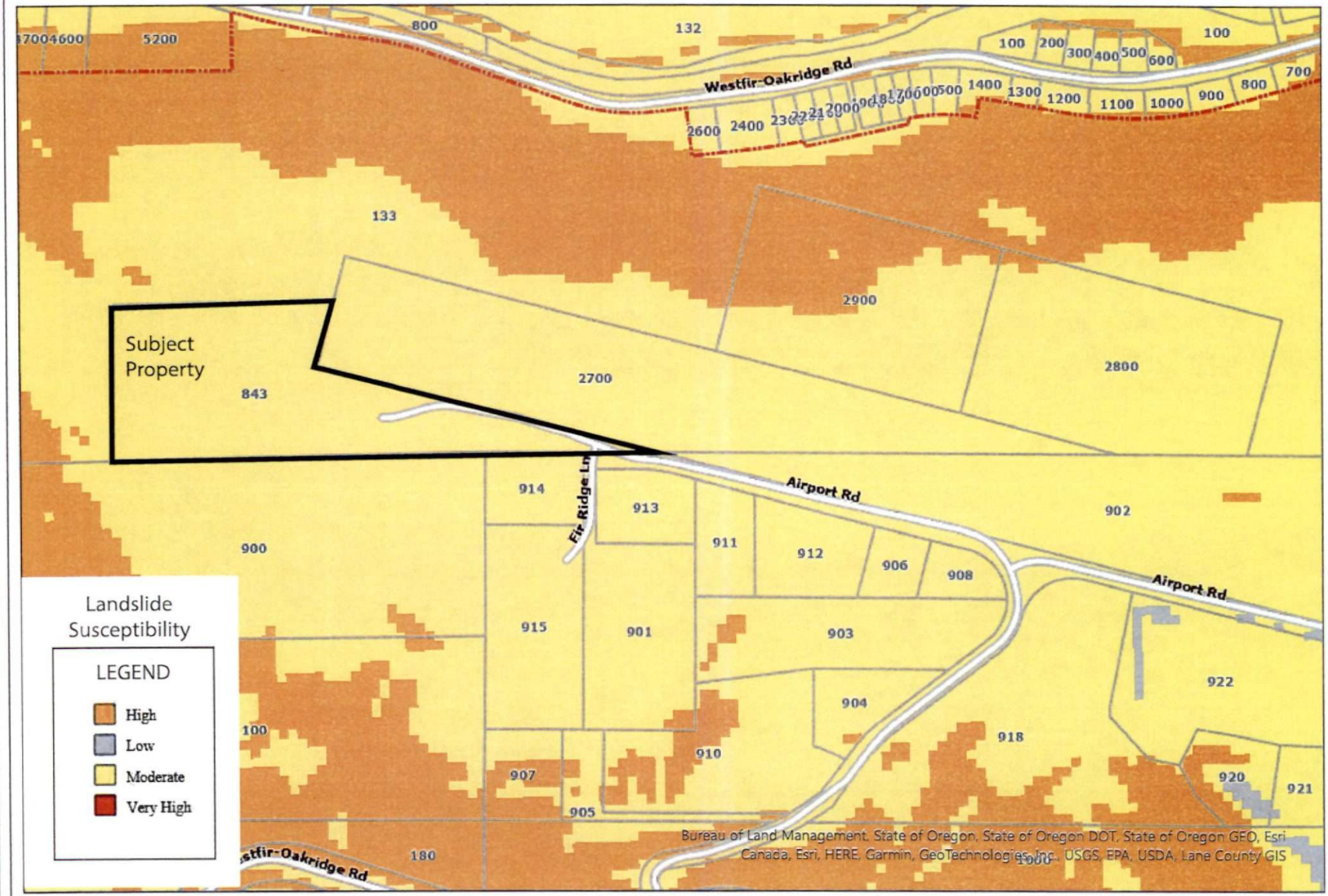
0 310 620 1,240 Feet

Flood Hazard

Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT U

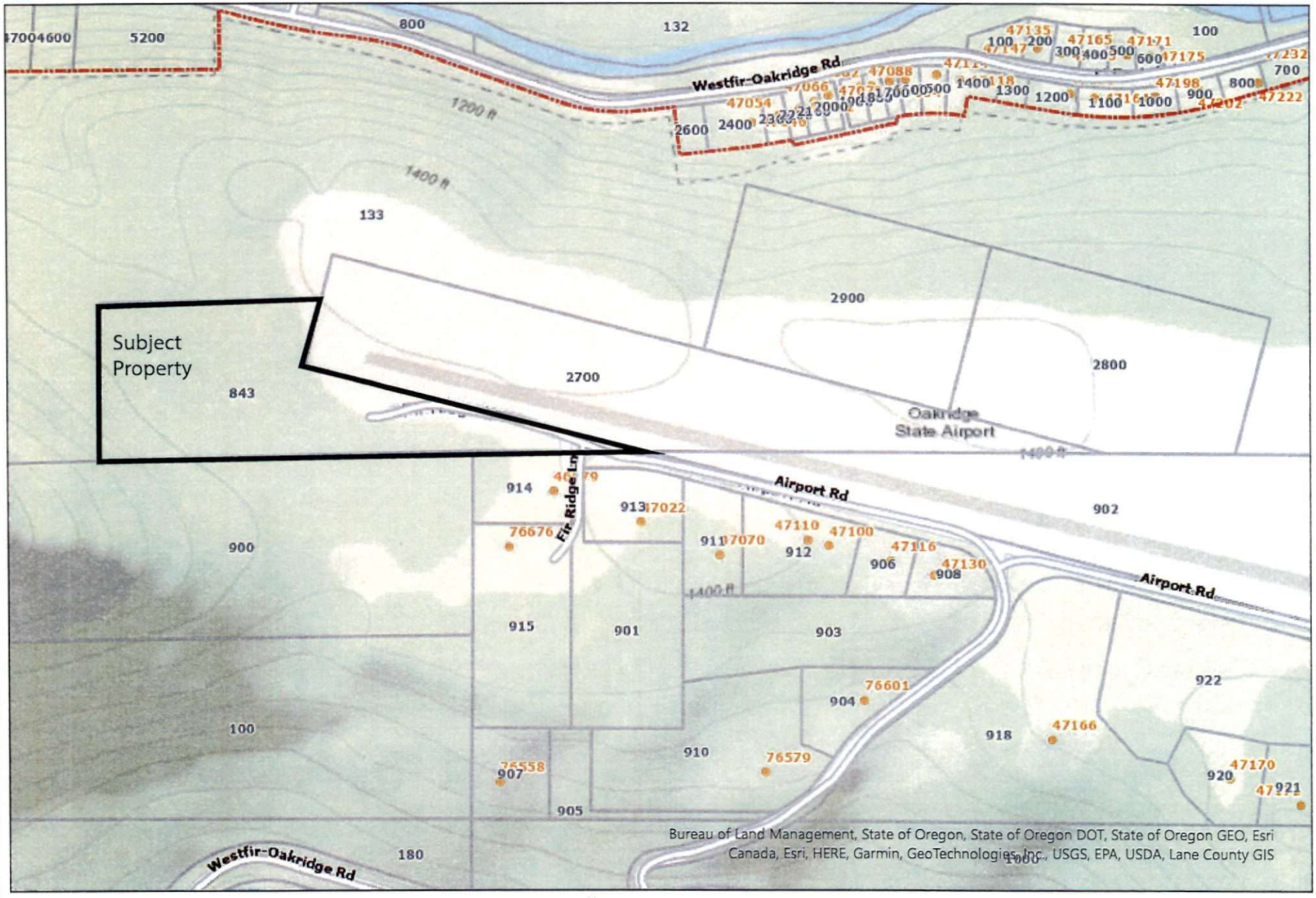


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Landslide Susceptibility

Map 21-25-12 Tax Lot 843 **EXHIBIT V**

Lane County, Oregon



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N

0 310 620 1,240 Feet

Dwellings

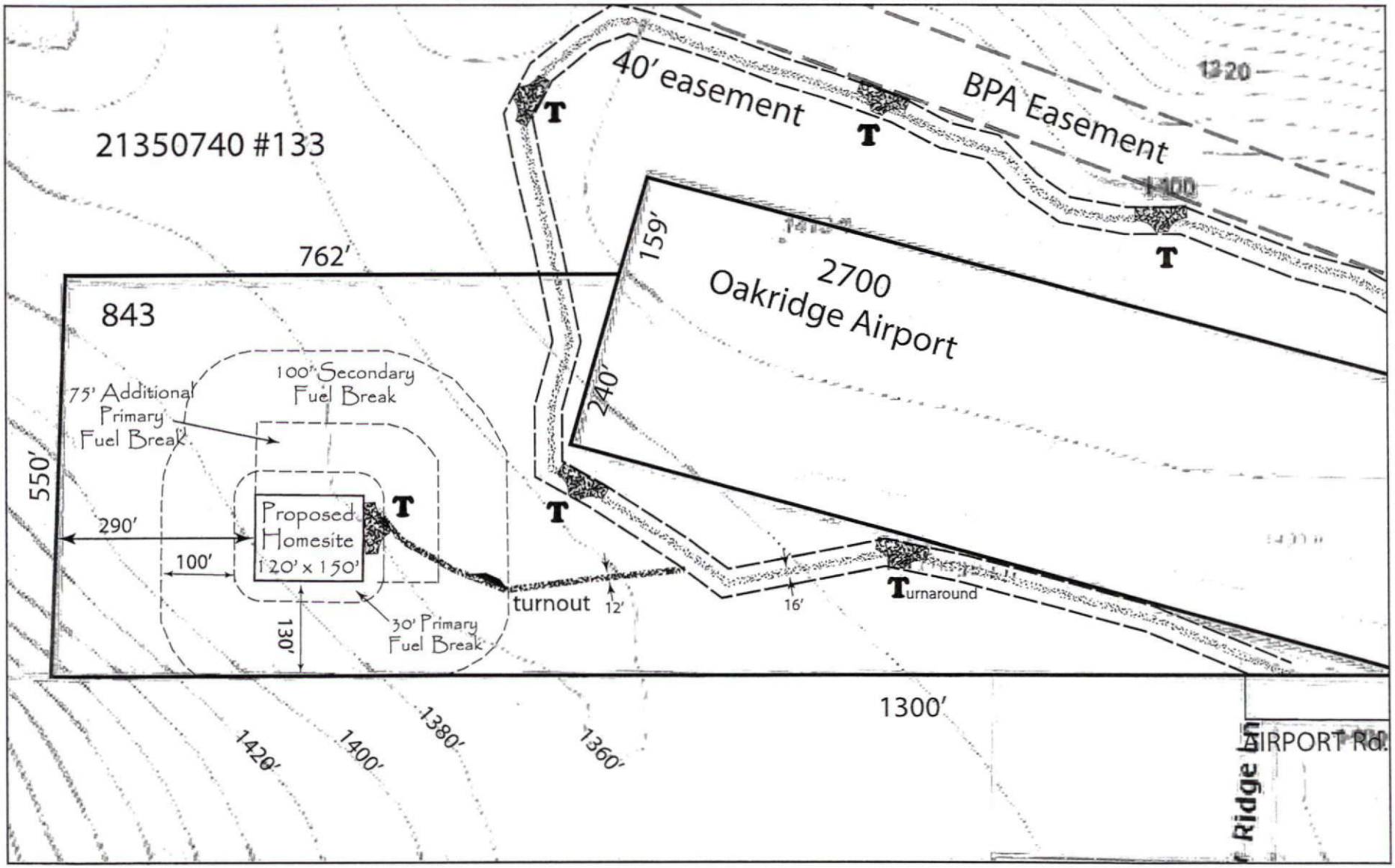
Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT W

Site Plan

Contours



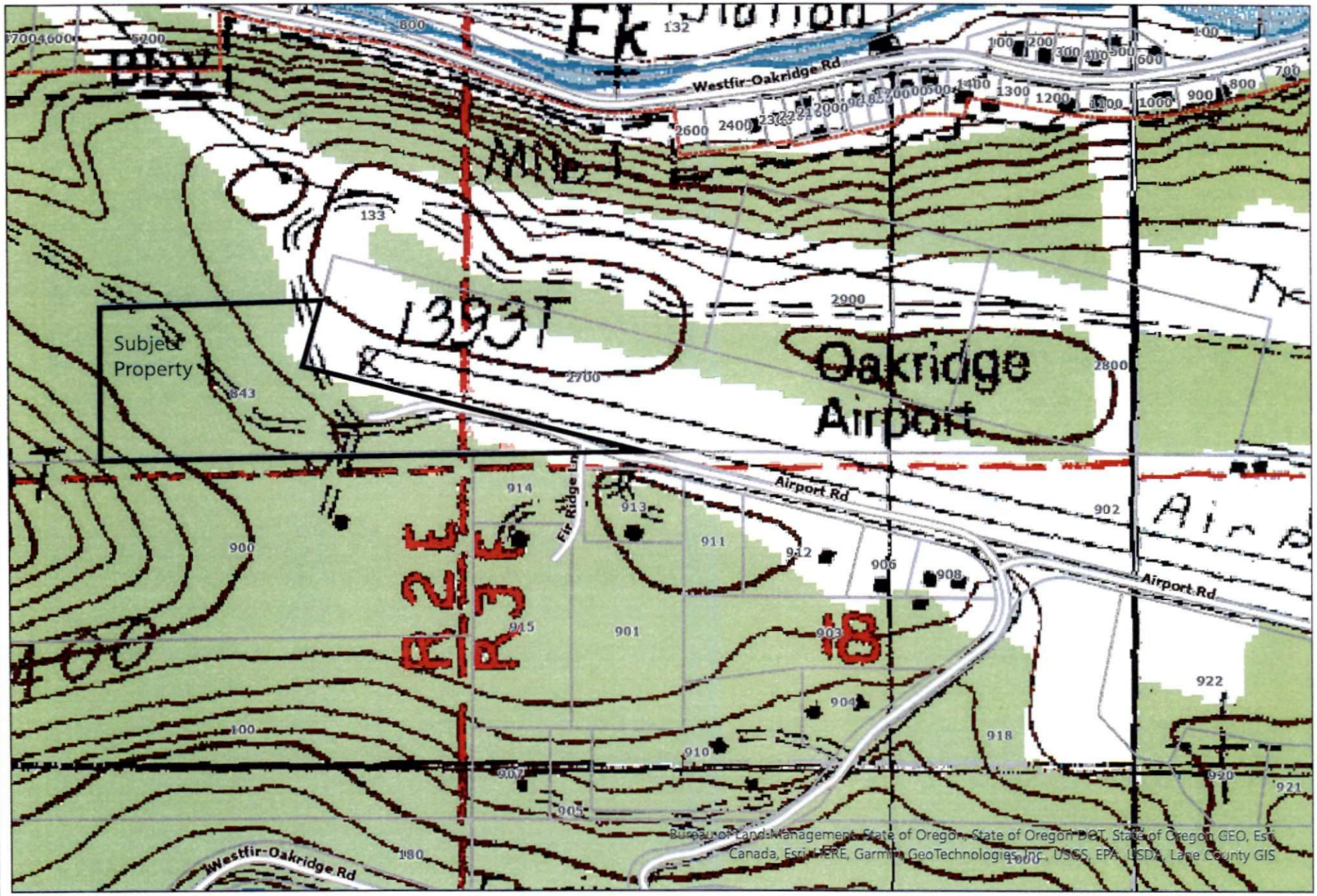
scale 1" = 200'

0 50 100 200 Feet

N

Subject Property Map 21-25-12 Taxlot 843

EXHIBIT X



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N

0 310 620 1,240 Feet

USGS Map

Map 21-25-12 Tax Lot 843

Lane County, Oregon

EXHIBIT Y

Notice of Pending Land Use Decision
By The Lane County Planning Director

LANE COUNTY OREGON

LAND MANAGEMENT DIVISION
http //www LaneCounty org/PW_LMD/

Mailing Date:	1-7-11
Department File:	PA 10-5485
Property Owner:	E.J.K. Investments, LLC
Applicant:	Nickell Land Surveying & Planning, LLC
Assessor's Map & Tax Lot:	21-25-12-00-00843
Address or Location:	Airport Road, Oakridge, OR
Acreage:	13.34 acres
Base Zone:	Impacted Forest Lands (F-2, RCP)
Combining Zone(s):	Airport Safety Combining Zone (/AS-RCP)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director **The conditions of approval are contained in the attached Exhibit A.**

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: Request for Director approval of a dwelling in the Impacted Forest Lands Zone (F-2, RCP) pursuant to the "Template Dwelling" provisions of Lane Code 16.211(5) and Lane Code 16.211(8).

Enclosed is a site plan of the subject property.

The proposed use that could be authorized by approval of the land use application is: One Dwelling

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact is **Sarah Wilkinson** and the telephone number where more information can be obtained is **541-682-4054**.

This decision will become final at 5 P.M. on 1-19-2011 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

EXHIBIT Z

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.

2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above-mentioned time that the decision becomes final.

3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: Sarah Wilkinson, Planner **Date:** 1/6/2011

Authorized by: Kent Howe, Planning Director **Date:** 6 Jan 11

EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Exhibits below are mailed to the Owner and Applicant only. Copies are available upon request. Please contact Chris at 541-682-3347.

Exhibit D: Staff Report
Exhibit E: Referral Response: Oregon Department of Aviation (d. 12/06/2010)
Exhibit F: Referral Response: Lane County Transportation Planning (d. 12/06/2010)

EXHIBIT A

CONDITIONS OF APPROVAL
PA 10-5485

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of PA 10-5485 is valid for a **four-year** period from the final date of approval. Lane County may grant an initial extension period of **two years** if:

   a. An applicant makes a written request with the required fee for an extension of the development approval period;

   b. The request is submitted to the county prior to the expiration of the development approval period;

   c. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period;

   d. The county determines that the applicant was unable to begin or continue development during the approval period for reasons which the applicant was not responsible; and

   e. The criteria and standards under which this proposal was granted have not changed.

Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

The following conditions shall be met prior to the expiration date in Condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

1. Submit to Lane County Assessment and Taxation a stocking survey report for the subject property, prepared by a qualified forester. A copy of the stocking survey report shall be submitted to Lane County Land Management Division with evidence of receipt by Lane County Assessment and Taxation.

2. Complete, notarize and record a Farm and Forest Management Practices Easement for the subject property (Attachment 1). Attach to the easement an "Exhibit A" that contains the legal description of the subject property. The easement is to be submitted to and recorded by Lane County Deeds and Records. A copy of the signed, notarized and recorded Farm and Forest Management Practices Easement shall be submitted to Lane County Land Management Division.

3. Physically establish primary and secondary fuel breaks. The minimum primary fuel break shall extend 30 feet in all directions around the dwelling. The secondary fuel break shall extend 100 feet in all directions around the primary fuel break. All fuel breaks must be maintained in perpetuity. Please contact 541-682-3989 for more information about fuel break requirements.

4. Submit evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629.

5. Construct the length of the private road and driveway, from the Airport Road right-of-way to the proposed dwelling, to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director. Please contact 541-682-3989 for more information about the requirements of LC 16.211(8)(e).

6. Submit written documentation from the Hazeldell RFD that states that the roads and driveway leading from the fire station to the proposed dwelling are adequate for their fire fighting equipment to access the use, fire fighting equipment and water supply.

   - OR -

   Submit written documentation from an Oregon Registered Professional Engineer that states that the roads and driveway leading from the fire station to the proposed dwelling meet the requirements of LC 16.211(8)(e).

7. Obtain approval of a road name for the private road (Attachment 2). The road name should not duplicate existing road names, or be similar sounding, or confusing. Upon approval of the road name, a road name sign shall be installed at the intersection of the private road and Airport Road (Attachment 3). The road name shall be noted on the Site Plan. Addressing requirements shall be addressed as part of the building permit process. Please contact 541-682-4196 for more information about road naming and/or signage.

8. No structure or object shall be erected, altered, allowed to grow or be maintained above the surface of the ground within the Approach Surface, as defined by LC 16.246(5)(a).

9. No structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface, which extends outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of seven horizontal feet to one vertical foot to the intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway.

   The center of the northern boundary of the proposed home site is located approximately 50 feet south of the Approach Surface. Accordingly, the height of the dwelling is not to penetrate 1426 feet above sea level, which is equivalent to 7 feet (50 ÷ 7 = 7) above the elevation of the runway (1419 feet above sea level). The applicant documented that the elevation of the proposed home site is 1402 feet above sea level. Accordingly, at the center of the northern boundary of the home site, the height of the dwelling is not to exceed 24 feet (1426 – 1402 = 24).

   The center of the proposed home site is located approximately 100 feet south of the Approach Surface. Accordingly, the height of the dwelling is not to penetrate 1433 feet above sea level, which is equivalent to 14 feet (100 – 7 = 14) above the elevation of the runway (1419 feet above sea level). The applicant documented that the elevation of the proposed home site is 1402 feet above sea level. Accordingly, at the center of the home site, the height of the dwelling is not to exceed 31 feet (1433 – 1402 = 31).

10. File a Notice of Construction or Alteration (Form 7460-1) with the Federal Aviation Administration and the Oregon Department of Aviation. A copy of the filed Notice shall be submitted to Lane County Land Management Division.

11. A Facility Permit is required for placement of facilities within the right-of-way of Airport Road (Attachment 4). Facilities and development include, but are not limited to, road improvements, sidewalks, new or reconstructed driveway or road approach intersections, utility placements, excavation, clearing, grading, culvert placement or replacement, storm water facilities, or any other facility, thing, or appurtenance [LC 15.205(1)]. **A facility permit is required for the existing private road approach connection to Airport Road.**

12. Storm water runoff from the subject property shall **not** be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate roadway storm water runoff.

13. Upon completion of conditions no.2 through no.12, complete and submit a Land Use Application for the Verification of Conditions for PA 10-5485, with the applicable fee (Attachment 5). **Attach to this application:**

    - ☐ Copy of the stocking survey report with evidence of receipt by Lane County Assessment and Taxation;
    - ☐ Copy of signed, notarized and recorded Farm Use and Forest Management Agreement;
    - ☐ Copy of a well constructor's report or a water use permit from the Water Resources Department;
    - ☐ Copy of filed Notice of Construction or Alteration (Form 7460-1).
    - ☐ Copy of facility permit;
    - ☐ Copy of letter from the **Hazeldell RFD** regarding adequacy of roads and driveway; and
    - ☐ Copy of the approved Site Plan that conforms with the approved plans, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. The Site Plan shall show the primary and secondary fuel breaks and the approved name for the private road.

14. As part of the Verification of Conditions process, the road, driveway and fuel breaks shall be field inspected by Land Management Division staff to verify the requirements stated in conditions no.3, 5 and 7 have been met. At the discretion of the Planning Director, failure to meet, upon first inspection, the minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(c) and (e), may require the owner to submit an application for Fuel Break Verification and Road Inspection, with the applicable fee.

15. Upon completion of the Verification of Conditions, submit a building or placement permit application for the proposed dwelling. To schedule a Permit Review Meeting, during which application for a building permit is submitted, please call 541-682-3577 or visit the Planner on Duty in the Land Management Division located in the Public Service Building at 125 E. 8th Ave., Eugene, OR. Please contact the Building Department at 541-682-3823 and the On-Site Sewage Department at 541-682-3754 with questions regarding building and sanitation requirements.

16. In the building or placement permit application submittal, submit a Site Plan that demonstrates the parcel configuration, proposed dwelling, driveway, and septic system, are located as on the approved Site Plan, unless modified by the Planning Director. The Site Plan shall show the primary and secondary fuel breaks and the approved name for the private road. At the discretion of the Planning Director, any deviation from the approved Site Plan may require an application for the Modification of Conditions.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

17. The proposed dwelling shall meet the following requirements, to be verified by the Lane County Building Official:

    a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.

    b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

    (Please contact a Lane County plans examiner at 541-682-3823 for more information about building code requirements)

The following conditions are provided for informational purposes and shall be fulfilled as applicable to the proposed development:

18. All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

19. All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

20. Private Access Easements shall conform to the applicable requirements of LC 15.055:

    (4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

(5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(6) Development on a lot or parcel taking access over a railroad or limited access road right-of-way may require documentation that permanent or long term access over the railroad or limited access road meeting the requirements of this section has been granted.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

(8) The County may require that at the entrance to a Private Access Easement road a sign be posted at private expense stating the name of the private road and the words "Private Road, Not Dedicated for Public Use or Maintained by Lane County."

21. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

"THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

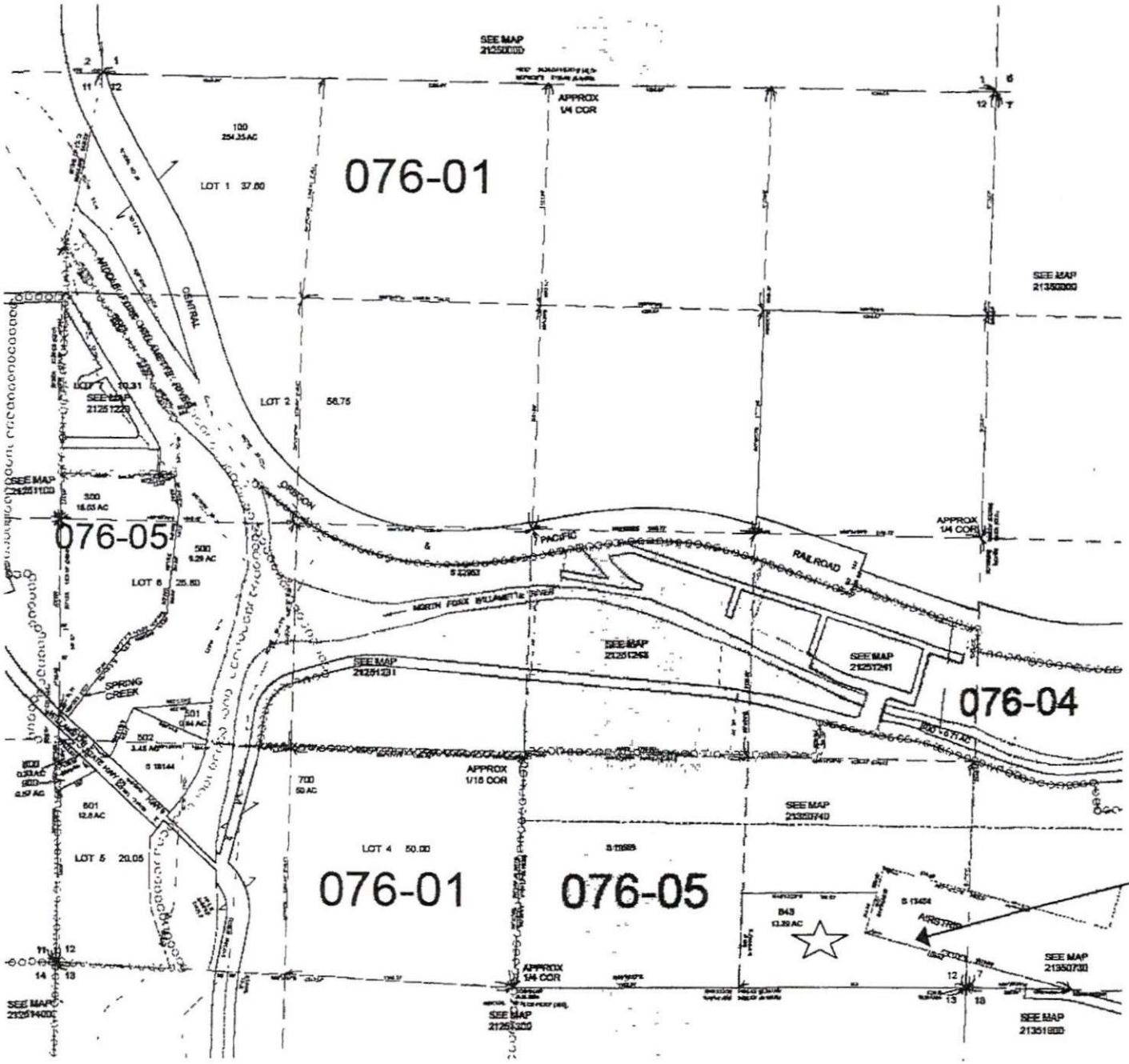
This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.

FOR ASSESSMENT AND TAXATION ONLY

SECTION 12 T.21S. R.2E. W.M.
Lane County
1" = 400'

Not to Scale

21251200
WESTFIR



CANCELLED:
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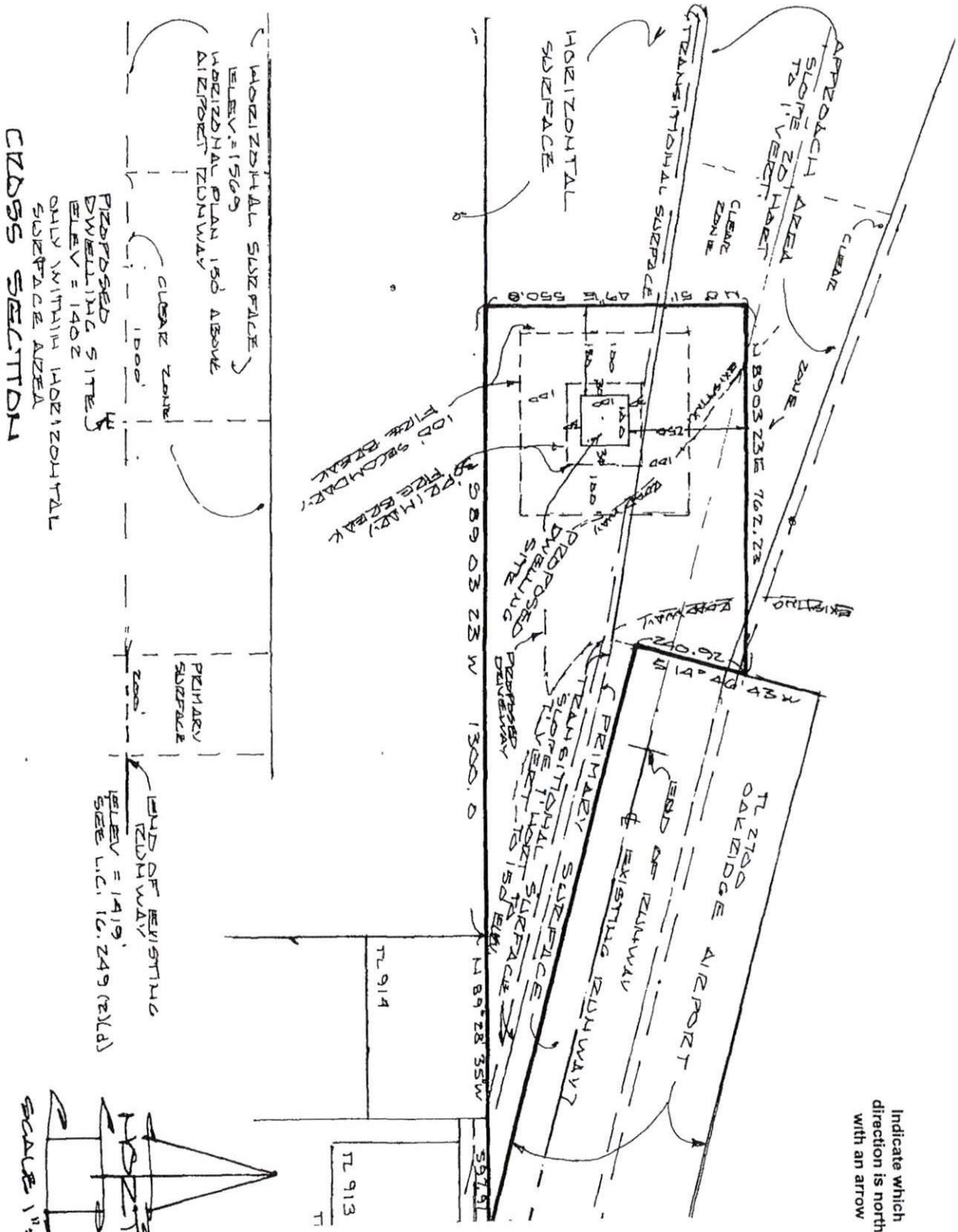
Vicinity Map (Not To Scale)

Department File PA 10-5485

EXHIBIT B

SITE PLAN SUBMITTAL FORM

OWNER NAME:	Map and Taxlot #:	APPLICANT NAME:
B3K INVESTMENTS	21-25-12 TL 843	NICKELL LAND SURVEYING
PHONE #		PHONE # 541-968-2005
ADDRESS:		ADDRESS:
30414 LEBLED ROAD	Scale: 1" = 200'	33225 CRAIG LOOP
EUGENE OR 97405		COTTAGE GROVE OR 97424



Indicate which direction is north with an arrow

Site Plan (Not To Scale)

Department File. PA 10-5485

EXHIBIT C

EXHIBIT D

Planning Director Approval of a Land Use Application

Staff Report

Department File:	PA 10-5485
Property Owner:	E.J.K. Investments, LLC
Applicant:	Nickell Land Surveying & Planning, LLC
Assessor's Map & Tax Lot:	21-25-12-00-00843
Address or Location:	Airport Road, Oakridge, OR
Acreage:	13.34 acres
Base Zone:	Impacted Forest Lands (F-2, RCP)
Combining Zone(s):	Airport Safety Combining Zone (/AS-RCP)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff Planner:	Sarah Wilkinson, 541-682-4054

I. PROPOSAL

Request for Director approval of a dwelling in the Impacted Forest Lands Zone (F-2, RCP) pursuant to the "Template Dwelling" provisions of Lane Code 16.211(5) and Lane Code 16.211(8).

II. BACKGROUND

On June 25, 2010, the applicant submitted to Lane County Land Management an application for a "Template Dwelling." On July 20, 2010, staff reviewed and deemed the application incomplete pending submittal of evidence of compliance with Lane Code 16.246. On November 17, 2010, the applicant submitted the required materials and staff accepted the application as complete. On November 26, 2010, staff solicited referral responses from affected agencies, service providers and surrounding property owners. Referral responses, applicable to the approval criteria, are incorporated in the findings and decision below. Copies of all written responses are included in the application file for this proposal.

III. PROPERTY AND PROJECT DESCRIPTION

a. **LOCATION:** The subject property is identified as Tax Lot No. 843 on Lane County Tax Assessor's Map 21-25-12. The property is located immediately west of the Oakridge Airport and is a legal lot, verified by PA 08-6330 and noticed by PA 08-6329.

b. **ZONING:** The subject property is designated Forest (F) in the Lane County Rural Comprehensive Plan, is zoned Impacted Forest Lands (F-2, RCP) and is within the Airport Safety Combining Zone (/AS-RCP).

c. **SITE DESCRIPTION AND SURROUNDING USES:** The subject property is 13.34 acres in size and vacant. The property slopes upward from the east to the west and contains a scattering of trees. The property is bordered to the east by the Oakridge Airport and is surrounded to the

north and west by land zoned Impacted Forest Lands (F-2, RCP), to the south by land zoned Non-Impacted Forest Lands (F-1, RCP) and to the east by land zoned Airport Operations (AO-RCP) and Rural Residential (RR-5, RCP).

d. **PROJECT:** The applicant proposes to construct a dwelling on the subject property. The proposed 100-foot wide by 100-foot deep home site is located 250 feet south of the north property line, 200 feet north of the south property line, 400 feet west of the east property line, and 130 feet east of the west property line. The proposed dwelling is to be accessed from Airport Road, a County road, by an existing private road that also serves the nearby Tax Lot No. 133, 2900 and 2800. The proposed dwelling is to be accessed from the existing private road by an existing private driveway. The applicant proposes to construct a 120-foot long extension of the existing driveway.

IV. APPLICABLE CRITERIA AND FINDINGS OF FACT

Staff evaluated the subject proposal pursuant to the applicable criteria found in Lane Code 16.211(5) and Lane Code 16.211(8). The code language is in **boldface** type, followed by the findings of fact.

A. Conformity with Lane Code 16.211(5):

One single-family dwelling or manufactured dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) The tract upon which the dwelling or manufactured dwelling will be located has no other dwellings or manufactured dwellings on it. As used in LC 16.211(5), "tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

Finding 1: Staff finds the subject proposal meets this criterion. The subject tract consists of only one parcel in the ownership of "EJK Investments LLC" (Assessor's Map & Tax Lot: 21-25-12-00-00843). The tract contains no other dwellings or manufactured dwellings.

(b) The lot or parcel upon which the dwelling or manufactured dwelling will be located was lawfully created.

Finding 2: Staff finds the subject proposal meets this criterion. The property is a legal lot, verified by PA 08-6330 and noticed by PA 08-6329.

(c) The lot or parcel upon which the dwelling or manufactured dwelling will be located:

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least eleven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(iii)(aa) above.

Finding 3: Staff finds the subject proposal meets this criterion. The subject property is composed of soils that are capable of producing at least 85 cubic feet per acre per year of wood fiber. The subject property abuts Airport Road, which was accepted as a County road in 1978 (R878-80868) and 1980 (1052-R-03833). Per LC 16.211(5)(c)(iii)(aa)(A), the applicant documented the presence of at least 11 other lots or parcels that existed on January 1, 1993, within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the subject property:

- Map 21-35-18, Tax Lot No. 914, 913, 911, 912, 906, 908, 903, 904, 902
- Map 21-25-13, Tax Lot No. 900
- Map 21-35-07-30, Tax Lot No. 2700

The verification of the status of the 11 lots or parcels referenced above was preliminary and does not constitute a determination of legal lot status. Lots or parcels within urban growth boundaries were not used to satisfy the eligibility requirements in LC 16.211(5)(c).

(bb) At least three dwellings or permanent manufactured dwellings existed on January 1, 1993, on the other lots or parcels described in LC 16.211(5)(c)(iii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(iii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings or permanent manufactured dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle.

Finding 4: Staff finds the subject proposal meets this criterion. The applicant documented three dwellings that existed on January 1, 1993 on the lots or parcels listed in Finding 3:

- Map 21-35-18, Tax Lot No. 912, 908, 904

(d) Approval of a dwelling or manufactured dwelling shall comply with the requirements in LC 16.211(5)(d)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

Finding 4: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, a stocking survey report for the subject property, prepared by a qualified forester, shall be submitted to Lane County Assessment and Taxation. A copy of the stocking survey report with evidence of receipt by Lane County Assessment and Taxation shall be submitted to Lane County Land Management Division.***

(e) Prior to land use clearance of a building permit for the dwelling or manufactured dwelling, when the lot or parcel on which the dwelling or manufactured dwelling will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(6), "Exhibit A," shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

Finding 5: This criterion does not apply to the subject proposal. The subject tract consists of only one parcel in the ownership of "EJK Investments LLC" (Assessor's Map & Tax Lot: 21-25-12-00-00843).

(f) Land use approval of a permit described in LC 16.211(5) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(5)(f) above may be made and approved pursuant to LC 14.700(2).

Finding 6: Approval of the subject proposal shall be valid for four years from the final date of approval as indicated in the Conditions of Approval (Exhibit A). Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(5)(f) above may be made and approved pursuant to LC 14.700(2).

(g) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Finding 7: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, a Farm and Forest Management Practices Easement for the subject property shall be submitted to and recorded by Lane County Deeds and Records. A legal description of the property shall be attached to the easement as "Exhibit A." A copy of the recorded Farm and Forest Management Practices Easement shall be submitted to Lane County Land Management Division.***

B. Conformity with Lane Code 16.211(8):

The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h) and (j), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

Finding 8: Staff finds the subject proposal meets this criterion:

a. **Near dwellings or manufactured dwellings on other tracts.** The proposed dwelling is to be sited approximately 1,250 feet west of the nearest dwelling located to the east on Tax Lot No. 914, as identified on Lane County Tax Assessor's Map 21-35-18.

b. **Near existing roads.** The proposed dwelling is to be located near an existing private road.

c. **Most level part of the tract.** The applicant stated that the proposed dwelling is to be sited on a level part of the subject property in an area containing slopes of 3 – 6 percent.

d. **Least suitable portion of the tract for forest use.** The entirety of the subject property is undeveloped by non-forest uses and is composed of high-yielding soils. The modestly sized 100-foot wide by 100-foot deep proposed home site is located in an open area, near an existing private road, to minimize intrusion and to minimize the amount of forest lands used to site access roads, service corridors and structures.

e. **30 feet away from any ravine, ridge or slope greater than 40 percent.** The applicant stated that the proposed dwelling is to be sited at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

Finding 9: Staff finds the subject proposal meets this criterion. The entirety of the subject property is undeveloped by non-forest uses and is composed of high-yielding soils. The modestly sized 100-foot wide by 100-foot deep proposed home site is located in an open area, near an existing private road, to minimize intrusion and to minimize the amount of forest lands used to site access roads, service corridors and structures.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 and at least 30 feet from the adjoining lines of property zoned F-2 or EFU; and

Finding 10: Staff finds the subject proposal meets this criterion. The subject property is not adjacent to property zoned EFU. The proposed dwelling is to be sited at least 130 feet from adjoining property zoned F-2. The proposed dwelling is to be sited less than the required 500 feet from an adjacent property to the south zoned F-1 (Map & Tax Lot: 21-25-13-00-00900). Staff finds, however, that it is not possible to site the proposed dwelling at the required distance as the dwelling would encroach into the Approach Surface of the Airport Safety Combining Zone. Per LC 16.246(4), no structure or object above the surface of the ground is allowed to be erected, placed, grown or maintained within the Approach Surface. The proposed dwelling is located as far away as possible from the adjacent property zoned F-1 given the constraints of both the Approach Surface and the required fire siting standards, which require a 130-foot combined primary and secondary fuel break surrounding the dwelling in all directions.

(iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met; and

Finding 11: This criterion does not apply to the subject proposal. The subject property neither contains nor is adjacent to a Class I stream.

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 30 feet from all other property lines; and

(cc)The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

Finding 12: Staff finds the subject proposal meets this criterion. The proposed dwelling is to be sited at least 20 feet from Airport Road, the nearest right-of-way of a County road, and at least 30 feet from all other property lines. The location of the proposed dwelling complies with LC 16.211(8)(a), as discussed above, and 16.211(8)(b) through (d), as discussed below.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

Finding 13: Staff finds the subject proposal meets this criterion. The entirety of the subject property is undeveloped by non-forest uses and is composed of high-yielding soils. The modestly sized 100-foot wide by 100-foot deep proposed home site is located in an open area, near an existing private road, to minimize intrusion and to minimize the amount of forest lands used to site access roads, service corridors and structures.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:

(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100

40	30	150

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

Finding 14: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be located in a level area that contains slopes of less than 10-percent within 30 feet of the dwelling. There is sufficient area to establish the required primary and secondary fuel breaks in all directions around the dwelling. ***As a condition of approval, primary and secondary fuel breaks shall be established and maintained. The minimum primary fuel break shall extend 30 feet in all directions around the dwelling. The minimum secondary fuel break shall extend 100 feet in all directions around the dwelling. All fuel breaks must be maintained in perpetuity.***

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. If the dwelling or manufactured dwelling are not within a FPD, the applicant shall provide evidence that the applicant has submitted a written request for a long term services contract with the nearest FPD and to be annexed into the FPD boundaries. If the FPD and the Planning Director determine that inclusion within a FPD or contracting for residential fire protection is impracticable, the Planning Director shall require as a condition of approval for the dwelling or manufactured dwelling that the property owner implement and maintain a Fire Protection Plan as an alternative means for protecting the dwelling or manufactured dwelling from fire hazards, consistent with the following standards:

Finding 15: Staff finds the subject proposal meets this criterion. The subject property is located within the Hazeldell Rural Fire District.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is

repaired or replaced in one year, the roof covering shall be made to comply with this section.

Finding 16: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs. Building plans for the proposed dwelling shall meet this requirement. Compliance with this requirement shall be field verified by Land Management Division staff.***

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

Finding 17: Staff finds that it is feasible for the subject proposal to meet this criterion. The applicant proposes to drill a new well to provide domestic water supply. ***As a condition of approval, evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629.***

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of

compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

Finding 18: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be accessed from Airport Road by an existing private road and driveway. The applicant proposes to construct a 120-foot long extension of the existing driveway. ***As a condition of approval, the length of the private road and driveway, from the Airport Road right-of-way to the proposed dwelling, shall be constructed to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director.***

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not more than 500 feet. Turnarounds shall comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Finding 19: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be accessed from Airport Road by a private road that serves the nearby Tax Lot No. 133,

2900 and 2800. The private road does not appear to exit onto any other roads and is therefore considered to be a dead-end road. ***As a condition of approval, the length of the private road and driveway, from the Airport Road right-of-way to the proposed dwelling, shall be constructed to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director.***

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Finding 20: This criterion does not apply to the subject proposal. The existing private road and driveway do not contain bridges or culverts. No bridges and culverts are proposed.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

Finding 21: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, information shall be provided from the Hazeldell Rural Fire District demonstrating that the roads and driveway leading from the fire station to the dwelling are adequate for fire fighting equipment to access the use, fire fighting equipment and water supply; or written documentation from an Oregon Registered Professional Engineer shall be submitted that states the roads and driveway meet the requirements of LC 16.211(8)(e)***

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

Finding 22: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be accessed from an existing unnamed private road that provides access to Tax Lot No. 843, 133, 2900 and 2800. It is County policy to require the naming of a private road when more than three uses/parcels are served. ***As a condition of approval, the private road is required to be named. The road name should not duplicate existing road names, or be similar sounding, or confusing. Upon approval of the road name, a road name sign shall be installed at the intersection of the private road and Airport Road. The road name shall be stated on the site plan. Addressing requirements shall be addressed as part of the building permit process.***

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

Finding 23: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be accessed from Airport Road by an existing private road and driveway, which exceeds 200 feet in length. ***As a condition of approval, the length of the private road and driveway, from the Airport Road right-of-way to the proposed dwelling, shall be constructed to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director.***

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

Finding 24: This criterion does not apply to the subject proposal. The applicant did not request modification of the standards in LC 16.211(8)(e)(i) through (vi).

V. OTHER DEVELOPMENT STANDARDS

Lane Code 16.246, Airport Safety Combining Zone:

3. Use Limitations. In a /AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

a. The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

Finding 25: Staff finds that it is feasible for the subject proposal to meet this criterion. The subject property is located within the Approach Surface and Transitional Surface of the Oakridge Airport. Per LC 16.246(5)(a), the Approach Surface is longitudinally centered on the runway centerline, extending outward and upward from the ends of the Primary Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge. Per LC 16.246(4), no structure or object is allowed to be erected, placed, grown or maintained within the Approach Surface. Compliance with LC 16.246(4) is a condition of approval of the subject proposal.

Per LC 16.246(5)(e), the Transitional Surface extends outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of one horizontal foot to seven vertical feet to its intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above

the runway. LC 16.246(5)(e) contains a typographical error. Per LC 16.246(9) and OAR 660-013-0070(1)(a), the Transitional Surface extends outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of seven horizontal feet to one vertical foot to the intersection with the Horizontal Surface. The center of the northern boundary of the proposed home site is located approximately 50 feet south of the Approach Surface. Accordingly, the height of the dwelling is not to penetrate 1426 feet above sea level, which is equivalent to 7 feet (50 ÷ 7 = 7) above the elevation of the runway (1419 feet above sea level). The applicant documented that the elevation of the proposed home site is 1402 feet above sea level. Accordingly, at the center of the northern boundary of the home site, the height of the dwelling is not to exceed 24 feet (1426 – 1402 = 24).

The center of the proposed home site is located approximately 100 feet south of the Approach Surface. Accordingly, the height of the dwelling is not to penetrate 1433 feet above sea level, which is equivalent to 14 feet (100 ÷ 7 = 14) above the elevation of the runway (1419 feet above sea level). The applicant documented that the elevation of the proposed home site is 1402 feet above sea level. Accordingly, at the center of the home site, the height of the dwelling is not to exceed 31 feet (1433 – 1402 = 31). As a condition of approval, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface.

b. All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

c. All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

Finding 26: Staff finds that it is feasible for the subject proposal to meet this criterion. Per referral response from the Oregon Department of Aviation (Exhibit E), the applicant is required to file a Notice of Construction or Alteration (Form 7460-1) with the Federal Aviation Administration and Oregon Department of Aviation. As a condition of approval, all structures and uses shall comply with LC 16.246(3)(b) and (c).

Lane Code Chapter 15, Access Requirements:

Per referral response from Lane County Transportation Planning (Exhibit F):

Access to the proposed dwelling is from Airport Road which is a Lane County maintained rural road (LCR). It is functionally classified as a Local road having a minimum right-of-way width of 50 feet for development setback purposes [LC 15.070(1)(c)(i)(gg)].

In accordance with Lane Manual Chapter 15.515, storm water run off from private property shall not be directed to the Lane County road right-of-way, nor into any Lane County drainage facility, including

roadside ditches. Ditches adjacent to County roads are designed solely to accommodate roadway storm water run off.

A facility permit could not be found for the easement approach connection to Airport Road. A facility permit is required.

The following information is provided for informational purposes:

LC 15.055 - Minimum Requirements for Private Access Easements

(4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

(5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(6) Development on a lot or parcel taking access over a railroad or limited access road right-of-way may require documentation that permanent or long term access over the railroad or limited access road meeting the requirements of this section has been granted.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

(8) The County may require that at the entrance to a Private Access Easement road a sign be posted at private expense stating the name of the private road and the words "Private Road, Not Dedicated for Public Use or Maintained by Lane County."

LC 15.055(2)(c), "...lands within a Forest Zone shall be governed by the siting and development standards of the applicable zoning district."

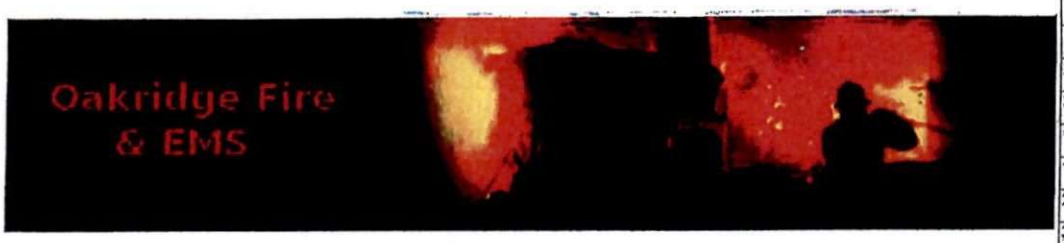
Transportation Planning defers to Land Management to ensure that the easement meets Forest Zone requirements from Airport Road to the proposed dwelling.

VI. DECISION

Based upon the findings above and the required conditions of approval, staff finds the applicant's request for approval of a dwelling in the Impacted Forest Lands Zone (F-2, RCP) to be consistent with applicable requirements of Lane Code 16.211(5) and Lane Code 16.211(8). The applicant's request is **approved** subject to the Conditions of Approval stated in Exhibit A.

Oakridge Fire Department

Please Sign In



Dec	January 2021					Feb
Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

Useful Links:

Oakridge City Website

Lane County Fire Defense Board

Oregon Volunteer Firefighters

Lane Regional Air Pollution Authority

e-AIRS Firecad

Homeland Security

FEMA

Citizen Corps Councils

Welcome to Oakridge Fire & EMS!

Supporting Fire and EMS Services through Community Involvement

The City of Oakridge is dedicated to providing life saving paramedic and fire services to the citizens of the community. Ensuring that lives, as well as structures, can be saved in an emergency is a critical service that ensures prosperity, growth, and the well being of the general public.





Oakridge is nestled in Eastern Lane County off of Oregon Route 58, also known as Willamette Highway 18. Oakridge is a small community with a population of 3,500. Oakridge Fire & EMS is a Fire Department governed under the City of Oakridge. The Fire Department is a combination department consisting of full-time career staff under IAFF Local 851, part-time staff and volunteers that operate under a non-profit 501 (c)3. Oakridge Fire & EMS operates 2 full-time medic units and a 3rd out when available. Our Ambulance Service Area (ASA) is 2,200 square miles, the largest in the county, with mostly rural forested area. Our Fire Service area is Oakridge city limits. We also work under an Intergovernmental Agreement (IGA) with with both Hazeldell Rural Fire District and the City of Westfir to respond for all emergency calls. We respond to all types of emergency calls as far East as Willamette Pass Ski area, mp 61, as far west as mp 17 bordering Dexter Rural Fire District. Oakridge Fire & EMS responds to over 800 calls per year, with more than 87% of those being ambulance calls. The United States Forest Service, along with various independent contractors, control fires in the surrounding National Forest.

Service Agreement

For technical support with FireCTR, send e-mail to support@FireCTR.com
Copyright © 2010 Perpetua Technologies LLC. All Rights Reserved.

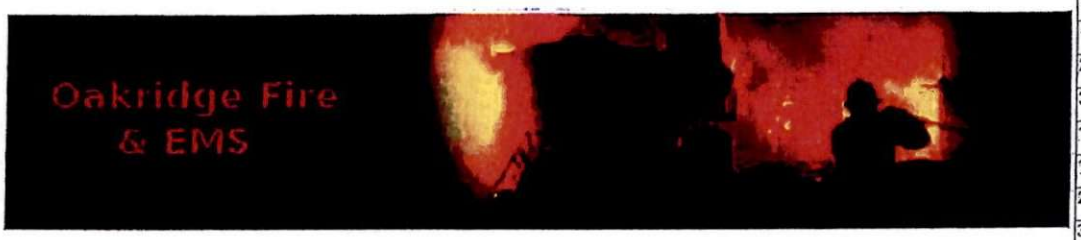
Information about Fire-CTR

SamaritanWeb - Version[2.6.0.0]

EXHIBIT AA

Oakridge Fire Department

Please Sign In



Dec	January 2021					Feb
Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

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Apparatus

Description

Created By: Hansen, Mike on: 11/07/2015 Last Updated By: Hansen, Mike on: 11/07/2015

Photos

First 1 Last Total Photos: 11 Photos per page: 16 Slideshow Back to Galleries

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PROUD TO SERVE OUR COMMUNITY

Oakridge Fire
and EMS

ABOUT US

Our Mission

The City of Oakridge is dedicated to providing life-saving paramedic and fire services to the community's citizens. Ensuring that lives and structures can be saved in an emergency is a critical service safeguarding prosperity, growth, and the general public's well-being.

We Save You Money

If you are a home/business owner in the Cities of Oakridge or Westfir, and/or Hazeldell Rural Fire Protection District, your business/home owner's insurance premiums may be decreased thanks to a new Insurance Services Office (ISO) rating of Oakridge Fire & EMS. Oakridge Fire & EMS improved its rating from a "5" to a "4" in areas with a hydrant system. From an "8" to a "5" in areas within 5 miles of a fire station but with no hydrant system. From a "10" to a "10W" in areas within 5 to 7 miles of a fire station with no hydrant system. In ISO's rating system, they use a 1-10 scale. The lower the number, the better the agency's rating is. The rating system reflects how quickly and efficiently a firefighting force can respond to a fire emergency. **Check with your insurance agent to ensure your insurance premiums reflect these new rates.**

About the Department

Oakridge is nestled in eastern Lane County off of Oregon Route 58, also known as Willamette Highway 18. Oakridge is a small community with a population of 3,500. Oakridge Fire & EMS is governed by the City of Oakridge. The Fire Department is a combination department consisting of full-time career staff under IAFF Local 851, part-time staff, and volunteers that operate under a non-profit 501(c)3.

We respond to over 1,200 calls annually, with more than 87% being ambulance calls. The average ambulance call takes 3 hours from the 911 call to return to the station. OFD Operates two medic units. Our ambulances respond to over 2,200 square miles, the largest ambulance service area provider in Lane County. Our Fire Service area is Oakridge city limits with an Intergovernmental Agreement (IGA) with Hazeldell Rural Fire District and the City of Westfir to respond to all emergency calls.

ABOUT US

Hazeldell RFD

The Hazeldell Rural Fire District (RFD) was formed in November 2002 to provide fire protection services to non-incorporated areas in the Oakridge/Westfir community of Lane County. The Hazeldell RFD is a legal municipal entity formed under Oregon Revised Statutes Chapters 198 and 357. This organization was created by a majority vote of Oakridge/Westfir rural residents, is funded through property tax assessments, and serves an area of about 15 square miles. To provide those services promptly to all rural residents, the Fire District needs to strategically locate facilities and fire fighting equipment across its area of responsibility.

Applicant's Statements addressing Lane Code 16.246 Airport Safety Combining Zone requirements for development of a dwelling on Map 21-25-12 Taxlot 843

LC 16.246(2) Applicability. The /AS-RCP Zone is applied to those lands adjacent to the Creswell Airport, the Cottage Grove Airport, the McKenzie Airport, the Oakridge Airport and Florence Airport which are encompassed by the surfaces set forth and described in LC 16.246(5) below and diagramed in LC 16.246(9) below. For purposes of this Chapter, the elevations of the five runways are established as follows:

(a) Cottage Grove - 641 feet above sea level.
(b) Creswell - 535 feet above sea level.
(c) Florence - 12 feet above sea level.
(d) Oakridge - 1419 feet above sea level.
(e) McKenzie - 1620 feet above sea level.

The determinations of the height of the various airport surfaces below are based on the established primary surface of the Oakridge Airport runway at an elevation of 1419' MSL.

(3) Use Limitations. In a /AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

The homesite is located underneath the Transitional Surface to the south of the Approach Surface at the west end of the runway. It is feasible to construct a dwelling on the subject property that does not penetrate the surface as described below. See analysis under the applicable Lane Code 16.246(5)(e) provision.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.
(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

It is feasible to meet these requirements when development of the property occurs. The applicant will file a Notice of Construction or Alteration (Form 7460-1) with the Federal Aviation Administration and Oregon Department of Aviation.

EXHIBIT BB

(4) Uses Prohibited. The area lying beneath the Approach Surface beginning at the end of the Primary Surface and extending outward a horizontal distance of 1,000 feet shall be considered to be a clear zone. Within this clear zone, no structure or object, except for fences and navigational aids approved by the airport operator, shall be erected, placed, altered, allowed to grow or be maintained above the surface of the ground.

The subject property is not located beneath the Approach Zone of the Oakridge Airport.

(5) Surface Described.

(a) Approach Surface. A surface longitudinally centered on the runway centerline, extending outward and upward from the ends of the Primary Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge.

The subject property is not located beneath the Approach Zone of the Oakridge Airport. The elevation of the approach surface at points measured outward from the runway centerline and extended upward at a slope of 20 horizontal feet to one vertical foot are shown in Table 1 below.

(d) Primary Surface. The Primary Surface is a plane longitudinally centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway surface and having a width of 250 feet. For purposes of this section, the Primary Surface shall be considered as having the same elevation as its respective runway as the same are specified in LC 16.246(2) above.

The northeast corner, the closest corner, of the proposed homesite is located 242' from the southeast corner of the primary surface. The Primary Surface is established at an elevation of 1419' MSL above.

(e) Transitional Surfaces. These surfaces extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the Primary Surface and Approach Surface to the point of intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway.

The elevation of the Transitional Surface at each corner of the proposed homesite can be determined by taking the distance of the corner from the end of the Primary Surface, dividing by 20 to account for the 20' horizontal to 1' vertical rise then taking the distance from the Approach Surface, dividing by 7 to account for the 7' horizontal to 1 vertical rise and adding the two numbers together. This analysis is contained in Table 1 below and illustrated in Exhibit BB. The analysis demonstrates that the lowest elevation of the Transitional Surface occurs at the northeast corner of the proposed homesite at an elevation of 1442' MSL. The homesite is located at an approximate elevation of 1402' MSL which allows for the development of a 40' tall dwelling. It is feasible to develop a dwelling within this height limitation. Additional survey certification can be provided as a condition of approval if necessary.

TABLE 1

Homesite Corner	Distance from end of primary surface	increase in vertical elevation at a 1v:20h ratio from end of Primary Surface	elevation of approach surface	distance from Approach Surface	increase in vertical elevation at a 1v:7h ratio from side of Approach Surface	elevation of Transition Surface
SE	242'	12'	1431'	192'	27'	1458' MSL (1419' + 12' + 27')
NE	264'	13'	1432'	76'	10'	1442' MSL (1419' + 13' + 10')
SW	384'	19'	1438'	216'	30'	1468' MSL (1419' + 19' + 30')
NW	408'	20'	1439'	100'	14'	1453' MSL (1419 + 20' + 14')

Airport Surfaces

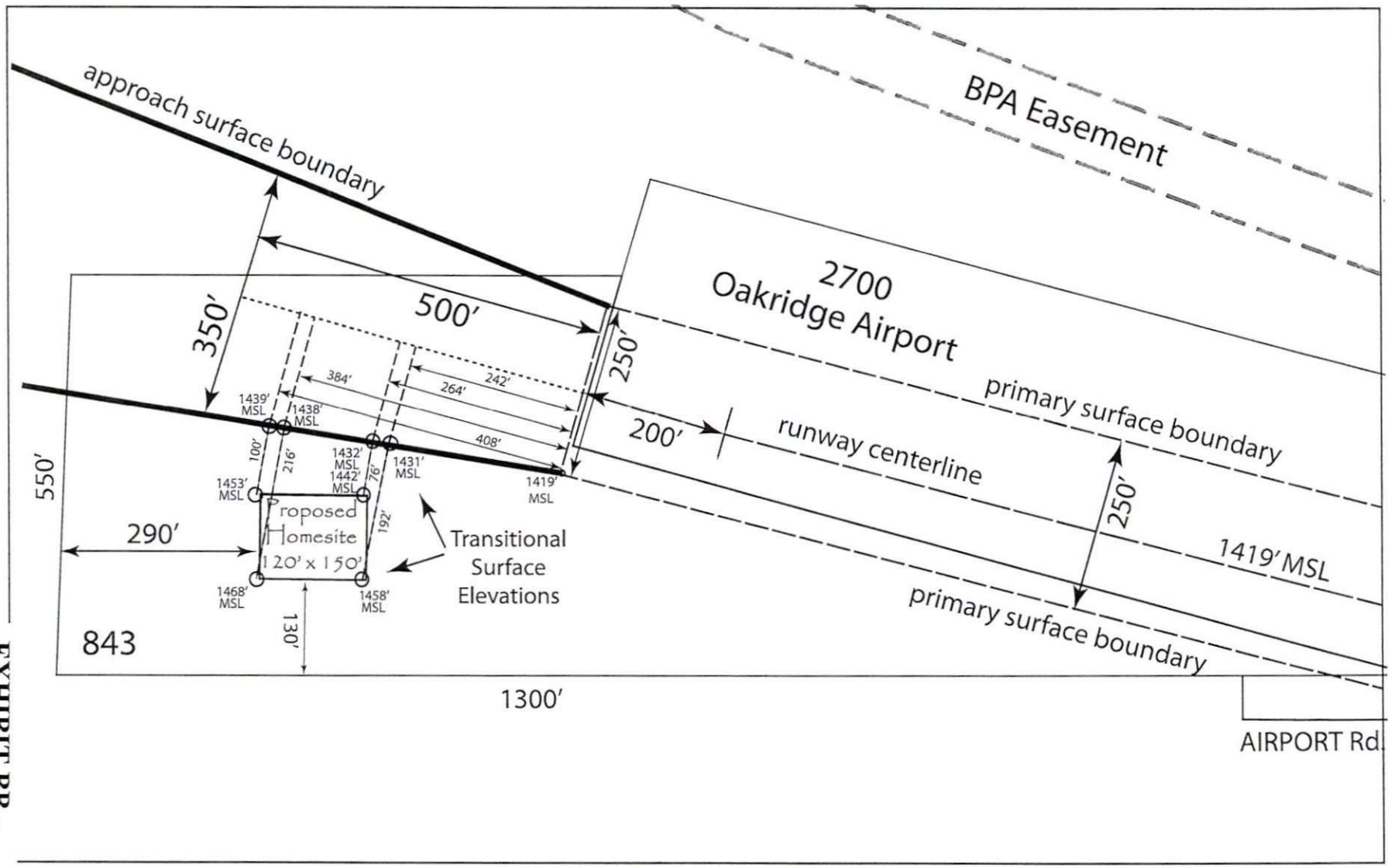


EXHIBIT BB 2

scale 1" = 200′

0 50 100 200 Feet

N

Subject Property Map 21-25-12 Taxlot 843

ADAMS Shawna L

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 2:28 PM
To: ADAMS Shawna L
Subject: FW: 509-PA20-05064 E.KING Oakridge
Attachments: O-LP-1-A-13R1_file0001_1582.pdf; 71862A-1-2.tif; Application_for_use_of_BPA_Right_of_Way.pdf

Hi Shawna,

Kimberly (Ed Kings attorney) emailed us on Friday requesting what's needed for her client. BPA has responded to her request fyi. Thank you~

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Sent: Monday, April 27, 2020 2:12 PM
To: kimodea@landuseoregon.com
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>; Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: RE: 509-PA20-05064 E.KING Oakridge

Kimberly,

Thank You for your inquiry into use of the BPA access road for driveway access to your clients property.

I have attached a copy of the BPA easements and the plan & profile drawing for the area crossing your clients property. BPA's Hills Creek-Lookout Point No. 1, 115 kV transmission line right of way is 100 feet in width. The deeded access road includes portions of the road that are both inside and outside the corridor width. A survey by your client locating the right-of-way boundary may be needed to assist proper siting of structures beyond the boundary.

Also attached, is a copy of BPA's land use application form. A $250.00 non-refundable fee will be required to process the application.

Your email mentioned plans to upgrade the road and bring it up to county standards. As part of the application, BPA would like to know, the equipment that will be used to do the work, what grades and turnouts are planned, what gates may be installed and whether any utilities will be undergrounded in the road. (Distances of road features from transmission structures are especially useful for analysis and can reduce the need for site visits.) This information will allow BPA to do a

EXHIBIT CC

thorough analysis of safety hazards that could arise from excavation and grading work in the right-of-way, and to work with your client to assure safe and secure joint access to the road in the future.

Please note that a portion of the BPA access road crosses the airport property as it turns north from the county road. Permission from the Oregon State Board of Aeronautics may be needed to improve and use that portion of the road.

Due to COVID-19 work restrictions, applications can take longer to process than usual. Detailed plans and work descriptions greatly assist in the turnaround time for responses. Email correspondence and application submission is vital to aid response time.

Please contact Myself or Janai if you have further questions or concerns.

Respectfully,

Harley Canaday
Realty Specialist
503-230-5545 office
360-931-0631 mobile
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

Bonneville
POWER ADMINISTRATION

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 7:26 AM
To: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: FW: 509-PA20-05064 E.KING Oakridge

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Friday, April 24, 2020 2:08 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] FW: 509-PA20-05064 E.KING Oakridge

Good afternoon, Janai:

I represent Ed King on the subject properties near Oakridge. Based on our site plans, none of the proposed dwellings are within the BPA right-of-way, which appears to be 80-90'. It is not our intention to propose any dwellings within the BPA easement. In fact, no structures will be built within the BPA easement.

However, we would like to utilize the existing access road. I was under the understanding that it was an old logging road. Regardless, as part of development, it will need to be improved to County standards (16' wide; compacted gravel; 20' of cleared area). This will also benefit BPA and give better access.

Attached is a rough site plan that shows all the parcels and the location of proposed access. It is feasible for us to move the dwelling site on TL 2900 eastward, if that would alleviate your concerns. A couple detailed site plans are also included.

In any case, please let me know what we need to do to obtain permission to use the existing access road, part of which is within the BPA easement?
Further, could you clarify the location and width of the BPA easement so that we can incorporate into our site plans, please?

Thank you much,
Kim

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Tuesday, April 21, 2020 3:41 PM
To: Kimberly O'Dea <kimodea@landuseoregon.com>
Subject: RE: 509-PA20-05064 E.KING

Kim, Sounds good. You may have better luck with Janal than I did, especially if you show her the c. 2010 letter to her.

If you are unable to get something from them that confirms feasibility by Friday and would like me to hold off on the decision until that can be provided, I'll need an extension to enable that.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Kimberly O'Dea [mailto:kimodea@landuseoregon.com]
Sent: Tuesday, April 21, 2020 8:52 AM
To: ADAMS Shawna L
Subject: Re: 509-PA20-05064 E.KING

[redacted]

Thanks, Shawna. I will contact her today. Do you need an extension?

Sent from my iPhone

On Apr 20, 2020, at 3:29 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

> Kim, BPA comment for this template dwelling application are below. I have followed up with Janai to verify whether the situation is similar to that in 2010 where we had sufficient confirmation to make feasibility findings. It sounds like that is not the case this time- they would need more info and an application before they can confirm that use of their access for the proposed purposes is something arrangements can be made for. Please advise how you would prefer we proceed with the review.
>
> Be well,
>
> **Shawna Adams | Senior Planner**
> Lane County | Land Management Division
> 3050 North Delta Hwy | Eugene, OR 97408
> Office: 541-682-8904 | Fax: 541-682-3947
> shawna.adams@lanecountyor.gov | www.lanecounty.org/planning
>
> Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Monday, April 20, 2020 7:14 AM
To: ADAMS Shawna L
Subject: RE: 509-PA20-05064 E.KING

[redacted]

Yes, thank you he needs to submit an application if he plans on using our access roads in case damage is done etc…

Respectfully,

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Thursday, April 16, 2020 6:55 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] RE: 509-PA20-05064 E.KING

Thanks Janai. At this point, we just need to know that the proposed access is feasible, e.g. that BPA is amenable to an arrangement with the applicants. Is the BPA able to confirm that at this stage? If not, is that what might be 12 weeks out or does the applicant need to submit one of your applications to before you would be able to respond?

Thanks much,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Tuesday, April 14, 2020 3:27 PM
To: ADAMS Shawna L
Subject: ref:509-PA20-05064 E.KING

[EXTERNAL]

My error I apologize this will need to be approved by BPA & has not been submitted as of yet. The existing case file we have is on another E.King parcel in Lane County.

I have attached a map that reflects where our lines are it appears the landowner will need to complete one of our applications for approval before building any dwellings in our easement areas. His parcels are marked by blue dots...
Thank you~

<image001.jpg>

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Soto,Janai A (CONTR) - TERR-ALVEY
Sent: Tuesday, April 14, 2020 12:10 PM
To: 'shawna.adams@co.lane.or.us' <shawna.adams@co.lane.or.us>
Cc: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>; Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: lis case 20200165/your ref:509-PA20-05064 E.KING

Hi Shawna,

BPA currently has received a request for this development & is in the process of review for a Land use permit. Due to the Covid 19 we are currently on a telework status from home. Our current eta on the Land use applications for multiple departments to review may be extended, the normal response time is: 6-12 weeks to process. Thank you for your patience. Have a great day & stay safe.

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

The Grantor, EDWARD HINES LUMBER CO., a Delaware corporation, for and in consideration of the sum of * * * TWO HUNDRED FIFTY * * * * * * * * * * * * * Dollars ($ 250.00 * * *), in hand paid by the UNITED STATES OF AMERICA, receipt of which is hereby acknowledged, hereby grants, bargains, sells, and conveys to the UNITED STATES OF AMERICA and its assigns, a perpetual easement and right to enter and erect, maintain, repair, rebuild, operate, and patrol one line of electric power transmission structures and appurtenant signal lines, including the right to erect such poles, transmission structures, wires, cables, and appurtenances as are necessary thereto, in, over, upon and across the following-described parcels of land in the County of Lane, in the State of Oregon, to-wit:

Tract O-LP-R-13

A strip of land 100 feet in width across the S½SW¼ of Section 7, Township 21 South, Range 3 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

> Beginning at a point which is N. 41°04'40" W. 3558.3 feet from the southeast corner of Section 12, Township 21 South, Range 2 East, Willamette Meridian; thence S. 47°28' E. 2225.0 feet; thence S. 53°28'00" E. 360.0 feet; thence S. 69°39'00" E. 1141.4 feet; thence S. 88°05'00" E. 1255.5 feet; thence S. 79°16'50" E. 3472.6 feet to a point which is S. 89°14'30" W. 2475.8 feet from the north quarter corner of Section 17, Township 21 South, Range 3 East, Willamette Meridian.

The bearings of said survey line refer to Local Grid.

Tract LO-R-35

A strip of land 100 feet in width through the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

> Beginning at a point in said survey line in Section 12, Township 21 South, Range 2 East, Willamette Meridian, said point being N. 41°04'40" W. 3558.3 feet from the southeast corner of said Section 12; thence S. 47°28' E. 2225.0 feet to a point; thence S. 53°28'00" E. 360.0 feet to a point; thence S. 69°39'00" E. 1141.4 feet to a point; thence S. 88° 05'00" E. 1255.5 feet to a point; thence S. 79°16'50" E. 3472.6 feet to a point in said survey line in Section 17, Township 21 South, Range 3 East, Willamette Meridian, said point being S. 89°14'30" W. 2475.8 feet from the north quarter corner of said Section 17.

The bearings of said survey line refer to Local Grid;

together with the present and future right to clear said right of way and keep the same clear of brush, timber, structures, and fire hazards, provided that fire hazards shall not be interpreted to include any growing crops other than [illegible] the present and future right to top, limb or fell all growing

Tract O-LP-R-13:

Width in Feet	Side of R/W	From	To
85	Northerly	West line Sec. 7, T21S, R3E, WM	Opp. SS 990+80
40	North	Opp. SS 993+15	Opp. SS 994+60
50	Northerly	Opp. SS 997+32	Opp. SS 1001+30
60	Northerly	Opp. SS 1007+20	Opp. SS 1020+00
70	Northerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM	Opp. SS 1030+00
45	South	Opp. SS 987+70	Opp. SS 991+60
40	South	Opp. SS 994+00	Opp. SS 995+00
50	Southerly	Opp. SS 997+32	Opp. SS 1001+80
50	Southerly	Opp. SS 1009+00	Opp. SS 1014+25
50	Southerly	Opp. SS 1017+50	West line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM
40	Southerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7 T21S, R3E, WM	South line Sec. 7, T21S, R3E, WM

Tract IO-R-35:

50	Northeasterly	Opp. SS 969+75	Opp. SS 973+35
85	Northeasterly	Opp. SS 975+70	East line Sec. 12, T21S, R2E, WM

and contiguous to said right of way that (a) are danger trees on the date hereof (hereinafter called "present danger trees"), or (b) become danger trees thereafter (hereinafter called "future danger trees"). The right to top, limb or fell danger trees outside of said strips (hereinafter called "additional danger trees") may only be exercised within 3 years after all present danger trees have been cut, and the UNITED STATES OF AMERICA shall pay the person who is the owner thereof at the date of cutting such additional danger trees the market value prevailing at the date of cutting under authority of the UNITED STATES OF AMERICA, such payment to be made within a reasonable period of time after they have been so cut; and

Grantor also hereby grants, bargains, sells, and conveys unto the UNITED STATES OF AMERICA, and its assigns, a permanent easement and right of way for the construction, operation, use and maintenance of roads approximately 14 feet in width (with such additional widths as are necessary to provide for cuts, fills, and turn-outs and for curves at angle points) on, over, and across the land of the Grantor in portions of the SW¼SE¼, SE¼SW¼ and Government Lot 4 of Section 7, Township 21 South, Range 3 East, and the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, W. M., Lane County, Oregon, for the following purposes, namely: the right to enter and to clear of timber, danger trees, and

Bonneville Power Administration, attached hereto and by this reference, made a part hereof.

ATTACHMENT 2.40

The Grantor reserves the right of ingress and egress over and across said roads and the right to pass and repass along and on said roads insofar as the same extend across the lands of the Grantor, said right to be exercised in a manner that will not interfere with the use of the roads by the UNITED STATES OF AMERICA, its employees, contractors, or assigns.

It is understood and agreed that if said roads are damaged by the UNITED STATES OF AMERICA, its employees, contractors, or assigns, the UNITED STATES OF AMERICA, subject to the availability of appropriations, or its assigns, will repair such damage. It is further understood and agreed that the Grantor may erect or maintain fences across such roads, provided adequate gates of not less than ten feet in width are installed, which may be kept locked, provided the UNITED STATES OF AMERICA is also permitted to install its own lock thereon.

TO HAVE AND TO HOLD said easement and rights unto the UNITED STATES OF AMERICA and its assigns, forever.

The Grantor covenants to and with the UNITED STATES OF AMERICA and its assigns that the title to all brush, timber, or structures existing upon the rights of way on the date hereof, and the title to all present danger trees shall vest in the UNITED STATES OF AMERICA on said date; and that title to any additional danger trees shall vest in the UNITED STATES OF AMERICA upon their being cut pursuant to the terms hereof; and that title to all future danger trees cut pursuant to the terms hereof shall remain in the owner thereof at the date of cutting; and that the consideration stated herein is accepted by the Grantor as full compensation for all damages incidental to the exercise of said easement and danger tree rights, except payment for any additional danger trees as defined hereinabove which may be cut under authority of the UNITED STATES OF AMERICA as herein provided.

The Grantor also covenants to and with the UNITED STATES OF AMERICA that Grantor is lawfully seized and possessed of the lands aforesaid; has a good and lawful right and power to sell and convey same; that same are free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

The UNITED STATES OF AMERICA, Department of the Interior, acting by and through the Bonneville Power Administrator, pursuant to the Acts of Congress approved August 20, 1937 (50 Stat. 731, 16 U.S.C. 832a, et seq.), as amended, and June 30, 1949 (63 Stat. 377, 40 U.S.C. 471, et seq.), as amended, and regulations and delegations of authority issued pursuant thereto, and as part of the consideration for the easement rights hereinabove described, does hereby remise, release and quitclaim to the Grantor all that portion of Tract LO-35 as acquired by easement dated October 10, 1960 and recorded in Reel 162 '60 D, File No. 15633, Official Records of Lane County, Oregon, which lies southerly of the above-described Tract Lo-R-35.

IN WITNESS WHEREOF, EDWARD HINES LUMBER CO. has caused this instrument to be signed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed this 18 day of July, 1968.

UNITED STATES OF AMERICA
Department of the Interior
Bonneville Power Administration

By _____
Chief, Branch of Land

EDWARD HINES LUMBER CO.

By _____
Executive Vice President

Attest _____
Asst. Secy.

ATTACHMENT 2.41

ATE OF ILLINOIS)
) ss:
UNTY OF COOK)

On this 18th day of July , 1968, before me personally appeared Joseph J. Fitzgerald and Estelle D. Koehn to me known to be the Exec. Vice President and Asst. Secretary of the corporation that ecuted the foregoing instrument, and acknowledged said instrument to be the free and voltary act and deed of said corporation, for the uses and purposes therein mentioned, and oath stated they were authorized to execute said instrument and that the seal fixed is the corporate seal of said corporation.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

David D. Kyle
Notary Public in and for the
State of Illinois
Residing at Chicago

My commission expires:
April 13, 1970

TATE OF OREGON)
) ss:
OUNTY OF MULTNOMAH)

On the 30th day of October , 1969 , personally came before me, a notary ublic in and for said County and State, the within-named John V. Mulcahy, Chief, anch of Land, Bonneville Power Administration, o me personally known to be the identical person described in and who executed the within nd foregoing instrument and acknowledged to me that he executed the same as his free and oluntary act and deed, for the uses and purposes therein mentioned.

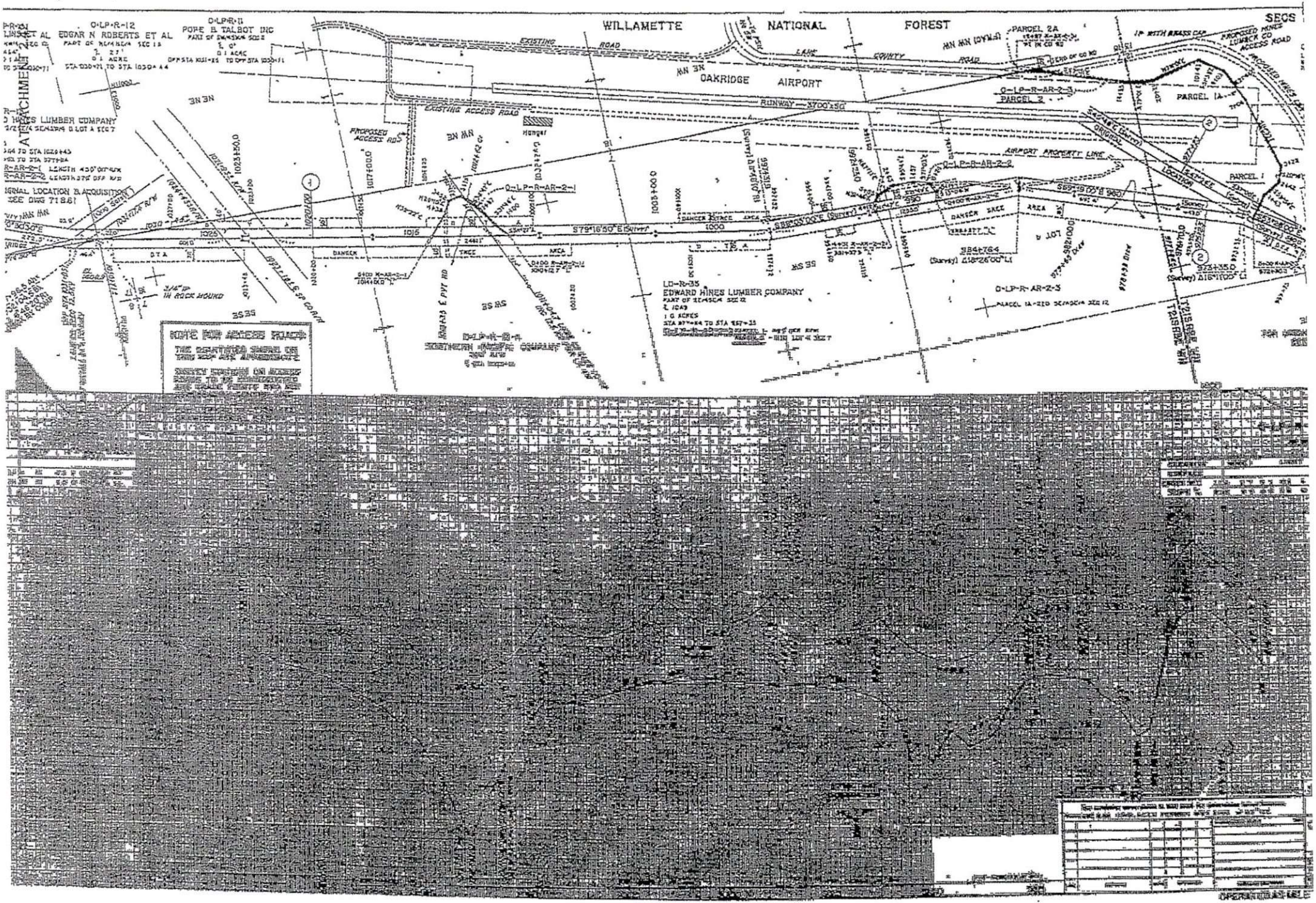
GIVEN under my hand and official seal the day and year last above written.

(SEAL)

G. E. Hellman
Notary Public in and for the
State of Oregon
Residing at Portland

My commission expires:
Sept. 20, 1973

The within instrument was received for the record on the day of , 19 , at M., and recorded in book on page , records of County, (State).


WILLAMETTE NATIONAL FOREST
OAKRIDGE AIRPORT
EXISTING ROAD
EXISTING ACCESS ROAD
PROPOSED ACCESS RD
RUNWAY — 3700'x50'
PARCEL 1
PARCEL 2
PARCEL 2A
AIRPORT PROPERTY LINE
PROPOSED HINES LUMBER CO ACCESS ROAD
EDWARD HINES LUMBER COMPANY
PART OF SE¼SE¼ SEC 12
2.1049
1.0 ACRES
DANGER AREA
3/4" IP IN ROCK MOUND
1P WITH BRASS CAP
O-LP-R-12
EDGAR N ROBERTS ET AL
PART OF NE¼SW¼ SEC 13
0.1 ACRE
O-LP-R-11
POPE & TALBOT INC
PART OF SW¼SW¼ SEC 7
0.0 ACRE
O-LP-R-AR-2-1
O-LP-R-AR-2-2
O-LP-R-AR-2-3
LD-R-35
SEC 5
SEC 7
SEC 8
SEC 12
S79°16'50"E (Survey)
S89°55'00"E (Survey)
S89°45'00"E (Survey)
Δ18°26'00" (Survey)
Δ16°11'00" (Survey)
SEE DWG 71861

36820

TRANSMISSION LINE RIGHT-OF-WAY

AND RELEASE OF EASEMENT

[redacted] - KLAMATH FALLS LUMBER CO.

TO

[redacted] - UNITED STATES OF AMERICA

State of Oregon,
County of Lane—ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

'69 OCT 31 PM 4 32 2

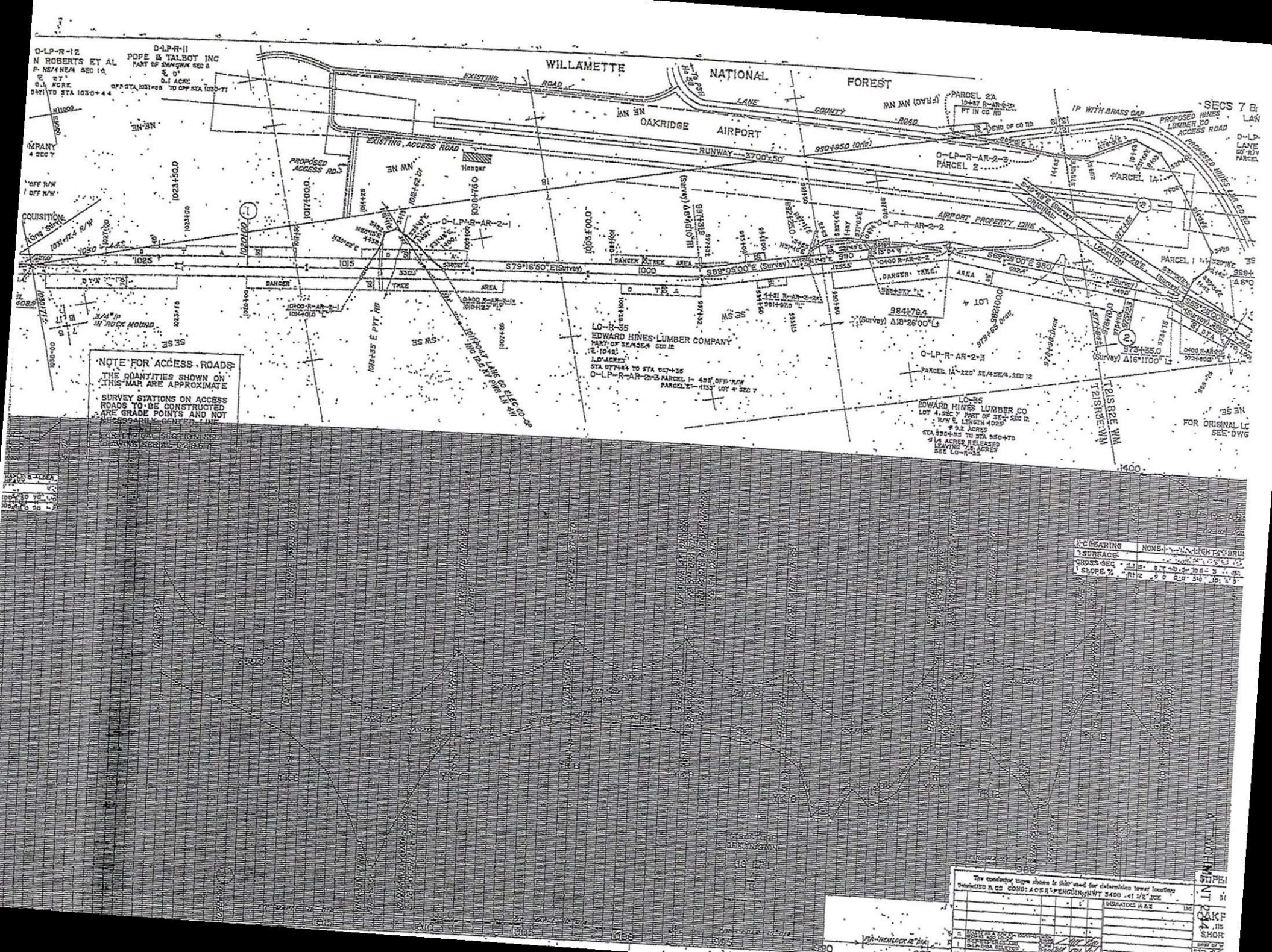
Reel 458-R

Lane County OFFICIAL Records.

INA RANDOLPH, Director of the Department of Records & Elections.

By [redacted] Deputy

C29-083-05


WILLAMETTE NATIONAL FOREST
OAKRIDGE AIRPORT
EXISTING ROAD
EXISTING ACCESS ROAD
PROPOSED ACCESS RD
RUNWAY 3700'x50'
AIRPORT PROPERTY LINE
PARCEL 1A
PARCEL 2
PARCEL 2A
O-LP-R-12
N ROBERTS ET AL
O-LP-R-11
POPE & TALBOT INC
O-LP-R-AR-2-1
O-LP-R-AR-2-2
O-LP-R-AR-2-3
LO-R-55
EDWARD HINES LUMBER COMPANY
LO-35
EDWARD HINES LUMBER CO
DANGER TREE AREA
S79°16'50"E (Survey)
S88°05'00"E (Survey)
NOTE FOR ACCESS ROADS
THE QUANTITIES SHOWN ON THIS MAP ARE APPROXIMATE
SURVEY STATIONS ON ACCESS ROADS TO BE CONSTRUCTED ARE GRADE POINTS AND NOT NECESSARILY CENTER LINE
T19SR2E WM
T19SR1E WM
T20SR2E WM
T20SR1E WM

BPA F 4300.030 (07-2019)

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION (BPA)
APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

1-800-282-3713

Ask for Real Property Services or a contact person from web site.
www.bpa.gov/goto/LandsCommunity

Date:

Privacy Act Statement
Authority: 42 USC § 7101 and 50 USC § 2401
Purpose: BPA will use this information to assess whether your proposed use of our right-of-way will interfere with BPA's land rights.
Routine Uses: This information is authorized to be maintained in Privacy Act system of records DOE-24, "Land Records System." Other routine uses for which this information may be disclosed are listed in the Privacy Act system of records notice for DOE-24, which is published in the Federal Register.
Disclosure: Voluntary; however, failure to provide complete information may result in a delay or denial of your application.

Applicant is required to complete all of page 1. If not submitting an attached map, plan or sketch, page 2 is required.

Checks will not be accepted. Remit payment to BPA electronically. To make payment using Google Chrome, Firefox, or Edge browser, navigate to https://www.bpa.gov/goto/HowtoPay; select the blue hyperlink MAKE PAYMENT NOW; select the blue CONTINUE TO FORM button; under Purpose of Payment select REALTY APPLICATION FEE and fill out remaining fields with an *; select CONTINUE to submit payment. Please make sure to select the appropriate box below before making your payment. You should receive a confirmation when finished.

☐ NO APPLICATION FEE	☐ $250 APPLICATION FEE	☐ $2500 APPLICATION FEE
For individual landowners requesting personal use of BPA Right-of-Way	For developments or subdivisions. Application fee is non-refundable.	For longitudinal occupancies that require multiple miles of BPA Right-of-Way. Application fee is non-refundable.

Applicant	**Owner** *(Complete only if the applicant is not the owner.)*
1. NAME	4. NAME
2. ADDRESS, CITY, STATE, ZIP	5. ADDRESS, CITY, STATE, ZIP
3. TELEPHONE NO. EMAIL ADDRESS: FAX NO:	6. TELEPHONE NO. EMAIL ADDRESS: FAX NO:

7. LOCATION OF PROPERTY (Legal description of the property. *This information is on your title, insurance policy, courthouse deed, or your tax statement.*)
(PROVIDE A COUNTY ASSESSOR'S MAP SHOWING THE OWNER'S BOUNDARY LINES AND THE LOCATION OF USE.)

QUARTER SECTION(S)	SECTION(S)	TOWNSHIP	RANGE	COUNTY	STATE

8. PURPOSE FOR WHICH BPA RIGHT-OF-WAY/PROPERTY IS TO BE USED. Check all boxes that apply and complete the information on the following page. *(Include a map, plan or sketch if appropriate.) NOTE:* For submission of digital plans please provide a PDF version. BPA will request larger plans, if needed.

☐ Driveway / Roadway Width	☐ Pipelines			☐ Electric Service Line
Width	Type:	☐ Gas	☐ Sewer ☐ Water	Voltage
Material	Diameter			Underground
PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS.	Material			Overhead
	Buried Depth			

☐ Other Uses:

Narrative: Please describe your intended use in detail. In order to assure safe clearance, please describe any equipment that will be used for applied use *(including equipment intended to construct and maintain the use)*. Space is provided on page 2 for a drawing. ***IF GRADING, PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS***

9. APPLICANT NAME	10. APPLICANT SIGNATURE	11. APPLICANT TITLE

IF APPLICABLE, ATTACH NAME, COMPANY ADDRESS, AND A CONTACT PERSON FOR ALL UTILITIES INVOLVED IN PROJECT.

12. RIGHT-OF-WAY Draw in space provided below the location of the proposed use. (Identify structures and show distances and angles from BPA structures). Diamonds on the line represent BPA structures on the right-of-way. Copy the series of letters and numbers from the lower half of each BPA structure *(see example below)* and enter in "BPA Structure Identification" block. Indicate which direction is "North" in relation to the right-of-way.

BIG E – CHEM 1-81-2
BPA STRUCTURE IDENTIFICATION



PS2 1-2-A
BPA STRUCTURE IDENTIFICATION



Identify structures and show distances and angles from BPA structures

BPA STRUCTURE IDENTIFICATION

BPA STRUCTURE IDENTIFICATION

PA F 4300.03
(7-2019)

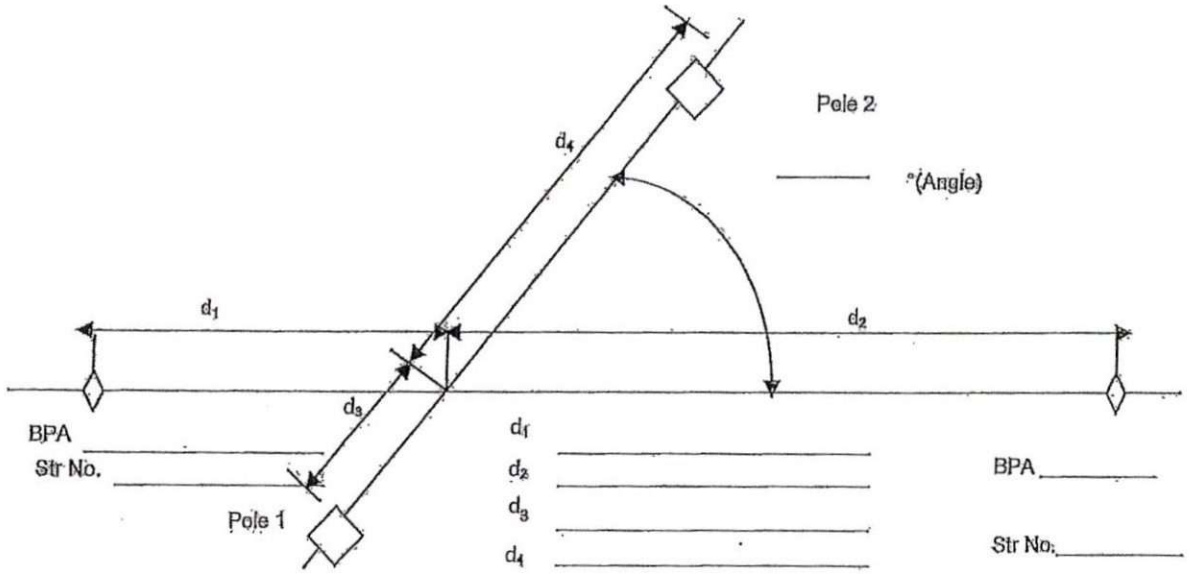
ATTACHMENT 2.47

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION (BPA)

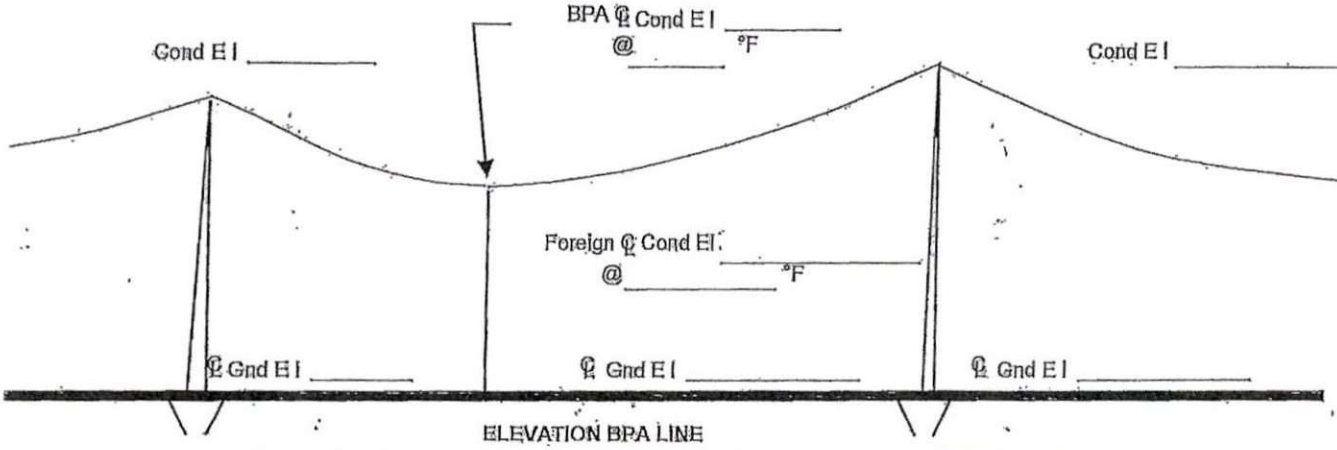
APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

APPLICANT NAME

omplete ONLY if overhead or underground foreign line crosses an overhead BPA line. If the foreign line crosses more than one BPA line use additional eets.



PLAN



ELEVATION BPA LINE

POLES	LENGTH	DEPTH SET	CLASS POLE
POLE 1			
POLE 2			

FIXTURES	SIZE OF CROSSARMS	
	MAKE AND CATALOG NUMBER OF INSULATORS	
CONDUCTORS	NUMBER	SIZE
	KIND	VOLTAGE
	MWT	LOADING
	COMMENTS	

POLE 1

POLE 2

CONFIGURATIONS

APPLICANT

PA F 4300.03e
07-2019)

U.S. DEPARTMENT OF ENERGY- BONNEVILLE POWER ADMINISTRATION *(BPA)*

APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

Mail your application to the location nearest to your project:

WESTERN WASHINGTON

Location and Address	Phone Number
nohomish District Office, 914 Ave D, Snohomish, WA 98290	360.563.3640
ovington District Office, PO Box 3621, Portland, OR 97208-3621	253.638.3741
lympia District Office, 5240 Trosper St SW, Olympia, WA 98512	360.570.4352, 360.570.4333 OR 360.570.4332
oss Maint. Hdqt. Office, PO Box 3621, Portland, OR 97208-3621	800.836.6691

OREGON

Location and Address	Phone Number
edmond District Office, 3655 SW Highland Ave., Redmond, OR 97756	541.516.3200
igene District Office, 86000 Hwy 99S, Eugene, OR 97405	541.988.7432
lem District Office, 2715 Tepper Lane, Keizer, OR 97303	503.304.5900
rtland Office, PO Box 3621, Portland, OR 97208-3621	800.836.6619
Hood River, *(see Portland for mailing address)*	
North Bend Area, *(see Portland for mailing address)*	

EASTERN WASHINGTON, IDAHO AND MONTANA

Location and Address	Phone Number
iho Falls District Office, *(see Tri-Cities Pasco, WA mailing address)*	509.544.4747
-Cities District Office, *(OR Side)*, 2211 North Commercial Avenue, Pasco, WA 99301	509.544.4747
-Cities *(WA side)*, 2211 North Commercial Avenue, Pasco, WA 99301	503.230.5510
okane District Office, 2410 E. Hawthorne Rd., Mead, WA 99021-9594	509.468.3081
and Coulee Area, PO Box 24, Grand Coulee, WA 99133	509.378.7447
ensburg Area, PO Box 3621, Portland, OR 97208-3621	503.230.5611
lispell Maintenance District Office, 2520 US Hwy 2 East, Kalispell, MT 59901	406.751.7824

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Monday, November 9, 2020 2:51 PM
To: BAUDER Jared W
Cc: ADAMS Shawna L; PECK Heather
Subject: RE: ODA Comment: 509-PA20-05065 & 509-PA20-05066

[redacted]

Hi Jared,

Great to hear from you and thanks for reaching out. I'm doing well, thank you. I hope you are as well.

Yes, the ODA requests submittal of the FAA Form 7460-1 still be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport.

The applicant must submit FAA Form 7460-1 documents to the ODA and receive Letters of Determination for the proposed construction as required by OAR 738-070-0060, prior to issuance of any building permits for the Template Dwellings.

The applicant should note that a separate FAA Form 7460-1 must be submitted for each Template Dwelling.

Notification to the FAA is also required for each Template Dwelling and is completed through the FAA's online portal:

https://oeaaa.faa.gov/oeaaa/external/portal.jsp

The ODA Letters of Determination will provide recommendations for the proposed construction in regards to aviation and public safety.

I am happy to reach out to the applicant directly if further clarification is needed.

Thanks again and please let me know if you have further questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: BAUDER Jared W <Jared.bauder@lanecountyor.gov>
Sent: Monday, November 9, 2020 11:54 AM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Cc: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: FW: ODA Comment: 509-PA20-05065 & 509-PA20-05066

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Hi Seth –

EXHIBIT DD

I hope all is well with you. I just want to confirm that the ODA would still like the attached form to be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport?

If so, is their submittal of the form to you all sufficient for the County to issue building permits, or do they need to see the processing of the form through with ODA first?

Thank you much,

Jared Bauder | Planner, CFM
Land Management Division | Lane County Public Works
Customer Service Center
3050 N Delta Hwy. | Eugene, OR 97408
Office: 541.682.6949 | **Fax:** 541.682.3947
Website : www.lanecounty.org/planning

From: THOMPSON Seth [mailto:Seth.THOMPSON@aviation.state.or.us]
Sent: Thursday, March 26, 2020 4:03 PM
To: BAUDER Jared W
Subject: ODA Comment: 509-PA20-05065

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation (ODA) to comment on Department File: 509-PA20-05065.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 CELL 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§ 77.7 Form and time of notice.

(a) If you are required to file notice under §77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the Internet.

(b) You must submit this form at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure that exceeds 2,000 ft. in height above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 45-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) or (b) of this section.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177
Fax: (817) 222-5920

Website: https://oeaaa.faa.gov

INSTRUCTIONS FOR COMPLETING FAA FORM 7460-1

PLEASE TYPE or PRINT

ITEM #1. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #2. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #3. New Construction would be a structure that has not yet been built.

Alteration is a change to an existing structure such as the addition of a side mounted antenna, a change to the marking and lighting, a change to power and/or frequency, or a change to the height. The nature of the alteration shall be included in ITEM #21 "Complete Description of Proposal".

Existing would be a correction to the latitude and/or longitude, a correction to the height, or if filing on an existing structure which has never been studied by the FAA. The reason for the notice shall be included in ITEM #21 "Complete Description of Proposal".

ITEM #4. If Permanent, so indicate. If Temporary, such as a crane or drilling derrick, enters the estimated length of time the temporary structure will be up.

ITEM #5. Enter the date that construction is expected to start and the date that construction should be completed.

ITEM #6. Please indicate the type of structure. DO NOT LEAVE BLANK.

ITEM #7. In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference" DO NOT LEAVE BLANK. NOTE: High Intensity lighting shall be used only for structures over 500' AGL. In the absence of high intensity lighting for structures over 500' AGL, marking is also required.

ITEM #8. If this is an existing tower that has been registered with the FCC, enter the FCC Antenna Structure Registration number here.

ITEM #9 and #10. Latitude and longitude must be geographic coordinates, accurate to within the nearest second or to the nearest hundredth of a second if known. Latitude and longitude derived solely from a hand-held G P S instrument is NOT acceptable. A hand-held GPS is only accurate to within 100 meters (328 feet) 95 percent of the time. This data, when plotted, should match the site depiction submitted under ITEM #20.

ITEM #11. NAD 83 is preferred; however, latitude and longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datum may be used. It is important to know which datum is used. DO NOT LEAVE BLANK.
ITEM #12. Enter the name of the nearest city and state to the site. If the structure is or will be in a city, enter the name of that city and state.

ITEM #13. Enter the full name of the nearest public-use (not private-use) airport or heliport or military airport or heliport to the site.

ITEM #14. Enter the distance from the airport or heliport listed in #13 to the structure.

ITEM #15. Enter the direction from the airport or heliport listed in #13 to the structure.

ITEM #16. Enter the site elevation above mean sea level and expressed in whole feet rounded to the nearest foot (e.g. 17'3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under ITEM #20.
ITEM #17. Enter the total structure height above ground level in whole feet rounded to the next highest foot (e.g. 17'3" rounds to 18'). The total structure height shall include anything mounted on top of the structure, such as antennas, obstruction lights, lightning rods, etc.

ITEM #18. Enter the overall height above mean sea level and expressed in whole feet. This will be the total of ITEM #16 + ITEM #17.

ITEM #19. If an FAA aeronautical study was previously conducted, enter the previous study number.

ITEM #20. Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" x 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-888-275-8747 or via Internet at "http://store.usgs.gov". If available, attach a copy of a documented site survey with the surveyor's certification stating the amount of vertical and horizontal accuracy in feet.

ITEM #21.
- For transmitting stations, include maximum effective radiated power (ERP) and all frequencies.
- For antennas, include the type of antenna and center of radiation (Attach the antenna pattern, if available).
- For microwave, include azimuth relative to true north.
- For overhead wires or transmission lines, include size and configuration of wires and their supporting structures (Attach depiction).
- For each pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For buildings, include site orientation, coordinates of each corner, dimensions, and construction materials.
- For alterations, explain the alteration thoroughly.
- For existing structures, thoroughly explain the reason for notifying the FAA (e.g. corrections, no record of previous study, etc.).

Filing this information with the FAA does not relieve the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation's and zoning authorities.

Paperwork Reduction Act Statement: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. The OMB control number for this information collection is 2120-0001. Public reporting for this collection of information is estimated to be approximately 19 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory for anyone proposing construction or alteration that meets the criteria contained in 14 CFR 77. This information is collected to evaluate the effect of proposed construction or alteration on air navigation and is not confidential. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

ATTACHMENT 2.53

...l Regulations (14 CFR), part 77 authorizes FAA to collect this information. PURPOSE(S): FAA will use the information provided to administer the Aeronautical Study Process. ROUTINE USE(S): In accordance with DOT's system of records notice, ALL 18 Mailing Management System and DOT/FAA 828 Petitions for Exemption, Other than Medical Exemption-Public Dockets, the information provided may be disclosed to officials within the Federal government and the public in general.

Please Type or Print on This Form

Form Approved OMB No.2120-0001
Expiration Date: 02/20/2020

Failure To Provide All Requested Information May Delay Processing of Your Notice

U.S. Department of Transportation
Federal Aviation Administration

Notice of Proposed Construction or Alteration

FOR FAA USE ONLY
Aeronautical Study Number

1. Sponsor *(person, company, etc. proposing this action)*:

Attn. of

Name:

Address:

City: State: Zip:

Telephone: Fax:

2. Sponsor's Representative *(if other than #1)*:

Attn. of

Name:

Address:

City: State: Zip:

Telephone: Fax:

Notice of: ☐ New Construction ☐ Alteration ☐ Existing

Duration: ☐ Permanent ☐ Temporary (___ months, ___ days)

Work Schedule: Beginning End

Type: ☐ Antenna Tower ☐ Crane ☐ Building ☐ Power Line
☐ Landfill ☐ Water Tank ☐ Other

Marking/Painting and/or Lighting Preferred:
☐ Red Lights and Paint ☐ Dual - Red and Medium Intensity
☐ White-Medium Intensity ☐ Dual - Red and High Intensity
☐ White -High Intensity ☐ Other

FCC Antenna Structure Registration Number *(if applicable)*:

9. Latitude: ° ' "

10. Longitude: ° ' "

11. Datum: ☐ NAD 83 ☐ NAD 27 ☐ Other

12. Nearest: City: State

13. Nearest *Public-use (not private-use)* or Military Airport or Heliport:

14. Distance from #13. to Structure:

15. Direction from #13. to Structure:

16. Site Elevation *(AMSL)*: ft.

17. Total Structure Height *(AGL)*: ft.

18. Overall Height *(#16 + #17) (AMSL)*: ft.

19. Previous FAA Aeronautical Study Number *(if applicable)*:

-OE

20. Description of Location: *(Attach a USGS 7.5 minute Quadrangle Map with the precise site marked and any certified survey)*

Complete Description of Proposal:

Frequency/Power (kW)	

Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44718. Persons who knowingly and willingly violate the notice requirements of part 77 are subject to a civil penalty of $1,000 per day until the notice is received, pursuant to 49 U.S.C., Section 46301(a)

...ereby certify that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to mark and/or light the ...ructure in accordance with established marking & lighting standards as necessary.

...e	Typed or Printed Name and Title of Person Filing Notice	Signature

...A Form 7460-1 (02/20) Supersedes Previous Edition

NSN: 0052-00-012-0009

Additional Information Submitted

Date Stamp

RECEIVED SEP 21 2023

Submitted By: Bill Kloos

Phone Number: 541-954-1260

Email Address: billkloos@landuseoregon.com

Project Address: _____

Permit Number (BP, PA, SP, SI): PA23-05321

Submittal Description: OPEN RECORD SUBMITTAL

Please Route to SHAUNA ADAMS

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

rev 12/26/2018

ADAMS Shawna L

From: Chris Leturno <chris@superiorec.net>
Sent: Monday, September 11, 2023 8:26 AM
To: ADAMS Shawna L
Cc: DOBBERSTEIN Julia C
Subject: RE: Request for party status

[EXTERNAL ⚠]

85180 Boomer Rd Eugene OR 97402

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Wednesday, September 6, 2023 5:07 PM
To: Chris Leturno <chris@superiorec.net>
Cc: DOBBERSTEIN Julia C <Julia.DOBBERSTEIN@lanecountyor.gov>
Subject: RE: Request for party status

Hello Chris, Can you confirm whether your email is intended for the Hearings Official in consideration of template dwelling applications PA23-05321, PA23-05322, PA23-05323 scheduled for public hearings tomorrow morning at 9:30 am? If so, please also confirm your mailing address so I and Julia Dobberstein (County staff planners assigned to those applications) can add you to the party list for future notices concerning the applications?

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Chris Leturno <chris@superiorec.net>
Sent: Wednesday, September 6, 2023 4:47 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Fwd: Request for party status

[EXTERNAL ⚠]

To whom it may concern we purchased our F2 land in 2014 with the understanding we would be able to get a template lot approval. We used our savings to buy the land and hope to build a house on it one day. We finally got to the point of being ready to build and applied to the county for a template lot approval and just before we were approved the decision was made by Luba regarding big game overlay on F2 land. We have been stuck in limbo with a property we cannot sell or build on and would greatly appreciate anything the County Board could help our family with on this matter.

Sincerely

Chris and Meagan Leturno

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

September 21, 2023

Lane County Hearing Official
c/o Shawna Adams, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: PA23-05321, PA23-05322, PA23-05323;
Applicants' First Open Record Submittal

Dear Shawna:

I am having delivered to LMD today two stacks of documents. One is a Compilation of documents relevant to the Policy 11 interpretation issue – mostly acknowledgment documents from the early 1980s. The second is a compilation of recent HO decisions addressing Policy 11.

Attached to this letter is a Table of Contents for each set.

This is a lot of paperwork. To facilitate your compiling this for the record I will send you a Drop Box link to the documents and decisions. However, I am counting on the physical delivery to constitute "filing."

Separately, I am submitting a letter that resolves the issue of the location of the driveway. I believe this is the only substantive outstanding issue in these applications other than the Policy 11 question. My goal, of course, is to maintain support of staff on all issues other than the Policy 11 issue.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Clients

Applicant's Table of Contents Documents Relevant to Interpreting Big Game Policy 11		
Attach #	**Date**	**Document Name and Notes**
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Name	**PA #**	**Date**
Tarjoto	PA 1841-96	1.8.1997
Goodman	PA 19-05299	1.27.2020
Nimpkish	PA 19-05298	2.4.2020
EJK King	PA 20-05054	4.19.2021

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VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
NORTHWEST REGION
ROUTE 5, BOX 325, CORVALLIS, OREGON 97330 PHONE 757-4186

June 16, 1980

Lane County Board of Commissioners
Otto t'Hooft, Chairman
Courthouse, Public Service Building
125 East Eighth Avenue
Eugene, Oregon 97401

Dear Sir:

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These are:

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   Change aquaculture to aquaculture facilities. Delete commercial clamming and fishing.

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Discussion: The Port of Siuslaw has expressed a desire to develop a boat basin and harbor of refuge in the upriver cove, (DOMSEA Bay) when the jetties are extended. The cove area does contain clams, shrimp and other benthic organisms, but biological productivity is minor in the content of the estuary as a whole. The site is, however, biologically productive and valuable for fish and wildlife, especially birds, of the lower bay. The site would provide good shelter with reconstruction of the jetty and has the additional advantage of proximity to the river mouth. The State Marine Board cites a 12% increase in larger boats in Lane County in 1979 and supports development of the harbor to help provide moorage for existing boats and anticipated future increases in moorage need. Lane County supports development of the harbor of refuge contingent on the Port meeting the requirements of state and federal agencies, including providing the county with sufficient data to develop an exception to Goal 16. Special care should be exercised to protect the upriver Piddock Bay area from adverse development impacts.

The small cove immediately west of DOMSEA Bay and north of the north jetty at approximately River Mile .5 was formed by water washing through gaps in the existing jetty. The cove supports ~~xxxxxxx~~ shorebirds. The cove may require some filling to allow for jetty maintenance or reconstruction. Any filling of the cove shall be the minimum necessary with total filling of the cove avoided. The cove shall be used only as needed for expansion and reconstruction of jetties, subject to state and federal agency requirements.

I must point out that the Department has agreed with the Fish and Wildlife Service's position on the proposed boat basin. However, we are willing to re-evaluate the proposal when sufficient data is available to address the criteria required for an exception.

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Revise language similiar to that proposed in number 11 above.

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Shoreland management 20 is an upriver extension of the prime wildlife shorelands referred to in points 14 and 15 below. We concur with removing from this unit pasturelands and aquatic marshes previously identified in these comments. However, this Department strongly opposes the proposed amendment to delete this unit.

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Jim Lauman, Asst. Chief
Environmental Management Section

JL:pb

BIG GAME RANGES - COAST RANGE

Definitions

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Peripheral Big Game Range - Foothill areas of the county generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals from sensitive range in severe winters. However, conflicts exist between big game and other uses. These existing conflicts limit management options and recreational opportunities.

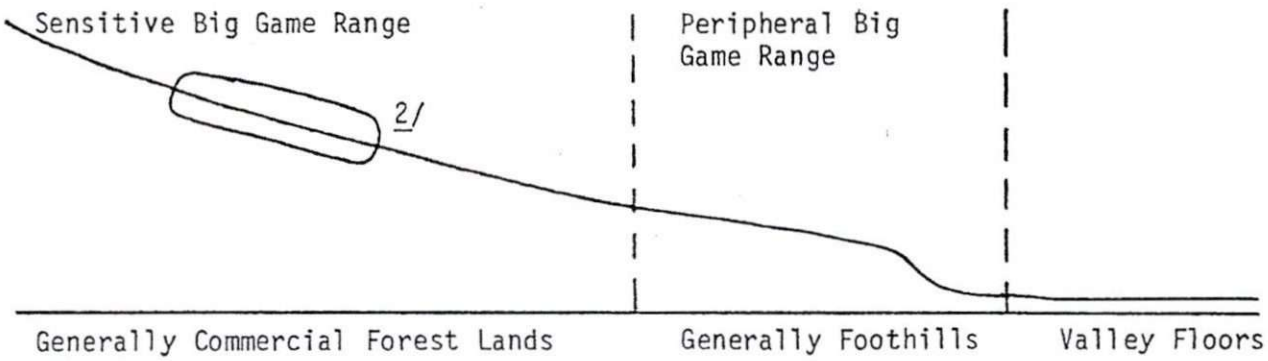
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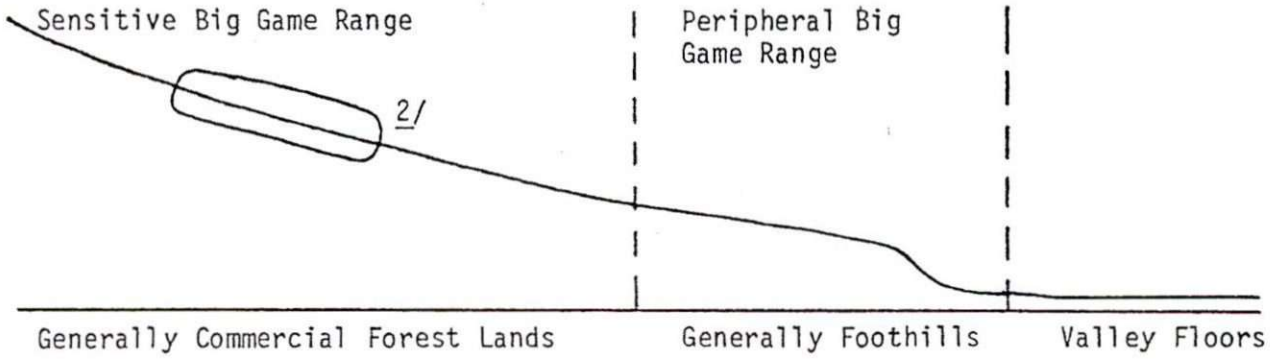
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WORKING PAPER:

Flora & Fauna

DRAFT

MAR ~ 1982

COMPREHENSIVE PLAN REVISION

LANE COUNTY, OREGON

FLORA AND FAUNA WORKING PAPER

INTRODUCTION

Oregon's wildlife and fish resources are varied and abundant. Lane County alone with its large land area and highly diverse landscape from snow level to sea level provides numerous specialized habitat areas for more than 290 species of birds, 70 mammal, 13 reptile, 17 amphibian and over 50 fish species. This diversity also is apparent in the vegetation of the County from coastal salt spray meadows inland to the treeless crests of the Cascade range.

Inventories of fish and wildlife species were compiled from Oregon Department of Fish and Wildlife information, various environmental assessment or impact statements and the Eugene-Springfield Metropolitan Area Wildlife Study. These lists are presented in the appendix to this report.

Inventories of habitat types are presented on USGS maps at a scale of one inch equaling one mile (15-minute series). This shows unique, endangered or threatened sites such as eagle nests, snowy plover sites, heron rookeries, band-tailed pigeon mineral springs, osprey snags and northern spotted owl sites. Further, major and Peripheral Big Game Range and general riparian vegetation around Class I streams are shown on these maps. Noncoastal wetlands and Sensitive Fish and Waterfowl areas are depicted on other maps.

The USGS maps also show general locations of Nature Conservancy sites and sites inventoried by the Oregon Natural Area Preserves Advisory Committee (NAPAC) which are in Lane County's Inventory.

Statewide Planning Goal #5 - Open Spaces, Scenic and Historic Areas, and Natural Resources - requires consideration of numerous resources, among them fish and wildlife habitat, ecologically and scientifically significant natural areas and wetlands.

Wetlands are considered here as fish and wildlife habitat. Although they have many valuable functions, their habitat value is a primary one. The original list of ecologically and scientifically significant areas included 86 sites from the Nature Conservancy Inventory and 12 sites from the Natural Area Preserves Advisory Committee. These are further refined in this paper.

Several deficiencies in Lane County's treatment of fish and wildlife habitats and natural areas were noted by LCDC. These were:

1. Updated inventory information required for sensitive fish and waterfowl areas and noncoastal wetlands.

2. Provide more specific information on Nature Conservancy Inventory sites.

3. Adopt mandatory policies regarding the protection of natural areas and noncoastal wetlands and clarify this with existing policies that encourage drainage projects.

4. Adopt implementing measures for the protection and/or resolution of conflicts with noncoastal wetlands, natural areas and the following types of fish and wildlife habitat: big game range, riparian areas and sensitive fish and waterfowl areas.

After these orders to comply were written, LCDC adopted administrative rule 660-16-00 which gives very specific procedures for evaluating Goal 5 resources. The administrative rule applied to Lane County due to the continuance status of the County. Therefore, this paper addresses the items set out in the orders to comply and does so in the format of OAR 660-16-00. Specifically, this rule requires that when conflicts to Goal 5 resources can be anticipated in the plan, the economic, social, environmental and energy (ESEE) consequences of the conflict are analyzed and resolution to the conflict proposed. In cases where a resource is considered significant but conflicts cannot be anticipated, procedures are established to analyze conflicts as they are identified.

The contents of this paper are as follows:

A. General Findings. Concise statements summarizing facts on Lane County's flora and fauna resource and potential impacts of certain land use activities.

B. Habitat Types. A description of the 12 habitat types found in Lane County.

C. Endangered or Threatened and Special Concern Species. A listing of the threatened or endangered species found in the County and special habitat requirements for some of them.

D. Habitats of Particular Concern. Location, quality and quantity information and conflict analysis for the following types of habitat:

Riparian vegetation
Noncoastal wetlands
Sensitive fish and waterfowl
Big game range

E. Natural Areas. Location, quality and quantity of the sites on the Nature Conservancy and NAPAC lists determined to be significant, including conflict analysis.

F. Policy Recommendations.

G. Appendices. Includes lists of species.

FINDINGS

1. Lane County's fish and wildlife resource is highly varied. Diverse habitats, ranging from coastal to alpine, support nearly 400 vertebrate species. Status of individual species extends from common to endangered.

2. Four physiographic provinces - coast, coast range, western interior valleys and western Cascades - are found in Lane County. Each province represents differences in climate, substrate, topography and other physical

and chemical variables. Each is distinct and represents a unique diversity, supporting flora and fauna which are adapted to the region.

3. Twelve distinct wildlife habitats are found in Lane County: estuary and bay (includes subtypes coastal salt marsh, tidelands and eelgrass), inland marsh, lakes and reservoirs, wet meadows, annual and perennial grasslands, riparian vegetation, coastal shore pine/spruce, Douglas fir/trailing blackberry, true fir/alpine, deciduous hardwoods, agricultural lands and cities.

4. Lane County's fish and wildlife resource provides substantial social, economic and ecological values.

5. A diversity of habitats is required to maintain Lane County's fish and wildlife fauna. Distribution of many species is limited by specialized habitat requirements.

6. Coordination between Lane County and state and federal agencies is necessary to properly harmonize wildlife needs and other resource values.

7. There will be a continuing need to review and update fish and wildlife inventory information.

8. Numerous land use activities have the potential to diminish the quality and quantity of fish and wildlife habitat. Habitat losses for a broad spectrum of fish and wildlife continue to occur. Sound resource management is necessary to minimize this loss.

9. Lack of biological information for many species handicaps the development of management procedures such as habitat guidelines.

10. Species not presently endangered or threatened may become so if their habitats are not adequately protected.

11. Examples of habitats of special value to fish and wildlife include high quality riparian and wetlands areas, estuaries, Major and Peripheral Big Game Ranges and other sensitive, fragile or unique areas.

12. Protecting water quality and quantity is vital to fish and wildlife resources.

13. A majority of certain habitat types and major watersheds lie within federal ownerships in Lane County. Therefore, public land managers have prime responsibility for protection of these habitats and watersheds. Where private lands support certain habitats, County land use planning needs to take into consideration wildlife needs, Statewide Planning Goal objectives and the rights and management objectives of the private landowner.

14. Land use activities which could negatively impact fish and wildlife habitat if uncontrolled include:

    a. Conversion of agricultural and forest lands to other uses;

b. Division of large tracts of farm and forest lands to small parcels;

c. Field burning, fencerow clearing, wetland drainage and certain other agricultural practices;

d. Careless or unplanned road construction;

e. Gravel extraction from streambeds.

f. Logging and road building activities which do not conform strictly to the Oregon Forest Practices Act.

15. Designated natural areas in Lane County provide examples of unique or outstanding habitat or species assemblages.

The many other riparian and wetland areas in the County range from undisturbed, very diverse areas to fringe marshes and riparian zones in urban areas. Often the small marshes and riparian zones in agricultural and urban areas take on a greater degree of importance due to their scarcity. They may provide a refuge for species whose habitat has been destroyed elsewhere.

Quality can be degraded in different ways. Certainly, removal of vegetation most immediately destroys most habitat value of an area. This can be done either directly by tearing out plants or by draining away water so that wetland or riparian vegetation can no longer survive. Human presence can drive off some forms of wildlife, but if not in large numbers will not generally degrade habitat values too much. Intense activities, such as recreation sites, will have a greater effect on habitat values and should be closely examined in view of this prior to approval.

Another activity which can greatly damage riparian and wetland areas, but which is only a minor problem in Lane County, is livestock grazing. The continual disturbance of streambanks can retard vegetation and can cause severe erosion.

Quantity

No good inventory exists on the quantity of riparian habitat in Lane County. Mapping of riparian habitat around Class I streams gives only a general indication of its location, but no figures on depth of the zone from the waterbody or cleared areas. The Willamette River Greenway and coastal lakes and rivers have the best mapping of riparian vegetation, often by aerial photography on large-scale maps, but these areas already have mechanisms to protect riparian vegetation.

The National Wetland Inventory maps will shortly cover about one-half of the County. General location of wetlands is given but no quantification of acreage by wetland type (and no indication of wetland quality). This mapping system, prepared by US Fish and Wildlife Service, will eventually cover the entire County.

Conflicting Uses

Two major activities conflict with preservation of riparian and wetland habitat areas:

1. Destruction of vegetation for any purpose; forestry, agriculture, construction, recreation, aggregate extraction, etc.; and

2. Draining surface or subsurface water which then changes the vegetative structure and generally the habitat value.

The end result of both of these activities is reduction in habitat value, flood control, water pollution control, and stability along streambanks for riparian vegetation.

An ESEE analysis for loss of riparian and wetland areas from either direct destruction or drainage follows.

ESEE Analysis

Economic Consequences

1. Since wetland and riparian vegetation decrease water velocity and damage from floods, removal of this vegetation could increase economic damage from flooding.

2. Merchantable timber removed from riparian and wetland areas is a source of employment, income and revenue in Lane County, although most species growing there have low economic value compared to some other species of timber.

3. Lands cleared for agricultural use could increase economic activity from that source.

4. Lands disturbed for aggregate extraction could increase economic activity from that source.

5. Removal of riparian and wetland vegetation could result in a loss of revenue from hunting which could result from a decrease in game species of fish and wildlife.

Social Consequences

1. Decline in wildlife diversity can be an important factor for many persons who enjoy living in proximity to watchable wildlife.

2. Regulations aimed at maintaining riparian and wetland vegetation, not just requiring building setbacks from those areas, would result in a much greater degree of governmental restrictions on most lands than presently exist. The sort of enforcement effort it would require to regulate vegetation removal in riparian and wetland areas Countywide would be truly massive. The payoff from this sort of effort must be particularly questioned since a majority of the County is timberland which is regulated by the State Forest Practices Act, not County regulations for riparian and wetland areas.

3. The question of aesthetics varies greatly with the viewer. Some persons prefer the look of natural vegetation along a water body, others find an artificial park-like setting preferable. A law requiring maintenance of riparian vegetation would force one perspective on a landowner.

4. The greater erosion potential when riparian and wetland vegetation is removed could result in more turbid water. This could have an effect on downstream recreational uses.

Environmental Consequences

1. Removal of riparian and wetland vegetation would result in decreased wildlife habitat, with a decrease in wildlife diversity.

2. Bank stability would be decreased with removal of vegetation. This causes more erosion, dirtier water and negative effects on aquatic life.

Riparian habitats have been recognized as one of the most important and valuable land types in Oregon for several reasons: (1) they play an essential role in determining the quality of fish habitat; (2) they provide a vegetative buffer for streambank stability; (3) they offer seasonal and year-long habitat to the greatest numbers and diversity of terrestrial wildlife populations than any other habitat type; (4) they accommodate and attract important recreational activities such as hunting, fishing, boating, camping and hiking; (5) their aesthetic value is high because of the pleasing combination of land and water, attractive and unique vegetation types, and abundant animal life; (6) their ability to control pollution by filtration; and (7) their ability to assist in flood control by water containment.

Fishery habitat is directly related to the conditions in the surrounding watershed, especially the adjacent riparian zone. Riparian vegetation provides a number of important features to aquatic habitat: (1) streambank stabilization and erosion control which reduces sedimentation and helps maintain an oxygen supply to eggs and juvenile fish; (2) a natural filter to settle out sediments and reduce downstream siltation; (3) shade to maintain suitable water temperatures for aquatic life; (4) organic debris to feed aquatic insects which are essential to the diets of many fish; (5) bank stability to minimize stream damage from torrential floods; (6) overhanging bank cover from the roots of trees, shrubs, and other vegetation to provide fish with protective cover and terrestrial insects; and (7) groundwater recharge by its ability to absorb water. When a riparian zone is adversely affected by human activities, the quality and quantity of fish production will be affected.

Riparian vegetation likewise plays a vital role for wildlife. The habitat is a gradation between aquatic habitat of the stream and surrounding terrestrial habitat. The riparian zone usually provides all four basic habitat components: water, food, cover and space. The habitat is generally more diverse than upland plant communities, and therefore supports greater wildlife diversity and higher numbers of individuals. Certain fish and wildlife species are totally dependent on the riparian ecosystem, other species use the area as a travel corridor, or for feeding, roosting, nesting or watering. The significance of riparian habitat to game and nongame wildlife, both within and in the vicinity of the area, surpasses that of any other habitat type (American Fisheries Society, 1980).

Very similar statements can be made for wetland ecosystem species diversity and habitat importance as for riparian areas. Their variety of habitats, and often their inaccessibility, make them very important for many species. Wetlands which occur in agricultural or developed areas take on an even greater degree of significance as they are often a refuge for animals which have been displaced and can provide some of the only available living space for many forms of wildlife.

Administrative Rule 66-16-000 requires examination of the location, quality and quantity of Goal 5 resources, including wetlands and fish and wildlife habitat. Riparian vegetation, being an important habitat type, was distinguished in the Orders to Comply as needing better implementing procedures for protection or resolution of conflicts.

After examination of location, quality and quantity, a decision must be made whether the resource sites are significant. If so, conflicting uses must be

identified. An analysis of ESEE consequences must be done, then a program developed for resolution of conflicts. The resolution can take three courses: a) preserve the resource site; b) allow the conflicting use fully; or c) specifically limit conflicting use.

Location

Although the total amount of riparian and wetland vegetation is much reduced from the amount prior to human habitation of Lane County, these habitat types still exist all around us. Unless the water regime which supports the area changes, areas which have been cleared will revert to riparian or wetland vegetation without constant upkeep.

All lakes, reservoirs and Class I streams in Lane County have been mapped. These maps are not included here for budgetary purposes, but are available in the Planning Department offices. Class I is a designation used by the Oregon Forestry Department and the Oregon Department of Fish and Wildlife to indicate streams important for fish life. Class I streams are those valuable for domestic use, important for angling or other recreation, and/or used by significant numbers of fish for spawning, rearing or migration routes. Stream flows may be either perennial or intermittent during parts of the year. Unless in a disturbed state, riparian vegetation will exist around all of these. Certain areas of stream and lake banks have been designated as "sensitive fish and waterfowl habitat," and will be discussed and analyzed later in this report. This section, then, deals only with riparian areas outside of the "sensitive" areas.

In the northwest quarter of the County, wetlands have been mapped by the US Fish and Wildlife Service. The maps, called the National Wetland Inventory, are very detailed and use an intricate classification system to show types of wetland vegetation. Most of the mapping is done at a scale of 1" = one mile, with the area close to Eugene at a scale of 1" = 2000'. Neither of these scales work well for most site specific uses. They give general ideas about where within a section wetland vegetation occurs, but field examination would be necessary to determine exactly where the wetland occurs.

This mapping should eventually be completed for all of the County, but lack of federal funding may extend that effort. Mapping for the southwest quarter of the County should be released in draft form by summer, 1982. As mentioned earlier, where this Inventory exists, it will be considered the maximum number of sites which will be considered wetlands. Where this mapping is not yet completed, only the earlier definition of a wetland will be used to identify sites.

Quality

For the most part, quality of riparian and wetland areas is discussed as it relates to quality for fish and wildlife habitat, as this is considered one of their prime functions. The "sensitive fish and waterfowl" areas designated by the ODFW are a subunit of riparian and wetland areas. These areas, discussed in the next section, are the most important and highest quality riparian and wetland areas.

2. Northern Bald Eagle. This nationally threatened species requires buffer areas around nest sites with restricted activities during nesting seasons. Federal land management policies provide protection for this bird on federal lands. No nests on private land are presently known in Lane County. If nest sites are identified on private land, an ESEE analysis should be done on conflicts which would either destroy the nest site or inhibit fledgling viability. The County should then work with the Oregon Department of Forestry to make them aware of the location of these areas and implementation methods adopted by the County for conflict resolution.

3. Wolverine. This threatened species requires remote, high elevation areas of the Cascades free of logging and intensive human activities. These areas are in federal ownership and therefore not under County jurisdiction.

4. Silverspot butterfly. This species is on the National list of Threatened and Endangered species. It requires undisturbed salt spray meadows and adjacent upland brush and treeline areas. It is only found along a small section of the Oregon coast. The Coastal Resources Management Plan of Lane County recognizes this species and applies a Prime Wildlife Management Unit to its habitat.

5. Western snowy plover. This species, threatened in Oregon, requires undisturbed areas of dry sand along the beach between the highest tide line and the vegetation line. The Oregon Department of Transportation, State Parks Division, regulates activities including vehicular use of this area. The Oregon Department of Fish and Wildlife is currently preparing a state management plan for the snowy plover. This plan will probably include recommendations for areas closed to vehicles either year round or seasonally to protect the habitat of this bird and other important shorebirds.

   Since the habitat is within state jurisdiction, Lane County proposes no direct action, but does support state activities to protect this species.

6. American osprey. This bird is a special interest species because its very specific nesting requirements in timber areas make it susceptible to population losses from habitat modification. The bird is neither threatened nor endangered and is found throughout the County, although not in great numbers. Some protection is already provided around coastal lakes and in the Willamette River Greenway. No special zoning provisions will be adopted by the County for osprey nesting sites. Nest sites are shown on the Wildlife Inventory maps. If these sites are confirmed by ODFW, their maintenance will be a consideration in land divisions and special use permits.

RIPARIAN AND WETLAND AREAS

LCDC Orders to Comply mandate updated inventory information on the location, quality and quantity of noncoastal wetlands and implementation measures for the protection and/or resolution of conflicts with these wetlands and with riparian habitat areas. The discussion in this section does not distinguish between coastal and noncoastal wetlands. Although many coastal wetlands are protected by Goal 17, many are not and should be considered along with wetlands on a Countwide basis.

Several areas within the County presently have regulations dealing with riparian vegetation. These are the Willamette River Greenway, the Siuslaw River Estuary, and coastal lakes. Also, lands zoned for timber production are regulated by the Oregon Forest Practices Act which considers buffer strips around streams. The County is not attempting to preempt state authority in forestry zoned areas. The discussion on conflicts and conflict resolution, therefore, does not apply to those areas.

It is difficult to separate discussions of wetlands and riparian (streamside) vegetation. Conditions which give rise to both are very similar and habitat values are similar. Riparian vegetation is that vegetation alongside streams and lakes which is structurally and physiologically adapted to living in saturated conditions.

Defining a wetland is more difficult and must be considered as a continuum of conditions not in direct relation to a lake or stream. There are many different definitions of wetlands - open water may or may not be present, the area may be seasonally or permanently wet, different vegetation types may occur. For purposes of this paper, a wetland is an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre. Vegetation types can range from grasslands to areas with mature, water-loving trees (Oregon white ash, cottonwood, alder and willow). The wetland must be large enough to be important for wildlife feeding and watering. The one-acre minimum size is intended to exclude small, backyard wet areas, and to give an indication of the type of areas intended to be covered by this definition of wetland. In a case of dispute over whether an area is important for wildlife and should be considered a wetland, the ODFW's recommendations will be relied upon.

For areas of the County covered by the National Wetland Inventory, that Inventory shall be considered the maximum number of sites which may possibly be considered wetlands. If sites occur there, though, which are streams or do not have open water present, they will not be considered a wetland by this definition.

These wetlands correspond to the Inland Marshes discussed in the Habitat Types section of this paper, rather than the Wet Meadows.

Riparian and wetland ecosystems are characterized by the combination of high species diversity, high species densities and high productivity. Continuous interactions occur between riparian and wetland ecosystems and adjacent uplands by transfer of energy, food and species.

ENDANGERED, THREATENED AND SPECIAL CONCERN SPECIES

Both plant and animal species which have been identified by the state or federal government as endangered or threatened are present in Lane County. Some species not presently threatened or endangered may become so if their habitat is further altered by man's influence and present practices.

It is important to note that many of these species are found on public lands. Those management agencies have prime responsibility for conservation and protection of the species on their lands.

No deficiencies were noted by LCDC during compliance review for threatened and endangered species. Two policies regarding threatened, endangered, and special interest species are presently part of the Lane County Plan. These policies are:

- Recognize and support existing federal and state programs protecting threatened or endangered fish and wildlife species.

- Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

The following definitions apply:

Endangered Species - Those likely to become extinct if present trends continue.

Threatened Species - Those whose population trends indicate that endangerment is forthcoming if present trends continue.

Special Interest Species - Those rare and uncommon species because of numbers or trends. Designations tend to be rather subjective and are therefore generally unofficial.

Endangered Animals and Plants

Columbian white-tailed deer
California brown pelican
American peregrine falcon
Gray wolf
Oregon chub

Bradshaw's desert parsley
Meadow sidalcea
Wayside aster (suggested as endangered)
Pacific fleabane (suggested as endangered)
Howellia (suggested as endangered)

Threatened Animals and Plants

Sea otter
Wolverine
Western spotted frog
Northern spotted owl
Western snowy plover

Silver spotted butterfly
Northern bald eagle
Wapato, broadleaf arrowhead
Darlingtonia, California pitcher plant

Special Interest or Protected Animal and Plant Species

Mary's Peak salamander
Sharp-tailed snake
Western rattlesnake
American osprey
Northern purple martin
Red tree vole
Cony (pika)
Short horned lizard
Oregon slender salamander
Tailed frog
Marine mammals

Allium amplectons
Aster hallii (curtus)
Cypripedium californicum
Draba aureola
Erigeron cascadensis
Eriogonum umbellatum
Gentiana newberryi
Ledum groenlandicum
Montia diffusa
Pellaea andromedaefolia
Phacelia verna
Phlox peckil (Phlox diffusa)
Pleuricospora fimbriolata
Scoliopus hallii
Sidalcea nelseniana
Silene douglasii var. monantha
Sinelowskia calycina
Sullivantia oregona
Vaccinium oxycoccus var. intermedium
Viola adunca var. bellidifolia

Specific Species Requirements

1. Northern spotted owl. Recent recommendations to an Interagency Spotted Owl Task Force from research in Oregon suggests maintaining 1,000 acres of old growth timber within 1-1/2 miles of the nesting tree of a pair of spotted owls. An Oregon Interagency Spotted Owl Management Plan has been drafted. This plan recommends a minimum nesting pair quota in Oregon of 400 pairs. Of these 400, 290 pairs should be located on US Forest Service land, 90 pairs on BLM land and the remaining 20 pairs on "other lands." Other lands include, but are not limited to state, county, national park, and private lands. Protection is not required on private lands by any state or federal laws.

   The major economic loss to a private landowner which would result from maintaining 1,000 acres of old growth timber for the purpose of one pair of spotted owls does not seem justified when 98 percent of the quota of owls is proposed for federal lands. A restriction on harvesting 1,000 acres of old growth from private property would be excessive and would very possibly constitute a "taking" under the law.

   No known spotted owl nests occur on private property in Lane County at this time. Because of the unreasonable burden protection of this species would place on a private landowner, no special provisions are recommended for any nests which may be found or constructed on private property.

   Maintaining a viable population of this species is recognized as an important goal by the County. As part of their multiple purpose mandate, the Forest Service and the Bureau of Land Management are encouraged in their efforts to protect this species on public lands in Oregon.

include the blue and ruffed grouse, mountain quail and the band-tailed pigeon.

Numerous species of small birds and mammals are associated with this habitat type, including several important furbearers.

c. Location

Valley foothills, coast range and Cascade range.

9. True Fir/Alpine

a. Description

This type occurs primarily in the Cascades above the Douglas fir-trailing blackberry area. Noble fir, Engelmann spruce, white fir, grand fir, mountain hemlock and mountain alder are the most common species. High elevation areas are densely covered with huckleberry, a preferred browse plant for many species of animals.

This habitat type contains numerous small lakes and meadow areas that are extremely important to wildlife.

b. Value to Wildlife

This habitat type is important summer range for black-tailed deer and Roosevelt elk. Some mule deer also spend the summer months in this area. This area contains the pine martin, fisher, wolverine, coyote and pikas. The black bear is also found in this habitat type.

Game bird species present are the blue grouse and occasionally band-tailed pigeon.

Many small birds and mammals are associated with this type.

This type contains numerous meadow and prairie areas that are very important to wildlife species and every effort must be made to preserve them. These meadows are important for resting, feeding, calving areas for elk and during most winters a place for animal survival. Many wet meadows remain open during deep snows and thus provide an important wintering area for animals.

c. Location

High elevations of Cascades - primarily in federal ownership.

10. Deciduous Hardwoods

a. Description

This forest type consists of white oak and black oak, with undergrowth of poison oak, ceanothus sp. and grasses. May also contain scattered or small clumps of Douglas fir or pines. Found primarily in the Willamette Valley and along the foothills.

b. Value to Wildlife

This area is the year-around habitat of the black-tailed deer, black bear, bobcat, coyote and silver gray squirrel. Upland game species include the ruffed grouse, valley and mountain quail and in many areas the ring-necked pheasant. The mourning dove and band-tailed pigeon also use this habitat. Other species include many types of song birds, small mammals, hawks and owls.

This habitat type value varies with its location, but most of it offers resting, feeding and nesting for many species of wildlife.

Its location along the valley foothills provide cover for species that utilize the agricultural areas for food. Some of the best black-tailed deer habitat in Lane County is found in this habitat type.

c. Location

Numerous sites primarily on valley foothills.

11. Agricultural Lands

a. Description

Includes the irrigated and nonirrigated agricultural forage and croplands and dry land seeded pastures.

b. Value to Wildlife

This land type provides important upland game and waterfowl habitat. The black-tailed deer is also found using these areas, but mainly for food, as long as adjacent land types are available for cover.

Many furbearing species such as the beaver, muskrat, mink, etc., are found in the waterways associated with this land type.

Several hundred species of song birds, small and large mammals, hawks and owls are dependent upon this habitat type. The availability of food provided by this habitat type also attracts many species of wildlife from the adjacent habitats.

c. Location

Willamette Valley and assorted small valley floors.

12. Cities

Not applicable to rural Lane County.

c. Location

Countywide.

5. Riparian Vegetation

a. Description

This type occurs along streams, rivers and slough banks. Vegetation is usually in a dense, narrow band. Species of plants identifying this type are those dependent on water such as willow, cottonwood, alder and aspen. Further discussion is found in the Riparian and Wetlands section and the Sensitive Fish and Waterfowl section of this report.

b. Value to Wildlife

An important wildlife habitat type. The riparian vegetation is a concentration point for a great variety of game and nongame species, providing food and cover. This vegetation renders the more open grassland and agricultural areas suitable for wildlife feeding areas by providing the necessary cover. The riparian strip also acts as a food supply for beaver and muskrat and can provide nesting cover, including snags for cavity-nesting birds. Valuable for maintaining good water quality for aquatic organisms.

c. Location

Countywide.

6. Annual and Perennial Grasslands

a. Description

This type contains the annual and perennial grassland areas of the County. Species of forbs and grasses differ with the geophysical area.

In Western Oregon the type may typically be found in small acreages but may be in large tracts of several hundred acres which are commonly called prairies. Many species of native and domestic grasses may be found in this type. In the Cascades and Coast Range this type occurs on shallow soils. Bracken fern may be a common plant on these sites also.

b. Value to Wildlife

A very important type for elk, deer, grouse, turkey, mountain quail, moles, gophers, ground squirrels, hawks and owls and many smaller species of wildlife. This type is heavily used on winter range and summer range by deer and elk. Grouse and quail use the prairies for feeding on insects which are a vital part of the young birds' diet in the summer.

c. Location

Countywide.

7. Coastal Shore Pine/Spruce

a. Description

A narrow belt along the coast from the beach inland to the coastal foothills. Shore Pine and spruce are the main trees with salmonberry, red elderberry, salal, alder and thimbleberry being other species present. The coastal sand dunes and beach grass areas are also included in this type.

b. Value to Wildlife

Mature, dense stands of spruce and shore pine are of limited food value to big game species, but are necessary for the protection, shelter, travel lanes, etc., that they provide. Areas that have been burned, logged or otherwise disturbed produce good black-tailed deer, Roosevelt elk, black bear, blue and ruffed grouse and band-tailed pigeon habitat. Numerous species of small birds, shore birds and mammals are associated with this habitat type.

The coastal sand dunes near Florence provide an important area for whistling swans during the winter months.

c. Location

Narrow coastal strip.

8. Douglas Fir/Trailing Blackberry

a. Description

Trees are Douglas fir, western hemlock, red and Port Orford cedar, big-leafed and vine maple, red alder, trailing blackberry, salmonberry, salal and other similar species. Douglas fir and hemlock are the most abundant. Brush species are present in wildfire burn, logged and other disturbed sites. This is the largest habitat type in Lane County.

b. Value to Wildlife

Mature dense stands of Douglas fir are of limited food value to most species of big game; however, they are necessary for the shelter, protection, etc., that they afford. Many species of birds and mammals, however, spend their entire life dependent upon these mature stands of vegetation (ex. northern spotted owl, pileated woodpecker, flying squirrels). With logging and fires these timbered areas are opened to produce abundant foods in the form of berries, forbs, browse and grasses.

Big game species associated with this habitat type are the black-tailed deer, Roosevelt elk, black bear and mountain lion. Upland game species

WILDLIFE HABITATS

The following descriptive information on Lane County habitat types is derived primarily from Oregon Department of Fish and Wildlife materials. This material is not considered an inventory and is not accompanied by maps. It is intended merely as background information.

1. Estuary and Bay (includes salt marsh, tidelands and eelgrass)

   a. Description

      That area from the mouth of a bay or river inland to the mean high tide line. Within this type will occur coastal salt marsh, tideland, eelgrass and open water. Includes all salt, brackish and freshwater area below the mean high tideline. Climate basically mild winters and cool summers. Precipitation is heavy, about 40 inches.

   b. Value to Wildlife

      A very important type to wildlife species. Estuaries and bays support thousands of waterfowl, waterbirds and shorebirds. The shallow tidal areas are critical feeding areas for many species because of the abundance of small food organisms. Eelgrass beds in certain coastal bays are the most important black brant feeding areas. Coastal salt marsh is valuable feeding and nesting area for waterfowl, snipe, yellowlegs, plover, godwits, rails, etc. Mud flats, in addition to being important for many shorebirds, waterfowl and water birds may also serve as haul-out grounds for seals. Raccoons are common foragers in this type. Band-tailed pigeons use the tide flats and salt marsh channels in specific areas for drinking and often concentrate in large numbers at these places.

   c. Location

      Siuslaw River and minor estuaries.

2. Inland Marsh

   a. Description

      This type is a shallow water area, not including coastal bay marsh, with water remaining year-around. Usually vegetated throughout or with patches of open water. Tules and cattails are common indicator plants of this type. Further discussion of this important habitat is found in the Riparian and Wetlands section of this report and under Sensitive Fish and Waterfowl Areas.

   b. Value to Wildlife

      Contains some of the most important waterfowl and waterbird nesting and wintering areas. This is critical habitat because of the limited acreage of this type in Lane County. Muskrats are common mammals found

in this type. Redwing and yellow-headed blackbirds use this type for nesting. Amphibians and reptiles such as frogs, toads, salamanders, turtles and certain snakes are found in this type.

c. Location

Fern Ridge Reservoir and numerous smaller sites.

3. Wet Meadows

a. Description

Boggy or damp areas with many small springs or bisected by slow-moving streams. Contain sedges, monkey flower, skunk cabbage, false hellebore, aspen, cone flowers or similar species. May be found throughout the County from low foothill areas to high elevations in the Cascade Mountains. These are generally seasonal wetlands. Further discussion of wetlands is found in the Riparian and Wetlands section of this report.

b. Value to Wildlife

A very important vegetation type. Provides summer, fall and sometimes winter forage to big game. Utilized as wallows by bear and elk. Important to amphibians such as toads and frogs. This type is usually important for watering area. Can be excellent beaver habitat. Beaver ponds and slow-moving streams in this type can be excellent fish-producing area also because of the abundant food supply.

c. Location

Numerous sites Countywide from low foothills to high Cascades.

4. Lakes and Reservoirs

a. Description

All open fresh-water areas in the County. Borders sometimes vegetated with water-tolerant forbs, shurbs and trees. There are 11 major reservoirs in Lane County. Lowland and coastal lakes total 10 and 27 respectively. High lakes are abundant in the Cascade Mountains with approximately 250 located in Lane County.

b. Value to Wildlife

The value of these areas varies with type and location. Most offer resting, nesting and limited feeding areas to waterfowl. Many of the large, deep reservoirs are of low value because of continuous water level fluctuation. Some of the wildlife species present in these bodies of water are: furbearing animals--otter, beaver, muskrat, nutria; waterfowl--ducks, geese, swans, coots, rails, grebes and loons; amphibians and reptiles--frogs, toads, snakes, turtles and salamanders.

Indian Creek	Salt Creek
Deadwood Creek	Hills Creek
Whittaker Creek	Steamboat Creek
Esmond Creek	Coast Fork Willamette
Wildcat Creek	Row River
Wolf Creek	Mosby Creek
Long Tom River	Sharps Creek
Willamette River Main Stem	Brice Creek
Mohawk River	Layng Creek

All or portions of the following areas are considered sensitive waterfowl habitat:

Fern Ridge periphery exclusive of parks
Old Long-Tom channel below Fern Ridge
Main Long-Tom channel below Fern Ridge
Amazon Canal where not riprapped
North Fork Siuslaw Freshwater marsh
Maple Creek marsh
Siltcoos Lake/Westlake marsh

Quality

Since these are the areas identified as important, sensitive fish and waterfowl areas, they can all be considered high quality for that purpose.

Quantity

Most of the major rivers and creeks in the County are designated Sensitive Fish and Waterfowl areas, but not the many miles of smaller, less significant Class I streams.

Conflicts

Maintenance of natural vegetation in waterfowl nesting areas is of prime importance to those species. Maintaining riparian vegetation around sensitive fish areas is essential to water quality and aquatic life. Removal of riparian vegetation in these areas is considered a conflict, whatever the purpose.

ESEE Consequences

ESEE consequences for Sensitive Fish and Waterfowl areas is generally the same as for Riparian and Wetlands, with a few additions. Since the areas in this category are considered more valuable for fish and waterfowl habitat than others in the County, the effects of vegetation removal can be more significant.

Economic consequences

Same as for Riparian and Wetland areas.

Social consequences

Same as for Riparian and Wetland areas plus the following:

1. Sensitive Fish and Waterfowl areas are important for recreational purposes, both private and public. They also influence nearby recreational values. For instance, severe erosion from one property can influence fishery values downstream.

Environmental consequences

Same as Riparian and Wetland areas plus the following:

1. Sensitive Waterfowl areas serve as important resting and feeding areas for migratory birds. Destruction of this habitat causes effects which reach far beyond Lane County.

Energy consequences

Same as Riparian and Wetland areas.

Conflict Resolution

To repeat the procedure, after examination of ESEE consequences of potential conflicts, a decision must be made to preserve the resource fully, allow the conflicting use fully, or to specifically limit the conflicting use. In this case, preserving the resource fully would be to completely protect riparian vegetation in the identified waterfowl nesting areas and adjacent to the identified streams. Allowing the conflicting use fully would mean that no implementation requirements would exist protecting that riparian vegetation. The third option is a compromise between the two.

The third option, limiting the conflicting use, is the most appropriate, with the limitation weighed in favor of maintenance of the vegetation. Since these areas are the most important fish and waterfowl areas in the County, the riparian vegetation should be maintained whenever possible. As with Riparian and Wetland areas, a 50-foot building setback from the high water mark of the waterway shall be required. But within these Sensitive areas a 30-foot strip of indigenous vegetation shall be left along the waterway. Exceptions to this requirement shall be very limited and will include areas necessary for water-dependent uses, and areas which are now unvegetated and developed.

Regulations for riparian vegetation maintenance will be similar to those currently existing in the coastal shoreland overlay zones. One example, from the Residential Development Combining District (LC 10.255-30(3)):

"Within the setback area . . . all indigenous vegetation except that removed to provide paths to the water body shall be retained within an area 30 feet in width measured at right angles from the mean high water line of the water body. For the remainder of the required setback area brush may be removed but trees shall be retained."

Policy statements pertaining to Riparian and Wetland areas are also applicable here.

3. Water holding capacity is decreased with removal of vegetation in wetlands and riparian areas.

4. Water purification through filtration is a function of riparian and wetland vegetation which would be missing if the vegetation were removed.

5. The values of floodwater retention and decrease in floodwater velocity would be missing with removal of riparian and wetland vegetation.

Energy Consequences

1. If riparian vegetation is removed, bank erosion can increase. This causes more turbid water which may be more expensive and require more energy to treat downstream.

Conflict Resolution

After examination of the conflicts to riparian and wetland vegetation, and the ESEE consequences of those conflicts, the decision must be made as to preserving the resource totally, allowing the conflicting use totally, or specifically limiting the conflicting use. The third option, specifically limiting the conflicting use, seems the only prudent course of action. To disregard the value of riparian and wetland vegetation and not even consider it in permit applications does not make sense, when the valuable functions of the areas are taken into account. On the opposite end of the spectrum, to have a program which requires the County to be involved in any activity, no matter how minor, in riparian and wetland areas, also does not make sense. A program which recognizes the value of wetlands and riparian areas by way of strong policy statements, requires reasonable setbacks from Class I streams and wetlands so construction will not occur in the wetland or riparian zone, requires a balancing of wetland and agricultural values before drainage projects are undertaken, and which carefully considers input from the Oregon Department of Fish and Wildlife prior to approval of Special Use Permits and land divisions will ensure that these important areas receive the evaluation and attention they deserve.

SENSITIVE FISH AND WATERFOWL AREAS

LCDC Orders to Comply required implementation measures for the protection and/or resolution of conflicts for fish and wildlife habitats in general, and sensitive fish and waterfowl habitats in particular. Lane County's previous plan discussed riparian areas around all Class I streams. The Oregon Department of Fish and Wildlife (ODFW) objected to this being too broad brush. Correspondingly, LCDC required that the category of sensitive fish and waterfowl areas be called out.

This category is a subset of the riparian and wetland areas discussed above. Maps have been provided by ODFW showing important waterfowl nesting habitat and streams which receive high use by anglers and/or game fish. Streams which are consistently used by large numbers of anglers are considered to contain large numbers of game fish, even though creel censuses have not been done in each of the areas. These identified areas are considered the highest quality fish and waterfowl habitat in Lane County.

Location

Certain of the areas identified by ODFW already receive a high degree of protection for the surrounding riparian vegetation. These are the Willamette River within the Greenway and coastal lakes and marshes covered by management units under the Coastal Resources Management Plan.

Other of the areas fall under the jurisdiction of the Oregon Forest Practices Act. In areas zoned for the primary purpose of timber production, state rules take precedence over County regulations. Buffer strips and critical wildlife and aquatic habitat are considered by the Oregon Department of Forestry prior to approving harvest plans.

Still other of the areas identified by ODFW are within federal lands where the County has no jurisdiction.

Instead of providing a map in this text (at a scale which is difficult to interpret) a list of the areas involved will be provided. The map is available in the Planning Division office for review.

Portions of the following streams are sensitive fish habitats:

Tenmile Creek	McKenzie River
Big Creek	Gate Creek
Cape Creek	Blue River
Sutton Creek	South Fork McKenzie River
North Fork Siuslaw	Horse Creek
Siltcoos River	Lost Creek
Woahink Creek	Middle Fork Willamette
Maple Creek	Fall Creek
Fiddle Creek	Little Fall Creek
Sweet Creek	Winberry Creek
Siuslaw River above Mapleton	North Fork, Middle Fork Willamette
Lake Creek	Salmon Creek

BIG GAME RANGE

LCDC Orders to Comply required implementing measures for the protection and/or resolution of conflicts with Big Game Range. The County must clarify the types of uses which conflict with big game habitat, and would therefore be reviewable by the County under any implementing measures developed. The primary conflicting use mentioned by LCDC is residential use at certain densities.

Location. The Oregon Department of Fish and Wildlife (ODFW) has divided big game range in Lane County into three categories as follows:

> Major Big Game Range - That portion of the County which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.
>
> Peripheral Big Game Range - Foothill areas of the County generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals in severe winters.
>
> Impacted Big Game Range - Those areas of the County that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

These areas are mapped on Lane County Wildlife Inventory maps. As a general depiction, Major Big Game Range occurs on federal lands, large timber company holdings, and some private lands which are sparsely developed. Peripheral Big Game Range encompasses primarily foothills and smaller valleys. Impacted Range includes cultivated fields and developed areas, often on valley floors.

Because of the large amount of undeveloped timberland in Lane County, the majority of the County is Major Big Game Range. But, due to scattered ownership patterns, many areas within the Major Range are small, private parcels. Peripheral Range often falls along small valley floors which are privately owned and often fairly extensively developed. For example, most of the Fall Creek, Mohawk and Lorane valleys are within Peripheral Range, as well as large tracts of land west of Elmira.

Wildlife Inventory maps have not been included in this Working Paper due to budget constraints, but are available for review in the Planning Department office.

Quality. The majority of big game use occurs on Major Range. This can be considered the highest quality habitat as man's intrusion with developments is the least. Peripheral Range is also important habitat, and can be particularly crucial in severe winters, but has enough development to limit big game use and management options. Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.

One other category of lands should be mentioned here. Outside Urban Growth Boundaries, areas exist which are committed to nonresource use. Exceptions for these areas will be taken as "Built Upon and Committed Lands" and acknowledged by LCDC. These small pockets of development within Major or Peripheral Range are essentially Impacted areas due to their level of use by man. They were not large enough, generally to include on the Big Game maps as Impacted. These areas will be treated as Impacted areas for implementation purposes.

Quantity. Areas of of Major, Peripheral and Impacted Big Game Range have not been computed. Figures for acreage of some other categories of land may be useful, though, for illustrative purposes.

Total amount of land in Lane County	2,959,400 acres
Commercial forest land (primarily Major Range)	1,813,228 acres
Other public lands (primarily Major Range, some Peripheral Range)	735,112 acres
Farms (primarily Impacted Range)	255,712 acres

Over 61 percent of the County is considered commercial forest land, a category with essentially no residential development. Including other public lands, such as the Dunes National Recreation Area, Oregon State lands, Corps of Engineers lands and County parks, approximately 85 percent of the County is not available for residential use. A good portion of the remaining acreage is farmland, a category very difficult to justify as available for residential use, but also not prime big game habitat.

Conflict Identification

The clearing of natural vegetation for agricultural purposes decreases an area's habitat value for big game. But since important, existing agricultural lands are already considered Impacted Big Game Range, this is not an issue now. Impacted Range has essentially been "written off" for big game management.

Management of land for timber production does not conflict with big game habitat. With proper forest management techniques, big game habitat can be significantly enhanced. The forage provided to deer and elk in clear-cut areas is very important, but the combination of areas in various successional stages is probably the vital factor in enhancing numbers of deer and elk. Lands zoned for the primary purpose of timber production are subject to the requirements of the Oregon Forest Practices Act. For our purposes, timber harvesting activities do not constitute a conflict to Big Game Range.

The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.

The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning

by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.

The County will be divided into regions convenient for planning purposes. These have not yet been determined, but will probably result in 10-20 regions in the County.

Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.

Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process.

As a final note regarding residences in Big Game Range, damage to landscaping and gardens is a common problem around these residences. For new residential building permits within Major and Peripheral Range, the applicant will be notified that compatibility problems with big game may exist.

Several recommendations in the Policies Section of this Working Paper relate to the method the County will use to protect Big Game Range.

NATURAL AREAS

Lane County's original work on natural areas included just a listing of sites from the Oregon Natural Heritage Program (ONHP) and the Governor's Natural Area Preserves Advisory Committee (NAPAC). A very brief narrative was included with the NAPAC sites, but only site names for the 86 ONHP sites. LCDC's review mentions 12 NAPAC sites; in fact, there are only nine sites in this category.

In its review of Lane County's plan, LCDC noted that adequate quality, quantity and locational data existed for the NAPAC sites. The 86 sites from the Nature Conservancy Inventory, though, required more specific information on location, quality and quantity.

The Goal 5 Administrative Rule (66-16-000), adopted after LCDC's review of Lane County's plan, contains procedures for more detailed review of Goal 5 resources. Accordingly, both the ONHP and NAPAC sites are re-examined and divided into three categories as laid out in the rule:

1A: Available information on location, quality and quantity indicates resource site not important; not included on plan inventory.

1B: Some information available but inadequate to identify resource site; included on plan inventory with special status; plan statement to address resource site when information available.

1C: Information on location, quality and quantity indicate site is significant; conflicting uses, if any, identified; ESEE analysis of conflicting uses; conflict resolution proposed.

Criteria for Evaluation

For those sites with adequate information on location, quality and quantity, it was necessary to determine if the site was "significant." If so, it fell in an 1C category; if not, in a 1A category. This decision required criteria upon which to base that judgment. Six questions were answered for each site or group of similar sites. These were:

1. Uniqueness?
2. Number of examples limited?
3. Site unusual due to size?
4. Rare or endangered species present?
5. Site already protected by County zones?
6. Examples already protected on public lands?

In some cases final decisions were necessarily subjective and were judgment calls. In other cases, the decision was based on other plan policies. For instance, one of the sites determined not to be significant was the Noti Osprey nest. The portion of this Working Paper on Endangered, Threatened and Special Interest Species stated that no special zoning measures will be taken in Lane County for Osprey nests.

Sites placed in the 1B category had inadequate information on location, quality and quantity to allow use of these criteria. When information is available, the

same method will be used to place them in either a 1A or 1C classification. Moving a site out of the 1B category will be considered a plan amendment.

1B Category

Six sites have been placed in this category. These are:

1. Booth Island/Siltcoos Lake
2. McKenzie River Island
3. South Fork Gate Creek
4. Swamp Creek
5. Marshall Island Heronry
6. Willamette Valley Quaking Aspen Grove

These sites are individually discussed below. No specific timetable is set for dealing with the first four sites. When information is presented to this department which will allow a determination of significance of the site, it will be analyzed and placed in either a 1A or 1C category, based on the criteria mentioned above. Site #5, Marshall Island Heronry, will be field inspected by ODFW later this year. Based on the results of their investigation, the site will be placed in a 1A or 1C category later this year. Site #6 will also be placed in a 1A or 1C category within 1982. Field inspection of the site by knowledgeable botanists is essential here.

a. Booth Island--Siltcoos Lake (ONHP #82). ODFW is unaware of a band-tailed pigeon mineral spring on this island.

b. McKenzie River Island (ONHP #52). ONHP Inventory states "Good riparian habitat and river island." No further data is available.

c. South Fork Gate Creek (NAPAC #12). No way to locate this site any more specifically. Defined only as "old Douglas fir, western hemlock and relatively steep slopes . . . patches of red alder and vine maple."

d. Swamp Creek (ONHP #49). This unsurveyed, unverified ONHP site is described in their Inventory only as "small stream, riparian vegetation."

e. Marshall Island Heronry (ONHP #113). This heronry is on a parcel divided by state and private ownership. Logging on large cottonwoods in the private ownership in 1980 may have destroyed the rookery. ODFW plans flights of the Willamette this spring to inspect heronrys, followed by field surveys later in the spring. If the heronry exists, this site will be placed in a 1C category; if not, in a 1A category. If in 1C, the nest trees and a buffer around them should be protected with a Natural Resource Zone. If the heronry turns out to exist on private property, the Parks Department or the Fish and Wildlife Department are urged to acquire this property.

f. Willamette Valley Quaking Aspen Grove (ONHP #2). This site is reported as a one-acre stand of Quaking Aspen located west of Elmira along Highway 126. The site is a remnant, native stand of trees. Conflicting directions to the site listed in the Nature Conservancy file have made it impossible to locate this site to date. Botanists from the Nature Conservancy and the University of Oregon are very interested in assisting the County to find this site, if it still exists.

The ONHP report states: "Very rare, relict remnant stand of Quaking Aspen. Very rare in the WV [Willamette Valley] of extreme botanical interest due to long separation from the major Aspen gene pool and because of its novelty and rarity in the Willamette Valley."

If the trees still exist, the site will be placed in a 1C (significant) category. A full ESEE analysis will be done at that time, which will include information and recommendations from botanists. The following items should be considered when and if a full ESEE analysis is prepared:

Under economic consequences, the possibility of reduction of income to the private property owner if the land cannot be converted to another use. Also the fact that the property owner may gain tax advantages if an NR zone is applied and an open space tax deferral approved.

Under social consequences, the loss of a rare site such as this is inherently displeasing to many persons, even though the site is on private property and not open to the public.

Under environment consequences, the fact that the tree is very abundant in other parts of the US. Also that the long separation from the major Aspen gene pool could result in valuable research opportunities.

No energy consequences can be anticipated at this time.

1C Category

Fifty-six sites fall within this category. These sites have been divided into four groups and will be discussed in this order:

1. Sites owned by USFS and BLM
2. Sites which are State Parks
3. Sites covered by the Coastal Resources Management Plan or the Willamette River Greenway
4. Others

- -

1. Sites Owned by USFS or BLM

No additional research has been done on these 29 sites. Available information from the Nature Conservancy on location, quality and quantity indicates these resource sites are significant, and therefore are placed in a 1C category. Because they are in US Forest Service and BLM ownership, however, no conflicts exist based on uses allowed in zoning districts. Lane County does not have jurisdiction on federal lands. Although, as a matter of policy, zoning districts are applied to federal lands in the County, these zones have no effect unless the land is converted to nonfederal ownership. Besides the issue of lack of jurisdiction, the Forest Service

and BLM are required by federal law to consider natural areas as part of their multiple-use mandate.

Inventory of Resource Sites Owned by the US Forest Service

1. Bob Creek (ONHP #55) 15-11, 15-12
2. Buck Creek (ONHP #99) 18-45-4,5
3. Cox Rock (ONHP #16) 17-12-10
4. Diamond Peak Wilderness Area (ONHP #124) 24-55,65
5. Fossil Beds (ONHP #137) 21-1E-30
6. French Pete Wilderness Area (ONHP #140) 17,18-5E,6E
7. Gold Lake Bog RNA (ONHP #95) 22-6E-20,29
8. Hagan-Block Proposed Research Natural Area (ONHP #148) 16-4E,11-15
9. H. J. Andrews Experimental Forest (ONHP #105) 16-5E,6E
10. Karnowsky Creek Bald Eagle Nest (ONHP #119) 18-11-22
11. Lamb Butte Scenic Area (ONHP #126) 17-6E22
12. Lily Lake (ONHP #4) 17-12-15
13. Lost Creek Headwaters (ONHP #54) 16-6E-19, 17-6E-24
14. Lowder Mountain Geological Area (ONHP #127) 17-6E-19
15. Mount Washington Wilderness (ONHP #123) 15-7E
16. Olallie Ridge Research Natural Area (ONHP #96) 17-65
17. Parrot Rock (ONHP #115) 17-12-4
18. Quaking Aspen Swamp (ONHP #129) 17-6E-28
19. Rebel Rock Geological Area (ONHP #128) 18-6E-30
20. Siuslaw South Jetty Area (ONHP #68) 18-12-21
21. Three Sisters Wilderness (ONHP #122) 15-19-6E-9E
22. Torry Charlton Forest (ONHP #149) 20,21-6E
23. Yankee Mountain Scenic Area (ONHP #125) 17-5E-26

Inventory of Resource Sites Owned by BLM

1. Dorena Heronry (ONHP #111) 20-2-31
2. Eagle Rock (ONHP #1) 17-3E-10
3. Hula Creek Headland Forest (ONHP #101) 17-8-N1/2 NW1/4 6
4. Long Tom River (ONHP #6) 16-5
5. Poodle Creek Heronry (ONHP #112) 17-7-13
6. Shaw Creek Heronry (ONHP #110) 20-5-6

2. Sites Within State Parks

These sites, owned by the State of Oregon, are within the State Parks and Highways System. There is no question as to the significance of these sites, that is why they have been set aside as State Parks and Waysides. The sites are placed in a 1C category. No conflicts exist based on uses allowed in zoning districts. The sites are all zoned in Public Reserve Zones and are presently being managed by the State Parks Division and the Oregon Department of Transportation.

a. Ben and Kay Dorris State Park (NAPAC #11) 16-2E-36. Douglas fir-alder vegetation. Existing recreational use does not negatively impact this vegetation.

b. Darlingtonia State Wayside (ONHP #109) 17-12-35. Unique plant protected in this wayside.

c. Dexter Island and Dexter Dam State Park (ONHP #108) 19-1-5,8,9. Riparian vegetation and heron rookery. The approved Master Plan for this park (now called Elijah Bristow State Park) indicates that the rookery and riparian vegetation areas will not be negatively affected.

d. Washburne Memorial State Park (ONHP #58) 16-12-22. Unique vegetation complexes, including an unusual sphagnum moss bogs, are protected in this park.

e. Washburne Wayside (ONHP #40 and NAPAC #4) 15-5-12. Douglas fir and white oak vegetation. Minimal development in this wayside.

3. Sites Within the Coastal Resources Management Plan or Willamette River Greenway Plan

Information on the location, quality and quantity of these sites indicates that they are all significant and are being placed in a 1C category. Two special purpose plans, the Coastal Resources Management Plan (CRMP) and the Willamette River Greenway Plan, have been adopted by the County. Different parts of these plans cover the 21 sites listed here.

Because of the degree of protection already afforded these sites, and the amount of planning which has already gone into them, no conflicts are determined to exist with use of these sites as they are presently zoned.

During development of Management Units within the Coastal Resources Management Plan, natural values of the area were a major factor. Those same values are the basis of the Greenway Plan. Detailed information on these plans, and the Management Units, is available in the Planning Division office.

a. Big Creek (ONHP #45) CRMP--Management Unit (MU) 45, Prime Wildlife Area.

b. Big Creek, Rock Creek and Tenmile Creek. Silverspot Butterfly sites (ONHP #5,56,130). CRMP--MUs 38,45, Prime Wildlife Area for this nationally threatened species.

c. Butterfly, Grass, Reed and Jernigan Islands (ONHP #83). CRMP--Siltcoos Lake MU 1, Significant Natural Area. The riparian vegetation on these islands provides excellent wildlife, particularly bird, habitat.

d. Camp Baker (Boy Scout Camp) (ONHP #46) CRMP--Siltcoos Lake MUs 5 and 6. A Prime Wildlife Area MU extends 150 feet inland from the shore of the lake to cover riparian vegetation and marshy areas; the remainder of the site is in a Natural Resources Conservation MU.

e. Coast Fork Willamette River (ONHP #93). Greenway Plan. Riparian vegetation, the important value listed at this site, is protected by Greenway Development permit requirements.

f. Cox Island (ONHP #65) CRMP-MUTI, Natural. This island is owned and managed by the Nature Conservancy.

g. Duncan Slough and Marsh (ONHP #61) CRMP--MU N, Natural. A unique marsh complex and a band-tailed pigeon mineral spring are protected by this MU.

h. Heceta Beach Dunes (ONHP #37) CRMP--Beaches and Dunes section and Beaches and Dunes Combining District of the zoning ordinance guide development in dunal areas.

i. Heceta Head/Conical Rock (ONHP #53,114) CRMP--MU 48, Significant Natural Area. Conical Rock is part of the Oregon Islands National Wildlife Refuge. Heceta Head is an important bird nesting area, as well as being an outstanding scenic site.

j. McCarty Marsh Heronry (ONHP #62) CRMP--MU 25, Prime Wildlife Area. The private property owner has an agreement with ODFW to protect this rookery.

k. Mercer Lake (ONHP #145) CRMP--Mercer Lake MUs. Several MUs are used to surround the shoreline of this lake, protecting its natural values.

l. Middle Fork Willamette River (ONHP #91) Greenway Plan. The valuable riparian vegetation here is protected by the Greenway Plan and Development Permit.

m. Miller Arm/Maple Creek Marsh (ONHP #81) CRMP--Siltcoos Lake MU 4, Prime Wildlife Area. This MU protects an uncommon canary grass/tule marsh.

n. North Fork Siuslaw River Marsh (ONHP #60) CRMP--MU H, Natural. The proximity of four marsh types and the extent of the marshes make this site unusual. The Natural designation provides protection for this area.

o. Siboco Slough and South Inlet Pigeon Springs (ONHP #63,132) CRMP--MU I, Natural. These marsh areas and the mineral springs are protected by the Natural designation.

p. Siltcoos Lake (ONHP #85) CRMP--Siltcoos Lake MUs. The Lane County portion of Siltcoos Lake's shoreline is surrounded by MUs which recognize the importance of the riparian vegetation and the marshlands.

q. Siltcoos Lake Dunes (ONHP #84) CRMP--Beaches and Dunes Section. This section of the Plan, as well as a Beaches and Dunes Zoning District guide development in dunal areas and preserve the important values of the dunes.

r. Siuslaw River Estuary (ONHP #67) CRMP. The entire estuary portion of the CRMP is designed to recognize and preserve the various values of the estuary and its shoreline.

s. Sutton Lake Marsh (ONHP #20) CRMP--Sutton Lake MU 4, Significant Natural Area. This MU covers an important willow, sedge and bullrush marsh.

t. Woahink Lake Bog (ONHP #14) CRMP--Woahink Lake MU 2, Prime Wildlife Area. An uncommon plant is protected by this MU.

4. Others

1. Upper Yachats Elk Pasture (ONHP #146). A portion of this site, previously in private ownership, has been purchased by ODFW. The remainder is in the Siuslaw National Forest. SNF and ODFW have an agreement concerning use of the site as an elk wintering area. The site is zoned FM - no conflicts exist.

2. Fern Ridge (ONHP #8). The reservoir itself is owned by the Corps of Engineers and operated under a management plan done in 1980. This plan recognizes the vital role of Fern Ridge to wildlife, particularly waterfowl. The ODFW manages wildlife in the area, including plots south of the reservoir being farmed for wildlife utilization only. The reservoir is considered "sensitive fish and waterfowl habitat," discussed earlier in this report. As such, riparian vegetation around the reservoir is protected. No conflicts exist.

POLICY DISCUSSION

Several existing policies relate to flora and fauna. These are:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize and support existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies shall be encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall be encouraged to investigate and utilize fee acquistions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement these policies.

While these policies are adequate as far as they go, there are other areas discussed in this Working Paper for which policies have not been developed. The general areas with policy gaps will be mentioned and examples of possible policies given.

- Policy gap: Riparian and wetland vegetation. Examples of policies are:

    1. Riparian and wetland vegetation is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and wetlands, and consideration of the areas in other land use activities such as Special Use Permits and Zone Changes.

    2. Drainage of wetland areas will not be promoted by Lane County. Any drainage project over which Lane County has permit authority shall be approved only after analysis of the ESEE consequences of such an action.

- Policy gap: Sensitive Fish and Waterfowl areas. An example of a policy is:

    1. Sensitive Fish and Waterfowl areas are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

- Policy gap: Big Game Ranges. Some policy examples are:

    1. Residential building permits issued within Major or Peripheral Big Game Range shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

    2. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range.

3. ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.

- Policy gap: Conflicts not anticipated or identified in the plan. Example of policy:

1. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-00 will be followed.

APPENDIX A

WILDLIFE OF LANE COUNTY

1. Birds

Approximately 305 species are thought to occur in Lane County. Frequency of occurrence may range from common to rare or accidental; further, some occurrences are seasonal only. This inventory is as complete as current resources allow. Updating and further verification is anticipated, as populations are not static but dependent upon habitat, nesting occurrence, threatened or endangered species, etc.

Common Loon
Arctic Loon
Red-Throated Loon
Horned Grebe
Eared Grebe
Western Grebe
Pied-Billed Grebe
Red-Necked Grebe
Black-Footed Albatross
Fulmar
Pink-Footed Shearwater
Sooty Shearwater
Slender-Billed Shearwater
Leach's Storm Petrel
Fork-Tailed Petrel
White Pelican
Brown Pelican
Double-Crested Cormorant
Brandt's Cormorant
Pelagic Cormorant
Common Egret
Black-Crowned Night Heron
Great Blue Heron
Green Heron
Great Egret
Snowy Egret
American Bittern
Whistling Swan
Trumpeter Swan
Canada Goose
White-Fronted Goose
Snow Goose
Black Brandt
Mallard
Gadwall
Northern Pintail
Green-Winged Teal
Blue-Winged Teal
Cinnamon Teal
European Widgeon

Harlequin Duck
White-Winged Scoter
Red-Breasted Merganser
Surf Scoter
Ruddy Duck
Hooded Merganser
Turkey Vulture
White-Tailed Kite
Goshawk
Sharp-Shinned Hawk
Cooper's Hawk
Red-Tailed Hawk
Swainsen's Hawk
Rough-Legged Hawk
Ferruginous Hawk
Golden Eagle
Bald Eagle
Marsh Hawk
Osprey
Prairie Falcon
Peregrine Falcon
Pigeon Hawk
Merlin
American Kestrel (Sparrow Hawk)
Blue Grouse
Ruffed Grouse
California Quail
Mountain Quail
Ring-Necked Pheasant
Sandhill Crane
Virginia Rail
Sora
American Coot
Black Oystercatcher
Semipalmated Plover
Snowy Plover
Killdeer
American Golden Plover
Black-Bellied Plover
Surfbird

American Widgeon
Northern Shoveler
Wood Duck
Redhead
Ring-Necked Duck
Canvasback
Greater Scaup
Lesser Scaup
Common Goldeneye
Bufflehead
Old Squaw
Knot
Pectoral Sandpiper
Baird's Sandpiper
Least Sandpiper
Dunlin
Short-Billed Dowitcher
Long-Billed Dowitcher
Stilt Sandpiper
Semipalmated Sandpiper
Western Sandpiper
Sanderling
American Avocet
Red Phalarope
Northern Phalarope
Pomarine Jaeger
Parasitic Jaeger
Long-Tailed Jaeger
Glaucous Gull
Western Gull
Herring Gull
Thayer's Gull
California Gull
Ring-Billed Gull
Mew Gull
Bonaparte's Gull
Heermann's Gull
Black-Legged Kittiwake
Sabine's Gull
Forster's Tern
Arctic Tern
Common Tern
Caspian Tern
Black Tern
Common Murre
Pigeon Guillemot
Marbled Murrelet
Ancient Murrelet
Cassin's Auklet
Parakeet Auklet
Rhinoceros Auklet
Horned Puffin
Tufted Puffin
Band-Tailed Pigeon
Ruddy Turnstone
Black Turnstone
Godwit
Spotted Sandpiper
Common Snipe
Long-Billed Curlew
Solitary Sandpiper
Wandering Tattler
Willet
Greater Yellowlegs
Lesser Yellowlegs
Long-Eared Owl
Short-Eared Owl
Saw-Whet Owl
Poor-Will
Common Nighthawk
Vaux's Swift
Anna's Hummingbird
Rufous Hummingbird
Calliope Hummingbird
Belted Kingfisher
Yellow-Shafted Flicker
Red-Shafted Flicker
Common Flicker
Pileated Woodpecker
Acorn Woodpecker
Lewis' Woodpecker
Yellow-Bellied Sapsucker
Hairy Woodpecker
Downy Woodpecker
Eastern Kingbird
Western Kingbird
Traill's Flycatcher
Hammond's Flycatcher
Ash-Throated Flycatcher
Say's Phoebe
Willow Flycatcher
Dusky Flycatcher
Western Flycatcher
Western Wood Pewee
Olive-Sided Flycatcher
Horned Lark
Violet Green Swallow
Tree Swallow
Bank Swallow
Rough-Winged Swallow
Barn Swallow
Cliff Swallow
Purple Martin
Steller's Jay
Gray Jay
Scrub Jay
Black-Billed Magpie
Common Raven

Rock Dove
Mourning Dove
Barn Owl
Screech Owl
Great Horned Owl
Snowy Owl
Pygmy Owl
Burrowing Owl
Norther Spotted Owl
Great Gray Owl
House Wren
Winter Wren
Bewick's Wren
Long-Billed Marsh Wren
Rock Wren
Northern Mockingbird
Sage Thrasher
American Robin
Varied Thrush
Hermit Thrush
Swainsen's Thrush
Western Bluebird
Mountain Bluebird
Townsend's Solitaire
Golden-Crowned Kinglet
Ruby-Crowned Kinglet
Water Pipit
Bohemian Waxwing
Cedar Waxwing
Northern Shrike
Loggerhead Shrike
Common Starling
Hutton's Vireo
Solitary Vireo
Red-Eyed Vireo
Orange-Crowned Warbler
Yellow Warbler
Yellow-Rumped Warbler
Black-Throated Gray Warbler
Myrtle Warbler
Audubon's Warbler
Townsend's Warbler
Hermit Warbler
MacGillivray's Warbler
Yellow Throat
Yellow-Breasted Chat

Common Crow
Clark's Nutcracker
Black-Capped Chickadee
Mountain Chickadee
Common Bushtit
White-Breasted Nuthatch
Red-Breasted Nuthatch
Brown Creeper
Wrentit
Dipper
Wilsen's Warbler
House Sparrow
Western Meadowlark
Yellow-Headed Blackbird
Red-Winged Blackbird
Northern Oriole
Brewer's Blackbird
Brown-Headed Cowbird
Western Tanager
Black-Headed Grosbeak
Lazuli Bunting
Evening Grosbeak
Purple Finch
House Finch
Gray-Crowned Rosy Finch
Pine Siskin
American Goldfinch
Lesser Goldfinch
Red Crossbill
Rufous-Sided Towhee
Savannah Sparrow
Grasshopper Sparrow
Vesper Sparrow
Dark-Eyed Junco
Slate-Colored Junco
Oregon Junco
Chipping Sparrow
Harris' Sparrow
White-Crowned Sparrow
Golden-Crowned Sparrow
White-Throated Sparrow
Fox Sparrow
Lincoln's Sparrow
Swamp Sparrow
Song Sparrow
Chestnut-Collared Longspur

NOTE: Species list compiled from:

a. Environmental Assessment of Siuslaw-Umpqua-Smith Rivers, 1974 by Dames and Moore.

b. Eugene-Springfield Metropolitan Area Inventory by Steve Gordon.

B. MAMMALS

Pacific Shrew
Vagrant Shrew
Marsh Shrew
Trowbridge Shrew
Pacific Mole
Shrew-Mole
Dusky-Shrew
Water Shrew

Little Brown Myotis
Fringed Myotis
California Myotis
Long-Legged Myotis
Long-Eared Myotis
Yunca Myotis
Hoary Bat
Silvery-Haired Bat
Big Brown Bat
Western Big-Eared Bat
Pika
Snowshoe Hare
Brush Rabbit

Mountain Beaver
Sierra Nevada Golden-Mantled Ground Squirrel
Beechey Ground Squirrel
California Ground Squirrel
Townsend Chipmunk
Northern Flying Squirrel
Yellow Pine Chipmunk
Western Gray Squirrel
Beaver
Douglas Squirrel
Northern Flying Squirrel
Mazama Pocket Gopher

Deer Mouse
Bushy-Tailed Woodrat
White-Footed Vole
Red Tree Mouse

California Red-Backed Vole
Townsend Vole
Longtail Vole
Oregon Vole
Muskrat
Western Red-Backed Mouse
Water Rat
Pacific Jumping Mouse
Porcupine
Yellow-Bellied Marmot
Gray Fox
Coyote
Red Fox
Cougar
Black-Bear

Raccoon
Nutria
Marten
Mink
Long-Tailed Weasel
Short-Tailed Weasel
Striped Skunk
Spotted Skunk
River Otter

Mountain Lion
Bobcat

Steller Sea Lion
California Sea Lion
Harbor Seal

Roosevelt Elk
Black-Tailed Deer
Mule Deer

3. AMPHIBIANS AND REPTILES

Northwestern Salamander
Pacific Giant Salamander
Olympic Salamander
Rough-Skinned Newt
Dunn's Salamander
Western Red-Backed Salamander
Oregon Slender Salamander

Northern Alligator Lizard
Rubber Boa
Northwestern Garter Snake
Common Garter Snake
Western Fence Lizard
Western Skink
Short-Horned Lizard

Clouded Salamander
Ensatina
Western Toad
Pacific Tree Frog
Red-Legged Frog
Bullfrog
Yellow-Legged Frog
Tailed Frog
Cascade Frog
Western Pond Turtle

Western Ring-Necked Snake
Western Racer
Gopher Snake
Sharp-Tailed Snake
Common Kingsnake
Western Rattlesnake

4. FISH

Anadromous

Coho Salmon
Fall & Spring Chinook Salmon
Winter Run Steelhead
Sea Run Cutthroat Trout
Brown Trout
Cutthroat Trout
Dolly Varden Trout
Golden Trout
Brook Trout
Rainbow Trout

Warmwater, Rough and Other

Western Brook Lamprey
Pacific Lamprey
White Sturgeon
Green Sturgeon
American Shad
Pacific Herring
Kokanee
Mountain Whitefish
Chiselmouth
Goldfish
Carp
Oregon Chub
Peamouth
Northern Squawfish
Dace

Redside Shiner
Large-Scale Sucker
Mountain Sucker
Black Bullhead
Yellow Bullhead
Brown Bullhead
Channel Catfish
Three-Spined Stickleback
Mosquito Fish
Sand Roller
Warmouth
Pumpkinseed
Bluegill
Smallmouth Bass
Largemouth Bass
White Crappie
Black Crappie
Yellow Perch
Sculpins
Greenling and Ling Cod
Rock Fishes
Sole and Starry Flounder
Sea Perches
Striped Bass
Columbia River Smelt

ADDENDUM TO WORKING PAPER:

FLORA & FAUNA

November, 1983

MEMORANDUM

lane county

TO Interested Persons and Groups

FROM Land Management Division

SUBJECT Revision of General Plan Working Papers DATE November 1983

In order to fully comply with the requirements of Oregon statewide planning Goals as promulgated by the Oregon Land Conservation and development Commission, Lane County must revise certain elements of its rural General Plan. Following the revision action, the Plan must be submitted to LCDC for acknowledgement.

Part of the revision effort is directed toward improving the information base and Policy suggestions of the Working Papers. These documents were originally intended to serve as technical foundations (by pulling together information and in some cases indicating where it was already available) for Plan development. The actual Plan was to take the form of Policies and a Plan Diagram, both of which were completed and, in the case of the Policies, adopted. Working Papers were to serve as reference material.

To bring the Plan into better compliance with state Goals, all three elements -- Working Papers, Policies and Plan Diagram -- need some revision. Since the Policies are generated from information in the Working Papers, it follows that new Policy statements must be founded in the form of Working Paper revisions.

Attached for your review and comment are revisions to one of the existing Working Papers. It is the intention of the County to follow essentially the same process of public review that was followed when the Working Paper were originally published. Bear in mind that in some instances, revisions pre-empt or modify or add to material now in the Working Papers.

After action is completed on all Working Paper revisions, the Policy statements generated by this procedure will be compiled and brought before the public and County officials for adoption as amendments to the General Plan Policies document. When the Plan Diagram is made available for similiar action, it too will contain pertinent directives of this and the other Working Papers.

REVISIONS TO "FLORA AND FAUNA WORKING PAPER"

I. Introduction

The "Flora and Fauna Working Paper" was published by Lane County in March, 1982. It was brought before both County Planning Commissions in a public hearing format in March and April, with testimony taken and responses given. In May, 1982, both Planning Commissions issued formal reports to the Board of County Commissioners, recommending tentative Policies to be formulated from both the Working Paper and the testimony received about it. The tentative Policies were reviewed and adopted by the Board of County Commissioners in December 1982.

In early 1983, staff of the DLCD reviewed the Working Paper and identified some aspects of it that needed to be adjusted before it would comply with statewide planning Goal requirements. The purpose of this Revision report is to correct those deficiencies.

Changes to the "Flora and Fauna Working Paper" take the form of technical data additions, and of Policy statements. Only the Policy statements are intended to be formally adopted as part of the Plan.

II. Working Paper Revisions

A. ADD the following language to page 5 of the Working Paper, directly following the first (leading) paragraph of the section entitled, "Wildlife Habitats":

The description of a habitat type in the following section is intended to provide a setting for identification of more specific resource types and sites. Because several of the following habitat types are so prominent in the County (e.g, "Douglas Fir/Trailing Blackberry", "Deciduous Hardwoods"), mapping the information would be of little value. Likewise, it is not practical to make Plan designations of these types, thereby eliminating the need for the "Goal 5 Rule" application. It is assumed that existing land use regulations (such as forest land zoning) will properly protect these habitat types, allowing the County to focus its regulator efforts on specific types (such as riparian lands) discussed later in this Working Paper.

B. DELETE the list of "sensitive fish habitats" which appears on pages 20 and 21 of the Working Paper, and ADD the more detailed list below:

Row River	Dorena Reservoir to Coast Fork Willamette Layng Creek to Dorena Reservoir
Layng Creek	South Boundary of 21-15-24 to Row River
Brice Creek	South Boundary of 22-25-29 to Row River
Sharps Creek	Clark Creek to Row River
Mosby Creek	Tom Creek to Row River
MAIN STEM WILLAMETTE BASIN	
Springfield Mill Race	Middle Fork Willamette to Main Stem Willamette
Main Stem Willamette	Confluence of Coast and Middle Forks Willamette to County Line
MC KENZIE RIVER BASIN	
McKenzie River	County Line to Main Stem Willamette
Mohawk River	Drury Creek to McKenzie River
Gate Creek	Minney Creek to McKenzie River
Blue River	Blue River Reservoir to McKenzie River County Line to Blue River Reservoir
South Fork McKenzie River	Cougar Reservoir to McKenzie River Roaring River to Cougar Reservoir
West Fork Horse Creek	Horse Creek to McKenzie River
Horse Creek	Separation Creek to McKenzie River
Lost Creek	South Boundary of 16-65-13 to McKenzie River
UMPQUA BASIN	
Steamboat Creek	Horse Heaven Creek to County Line

C. DELETE the sixth paragraph on page 20 (concerning a map) and ADD the following:

A small-scale map of the streams identified below appears in this Working Paper. Streams listed have been called out by ODFW, and reaches noted by agency staff. A large-scale map is also available for review in County planning offices.

D. DELETE the text under "Quantity" (page 21), and ADD the following:

Several hundred miles of waterway are involved, all of it subject to the Riparian Lands setback requirements discussed in that section of the Working Paper. Since fish habitat is confined to the streams themselves, all such habitat is automatically included in riparian land designations. Waterfowl nesting areas extend beyond the water surface, normally in Wetland areas as identified in that section of the Working Paper.

Although occuring in all parts of the County, sensitive fish habitat has very similiar characteristics throughout -- it is highly dependant on the existence of riparian vegetation. Such vegetation is the subject of recommended protective measures (setback and vegetation management provisions) along Class I waterways.

Because of the vast quantity of waterway designated sensitive fish habitat, and the unifying requirement of riparian vegetation, it is not useful to attempt site-specific conflict analysis. Conflict analysis for waterfowl nesting areas coincides with that for wetlands.

E. DELETE the last three sentences in paragraph 2 of the section entitled "Conflict Resolution" on page 22 (beginning with, "As with Riparian...."). ADD the following language:

The Oregon Fish and Wildlife Department has recommended building setbacks of 50 to 100 feet (depending on zone, which in turn reflects location) along waterways designated as sensitive fish habitat, and the use of a NR zone for wetlands not falling into the riparian strip. These setbacks can be the same rules as have been proposed for Class I streams (see previous section of the Working Paper). Since sensitive fish habitat consists of specified portions of Class I waterways, the riparian land management program should effectively protect such habitat. The NR zone should be applied to wetlands not protected by Coastal zoning or federal ownership.

F. DELETE paragraph 5 on page 14 of the Working Paper (in section entitled, "Riparian and Wetland Areas"), and ADD the following:

For areas of the County covered by the National Wetland Inventory, wetlands shall be defined through a program of consultation with fish and wildlife experts of the Oregon Fish & Wildlife Department and its federal counterpart. For interim purposes of this section, streams and areas of open water shall not be considered wetlands.

G. DELETE the first two sentences of paragraph 1, page 16 of the Working Paper (under section entitled, "Location"), and ADD the following:

The Oregon Fish and Wildlife Department has assisted the County in providing maps of all Class I streams, as well as major significant wetland areas. Attached to this Working Paper is a summary map of those areas, and detailed maps are available for review in County offices.

H. DELETE last two paragraphs under section entitled "Location" on page 16 of the Working Paper, and ADD the following:

A vast array of wetland types has been identified from air photo analysis by the U.S. Fish and Wildlife Service. That agency's product, known as the National Wetland Inventory, includes wetland types from open water to small, seasonal marshes. The scale of the maps is at 1"=62,500 feet (scale of USGS quadrangles) and 1"=24,000 feet. Such a scale, although permitting total coverage of the County, requires much supplementary interpretation and field checking before specific Plan designations and regulations can be placed on the sites.

Presently, about half the County (from the Willamette Valley to the Coastal Zone) has been so mapped, and it is expected that the rest of the County will be completed within a year or two. Although it is not possible -- because of the interpretation requirements mentioned above and of incomplete County coverage -- to designate a large number of minor wetlands, the maps have been useful in identifying "major wetlands." These major wetlands are considered by ODFW staff as being sufficient in size and value to merit County identification. They are located in the following areas:

- Fern Ridge periphery exclusive of parkland;
- Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel.
- North Fork Siuslaw freshwater marsh;
- Maple Creek marsh;
- Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

Staff of the ODFW indicate that protection of the above major wetlands will enable the County to meet basic Goal 5 requirements, and the later interpretation and application of NWI mapped data will completely fulfill such requirements.

The areas listed above are mapped in detail on the County's Plan Diagram maps. Additionally, a small-scale map showing their general location is attached to this Working Paper. They are discussed in more detail in the "ESEE Analysis" section.

The County should take the Goal 5 Rule "1B" option on interpreting and applying the NWI data, within a timetable of one or two years (or when complete County coverage finally occurs).

I. DELETE both paragraphs of the section entitled, "Quantity" on page 17 of the Working Paper, and ADD the following:

The quantity of riparian and wetland areas is difficult to estimate in terms of acres or square miles. For purposes of this analysis, "quantity" of riparian lands is defined as all lands along both banks of Class 1 streams in Lane County, to a setback line 100 feet from ordinary high water. This area may or may not contain riparian vegetation; uses of it vary depending on location.

Major wetlands as previously defined vary in size from a few to several hundred acres. Each wetland is discussed individually in the "conflict analysis." The quantity of wetlands on the National Wetlands Inventory probably measures in hundreds of square miles; until a full analysis is done per the Goal 5 rule "1B" option, there is no way of knowing.

J. DELETE the section entitled, "ESEE Analysis" on pages 18 and 19 of the Working Paper. ADD the following material to replace it:

Riparian Lands

For purposes of conflict analysis, riparian lands are divided into the following categories:

- Resource Areas (forested and agricultural);
- Rural Lands (partially/sparsely developed);
- Developed & Committed areas (including communities).

The analysis is carried out for each category.

1. Resource Areas

a) Economic Impacts:

1) Merchantable timber removed from riparian areas is a source of employment and revenue in the County.

2) Use of riparian areas for farming purposes increases available land for farming; usually, riparian lands consist of soils types suitable for agriculture.

3) Riparian lands used for aggregate production increase the economic benefits of that resource.

4) Loss of riparian vegetation destroys fish and waterfowl habitat, increases flood risks, and destroys the riverbank itself, all of which produce net costs to the area.

b) Social Impacts:

1) Loss of income from reduced forest and farming activities adversely affects Land County residents, and could require relocation, etc.

2) Regulations to restrict activities in the riparian strip may conflict with the Forest Practices Act, and in any case will increase the burden on the landowner. Enforcement of such regulations in Resource Areas would be difficult.

3) The social consequences of reduced water quality, flooding, and fish/wildlife quantity, stemming from loss of riparian lands could be significant, especially for those oriented toward outdoor recreation and those living in flood-prone areas.

c) Environmental Impacts:

1) Loss of riparian vegetation would have a significant adverse impact on the riverine environment, as already discussed, and on the wildlife species dependent on that environment.

2) Reduced bank stability, more turbid water, flooding, etc., has generally negative impacts on downstream environments. Flood control would be more difficult to achieve, water purification would be necessary for jurisdictions using surface water for municipal supply, and the risk of health hazards from poorer water quality and/or flooding would increase.

d) Energy Impacts:

1) Reduction of agricultural or forestry production would require a greater investment of energy to more intensively manage unaffected areas and/or obtain the resource products from other areas.

2) Loss of riparian vegetation and a reduction in environmental quality could result in increased downstream energy costs (water treatment, greater travel in search of suitable outdoor recreational sites, flood cleanup)

2. Rural Lands

a) Economic Impacts:

1) Riparian land development restrictions can decrease the availability/usability of Rural Lands, thus increasing land costs.

2) In much the same manner as with Resource Areas, loss of riparian areas for noncommercial forestry, farming, etc., can increase landowner costs and reduce income.

3) Reduced riparian land quality can reduce property values and increase costs to landowners through flood risk, higher insurance costs, less wildlife, and poorer water quality.

b) Social Impacts:

1) Rural residents who desire high-quality riparian environments would be adversely impacted by loss of riparian land and associated consequences.

2) Restrictions on building and land use in the riparian strip would adversely impact landowners through reduction of their options for building siting, etc.

c) Environmental Impacts:

1) In rural areas, riparian environments often contrast to open lands used for pasture, or once covered with timber, or cleared for homesites. Loss of such lands would damage those environments andthus the quality of the overall community or area.

2) The quality of surface and groundwater, upon which rural landowners depend, would be adversely impacted.

d) Energy Impacts:

1) Energy costs to landowners would be higher if riparian restrictions forced them to live elsewhere. Costs would be lower if riparian restrictions preserved water quality, provided natural flood control, and so forth.

3. Developed and Committed Areas

a) Economic Impacts:

1) Especially on small parcels, the preservation of riparian vegetation through County use restrictions could have serious impacts on the owner.

2) Siting of structures, riparian land use, and vegetation management would all be affected by riparian regulations, possibly increasing costs to landowners.

3) Loss of riparian vegetation through no management would decrease the desirability of the local environment and adversely impact property values. Physical damage to the riverbank through loss of riparian vegetation could cause bank erosion which in turn would increase costs to the landowner to combat it, or because of damages to structures and other improvements.

b) Social Impacts:

1) Within developed areas, riverbanks are often valued for both public and private recreational purposes. Usually, riparian land has a higher social value than equivalent nonriparian land. Loss of that resource would be detrimental to such qualities.

2) The burden of riparian use restrictions on the landowner would amount to another layer of regulation, and could be difficult to enforce.

c) Environmental Impacts:

1) The adverse impacts of flooding, bank erosion, loss of wildlife and fish habitat, reduced water quality and increased runoff would be significant if riparian vegetation was not protected in some manner.

2) Excessive restrictions on riparian lands within developed and committed areas could result in an aesthetic environment which would displease those who prefer manicured, park-like community settings to more wild, natural settings.

d) Energy Impacts:

1) Restrictions on riparian land use could increase energy costs to those forced to find other land upon which to build.

2) Public service costs in areas not subject to flooding or other adverse impacts of destroyed riparian areas, including the energy costs of those services, would be controlled.

Conflict Resolution

Following the analysis of conflicts, a decision must be made whether to 1) preserve the resource totally, 2) allow unlimited conflicting uses, or 3) limit the conflicting uses. Such limitation should be in the form of regulations and similiar implementing measures.

Considering the value of riparian vegetation to the County's ecosystem, and the impacts of its loss, option 2) above is not prudent. On the other hand, a complete limitation of all activities-- option 1)-- in the 100-foot riparian area is equally unfeasible. As with most resources, a compromise is the most practical -- the third option.

In Goal 5 Rule language, a "3C" decision should be made. This should take the form of Policies and land use regulations which accomplish the following:

1. Requires building setbacks* from all Class 1 streams. (The actual setback should be 50 feet in rural development zones and 100 feet in rural resource zones. According to ODFW officials, these setbacks are justifiable, and have been used in other Oregon counties. Specific language should be introduced to each zoning district to this end.)

2. Provides for vegetation management within the riparian setback strip. (ODFW officials have provided the County with suggested vegetation management regulations, based in part on the County's Coastal Resources Management Plan shoreland provisions, to be applied within the riparian strip. The actual area of application should be 30 feet for the 50-foot strip, and 50 feet for the 100-foot strip. See the County's "Natural Resources Conservation" shoreland overlay for fuller justification and explanation.)

3. Provides for flexibility. (It must be recognized that situations will occur where the above regulations are overly burdensome. A provision for landowner appeal for a relaxation of the standards needs to be written into each zoning district along with the other standards suggested above. Upon such appeal, the vegetative

*for non-water dependent uses.

management area -- as well as the wider riparian setback area itself -- could be modified upon consultation with, and approval by, officials of the ODFW.)

4. Does not conflict with the provisions of the Forest Practices Act. (Presently, it has not yet been resolved in Oregon whether or not Goal 5 concerns take precedence over activities regulated by the FPA -- an example being timber cutting along a Class 1 stream. Until and if that issue is resolved in favor of Goal 5 concerns, County action to limit conflicting uses should not be applied to lands subject to FPA regulation.)

5. Uses existing regulations wherever practical. (Both the Willamette Greenway Permit and the Coastal Resources Zoning regulate activites in the riparian zones of respective waterways. There is no need for an additional layer of regulation on lands already subject to such regulation. In fact, those standards should be used as a basis for management of riparian lands in areas beyond WGP or CRZ jurisdiction.)

Wetlands

The Major Wetlands listed earlier can each be evaluated seperately for Goal 5 Rule conflict analysis.

1. Fern Ridge Reservoir

   a) Location: Marshy areas on perimeter of the Reservoir, including lands to southeast of Reservoir (see map).

   b) Quality: High. The major fresh water wetland of the County. Contains freshwater marsh, warm water game fish, submerged & emergent vegetation, fur bearers, and many species of waterfowl, shorebirds, song birds and small mammals.

   c) Quantity: Several hundred acres of land, most of it owned by the U.S. Army Corps of Engineers, some of which is managed by ODFW under an interagency agreement.

   d) Conflicting Uses: Any use which would result in destruction of vegetation or drainage of surface/subsurface water.

   e) ESEE Analysis:

      1) Economic: The principal value of the area is for its present use. Alternative uses, such as development, would require expensive land alteration. As a focal point for outdoor, water-related recreation in central Lane County, Fern Ridge Reservoir and its wetlands provide a significant economic benefit. Maintenence of the Reservoir also provides valuable flood control benefits to downstream landowners.

      2) Social: Social consequences of protecting the resource parallel the economic ones -- generally beneficial.

      3) Environmental: The site provides a highly valuable area for a variety of life-forms. Destruction of the wetlands would destroy the habitat values, and would probably degrade the quality of the Reservoir and adjacent lands for flood control and recreational purposes.

4. Maple Creek Marsh

a) Location: Maple Creek where it meets northeast extent of Siltcoos Lake (19-11-30). See map.

b) Quality: High. One of the largest freshwater marshes in the area. Major use by water birds, beaver, furbearers, salmonids, shorebirds, emergent grasses, canary grass, sedges.

c) Quantity: About 30 acres, in private ownership.

d) Conflicting Uses. Same as entry #3.

e) Conflict Analysis: Same as entry #3. Also in a similiar manner, this site is under the protection of Coastal Resources zoning. The area is presently zoned with an overlay district of "Prime Wildlife," which is intended to maintain its existing character. A base zone of Exclusive Farm Use additionally restricts potentially conflicting uses.

5. Amazon Canal

a) Location: Amazon Canal for about the first ¼-mile from its confluence with the waters of Fern Ridge Reservoir.

b) Quality: High. Part of the Fern Ridge wetland system, although more open water than marsh. Water level varies. Provides habitat for various bird and acquatic animal species.

c) Quantity: About 200 yards of water and banks. Owned by Corps.

d) Conflicting Uses: Same as entry #1.

e) Conflict Analysis: Same as entry #1, although site plays less of a sponge function and more of a flood control function.

Conflict Resolution

Conflict resolution for wetlands should be much the same as for riparian lands: limit the conflicting uses (the "3C" option). Those areas which are owned by the Corps of Engineers can be considered to have sufficient protection from conflicting uses without the futile effort of County regulation of federally-controlled resources. Areas presently under the jurisdiction of Coastal Resource Zoning can also be assumed to have adequate protection, since the fundamental purpose of the County's Coastal Zoning was to restrict activities that posed a threat to Coastal resources -- shorelands, estuarine areas, and beaches and dunes. Areas not in either of the above categories should be designated with a "Natural Resource" land use category and appropriately zoned. As with most zones, it should contain language permitting flexibility when merited -- without the violation of Goal 5 purposes.

J. DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place:

Although this is a useful index, officials of the ODFW stress the fact that a mere "numbers game" is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.

A prime example is that of "clustering" dwelling units in Peripheral or Major Range areas -- siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.

The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirments of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.

Within Developed and Committed areas, ODFW officials are examining the utility of continuing to designate some of these lands as either Peripheral or Major Range. Developed and Committed areas should be considered as Impacted, and conflicting uses permitted.

The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenence.

Policies concerning this issue are proposed in the concluding section of this Working Paper.

K. DELETE the first full paragraph on page 27 (following the list of "1B" sites) in "Natural Areas" section, and ADD the following:

The six sites are individually discussed below. Since proper evaluation of each of them requires field inspection and reporting by knowledgable experts (biologists, botanists, etc.), and such staff capability is not presently available to the County, the County should commit itself to a timetable of developing the necessary information to satisfy the Goal 5 Rule, for each of of these sites. It is proposed that they be fully evaluated, and placed in "1A" or "1C" categories, within two years of the adoption of the Plan Policies, or equivalent statements, proposed in this Working Paper.

L. DELETE item "a" at the top of page 30 (Ben & Kay Dorris State Park), and re-letter the following four items "a" through "d"; ADD the following statement in a paragraph to conclude the listing:

The State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen.

M. DELETE the third full sentence in item 6. on page 13 of the Working Paper ("American Osprey"), and ADD the following in place of it:

Through protection of the vegetative fringe along waterways, the habitat requirements of the osprey are protected by existing County regulations (e.g., Willamette Greenway Permit, Coastal Shoreland zoning overlays) and are expected to be further protected by new zoning restrictions intended to fulfill the County's responsibility for protection of riparian and wetland resources (see later sections of this Working Paper).

N. DELETE the material on pages 33 and 34 under "Policy Discussion." ADD the following in that location:

Following the publication of the first draft of this Working Paper, a number of Policies were adopted -- drawing in part on suggestions made in the Working Paper -- and placed in the General Plan Policies document (itself adopted December 1982). These Policies are duplicated at the conclusion of this section, for reader reference.

In order to comply with LCDC directives, and to implement proposed resource management programs discussed on the preceding pages, a few of the adopted Policies need to be revised, and some new ones added. These are proposed in the following paragraphs.

1. Revise existing Policy 3 as follows:

"3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification)."

2. Revise existing Policy 6 as follows:

"6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner. Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife."

3. Revise existing Policy 7 as follows:

"7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, the "Natural Resources" zone shall be applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction."

4. Revise existing Policy 8 as follows:

"8. The County shall not establish restrictions, based on Goal 5 objectives, on timber management activities subject to the Forest Practices Act which are more severe than the requirements of the Act itself. Goal 5 resources which are not dealt with by the Act shall be protected by the County per Goal 5 and OAR 660-16-000/025 requirements."

5. Revise existing Policy 9 as follows:

"9. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision to the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statements."

EXISTING FLORA AND FAUNA POLICIES from GENERAL PLAN POLICIES Document....

Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County is encouraged to investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and shall be a consideration in Special Use Permits and Zone Changes.

7. Because of the inadequate inventory in Lane County, freshwater wetlands are being placed in a 1B category (insufficient data existing, per Goal 5 requirements, to decide on preserving the resource or not). When National Wetland Inventory (or equivalent) maps are available for all private lands in the County, these wetlands will be evaluated for quality and quantity as per the Goal 5 administrative rule (OAR 660-16-000). If the wetlands are determined to be significant, they will be evaluated against the rule's standardized set of ESEE (Environmental-Special-Economic-Energy) factors and conflict resolution proposed. This action will take place within one plan update period after the maps are available.

8. Lane County shall rely on the Oregon Forest Practices Act for protection of wildlife habitats and areas on lands zoned for the primary use of commercial growing and harvesting of forest tree species. Such habitats and areas shall include sensitive fish and waterfowl areas, riparian vegetation, wetlands areas, and big game ranges.

9. Sensitive Fish and Waterfowl Areas, as identified in the 1982 Lane County Working Paper on Flora and Fauna, are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

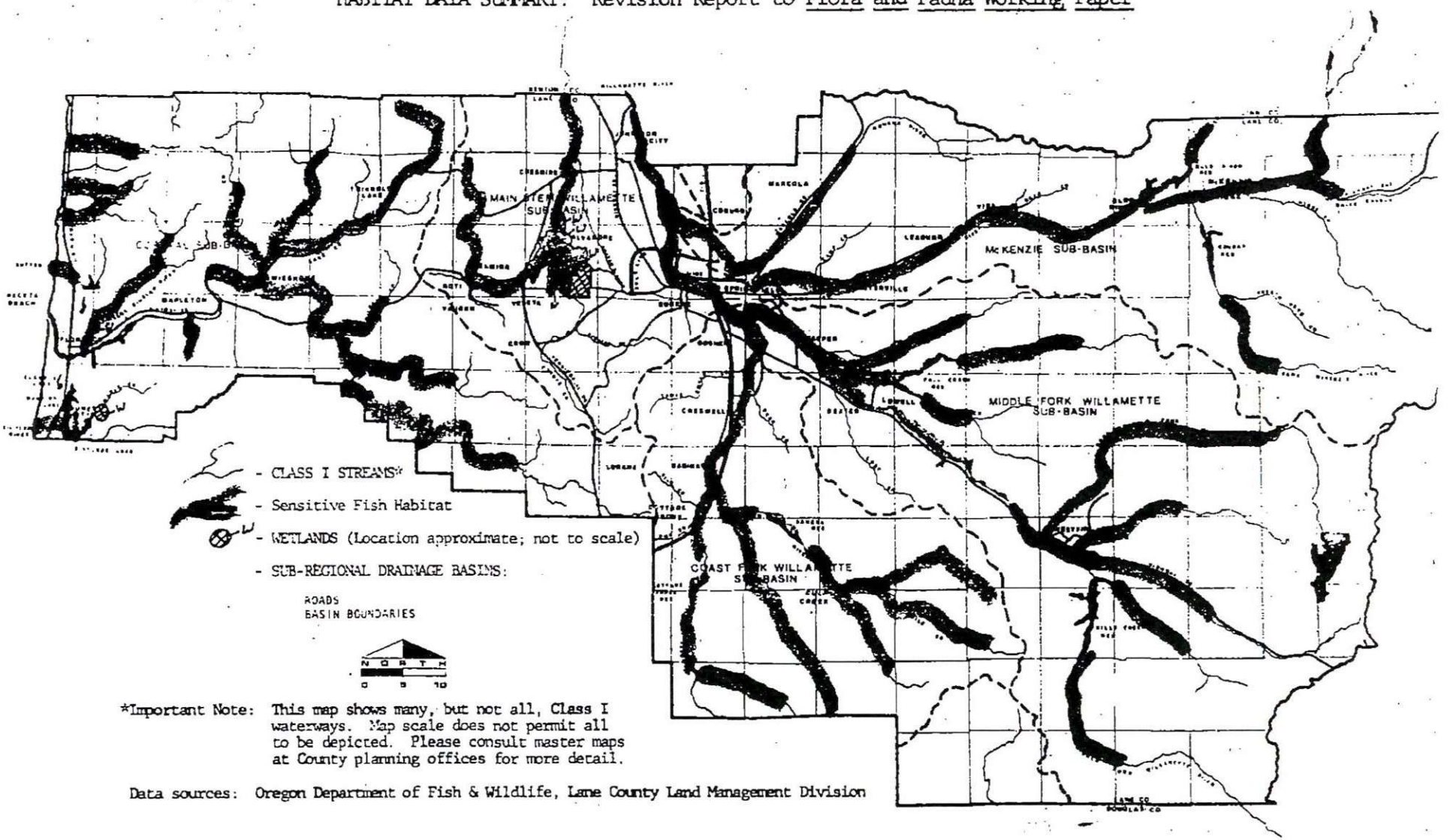
10. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

11. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna.

12. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.

13. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

HABITAT DATA SUMMARY: "Revision Report to Flora and Fauna Working Paper"



*Important Note: This map shows many, but not all, Class I waterways. Map scale does not permit all to be depicted. Please consult master maps at County planning offices for more detail.

Data sources: Oregon Department of Fish & Wildlife, Lane County Land Management Division

Goal 6:	Air, Water and Land Resources; Water Quality; Air Quality
Goal 7:	Areas Subject to Natural Disasters and Hazards
Goal 8:	Recreational Needs
Goal 9:	Economy of the States
Goal 10:	Housing
Goal 11:	Public Facilities and Services
Goal 12:	Transportation
Goal 13:	Energy Conservation
Goal 14:	Urbanization
Goal 15:	Willamette Greenway

3. Ordinance No. 870 shall remain in full force and effect until the effective date of this Ordinance.

4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

While not part of this Ordinance, the Board of County Commissioners adopt the Legislative Findings set forth in attached Exhibit "C" in support of this action.

Enacted this ~~15th~~ 29th day of February, 1984.

Chair, Lane County Board of Commissioners

Recording Secretary for ~~this~~ Meeting of the Board

I. Historical Planning Perspective

1. Scope. Lane County is one of only two counties stretching from the Pacific Ocean to the crest of the Cascades, currently has twelve incorporated cities, and is the only county in the State to which all 19 Statewide Planning Goals apply. Therefore, the range of comprehensive land use planning issues in Lane County is innately complex. This complexity has been gradually addressed through a jurisdictional and geographical approach to comprehensive land use planning. All twelve cities with County support, have submitted comprehensive land use plans to LCDC and had these plans approved or acknowledged by LCDC (except for the Eugene-Springfield Metro Area General Plan area outside of the UGB). Lane County has submitted its Coastal Goals Compliance Report and, in July of 1983, was found by LCDC to be in compliance with Goals 16-18. Finally, Lane County has completed its Rural Comprehensive Plan for the remaining areas of the County and will submit the plan, together with a request for acknowledgement, to LCDC.

2. Compliance Status. Lane County believes its current Rural Comprehensive Plan substantially complies with all applicable Statewide Planning Goals. In the past, compliance with the Goals has eluded the County. On Feb. 13, 1981, LCDC formally denied Lane County's last compliance request and adopted over 200 pages of findings describing plan deficiencies. At that time, Lane County's Comprehensive Plan submittal consisted of a series of subarea plans, a policies document and several chapters of implementing codes. The current Rural Comprehensive Plan consists of a single policies document, set of plan and zone maps, and chapter of Lane Code.

3. 1981 and 1982 Planning Efforts. After LCDC denied Lane County's Comprehensive Plan in February of 1981, Lane County developed a work program to achieve Goal compliance. Twenty different technical reports (Working Papers) were developed to address each Goal in terms of inventory and suggested policy approaches. Ordinance 870 for the plan policies was adopted on Nov. 10 of 1981 and amended in Dec. of 1982. During this period, plan and zone maps were developed for public review and subsequent hearings.

4. 1983 and 1984 Planning Efforts. In January of 1983, public hearings to adopt county-wide plan and zoning map designations were stopped because of plan and zone deficiencies identified by County staff as well as DLCD staff. Between January and November of 1983, staff developed an additional set of working papers and working paper addendums to address identifiable Goal deficiencies. In October of 1983, the Board of Commissioners appointed the Planning Commissions as the Citizen Involvement Program Committee and adopted a work program to achieve citizen review, input and ultimate adoption of the plan. In November of 1983, joint Board/Planning Commission public meetings were held to review the additional working papers and working paper addendums.

e. An informal policy of holding meetings and hearings in the area affected by the subject matter was initiated -- that is, holding citizen involvement meetings (with Planning Division staff) or official public hearings (by Planning Commissions and/or the Board of County Commissioners) in one or another subarea, instead of requiring subarea residents to come to Eugene. Although more expensive and time-consuming than the reverse, the effort brought planning awareness to many citizens who might not otherwise have become involved.

f. Our current citizen involvement program was originally adopted in 1976 and revised in 1978, 1980, 1981 and 1983. Concurrently with revising the citizen involvement program in 1981, the Board approved a citizen involvement program for the rural comprehensive plan revision project. See the attached LANE COUNTY CITIZEN INVOLVEMENT PROGRAM FOR PLANNING, Goal 1 Attachment "A". In October of 1983, the Board of Commissioners appointed the Planning Commissions (Lane County Planning Commission and West Lane Planning Commission) as the Citizen Involvement Program Committee. Goal 1 Attachment "A" does not reflect the change of the CIPC membership to the two planning commissions. However, Goal 1, Policy #4 reflects this change.

2. Over the years the CIPC has been plagued by lack of consistent participation by its membership. The restructuring of its membership in 1983 was to overcome this difficulty. As stated in the October 12, 1983 report of the Board the prior structuring was not successful in its objective. See Goal 1 Attachment "B".

3. Goal 1 gives preference to an independent committee, however offers two alternatives; the governing body (Board of Commissioners) may assume the CIPC function s or it may assign it to the Planning Commission. In appointing the Planning Commission as the CIPC, the Board considered the following three alternatives and considered alternative 3 to be preferrable:

a. An attempt could have been made to revitalize the independent CIPC. As a minimum this would have required assignment of staff liaison to provide close and continuous support. The support would have been both direct (i.e., CIPC meetings) and indirect. The indirect support would have included such things as maintaining contact with represented groups, keeping individual interest high through personal contacts, etc. Such effort would have been almost a full time position. Financial limitations precluded allocation of this amount of resources to achieve an objective that could be attained by other means. Additionally, the long term success of this approach would have been questionable.

b. A second approach would have been for the Board to assume the role of the CIPC. Advantages included the Board members familiarity with current and proposed planning efforts, broad public contact, high interest level and selection by a district election. Disadvantages were the additional load to an already overcrowded schedule, limited membership (5 members) and

narrowing the scope of information input (the advisors are the implementors).

c. The third alternative, and the one selected by the Board in October 1983, was to delegate CIPC repsonsibility to the two Planning Commissions. Advantages included familiarity with current and proposed planning efforts, broad public contact, widely based membershp, regular meeting schedule, high interest level of the two commissions, and noninvolvement in the application process The Board's realignment of Planning Commission duties (the elimination of the planning commissions from the application process) placed them in an ideal position to also oversee the citizen involvement process. Being the primary body to develop comprehensive plans, they also were front line observers to the publics' interaction with the process. Additionally, experience has shown that citizen involvement and access are matters of paramount concern to the commission members. The Planning Commission appointment process established by the Board more than adequately meets Goal requirements for CIPC membership.

4. 1981-1984 Comprehensive Plan Revision Time Span. Lane County has been working on its comprehensive plan since mid 1981 when the first working papers were developed. The Plan revision work has been in process for two and one half years. There has been more than adequate time for interested citizens to review working papers prepared early in the plan revision process.

5. 1983-1984 Work Program. Lane County halted hearings in January of 1983 to correct several plan deficiencies. Additional plan inventory, code work needed to be done and reviewed in order to have a comprehensive plan that would comply with the Goals. See Goal 1 Attachment "C".

6. Work Program and Citizen Involvement Program Committee. In October of 1983 the Board of Commissioners tentatively adopted an intensive work program for public review and adoption of a revised comprehensive plan capable of being acknowledged. The two planning commissions in Lane County were then appointed as the Citizen Involvement Program Committee for the reasons mentioned earlier. The work program was designed to involve the Planning Commissions and public in the comprehensive plan revision consistent with Goal #1 and to comply with stringent submittal timelines mandated by the 1983 Oregon Legislature.

7. Between October 18, 1983 and February 29, 1984, 61 separate public meetings were held to revise the comprehensive plan. Public information meetings were held prior to final Planning Commission deliberation and final Board adoption of the plan and implementing codes. See Goal 1 Attachment "D".

8. Comprehensive Plan revision documents prepared in 1983 were made available to the public from Nov. of 1983 to Feb. of 1984 in a self service area located in the first floor of the County Courthouse. Between Nov. 1983 and Feb. 1984, planning staff kept a

sign-up sheet for persons wishing assistance regarding comprehensive plan revision matters. 1109 persons were provided with such assistance. See Goal 1 Attachment "E".

9. To organize individual plan, zone or implementing code requests, Lane County developed Comprehensive Plan Revision CPR Request forms. These forms allowed owners to clearly identify specific property and to state their request for a revision. All request were entered into the County's computer and an accurate tracking system was in place. More than 1800 such requests were received and reviewed by Lane County. See Exhibit "L".

10. Written correspondence was received which was not tracked like CPR requests. The record shows that in excess of 100 such correspondences were received by Lane County prior to final decisions. See Goal 1 Attachment "F".

11. A Comprehensive Plan/Zoning Revision Newsletter was mailed to persons on the County's mailing list and to the Register Guard and Siuslaw News on November 17, 1983. See Goal 2 Attachment "G". As a result of public hearings, many names were added to the mailing list, those persons receiving comprehensive plan revision information. See Goal 1 Attachment "H".

12. Prior notice of all public hearings and meetings was provided through the Board of Commissioners office, Goal 1 Attachment "I", and the Land Management Division, Goal 1 Attachment "J".

13. Public Announcements were provided to the news media disclosing news or topics of special interest. See Goal 1 Attachment"K".

14. Between December 1983 and February 1984 at least 87 news articles and editorials appear in local newspapers. See Goal 1 Attachment "L".

15. Between December 1983 and February 1984, at least 52 letters to the editor appeared in local newspapers. See Goal 1 Attachment "M".

16. Between November 1983 and February 1984, the comprehensive plan revision efforts received radio and tv coverage.

17. Between November 1983 and February 1984, special interest groups contacted and informed members about the comprehensive plan revision. See Goal 1 Attachment "N".

CONCLUSION

Based upon the above facts, we find that Lane County has provided extensive opportunities for citizen participation in full compliance with Goal 1 and the County's citizen involvement program.

LAND USE PLANNING LEGISLATIVE FINDINGS

Goal #2 provides:

"GOAL: PART 1 - PLANNING: To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

"City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS 197.705 through 197.795.

"All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable state-wide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents and implementation ordinances shall be filed in a public office or other plce easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.

"All land use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

"PART II - EXCEPTIONS: When, during the application of the statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of hearing shall summarize the issues in an understandable meaningful manner.

"If the exception to the goal is adopted, then the compellinreasons and fac ts for that conclusion shall be completely set forth in the plan and shall include:

(a) Why these other uses should be provided for'

(b) What alternative locations within the area could be used for the proposed uses;

(c) What are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;

(d) A finding that the proposed uses will be compatible with other adjacent uses.

"PART III - USE OF GUILDELINES: Governmental units shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the goals. All land us plans shall state how the guidelines or alternative means utilized achieve the goals."

FINDINGS

1. Factual Base. Goal #2 requires that there be "inventories and other forms of date ... as the basis for the policies and other deicisions set forth in the plan. The Lane County Rural Comprehensive Plan is based upon extensive inventories, as identified below, and conforms to this requirement:

a) 1981 - 1982 Working Papers:

"1. County Planning Process
2. Citizen Involvement
3. Agricultural Resources
4. Forest Resources
5. Historic Resources
6. Natural Resources: Flora and Fauna
7. Public Facilities
8. Recreation
9. Transportation
10. Urbanization
11. Energy Resources
12. Environmental Quality
13. Economy
14. Population
15. Natural Resources: Minerals and Aggregate
16. Water Resources
17. Natural Resources
18. Housing
19. Willamette Greenway"

b) 1983 Working Papers and Working Paper Addendums:

1. Developed and Committed Lands
2. Marginal LAnds (and Nonresource Lands)
3. Addendum to Agricultural Lands
4. Addendum to Forest Lands
5. Addendum to Historic Resources
6. Addendum to Flora and Fauna
7. Addendum to Energy
8. Addendum to Mineral and Aggregate Resources
9. Addendum to Willamette Greenway

d. Policy 20. Because of its size and geographical local, Lane County has numerous, natural recreational amenities. To provide greater opportunities for citizens to utilize these amenities, to promote economic diversification, and to promote tourism; Lane County developed Policy 20 for destination resorts. The provisions of this policy and the DR/RCP zone provide adequate standards to assure that such development would be destination resort oriented and distinguishable from purely commercial or residential development. When discussed at public meetings and hearings, feedback regarding this policy was supportive.

e. Policy 21. This policy is in response to the large number of specific property, plan/zone requests Lane County has received via written Comprehensive Plan Revision (CPR) requests. It assures that all citizens will receive notification of the final status of their requests. It also recognizes the complex review and factual findings necessary to support marginal lands or nonresource designations and provides the framework to obtain additional information and Planning Commission reviews.

f. Policy 22. This policy anticipates that certain errors or omissions will occur when Lane County adopts the plan, and when such errors are identified, provides a framework for Lane County to initiate corrective action without citizens having to pay application fees for such corrective action. Citizen support for such a policy was received during hearings.

g. Policy 23. This policy responds to concerns for interim protection of Goal's resources raised by the Department of Fish and Wildlife, the League of Women Voters, and the Ad Hoc Fish and Wildlife Committee. It recognizes the value of protecting Goal 5 resources in a 1B category and provides a framwork for applying interim protective measures.

4. Planning Map. Goal 2 requires that the comprehensive plan also consist of a general plan map including general plan designation. We find that Lane County's adoption of the general plan maps and plan designations via Ordinance PA 883 satisfies this requirement.

5. Implementing Ordinances. Goal 2 requires that the comprehensive plan shall have adequate implementing measures to implement the purposes of the plan policies and designations. We find that Lane County's adoption of Lane Code Chapter 16 satisfies this requirement.

AGRICULTURAL LANDS GOAL LEGISLATIVE FINDINGS

Goal #3 provides:

"GOAL: To preserve and maintain agricultural lands.

"Agriculture lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive use zones pursuant to ORS Chapter 215. Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise with the area. Conversion of rural agricultural land to urbanizable land shall be based upon consideration of the following factors: (1) environmental, energy, social and economic consequences; (2) demonstrated need consistent with LCDC goals; (3) unavailability of an alternative suitable location for the requested use; (4) compatibility of the proposed use with related agricultural land; and (5) the retention of Class I, II, III and IV soils in farm use. A governing body proposing to convert rural agricultural alnd to urbanizable land shall follow the procedures and requirements set forth in the Land Use Planning goal (Goal 2) for goal exceptions."

FINDINGS

1. Inventory: We find that agricultural lands, as deifned by Goal 3, have been inventoried in the Agricultural Resources Working Paper, the Working Paper: Addendum to Agricultural Lands, and during the preparation of the plan map.

2. Policies: We find that the General Plan Policies, Part II, Goal 3, adopted by Ordinance No. PA 883, are reflective of the above inventory and provide fifteen general standards to preserve and maintain agricultural lands as required by Goal 3. Policy No. 18, Goal 2, Part II of the General Plan Policies commits the Board to further refinement of the standards necessary to preserve agricultural lands as required by Goal 3.

3. Plan Designations: Ordinance PA 883 adopts the plan designation of "Agricultural Land". We find that the above policies provide direction for the application of the agricultural land designation.

4. Zones: Agricultural lands designated as "Agricultural Land" are zoned Exclusive Farm Use (E) by Lane County, and the E zone is contained in LC 16.212 as adopted by Ordinance 1-84. The E zone is modeled after the provisions of ORS 215 consistent with Lane County's adoption of marginal lands. The standards in the E zone also bear a clear relationship to the above inventory and policies. Farm unit and parcel sizes in the E zone are based upon the inventory data, analyses and conclusions contained in

Working Paper: Addendum to Agricultural Lands. We find that the E zone complies with Goal #3.

FORESTRY GOAL LEGISLATIVE FINDINGS

Goal #4 provides:

"GOAL: To conserve forest lands for forest uses.

"Forest land shall be retained for the production of wood fibre and other forest uses. Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.

"In the process of designating forest lands, comprehensive plans shall include the determination and mapping of forest site classes according to the United States Forest Service manual "Field Instructions for integrated Forest Survey and Timber Management Inventories - Oregon, Washington and California, 1974."

"Forest Lands -- are (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife, and fisheries habitat, livestock habitat, scenic corridors and recreational use.

"Forest Uses -- are (1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water, (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock."

FINDINGS

1. The Forest Land working paper and addendum are incorporated as if fully set forth herein. The following discussion addresses only the issues where the ultimate policy choice is at variance with the draft working papers.

2. Dwellings. During the public comment stage of this Plan's development, substantial opposition to the limitations on locating dwellings on Impacted Forest Land (F-2) arose. In reviewing available optoins, the Planning Commission and Board of County Commissioners were aware of the following factors:

a. The specification of permissible forest uses, as exprssed in the Goal itself, is quite limited. Despite this limitation, two appellate court cases allow uses not enumerated in the Goal. See Shadybrook Environ. Protect. Assn. v. Washington Co., 61 Or App 474 (1983), rev. den., 294 Or 682 (1983), where the

court authorized nonforest (rock quarry) uses in a forest zone. See also, Publishers' Paper Co. v. Benton Co., 63 Or App 636 (1982), which authorizes nonforest dwelling in forest land when certain conditions are met.

b. Lane County forest zones have been subject to legal challenges in the past and LCDC and LUBA directed that nonforest uses, such as dwellings, be allowed only if "necessary and accessory to" an enumerated forest use. Lamb v. Lane County, 7 Or LUBA 137 (1983). Neither LUBA nor LCDC defined "necessary and accessory to".

c. During 1983, LCDC attempted to prescribe, via a proposed Administrative Rule, under what circumstances a dwelling would be permitted. The draft Rule of February 17, 1973 proposed that if a dwelling were allowed that it must be a use "accessory" to the forest use. No such Administrative Rule was ever adopted.

d. Approximately 92 percent of Lane County's forest land is either in industrial or public ownership. This land has been zoned F-1, Noninpacted Forest Land. The implementing measures under this zone are quite specific and uses are strictly limited. For example, dwellings, except for replacement and statutory lots of record, are not allowed.

e. Forest Management Plan. Land designated F-2, while impacted by nonforest activities, are nevertheless lands capable of significant forest production. Lane County wishes to enhance forest management on these parcels. The method selected is to allow dwellings only when two things occur: A Forest Management Plan is submitted demonstrating how the dwelling will enhance forest production and a tax deferral or equivalent stocking is achieved. The second condition will be discussed in detail later. With regard to whether a Forest Management Plan, was a viable criterion to help meet the "necessary and accessory to" standard, we received conflicting evidence. At least one individual testified that dwellings interferred with and adversely affected Forest Management. No specific data arising from Lane County on this issue was submitted. In contrast to this testimony, numerous owners of F-2 parcels testified that they managed their forest from their home and were able to enhance forest production thereon. They testified in detail about being able to work on the land in the evenings and on weekends thinning, fertilizing, etc. Also, numerous citizens pointed to the small tree farmer of the year who managed the winning parcel in question, 22 acres, from his home on the subject property. Finally, we note that Forest Management from the homesite has been a tradition in Lane County for many years without any requirement of Forest Management Plans or tax deferrals. Because of the conflict in testimony as to the impact of dwellings, we elect to continue the basic pattern, but formalize actual practice by conditioning the dwelling on the Forest Management Plan -- by this technique, we can be assured of enhanced production and thereby help confirm that the dwelling is necessary and accessory to Forest Management. New dwellings for nonforest purposes on land suitable for commercial forest production are not allowed.

DIVISIONS IN F-2 IMPACTED FOREST LAND

Division standards in the F-1 Zone remain as discussed in the working paper and need no further discussion. F-2 Division standards did change in response to public testimony and an explanation is required.

The 1983 Legislature, revised Oregon law to provide that dwellings may be allowed on any woodlot operated in conjunction with the farm operation if the parcel is capable of producing $10,000 in gross income over the growth cycle (ORS 215.213(2)(b(A)(B)). When this revision was adopted, the Legislature was aware of Goal #4's requirement to conserve forest land for commercial forest uses. Reading the Goal and the statutory revision together, we find that the Legislature has determined that $10,000/year gross income over the growth cycle meets the standard of the Goal. Further, that similar treatment of impacted forest land in Lane County will result in consistent treatment of forest land and farm woodlots. In fact, this land is very similar. Impacted Forest Land is, by its nature, forest land affected by nonforest uses, i.e. farms. It is often located in transition areas between EFU and Nonimpacted Forest Land. Furthermore, such a standard is objective and certain. Objectivity and certainty are two land use criteria we wish to use whenever possible.

In addition, we believe the legislative standard is very logical. $10,000 gross income per year over a growth cycle is a significant economic unit. As such, our experience leads us to conclude that the marketplace will cause the owner of such land to conserve its use for forest purposes. We find that an asset worth $10,000/year over a growth cycle will not be left idle, but will be used for forest purposes. As such, the legislative standard meets the Goal.

This conclusion is supported by the Oregon property tax laws. The two programs, the Western Oregon Forest Land and Severance Tax (ORS 321.257 to .375) and Western Oregon Small Tract Optional Tax (ORS 321.705 to .765) create substantial incentives for Forest Management. Property once placed in the program is subject to substantial back taxes if not continuously managed for forest purposes. See ORS 321.760 and 321.372. If an owner elects not to apply for the designation on the parcel, the property, by definition, will have a very significant true cash value. An asset capable of $10,000/year gross income is very valuable. Substantial annual carrying costs exist if the deferral programs are not used. Our experience leads us to conclude that the vast majority of owners of newly created parcels will, therefore, apply for the deferral or continue in the program as the taxes are too high otherwise.

Based upon the nature of the division standard, which only allows creation of economically viable commercial units, we find the purpose of the Goal is fulfilled.

We selected the $10,000 standard based upon a memorandum from the office of the State Forester, Dave Stere to Mike Rupp of DLCD, dated September 22, 1983. We note the current economic conditions reflect very low timber values. By adopting the standard of September 22, 1983, we have selected a standard which produces far larger acreages than market conditions just a few years ago would have produced. The State Forester's memorandum is attached hereto as an exhibit.

Our experience further indicates that most soil types in Lane County in lannds zoned F-2 have a cubic foot site class of Class 3, 4 and 5. As a consequence, parcel sices of 40 acres and larger will be, in fact, the parcel sizes actually allowed.

In conclusion, because the parcel created is a significant economic unit, it is, by definition, a viable commercial forest parcel, and the division standard meets Goal #4's requirement to retain forest land for forest purposes.

FARM USES IN AREAS OF MIXED FARM AND FOREST USES

1. We incorporate by reference the memorandum from County Counsel to the Board of County Commissioners and Planning Commission dated December 9, 1983, copy attached and adopt the same as if fully set forth therein.

Water Impoundments, LC 16.211(2)(d). The proposed standard was 1,000 acre feet. However, we found this area to be too large. We, therefore, specified that impoundments of greater than 100 feet should be moved to the conditional use category so that they would be subject to review prior to approval.

Class I Stream Setbacks and Maintenance, Removal and Replacement of Riparian Vegetation, LC 16.211(9)(b) and (c). These standards were revised consistent with the flora and fauna working paper addendum and comments from the Department of Fish and Wildlife.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 870
(Amended 11/10/82)

) IN THE MATTER OF REPEALING ORDINANCE
) NO. 804 AND ADOPTING THE GENERAL PLAN
) POLICIES AS A COMPONENT OF THE
) COMPREHENSIVE PLAN FOR LANE COUNTY
) (PA 82-145)

WHEREAS, the Board of County Commissioners has received a recommendation from the Lane County Planning Commission (LCPC Resolution PA 82-191) and the West Lane Planning Commission (WLPC Resolution PPA 82-145) regarding amendments to the General Plan Goals and Policies, a component of the Comprehensive Plan of Lane County; and

WHEREAS, the Board of County Commissioners has received and considered the proposed amendments, public testimony and correspondence relating thereto; and

WHEREAS, the Board of County Commissioners has performed its public hearing and other duties in accordance with applicable law; now, therefore;

THE BOARD OF COUNTY COMMISSIONERS ORDAIN AS FOLLOWS:

1. Ordinance 804 adopting the "General Plan Goals and Policies" as an element of the Lane County Comprehensive Plan is hereby repealed.

2. The proposed "General Plan Policies" as set forth in Exhibit A attached hereto is ADOPTED as a component of the Comprehensive Plan of Lane County.

In support of this ordinance, the Board adopts the findings set forth in Exhibit B attached hereto.

This ordinance becomes effective December 31, 1982, unless, prior to that date and by separate ordinance, the Board shall extend the effective date to a later time.

Enacted this 10th day of November, 1982.

Scott Lucas Allen
Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
DATE 12/1/82 Lane County
OFFICE OF LEGAL COUNSEL

Debbie Mahr
Recording Secretary for this ~~Meeting~~ of the Board

In the Matter of Repealing Ordinance No. 804 and Adopting the General Plan Policies as a Component of the Comprehensive Plan for Lane County (PA 82-145)

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PART I: INTRODUCTORY MATERIAL

A. INTRODUCTION TO THE GENERAL PLAN

The Lane County General Plan applies to all unincorporated lands within the County beyond the Urban Growth Boundaries of incorporated cities in the County and beyond the boundary of the Eugene-Springfield Metropolitan Area Plan. Where these lands are beyond County jurisdiction (such as National Forest lands), the Plan does not legally apply, but it does contain provisions and representations of County positions on various issues, to be used by those agencies (e.g., US Forest Service) in their own management actions, and also used in the event that lands not in County jurisdiction enter County jurisdiction.

The Plan follows the format of the LCDC Statewide Planning Goals, recognizing that they must be met by all local jurisdictions in Oregon. It is composed of two major elements:

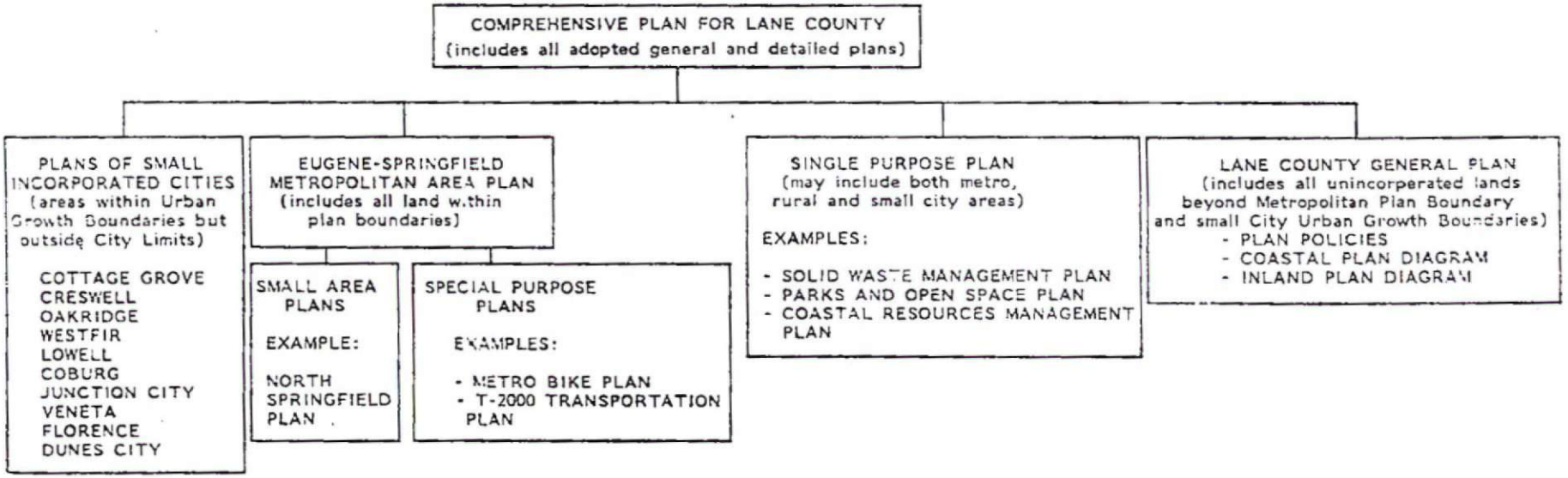
1. County General Plan Policies: For each LCDC Goal, there are one or more Policies to be applied by the County toward land use and other planning and resource-management issues, in the interests of compliance with sound planning principles and statewide planning law. Policies are binding commitments, but will be carried out within established work programs and over all County priorities. The application of Policies which call for new programs or studies will occur as County resources (staff, budgetary) permit.

2. Plan Diagrams: Two major planning regions are identified for Lane County--the Coastal Region and the Inland Region. For each, detailed representations of land use are depicted on maps, or Plan Diagrams. Land use regulation methods, such as zoning, are applied to carry out the intent of the designations. The application of the general plan is primarily through zoning.

Chart One diagrams the relationship of these elements, and also indicates relationships with other portions of the County Comprehensive Plan.

The document now before the reader is one of the two above components--the County General Plan Policies document. The Policies document is the broad, direction-setting portion of the Plan, and lays out approaches for interpretation of County planning needs and means of complying with State of Oregon planning law. This law attaches great importance to local jurisdictions having adopted comprehensive plans which in turn meet the requirements of statewide planning Goals. Accordingly, matters of interpretation concerning the General Plan are to be resolved in favor of compliance with these Goals, and the Plan itself shall be recognized as representing the County's best effort in meeting the requirements of LCDC and its policy expressions, including the Goals.

CHART ONE


COMPREHENSIVE PLAN FOR LANE COUNTY
(includes all adopted general and detailed plans)
PLANS OF SMALL INCORPORATED CITIES
(areas within Urban Growth Boundaries but outside City Limits)
COTTAGE GROVE
CRESWELL
OAKRIDGE
WESTFIR
LOWELL
COBURG
JUNCTION CITY
VENETA
FLORENCE
DUNES CITY
EUGENE-SPRINGFIELD METROPOLITAN AREA PLAN
(includes all land within plan boundaries)
SMALL AREA PLANS
EXAMPLE:
NORTH SPRINGFIELD PLAN
SPECIAL PURPOSE PLANS
EXAMPLES:
- METRO BIKE PLAN
- T-2000 TRANSPORTATION PLAN
SINGLE PURPOSE PLAN
(may include both metro, rural and small city areas)
EXAMPLES:
- SOLID WASTE MANAGEMENT PLAN
- PARKS AND OPEN SPACE PLAN
- COASTAL RESOURCES MANAGEMENT PLAN
LANE COUNTY GENERAL PLAN
(includes all unincorperated lands beyond Metropolitan Plan Boundary and small City Urban Growth Boundaries)
- PLAN POLICIES
- COASTAL PLAN DIAGRAM
- INLAND PLAN DIAGRAM

B. INTRODUCTION TO THE COUNTY POLICIES COMPONENT OF THE GENERAL PLAN

County Policies are broad, somewhat generalized statements that provide direction to County decision makers in their efforts to choose between competing uses for given resources, and in their efforts to solve historic problems and prevent new ones from occurring. The Policies covering complex topics and laying the groundwork for future actions of various kinds. The Policies expressed here apply to rural Lane County, outside of the Urban Growth Boundaries of cities and beyond the Plan Diagram Boundary of the Eugene-Springfield Metropolitan Area General Plan. They are designed to be compatible with similar Policies--and planning efforts--of other governmental jurisdictions in the County.

In some respects, the Policies can be considered the basis of the County plan, in that they provide the lead, or set the general direction, for subsequent County actions to deal with various land use and resource management decisions. In doing so, they are directly intended to fulfill the mandate of the LCDC statewide planning Goals.

Four statewide planning Goals are not addressed in this document: the four "Coastal Goals" (LCDC Goals 16-19). These, and Policies connected with them, are located in a special-purpose Coastal Resources Management Plan developed and adopted for use in the Coastal portion of the County. They should be used in concert with the "basic fifteen" Goals. Since they are special-purpose in nature, and deal more specifically with particular concerns of the Coastal area, conflicts that may arise or be generated between the Coastal Policies and the "basic fifteen" should be resolved in favor of the Coastal Policies until and if one or the other conflicting statement is changed to eliminate the conflict.

The Willamette Greenway Goal is considered to be part of the "basic fifteen." The Appendix to this document cites the language of the 15 Goals.

C. HISTORY OF THE POLICIES DOCUMENT

The Policies contained in this document were developed during a period of more than a year, beginning in early 1981. A process was devised at the beginning of the period to prepare a series of 20 Working Papers, which, along with other sources, were to serve as the technical data base for the Policies. The Working Papers were written and published from mid-1981 to early 1982. Each Working Paper contained information on a given topic or topics and a number of them contained preliminary Policies which were drawn from the information in the Papers and which were presented for initial discussion purposes.

Hearings were held on the Papers as they were published. Each Planning Commission prepared a Report to the Board of County Commissioners containing its reaction to the Paper and containing draft Policies. Often the Policy statements drew on sources other than the Working Papers -- existing County Plan information (such as special-purpose plans or technical studies), comments or testimony of individuals or groups appearing at the hearings, the judgment and views of Planning Commission members and so on -- and so represented a broad array of perspectives and attitudes. Each Planning

Commission Report cited information used in Policy development, in order to provide a firm basis for Policy use. The background information, including the Working Papers, is to be used to help interpret and understand General Plan approaches but is not itself designed to be adopted as legislative law.

Following the initial development of Policies, the two Planning Commissions went through a process of reconciling differences between each Commission's version of them. After this was completed, the Policies were put before each Commission for a second time for formal public hearing as a complete draft document and then approved for Board of County Commissioners' review and hearing. The Board completed its hearings in mid-1982 and adopted a final version of the Policies document.

D. CITIES, COMMUNITIES AND RURAL LANDS

While the Policies in this document are directed at Lane County government, it is clearly recognized that the County has a responsibility to, and must coordinate efforts closely with, the incorporated cities within its boundaries. Statewide planning law requires that each incorporated city develop and adopt its own land use plan which must itself comply with LCDC Goals. The plan must contain essentially the same elements as the County General Plan, with an additional element of an identified Urban Growth Boundary (required by Goal 14). Future urban growth for each city is to take place within that Boundary. In the case of the Eugene-Springfield Metropolitan Area Plan, a mutual Boundary is adopted by both cities and the County. For all other cities, the County must ratify the cities' UGBs by independent evaluation of, and adoption of, appropriate city plan provisions.

Through this method, the County becomes responsbile for administering the provisions of city plans within the city UGBs but outside of the corporate city limits. "Joint Agreements for Planning Coordination" drawn up between the County and each city lay the framework for cooperative action in the effort. Policies concerning Goal 14 in this document further indicate County posture toward city plans. County adoption of city plans--or amendments thereto--ensures that conflicts between city plans and County Plan do not readily occur.

Unincorporated communities are treated differently. They are identified as "community" on the two Plan Diagrams, but are not given official Urban Growth Boundaries. Instead, the probable limits of growth over the planning period are reflected in the area within the "community" designation. Since lands within these areas are under County jurisdictions, no Joint Agreements are required, but development there must be justified by LCDC "need" or "committed land" exceptions.

Areas within rural Lane County qualifying as Exception areas on the basis of need or precommitted uses are not necessarily "communities" as such, but do have some of the characteristics of community development--higher densities, for example. These areas are treated much as unincorporated communities are within the General Plan, in that they are solely under County jurisdiction, and they are provided with specific land use designations and zoning reflective of their characteristics. They are not portrayed, however, with the broad "community" designation in most cases.

For purposes of Plan administration, a parcel of land is either within a UGB or designated community or it is not--the deciding factor is the portrayal on the Plan Diagram. Lands adjacent to such boundaries are not considered to be within them until and if the boundaries are adjusted to accomodate them.

New Development Centers are special-purpose community designations produced through the Plan Amendment process. A NDC, once adopted, has the status of "community" unless it incorporates as a separate jurisdiction beyond County control, in which case it must meet LCDC requirements just as other incorporated cites do. NDC definitions, approval guidelines and criteria are integrated with the County's Lane Code (Chapter 12) rules on Plan Amendments, and parallel Lane Manual provisions.

Finally, lands considered "rural" are lands not within any of the above classifications. These lands include the vast majority of total Lane County acreage, and are under the jurisdiction of the County plus state and federal governments (e.g., National Forests). The statewide planning Goals and the Policies of this Plan limit substantial rural development. However, it is recognized that such development may occur provided it is consistant with the policies contained in this document.

E. IMPLEMENTATION

As stated earlier the County Policies are intended to guide actions and decisions. Although the policies have a common feature (i.e., relating to one or more aspects of land use) they cover a broad range of topics and concerns. Because of this wide range it is not reasonable to assume all policies are to be implemented in the same manner. Visualizing a policy as being in one or more of the following categories will provide a better understanding as to its application.

Advisory Policies

These are statements describing the County's position on a certain topic or issue; generally but not always, relating to a subject nor under the direct jurisdiction of the County. These policies are primarily intended to inform or influence the actions of other parties. They do not have direct influence on the implementation of the General Plan through Plan Map designation, zoning of land or County Regulations.

Example: "Lane County recommends that no new wilderness areas be designated without a complete analysis of the revenue and employment impacts on Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvests on other public lands." (Goal 5, #D.2.)

Commitment Policies

These are statements describing a future action the County intends to undertake. The policies cover a variety of topics including (a) guidance in County operations, procedures and relationships with other agencies, (b) recognition of state and federal requirements, and (c) general direction or intent. Where the County believes the action is necessary to carry out

State Planning Goals or the General Plan the commitment will be in a mandatory, binding [form (i.e., Lane County shall . . .). Where the action may be desirable, however, not absolutely necessary, the statement may be phrased in a nonmandatory, advisory manner (i.e., Lane County is encouraged to . . .).] As with advisory policies, the commitment policies do not have a direct influence in plan diagram designations or zoning. Actions resulting from the commitment may, however, have a direct influence. Inasmuch as these policies are describing a future action, lack of achievement at any particular point in time due to lack of resources shall not be construed as a failure to carry out the plan.

Examples: "Lane County shall actively support and assist progressive solid waste management efforts. The Lane County Solid Waste Management Plan shall be the primary instrument to effect this policy." (Goal 11, #4)

"Lane County is encouraged to investigate and utilize fee acquisition, easements, cluster development, preferential assessment, development rights acquisition and similar techniques to implement these policies." (Goal 5, #C.5.)

"Avoidance and/or control of soil erosion shall be major criterion addressed in all applicable County review procedures." (Goal 6, #A.1.)

Plan Conformity Policies

These are directives applicable to land use designations. They are intended to guide designations on both plan diagrams and zoning maps. These policies are initially implemented by the adoption of the plan diagrams and zoning maps. Subsequent rezoning and/or plan diagram amendments must be in accord with these policies (i.e., an action that would be inconsistent with policies in this category is inconsistant with the plan). The policies are applicable to both legislative and quasi-judicial actions:

Example: Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate wth groundwater aquifer capacities. (Goal 6, #A.8.)

Depending on the circumstances, a given policy may fall into more than one category. The purpose of establishing these classifications is 1) provide a better understanding of how the plan will be implemented, and 2) provide a review standard for future land use changes. This latter purpose is accomplished by requiring any future rezoning and/or plan diagram be in accord with the Plan Conformity Policies. This review standard is considered to be the minimum level of review. As a minimum threshold, however, it should not be construed to mean that compliance with the plan conformity policies is the sole criterion and other policies cannot be taken into consideration. If it can be demonstrated that approval of a change, even though satisfying the plan conformity policies, is in conflict with other policies or State Planning Goals, the request may be denied. The classification of the Policies is set forth in Appendix A.

F. DEFINITIONS

ADOPT -- Take official action to make part of the body of regulations and Policies with which the governing body functions.

ASSIST -- Actively help or support in the accomplishment of a program or a desired action through provision of technical assistance, administrative aid, or political support.

CITY -- A legally incorporated general-purpose government operating under State of Oregon statutes.

COMMUNITY -- A cohesive, identifiable human settlement of a size use-mixture, and density making it effectively unavailable for other uses, usually having a commonly-acknowledged place name, but not having a separate general-purpose form of government.

CONSERVE -- Manage in a manner which avoids wasteful or destructive uses and provides for future availability.

DEVELOP -- Convert from a less intensive to a more intensive use, including to bring about growth or availability , to conduct a mining operation, to make a physical change in the use or appearance of land (exception normal agricultural or forest management practices), to divide land into parcels or create or terminate rights of access, to construct or alter a structure, and other similar actions.

DEVELOPMENT -- The act, process or result of "develop."

DISCOURAGE -- Argue against, make more difficult to accomplish, restrict

ENCOURAGE -- Stimulate, give help to, make possible, foster.

ESEE -- Environmental-Special-Economic-Energy impact analysis required by Goal 5, Administrative Rule OAR-660-16-000.

GENERAL PLAN -- That portion of the Lane County Comprehensive Plan having jurisdiction in rural areas outside of Urban Growth Boundaries of cities and the jurisdiction of the Eugene-Springfield Metropolitan Area General Plan.

GOAL -- A desired condition or circumstance toward which the planning effort is directed, by nature somewhat generalized, used to give direction and indicate intention; an expression of State of Oregon intention as articulated by the Oregon Conservation and Development Commission.

IMPACT -- The consequences of a course of action; the effect of an action or decision upon something else as measured by the characteristics of the thing impacted prior to the decision or action as compared to the characteristics of the thing impacted following the decision or action.

INSURE (ENSURE) -- Guarantee, commit necessary effort to see that something indeed occurs or happens.

MAINTAIN -- Support, keep and continue in an existing state or condition without decline.

NATURAL RESOURCES -- Air, land and water and the elements thereof which are valued for the existing and potential usefulness to man.

NEW DEVELOPMENT CENTER -- A major development proposal, the scale and magnitude of which is likely to produce a significant impact on the area. Typical forms of an NDC include seasonal-residential developments, year-round "new community" developments, recreational complexes, or traditional "new town" proposals. New Development Centers encompass the following characteristics:

1. Large land area comprising one or more contiguous parcels;

2. Utilization of the principles of planned community development;

3. A more intensive level of residential development for the property than contemplated in the County General Plan Diagrams;

4. The inclusion of uses other than residential.

PLAN DIAGRAM -- A graphic portrayal, on a map, of land use designations which fulfill state and County planning Goals and Policy requirements.

POLICY -- A formally adopted means of moving toward a Goal; a mandatory action which is ultimately binding on the jurisdiction adopting it.*

POLLUTION -- Violation or threatened violation of applicable state or federal environmental quality statutes, rules and standards; reduction in the natural quality of a given resource as a result of external actions by man.

PRESERVE -- Save from loss or change, set aside for special purposes, insulate from modification.

PROGRAM -- Proposed or desired course of proceedings or action.

PROHIBIT -- Prevent or forbid from being done.

PROMOTE -- Urge or encourage the carrying out of a given action or program; contribute toward the accomplishment of an object through specific actions or attitudes.

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*Note: This definition is to be applied to all elements of the General Plan of Lane County, including special-purpose Plans such as the Housing Plan.

PROTECT -- Save or shield from loss, destruction or injury or for future intended use.

PROVIDE -- Prepare, plan for and supply what is needed to accomplish an action or program.

PUBLIC FACILITIES AND SERVICES -- Those structures, programs and activities which are supplied by government or quasi-government units to constituents of an area, on a collective basis, which are intended to promote or protect the health, welfare, safety and quality of life of the constituents; examples include sewer and water systems, police and fire protection and recreational sites and programs (includes facilities defined by LCDC as "key" facilities).

RESTRICT -- Make more difficult to accomplish, limit in terms of quantity or intensity.

RURAL LANDS -- Lands within Lane County beyond the Urban Growth Boundaries of cities and beyond the jurisdiction of the Eugene-Springfield Metropolitan Area General Plan.

URBAN GROWTH AREA -- Lands encompassed by the Urban Growth Boundary of a given city.

URBAN GROWTH BOUNDARY -- The anticipated limit of the reach of public facilities and services which can be supplied within a designated period from a particular city; usually refers to the extent of "hardware-type" facilities, such as sewers and water systems. Provisions of these services permits higher-density development commensurate with that usually found in city or urban environments, and thus the UGB is also a definition of the anticipated limits of that type of growth pattern.

PART II: LANE COUNTY GENERAL PLAN POLICIES

GOAL ONE: CITIZEN INVOLVEMENT

1. Lane County shall assure the availability of planning information in a timely manner to all County citizens.

2. Plan implementation shall include participation by the general public through a citizen involvement program in the development, adoption and application of codes and ordinances needed to carry out the County General Plan requirements.

3. Firmly identified public needs and desires shall be responded to by the County planning process, within the parameters of state and local planning requirements.

4. The Citizen Involvement Program Committee (CIPC) of Lane County is recognized as the primary body advising the Board as to:

   a. citizen access to planning information;
   b. effectiveness of the existing program;
   c. needed program changes or new program areas;
   d. compliance with LCDC Goal #1 (Citizen Involvement).

5. The program of communicating with chartered community organizations shall be continued.

6. Identification of priorities for and adoption of capital improvement programs shall be done through the citizen involvement program.

GOAL TWO: LAND USE PLANNING

1. The purpose of the revised Lane County Comprehensive Plan shall be to provide information to assist public and private decision-making, and to meet the requirement of Oregon State Planning Goals and associated laws.

2. The Policies shall provide the direction for County growth and development and programs for dealing with planning issues; the Plan Diagrams shall be specific graphic descriptions of proposed land use throughout the County, and shall be the primary basis for zoning decisions.

3. All products of the County Planning process shall be made available for public review and comment and shall be adopted through the hearings process.

4. The County shall be divided into two sub-County regions: the Coastal Region and the Inland Region. Each region shall have its own Plan Diagram. The dividing line shall be the eastern jurisdictional boundary of the West Lane Planning Commission.

5. The Lane County Planning Commission and the West Lane Planning Commission shall have primary advisory authority for the Inland and Coastal Regional Plan Diagrams, respectively. Both Commissions shall have equal authority with respect to Countywide issues, including County Policies (not including geographically-based Policies, such as the Coastal Goals or the Willamette Greenway). Conflicts between the two Commissions shall be resolved by the Board of County Commissioners.

6. The revised General Plan shall have primary jurisdiction in all areas of the County outside of incorporated City Urban Growth Boundaries and the Plan Boundary shown on the Eugene-Springfield Metropolitan Area Plan Diagram (which includes UGB plus additional territory).

7. The Planning period for the revised Plan shall be 20 years with revisions and update to occur every five years, beginning five years from the date of adoption.

8. It shall be the policy of the County to systemize and streamline the existing Plan amendment process, to make the process more efficient and more responsive to individual needs. This will be accomplished by future amendment of the Lane Code.

9. Exceptions to LCDC Goals (i.e., a determination that it is not possible to apply an appropriate goal to a specific property) shall be in accordance with OAR 660-04-000 (Goal 2 Exception Process) and shall only be taken at times of Plan adoption or amendment.

GOAL THREE: AGRICULTURAL LANDS

1. Encourage agricultural activities by preserving and maintaining agricultural lands through the use of exclusive farm use zones.

2. Where lands may be subject to both State Goals 3 and 4, preference will be given to Goal 4 in Agricultural Rent Zone 3 as that zone is established by the County Tax Assessor. In Rent Zones 1 and 2 preference will be given to Goal 3.

3. Reserve the use of the best agricultural soils exclusively for agricultural purposes.

4. Insure that zoning districts applied to agricultural lands encourage valid agricultural practices in a realistic manner; emphasis shall be placed on performance rather than arbitrary requirements such as minimum parcel sizes.

5. Use planning and implementation techniques that reflect appropriate uses and treatment for each type of land.

6. Encourage irrigation, drainage and flood control projects that benefit agricultural use with minimum environmental degradation in accordance with existing state and federal regulations.

7. Some agricultural land in Lane County is not suitable or available for agricultural use by nature of being built upon, committed to or needed for nonagricultural uses. The County shall plan and zone such lands for nonagricultural uses by using the exceptions process of LCDC Goal 2, Part II.

8. Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible, planning goals, policies and regulations should be interpreted in favor of agricultural activities.

9. Actively explore better methods of identifying agricultural lands than those currently used. Such methods should accurately reflect the productive capacity of the land taking into account fertility, suitability for management, climatic conditions, availability of water, land use patterns and accepted farm practices.

10. Such minimum lot sizes or land division criteria as are used in exclusive farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise in the area.

11. Conversion of rural agricultural land to urbanizable land shall follow the process and criteria set forth in LCDC Goal 3.

12. Regard nonagricultural uses within or adjacent to agricultural lands as being subject to the normal and accepted agricultural practices of that locality.

13. No County policy shall be construed to prevent the rezoning of land in compliance with ORS 215.215(2), or to require the taking of an exception or

adoption of a plan amendment prior to such rezoning, as long as the requirements of the statute are met. The statute shall be implemented by ordinances requiring findings of compliance with ORS 215.215(2) and incorporating the standards set forth in ORS 215.243. Such rezoning shall be the favored method of regulating existing commercial and industrial nonfarm uses.

14. No County policy shall be construed to exclude permitted and specially permitted nonfarm uses, as defined in ORS Chapter 215.213, from EFU zones. Implementing ordinances shall provide for such uses, consistent with the statutory requirements. Special permits for commercial uses in conjunction with farm use shall have the same effect as making the use an outright permitted use on the affected parcel.

GOAL FOUR: FOREST LANDS

1. Forest lands will be segregated into three categories. Lands capable of producing commercial wood products that have large areas free from competing uses will be designated Forest Land I. Land capable of producing commercial wood products, however, if impacted to some degree by competing uses, will be designated Forest Land II. Forest Land not suitable for the producing of commercial wood products shall be designated Forest Land III.

2. Restrict the intrusion of nonforest uses on Forest Land I. Limit the intrusion of nonforest uses on Forest Lands II and Forest Lands III.

3. Consider and evaluate, prior to allowing the conversion of forest lands to nonforest uses, (i.e., through rezoning) the total forest benefits lost and the impacts of the proposed use on adjacent forest lands.

4. Develop and apply standards for commercial forest lands that utilize a minimum parcel size together with performance criteria to allow deviation from the established minimum.

5. Where lands may be subject to both State Goals 3 and 4, preference will be given to Goal 4 in Agricultural Rent Zone 3 as that zone is established by the County Tax Assessor. In Rent Zones 1 and 2 preference will be given to Goal 3.

6. Some forest land in Lane County is not suitable or available for forest use by nature of being built upon, committed to, or needed for nonforest uses. The County shall plan and zone such lands for nonforest uses by using the exceptions process of LCDC Goal 2, Part II.

7. Encourage the multiple use of forest lands consistent with intensive forest management for forest products.

8. Encourage the use of intensive forest management techniques that will result in the greatest economic benefit of forest products and other forest values through land division regulations and other appropriate techniques.

9. Encourage the use of forest management practices that assure the continuous growing and harvesting of forest tree species; protect soil, air, and water resources; provide habitat for wildlife and aquatic life.

10. Encourage forest management activities that provide for and enhance the protection of forest land from fire, insects, and disease.

11. Encourage industrial practices which result in the optimum utilization of forest resources.

12. Encourage the development of assistance programs, tax laws, educational programs and research that will assist small woodland owners with the management of their forest land.

13. The effects of a projected shortfall in timber supplies within the near future are of considerable concern to Lane County. The County supports efforts by state and federal agencies in developing plans that will address this situation. The County intends to be an active, committed participant in such plan development.

14. Regard nonforest uses within or adjacent to forest lands as being subject to the normal and accepted forest practices in the locality.

15. Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands. No other findings, assumption, goal, policy or other planning regulation shall be construed as additional regulation of forest management activities.

GOAL FIVE: OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

A. Historical Resources

1. An ad hoc committee shall be designated to develop appropriate criteria which shall be used to evaluate and designate historic sites and places in the County, and shall report its findings to the Planning Commission in order that the Planning Commission may develop a final list of historic resources in the County. This will be accomplished by the time of the next Plan review.

2. The County shall establish an Ordinance to preserve historic sites now on the National Register of Historic Places, and applicable to other sites not on the NRHP which the County may determine should be added to the list of sites.

3. The Goal 5 conflict resolution process shall be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or changes in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historic sites and resources. A long-term objective shall be in the inclusion of historical sites in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

9. The County, within its resources, shall make substantive efforts to educate and involve the public in a historical resources protection program and stimulate public interest in its objectives.

10. The County shall work with concerned local, state and federal agencies to coordinate efforts to identify and protect historical resources.

11. The County will protect archeological sites through a process of review and voluntary cooperation rather than zoning controls. This process will be structured to 1) keep specific site locations confidential,

2) work in concert with the State Archeologist and the University of Oregon Museum of Natural History, 3) notify individual property owners and urge their cooperation, and 4) review major land use changes for possible impact on sites.

B. Mineral and Aggregate Resources

1. The known mineral resources within the County shall be conserved for present and future use through appropriate land use measures. Known sites shall be designated on Plan Diagrams and zoned in a manner suitable for the needs of the resource and the area.

2. Exploration for mineral resources (in contrast to actual mining) shall be a permitted activity in the rural portions of the County. Areas designated primarily for residential purposes are to be excluded from this policy as are areas that, having undergone analysis in accordance with OAR 660-16-000, are deisgnated as having some unique natural, historical or cultural value. Exploratory drilling for gas, oil or other hydrocarbons is not within the scope of this policy.

3. Mining operations are regulated by state and federal government agencies. County regulations shall supplement these actions only as necessary to ensure compatibility in the area, or to protect other resources.

4. Conserve and manage land, soil and mineral resources by respecting their physical limitations and environmental assets.

5. Update, in cooperation with local aggregate operators, federal, state and local agencies, past sand and gravel inventories to ensure supply/demand information is current.

6. Protect aggregate desposits from encroachment of incompatible uses and ensure that aggregate material in close proximity to its point of use will be available when needed.

7. Present and future land use controls shall be implemented to allow for the discovery of new mineral and aggregate resources when it is demonstrated that the projected demand for those resources in a given area will exceed available supply and conflict with adjacent uses can be minimized. Conflict analysis and resolution shall follow the methodology set forth in Appendix J of Working Paper: Mineral & Aggregate Resources; however possible impact on agricultural lands, forest lands and residential development (existing or planned) must also be considered. For sites within the Willamette Greenway or near Goal 5 inventoried resources, notification of the potential conflict shall be sent to the appropriate body (e.g., Pioneer Museum, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, etc.).

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacs during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listed in Appendix J of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

GOAL FIVE (cont.)

C. Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County is encouraged to investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and shall be a consideration in Special Use Permits and Zone Changes.

7. Because of the inadequate inventory in Lane County, freshwater wetlands are being placed in a 1B category (insufficient data existing, per Goal 5 requirements, to decide on preserving the resource or not). When National Wetland Inventory (or equivalent) maps are available for all private lands in the County, these wetlands will be evaluated for quality and quantity as per the Goal 5 administrative rule (OAR 660-16-000). If the wetlands are determined to be significant, they will be evaluated against the rule's standardized set of ESEE (Environmental-Special-Economic-Energy) factors and conflict resolution proposed. This action will take place within one plan update period after the maps are available.

8. Lane County shall rely on the Oregon Forest Practices Act for protection of wildlife habitats and areas on lands zoned for the primary use of commercial growing and harvesting of forest tree species. Such habitats and areas shall include sensitive fish and waterfowl areas, riparian vegetation, wetlands areas, and big game ranges.

9. Sensitive Fish and Waterfowl Areas, as identified in the 1982 Lane County Working Paper on Flora and Fauna, are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

10. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

11. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna.

12. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.

13. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

GOAL FIVE (cont.)

D. Open Space and Scenic Areas

1. Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals for developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

2. Lane County recommends that no new wilderness areas be designated in the County without a complete analysis of the revenue and employment impacts on Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvest on other public lands.

3. Initiate a program to identify areas of outstanding scenic value, identify and resolve conflicts after consideration of social, economic, energy and environmental consequences and protect sites for which conflict resolution indicates protection is desirable. This program will be initiated prior to the next scheduled Plan update (five years from adoption of revised plan). The County is encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this policy.

4. The County shall acknowledge recreational trails which are developed by the Oregon Parks Outdoor Recreation Plan and shall display the routes on its Plan documents.

5. The County shall cooperate with appropriate state and federal agencies in the selection of scenic and wild rivers.

GOAL FIVE (cont.)

E. Energy

1. Lane County shall identify energy resource areas within the County and encourage protection of these areas through the use of existing ordinances and regulations.

2. Lane County shall encourage the exploration and development by other agencies of renewable energy resources such as geothermal, wind, biomass, hydroelectric and solar, and shall monitor such development to ensure that the development does not cause adverse effects within the County.

3. Lane County will initially rely on the L-COG Committee on Energy to identify energy resources within the County and to recommend such measures as may be appropriate to protect these sites.

GOAL FIVE (cont.)

F. Water Resources

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and establish priorities among the various beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. The primary means of evaluating groundwater resources for land use planning purposes shall be through the land division review process. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

4. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

GOAL SIX; AIR, WATER AND LAND RESOURCES

A. Water Quality

1. Avoidance and/or control of soil erosion shall be a major criterion to be addressed in all applicable County review procedures and County construction activity.

2. The re-establishment of vegetative cover by standard erosion control practices shall be required as part of the land development process.

3. Lane County shall cooperate with the Department of Environmental Quality and other State and Federal agencies in maintaining domestic water supplies to the existing standards of the appropriate governing body.

4. Lane County shall promote watershed practices which protect and enhance water quality and quantity though land use planning, Public Works projects and management of County facilities.

5. Lane County shall cooperate with the Lane Council of Governments and Oregon Department of Environmental Quality in identifying sources of water pollution and controlling or abating them. The County's primary emphasis will be the possible degradation of ground and surface water quality by onsite sewage disposal systems.

6. Lane County shall cooperate with the Oregon Water Policy Review Board to evaluate flow requirements necessary to maintain water quality in critical streams and support the establishment of minimum flow designations for those streams.

7. In basins where consumptive flow appropriations result in water quality problems due to low flows, the County shall encourage the construction of small storage reservoirs for flow augmentation of sites with minimal use conflicts. The County will also encourage conservation practices among water consumers in those basins.

GOAL SIX (cont.)

B. Air Quality

1. The County shall support programs which reduce air pollution primarily through continued active participation in Lane Regional Air Pollution Authority (LRAPA).

2. The County shall encourage practices and developments which can meet air quality standards.

3. The County shall cooperate with State and Federal agencies to achieve enforcement of existing noise control regulations.

4. The County shall be committed to, and shall participate in, programs of the Lane Regional Air Pollution Authority to monitor air quality in the County and ensure that federal, state and local standards are being met; the County shall cooperate in the same manner with the State Department of Environmental Quality with respect to air quality and noise control standards for which that agency is responsible.

5. Lane County shall, working in cooperation with LRAPA and DEQ, maintain an inventory of air pollution sources, and noise pollution sources where information is available, and shall update such inventory periodically.

6. Lane County shall develop a procedure of regular, routine referral of major land development and/or building permit requests to LRAPA and/or DEQ for review for air quality and noise implications, and shall consider the responses of those agencies to the referrals when action is being taken on the requests.

GOAL EIGHT: RECREATIONAL NEEDS

1. Lane County shall use the adopted Parks Master Plan as its chief guide for recreational development and service provision, to be supplemented by information obtained from the US Forest Service, the State Department of Transportation, the State Marine Board and other agencies.

2. Private recreational development in areas predominated by public recreational amenities and facilities shall be encouraged, provided that development is complimentary to or supplements public facilities.

3. Proposals for major recreational developments which exceed projected needs contained in the Recreational Working Paper or the Parks Master Plan shall be accompanied by a demand analysis.

4. Increase recreation opportunities, as needed, throughout the County.

5. Encourage private recreational development as an important component of the County's total supply of recreational facilities and services.

6. Encourage the development of recreation facilities in community development centers.

7. Encourage the development of environmentally compatible tourist and recreational facilities which enhance the economic prospects of rural areas while serving the recreational needs of tourists and County residents.

8. Continue development of a Countywide system of paths and trails for nonmotorized travel--pedestrian, bicycle and equestrian--interconnecting development centers, recreation sites and scenic areas.

9. Increase public access to public outdoor recreation sites that can tolerate the pressure of increased use.

10. Encourage public and private participation to increase access to waterways, where needed, without infringing upon private property rights.

11. Encourage exchange of public lands of comparable value to offset acquisition of private lands for public use.

12. The County should develop additional guidelines to encourage the private lease and development of existing County-owned land for public recreational facilities.

GOAL NINE: ECONOMY OF THE STATE

1. Within the framework of these policies, the County shall encourage the diversification and growth of the local economy. Primary efforts will be in the following areas:

   i. Cooperation and participation with efforts and programs established by public agencies and private concerns to promote and enhance economic development throughout the County.

   ii. Recognition of the value of local resources such as timber and agricultural lands as the primary source of raw materials for the manufacturing and processing sectors of the economy.

   iii. Establishment of land use policies that provide a supportive environment for industrial and commercial activities.

2. The County's primary responsibility in economic development shall be to ensure the necessary land area is available throughout the County and appropriate levels of service can be obtained, consistent with the needs of industry and commerce, the area and other County policy.

3. Most industrial and commercial development shall be concentrated within the urban growth boundaries of the various cities throughout the County. The County shall work closely with city governments to improve economic conditions within their areas. During County review and adoption of city plans, particular attention shall be given to the identification and protection of industrial and commercial sites, both large and small scale.

4. Commercial and service facilities in rural, unincorporated communities shall be supported commensurate with increases in rural population and where necessary to insure continued operation of industrial activity. Such facilities shall be located within rural communities unless justified by appropriate plan amendment and exception to Statewide Planning Goals.

5. Existing parcels of land within UGBs which are suitable for large-scale industrial development shall be protected through the County's review and acknowledgment of city plans.

6. The County shall work closely with incorporated city governments to improve local economic conditions, including land and service provision.

7. New industrial development shall normally take place within adopted Urban Growth Boundaries, unless such development a) is clearly rural oriented (e.g., canneries, logging operations, processing of resource material); b) is necessary for the continuation of existing industrial operations, including plant or site expansion; c) will be located in an area either built upon or committed to nonresource use where necessary services can be provided; d) the industrial activity is dependent on a unique site-specific resource; e) the use is too hazardous or is incompatible in densely populated areas; f) the industrial activity creates by-products which are used to a significant level in resource activities in the immediate area; or g) where a significant comparative advantage could be gained in locating in a rural area. Any development approved under this policy that requires a

plan amendment shall be justified by an exception to applicable Statewide Planning Goals.

8. Existing industrial and commercial uses shall be designated on the plan diagram. Uses so identified shall be zoned to allow for continued operation and routine expansion commensurate with their character, provided significant conflicts with other land uses (existing and planned) do not result.

9. Tourism shall be considered as a base industry having high potential for growth throughout the County. Development of facilities oriented towards tourists shall be given maximum support within the framework of these policies.

10. As a stimulus to the tourist industry, the County shall maintain and where possible improve public recreational facilities such as parks, boat ramps, etc. Wherever possible, private operations and contracts will be used in these endeavors.

11. Specific standards for rural economic development shall be developed, which include the use of economic inventory data such as population and employment trends.

GOAL TEN: HOUSING

1. "The adopted Lane County Housing Plan is a special function plan concerned with Goal 10 requirements, and containing a number of policy statements specifying the County's position toward these requirements. The 1978 Housing Plan, as amended, shall continue to be used as the primary guideline toward Housing matters, and policy statements within it shall be considered to be mandatory actions which are ultimately binding on the County."

GOAL ELEVEN: PUBLIC FACILITIES AND SERVICES

1. Lane County shall provide an orderly and efficient arrangement for the provision of public utilities, services and facilities. The primary means of establishing such an arrangement will be by the requirement of minimum acceptable levels of service for various areas throughout the County. Appropriate minimum service levels are attached to the various Plan Diagram land use categories and are stated in the Plan Diagram documents.

2. Designation of land into any given use category, either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category. The required minimum level of services must be attainable through either (a) the existing level of public facilities and services within the area, or (b) the capability of facility and service providers to supply the increased levels necessary to properly support such designation.

3. Any increases in the levels of public facilities and services generated by the application of new or revised land use designations within an area shall, to the extent practicable, be financed and maintained by revenues generated within or as a result of those designated land uses. Those land uses benefiting from increased levels of public facilities or services shall be expected to provide a significant share of the costs associated with providing such facilities and services, recognizing that in some instances, resources for such provision must be obtained on a widespread geographic or revenue basis and may involve capital investments exceeding the immediate needs of the area being served.

4. Lane County shall actively support and assist progressive solid waste management efforts. The Lane County Solid Waste Management Plan shall be the primary instrument to effect this policy.

5. Lane County shall maintain an active role to provide the facilities and services needed to make quality health, social and cultural services available and accessible to all Lane County residents. The County's specific objectives at any given time in these areas are contained in the work program objectives of the Departments of Community Health and Social Services, Planning and Community Development and the County Fair Board.

6. Lane County shall participate in the coordination of planning and development for various public facilities and utility services. The primary means of effecting this policy shall be through a system whereby land use applications shall be referred to the various providers of services including cities, utilities, special districts, County and other public agencies, as well as the Lane County Boundary Commission.

GOAL TWELVE: TRANSPORTATION

1. Lane County shall strive for a coordinated and balanced transportation system which complies with LCDC Goal 12 and is responsive to the economic, social and environmental considerations, and which will work toward the following objectives:

   a. Safe, convenient and economical transportation for all people, materials and services.

   b. An effective distribution of transportation options.

   c. A transportation system responsive to changing needs and conditions.

   d. Consideration of direct and indirect impacts of proposed transportation projects on the environment, energy resources, economy and general livability.

   e. Public participation in the transportation planning process.

   f. Coordination with the development of statewide comprehensive transportation plans.

   g. Encouragement of energy-efficient modes of transportation.

   h. Safe and convenient opportunities for bicycle and pedestrian travel throughout populated areas of Lane County.

   i. An efficient public transportation service which meets demonstrated needs for alternative transportation.

   j. An appropriate level of general and commercial aviation development.

   k. The development of the Port of Siuslaw consistent with adopted policies and plans.

2. In managing the transportation system toward the fulfillment of adopted County land use goals and plans, Lane County shall:

   a. Provide transportation services as necessary to accommodate growth concentrated within existing communities.

   b. Discourage the spread of residential development in agricultural and forest areas.

   c. Guide the transportation pattern of newly developing areas and rural communities.

   d. Ensure that transportation improvements are consistent with adopted public policies and plans.

   e. Ensure that road development or improvement is consistent with adopted plans and policies.

3. Lane County shall seek an efficient, safe and attractive highway network to serve the existing and future arrangement of land uses by striving toward the following objectives:

   a. Make improved safety for the traveling public a primary consideration in the expenditure of resources.

   b. Ensure that all road construction meets adopted uniform standards unless excepted for substantial reason.

   c. Provide for timely development of streets and roads in community development centers.

   d. Include aesthetic considerations in maintenance, construction or improvement within County road rights-of-way.

   e. Minimize frontage access onto the County's collector and arterial roads.

   f. Ensure that future route selection considers the indirect costs as well as the direct costs of construction.

   g. Discourage strip development between the County's urban service areas and their satellite communities.

   h. To the extent possible, coordinate implementation of new highway facilities with land development needs to minimize stimulation of untimely land development.

   i. Ensure that street and highway development or improvement is integrated with and complementary to other transportation modes.

   j. Maintain County roads and bridges adequately to meet the needs of the trucking industry consistent with adopted land use plans for the area.

   k. Establish priority trucking routes which minimize conflicts with incompatible land uses and areas of congestion.

4. The adopted Lane County Rural Transportation Plan is a special-function Plan concerned with Goal 12 requirements, and containing a number of Goals, Objectives and Recommendations on various components of the County's transportation system and Goal 12 requirements. The 1980 Rural Transportation Plan, as amended, shall continue to be used as the primary guideline toward transportation matters. Goal and Objective statements within it are incorporated into the above County Policies, and Recommendations within it shall be applied where appropriate; these Recommendations shall be considered to be mandatory actions which are ultimately binding on the County.

GOAL THIRTEEN: ENERGY CONSERVATION

1. Lane County shall work to implement the Lane County Energy Task Force recommendations as soon as practical and feasible. Among them are the four broad programs listed below as well as a number of detailed recommendations, including ones to encourage efficiency in land use, building and transportation.

   a. Develop staff capability to implement recommended programs.

   b. Promote public education/awareness/motivation.

   c. Provide and promote interjurisdictional cooperation and coordination.

   d. Develop and publicize financial incentives/assistance for energy efficient project.

2. Lane County shall encourage energy conservation in the development and use of public facilities, services and utilities and in the development and use of electrical and communication systems.

3. Lane County shall establish programs when financially feasible to promote the stated goal through intergovernmental cooperation, to increase public awareness of the benefits of energy conservation and to revise existing programs concerning land use, transportation, existing and new buildings.

GOAL FOURTEEN: URBANIZATION

1. The County shall encourage new residential, commercial and industrial development to locate within existing incorporated cities or rural communities. Any growth outside Urban Growth Boundaries must:

   a. Be restricted to committed or developed areas including approved new development centers; or

   b. Under certain specified conditions set forth in this plan, industrial, commercial and residential development is appropriate outside of developed and committed areas provided a valid exception is taken and/or all Statewide Goal requirements are met.

   c. Any community designated in the plan that does not have an adopted Urban Growth Boundary, or any addition to such community that may be proposed, shall be justified by a valid exception pursuant to Statewide Goal 2, Part II.

   This and subsequent policies do not apply to the Eugene-Springfield Metropolitan Area, which is governed by the Metro Area Plan.

2. The County shall provide for orderly and efficient transition from rural to urband land use while insuring the supply of housing, employment, livability and other amenities, in order to accommodate the long-range growth of each city.

3. The County shall provide for a cooperative UGB management process between the County and cities in the County in the following:

   a. The establishment and periodic revision of urban growth boundaries and the planning and implementation of common policies and procedures within the boundaries;

   b. The planning and implementation of city policies for lands inside city boundaries which may affect the County.

4. The County shall continue to comply with the planning coordination requirements, and the "urban growth management program" requirements, of the Oregon Land Conservation and Development Commission.

5. The County will seek agreement with each city to commonly determine the location of urban growth boundaries and the interim and long-term land use designations and public improvement project designations within the growth boundaries.

6. Each city is regarded as the logical and ultimate provider of urban services within its urban growth boundaries; Lane County will not approve any development nor encourage or abet the establishment of urban services or

facilities within the city's urban growth boundary, which are contrary to city policy or agreement excepting established service districts.

7. It is the County's position that ultimate urban-level density within a city's urban growth boundary should occur only where all essential public facilities and services (water, sewer, etc.) are or will be shortly available. Cities are encouraged and expected to prepare and publish facilities plans and schedules for all facilities.

8. The County will encourage the orderly and logical annexation of territory to each city.

9. Any County approval of the division and/or development of land within a city's urban growth boundary will be consistent with provisions of the applicable city plan within the area. If necessary, the County may take one or more of the following actions to enforce this policy for decisions applicable to land outside the city's jurisdiction:

   a. On an interim basis, limiting the level of development to less than the planned urban density or intensity, based on iterim standards to be adopted and published.

   b. Determining that the design and operation of an interim land use will allow for later conversion to full urban densities in an orderly and efficient manner (e.g., land divisions to be approved in such a way as to permit later redivision into greater and urban-level densities), and that the interim land use will not otherwise preempt the subject or other properties from the future orderly provision of urban services and facilities;

   c. Requiring that interim and long-term development be consistent with existing master sewer and/or water plans for the urban growth area;

   d. Requiring city service connection, where agreeable to the city and consistent with applicable law, and where consistent with approved master facility plans for the urban growth area.

10. Lane County will apply where appropriate applicable city public improvement standards within urban growth boundaries when it is determined that those standards are more rigorous than those of the County. Where city standards are not practicable, County approvals will be given in such a way as to permit each conversion in the future to city standards.

11. Use of utility easements and natural drainageways within the urban growth area shall be consistent with applicable plans, will have multiple uses where practicable and will be based on County-city agreement.

12. The County will provide each city the opportunity to review and comment upon County consideration of plans, ordinances, development proposals (zoning and land division), public improvement projects, sale of County lands and other similar matters of city interest which occur within the city's area of influence and/or urban growth boundary, via "joint agreements for planning coordinator" executed with each city.

13. Lane County will expect to review city proposals for, or consideration of, matters of County interest through established procedures. Matters to be reviewed may include those listed above in Policy No. 12, plus other matters such as annexations, as governed by joint agreements.

14. Lane County shall attempt to achieve coordinated establishment of city urban growth boundaries and land use/public improvement approaches (including plan land use designations, development policies, zoning, etc.). Plan coordination may take one of the following forms:

    a. Co-adoption, with each city, of a common comprehensive plan; or

    b. Adoption of the city's comprehensive plan as a part of the County's plan(s); or

    c. Approval of any supplemental policies or procedures which will accomplish the intent of this section of the Policies, which may be mutually agreed upon by the County and each city.

15. Lane County shall regard itself as "caretaker" for lands within city UGBs but outside of city limits and will administer County land use and other regulations toward that objective, within the parameters established by the preceding Policies. Conflicts between city and County interpretations of plans or appropriate County actions shall be resolved temporarily in favor of County until the conflict is fully resolved through plan amendment or clarification, or other action.

16. Unincorporated communities shall be considered and treated as part of the County Plan with due consideration for community needs and values. Urban-level development requiring or ultimately likely to require urban services such as sewer and water systems shall not be approved unless the community itself, by public or private installation, can supply these services, and the development is in the form of an acceptable new development center proposal.

17. Within established UGBs, city plans ratified or adopted by the County are to be considered the governing land use documents, but do not pre-empt final County legal responsibilities or authority. Contract annexation agreements between cities and the County may modify this position as acceptable to both parties.

GOAL FIFTEEN: WILLAMETTE RIVER GREENWAY

1. Maintain and support continuation of existing uses within the Greenway Boundary.

2. Intensification and change of use of lands within the Greenway Boundary shall remain compatible with the protection, conservation and enhancement of the natural, scenic, historic, agricultural, economic and recreational qualities of the Willamette River Greenway Program.

3. Recognize that the Greenway consists of a multitude of resources and due to continued growth, 100 percent protection to all resources will never be realized.

4. Protect, conserve and preserve important economic uses such as, but not limited to, agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands and timber within the Greenway.

5. Maintain sufficient water flows to support water uses such as municipal, agricultural,industrial, natural resources (i.e., fish, aquatic life, wildlife) and recreation within the Greenway.

6. Prioritize water quality management controls along the Coast Fork and the Main Stem, especially in the Metropolitan area.

7. Acquisitions for Greenway purposes must be consistent with noninterference or interruption of farm uses.

8. Recognize that DOT cannot condemn for a scenic or use easements on lands devoted to farm use; however, easements may be given by owners of lands being used for farm purposes.

9. Protect water rights and access to the river for irrigation purposes.

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, if not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, consideration shall be given to mining methods which reduce or mitigate adverse impacts, as well as to the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occurring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity to urban areas and other points of use. Such monitoring shall be conducted in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

19. Encourage the reestablishment of vegetative cover as part of the land development process.

20. Conserve the rural character of the river bank as a primary objective within the Greenway.

21. Encourage a river-related mixture of industrial, commercial, residential and public land uses where appropriate in the Greenway.

22. In instances where a public agency has acquired productive farmlands or other resource lands as long-range reserve for recreational use, if possible, such property should be leased back for agricultural or other resource use until it is required for public purposes.

23. Provide and encourage use of public lands within the Greenway.

24. Accommodate public access to the river and to public lands within the Greenway by:

    - Controlled, clearly designated, access points;

    - Establishment of an integrated system of safe river landings, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;

    - Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

25. Provide appropriate levels of police protection in those areas subject to public use.

26. Encourage additional police security for private and publicly owned lands within the Greenway.

27. Protect, conserve or preserve the scenic and recreational qualities of the lands within the Greenway Boundary.

28. Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.

29. The sensitivity of lands within the Greenway shall determine the level of human activity.

30. Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.

31. Consider and minimize the possibility that public recreation use might disturb adjacent private property owners.

32. Scenic easements shall not be acquired through the exercise of the power of eminent domain on lands in farm use.

33. Control vehicle access to the river.

34. Consider and adopt policies that would not hinder the physically handicapped from using public recreation facilities within the Greenway Boundary.

35. Emphasize public access to the river in the metropolitan area and other urban areas while discouraging upland access in rural areas.

36. Measures should be taken to minimize disturbance to private property, including the implementation of programs to eliminate trespass and vandalism on private lands and destruction of ecological fragile areas.

APPENDIX A: POLICY CATEGORIES

Goal	Policy	Catagory		
		Advisory Policy	Commitment Policy	Plan Conformity Policy
1	1		X	
	2		X	
	3		X	
	4		X	
	5		X	
	6		X	
2	1	X		
	2		X	X
	3		X	
	4		X	
	5		X	
	6		X	
	7		X	
	8		X	
	9		X	X
3	1			X
	2			X
	3			X
	4		X	
	5		X	X
	6	X	X	X
	7			X
	8		X	X
	9		X	
	10		X	
	11			X
	12	X	X	X
	13			X
	14		X	
4	1			X
	2		X	X

Goal	Policy	Catagory		
		Advisory Policy	Commitment Policy	Plan Conformity Policy
4	3			X
	4		X	
	5			X
	6			X
	7		X	X
	8		X	
	9		X	
	10		X	
	11		X	
	12		X	
	13	X		
	14			X
	15		X	
5A	1		X	
	2		X	
	3		X	
	4		X	
	5		X	
	6		X	X
	7		X	
	8		X	
	9		X	
	10		X	
	11		X	
5B	1			X
	2		X	
	3		X	
	4		X	X
	5		X	
	6			X
	7		X	X
	8		X	X

Goal	Policy	Catagory		
		Advisory Policy	Commitment Policy	Plan Conformity Policy
5B	9		X	X
5C	1		X	X
	2	X		
	3		X	X
	4	X		
	5		X	
	6		X	X
	7		X	
	8		X	
	9		X	
	10		X	
	11			X
	12		X	X
	13		X	
5D	1	X	X	
	2	X		
	3		X	
	4		X	
	5			X
	6		X	
5E	1	X		
	2		X	
	3	X		
	4		X	
5F	1	X	X	
	2	X	X	
	3		X	
	4		X	X
	5			

Goal	Policy	Catagory		
		Advisory Policy	Commitment Policy	Plan Conformity Policy
6A	1		X	X
	2		X	
	3		X	
	4		X	
	5		X	
		X	X	
		X		
6B			X	
		X		
			X	
			X	
			X	
			X	
7			X	X
	2		X	X
			X	
	4		X	X
8	1			X
		X		X
			X	X
	4	X	X	
	5	X		
	6	X		X
	7	X		X
	8		X	
	9		X	
	10	X		
	11	X		
			X	

Goal	Policy	Catagory		
		Advisory Policy	Commitment Policy	Plan Conformity Policy
9	1	X	X	
	2			X
	3		X	X
	4			X
	5		X	
	6		X	
				X
				X
				X
	10		X	
			X	
10	1	X		
11	1			X
				X
				X
	4	X	X	
	5	X		
	6		X	
12		X		
	2	X	X	
		X	X	
	4	X	X	
13	1		X	
	2	X		
	3		X	
				X
			X	

Goal	Policy	Catagory		
		Advisory Policy	Commitment Policy	Plan Conformity Policy
14	5		X	
	6			X
	7	X		X
	8	X	X	
	9		X	
	10		X	
			X	
			X	
			X	
			X	
		X	X	
				X
	17	X	X	
15	1		X	X
	2		X	X
			X	X
			X	X
	5	X		
	6	X	X	
	7	X	X	
	8	X		
	9	X		
	10		X	X
	11		X	
	12		X	
	13			X
	14	X	X	
	15	X	X	X
	16	X	X	
	17	X	X	
	18	X	X	X
	19		X	
	20		X	

Goal	Policy	Catagory		
		Advisory Policy	Commitment Policy	Plan Conformity Policy
15	21			X
	22		X	X
	23			X
	24			X
	25	X		
	26	X		
	27	X		
	28	X		
	29	X		
	30			X
	31			X
	32			X
	33			X
	34			X
	35	X		
	36		X	
	37		X	
	38	X		
	39	X	X	

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FINDINGS

1. The Oregon Land Conservation and Development Commission has reviewed Lane County's Comprehensive Plan and implementing measures for conformance to Statewide Planning Goals. The Commission concluded the plan did not comply with the Goals and ordered deficiencies corrected. These conclusions and directives are set forth in an Order dated February 26, 1982.

2. The Board of County Commissioners adopted a work program intended to revise the Cou Comprehensive Plan so it would comply with Statewide Planning Goals. An element of the work program was to evaluate the General Plan Goals and Policies and prepare suc revisions as may be necessary. To carry out this task the Planning Commissibn has followed a process of publishing Working Papers on various subjects, conducting hearings on the Papers and adopting reports containing the Planning Commission conclusions regarding each Working Paper.

3. The Working Papers reviewed by the Planning Commission together with corresponding State Goal is as follows:

LCDC Goal	Working Paper
1 - Citizen Involvement	Citizen Involvement
2 - Land Use Planning	Planning Process, Population
3 - Agricultural Lands	Agricultural Lands
4 - Forest Lands	Forest Lands
5 - Open Spaces, Scenic and Historic Areas and Natural Resources	Historical Resources, Mineral and Aggregate Resources, Flora and Fauna, Recreation, Energy
6 - Air, Water and Land Resources	Water Resources, Air Quality
7 - Areas Subject to Natural Disasters and Hazards	Natural Hazards
8 - Recreational Needs	Recreation
9 - Economy of the State	Economy
10 - Housing	Housing
11 - Public Facilities and Services	Public Facilities and Services
12 - Transportation	Transportation
13 - Energy Conservation	Energy
14 - Urbanization	Urban Growth Management
15 - Willamette River Greenway	Willamette Greenway
16 - Estuarine Resources	Coastal Resources
17 - Coastal Shorelands	Coastal Resources
18 - Beaches and Dunes	Coastal Resources
19 - Ocean Resources	Coastal Resources

4. Each Working Paper has resulted in a separate policy background file for that topic. The components of each background file are:

   a) The Working Paper
   b) Comments and testimony received
   c) Record of the Planning Commissions deliberation and action
   d) Planning Commission report and recommendation

The Board relies on the policy background files together with all data and material referenced in those files as support for the recommended Lane County General Plan Policies.

5. Each Working Paper was reviewed separately and conclusions were reached without regard for other Working Papers. Also, each Planning Commission conducted their review independently. To resolve the conflicts that were inherent in this process the two Planning Commissions created a joint Committee to review the various reports and present a single common body of policies for consideration. The document titled Lane County General Plan Policies Draft, dated June 1982 represented the efforts of the joint committee.

6. Each Planning Commission has conducted a public hearing on the June Draft proposal and forwarded a recommendation to the Board. Changes recommended by the Planning Commission were incorperated into the text of Ordinance 870, Exhibit A prior to first reading of the ordinance.

CONCLUSIONS

1. A change in circumstances has occurred since adoption of Ordinance No. 804 (General Plan Goals and Policies). Specifically rejection of the County Comprehensive Plan by LCDC requires revision of that document.

2. The revised policies as adopted by the Board are adequate to comply with Statewide Planning Goals and meet the objections raised during the previous LCDC review.

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Part II: Lane County General Plan Policies

Goal One: Citizen Involvement
Goal Two: Land Use Planning
Goal Three: Agricultural Lands
Goal Four: Forest Lands
Goal Five: Open Spaces, Scenic and Historic Areas and Natural Resources
Historic Resources
Mineral & Aggregate Resources
Flora & Fauna
Open Spaces & Scenic Areas
Energy
Water Resources
Goal Six: Air, Water and Land Resources
Water Quality
Air Quality
Goal Seven: Areas Subject to Natural Disasters & Hazards
Goal Eight: Recreational Needs
Goal Nine: Economy of the State
Goal Ten: Housing
Goal Eleven: Public Facilities & Services
Goal Twelve: Transportation
Goal Thirteen: Energy Conservation
Goal Fourteen: Urbanization
Goal Fifteen: Willamette Greenway

Part III: Coastal Resources Management Plan Policies

Goal Sixteen: Estuarine Resources
Goal Seventeen: Coastal Shorelands
Goal Eighteen: Beaches and Dunes
Goal Nineteen: Ocean Resources

PART 1: INTRODUCTORY MATERIAL

A. INTRODUCTION TO THE RURAL COMPREHENSIVE PLAN

The Lane County Rural Comprehensive Plan applies to all unincorporated lands within the County beyond the Urban Growth Boundaries of incorporated cities in the County and beyond the boundary of the Eugene-Springfield Metropolitan Area Plan. Where these lands are beyond County jurisdiction (such as National Forest lands), the Plan applies but its application is regulated by federal law. In addition, it does contain provisions and representations of County positions on various issues, to be used by those agencies, such as the US Forest Service, in their own management actions, and also used in the event that lands not in County jurisdiction enter County jurisdiction.

The Plan follows the format of the LCDC Statewide Planning Goals, recognizing that they must be met by all local jurisdictions in Oregon. It is composed of two major elements:

1. County General Plan Policies: For each LCDC Goal, there are one or more Policies to be applied by the County toward land use and other planning and resource-management issues, in the interests of compliance with sound planning principles and statewide planning law. Policies are binding commitments, but will be carried out within established work programs and over all County priorities. The application of Policies which call for any programs or studies will occur as County resources in terms of both staff and budgetary allocations permit.

2. Plan Diagrams: Two major planning regions are identified for Lane County--the Coastal Region and the Inland Region. For each, detailed representations of land use are depicted on maps, on Plan Diagrams. Land use regulation methods, such as zoning, are applied to carry out the intent of the designations. The application of the general plan is primarily through zoning. In fact planning and zoning designations are set forth on the same map.

Chart One diagrams the relationship of these elements, and also indicates relationships with other portions of the County Comprehensive Plan.

The document now before the reader is one of the two above components--the County General Plan Policies document. The Policies document is the broad, direction-setting portion of the Plan, and lays out approaches for interpretation of County planning needs and means of complying with State of Oregon planning law. This law attaches great importance to local jurisdictions having adopted comprehensive plans which in turn meet the requirements of Statewide Planning Goals. Accordingly, matters of interpretation concerning the General Plan are to be resolved in favor of compliance with these Goals, and the Plan itself shall be recognized as representing the County's best effort in meeting the requirements of LCDC and its policy expressions, including Goals.

CHART ONE

COMPREHENSIVE PLAN FOR LANE COUNTY
(includes all adopted general and detailed plans)

EUGENE-SPRINGFIELD METROPOLITAN AREA PLAN
(includes all land within plan boundaries

- **SMALL AREA PLANS**
  EXAMPLE:
  NORTH SPRINGFIELD
- **SPECIAL PURPOSE PLANS**
  EXAMPLES:
  - METRO BIKE PLAN
  - T-2000 TRANSPORTATION PLAN

PLANS FOR SMALL INCORPORATED CITIES
(areas within Urban Growth Boundaries but outside City Limits)

- COTTAGE GROVE
- CRESWELL
- OAKRIDGE
- WESTFIR
- PLAN
- LOWELL
- COBURG
- JUNCTION CITY
- VENETA
- FLORENCE
- DUNES CITY

SINGLE PURPOSE PLAN
(may include both metro, rural and small city areas)

EXAMPLES:
- SOLID WASTE MANAGEMENT PLAN
- PARKS AND OPEN SPACE PLAN
- COASTAL RESOURCES MANAGEMENT PLAN

LANE COUNTY GENERAL PLAN
(includes all unincorporated lands beyond Metropolitan Plan Boundary and small City Urban Growth Boundaries)
- PLAN POLICIES
- COASTAL PLAN DIAGRAM
- INLAND PLAN DIAGRAM

B. INTRODUCTION TO THE COUNTY POLICIES COMPONENT OF THE GENERAL PLAN

County Policies are broad, somewhat generalized statements that provide direction to County decision makers in their efforts to choose between competing uses for given resources, and in their efforts to solve historic problems and prevent new ones from occurring. The Policies cover complex topics and lay the groundwork for future actions of various kinds. The Policies expressed here apply to rural Lane County, outside of the Urban Growth Boundaries of cities and beyond the Plan Diagram Boundary of the Eugene-Springfield Metropolitan Area General Plan. They are designed to be compatible with similar Policies--and planning efforts--of other governmental jurisdictions in the County.

In some respects, the Policies can be considered the basis of the County plan, in that they provide the lead, or the general direction, for subsequent County actions to deal with various land use and resource management decisions. In doing so, they are directly intended to fulfill the mandate of the LCDC statewide planning Goals.

Four statewide planning Goals are not addressed in this document: the four "Coastal Goals" (LCDC Goals 16-19). These, and Policies connected with them, are located in a special-purpose Coastal Resource Management Plan developed and adopted for use in the Coastal portion of the County. They should be used in concert with the "basic fifteen" Goals. Since they are special-purpose in nature, and deal more specifically with particular concerns of the Coastal area, conflicts may arise or be generated between the Coastal Policies and the "basic fifteen" and should be resolved in favor of the Coastal Policies until, and if one or the other conflicting statement is c@changed to eliminate the conflict.

The Willamette Greenway Goal is considered to be part of the "basic fifteen".

C. HISTORY OF THE POLICIES DOCUMENT

The Policies contained in this document were developed during a period of more than a year, beginning in early 1983. A process was devised at the beginning of the period to utilize existing working papers and to prepare a series of new working papers which, along with other sources, were to serve as the technical data based for the Policies. The Working Papers were written and published from mid-1981 to early 1984. Each Working Paper contained information on a given topic or topics, and a number of them contained preliminary Policies which were drawn from the information in the Papers and which were presented for initial discussion purposes.

Hearings were held on the Papers as they were published. Each Planning Commission reported to the Board of County Commissioners containing its reaction to the Paper and draft Policies. Often the Policy statements drew on sources other than the Working Papers--existing County Plan information (such as special-purpose plans or technical studies),comments or testimony of individuals or groups appearing at the hearings, the judgment and views

of Planning Commission members and so on--and so represented a broad array of perspectives and attitudes. Each Planning Commission Report cited information used in Policy development, in order to provide a firm basis for Policy use. The background information, including the Working Papers, is to be used to help interpret and understand General Plan approaches but is not itself designed to be adopted as legislative law. The Board formally adopted the Policies in February of 1984.

D. CITIES, COMMUNITIES AND RURAL LANDS

While the Policies in this document are directed at Lane County government, it is clearly recognized that the County has a responsibility to, and must coordinate efforts closely with, the incorporated cities within its boundaries. Statewide planning law requires that each incorporated city develop and adopt its own land use plan which must itself comply with LCDC Goals. The plan must contain essentially the same elements as the County General Plan, with an additional element of an identified Urban Growth Boundary (required by Goal 14). Future urban growth for each city is to take place within that Boundary. In the case of the Eugene-Springfield Metropolitan Area Plan, a mutual Boundary is adopted by both cities and the County. For all other cities, the County must ratify the cities UGBs by independent evaluation of, and adoption of, appropriate city plan provisions.

Through this method, the County becomes responsible for administering the provisions of city plans within the city UGBs but outside of the corporate city limits. "Joint Agreements for Planning Coordination" drawn up between the County and each city lay the framework for cooperative action in the effort. Policies concerning Goal 14 in this document further indicate County" posture toward city plans. County adoption of city plans--or amendments thereto--ensures that conflicts between city plans and County Plan do not readily occur.

Unincorporated communities are treated differently. They are identified as "community" on the Plan Diagrams, but are not given official Urban Growth Boundaries. Instead, the probable limits of growth over the planning period are reflected in the area within the "community" designation. Since lands within these areas are under County jurisdictions, no Joint Agreements are required, but development there must be justified by "committed lands" exceptions.

Areas within rural Lane County qualifying as Exception areas on the basis of precommitted uses are not necessarily "communities" as such, but do have some of the characteristics of community development--higher densities, for example. These areas are treated much as unincorporated communities are within the General Plan, in that they are solely under the County jurisdiction, and they are provided with specific land use designations and zoning reflective of their characteristics. They are not portrayed, however, with the broad "community" designation in most cases. For purposes of Plan administration, a parcel of land is either within a UGB or designated: community or it is not--the deciding factor is the portrayal on

the Plan Diagram. Lands adjacent to such "boundaries are not considered to be within them until and if the boundaries are adjusted to accommodate them.

Finally, lands considered as agricultural, forest or natural resource are lands not within any of the above classifications. These lands include the vast majority of total Lane County acreage, and are under the jurisdiction of the County plus state and federal governments (National Forests). The Statewide Planning Goals and the Policies of this Plan limited substantial rural development. However, it is recognized that such development may occur provided it is consistent with the policies contained in this document.

E. IMPLEMENTATION

As stated earlier, the County Policies are intended to guide actions and decisions. Although the policies have a common feature (i.e., relating to one or more aspects of land use) they cover a broad range of topics and concerns. Because of this wide range, it is not reasonable to assume all policies are to be implemented in the same manner. Visualizing a policy as being in one or more of the following categories will provide a better understanding as to its application.

Advisory Policies

These are statements describing the County's position on a certain topic or issue; generally but not always, relating to a subject nor under the direct jurisdiction of the County. These policies are primarily intended to inform or influence the actions of other parties. They do not have direct influence on the implementation of the General Plan through Plan Map designation, zoning of land or County Regulations.

Examples: "Lane County recommends that no new wilderness areas be designated without a complete analysis of the revenue and employment impacts on Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvests on other public lands."

Commitment Policies

These are statements describing a future action the County intends to undertake. The policies cover a variety of topics including (a) guidance in County operations, procedures and relationships with other agencies, (b) recognition of state and federal requirements. and (c) general direction or intent. Where the County believes the action is necessary to carry out State Planning Goals or the General Plan the commitment will be in a mandatory, binding form (i.e., Lane County shall . . .). Where the action may be desirable, however, not absolutely necessary, the statement may be phrased in a nonmandatory, advisory manner (i.e., Lane County is encouraged to. ..). As with advisory policies, the commitment policies do not have a direct influence in plan diagram designations or zoning. Actions resulting from the commitment may, however, have a direct influence. Inasmuch as

these policies are describing a future action, lack of achievement at any particular point in time due to lack of resources shall not be construed as a failure to carry out the plan.

Examples: "Lane County shall actively support and assist progressive solid waste management efforts. The Lane County Solid Waste Management Plan shall be the primary instrument to effect this policy".

"Lane County is encouraged to investigate and utilize fee acquisition, easements, cluster development, preferential assessment, development rights acquisition and similar techniques to implement these policies."

"Avoidance and/or control of soil erosion shall be a major criterion addressed in all applicable County review procedures."

Plan Conformity Policies

These are directives applicable to land use designations. They are intended to guide designations on both plan diagrams and zoning maps. These policies are initially implemented by the adoption of the plan diagrams and zoning maps. Subsequent rezoning and/or plan diagram amendments must be in accord with these policies (i.e., an action that would be inconsistent with policies in this category is consistent with the plan). The policies are applicable to both legislative and quasi-judicial actions:

Example: "Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities."

Depending on the circumstances, a given policy may fall into more than one category. The purpose of establishing these classifications is 1) provide a better understanding of how the plan will be implemented, and 2) provide a review standard for future land use changes. This latter purpose is accomplished by requiring any future rezoning and/or plan diagram be in accord with the Plan Conformity Policies. This review standard is considered to be the minimum level of review. As a minimum threshold, however, it should not be construed to mean that compliance with the plan conformity policies is the sole criterion and other policies cannot be taken into consideration. If it can be demonstrated that approval of a change, even though satisfying the plan conformity policies, is in conflict with other policies or State Planning Goals, the request may be denied. The classification of the Policies will be set forth as an appendix to this document.

GOAL THREE: AGRICULTURAL LANDS

1. Encourage agricultural activities by preserving and maintaining agricultural lands through the use of an exclusive agricultural zone which is consistent with ORS 215.

2. In Agricultural Rent zones 1 and 2 preference will be given to Goal 3. In Rent Zone 3, unless commercial agricultural enterprises exist, preference will be given to Goal 4.

3. Reserve the use of the best agricultural soils exclusively for agricultural purposes.

4. To insure that zoning districts applied to agricultural lands encourage valid agricultural practices in a realistic manner; emphasis shall be placed on minimum parcel sizes which are based upon a countywide inventory and which are adequate for the continuation of commercial agriculture. As minimum parcel sizes decrease to accommodate more specialized commercial agricultural activities, the burden of proof upon the applicant shall increase in order to substantiate the proposed agricultural activity and restrictions shall increase in order to obtain a residence on the commercial farm unit. Deviation from minimum parcel sizes of the Exclusive Farm Use land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes or horticultural specialties. A temporary mobile home which is accessory to the farm management may be conditionally located upon the farm parcel for a reasonable length of time to allow for substantial implementation of the farm management plan. Upon evidence that the farm management plan has been substantially implemented, the mobile home may be allow on a permanent basis or may be converted to a permanent dwelling.

5. Use planning and implementation techniques that reflect appropriate uses and treatment for each type of land.

6. Encourage irrigation, drainage and flood control projects that benefit agricultural use with minimum environmental degradation in accordance with existing state and federal regulations.

7. Some agricultural land in the County is not suitable or available for agricultural use by nature of being built upon, committed to or needed for nonagricultural uses by using applicable comprehensive plan policies and the exceptions process of LCDC Goal 2, Part II.

8. Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of agricultural activities.

9. Actively explore better methods of identifying agricultural lands than those currently used. Such methods should accurately reflect the productive capacity of the land taking into account fertility, suitability for management, climatic conditions, availability of water, land use patterns, and accepted farm practices.

10. Such minimum lot sizes or land division criteria as are used in exclusive farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise in the region. The commercial agricultural, minimum field or parcel sizes and corresponding farming regions identified in Addendum to Working Paper: Agricultural Lands shall be used to determine the appropriate division requirements for lands zoned Exclusive Farm Use (E).

11. Conversion of rural agricultural land to urbanizable land shall follow the process and criteria set forth in LCDC Goal 3.

12. Regard nonagricultural uses within or adjacent to agricultural lands as being subject to the normal and accepted agricultural practices of that locality.

13. No County policy shall be construed to exclude permitted and specially permitted nonfarm uses, as defined in ORS Chapter 215.213, from the EFU zones. Implementing ordinances shall provide for such uses, consistent with the statutory requirements. Special permits for commercial uses in conjunction with farm use shall have the same effect as making the use an outright permitted use on the affected parcel.

14. Land may be designated as marginal land if it complies with the following criteria:
    a. The requirements of ORS 197.247, and
    b. Lane County General Plan Policies, Goal 5, Flora and Fauna, policies numbered 11 and 12.

15. Lane County recognizes ORS 215.253 shall apply on land-zoned EFU.

16. Recreational activities in the Park and Recreation (PR/RCP) Zone District within agricultural areas that are outside lands for which a built or committed exception to a Statewide Planning Goal has been taken shall be limited to those uses consistent with Statewide Planning Goals 3 and 4.

GOAL 4: FOREST LANDS

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

   Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

2. Forest lands will be segregated into two categories, Non-impacted and Impacted and these categories shall be defined and mapped by the general characteristics specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics.

3. Forest lands that satisfy the requirements of ORS 197.247 may designated as Marginal Lands and such designations shall also made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands ands shall be those allowed by ORS 197.247.

4. Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in the Oregon Forest Practices Act, ORS 527.722.

5. Prohibit residences on Non-Impacted Forest Lands except for the maintenance, repair or replacement of existing residences.

6. Dwellings shall be allowed in the Impacted Forest Land (F-2/RCP) Zone District as provided in OAR 660-06.

7. The minimum land division size for the Nonimpacted Forest Lands (F-1/RCP) Zone shall be 80 acres pursuant to OAR 660-06-026(2)(a) except parcels smaller than 80 acres may be authorized for certain uses pursuant to OAR 660-06-026(3) and (4). Area requirements for Impacted Forest Land must be adequate to conserve forest land for impacted farm and forest uses and be consistent with the following criteria:

   (a) Except as provided in subsection (2) below, for the creation of a wood lot for the purpose of the propagation or harvesting of a forest product, the minimum area shall be at least 20 acres, and that which is consistent with the Douglas fir cubic foot site indexes and minimum area computations promulgated by the Oregon Department of Forestry and specified below, and additional area to accommodate a homesite, access and fire breaks, and a logical parcel layout and use of the parcel. There shall be presented for each application sufficient factual documentation to verify that each proposed tract meets the above requirements.

Cubic Foot Site Class	Potential Yield cu.ft./acre/yr	Acreage Minimum
6	20-49 cf/ac	64
5	40-84 cf/ac	43
4	85-119 cf/ac	34
3	120-164 cf/ac	24
2	165-224 cf/ac	17

(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:

(i) Zoned F-2
(ii) Containing at least 160 acres
(iii) For the creation of lots or parcels adjacent to F-1, RCP zoned lands.

(c) Deviation from the standard specified in subsections 7(a) and 7(b) above, for a 40 acre parcel on impacted forest land to be used for farm land may be allowed.

(d) Deviation from the standard specified in subsections 7(a) and 7(b) above, of the impacted forest land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes, or horticultural specialities.

(e) Lot line adjustments consistent with the definition of "divide" in LC 16.090 are permissible.

(f) Parcels smaller than specified in subsections (1)-(4) above may be authorized for certain uses pursuant to OAR 660-06-026(3) and (4).

8. New structures must comply with the Siting and Fire Safety Standards of OAR 660-06-029 and 660-06-035.

9. Recreational activities in the Park and Recreation (PR/RCP) Zone District within resource areas that are outside lands for which a built or committed exception to a Statewide Planning Goal has been taken shall be limited to those uses consistent with Statewide Planning Goals 3 and 4.

10. The effects of a projected shortfall in timber supplies within the near future are of considerable concern to Lane County. The County supports efforts by state and federal agencies in developing plans that will

address this situation. The County intends to be an active, committed participant in such plan development.

11. Encourage the consolidation of forest land ownership in order to form larger more viable forest resource units.

12. Encourage the conversion of under-productive forest lands through silvicultural practices and reforestation efforts.

13. Encourage the development of assistance programs, tax laws, educational programs and research that will assist small woodland owners with the management of their forest land.

14. Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal #5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal #5. No other findings, assumptions, goal policy or other planning regulation shall be construed as additional regulation of forest management activities.

15. Minimum parcel sizes and land division standards for Impacted Forest Lands should be the subject of additional study in future plan revisions and updates.

16. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

    a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

    b. Non-impacted Forest Land Zone (F-1,RCP) Characteristics:
        (1) Predominantly ownerships not developed by residences or nonforest uses.
        (2) Predominantly contiguous, ownerships of 80 acres or larger in size.
        (3) Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.
        (4) Accessed by arterial roads or roads intended primarily for forest management.
        (5) Primarily under commercial forest management.

    c. Impacted Forest Land Zone (F-2, RCP) Characteristics
        (1) Predominantly ownerships developed by residences or nonforest

uses

(2) Predominantly ownerships 80 acres or less in size.

(3) Ownerships generally contiguous to tracts containing less then 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

GOAL FIVE: OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

Historical Resources

1. A group known as the "Lane County Historic Resource Committee" is to be established and given permanent status by the Board of County Commissioners. The Committee shall represent a wide array of historical interests and the interests of property owners. Its tasks shall include: general concern with historical matters in Lane County; to monitor conditions affecting such resources; to devise criteria and methods for the selection of newly-designated historical resources; to advise the staff and officials of the County on proposed new historical sites and structures; to oversee the administration of the Historic Structures or Sites ordinance; and other related tasks and duties. Outputs of the Commissions and subsequently to the Board of County Commissioners.

2. The County shall administer the "Historic Structures or Sites" section of Lane Code Chapter 10 as a means of protecting historic resources. These regulations shall be applied to all sites contained in list of "Historic Structures or Sites" referenced by the the ordinance, which are sites deemed significant by the County, and therefore meriting protection from conflicting uses by a limitation of such conflicting uses.

3. The Goal 5 conflict resolution process (OAR 660-16-000 through 660-16-025) which has been applied in the selection of historical sites and structures contained in the General Plan and implemented through the "Historic Structures or Sites" ordinance, shall continue to be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County Shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or changes in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historical sites and resources. A long-term objective shall be in the inclusion of historical sites

in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

9. The County shall work with concerned local, state, and federal agencies to coordinate efforts to identify and protect historical resources.

10. Archaeological sites identified in the Historical Resources Working Paper and Addendum to the Historic Resources Working Paper shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. These significant sites shall be incorporated into the Lane County General Plan Policies document as Historic Resources Exhibit A.

Mineral and Aggregate Resources

1. Known mineral resource sites within the County, which are limited to those identified in Appendix "D" of the "Mineral and Aggregate Resources Working Paper", shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. Such designation and regulation is to take place after the requirements of the Goal 5 rule (OAR 660-16-000 through 660-16-025), which is addressed in Appendix "J" of the "Mineral and Aggregate Resources Working Paper".

2. Exploration for mineral resources (in contrast to actual mining) shall be a permitted activity in the rural portions of the County. Areas designated primarily for residential purposes are to be excluded from this policy as are areas that, having undergone analysis in accordance with OAR 660-16-000, are designated as having some unique natural, historical or cultural value. Exploratory drilling for gas, oil, or other hydrocarbons in not within the scope of this policy.

3. Mining operations are regulated by state and federal government agencies. County regulations shall supplement these actions only as necessary to ensure compatibility in the area, or to protect other resources.

4. Conserve and manage land, soil, and mineral resources by respecting their physical limitations and environmental assets.

5. Update, in cooperation with local aggregate operations, federal, state and local agencies, past sand and gravel inventories to ensure supply/demand information is current.

6. Protect aggregate deposits from encroachment of incompatible uses and ensure that aggregate material in close proximity to its point of use will be available when needed.

7. Mineral and aggregate resource sites, which, on the basis of substantial evidence, are considered for inclusion in Appendix "D" of the "Mineral and Aggregate Resources Working Paper" pursuant to the application of the Goal 5 rule (OAR 660-16-000/025), shall also show evidence of substantial resource utility over time. Any site evaluation shall also address possible impacts on agricultural lands, forest lands and residential development (existing or planned). For sites within the Willamette Greenway or near Goal 5 inventoried resources, notification of the potential conflict shall be sent to the appropriate body (e.g., Pioneer Museum, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, etc.).

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacts during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listen in Appendix "J" of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

10. Newly discovered or known or suspected sites, for which there is inadequate substantive information to allow a determination of quality, quantity, significance and conflicts with other uses, are identified in Appendix "F" of the "Mineral and Aggregate Resources Working Paper." All sites listed in Appendix "F", including sites used pursuant to Special Use Permits issued after the effective dated of this Policy, shall be examined pursuant to the Goal 5 rule (OAR 660-16-000 through 660-16-025), for inclusion in the County's resource inventory no later than the time of completion of the next Periodic Review of the Lane County Rural Comprehensive Plan. Until then, the alternative procedures of Special Use Permits may be used to authorize mineral and aggregate extraction and accessory activities on a short-term, limited or intermittent basis as provided by Lane Code Chapter 16. In addition to meeting the criteria specified in Lane Code Chapter 16. mineral and aggregate extraction and accessory uses shall be substantially compatible with the livability of existing development of abutting property and the surrounding vicinity, and the duration of the permit shall not extend beyond the next Periodic Review unless found appropriate during Periodic Review. Conditions enhancing compatibility may be adopted as required.

11. Mineral and aggregate extraction activities within the Willamette

Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with sections C.3.d and C.3.i of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encourage to work with landowners to conserve wildlife habitats.

5. Lane County shall investigate fee acquisitions, easements, cluster developments, preferential assessment, development right acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "Significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available fro review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or that riparian vegetation does actually extend all the way into the 50 foot or 100 foot setback to the location of the proposed improvements.

   Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife.

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be

considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

13. In its program of protecting "1C" resources, the County shall make

maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met.

14. A group known as the "Lane County Flora and Fauna Committee" is to be established and given permanent status by the Board of County Commissioners. The committee shall represent a wide array of environmental interests and the interests of property owners. Its tasks shall include: evaluation of LCDC Goal 5 concerns and resources, development of information to help the County comply with OAR 660-16-000/025 ("Goal 5 Rule"), research and provision of resource site data to the County, and response to work in progress. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

15. Rare and endangered vascular plants, identified in a 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants in included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

16. Lane County recognizes that Douglas fir old growth stands provide valuable and unique wildlife habitat and will encourage the Forest Service and Bureau of Land Management to maintain acreage in this age class sufficient to ensure viable populations of dependent wildlife species.

17. The Cooperative Agreement between Oregon State Board and Forestry and Oregon State Fish and Wildlife Commission shall constitute Lane County's means of protection sensitive bird habitat site sites form conflicts which may result from forest practices as regulated by the Forest Practices Act. Within two years of the date of acknowledgment of the Rural Comprehensive Plan, Lane County shall evaluate the effectiveness of the use of this agreement in providing actual protection to sensitive bird habitat sites and, if necessary, shall consider the adoption of more effective means of protecting sensitive bird habitat sites. This agreement is incorporated into the Lane County General Plan Policies as Flora and Fauna Exhibit 'A'.

18. Owners of property designated as a sensitive bird habitat and as identified in LM 11.400 shall be encouraged to develop a management plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any development which may adversely affect the habitat. Such management plans shall consider nesting trees, perch trees, critical nesting period, roosting sites, flight pathways and

buffer zones, and shall demonstrate how the proposed development will not adversely affect the sensitive bird habitat site. The policy shall not apply to forest practices covered by the above Flora and Fauna Policy 17.

Open Space and Scenic Areas

1. Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals are developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

2. Lane County will recommend that no new wilderness areas be designated in the County without a complete analysis of the revenue and employment impacts to Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvest on other public lands. Lane County will cooperate to the extent of its jurisdictional authority in the maintenance of existing Wilderness Areas located within Lane County. Should any of these Wilderness Areas ever revert to private ownership, the County will apply the Goal 5 evaluation process as required by Goal 5.

3. The 1983 Revision to the 1981 Recreational Resources Working Paper identifies six major areas of outstanding scenic value in Lane County. These areas are to be considered '3C' resources in the terms of OAR 660-16-000/025 ('Coastal Strip', 'McKenzie Valley', Willamette Highway/Salt Creek Corridor' and 'Coburg Ridge'), '3B' resources ('Willamette Greenway') and '2A' resources ('ODOT Scenic Areas'). Conflicting uses in '3C' areas shall be regulated by the management activities of the Siuslaw and Willamette National Forests, the Oregon Forest Practices Act and the County's rural resource and Coastal zones (on private land). Scenic resources beyond those referenced shall be considered '1B' resources until the County can initiate a program to identify areas of outstanding scenic value.

   Initiate a program to identify areas of outstanding scenic value, identify and resolve conflicts after consideration of social, economic, energy and environmental consequences and protect sites for which conflict resolution indicates protection is desirable.

   This program will be initiated prior to the next scheduled Plan update (five years form adoption of revised Plan). The County is encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this policy.

4. The County shall recognize and acknowledge existing and potential

recreational trails designated by the Oregon Parks Outdoor Recreation Plan, shall cooperate with the Oregon Department of Transportation in the identification of specific routes for potential trails, and in the completion of applicable steps of OAR 660-16-000/025. Existing developed trails shall be displayed on the County's planning documents.

5. The County shall cooperate with appropriate state and federal agencies in the selection of wild and scenic rivers, and will cooperate with these agencies in the completion of applicable steps of OAR 660-16-000/025 in making such selections.

Energy

1. lane County shall identify energy resource areas within the County and protect such areas through the use of existing ordinances and regulations. Such regulations shall address hydroelectric, geothermal, and wind power sites.

2. Lane County shall encourage the exploration and development by other agencies of renewable energy resources such as geothermal, wind, biomass, hydroelectric and solar, and shall monitor such development to ensure that the development does not cause adverse effects within the County.

3. Lane County will use the work of the L-COG Committee on Energy, and its report, "Lane County Electric Energy Planning Program, Final Report (1983)" as a source of resource identification and site protection measures. This will supplement the County's own measure expressed in Policy and Zoning Statements.

4. The County shall protect the sites of hydroelectric resources through conditional or special use provisions of its resource zones. Sites for which a license has been applied for with federal and state authorities, or for which water impoundments of more that 100 acre-feet are proposed, or which will generate power in excess of 75 KW, shall be shown on the Plan as special designation, an Exception to applicable LCDC Goals taken if necessary, and a special zoning district applied. At that time, the Goal 5 rule conflict analysis shall also be carried out.

5. For additional energy policies see Goal 3.

Water Resources

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and

establish priorities among the various beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

4. The primary means of evaluating groundwater resources for land use planning purposes shall be through the land division review process.. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

FLORA & FAUNA EXHIBIT "A"

COOPERATIVE AGREEMENT

BETWEEN

OREGON STATE BOARD OF FORESTRY

and

OREGON STATE FISH AND WILDLIFE COMMISSION

This agreement made and entered into upon the dates hereinafter indicated, by and between the Oregon State Board of Forestry, hereinafter referred to as OSBF, and the Oregon State Fish and Wildlife Commission, hereinafter referred to as OF&WC.

PREAMBLE

Whereas, the policy of OSBF as required by ORS 527.630 is to encourage forest practices that maintain and enhance the multiple forest benefits and resources while recognizing various forest conditions; and,

Whereas, the policy of OF&WC as required by ORS 496.012 is to maintain all species of wildlife at optimum levels and prevent the serious depletion of any indigenous species, and

Whereas, the various counties, under the provisions of ORS 197.175, are required to provide for protection of certain resources under Goal 5 and 17 of the Statewide Planning Goals and Guidelines, and may use the Oregon Forest Practices Act to implement the Goals; and

Whereas, Goal 5 identifies the need to protect and manage critical wildlife habitat and streamside wildlife habitat; and

Whereas, Goal 17 requires protection of major marshes, critical wildlife habitat, and riparian habitat in coastal shoreland areas:

Now, therefore, it is hereby understood and agreed by and between OSBF and OF&WC to implement the following process:

1. The OF&WC will furnish to the OSBF a current list of critical wildlife habitat sites (which will include major marshes in the coastal shoreland area) situated on lands subject to the provisions of the Forest Practices Act. The list will be updated as needed considering new information including those sites inventoried in

local comprehensive plans.

2. The OSBF will recognize the list furnished by OF&WC as critical wildlife habitat to be protected through administration of the Forest Practices Act.

3. The OF&WC will provide OSBF with the current policies and standards used by OF&WC to identify the quality, quantity, and location of critical habitat sites.

4. The OSBF will classify any operation near or within a listed critical wildlife habitat site as a high priority operation requiring a joint inspection between OSBF and OF&WC prior to commencement of the operation on the sites.

5. The OSBF, OF&WC, and landowner/representative will jointly inspect the site to determine if the planned use of the site is a conflict. If no conflict is identified, the operation is to be limited only be current Forest Practice Rules.

6. If the planned use of the site is identified as a conflict between the operation and the wildlife habitat, OSBF will require a plan to resolve the conflict. The plan will determine reasonable measures sufficient to resolve the conflict on the site by limiting conflicting practices. Reasonable measures may include limiting conflicting forest operations during the time of the year wildlife need the site, limiting operations to meet other wildlife needs or excluding forest operations on the site.

7. The OSBF and OF&WC will cooperate in the development of standards and procedures for streamside protection and management including riparian habitat within coastal shoreland areas, to be applied in administration of the Forest Practices Act on commercial operation. The OSBF will apply these procedures during administration and enforcement of the Forest Practices Act, consistent with the Forest Practices Act and Forest Practices Rules.

8. This Cooperative Agreement shall become effective upon execution of the parties hereto and shall be operative until terminated by either party by written notice to the other party and to DLCD and those local jurisdictions relying on the agreement for compliance to Goal 5. The notice to terminate shall be submitted at least thirty (30) days prior to the termination date.

HISTORIC RESOURCES EXHIBIT "A"

Agriculture	
Century Farms	F
Grange Halls	G
Old Barns	B
Mining	M
Logging	L
Marine Industry	W
Historical Sites	H
Natural Features	
Natural Landmarks	N
Hot Springs	S

LISTING-HISTORIC RESOURCE SITES

ARCHAEOLOGICAL SITES MAP SYMBOL A

Site numbers and Unit names are provided by sources listed in Historic Preservation Preliminary Survey Notebook I, located at the Lane County Planning Division Office.

Map Symbol #	Location (Township, Range & Section)	Site # or Name	Quad Sheet
1	16-2-25	Mohawk Unit AR090 33	Marcola
2	16-3-14	Mohawk Unit AR090 34	Eugene
3	16-3-27	35 LA 216-Beebe Site	Eugene
4	16-3-33	35 LA 44-Hurd Site	Eugene
5	16-4-13	35 LA 71 (East of River)	Eugene
6	16-4-13	35 LA 72 (970' East of River)	Eugene
7	16-5-27	35 LA 41-42-Benjamine Site	Elmira
8	16-5-28	35 LA 80 (Near Long Tom River - 2 mi. N. of Fern Ridge)	Elmira
10	18-2-7	35 LA 95	Marcola
11	18-2-26	35 LA 63	Lowell
12	18-2-29	35 LA 64 Stuzsite	Lowell
13	18-2-16/21	35 LA 63 Derysite	Lowell-Marcola
14	18-2-28	35 LA 61	Lowell
15	18-2-28	35 LA 60 Pleasant Hill	Lowell
16	18-2-30	35 LA 144	Lowell
17	18-2-33	35 LA 59	Lowell
18	18-2-33	35 LA 56	Lowell
19	18-2-33	35 LA 94	Lowell
20	18-2-32	35 LA 57 Pleasant Hill Area	Lowell
23	18-3-12	35 LA 133	Marcola

24	18-3-34	35 LA 113	Cottage Grove
25	18-5-33	Lorane Unit AR 090 49	Crow
26	18-5-33	Mohawk Unit AR 090 48	Crow
27	19-2-1	35 LA 58-Middle Fork Willamette	Lowell
28	19-2-4	35 LA 96-Seller Butte (SE)	Lowell
29	19-2-16	35 LA 116 Simions Site	Lowell
30	19-2-7	35 LA 117	Lowell
31	19-2-7	35 LA 118-Creswell Area near Bear Creek	Lowell
32	19-2-3	35 LA 123	Lowell
33	19-2-10	35 LA 124	Lowell
34	19-2-9	35 LA 125	Lowell
35	19-2-18	35 LA 135	Lowell
36	19-2-16	35 LA 193	Lowell
37	19-3-2	35 LA 91-Camas Swale Area	Cottage Grove
38	19-3-1	35 LA 121	Cottage Grove
39	19-3-8	35 LA 102	Cottage Grove
40	19-3-13	35 LA 120	Cottage Grove
41	19-3-12/13	35 LA B1	Lowell
42	19-3-13	35 LA 132	Cottage Grove
43	19-3-13	35 LA 134	Lowell
44	19-3-8	35 LA 136	Cottage Grove
45	19-3-18	35 LA 122	Cottage Grove
46	19-3-24	35 LA 119	Cottage Grove
47	19-3-24	35 LA 112	Lowell
48	19-3-26	35 LA 111	Cottage Grove
49	19-3-23	35 LA 104	Cottage Grove
50	19-3-16	35 LA 103	Cottage Grove
51	19-3-18	35 LA 101	Cottage Grove
52	19-3-24	35 LA 93 (S.E. of Creswell)	Lowell
53	19-3-17	Camas Swale Area	Cottage Grove
54	19-3-24	35 LA 127	Cottage Grove
55	19-3-25	35 LA 128	Cottage Grove
56	19-3-35	35 LA 129	Cottage Grove
57	19-3-35	35 LA 109	Cottage Grove
58	19-4-12	35 LA 20	Cottage Grove
59	19-4-12	35 LA 69	Cottage Grove
60	19-4-13	35 LA 114	Cottage Grove
61	19-3-35	35 LA 110	Cottage Grove
62	19	35 LA 99	Cottage Grove
63	19-4-14	Lorane Unit AR 090 47	Cottage Grove
64	19-5-22	Lorane Unit AR 090 50	Crow
65	20-6-1	35 LA 173 Siuslaw Falls Site	Crow
66	20-6-1	Lorane Unit AR 090 32	Crow
67	16-1-15	35 LA 236	Marcola
68	16-1-31	35 LA 235	Marcola
69	16-1-31	Mohawk Unit AR 090 45	Marcola
70	17-1-5	Mohawk Unit AR 090 46	Marcola
71	17-1-9	35 LA 248	Marcola
72	18-1-25	Mohawk Unit AR 090 35	Lowell

73	18-1E-30	Mohawk Unit AR 090 25	Lowell
74	18-1E-31	Mohawk Unit AR 90 26	Lowell
75	18-1E-31	35 LA 244	Lowell
76	18-4E-1	35 LA 194-Indian Ridge Site	Fairview Peak
77	19-2-16	35 LA 194	Lowell
77	19-1E-31	35 LA 30-38-Fall Creek	Hardesty Mtn.
78	20-1-3	BLM # Dorena District AR 090 18	Lowell
79	20-1-3	BLM # Dorena District AR 090 19	Lowell
80	20-1-11	BLM # Dorena District AR 090 8	Lowell
81	20-1-11	BLM # Dorena District AR 090 9	Lowell
82	20-1-11	BLM # Dorena District AR 090 10	Lowell
82	20-1-11	BLM # Dorena Limit AR 090 10	Lowell
83	20-1-11	BLM # Dorena Limit AR 090 11	Lowell
84	20-1-31	BLM # Dorena Limit AR 090 30	Lowell
85	20-3-14	35LA 106	Cottage Grove
86	20-3-14	35LA 107	Cottage Grove
87	20-3-4	35LA 105	Cottage Grove
88	20-3-13	35LA 100	Lowell
89	20-3-11	35LA 130	Cottage Grove
90	20-5-14	Lorane Unit AR 909 21	Crow
91	21-1-31	BLM # Dorena Unit BAP 090 15	Culp Creek
93	21-2-15	BLM # Dorena Unit AP 090 22	Lowell
94	23-2-10	BLM # Dorena Unit AP 090 13	Culp Creek
95	22-2-32	BLM # Dorena Unit AP 090 23	Culp Creek
96	23-1-16	BLM # Dorena Unit AP 090 51	Culp Creek
97	23-2-4	BLM # Dorena Unit AR 090 31	Culp Creek
98	21-4E-19	35LA 53 Baby Rock Shelter #2	Oakridge
99	21-4E-19	35LA 54 Baby Rock Shelter #1	Oakridge
100	20-4E-10	35LA 55 Summitt Huckleberry Mtn.	Sardine Butte
101	16-5-33	Virgin Ranch Site	Elmira
102	17-5-14	Smithfield	Elmira
103	17-05-33	Perkins	Elmira
104	18-12-3	Mohawk Unit 35LA 25	Siltcoos Lake

105	16-12-34	Mohawk Unit 35LA 25 Devil's Elbow St. Park	Heceta Head
106	Somewhere just east of Fern Ridge; contact State Historic Preservation Office	Franklin Site of Flanagan Site (on National Register)	
107	19-1-16	35LA 68 Dexter Park	Lowell

GOAL SIX: AIR, WATER AND LAND RESOURCES

Water Quality

1. Avoidance and/or control of soil erosion shall be a major criterion to be addressed in all applicable County review procedures and County construction activity.

2. The re-establishment of vegetative cover by standard erosion control practices shall be required as part of the land development process.

3. Lane County shall cooperate with the Department of Environmental Quality and other state and federal agencies in maintaining domestic water supplies to the existing standards of the appropriate governing body.

4. Lane County shall promote watershed practices which protect and enhance water quality and quantity through land use planning, Public Works projects and management of County facilities.

5. Lane County shall cooperate with the Lane Council of Governments and Oregon Department of Environmental Quality in identifying sources of water pollution and controlling or abating them. The County's primary emphasis will be the possible degradation of ground and surface water quality by onsite sewage disposal system.

6. Lane County shall cooperate with the Oregon Water Policy Review Board to evaluate flow requirements necessary to maintain water quality in critical streams and support the establishment of minimum flow designations for those streams.

7. In basins where consumptive flow appropriations result in water quality problems due to low flows, the County shall encourage the construction of small storage reservoirs for flow augmentation of sites with minimal use conflicts. The County will also encourage conservation practices among water consumers in those basins.

Air Quality

1. The County shall support programs which reduce air pollution primarily through continued active participation in Lane Regional Air Pollution Authority (LRAPA).

2. The County shall encourage practices and developments which can meet air quality standards.

3. The County shall cooperate with State and Federal agencies to achieve enforcement of existing noise control regulations.

4. The County shall committed to, and shall participate in, programs

of the Lane Regional Air Pollution Authority to monitor air quality in the County and ensure that federal, state and local standards are being met; the County shall cooperate in the same manner with the State Department of Environmental Quality with respect to air quality and noise control standards for which that is responsible.

5. Lane County shall, working in cooperation with LRAPA and DEQ, maintain an inventory of air pollution sources, and noise pollution sources where information is available, and shall update such inventory periodically.

6. Lane County shall develop a procedure of regular, routine referral of major land development and/or building permit requests to LRAPA and/or DEQ for review of air quality and noise implications, and shall consider the responses of those agencies to the referrals when action is being taken on the requests.

GOAL SEVEN: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon the inventory and upon on-site or other evaluation as appropriate.

2. Development shall be commensurate with the type and degree of any natural hazard(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to be the sole means of safeguard against natural hazards.

3. When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact, (including financial and economic considerations) of such safeguards on the environment and the public shall be considered.

4. Lane County shall continue as a qualified participant in the Federal Flood Insurance Program through application of comprehensive flood hazards analysis and floodplain management data to general and specific land use decision.

GOAL EIGHT: RECREATIONAL NEEDS

1. Lane County shall use the adopted Parks Master Plan as its chief guide for recreational development and service provision, to be supplemented by information obtained from the US Forest Service, the State Department of Transportation, the State Marine Board and other agencies.

2. Private recreational development in areas predominated by public recreational amenities and facilities shall be encouraged, provided that development is complimentary to or supplements public facilities.

3. Proposals for major recreational developments which exceed projected needs contained in the Recreational Working Paper of the Parks Master Plan shall be accompanied by a demand analysis.

4. Increase recreation opportunities, as needed, throughout the County.

5. Encourage private recreational development as an important component of the County's total supply of recreational facilities and services.

6. Encourage the development of recreation facilities in community development centers.

7. Encourage the development of environmentally compatible tourist and recreational facilities which enhance the economic prospects of rural areas while serving the recreational needs of tourist and County residents.

8. Continue development of a Countywide system of paths and trails for nonmotorized travel (i.e. pedestrian, bicycle and equestrian) interconnecting development centers, recreation sites and scenic areas.

9. Increase public access to public outdoor recreation sites that can tolerate the pressure of increased use.

10. Encourage public and private participation to increase access to waterways, where needed, without infringing upon private property rights.

11. Encourage exchange of public lands of comparable value to offset acquisition of private lands for public use.

12. The County should develop additional guidelines to encourage the private lease and development of existing County-owned land for public recreational facilities.

GOAL NINE: ECONOMY OF THE STATE

1. Within the framework of these policies, the County shall encourage the diversification and growth of the local economy. Primary efforts will be in the following areas:
   a. Cooperation and participation with efforts and programs established by public agencies and private concerns to promote and enhance economic development throughout the County.
   b. Recognition of the value of local resources such as timber and agricultural lands as the primary source of raw materials for the manufacturing and processing sectors of the economy.
   c. Establishment of land use policies that provide a supportive environment for industrial and commercial activities.

2. The County's primary responsibility in economic development shall be to ensure the necessary land area is available throughout the County and appropriate levels of service can be obtained, consistent with the needs of industry and commerce, the area and other County policy.

3. Most industrial and commercial development shall be concentrated within the urban growth boundaries of the various cities throughout the County. The County shall work closely with city governments to improve economic conditions within their areas. During County review and adoption of city plans, particular attention shall be given to the identification and protection of industrial and commercial sites, both large and small scale.

4. Commercial and service facilities in rural, unincorporated communities shall be supported commensurate with increases in rural population and where necessary to insure continued operation of industrial activity. Such facilities shall be located within rural communities unless justified by appropriate plan amendment and exception to Statewide Planning Goals.

5. Existing parcels of land within UGBs which are suitable for large-scale industrial development shall be protected through the County's review and acknowledgment of city plans.

6. The County shall work closely with incorporated city governments to improve local economic conditions, including land and service provision.

7. New industrial development shall normally take place within adopted Urban Growth Boundaries, unless such development:

   a. Is clearly rural oriented (e.g., canneries, logging operations, processing of resource material);
   b. Is necessary for the continuation of existing industrial operations, including plan or site expansion;
   c. Will be located in an area either built upon or committed to

nonresource use where necessary services can be provided;

d. The industrial activity is dependent on a unique site-specific resource;
e. The use is too hazardous or is incompatible in densely populated areas;
f. The industrial activity creates by-products which are used to a significant level in resource activities in the immediate area; or
g. Where a significant comparative advantage could be gained in locating in a rural area. Any development approved under this policy that requires a plan amendment shall be justified by an exception to applicable Statewide Planning Goals.

8. Existing industrial and commercial uses shall be designated on the plan diagram. Uses so identified shall be zoned to allow for continued operation and routine expansion commensurate with their character, provided significant conflicts with other land uses (existing and planned) do not result.

9. Tourism shall be considered as a base industry having high potential for growth throughout the County. Development of facilities oriented towards tourists shall be given maximum support within the framework of these policies.

10. As a stimulus to the tourist industry, the County shall maintain and where possible, improve public recreational facilities such as parks, boat ramps, etc. Wherever possible, private operations and contracts will be used in these endeavors.

11. Specific standards for rural economic development shall be developed, which include the use of economic inventory data such as population and employment trends.

12. Destination Resorts siting enhances tourism and is encouraged within Lane County. Destination Resorts shall be sited consistent with guidance in Goal 2: Land Use Planning.

GOAL TEN: HOUSING

1. The adopted Lane County Housing Plan is a special function plan concerned with Goal 10 requirements, and containing a number of policy statements specifying the County's position toward these requirements. The 1978 Housing Plan, as amended, shall continue to be used as the primary guideline toward housing matters, and policy statements within it shall be considered to be mandatory action which are ultimately binding on the County.

GOAL ELEVEN: PUBLIC FACILITIES AND SERVICES

1. Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category.

2. Any increases in the levels of public facilities and services generated by the application of new or revised land use designations within an area shall, to the extent practicable, be financed and maintained by revenues generated within or as a result of those designated land uses. Those land uses benefiting from increased levels of public facilities or services shall be expected to provide a significant share of the costs associated with providing such facilities and services, recognizing that in some instances, resources for such provision must be obtained on a widespread geographic or revenue basis and may involve capital investments exceeding the immediate needs of the area being served.

3. Lane County shall actively support and assist progressive solid waste management efforts. The Lane County Solid Waste Management Plan shall be the primary instrument to effect this policy.

4. Lane County shall maintain an active role to provide the facilities and services needed to make quality health, social and cultural services available and accessible to all Lane County residents. The County's specific objectives at any given time in these areas are contained in the work program objectives of the Departments of Community Health and Social Services, Public Work and the County Fair Board.

5. Lane County shall participate in the coordination of planning and development for various public facilities and utility services. The primary means of effecting this policy shall be through a system whereby land use applications shall be referred to the various providers of services including cities, utilities, special districts, County and other public agencies, as well as the Lane County Boundary Commission.

6. Land designations and service levels:

   a. Forest Land: Non-Impacted Forest Land (F-1)

      Description: Forest land that requires the highest degree of protection from intrusion by nonforest uses. This land has a high value as commercial forest land or is valuable for one or more other forest uses. Use of the land should be directly related to existing or potential forest uses. Nonforest uses should be prohibited or severely restricted.

e. Rural Residential (RR-1, RR-2, RR-5, RR-10) (Outside Community Designations)

Description: Lands outside communities and not identified as Forest Land, Agricultural Land or Natural Resource: Mineral. These lands may have some productive capability, however, not to the degree warranting designation as resource land. This land can be used for low-density rural residences, part-time farming and similar activities. Settlement patterns will be primarily a factor of on-site conditions. (Refer to Goal #2, Policy #11, for criteria used to determine the application of the Rural Residential designation.)

Service Level: Schools, on-site sewage disposal, individual water supply system, electrical service, telephone service, rural level fire and police protection, reasonable access to solid waste disposal facility.

f. Community (RR-1, RR-2, RR-5, RR-10, RA, RG, C1, C2, C3, M2, M3)

Description: Land that has an existing cohesive, dense settlement and development pattern to the degree that it may no longer be considered available for other uses. (Refer to Goal #2, Policy #10, for the characteristics an exception area must have to receive a Community designation.)

Service Level: Schools, on-site or community sewage disposal, individual or community water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility.

g. Rural Commercial (CR)

Description: Existing facilities providing goods and services. The category includes a broad range of such activities from a small isolated store to a large shopping complex. Only existing uses are shown as new commercial uses are expected to locate in development centers. New commercial establishments seeking to locate outside of a Community can do so only by a plan amendment or by justifying the location through the refinement process.

Service Level: Schools, on-site sewage disposal, individual water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility.

h. Industrial (M2, M3) (Outside Community Designations)

Description: Existing facilities engaged in the production of goods. The full range of such activities from small to large is included in this category. Only existing locations shown as new industrial uses are expected to locate in community centers. New industrial uses seeking to locate outside of a community can do so only through a plan amendment or by justifying the location through the refinement process. Expansion of existing uses will require justification through the exception process.

Service Level: Schools, on-site sewage disposal, individual water supply system, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility.

i. Park or Recreation (PR)

Description: Lands or buildings devoted to public or semi-public recreational use. Included are such uses as golf courses, parks, reservoirs and surrounding land, etc.

Service Level: No minimum level of services is established for Park or Recreation areas outside committed areas. Service level for Park or Recreation areas inside committed areas shall be consistent with that level required for the Community or committed area outside of a Community.

j. Marginal Lands (ML)

Description: Lands that satisfy the requirements of ORS 197.247 may be designated Marginal Lands in accordance with other Plan policies.

Service Level: Consistent with service levels for Rural Residential outside a Community designation.

k. Non-resource Lands (NRES)

Description: Lands that are not farm or forest lands as defined by Statewide Planning Goals #3 and #4. (Refer to Goal #2, Policy 16.)

Service Level: Consistent with service levels for Rural Residential outside a Community designation. The service level for cluster subdivisions of nonresource shall be consistent with Goal #2, Policy 24.

GOAL TWELVE: TRANSPORTATION

1. Lane County shall shall strive for a coordinated and balanced transportation system which complies with LCDC Goal 12 and is responsive to the economic, social and environmental considerations, and which will work toward the following objectives:
   a. Safe, convenient and economical transportation for all people, materials and services.
   b. An effective distribution of transportation options.
   c. A transportation system responsive to changing needs and conditions.
   d. Consideration of direct and indirect impacts of proposed transportation projects on the environment, energy resources, economy and general livability.
   e. Public participation in the transportation planning process.
   f. Coordination with the development of statewide comprehensive transportation plans.
   g. Encouragement of energy-efficient modes of transportation.
   h. Safe and convenient opportunities for bicycle and pedestrian travel throughout population areas of Lane County.
   i. An efficient public transportation service which meets demonstrated needs for alternative transportation.
   j. An appropriate level of general and commercial aviation development.
   k. The development of the Port of Siuslaw consistent with adopted policies and plans.
2. In managing the transportation system toward the fulfillment of adopted County land use goals and plans, Lane County shall:
   a. Provide transportation services as necessary to accommodate growth concentrated within existing communities.
   b. Discourage the spread of residential development in agricultural and forest areas.
   c. Guide the transportation pattern of newly developing areas and rural communities.
   d. Ensure that transportation improvements are consistent with adopted public policies and plans.
   e. Ensure that road development or improvement is consistent with adopted plan and policies.
3. Lane County shall seek an efficient, safe and attractive highway network to serve the existing and future arrangement of land uses by striving toward the following objectives:
   a. Make improved safety for the traveling public a primary consideration in the expenditure of resources.
   b. Ensure that all road construction meets adopted uniform standards unless excepted for substantial reason.
   c. Provide for timely development of streets and roads in community development centers.
   d. Include aesthetic considerations in maintenance, construction or improvement within County road right-of-way.
   e. Minimize frontage access onto the County's collector and

GOAL THIRTEEN: ENERGY CONSERVATION

1. Lane County shall work to implement the Lane County Energy Task Force recommendations as soon as practical and feasible. Among them are the four broad programs listed below as well as a number of detailed recommendations, including ones to encourage efficiency in land use, building and transportation.
   a. Develop staff capability to implement recommended programs.
   b. Promote public education/awareness/motivation.
   c. Provide and promote interjurisdictional cooperation and coordination.
   d. Develop and publicize financial incentives/assistance for energy efficient project.
2. Lane County shall encourage energy conservation in the development and of public facilities, services and utilities and in the development and use of electrical and communication systems.

3. Lane County shall establish programs when financially feasible to promote the stated goal through intergovernmental cooperation, to increase public awareness of the benefits of energy conservation and to revise existing programs concerning land use, transportation, existing and new building.

GOAL FOURTEEN: URBANIZATION

1. The County shall encourage new residential, commercial and industrial development to locate within existing incorporated cities or rural communities. Any growth outside Urban Growth Boundaries must:
   a. Be restricted to committed or developed areas including approved new development centers; or
   b. Under certain specified conditions set forth in this plan, industrial, commercial and residential development is appropriate outside of developed and committed areas provided a valid exception is taken and/or all Statewide Goal requirements are met.
   c. Any community designated in the plan that does not have an adequate Urban Growth Boundary, or any addition to such community that may be proposed, shall be justified by a valid exception pursuant to Statewide Goal 2, Part II.

   This and subsequent policies do not apply to the Eugene-Springfield Metropolitan Area, which is governed by the Metro Area Plan.

2. The County shall provide for orderly and efficient transition from rural to urban land use while insuring the supply of housing, employment, livability and other amenities, in order to accommodate the long-range growth of each city.

3. The County shall provide for a cooperative UGB management process between the County and cities in the County in the following:
   a. The establishment and periodic revision of urban growth boundaries and the planning and implementation of common policies and procedures within the boundaries;
   b. The planning and implementation of city policies for lands inside city boundaries which may effect the County.

4. The County shall continue to comply with the planning coordination requirements, and the "urban growth management program" requirements of the Oregon Land Conservation and Development Commission.

5. The County will seek agreement with each city to commonly determine the location of urban growth boundaries and the interim and long-term land use designations and public improvement project designations within the growth boundaries.

6. Each city is regarded as the logical and ultimate provider of urban services within its urban growth boundaries; Lane County will not approve any development nor encourage or abet the establishment of urban services or facilities within the city's urban growth boundary, which are contrary to city policy or agreement excepting establishment service districts.

7. It is the County's position that ultimate urban-level density within a city's urban growth boundary should occur only where all essential public facilities and services (water, sewer, etc.) are or will be shortly available. Cities are encouraged and expected to prepare and publish facilities plans and schedules for all facilities.

8. the County will encourage the orderly and logical annexation of territory to each city.

9. Any County approval of the division and/or development of land within a city's urban growth boundary will be consistent with provisions of the applicable city plan within the area. If necessary, the County may take one or more of the following actions to land outside the city's jurisdiction:
   a. On an interim basis, limiting the level of development to less than the planned urban density or intensity, based on interim standards to be adopted and published.
   b. Determining that the design and operation of an interim land use will allow for later conversion to full urban densities in an orderly and efficient manner (e.g., land divisions to be approved in such a way as to permit later redivision into greater and urban-level densities), and that the interim land use will not otherwise pre-empt the subject or other properties from the future orderly provision of urban services and facilities;
   c. Requiring that interim and long-term development be consistent with existing master sewer and/or water plans for the urban growth area;
   d. Requiring city service connection, where agreeable to the city and consistent with applicable law, and where consistent with approved master facility plans for the urban growth area.

10. Lane County will apply where appropriate applicable city public improvement standards within urban growth boundaries where it is determined that those standards are more rigorous than those of the County. Where city standards are not practicable, County approvals will be given in such a way as to permit each conversion in the future to city standards.

11. Use of utility easements and natural drainageways within the urban growth area shall be consistent with applicable plans, will have multiple uses where practicable and will be based on County-city agreement.

12. The County will provide each city the opportunity to review and comment upon County consideration of plans, ordinances, development proposals (zoning and land division), public improvement projects, sale of County lands and other similar matters of city interest which occur within the city's area of influence and/or urban growth boundary, via "joint agreements for planning coordinator" executed

with each city.

13. Lane County will expect to review city proposals for, or consideration of, matters of County interest through established procedures. Matters to be reviewed may include those listed above in Policy No. 12, plus other matters such as annexations, as governed by joint agreement.

14. Lane County shall attempt to achieve coordinated establishment approaches (including plan land use\public improvement approaches (including plan land use designations, development policies, zoning, etc.). Plan coordination may take one of the following forms:
    a. Co-adoption, with each city, of a common comprehensive plan;or
    b. Adoption of the city's comprehensive plan as a part of the County's plan(s); or
    c. Approval of any supplemental policies or procedures which will accomplish the intent of this section of the Policies, which may be mutually agreed upon by the County and each city.

15. Lane County shall regard itself as "caretaker" for lands within city UGBs but outside of city limits and will administer County land use and other regulations toward that objective, within the parameters established by the preceding Policies. Conflicts between city and County interpretations of plans or appropriate County actions shall be resolved temporarily in favor of County until the conflict is fully resolved through plan amendment or clarification, or other action.

16. Unincorporated communities shall be considered and treated as part of the County Plan with due consideration for community needs and values. Urban-level development requiring or ultimately likely to require urban services such as sewer and water systems shall not be approved unless the community itself, by public or private installation, can supply these services, and the development is in the form of an acceptable new development center proposal.

17. Within established UGB's, city plans ratified or adopted by the County are to be considered the governing land use documents, but do not pre-empt final County legal responsibilities or authority. Contract annexation agreements between cities and the County may modify this position as acceptable to both parties.

GOAL FIFTEEN: WILLAMETTE RIVER GREENWAY

1. Maintain and support continuation of existing uses within the Greenway Boundary.

2. Intensification and change of use of lands within the Greenway Boundary shall remain compatible with the protection, conservation and enhancement of the natural, scenic, historic, agricultural, economic and recreational qualities of the Willamette River Greenway Program.

3. Recognize that the Greenway consists of a multitude of resources and due to continued growth, 100 percent protection to all resources will never be realized.

4. Protect, conserve and preserve important economic uses such as, but not limited to, agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands and timber within the Greenway.

5. Maintain sufficient water flows to support water uses such as municipal, agricultural, industrial, natural resources (i.e., fish, aquatic life, wildlife) and recreation within the Greenway.

6. Prioritize water quality management controls along the Coast Fork and the Main Stem, especially in the Metropolitan area.

7. Acquisitions for Greenway purposes must be consistent with noninterference or interruption of farm uses.

8. Recognize that ODOT cannot condemn for a scenic or use easements on lands devoted to farm use; however, easements may be given by owners of lands being used for farm purposes.

9. Protect water rights and access to the river for irrigation purposes.

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, if not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored

within a brief period of time.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long term.

16. Aggregate operations occurring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity to urban areas and other points of use. Such monitoring shall be conducted in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

19. The County shall require to the maximum feasible extent the protection of the vegetative fringe within the Greenway, and shall require the re-establishment of vegetative cover where it has been significantly removed during the land development process.

20. Conserve the rural character of the river bank as a primary objective within the Greenway.

21. Encourage a river-related mixture of industrial, commercial, residential and public land uses where appropriate in the Greenway.

22. In instances where a public agency has acquired productive farmlands or other resource lands as long-range reserve for recreational use, if possible, such property should be leased back for agricultural or other resource use until it is required for public purposes.

23. Provide and encourage use of public land within the Greenway.

24. Accommodate public access to the river and to public lands within the Greenway by:
    a. Controlled, clearly designated, access points;
    b. Establishment of an integrated system of safe river landings, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
    c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

25. Provide appropriate levels of police protection in those areas subject to public use.

26. Encourage additional police security for private and publicly owned lands within the Greenway.

27. Protect, conserve or preserve the scenic and recreational qualities of the lands within the Greenway Boundary.

28. Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.

29. The sensitivity of lands within the Greenway shall determine the level of human activity.

30. Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.

31. Consider and minimize the possibility that public recreation use might disturb adjacent private property owners.

32. Scenic easements shall not be acquired through the exercise of the power of eminent domain on lands in farm use.

33. Control vehicle access to the river.

34. Consider and adopt policies that would not hinder the physically handicapped from using public recreation facilities within the Greenway Boundary.

35. Emphasize public access to the river in the metropolitan area and other urban areas while discouraging upland access in rural areas.

36. Measures should be taken to minimize disturbance to private property, including the implementation of programs to eliminate trespass and vandalism on private lands and destruction of ecological fragile areas.

37. Mineral and aggregate extraction activities within the Willamette

Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

PART III: "COASTAL RESOURCES MANAGEMENT PLAN" POLICIES

Adopted 6/19/80, Ord. 803

Revised 1/82, Ord. 862

Revised 3/16/82, Ord. 876

Revised 6/6/91, Ord. 1000

The policies listed on the following pages have been excerpted from the Lane County Coastal Resources Management Plan which explains the policies and defines how the policies should be used. Therefore, the Coastal Resources Management Plan must be used in conjunction with any application of the policies.

GOAL SIXTEEN: ESTUARINE RESOURCES

Natural

1. Log storage on existing sites should continue subject to the requirements of state and federal regulations. Log storage in the waters of the Siuslaw has been the practice of wood processing firms for many years. Storage and handling of logs by use of water is an integral part of the present facilities' manufacturing processes and is therefore water dependent. However, due to impacts of log storage in intertidal areas, Lane County recommends against expansion of existing sites or creation of new storage sites in the Natural MU.

2. Low-intensity grazing on high salt marshes is consistent within the capacity of the marsh to accommodate such use and retain significant natural characteristics.

3. Commercial clamming and fishing shall only be allowed to the extent that the productivity of the resource is not endangered. The Oregon Department of Fish and Wildlife shall be the proper consulting agency in this regard.

4. Riprap to protect structures existing prior to October 7, 1977, to protect unique natural resources, historical and archaeological values and public facilities such as bridge support structures, shall be allowed provided other protection measures less harmful to the estuary have been considered and found by the County not to be feasible. Short-term fills for temporary alterations are permissible, provided such alterations satisfy Goal 16 and Lane Code standards concerning such activities, and provided the estuarine areas impacted can be restored following removal of the fill. |All other fills, regardless of volume, are prohibited in this MU.

5. Provided they comply wit Goal 16 and Lane Code 16 provisions concerning the protection of the resource capabilities of the areas in which they are to be located, uses involving he maintenance and/or installation of public facilities (bridge crossing, tidegates, temporary alterations and other similar uses identified in the Goal) are appropriate within this Management Unit.

6. Temporary alterations are permitted in the Management Unit only to allow minor and reversible alterations to areas and resources that Goal 16 otherwise requires to be preserved or conserved. This exemption is limited to alterations in support of uses permitted by the Goal; it is not intended to allow uses which are not otherwise permitted by the Goal. A resource capabilities test shall e applied to temporary alteration proposals to ensure:
   a. That the short-term damage to resources is consistent with resource capabilities of the area; and

b. That the area and affected resources can be restored to their original condition.

Conservation

1. Log storage on existing sites is subject to the requirements of state and federal regulations. Log storage in the waters of the Siuslaw has been the practice of wood processing facilities for many years. Storage and handling of logs by use of water is an integral part of the present facilities' manufacturing processes and are therefore water dependent.

   Expanded or new log storage leases shall be allowed only if:

   1. It is determined that the storage is water dependent;
   2. A public need is demonstrated;
   3. No alternative upland locations are feasible;
   4. Adverse impacts are minimized as much as feasible;
   5. The storage meets all applicable state and federal regulations;
   6. The storage does not pre-empt long-established recreational use of the site; and
   7. Logs will not ground at low water.

2. Single-family, single-purpose piers are discouraged in favor of public, multiple-purpose or commercial piers. Mooring buoys, floating piers, launching ramps and dry-land storage are potential alternatives.

3. Filling, dredging and other activities which degrade natural estuarine values will be allowed only:

   a. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and
   b. If a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
   c. If no alternative upland locations exist; and
   d. If adverse impacts are minimized.
   e. I in compliance with mitigation requirement of ORS 541.605 to 541.695 (Fill and Removal Law).

   Other uses and activities which could alter the estuary shall only be allowed if the requirements in (b).(c) and (d) are met.

4. Temporary alterations are permitted in this Management Unit only to allow minor and reversible alterations to areas and resources that Goal 16 otherwise requires to be preserved or conserved. This exemption is limited to alterations in support of uses permitted by the Goal; it is not intended to allow uses which are not otherwise

permitted by the Goal. A resource capabilities test shall be applied to temporary alteration proposals to ensure:

a. That the short-term damage to resources is consistent with resource capabilities of the area; and
b. That the area and affected resources can be restored to their original condition.

Normal maintenance dredging or existing facilities and dredging of minor channels between such facilities and the main Siuslaw River channel constitute minor estuarine alterations.

Development

1. New dredging projects, any project which requires filling of the estuary, or other degradation of natural biological values, shall be allowed only:

   a. if required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of Goal 16; and
   b. if a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
   c. if no feasible alternative upland locations exist; and
   d. if adverse impacts are minimized.
   e. if in compliance with mitigation requirements of ORS 541.605 to 541.695.

2. Dredge or fill activities, as otherwise approved, must be mitigated, if found to be subject to the mitigation requirement, by creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary such as its natural biological productivity, habitats and species diversity, unique features and water quality.

3. Maintenance dredging of the navigation channel, as authorized in the Siuslaw River Dredge Material Disposal Plan, is automatically approved and need not go through an impact assessment for each individual project.

4. Proposals must consider and not be detrimental to natural characteristics of value in the adjacent estuary.

5. Flood and erosion control structures such as jetties, bulkheads and seawalls, shall meet the requirements of Policy #1 and shall be designed and sited to minimize:

   (1) erosion or man-induced sedimentation in adjacent areas, and
   (2) other adverse impacts on water currents, water quality, and fish and wildlife habitat.

6. Temporary alterations are permitted in this management unit only to allow minor and reversible alterations to areas ad resources that Goal 16 otherwise requires to be preserved or conserved. This exemption is limited to alterations in support of uses permitted by the Goal; it is not intended to allow uses which are not otherwise permitted by the Goal. A resource capabilities test shall be applied to temporary alteration proposals to ensure:
   a. That the short-term damage to resources is consistent with resource capabilities of the area; and
   b. That the area and affected resources can be restored to their original condition.

GOAL SEVENTEEN: COASTAL SHORELANDS

Significant Natural Areas

1. Uses shall fall within Priority 1 of the General Priority Statement (page 43). No use shall be permitted within a Significant Natural Shorelands Management Unit unless that use is determined to be consistent with protection of natural values identified in the Coastal Resources Management Plan's description of the Management Unit.

2. Artificial bank stabilization shall be allowed only to protect structures existing as of October 7, 1977 and only after other methods of bank stabilization which are less destructive to the resource have been considered, or unless the unique value of the resource itself is in danger.

3. Dredge spoil disposal is appropriate only on the dunes in MU along the estuary, as indicated in the Siuslaw Dredged Material Disposal Plan.

4. Development shall not result in the clearance of natural vegetation in excess of that which is necessary for the actual structure(s), required access, fire safety requirements and the required septic or sewage disposal system. Parcels which exhibit vegetation removal shall be replanted as soon as possible.

5. Filling in coastal lakes adjacent to this MU is not allowed.

6. Timber harvesting activities shall be consistent with Forest Practices Act rules. Lane County recommends that timber harvest plans consider both scenic and biologic values of the MU.

   Where major marshes and significant wildlife habitat or riparian vegetation are identified by the Lane County Coastal Inventory on lands subject to forest operations governed by the Forest Practice Act, the act and forest practice rules administered by the Oregon Department of Forestry will be used to protect the natural values of these resources and to maintain riparian vegetation.

7. Land division The development of water-dependent commercial or industrial land uses, water-related land uses. and other similar land uses, shall be allowed only upon a finding by the governing body of the County Approval Authority that such uses satisfy a need, fulfill a substantial public benefit which cannot reasonably be accommodated at other upland locations. within rural areas acknowledged as developed or committed to development, or in urban or urbanizable areas and are compatible with identified shorelands values.

8. Development on lots less than 10 acres in size shall be prohibited.

Where lots less than 10 acres existed on the date of adoption of this report, development may occur if in conformance with the requirements of the parent zone and this Management Unit.

9. For any approved development on coastal lake or estuarine shoreland in this management unit, a minimum 100' building setback from the shoreline is required wherever practicable. Setback requirements on ocean shorelands in this MU will vary depending on the rate of erosion at the site and will require a County site review. Furthermore:
   a. A band of natural vegetation no less than one-half the width of the setback shall be left in natural vegetation.
   b. Existing lots which are too small to accommodate both the required management unit setback, the construction of a residence and other development requirements such as septic and replacement fields will be allowed to build in this setback zone following a County site inspection, providing clearance of vegetation on the remainder of the lot is kept to an absolute minimum, and other County requirements are met, and hazard to life and property is minimal and acceptable.

   c. Within the shoreside belt of natural vegetation, the following kinds of modifications are allowable:
      1) unsurfaced foot paths;
      2) removal of hazardous vegetation as unstable streambank trees or trees otherwise vulnerable to blowdown may allowed in unusual circumstances following review by the County or Oregon Department of Fish and Wildlife. Streambank trees, snag and shorefront brush are necessary for wildlife habitat.
      3) replanting of areas modified in "c." above or other areas which have been previously cleared.

10. Construction or expansion of single-family, single-purpose piers is discouraged in favor of multiple-use, public or commercial piers.

    Applicants for such single-purpose piers shall be required to demonstrate that no viable alternatives (cooperative use of existing piers, nearby public facilities, mooring buoys, etc.) exist before approval of construction. Docks and piers existing on the date of Plan adoption may be rebuilt (not expanded) if damaged or destroyed.

11. New development proposed of this management unit shall blend to the maximum degree feasible with the surrounding vegetation and topography in terms of color, form and location. Design and site shall be reviewed to ensure that visual harmony is achieved consistent with the purposes of the management unit.

12. The filling in of freshwater marshes within this MU is not allowed. Freshwater marsh areas are found south of Sutton Lake between the

two portions (MU 4) and in estuary shoreland's MUs 4 and 27.

13. Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

Prime Wildlife Area

1. Uses shall fall within Priority 1 of the General Priority Statement (page 43). "No use shall be permitted within a Prime Wildlife Shorelands Management Unit unless that use is determined to be consistent with protection of natural values identified in the Coastal Resources Management Plan's description of the Management Unit.

2. Artificial bank stabilization shall be allowed only in unusual circumstances where natural erosion processes are threatening critical wildlife habitat or structures existing on or before October 7, 1977, provided that natural bank stabilization methods have been considered. Riprap used for bank stabilization must meet Army Corps of Engineers strength, size an design criteria unless the County Engineer determines this to be unnecessary and inadvisable.

3. For any approved development in this MU, a minimum 50' horizontal setback from the shoreline of the estuary or coastal lakes is required. Ocean shoreland setback will vary depending on current rate of erosion and will require a site review. Implementation will include the following:
   a. Existing lots which are too small to accommodate both the required Management Unit setback, the construction of a residence and other development requirements such as septic and replacement fields which will be allowed to build in this setback zone following a County site inspection, providing clearance of vegetation on the remainder of the lot is kept to an absolute minimum and other County requirements are met.
   b. Within the 50' setback, 30' adjacent to the shore shall be left in natural vegetation. Brush may be removed from the remaining 20' if revegetated and, decks and similar structures may project into this area.
   c. Within the 30' of natural vegetation the following kinds of modifications are allowable:
      1) unsurface foot paths;
      2) removal of hazardous vegetation such as unstable streambank trees or trees otherwise vulnerable to blowdown may be allowed in unusual circumstances following review by the County or Oregon Department of Fish and Wildlife. Streambank trees, snags and shorefront brush are necessary for wildlife habitat.
      3) replanting of areas modified in "c." above or other areas which have been previously cleared.

4. Development shall not result in the clearance of natural vegetation in excess of that which is necessary for the actual structure(s), required access, fire safety requirements and the required septic or sewage disposal system. Parcels which exhibit vegetation-free areas suitable for development should utilize such areas for the building site where feasible. Areas of excessive vegetation removal shall be replanted as soon as possible.

5. State Fish and Wildlife biologists shall have a 14-day "review and comment" period to evaluate the impact of any development on critical habitats and to make suggestions concerning ways to avoid or mitigate identified adverse impacts.

6. Filling in coastal lakes adjacent to this MU in not allowed.

7. Development on lots less than five acres in size shall be prohibited. Where lots less than five acres existed on the date of adoption of this report, development may occur if in conformance with the requirements of the parent zone and this management unit.

8. Timber harvesting shall be consistent with Forest Practices Act rules. Lane County recommends that timber harvesting activities be allowed in the Prime Wildlife Area under Forest Practices Act rules after consultation with Oregon Department of Fish and Wildlife to determine a harvest plan which will result in the least impact on wildlife inhabiting the designated area.

   Where major marshes and significant wildlife habitat or riparian vegetation are identified by the Lane County Coastal Inventory on lands subject to forest operations governed by the Forest Practice Act, the act and forest practice rules administered by the Oregon Department of Forestry will be used to protect the natural values of these resources and to maintain riparian vegetation.

9. No dredge spoils deposition shall be allowed in the Prime Wildlife management unit.

10. Construction of expansion of single-family, single-purpose piers is discouraged in favor of multiple-use, public or commercial piers. Applicants for such single-purpose piers shall be required to demonstrate that no viable alternatives (cooperative use of existing piers, nearby public facilities, mooring buoys, etc.) exist before approval of construction. Docks and piers existing on the date of Plan adoption may be rebuilt (not expanded) if damaged or destroyed.

11. Land divisions The development of water-dependent commercial or industrial land uses, water-related land uses, and other similar land uses, shall be allowed only upon finding by the governing body of the County Approval Authority that such uses satisfy a need, fulfill a substantial public benefit which cannot reasonably be

accommodated at other upland locations, within rural areas acknowledged as developed or committed to development, or in urban or urbanizable areas and are compatible with identified shoreland values.

12. The filling in of freshwater marshes within this management unit is not allowed. Freshwater marsh areas are found within Estuarine shorelands MU 21 opposite the east end of Duncan Island, in section 18-11-12, and within Woahink Lake shorelands MU 2 (19-12-11) and Siltcoos Lake MU 4 (19-11-19 and 30) and MU 5 (19-12-35). Smaller freshwater marsh areas are also found on Siltcoos Lake within MU 5 (19-12-25).

13. Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

Natural Resources Conservation

1. Uses shall fall within, and respect, Priorities 1-4 of the General Priority Statement (page 43).

2. Dredge spoil disposal must provide adequate run-off protection and, whenever possible, maintenance of a riparian strip along the water. Those sites adopted as part of the Siuslaw River Dredged Material Disposal Plan are automatically approved.

3. Artificial bank stabilization shall be used only to protect public and private roads, bridges or railroads, or when natural erosion processes are threatening a structure which existed on October 7, 1977.

4. Construction or expansion of single-family, single-purpose piers is discouraged in favor of multiple-use, public or commercial piers. Mooring buoys, floating piers, launching ramps and dryland storage are potential alternatives. If this MU exists adjacent to a natural estuarine MU, no pier development shall be allowed. Recently destroyed or damaged piers may be replaced if destroyed.

5. Filling in coastal lakes adjacent to this MU shall be allowed only in very rare instances and after a complete study of potential physical or biological impacts upon the lake. The cumulative effects of all such fills shall be considered. Positive benefits must outweigh negative effects.

6. Forestry and agricultural practices shall take place in such a manner as to retain the flexibility of future shore land uses and to maintain the natural integrity of the estuary.

   Where major marshes and significant wildlife habitat or riparian vegetation are identified by the Lane County Coastal Inventory on lands subject to forest operations governed by the Forest Practice

Act, the act and forest practice rules administered by the Oregon Department of Forestry will be used to protect the natural values of these resources and to maintain riparian vegetation.

7. Land divisions. The development of water-dependent commercial or industrial land uses, water-related land uses, and other similar land uses, shall be allowed only upon a finding by the governing body of the County Approval Authority that such uses satisfy a need, fulfill a substantial public benefit which cannot reasonably be accommodated at other upland locations, within rural areas acknowledged as developed or committed to development, or in urban or urbanizable area and are compatible with identified shorelands values.

8. For any approved development on coastal lake or estuarine shoreline in this MU, a minimum 50' building setback from the shoreline is required. Setback requirements on ocean shorelands in this MU will vary depending on the rate of erosion in the area and will be determined by County site review. Furthermore:

   a. Within the 50' setback, 30' adjacent to the shore shall be left in natural vegetation. Brush may be removed from the remaining 20' if revegetated and, decks and similar structures may project into this area.
   b. Existing lots which are too small to accommodate both the required management unit setback, the construction of a residence and other development requirements such as septic and replacement fields will be allowed to build in this setback zone following a County site inspection providing clearance of vegetation on the remainder of the lot is kept to an absolute minimum, and other County requirements are met and hazard to life and property in minimal and acceptable.
   c. Within the 30' of natural vegetation, the following kinds of modifications are allowable:
      1) Unsurfaced foot paths;
      2) Removal of hazardous vegetation such as unstable streambank trees or trees otherwise vulnerable to blowdown may be allowed in unusual circumstances following review by the County or Oregon Department of Fish and Wildlife. Streambank trees, snags and shorefront brush are necessary for wildlife habitat.
      3) Replanting of areas modified in "c." above or other areas which have been previously cleared.

9. The District Forester of the Oregon Department of Forestry shall have a 14-day "review and comment" period to evaluate the impact of development proposed on lands zoned for timber production within the management unit. The ODF may make suggestions concerning ways to avoid or mitigate adverse impacts.

10. Only developments and activities which do not pose a threat to life

or property from land instability, erosion or other natural hazards shall be allowed. Where the property is zoned for timber production, it is the responsibility of ;the Forest Practice Act to ensure that timber harvest activities pose no hazard to life or property.

11. Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

Residential Development

1. Uses shall fall within, and respect, Priorities 1 and 4 of the General Priority Statement (page 43).

2. A minimum building setback of 50' from the shoreline of coastal lakes or estuaries shall be required. The shoreward 30' of this setback area shall be maintained in natural vegetation wherever currently existing. Where not presently existing, it should be encouraged to develop. Setback needs along ocean shorelands will vary due to rate or erosion in the area and will require a County site review. Furthermore:

   a. Existing lots which are too small to accommodate both the required management unit setback, the construction of a residence and other development requirements such as septic and replacement fields will be allowed to build in this setback zone following a County site inspection providing clearance of vegetation on the remainder of the lot is kept to an absolute minimum, and other County requirements are met, and hazard to life and property is minimal and acceptable.
   b. Within the shoreside belt of natural vegetation, the following kinds of modifications are allowable:
      1) unsurfaced foot paths;
      2) removal of hazardous vegetation such as unstable streambank trees or trees otherwise vulnerable to blowdown may be allowed in unusual circumstances following review by the County or Oregon Department of Fish and Wildlife. Streambank trees, snags and shorefront brush are necessary for wildlife habitat.
      3) replanting of areas modified in "c." above or other areas which have been previously cleared.

3. Construction or expansion of single-family, single-purpose piers is discouraged in favor of multiple-purpose, public or commercial piers. If destroyed, existing or previously existing docks or piers may be rebuilt but not expanded.

4. Dredge soil disposal sites approved as part of the Siuslaw River Dredged Material Disposal Plan are automatically approved and need no additional review.

5. Filling in coastal lakes adjacent to this MU is not allowed.

6. Land divisions The development of water-dependent commercial or industrial land uses, water-related uses, and other similar land uses, shall be allowed only upon a finding by the governing body of the County Approval Authority that such uses satisfy a need fulfill a substantial public benefit which cannot reasonably be accommodated at other upland locations, within rural areas acknowledged as developed or committed to development, or in urban or urbanizable areas and are compatible with identified shorelands values.

7. Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

Mixed Development

1. Uses shall respect the priorities set out in the General Priority statement (page 43 & 44).

2. All lands within this management unit which have the potential for water-dependent commercial and industrial and water-related uses have priority over other uses within this management unit. However, new water-related and water-dependent development in rural shoreland areas shall be allowed only upon a finding by the governing body of the County that such uses cannot be accommodated within an urban or urbanizable area or within areas which are acknowledged as developed or committed to development.

3. Short-term economic gain or convenience in development shall be evaluated in relation to potential long-term effects on the estuary and shoreland, as well as the long-term economy of the area.

4. Promotion of visual attractiveness shall be a consideration in any commercial or industrial development.

5. Natural riparian vegetation should be maintained or encouraged to provide erosion control, bank stabilization, aesthetic quality and to maintain water quality and temperature, except where maintenance of vegetation would preclude use of the site for a water-dependent use and removal will not be detrimental to erosion control, bank stabilization or water quality.

6. Construction or expansion of single-family, single-purpose piers is discouraged in favor of multiple-use, public or commercial piers. If destroyed, existing or previously existing docks and piers may be rebuilt but not expanded.

7. Dredge spoil disposal sites which were approved as part of the Siuslaw River Dredged Material Disposal Plan are automatically approved and need no additional review.

8. Filling in coastal lakes adjacent to this MU is allowed only to protect water-dependent uses and only after a complete study of the potential physical or biological impacts upon the lake. Cumulative effects of all such fills shall be considered.

9. New residential development shall be permitted within this Management Unit only on parcels determined to be unsuited to water-dependent or water-related uses and only if consistent with the parent zoning district.

10. Land divisions The development of water-dependent commercial or industrial land uses, water-related land uses, and other similar land uses, shall be allowed only upon a finding by the governing body of the County Approval Authority that such uses satisfy a need, fulfill a substantial public benefit which cannot reasonably be accommodated at other upland locations, within rural areas acknowledged as developed or committed to development, or in urban or urbanizable areas and are compatible with identified shorelands values.

11. Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

GOAL EIGHTEEN: BEACHES AND DUNES

General Policies

1. Ensure the protection and conservation of coastal beach and dune resources.

2. Prevent economic loss by encouraging development consistent with the natural capability of beach and dune landforms.

3. Provide for clear procedures by which the natural capability of dune landforms can be assessed prior to development.

4. Prevent cumulative damage to coastal dune resources due to the incremental effects of development.

5. Protect areas of scenic, scientific or biological importance, significant wildlife habitat, and other critical environmental areas through use of appropriate underlying zoning.

6. When federal lands are converted to nonfederal ownership, plan and zone designations shall become effective.

Beaches

1. Development on the beach is not allowed, with the exception of certain features such as necessary jetties or beachfront protective structures.

2. Permits for beachfront protective structures shall be issued only for those developments that existed on January 1, 1977. Criteria for the issuance of such permits shall include, at least, that:

   a. visual impacts are minimized,
   b. necessary public access to the beach is maintained,
   c. negative impacts on adjacent property are minimized as much as possible,
   d. long-term or recurring costs to the public are avoided, and
   e. riprap materials must meet Army Corps of Engineers strength and design standards.

3. No sand mining shall be allowed on the beach.

4. Certain access points to beaches shall be closed to off-road vehicle traffic seasonally or temporarily upon findings by the appropriate agency that such closure is necessary.

5. Driftlog removal should be limited.

6. Access to the two documented sites of snowy plover nesting habitat at the mouths of Sutton Creek and Siltcoos River should be

prohibited during the nesting season (April - June).

Foredune

1. Because the foredune is a highly impermanent landform and subject to a number of extreme hazards, no permanent development will be allowed here. Allowable development may include temporary raised boardwalks which provide beach access and avoid vegetation trampling.

2. Access to the two documented sites of snowy plover nesting habitat at the mouths of Sutton Creek and Siltcoos River should be prohibited during the nesting season (April - June).

3. Breaching of foredunes shall be allowed only to replenish sand supply in interdune areas or on a temporary basis in an emergency and only if the breaching and restoration after breaching is consistent with sound principles of conservation.

4. When allowed through the LCDC exception process, any residential infilling shall be required to maintain at least a 50-foot horizontal setback from the mean high tide line. A County site review shall be required.

5. Due to the extreme porosity of the sand (and in interdune areas, a high groundwater table), leaks in buried fuel oil or gasoline tanks could present a serious threat to the quality of the groundwater in the dunal aquifer. No new buried fuel tanks shall be permitted without a County inspection to determine proper placement and design standards so that water resources are protected.

Foredune

1. Because of ;the highly unstable nature of these landforms, development will be prohibited where they occur.

2. Recreational vehicular traffic should be prohibited on any County active sand dune areas north of the Siuslaw River.

Recently Stabilized Dune Forms

1. Development shall result in the least topographic modification of the site as is reasonable and possible.

2. Development shall not result in the clearance of natural vegetation in excess of that which is necessary for the actual structures, required access, fire safety requirements and the required septic or sewage disposal system. Parcels which exhibit vegetation-free areas suitable for development should utilize such areas for the building site where feasible. Areas which exhibit excessive vegetation removal shall be replanted as soon as possible.

3. Sand stabilization is required of the developer or owner: (1) using temporary stabilization techniques during all construction phases, and (2) through an ongoing maintenance program, including preliminary revegetation with beachgrass (or other species recommended by a recognized expert), fertilization and later plantings of appropriate secondary successional species at the appropriate time. Successional species reduce the extreme fire hazard associated with mature beachgrass.

4. In assessing new development, the cumulative effect of the combination of existing development, along with that proposed, has to be considered in assessing the feasibility of the new development.

5. All development proposals for recently stabilized sand dune areas, except proposals for minimum development, must be accompanied by a Lane County Sand Dune Hazards Checklist. Results of the completed Checklist will determine any need for a further Site Investigation Report.

6. Due to the extreme porosity of the sand (and in interdune areas, a high groundwater table), leaks in buried fuel oil or gasoline tanks could present a serious threat to the quality of the groundwater in the dunal aquifer. No new buried fuel tanks shall be permitted without a County inspection to determine proper placement and design standards so that water resources are protected.

Interdune Forms

1. Due to the severe limitations of the near shore deflation plain, and in order to protect the quality of the groundwater and the dunal aquifer, development, except for limited minor development, shall be prohibited.

2. Due to the extreme porosity of the sand (and in interdune areas, a high groundwater table) leaks in buried fuel oil or gasoline tanks could present a serious threat to the quality of the groundwater in the dunal aquifer. No new buried fuel tanks shall be permitted without the County inspection to determine proper placement and design standards so that water resources are protected.

3. To assure protection of groundwater and the dunal aquifer, nonsewered residential and other development proposed for interdune areas, other than near shore deflation plain:
   a. Shall require a staff investigation (Sand Dune Hazards Check-List) and, if deemed necessary by the Lane County Planning Department, a Site Investigation Report;
   b. Shall not result in the clearance of existing vegetation in excess of that which is necessary for the dwelling unit, required access, fire safety requirements and the required

septic or sewage disposal system. If possible, septic drain lines should be placed among existing vegetation to avoid unnecessary vegetation removal. Parcels which exhibit vegetation-free areas should utilize such areas for the building site where feasible. Sites which experience excessive vegetation removal shall be replanted as soon as possible.

Groundwater

1. Wells designed for municipal or community water supply purposes shall be sited such that bogs with plant assemblages dependent on water tables near the surface are not drained.

GOAL NINETEEN: OCEAN RESOURCES

1. Lane County shall participate fully in the review and decision-making process of state and/or federal agencies where ocean resources offshore of Lane County territory are likely to be affected.

2. Lane County shall cooperate with state and/or federal agencies in developing the necessary information, including inventories and impact assessment, to allow these agencies to properly evaluate proposed actions and make decisions about whether or not to allow such actions.

3. The County should consult with state and/or federal agencies having responsibilities under this Goal if actions are proposed within the County (and for which the County has all or partial approval authority) which are likely to impact the quality of ocean resources in the area.

4. The County should build and maintain an "information bank" consisting of state or federally generated information about ocean resources, using such information as it is supplied to the County. This information should be made available to County decision-makers in evaluating proposals which may affect ocean resources.

5. Programs or regulations arising from County compliance with LCDC Coastal Goals 16 through 18 should be cognizant of, and seek to enhance the quality of, ocean resources as defined in Goal 19.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 1-84

IN THE MATTER OF ENACTING CHAPTER 16 OF THE LANE CODE AS THE RURAL DEVELOPMENT CODE AND ADOPT THE FOLLOWING NEW ZONES AS ELEMENTS OF THE RURAL COMPREHENSIVE PLAN:

a. FOREST ZONES
   (1) Nonimpacted Forest Lands (F-1, RCP)
   (2) Impacted Forest Lands (F-2, RCP)

b. AGRICULTURAL ZONE
   (1) Exclusive Farm Use - 25 acres (E-25, RCP), 30 acres (E-30, RCP), 40 acres (E-40, RCP), 60 acres (E-60, RCP)

c. RESOURCE ZONES
   (1) Natural Resource (NR--RCP)
   (2) Park and Recreation (PR-RCP)
   (3) Quarry and Mining (QM-RCP)
   (4) Sand and Gravel (SG-RCP)
   (5) Controlled Processing (/CP-RCP)

d. MARGINAL LAND ZONE
   (1) Marginal Lands - 10 acres (ML-10, RCP), 20 acres (ML-20, RCP)

e. COMMERCIAL ZONES
   (1) Limited Commercial (C-1, RCP)
   (2) Neighborhood Commercial (C-2, RCP)
   (3) Commercial (C-3, RCP)
   (4) Rural Commercial (C-R, RCP)

f. INDUSTRIAL ZONES
   (1) Limited Industrial (M-1,RCP)
   (2) Light Industrial (M-2, RCP)
   (3) Heavy Industrial (M-3, RCP)

g. AIRPORT ZONES
   (1) Airport Operation (AO-RCP)
   (2) Airport Safety District (/AS-RCP)
   (3) Commercial Airport Safety District (/CAS-RCP)

) h. RESIDENTIAL ZONES
) (1) Suburban Residential (RA-RCP)
) (2) Garden Apartment (RG-RCP)
) (3) Rural Residential - 1 acre (RR-1-RCP), 2 acres (RR-2-RCP), 5 acres (RR-5-RCP), 10 acres (RR-10-RCP)

) i. COASTAL OVERLAY ZONES
) (1) Shoreland Zones
) (a) Prime Wildlife (/PW-RCP)
) (b) Significant Natural (/SN-RCP)
) (c) Natural Resource (/NRC-RCP)
) (d) Residential Development (/RD-RCP)
) (e) Mixed Development (/MD-RCP)
) (f) Dredged Materials (/DMD-RCP)
) (2) Estuary Zones
) (a) Natural Estuary (/NE-RCP)
) (b) Conservation Estuary (/CE-RCP)
) (c) Development Estuary (/DE-RCP)

) j. FLOOD HAZARD AREAS OVERLAY ZONE
) (1) Floodplain Combining Zone (/FR-RCP)

) k. DESTINATION RESORT ZONE
) (1) Destination Resort (DR/RCP)

) l. HISTORIC RESOURCE ZONE
) (1) Historic Resource Combining District ((HR/RCP)

) m. GREENWAY
) (1) Greenway Development Permit (GP/RCP)

INSERT THESE PAGES

All of Chapter 16 (new Chapter)

Said pages are attached hereto and incorporated herein by reference. The purpose of the new Chapter is to adopt a Development Code for Rural Lane County.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

The pending applications which on the effective date hereof have progressed through at least one public hearing shall be completed under procedures applicable at the time of said public hearing. All other applications shall be processed pursuant to these new provisions.

The application of Chapter 10 to rural Lane County repealed by this Ordinance shall remain in force to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

While not part of this Ordinance, the Board of County Commissioners adopt the Legislative Findings set forth in attached Exhibit "A" to explain and support this action.

Enacted this 29th day of February, 1984.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

Chapter 16

LANE COUNTY LAND USE AND DEVELOPMENT CODE

INTRODUCTORY AND GENERAL PROVISIONS

16.001 Authority. This Chapter is enacted pursuant to the provisions of ORS Chapters 92, 197, 203, 215 and the Lane County Home Rule Charter.

16.002 Title. This Chapter shall be known as the Lane County Land Use and Development Code.

16.003 Purpose. This Chapter is designed to provide and coordinate regulations in Lane County governing the development and use of lands to implement the Lane County Rural Comprehensive Plan. To these ends, it is the purpose of this Chapter to:

(1) Insure that the development of property within the County is commensurate with the character and physical limitations of the land and, in general, to promote and protect the public health, safety, convenience and welfare.

(2) Protect and diversify the economy of the County.

(3) Conserve the limited supply of prime industrial lands to provide sufficient space for existing industrial enterprises and future industrial growth.

(4) Conserve farm and forest lands for the production of crops, livestock and timber products.

(5) Encourage the provision of affordable housing in quantities sufficient to allow all citizens some reasonable choice in the selection of a place to live.

(6) Conserve all forms of energy through sound economical use of land and land uses developed on the land.

(7) Provide for the orderly and efficient transition from rural to urban land use.

(8) Provide for the ultimate development and arrangement of efficient public services and facilities within the County.

(9) Provide for and encourage a safe, convenient and economic transportation system within the County.

(10) Protect the quality of the air, water and land resources of the County.

(11) Protect life and property in areas subject to floods, landslides and other natural disasters and hazards.

(12) Provide for the recreational needs of residents of Lane County and visitors to the County.

(13) Conserve open space and protect historic, cultural, natural and scenic resources.

(14) Protect, maintain, and where appropriate, develop and restore the estuaries, coastal shorelands, coastal beach and dune area and to the conserve the nearshore ocean and continental shelf of Lane County.

16.004 Scope and Compliance.

(1) A tract of land may be used or developed, by land division or otherwise, and a structure may be used or developed, by construction, reconstruction, alteration, occupancy otherwise, only as this Chapter permits.

(2) In addition to complying with the criteria and other provisions within this Chapter, each development shall comply with the applicable standards adopted and published by the Director.

(3) The requirements of this Chapter apply to the person undertaking a development or the user of a development and to the person's or user's succesors in interest.

16.005 Use of a Development. A development may be used only for a lawful use. A lawful use is a use that is not prohibited by law or which is nonconforming pursuant to LC 16.251 below of this Chapter.

16.006 Compliance Required.

(1) No person shall engage in, or cause to occur, a development which does not comply with the Lane County Land Use and Development Chapter.

(2) A development shall be approved by the Director, or other Approving Authority, according to the provisions of this Chapter.

(3) Unless appealed, a decision on any application shall be final upon expiration of the period provided for filing an appeal or, if appealed, upon rendering of the decision by the reviewing body.

16.007 Compliance With Rural Comprehensive Plan. In the event of any conflict between any provision of this Chapter and provisions of the Rural Comprehensive Plan of Lane County, or duly adopted portions, elements or amendments of such Plan, the more restrictive provisions shall prevail.

16.008 Interpretation. When in the administration of this Chapter there is doubt regarding the intent of the Chapter or the suitability of uses not specified, the Director shall request an interpretation of the provision by the Board of County Commissioners. The Board shall issue an interpretation to resolve the doubt, but such interpretation shall not have the effect of amending the provisions of this Chapter. Any interpretation of the Chapter shall be deemed an administrative action and shall be based on the following considerations:

(a) The Lane County Comprehensive Plan.

(b) The purpose and intent of the Chapter as applied to the particular section in question.

(c) The opinion of the County Counsel.

Copies of such interpretations shall be indexed and kept on file in the Department and may be reviewed by the public upon request.

16.009 Restrictiveness. Where the conditions imposed by a provision of this Chapter overlap, the provisions which are more restrictive shall govern.

16.010 Severability. If any section, paragraph, subsection, clause, sentence or provision of this Chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this Chapter, and the effect thereof shall be confined to the section, paragraph, subsection, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this Chapter notwithstanding the parts so declared unconstitutional or invalid. Further, should any section, paragraph, subsection, clause, sentence or provision of this Chapter be judicially declared unreasonable or inapplicable to a particular premises or to a particular use at any particular location, such declaration or judgment shall not affect, impair, invalidate or nullify such section, paragraph, subsection, clause, sentence or provision as to any other premises or use.

16.011 Introductory Provisions. In order to achieve the purposes outlined in LC 16.003, and to assure that the development and use of land in Lane County conforms to the Rural Comprehensive Plan, zone classifications have been established for all unincorporated areas outside of adopted urban growth boundaries and within Lane County. These zones specify regulations for the use of land and property development standards, and use applied by boundaries indicated on the Lane County Rural Comprehensive Plan Zoning Maps.

Attach 5 - Page 6

16.012 Zone Classifications. For the purpose of this Chapter of Lane Code, the following zones are hereby established:

Zone Classification	Abbreviation	Section No.
Nonimpacted Forest Lands	F-1, RCP	16.210
Impacted Forest Lands	F-2, RCP	16.211
Exclusive Farm Use	E-RCP	16.212
Natural Resource	NR-RCP	16.213
Marginal Lands	ML-RCP	16.214
Park and Recreation	PR-RCP	16.215
Quarry and Mining Operations Combining	/QM-RCP	16.216
Sand, Gravel and Rock Products	SG-RCP	16.217
Sand, Gravel and Rock Products Processing	/CP-RCP	16.218
Public Facility	PF-RCP	16.219
Limited Commercial	C-1, RCP	16.220
Neighborhood Commercial	C-2, RCP	16.221
Commercial	C-3, RCP	16.222
Rural Commercial	C-R, RCP	16.223
Limited Industrial	M-1, RCP	16.224
Light Industrial	M-2, RCP	16.225
Heavy Industrial	M-3, RCP	16.226
Suburban Residential	RA-RCP	16.229
Garden Apartment Residential	RG-RCP	16.230
Rural Residential	RR-RCP	16.231
Destination Resort	DR-RCP	16.232
Historic Structures or Sites Combining	/H-RCP	16.233
Natural Estuary	/NE-RCP	16.234
Conservation Estuary	/CE-RCP	16.235
Development Estuary	/DE-RCP	16.236
Significant Natural Shorelands Combining	/SN-RCP	16.237
Prime Wildlife Shorelands Combining	/PW-RCP	16.238
Natural Resources Conservation Combining	/NRC-RCP	16.239
Residential Development Shorelands Combining	/RD-RCP	16.240
Shorelands Mixed Development Combining	/MD-RCP	16.241
Dredge Material/Mitigation Site Combining	/DMS-RCP	16.242
Beaches and Dunes Combining	/BD-RCP	16.243
Floodplain Combining	/FP-RCP	16.244
Commercial Airport Safety District	/CAS-RCP	16.245
Airport Safety District	/AS-RCP	16.246
Airport Operation	AO-RCP	16.247

16.013 Location of Zones. The boundaries of the zones indicated on the Lane County Zoning Maps are hereby adopted by reference.

16.014 Plan Designation and Zoning Maps.

(1) The Plan Designation and Zoning Maps shall consist of a set of base maps and detailed map sheets. The base maps will cover the entire County and will indicate plan designation and zoning where an entire section is in a single designation and zone. Where more than one plan designation and zone is used within a section, the zoning shall be shown on a detailed map sheet and the base map shall reference the detailed map sheet. The Flood Insurance Rate Maps (FIRM) and Flood Hazard Boundary Maps shall constitute the zone maps for the /FP/RCP zone.

(2) Final maps sheets (i.e., the maps actually adopted) will be 8-1/2 x 14 inches overall. Working maps may be drawn at a larger size and reduced to produce a final map. Scale of the final maps will adhere to a standard engineer's scale to the maximum extent feasible, however, this shall not be an absolute requirement. A graphic representation of map scale must be shown on each map sheet. Final maps are to be on durable material and be of sufficient contrast to allow high quality reproduction through microfilming or standard office equipment.

(3) Each map sheet shall contain the following information:

(a) Sheet number.

(b) Scale.

(c) North Point.

(d) Adoption ordinance number, effective date and file reference number.

(e) Revision number, ordinance or order number and effective date of map amendment.

(f) Title "Lane County Official Plan Designation and Zoning Map".

(4) Base map sheets will be numbered sequentially (i.e., 1, 2, 3, etc.). Detailed map sheets will be numbered with the same numbering system used by the County Assessor (i.e., township, range, section, 1/4 section, 1/4 1/4 section). When two sections are shown on the same sheet, that sheet will be indentified by both County Assessor map numbers (i.e, 17-04-06/17-04-07.

(5) The exterior boundaries of the individual detailed map sheets shall be determined by the polygons used by the County Geographic Data System Parcel File to represent the properties within the sections being displayed.

(6) To the maximum extent feasible, plan designation and zone boundaries shall follow features recognizable or reproducible line preference shall be given to going from a known point to a known point (i.e., property corner, section corner, etc.). In the event a zone boundary does not or cannot conform to the above, angle points and intersection points of that boundary shall be annotated

with the coordinates of the points or with the distance and bearing of the boundary.

16.015 Amendments to the Lane County Plan Designation and Zoning Maps.

(1) All amendments to the Lane County Zoning Maps shall be made by Ordinance or Order of the Approval Authority as specified in this Chapter of Lane Code.

(2) The Lane County Plan Designation and Zoning Maps shall be amended by substituting new map sheets for existing map sheets, adding new map sheets, or removing existing map sheets.

(3) Each time a map sheet is added to or substituted for an existing map sheet in the Plan Designation and Zoning Map, that action shall be indicated by placing a revision number in parenthesis following the map sheet number. The revision numbers will represent the sequential changes made to that sheet as follows:

Original Map Sheet	17-04-06/17-04-07
1st Revision	17-04-06/17-04-07(1)
2nd Revision	17-04-06/17-04-07(2)
New Map Sheet Added	18-05-06/18-05-07(1)

16.020 Interim Plan Designation and Zoning Maps. For legislative plan and zone adoption or amendment proceedings, the maps initially adopted may be on regular paper (8 1/2" x 11"). In addition, CPR change request summaries may be used to modify these maps. Upon adoption, the County shall have 90 days to adopt Plan Designation and Zoning Maps in conformity with LC 16.014 above.

16.090 Definitions. For the purpose this Chapter, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this Chapter. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1961, shall be considered as providing ordinary accepted meanings.

Acceptance. Received by and considered by the Director as sufficiently complete to begin processing according to the application or appeal review procedures of this Chapter.

Accessory. Incidental, appropriate and subordinate to the main use of a tract or structure.

Agriculture. Synonymous with definition of "farm use".

Agricultural Building. A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged; nor shall it be a place used by the public.

Alter or Alteration. Any change, addition or modification in use construction or occupancy.

Amendment, Minor. A change to a preliminary plan, plat or map which:

(1) Does not change the number of lots or parcels created by the subdivision or partition;

(2) Does not "substantially enlarge or reduce" the boundaries of subdivided or partitioned area;

(3) Does not change the general location or amount of land devoted to a specific land use; or

(4) Includes only minor shifting of the proposed parcel or lot lines, location of buildings, proposed public or private streets, pedestrian ways, utility easements, parks or other public open spaces, septic tank drainfield locations and well locations.

Amendment, Major. A change to preliminary plan, plat or map which is not a minor amendment.

Animal Hospital. A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.

Appearance. Submission of testimony or evidence in the proceeding, either oral or written. Appearance does not include a name or address on a petition.

Approval Authority. A person, or a group of persons, given authority by Lane Code to review and/or make decisions upon certain applications according to the review procedures of Lane Code Chapter 14.

Approximate Flood Hazard Study Area. Flood hazard areas as shown on the Federal Flood Hazard Boundary Maps where base flooding elevations have not been determined.

Aquaculture. The raising, feeding, planting and harvesting of fish, shell fish or waterborne plants and associated facilities necessary for the use.

Area. The surface included within any set of lines which may be further defined in square feet or acres, exclusive of County or local access - public street.

Area of Flood Hazard. The land in the floodplain within a community subject to a one percent chance of flooding in any given year.

Base Flood. A flood that has a one percent chance of being equaled or exceeded in any given year.

Beach. Gently sloping area of loose material (e.g., sand, gravel and cobbles) that extends landward from the low waterline to the uppermost line of wave and tidal action.

Bed and Breakfast Accommodation. An accessory use to be carried on within a structure designed for and occupied as a single-family dwelling in which no more than two sleeping rooms are provided on a daily or weekly period, not to exceed 29 consecutive days, for the use of travelers or transients for a charge or fee. Provision of a morning meal is customary as implied by title. Bed and Breakfast shall be considered a Home Occupation where not specifically listed as a permitted or conditionally permitted use.

Board. Board of County Commissioners of Lane County.

Boarding of Horses. The boarding of horses for profit shall include the following:

(1) The stabling, feeding and grooming for a fee, or the renting of stalls for the care of horses not belonging to the owner of the property; and

(2) Related facilities, such as training arenas, corrals and exercise tracks.

The boarding of horses for profit does not include the following:

(1) The mere pasturage of horses or the boarding of horses not owned by the property owner for the purpose of breeding with the owner's stock.

(2) The incidental stabling of not more than four horses.

(3) The boarding of horses for friends or guests where no charge is made.

(4) Equestrian activities when the raising, feeding, training or grooming of horses is a farm use by the property owner of the land qualifying for farm assessment under regulations of the State Department of Revenue.

Boarding House. A dwelling or part thereof, in which lodging is provided by the owner which equals or exceeds the limitations of a bed and breakfast accommodation.

Building. The terms "building" and "structure" shall be synonymous, and shall mean that which is framed, erected, constructed or placed to stand temporarily or permanently on a tract of land. This definition shall specifically include a mobile home and accessories thereto. Driveways or walks not more than six inches higher than the ground on which they rest shall not be considered buildings.

Building Site. That portion of the lot, parcel or unpartitioned or unsubdivided tract of land upon which the building appurtenances are to be placed, or are already existing, including adequate areas for sewage disposal, light, air clearances, proper drainage, appropriate easements and, if applicable, other items required by the Lane Code.

Camp. An area designed for organizational recreation which may include facilities such as; swimming pools, meeting halls and indoor shelters for recreation.

Campground. An area designed for short-term recreational purposes and where facilities, except commercial activities such as grocery stores and laundromats, are provided to accommodate that use. Space for tents, campers, recreational vehicles and motor homes are allowed and permanent open air shelters (adirondacks) may be provided on the site by the owner of the development.

Camping Vehicle Park. Synonymous with definition of Recreational Vehicle Park.

Cemetery. Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including

columbariums, crematoriums, mausoleums and mortuaries, when operated in conjunction with and within the boundary of such cemetery.

Church. A building, together with its accessory buildings and uses, where persons regularly assemble for worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship. A church does not include a school.

Clinic. Single or multiple offices for physicians, surgeons, dentists, chiropractors, osteopaths and other members of the healing arts, including a dispensary in each such building to handle only merchandise of a nature customarily prescribed by occupants in connection with their practices.

Cluster Subdivision. A subdivision for which the applicable zoning district allows relaxed lot area, coverage and setback requirements and alternative types of dwellings as specified in Lane Code Chapter 16.

Communication Facilitie. A facility constructed for the purpose of transmitting telegraph, telephone, microwave, television, radio and other similar signals.

Comprehensive Plan. A generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including, but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities and natural resources and air and water quality management programs. "Comprehensive" means all inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens or Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

Contiguous. Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.

County Official. The Director of a Lane County Department or Division, or any Lane County advisory committee or commission acting in its official capacity.

Day. A calendar day, computed consistent with ORS 174.120.

Day Care Nurseries. Any institution, establishment or place in which are commonly received at one time, six or more children not of common parentage, under the age of six years, for a period or periods not exceeding 12 hours, for the purpose of being

given board, care or training apart from their parents or guardians for compensation or reward.

Department. The Lane County Department of Public Works.

Depth. The horizontal distance between the front and rear boundary lines measured in the mean direction of the side boundary lines.

Development. The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or grading.

Development, Minimal. Development which is of minimal economic value and is essentially impermanent. Examples are dune boardwalks, fences which do not substantially affect sand erosion or migration, temporary open-sided structures or approved septic drainfield serving permitted development.

Director. The Director of the Land Management Division of the Lane County Public Works Department, or the Director's delegated representative within the Department.

Divide. To separate a tract or contiguous tracts of land under the same ownership into smaller tracts and different ownerships by deed, contract or lease; and when used herein refers collectively to partitions and subdivisions. To divide land shall not include the following:

(1) Leasing or financing of apartments, offices, stores or similar spaces within an apartment building, industrial building.

(2) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, campground or industrial development.

(3) Minerals, oil or gas leases.

(4) A lease for agricultural purposes.

(5) Foreclosures of liens.

(6) Foreclosures of recorded contracts for sale of real property.

(7) The creation of cemetery lots.

(8) Any adjustment of a property boundary line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning.

(9) The transfer of ownership of a lot or parcel in an approved and recorded subdivision plat or partition map.

Dune. A hill or ridge of sand built up by wind along sandy coasts.

Dune, Active. A dune that migrates, grows and diminishes primarily according to the force of wind and supply of sand. The dune has no soil development and little, if any, cohesion of underlying sand. Active dunes include all open sand (vegetation-free) areas and active (sparsely vegetated) hummocks and foredunes. Soil types are 72K and occasionally Westport series soils.

Dune, Older Stabilized. A dune which presently has sufficient vegetation to be stabilized from wind erosion, but which exhibits little, if any, soil development or cohesion of underlying sand. This includes soilless dunes recently stabilized with beach grass and younger stabilized dunes which may possess forest communities and some soil development, but which lack consolidation of underlying sands. Soil types are of Westport and Netarts series soils.

Dwelling. A building or portion thereof which is occupied in whole or in part as a residence or sleeping place, either permanently or temporarily, by one or more families, but excluding hotels, motels, auto courts, mobile homes and camping vehicles.

Dwelling, Multiple. A building designed and used for occupancy by three or more families, all living independently of each other, and having separate housekeeping facilities for each family.

Dwelling, Single-Family. A detached dwelling designed or used exclusively for the occupancy of one family and having housekeeping facilities for one family.

Dwelling, Two-Family (Duplex). A building consisting of two separate dwelling units with a common roof and common foundation, designed and used exclusively for the occupancy of two families living independently of each other and having housekeeping facilities for each family.

Estuary. A body of water semienclosed by land, connected with the open ocean and within which salt water is usually diluted by fresh water derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater.

Existing Mobile Home Park. Any lot where two or more permanent mobile homes are located or proposed to be located for the primary purpose of being rented or leased for residential purposes, for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed.

Expansion of an Existing Mobile Home Park. The prepara-tion of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

Family. An individual or two or more persons related by blood or marriage or group of not more than five persons (excluding servants), who need not be related by blood or marriage, living together in a dwelling unit.

Farm Use. The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding,

pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

Fill. The placement by humans of sand, gravel, earth, sediment or other material to create new uplands or raise the elevation of land. Activities such as diking, jetties, groins, breakwaters (nonfloating) and dredge material can also be considered fill if they: (a) involve the human placement of materials; and (b) create new uplands or raise the elevation of land.

Flood or Flooding. A general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters from any source.

Flood Elevation Determination. A determination by the Admnistrator of the water surface elevations of the base flood from the approved flood hazard studies.

Flood Hazard Boundary Map, (FHBM). An official map of the County furnished by the Federal Insurance Administration, labeled a Flood Hazard Boundary Map (FHBM) and delineating the boundaries of flood hazard areas.

Floodplain. A physical geographic term describing any land area susceptible to being inundated by water from any source.

Floodplain Management. The operation of an overall program of corrective and preventative measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain Management Regulations. This Floodplain ordinance, together with building code requirements, health regulations and any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing. Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway, Regulatory. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the waters of a base flood without cumulatively increasing the water surface elevation.

Floor, Habitable. A floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

Foredune. The first ridge of sand or hummock dunes situated immediately above the highest tide line and parallel to the beach. This includes active foredunes, conditionally stable foredunes and older foredunes. These may be sparsely vegetated or vegetated to the degree that they are wind stable. Soil types are Heceta fine sand 204A and Westport soils 205C and 206D.

Forest Uses. Are (1) the production of trees and the processing of forest products; (2) open space, buffers from noise

and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

Garage, Private Parking. A publicly or privately-owned structure having one or more tiers of height used for the parking of automobiles for the tenants, employees or owners of the property for which the parking spaces contained in or on said garage are required by this Chapter, and which is not open for use by the general public.

Garage, Public Parking. A publicly or privately-owned structure having one or more tiers of height used for the parking of automobiles and open for use by the general public, either free or for remuneration. Public parking garages may include parking spaces for customers, patrons or clients which are required by this Chapter, provided said parking spaces are clearly identified as free parking space(s) for the building or use which is required to provide said space(s).

General Merchandise. Items for human use, including: books and stationary, newspapers and magazines, clothing, furniture, drugs, curios and antiques, plants and flowers, household goods and furnishings, musical instruments and supplies, seeds and garden supplies, sporting goods, jewelry, art objects and supplies, pottery, handicrafts, photographic supplies, optical goods.

Grazing. The use of land for the pasture of horses, cattle, sheep, goats and/or other domestic herbivorous animals alone or in conjunction with agricultural pursuits.

Grazing, Low Intensity. Low intensity grazing is the use of land for pasture of horses, cattle, sheep, goats and/or other domestic herbivores at levels which will not damage permanent ground cover.

Group Care Home. Any home or institution maintained and operated for the care, boarding, housing or training of six or more physically, mentally or socially handicapped persons or delinquent or dependent persons by any person who is not the parent or guardian of and who is not related by blood, marriage or legal adoption to such persons.

Guest House, Servants' Quarters. An accessory building without kitchen or cooking facilities and occupied solely by nonpaying guests or by servants employed on the premises.

Hearings Official. A person who has been appointed by the Board of County Commissioners to serve at its pleasure and at a salary fixed by it.

Horticultural Specialties. A crop distinguishable from typical commercial crops mentioned in the garm groupings of the EFU zone which are conducive to intensive management techniques.

Improvement Agreement. An agreement that under prescribed circumstances may be used in lieu of required improvements of a performance agreement. It is a written agreement that is executed between the County and a developer, in a form approved by the Board of County Commissioners, in which the developer agrees to sign at a time any and all petitions, consents, etc., and all other documents necessary to improve an abutting road or other required improvements to County standards and to waive all rights or remonstrances against such improvements, in exchange for which the County agrees that the execution of the improvement agreement will be deemed to be in compliance with the improvement requirements of the Code.

Intensification. Any additions which increase or expand the area or amount of an existing use or the level of activity. Remodeling of the exterior of a structure is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit was issued as of December 5, 1975.

Interior Lot. A lot, other than a corner lot, having frontage on only one street.

Kennel; Commercial Breeding. A place of business for the breeding and/or selling of dogs. The term is not intended to include an animal hospital or noncommercial kennel.

Kennel; Commercial. A place of business for the breeding and/or selling of dogs. The term is not intended to include an animal hospital or noncommercial kennel.

Kennel; Noncommercial. An establishment or premises where three or more dogs, over six months of age, are kept or maintained. No more than two of the dogs shall be used for breeding. The term does not include any animal hospital.

Legal Interest. An interest in property not confined solely to ownership or possessory interst, but including all interests in property which in the discretion of the Planning Director, are not inconsistent with the intent and purposes of this Chapter. Such interests may include, but are not limited to, the following: owner, contract purchaser, lessee, renter, licensee, easement, resolution or ordinance of necessity to acquire or condemn adopted by a public or private condemnor.

Legal Lot. A tract of land which as been legally created in compliance with Lane County land division regulations and ORS Chapter 92:

(1) Any lot within a subdivision plat approved by the Board and recorded with Lane County Clerk.

(2) Any lot within a minor subdivision plat endorsed and dated by the Secretary of the Lane County Planning Commission.

(3) Any parcel within a final partition map approved and recorded by Lane County.

(4) A tract of land created as a result of a deed or real property sales contract, which was not created as a result of (1)-(3) above, but which at the date the conveyance occurred, the

creation of the tract was not subject to any Lane County land division regulations. However, contiguous units of unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot.

Loading Space. An off street space or berth on the same lot with a building for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials and which abuts upon a street, alley or other appropriate means of access.

Lot. A unit of land that is created by a subdivision of land.

Lot Line, Front. The private property line contiguous with the public street line or place. For corner lots, the front lot line shall be the narrowest street frontage or as shown on the official plat of the property.

Lot Line, Rear. A lot line which is opposite and most distant from the front lot line. In the case of a triangular-shaped lot, the rear lot line for building purposes shall be assumed to be a line 10 feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Lot Line, Side. Any lot line which is not a front or rear line.

Lot of Record. A legal lot which meets all of the lot of record standards specified in ORS Chapter 215 (Sections 9 to 13, Chapter 884, Oregon Laws) and is entitled to a dwelling or mobile home irrespective of land use regulations.

Low Intensity. An activity or use conducted at a level that does not require developed facilities and can be accommodated without change to an area or resource.

Map, Partition. A final diagram and other documentation relating to a major or minor partition.

Marsh, High Salt. Includes immature high marsh, mature high marsh and diked salt marsh. These marshes are from two to three feet above tide flat areas and are characterized by at least occasional tidal inundation at higher, high tides or, in the case of diked salt marshes, more infrequently with the opening of tide gates or with periodic flooding.

Mobile Home. A vehicle or structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, is intended for human occupancy and is being used for residential purposes.

Mobile Home Park. Any place where four or more mobile homes are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Mobile Home Park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one mobile home per lot if the subdivision

was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.160.

Natural Hazards. Natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, groundwater, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.

Nursing Home. Any home, place or institution which operates and maintains facilities providing convalescent or chronic care, or both, which exceeds that as defined by "Residential Home".

100 Year Flood. See "Base Flood"

Ordinary High Water. The high water level is defined as that high level of a river which is attained during mean annual flood. It does not include levels attained during exceptional or catastropic floods. It is often identifiable by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in character in the soil, destruction or absence of vegetation not adapted for life in saturated soils or the presence of flotsam and debris. In the absence of identifying physical characteristics, ordinary high water may be determined by Step backwater analysis upon a two-year frequency flood as determined by the US Army Corps of Engineers.

Ordinary Low Water. The low water mark of a river is that point to which the waters normally recede when the volume of water is at its low level, not determined by the extraordinary year, and further means the line to which the Willamette River ordinarily recedes annually in season even though the elevation of that line may be higher as a result of the Corps of Engineers' flood control structures than would otherwise be the case without such structures. Submersible lands are also considered that land or bank area between the ordinary low and high waterline.

Outdoor Advertising and Structure. Any card, cloth, paper, metal, wood, plastic or painted sign of any kind or character whatsoever, placed for outdoor advertising purpose on the ground, on any tree, wall, rock, post, fence, building or structure. The term "placed" as used in this definition of "Outdoor Advertising Sign" and "Outdoor Advertising Structure" shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or otherwise fastening, affixing or making visible in any manner whatsoever.

Panhandle. A narrow extension of a tract, 60 feet or less in width, which is used as access to the main portion of the tract.

Parcel. A unit of land that is created by a partitioning of land.

Parking Area, Automobile. Space within a public parking area or a building, exclusive of driveways, ramps, columns, office and work areas, for the temporary parking or storage of one automobile.

Parking Area, Private. Privately or publicly-owned property, other than streets and alleys, on which parking spaces are defined, designated or otherwise identified for use by the tenants, employees or owners of the property for which the parking area is required by this Chapter and which is not open for use by the general public.

Parking Area, Public. Privately or publicly-owned property, other than streets or alleys, on which parking spaces are defined, designated or otherwise identified for use by the general public, either free or for remuneration. Public parking areas may include parking lots for retail customers, patrons and/or clients as required by this Chapter.

Parking Space. A permanently maintained space with proper access for one standard sized automobile.

Partition. Either an act of partitioning land or an area or tract of land partitioned. Partitions shall be divided into the following two types:

(1) Major Partition. A partition which includes the creation of a road.

(2) Minor Parition. A partition that does not include the creation of any road.

Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year.

Party. With respect to actions pursuant to LC 14.100 and LC 14.200, the following persons or entities are defined as parties:

(1) The applicant and all owners or contract purchasers of record, as shown in the files of the Lane County Department of Assessment and Taxation, of the property which is the subject of the application.

(2) Any County official.

(3) Any person, or his or her representative, and entity who is specially, personally or adversely affected by the subject matter, as determined by the Approval Authority.

Performance Agreement. A written agreement executed by a subdivider or partitioner in a form approved by the Board of Commissioners and accompanied by a security also approved by the Board. The security shall be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

Person. A natural person, his heirs, executors, administrators or assigns, or a firm, partnership or corporation, its heirs or successors or assigns, or the agent of any of the aforesaid, or any political subdivision, agency, board or bureau of the State.

Personal Services. Laundering, dry cleaning and dyeing; rug cleaning and repair; photographic services; beauty and barber shops; apparel repair and alterations; shoe repair and maintenance; etc.

Planning Commission. The Planning Commission of Lane County, Oregon, which shall consist of two Planning Commissions referred to as the Lane County Planning Commission and the West Lane Planning Commission.

Plat. A final diagram and other documents relating to a subdivision.

Primary Processing Facility. A facility for the primary processing of forest products. The primary processing of a forest product means the use of a portable chipper, stud mill or other similar equipment for the initial treatment of a forest product, to facilitate its shipment for further processing. Forest products, as used in this definition, means timber and other resources grown upon the land or contiguous units of land where the primary processing facility is located.

Professional Services. Medical and health services, legal services and other professional services, including those related to: engineering, architecture, education, scientific research, accounting, planning, real estate, etc.

Received. Acquired by or taken into possession by the Director.

Recreational Vehicle. A vacation trailer or other unit, with or without motive power, which is designed for human occupancy and to be used temporarily for recreational or emergency purposes and has a floor space of less than 220 square feet, excluding built-in equipment, such as wardrobes, closets, cabinets, kitchen units or fixtures and bath or toilet rooms. The unit shall be identified as a recreational vehicle by the manufacturer.

Recreational Vehicle Park. A development designed primarily for transient service on which travel trailers, pickup campers, tent trailers and self-propelled motorized vehicles are parked and used for the purpose of supplying to the public a temporary location while traveling, vacationing or recreating.

Refinement Plan. Refinement plans are a detailed examination of the service needs and land use problems peculiar to a particular area. Refinements of the Comprehensive Plan can include specific neighborhood or community plans, or special purpose or functional plans (such as water, sewer or transportation plans). In addition, refinement plan can be in the form of major planned unit developments, annexation and zoning applications, or other special area studies.

Replacement in Kind. The replacement of a structure of the same size as the original and at the same location on the property as the original.

Residential Home. A residence for five or fewer unrelated physically or mentally handicapped persons and staff persons who need not be related to each other or to any other home resident. A "handicapped person" means an individual who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities. "Major life activity" means self-care, ambulation,

communication, transportation, education, sociaization, employment and the ability to acquire and maintain adequate, safe and decent shelter.

Restoration. Revitalizing, returning or replacing original attributes and amenities such as natural biological productivity, aesthetic and cultural resources which have been diminished or lost by past alterations, activities or catastrophic events.

Restoration, Active. Use of specific positive remedial actions, such as removing fills, installing water treatment facilities or rebuilding deteriorated urban waterfront areas.

Restoration, Passive. The use of natural processes, sequences and timing which occurs after the removal or reduction of adverse stresses without other specific remedial action.

Roadside Stand. A use providing for the retail sale of any agricultural produce where more than one-half of the gross receipts result from the sale of produce grown on the unit of land where the roadside stand is located.

School. A place or institution for learning and teaching in which regularly scheduled and suitable instruction meeting the standards of the Oregon State Board of Education is provided.

Service Station. Any building, land area or other premises, or portion thereof, used or intended to be used for the retail dispensing or sales of vehicular fuels; and including as an accessory use the sale and installation of lubricants, tires, batteries and similar accessories.

Sewerage Facility or Sewage Facility. The sewers, drains, treatment and disposal works and other facilities useful or necessary in the collection, treatment or disposal of sewage, industrial wastes, garbage or other wastes.

(1) Sewerage Facility, Community. A sewerage facility, whether publicly or privately owned, which serves more than one parcel or lot.

(2) Sewerage Facility, Individual. A privately owned sewage facility which serves a single parcel or lot for the purpose of disposal of domestic waste products.

(3) Sewerage Facility, Public. A sewerage facility, whether publicly or privately owned, which serves users for the purpose of disposal of sewage and which facility is provided for or is available for public use.

Sign. Any fabricated sign for use outdoors, including its structure, consisting of any letter(s), figure, character, mark, point, plane, design, poster, picture, stroke, stripe, line, trademark, reading matter or illuminating device which is constructed, attached, erected, fastened or manufactured in any manner whatsoever to attract the public in any manner for recognized purposes to any place, subject, person, firm, corporation, public performance, article, machine or merchandise display. However, the term "sign" shall not include any display of official, court or public notices, nor shall it include the flag, emblem or insignia of

a nation, government unit, school or religious group, except such emblems shall conform to illumination standards set forth in this Chapter.

Site, Residential. An area of more or less intensive development, surrounding a dwelling, not less than 60 feet wide, nor less than 6,000 square feet in area and comparable to a normal city lot.

Solid Waste Management. A planned program providing for the collection, storage and disposal of solid waste including, where appropriate, recycling and recovery.

Start of Construction. The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For mobile homes not within mobile home parks, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is complete.

State Plane Coordinate System. The system of plane coordinates which has been established by the U.S. Coast & Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Oregon.

Structure. Synonymous with the definition of building.

Structure in a Flood Hazard Area. A walled and roofed building, a mobile home or a tank used in the storage of gas or liquid which is principally above ground.

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

Subdivision. Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

Substantial Improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project or improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or

partitioned land under the same ownership shall be considered a single tract.

Urban. Those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also: (a) have concentrations of persons who generally reside and work in the area, and (b) have supporting public facilities and services.

Urbanizable. Those lands within an urban growth boundary and which are identified and (a) determined to be necessary and suitable for future urban use areas, and (b) can be served by urban services and facilities, and (c) are needed for the expansion of an urban area.

Use. The purpose for which land, submerged or submersible lands, the water surface or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

Veterinary Clinic. Synonymous with the definition of "animal hospital".

Water Dependent Use. A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water.

Water Related Use. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in public loss of quality in the goods or services offered. Except as necessary for water dependent or water related uses or facilities, residences, parking lots, spoil or dump sites, roads and highways, restaurants, businesses, factories and trailer parks are not generally considered dependent on or related to water location needs.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines.

Yard. An open space on the same lot with a building unoccupied and obstructed from the ground upward, except as otherwise provided herein.

Yard, Front. A yard between the front line of the building (exclusive of steps) and the front property line.

Yard, Rear. An open, unoccupied space on the same lot with a building, between the rear line of the building (exclusive of steps, porches and accessory buildings) and the rear line of the lot.

Yard, Side. An open, unoccupied space on the same lot with a building, between the sidewall line of the building and the side line of the lot.

DEVELOPMENT APPROVAL PROCEDURES

RURAL COMPREHENSIVE PLAN

16.100 Development Approval Procedures - Relationship of Lane Code Chapter 14 into Lane Code Chapter 16. Lane Code Chapter 14 is the procedure for submittal, acceptance, investigation and review of applications for development of lands under the jurisdiction of the Lane County Rural Comprehensive Plan with these additions:

(1) Definitions. Abbreviations, terms, phrases, words and their derivatives shall be construed as specified in LC 16.090 above instead of as specified in LC 14.015.

(2) Special Notice and Review Requirements for a dwelling or Mobile Home Subject to Director Approval in the Exclusive Farm Use (E) Zone, LC 16.212(3)(c). When reviewing an application for a dwelling or mobile home conditionally permitted by LC 16.212(3)(c) below, the Director shall:

(a) In additon to the requirements of LC 14.070 (1) for a decision to approve an application in LC 16.100(2) above, specify in the notice that, "persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or mobile home, or activities associated with either residence, would force a significant change in or significantly increase the costs of accepted farming practices on nearby lands devoted to farm use."

(b) In addition to the requirements of LC 14.100(4), notice of a decision to approve an application in subsection LC 16.100(2) above shall be mailed to persons who have requested notice of such applications and who have paid a reasonable fee imposed by the County to cover the cost of such notice.

(c) In addition to the requirements of LC 14.515(3)(d), an objection received within 15 days of the notice which factually alleges a significant change in or significant increase in the costs of accepted farming practices on nearby lands devoted to farm uses shall constitute sufficient assignment of error by the Approval Authority.

(d) A decision to approve or deny an application identified in LC 16.100(2) above shall become final unless appealed in the manner provided in LC 16.100(2)(a)-(c) above and LC Chapter14, and unless the appeal is submitted to the Department within 15 days of the date of postmark for the notice of the decision by the Approval Authority.

(3) Ex Parte Contacts. A communication between County staff and the Planning Commission or Board shall not be considered an ex parte contact for the purposes of LC 14.200(5)(a).

NONIMPACTED FOREST LANDS ZONE (F-1, RCP)

RURAL COMPREHENSIVE PLAN

16.210 Nonimpacted Forest Lands Zone(F-1, RCP).

(1) **Purpose.** The purpose of the Nonimpacted Forest Lands District (F-1, RCP) is:

(a) To conserve forest land for forest uses in accordance with Statewide Planning Goal #4.

(b) To recognize that the preservation and protection of commercial forest lands within Lane County is necessary for the continuous production of forest crops, and that such are beneficial to the economy of the County and to the welfare of its people.

(c) To encourage multiple use of forest land for commercial timber management, watershed protection, maintenance and protection of fish and wildlife resources, livestock habitat and recreation.

(d) To protect commercial forest lands from intrusion of noncompatible uses by prohibiting or restricting nonforest uses that create potential impacts.

(e) To implement the forest land policies of the Lane County Rural Comprehensive Land Use Plan.

It is the County's policy to protect forest operations from conflicting land uses. Nothing in this section is intended to interfere with normal forestry practices that might result in conditions such as noise, dust, smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest uses (i.e. dwellings) within the Forest Lands Zones must recognize the intent of the Zone is to protect resource management activities and that in the event of conflict between residential uses and forestry practices, this Chapter will be interpreted in favor of these resource management practices.

(2) **Permitted Uses.** The following uses and activities are permitted subject to the general provisions and exceptions set forth by this Chapter of Lane Code:

(a) Forest uses, not including a residence.

(b) Farm uses, not including a residence.

(c) Mining and quarrying and processing of rock as follows:

(i) Permitted in accordance with the Forest Practices Act (ORS 527.610 to 527.730) and for the purpose of forest road construction and other forest related uses, exclusive of the sale of rock for nonforest uses.

(ii) When used solely in conjunction with a farm use on which the mining and quarry activity occurs, exclusive of sales of the rock.

(d) Nonresidential uses necessary and accessory to the uses listed above, such as:

(i) Fire prevention, detection and suppression facilities;

(ii) Landing strips or heliports;

(iii) Roads for management and safety;

(iv) Maintenance, repair and storage of forest management and processing equipment, logging equipment, and farm equipment by the owner or operator of such equipment, exclusive of sales.

(v) Utility facilities and transmission lines limited in size for permitted or accessory use.

(vi) Log scaling and weigh stations.

(vii) Sorting yards and log storage areas located on the same unit of land from which the logs are harvested or on a nearby unit of land.

(viii) Solid waste disposal sites for industrial forest wastes on the same unit of land from which the wastes originated.

(ix) Communication facility necessary and accessory to forest uses.

(e) Public parks, campgrounds, boating facilities, camps and such other recreational facilities, including accessory parking areas.

(f) Water impoundments with less than 100 acre feet storage capacity and in conjunction with beneficial uses of water customarily associated with fire prevention, forest uses or farm uses.

(g) Operations conducted for the exploration of geothermal resources, aggregate and other mineral or subsurface resources.

(h) Maintenance and repair of any lawfully existing residence.

(i) Fish and wildlife habitat management and any necessary and accessory uses.

(j) Facilities for the primary processing of forest products.

(k) Facilities and test plots, excluding a residence, for experimental and research activities associated with forest management and forest products.

(l) A dwelling or mobile home on a lot of record as defined by ORS Chapter 15 provided such lot of record does not already have a residence on it. The applicant shall provide factual documentation of compliance with each lot of record criterian.

(3) Uses Subject to Director Approval. The following uses and activities are permitted subject to prior submittal of an application to LC 14.050 and subject to Director approval of such application pursuant to LC 14.100 and the general provisions and exceptions set forth by this Chapter of Lane Code:

(a) Replacement of any legal residence existing, occupied, suitable for occupancy or in the process of being constructed, and such replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice-versa). Any replacement authorized under this subsection shall be for a dwelling or mobile home to be located on the same site as the previous residence or on a site that has less impact on surrounding uses, and such replacement shall commence within one year of the date of removal of the previous residence.

(b) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is lcoated.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in an existing dwelling or mobile home, or other existing buildings normally associated with uses permitted under LC 16.210(2)(j) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.210(2)(j) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval shall not receive extended approval by the Director, and the Director shall mail written

notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(4) Uses Subject to Hearings Official Approval. The following uses and activities are conditionally permitted subject to submittal of an application pursuant to LC 14.050 and approval of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the conditional use criteria of LC 16.210(5) below:

(a) Sorting yards and log storage areas exceeding the standards of an accessory use specified under LC 16.210(2)(d)(vii) above.

(b) Maintenance repair and storage of forest management and processing equipment, logging equipment, and farm equipment as a business enterprise operated by someone other than the owner of such equipment, exclusive of sales.

(c) Solid waste disposal sites exceeding the standards of an accessory use specified under LC 16.210(2)(d)(viii) above and not exceeding 10 acres in size.

(d) The mining, quarrying and processing of mineral, geothermal and other subsurface resources; and rock mining, quarrying and processing which exceeds the standards as specified under specified under LC 16.210(2)(c) above.

(e) Power distribution and/or telephone lines which exceed the standard as specified under LC 16.210(2)(d)(i) and (v) above.

(f) Communication facility.

(g) A hydroelectric generating facility with a water impoundment of less than 100 acre feet.

(h) A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility.

(i) Privately owned parks, campgrounds, boat facilities, lodges, camps and other such recreational facilities, including accessory parking areas where overnight lodging is provided upon satisfying the following conditions:

(i) Domestic water supplies for all development within designated forest lands shall emanate from surface or subsurface water sources contained within the boundary of the property in question; except as provided in LC 16.210(4)(i)(ii) below.

(ii) The domestic water supply is obtained from another source with the documented approval of all other affected parties, with the condition that

such use will not affect the right of the owner of that water source to undertake forest management practices on his or her property.

(iii) The water supply system shall: have a delivery capability of sustaining a volume of 20 gallons per minute for not less than 50 minutes; sufficient water outlets and serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach nearby improvements; be maintained as a connected operating unit ready for immediate use during periods of fire danger.

(5) Conditional Use Criteria. Uses conditionally permitted under LC 16.210(4) above are subject to compliance with the following criteria:

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in forest lands, or;

(ii) That the proposed site is on land generally unsuitable for forest uses;

(b) That the proposed use will not significantly impact forest uses on adjacent and nearby forest lands;

(c) That the proposed use will not significantly increase the costs of forest management on adjacent and nearby forest lands;

(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;

(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby forest lands, and these measures may be established as conditions of approval; and

(f) That the proposed use is consistent with the forest policies contained in the Rural Comprehensive Plan.

(6) Area. The minimum area requirement for the division of land shall be 40 acres or a 1/4 of a 1/4 section, except as provided below:

(a) A division of land to create a parcel of less than 40 acres may be conditionally allowed pursuant to compliance with Lane Code Chapter 13 if it is for the purpose of separating an existing residence from the adjoining forest land and the parcel containing the residence is limited to the least amount of area reasonably possible so as to maximize forest use on the other parcel.

(b) The adjustment of a common property boundary which results in no additional parcels and if, where the parent parcel reduced in size is below 40 acres, the adjusted common property boundary is the most conducive

one for forest management considering the unique physical characteristics of the land, including terrain, stream courses, soils, existing nonforest uses, etc.

(7) Property Development Standards. All uses or activities permitted or conditionally permitted above, except the growing and harvesting of tree species regulated by the Oregon Forest Practices act, shall be subject to the following development standards, etc.

(a) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100 foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 below with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(b) Maintenance, Removal and Replacement of Riparian Vegetaton. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall be conducted in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.210(7)(b)(i) above. Where vegetation removal beyond that allowed in LC 16.210(7)(b)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Vegetation removal necessary to provide water access for a water dependent use.

(b) Removal of dead or diseased vegetation that poses a safety or health hazards.

(c) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(c) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access public road and 10 feet from all other property lines, except as provided above.

(d) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

IMPACTED FOREST LANDS ZONE (F-2, RCP)

RURAL COMPREHENSIVE PLAN

16.211 Impacted Forest Lands Zone (F-2, RCP).

(1) **Purpose.** The purpose of the Impacted Forest Lands Zone (F-2, RCP) is:

(a) To implement the forest land policies of the Lane County Rural Comprehensive Plan which recognize that certain forest lands are impacted by nonforest uses and merit different treatment than nonimpacted forest lands.

(b) To conserve forest land for forest uses consistent with Statewide Planning Goal #4, including commercial timber management, watershed protection, maintenance and protection of fish and wildlife resources, livestock habitat and recreation.

(c) In areas of mixed farm/forest uses where forest uses do not predominate, to conserve such land for uses consistent with Statewide Planning Goals #3 and #4.

(d) To protect lands mentioned in LC 16.211(1)(b) and (c) above from the intrusion of noncompatible uses by restricting nonforest uses or nonforest and nonfarm uses that create potential impacts.

(2) **Permitted Uses.** The following uses and activities are permitted subject to the general provisions and exceptions prescribed by this Chapter of Lane Code, except that for any property designated in the Eugene-Springfield Metropolitan Plan as significant n terms of OAR 660-16-000/025 and designated as "1B", a Goal 5 ESEE consequences analysis per the Goal 5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

(a) Forest use.

(b) Farm uses as defined by ORS 215.203(2).

(c) Mining, quarrying and processing of rock for forest or farm road construction on the same tract on which the mining and quarrying occurs.

(d) Water impoundments with less than 100 acre feet storage capacity and in conjunction with beneficial uses of water customarily associated with fire prevention, forest uses or farm uses.

(e) Operations conducted for the exploration of geothermal resources, aggregate and other mineral or subsurface resources.

(f) Public parks, campgrounds, boating facilities, camps and such other recreational facilities, including accessory parking areas.

(g) Fish and wildlife habitat management and any necessary and accessory uses.

(h) A facility for the primary processing of forest products.

(i) Facilities and test plots, excluding a residence, for experimental and research activities associated with forest management and forest products.

(j) Maintenance and repair of a lawfully existing residence.

(k) Uses necessary and accessory to those listed above, such as:

(i) Fire prevention, detection and suppression facilities.

(ii) Landing strips or heliports.

(iii) Roads for management and safety.

(iv) Maintenance, repair and storage of forest management and processing equipment, logging equipment and farm equipment by the owner of such equipment, exclusive of sales.

(v) Utility facilities and transmission lines limited in size for permitted or accessory use.

(vi) Log scaling and weigh stations.

(vii) Sorting yards and log storage areas located on the same unit of land from which the logs were harvested or on a nearby unit of land under the same ownership as the land from which the logs were harvested on a temporary site not exceeding 10 acres in size.

(viii) Solid waste disposal sites for industrial forest wastes on the same unit of land from which the wastes originated.

(ix) Communication facility necessary and accessory to forest uses.

(l) A dwelling or mobile home on a lot of record as defined by ORS Chapter 215, provided such lot of record does not already have a residence on it. The applicant shall provide factual documentation of compliance with each lot of record criterian. Accessory structures for the residence may also be allowed.

(3) Uses Subject to Director Approval. The following uses are permitted subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 and subject to conformance with the applicable criteria and standards of this Chapter of Lane Code:

(a) Replacement of any legal residence existing, occupied, suitable for occupancy or in the process of being constructed, and such replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice-versa). Any replacement authorized under this subsection shall be for a residence to be located on the same site as the previous residence or on one that has lessor impact on

surrounding forest uses, and such replacement shall commence within one year of the date of removal of the previous residence.

(b) A dwelling or mobile home, and any accessory structures, on a vacant legal lot shall be deemed accessory and necessary to the forest management of the legal lot provided:

(i) A detailed forest management plan is submitted for the legal lot which demonstrates forest production will be enhanced by on site forest management from the residence, and

(ii) Evidence is submitted indicating that the legal lot is qualified for and has a forest deferral pursuant to State Law, or

(iii) If the legal lot does not have a forest deferral pursuant to State law, then upon substantial completion of the details represented in the forest management in LC 16.211(3)(b)(i) above, the dwelling or mobile home shall be allowed on the property. Substantial completion of the details represented in the forest management plan shall be verified by a qualified private forestor and such verification shall be submitted in writing to the Department. During the interim, while the forest management plan is being implemented on the subject legal lot, a temporary mobile home in conjunction with the forest use shall be allowed for a period not to exceed five years. If the forest management plan is not implemented within the five-year period, the temporary mobile home shall be removed.

(c) A dwelling or mobile home, and any accessory structures, in conjunction with the propagation or harvesting of a forest product on a vacant legal lot that is managed as part of a woodlot meeting the Douglas-fir cubic foot site index and acreage requirements below, provided sufficient factual documentation concerning the forest management, the soils, cubic foot site indices and acreage of the legal lot is presented by the applicant to verify that the legal lot meets the minimum cubic foot site index/acreage requirements specified below:

Whenever a legal lot has cubic foot site indices which fall into more than one of the below categories, compliance with the minimum acreage requirements may be determined by:

(i) Identifying the number of acres in each cubic foot site index category.

(ii) Identifying the percentage of the acreage requirement met for each category. This percentage shall be determined by dividing the number of acres in each category by the acreage minimum number for the same category.

(iii) Adding the percentages identified in LC 16.211(3)(c)(ii) above. The minimum acreage requirement shall have been met if the percentage total is 100 or greater.

Cubic Foot Site Class	Potential Yield cu.ft./acre/yr	Acreage Minimum
6	(20-49 cf/ac)	64
5	(50-84 cf/ac)	43
4	(85-119 cf/ac)	34
3	(120-164 cf/ac)	24
2	(165-224 cf/ac)	17

(d) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in an existing dwelling or mobile home, or other existing buildings normally associated with uses permitted under LC 16.211(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.211(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions

of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(e) A dwelling when necessary and accessory to the use permitted in LC 16.211-10(i) above

(4) Uses Subject to Director Approval and Located in Mixed Agricultural and Forest Areas. The uses specified in LC 16.211(4)(c) through (m), are conditionally permitted upon:

(1) A positive determination that agricultural uses predominate on the subject property. This determination can be made either of two ways:

(i) The applicant demonstrates that generally accepted agricultural practices regularly occur over 50 percent of the property.

(ii) The applicant demonstrates that annual gross income for the subject property when obtained from farm use is greater than the annual gross income if managed for forest purposes. This will require a comparison of the actual annual gross farm income from accepted farm practices to the estimated annual gross income derived from accepted forest practice when managed on a sustained yield basis. In addition, the applicant must demonstrate that the area in which the subject property is located is characterized as a mixed farm forestry area.

(b) Prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 and compliance with the applicable approval criteria and standards of this Chapter of Lane Code.

(c) Public or private schools, including all buildings essential to the operation of a school.

(d) Churches.

(e) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale.

(f) A dwelling or mobile home customarily provided in conjunction with farm use existing on the subject property and which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) zone, LC 16.212(2)(f).

(g) A dwelling or mobile home customarily provided in conjunction with a farm use not yet existing on the subject property and which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(g).

(h) A dwelling or mobile home customarily provided in conjunction with farm use existing on the subject property, where another residence already exists on the

subject property, and which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(h).

(i) A dwelling or mobile home to be occupied by a relative of the farm operator which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(i).

(j) A mobile home in conjunction with an existing dwelling or mobile home, on the same legal lot as the existing residence, and as a temporary use for the term of a hardship suffered by the existing resident or a relative of the existing resident which is necessary and accessory to continued forest management or, complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(j).

(k) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(i) Consists of 20 or more acres.

(ii) Is not smaller than the average farm or woodlot in the County producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(iii) Does not already have a dwelling or mobile home on it.

(l) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot smaller than required under LC 16.212(6) (Exclusive Farm Use Zone) if the legal lot:

(i) Has produced at least $10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $10,000 in annual gross farm income.

(ii) Is a woodlot capable of producing an average over the growth cycle of $10,000 in gross annual income.

(iii) Does not already have a dwelling or mobile home on it.

(m) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049 together with equipment, facilities or buildings necessary for its operation.

(5) Special Uses - Hearings Official Approval. The following uses are conditionally permitted subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.300 and subject to compliance with the criteria specified in LC 16.211(6) below:

(a) Sorting yards and log storage areas on a temporary site not exceeding 10 acres in size and exceeding the standards specified under LC 16.211(2)(k)(vi) above.

(b) Maintenance, repair and storage of forest management and processing equipment, logging equipment and farm equipment as a business enterprise operated by someone other than the owner of such equipment, exclusive of sales.

(c) Solid waste disposal sites for industrial forest wastes exceeding the standards specified under LC 16.211(2)(k)(viii) above and not exceeding 10 acres in size.

(d) The mining, quarrying and processing of mineral, geothermal and other subsurface resources; and rock mining, quarrying and processing which exceeds the standards as specified under LC 16.211(2)(c) above.

(e) Power distribution and/or telephone lines which exceed the standard as specified under LC 16.211(2)(k)(v) above.

(f) Communication facility.

(g) A hydroelectric generating facility with a water impoundment of less than 100 acre feet.

(h) A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility.

(i) Privately owned parks, campgrounds, boat facilities, lodges, camps and other such recreational facilities, including accessory parking areas, where overnight lodging is provided, upon satisfying the following conditions:

(i) Domestic water supplies for all development within designated forest lands shall emanate from surface or subsurface water sources contained within the boundary of the property in question; except as provided in LC 16.211(5)(i)(ii) below.

(ii) The domestic water supply is obtained from another source with the documented approval of all other affected parties, with the condition that such use will not affect the right of the owner of that water source to undertake forest management practices on his or her property.

(iii) The water supply system shall: have a delivery capability of sustaining a volume of 20 gallons per minute for not less than 50 minutes; sufficient water outlets and serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach nearby improvements; be maintained as a connected operating unit ready for immediate use during periods of fire danger.

(j) Commercial activities that are in conjunction with farm use.

(k) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005, or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(l) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

(m) Golf courses.

(n) Commercial utility facilities for the purpose of generating power for public use by sale.

(o) Personal-use airports for airplanes and helicopter pads, including associated hanger, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(p) The boarding of horses for profit.

(q) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment facilities or buildings necessary for its operation.

(r) A dwelling or mobile home which is not necessary and accessory to forest use or customarily provided in conjunction with farm use and which is located upon a vacant legal lot.

(6) Hearings Official/Special Use Approval Criteria. The uses specified in LC 16.211((5) above, as identified below, are subject to compliance with the following criteria:

(a) Uses under LC 16.211(5)(a),(b),(c),(e),(f),(g),(h) and (i) above subject to compliance with the criteria identified in LC 16.211(6)(f)(i) through (vi) below.

(b) Use under LC 16.211(5)(d) above subject to compliance with the criteria identified in LC 16.211 (6)(f)(i) through (vi) and (xi) below.

(c) Uses under LC 16.211(5)(j),(l),(m),(n),(o),(p) and (q) above subject to compliance with the criteria identified in LC 16.211(6)(f)(i) through (viii) below, and upon a positive determination that agricultural uses predominate on the subject property. This determination can be made either of two ways:

(i) The applicant demonstrates that generally accepted agricultural practices regularly occur over 50 percent of the property.

(ii) The applicant demonstrates that annual gross income for the for the subject property when obtained from farm use is greater than the annual gross income if managed for forest purposes. This will require a comparison of the actual annual gross farm income from accepted farm practices to the estimated annual gross income derived from accepted forest practice when managed on a sustained yield basis. In addition, the applicant must demonstrate that the area in which the subject property is located is characterized as a mixed farm forestry area.

(d) Use under LC 16.211(5)(k) above subject to compliance with the criteria identified in the LC 16.211(6)(c)(i) and (ii)above, and the criteria identified in LC 16.211(6)(f)(iii) through (viii) and (xi) below.

(e) Use under LC 16.211(5)(r) subject to compliance with the criteria identified in LC 16.211(6)(f)(v),(vii),(viii),(ix) and (x) below.

(f) Criteria.

(i) Evidence is provided supporting reasons why the proposed use should be sited in forest lands, or that the proposed site is on land generally unsuitable for forest uses.

(ii) That the proposed use will not significantly impact forest uses on adjacent and nearby forest land.

(iii) That the proposed use will not significantly increase the costs of forest management on adjacent and nearby forest lands.

(iv) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use.

(v) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby forest or agricultural lands, and these measures may be established as conditions of approval.

(vi) That the proposed use is consistent with the forest policies contained in the Rural Comprehensive Plan.

(vii) That the proposed use will not interfere seriously with forest practices as regulated by the Forest Practices Act on nearby or adjacent lands devoted to forest use, and that the proposed use will not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use.

(viii) That the proposed use does not materially alter the stability of the overall land use pattern of the area.

(ix) That the proposed use is situated upon land generally unsuitable for the production of farm crops, livestock and the growing and harvesting of tree species regulated by the Forest Practices Act, considering terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

(x) That the proposed use is compatible with farm use as described in ORS 215.103(2) and the purpose and intent set forth in ORS 215.243, and the proposed use is compatible with forest uses as regulated by the Forest Practices Act and the purpose and intent set forth in ORS 527.630.

(xi) That the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity.

(7) Area. The minimum area requirement for the division of land shall be as follows:

(a) For the creation of a woodlot for the purpose of the propagation or harvesting of a forest product, the minimum area shall be at least 20 acres and that which is necessary to meet the acreage minimum requirements specified in LC 16.211(3)(c) above, and additional area to accommodate a homesite, access and fire breaks required by LC 16.211(8) below and a logical parcel layout or use of the parcel. The applicant shall submit sufficient factual documentation to verify that each

proposed tract meets the above requirements. Area computations shall be measured consistent with the LC 16.211 (3)(c) above.

(b) For the creation of a farm parcel, the minimum area shall be 40 acres. A farm management plan including the information required by the Exclusive Farm Use (E) Zone, LC 16.212(2)(g)(v)(e) below shall be presented by the applicant and shall factually demonstrate the suitability of the land for the intended use. A statement shall be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for a residence in a mixed farm/forest area are met.

(c) For the creation of a farm parcel for the purpose of growing grapes, berries or horticultural specialities, the minimum area shall be 20 acres. The management plan and map statement requirements of LC 16.211(b) above shall also apply.

(d) The remaining portion of the parent parcel being divided must also comply with either LC 16.211(a),(b) or (c) above.

(8) Siting and Fire/Safety Standards for Dwellings.

All dwellings and mobile homes conditionally permitted above:

(a) The Approval Authority shall balance the setback standards of LC 16.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts and to assure optimal siting of proposed residences consistent with the purposes of the F-2 zone. Where possible, residences shall maintain a setback of 500 feet from the adjoining lines of property zoned F-1 or 300 feet from adjoining lines of property zoned F-2 or EFU. Residences should be sited on the least valuable forest and farm areas on the property, or clustered with residences on other tracts in order to lessen impacts on forest or farm uses, and should be sited to avoid intruding unnecessarily on acres free from existing roads and residences. In cases where residences are clustered, sited to avoid intruding onto resource areas, or where property dimensions do not allow it, the 500 foot or 300 foot setback may not be the most desirable or possible standard and should not be applied.

(b) Shall maintain a fuel break of 50 feet around the residence. Fuel breaks shall be free of hazardous fuels in the form of native vegetation. Irrigation or fire resistent vegetation shall be planted within the fuel break to prevent undue soil erosion. Fuel breaks shall be continually maintained and may contain individual tree specimens, however plant material shall

not provide a means of readily spreading fire. Fuel breaks shall shall comply with the riparian vegetation protection standards of LC 16.211(9)(b) and (c) below.

(c) Shall provide an adequate fire suppression system. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:

(i) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capable of sustaining a volume of 20 gallons per minute for not less than 20 minutes.

(ii) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(iii) TThe water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period of fire danger.

(d) Shall have a spark arrestor on any chimneys and a fire retardant roof.

(9) Other Property Development Standards. All uses or activities permitted or conditionally permitted above, except the growing and harvesting of tree species regulated by the Oregon Forest Practices Act, shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines except as provided below.

(b) Class I Stream Setbacks. A residence shall not be located closer than 100 feet from ordinary high water of a Class I stream and no other structure except a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to

LC 16.256 below with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.211(9)(c)(i) above. Where vegetation vegetation removal beyond that allowed in LC 16.211(9)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards;

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazards.

(d) Removal of vegetation necessary for the maintenance of placement of structural shoreline stabilization.

(d) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

EXCLUSIVE FARM USE ZONE (E-RCP)

RURAL COMPREHENSIVE PLAN

16.212 Exclusive Farm Use Zone (E-RCP)

(1) Purpose. The purpose of the Exclusive Farm Use (E-RCP) Zone is to provide areas for the continued practice of commercial agriculture, guarantee the preservation and maintenance of areas so classified and minimize activities that may be incompatible with commercial agriculture. The Exclusive Farm Use Zone is to be applied to land designated as agricultural by the Rural Comprehensive Plan.

It is the County's policy to protect forestry and agricultural operations from conflicting land uses. Nothing in this section is intended to interfere with normal forestry or agricultural management or practices that might result in conditions such as noise, dust, smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest or nonfarm uses (i.e. dwellings) within the Exclusive Farm Use Zone must recognize that the intent of the Zone is to protect resource management activities and that, in the event of conflict between residential uses and farm forestry or forestry practices, this Chapter will be interpreted in favor of these resource management practices.

(2) Permitted Uses. In the EFU Zone, the following uses and activities are permitted subject to the general provisions and exceptions set forth by this Chapter.

(a) Farm Use (See farm use definition)

(b) Propagation or harvesting of a forest product.

(c) Public or private schools, including all buildings essential to the operation of a school.

(d) Churches.

(e) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale and transmission towers over 200 feet in height.

(f) A dwelling or mobile home customarily provided in conjunction with farm use (existing), provided it complies with the following requirements:

(i) The proposed dwelling or mobile home will be the only dwelling or mobile home on the subject property, contiguous property in the same ownership and any noncontiguous property which is managed as part of the same farm operation.

(ii) The proposed dwelling or mobile home will be located on a legal lot that is currently managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, and will be located on a legal lot that is not

smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iii) At least one occupant of the proposed dwelling or mobile home will be employed in conjunction with the current farm use of the farm operation.

(iv) Sufficient information is submitted by the person applying for the proposed dwelling or mobile home which factually documents compliance with the above criteria. Such information shall include, but not necessarily be limited to:

(a) The size, location and ownership of the total property involved in the farm operation.

(b) A copy of any farm use, lease agreements for the total property involved in the farm operation.

(c) Identification of the specific farm uses conducted on the total property involved in the farm operation and the number of acres for each specific farm use.

(d) Identification of the extent of involvement in the farm use activity by the occupants of the proposed dwelling or mobile home.

(e) Identification by reference to LC 16.212(6)(d below of the type of farm operation (i.e., farm group) that the proposed dwelling or mobile home would be customarily provided in conjunction with.

(g) A dwelling or mobile home customarily provided in conjunction with farm use (contemplated) which complies with the following requirements:

(i) The proposed dwelling or mobile home will be located on a legal lot which will be managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, but is not currently so managed.

(b) The proposed dwelling or mobile home will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iii) At least one occupant of the proposed dwelling or mobile home would be employed in conjunction with the proposed farm operation.

(iv) There is no other dwelling or mobile home on the subject property, contiguous property in the same ownership and any noncontiguous property which would be managed as part of the same farm operation.

(v) Sufficient information is submitted by the persons applying for the proposed dwelling or mobile home which factually addresses the above criteria. Such information shall include:

(a) The size, location and ownership of the total property involved in the farm operation.

(b) A copy of any farm use lease agreements for the total property involved in the farm operation and the number of acres for each specific farm use.

(c) Identification by reference to LC 16.212(6)(d) below of the type of farm operation (farm group) that the proposed dwelling or mobile home would be in conjunction with.

(d) Identification of the planned extent of involvement in the proposed farm use activity by the occupants of the proposed dwelling or mobile home and the experience of the occupants in prior farm use activities.

(e) A copy of a farm management plan for the proposed farm operation which provides factual details addressing the farm operation concerns pertinent to the farm operation proposed, including:

Land preparation.
Ripping and plowing.
Fencing.
Surveying.
Crop cultivation.
Irrigation.
Herbicide; fungicide and/or fertilizer application.
Machinery.
Accessory farm buildings.
Breeding and livestock raising concerns.
Labor.
Projected expenses associated with the above.
Date by which the farm management plan would be substantially implemented.

(f) The residence shall be so located on the subject property as to provide the least interference with farming activities which will thereon occur. A site plan shall be submitted which shows the location of the residence and explains the rationale of the location in reference to the above criterion.

(vi) Upon substantial completion of the details represented in the above farm management plan, the dwelling or mobile home shall be allowed on the subject property. During the interim while the farm management plan is being implemented on the subject property, a temporary mobile home in conjunction with the farm use may be allowed for a period not to exceed five years. If the farm management plan is not implemented within the five-year period, the temporary mobile home shall be removed or another special permit under this subsection may be made.

(h) A dwelling or mobile home customarily provided in conjunction with farm use (existing) which complies with the following requirements:

(i) The proposed dwelling or mobile home would be in addition to another dwelling or mobile home already on the subject property, contiguous property in the same ownership and any noncontiguous property which is managed as part of the same farm operation.

(ii) The occupant or occupants of the proposed dwelling or mobile home will be employed in conjunction with the current farm use of the farm operation and the occupant or occupants of the existing dwellings or mobile homes are employed in conjunction with the current farm use of the farm operation.

(iii) The proposed dwelling or mobile home will be located on a legal lot that is currently managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, and will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iv) Sufficient information is submitted by the person applying for the proposed dwelling or mobile home which factually documents compliance with the above criteria. Such information shall include, but not necessarily be limited to:

(a) The size, location and ownership of the total property involved in the farm operation.

(b) A copy of any farm use, lease agreements for the total property involved in the farm operation.

(c) Identification of the specific farm uses conducted on the total property involved in the farm operation and the number of acres for each specific farm use.

(d) Identification of the extent of involvement in the farm use activity by the occupant's of the proposed dwelling or mobile home, and by the occupant's of the existing dwellings or mobile homes.

(e) Identification by reference to LC 16.212(6)(d below to the type of farm operation (i.e., farm group) that the proposed dwelling or mobile home would be customarily provided in conjunction with.

(i) A dwelling or mobile home on real property used for farm use if the dwelling or mobile home is:

(i) Located on the same legal lot as the dwelling or mobile home of the farm operator; and

(ii) Occupied by a relative, which means grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(iii) Establishment of the second dwelling or mobile home may not be used for future justification of land division, and Lane County shall not approve any subdivision or partition of a lot or parcel for which such a second dwelling or mobile home has been approved.

(iv) The farm operator submits a statement that:

(a) The second dwelling or mobile home is necessary for his or her farm operation.

(b) Identifies the family relationship of the persons who will occupy the second dwelling or mobile home.

(c) He or she fully understands the conditions under which the building permit is being approved.

(j) One mobile home in conjunction with an existing dwelling or mobile home on the same legal lot as the existing dwelling or mobile home as a temporary use for the term of a hardship suffered by the existing resident or a relative of the existing resident subject to compliance with the following conditions:

(i) A resident of the existing dwelling or mobile home and a resident of the mobile home are family members.

(ii) One of the residents mentioned above suffers a hardship and needs the care of the other above-mentioned resident and family member.

(iii) Satisfactory evidence of the family member's hardship is furnished which shall include:

(a) A written statement, on a form provided by the Department, from the family member's physician, therapist, or other professional counselor, disclosing the existence and general nature of the hardship.

(b) A written statement, on the form provided by the Department, disclosing the family relationship of the person with the hardship and the person who will provide care.

(iv) The temporary mobile home will be located on the same legal lot as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(k) Nonresidential buildings customarily provided in conjunction with farm use.

(l) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(m) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(3) Special Uses - Director Approval. The following uses are allowed subject to prior submittal of an application pursuant to LC 14.050 and approval of the application by the Director pursuant to LC 14.100 and LC Chapter 16, and subject to conformance with the applicable approval criteria:

(a) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(i) Consists of 20 or more acres.

(ii) Is not smaller than the average farm or woodlot in the County producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(iii) Does not already have a dwelling or mobile home on it.

(b) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest

product on a legal lot that is managed as part of a farm operation or woodlot smaller than required under LC 16.212(6)(d) below if the legal lot:

(i) Has produced at least $10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $10,000 in annual gross farm income; or

(ii) Is a woodlot capable of producing an average over the growth cycle of $10,000 in gross annual income.

(iii) Does not already have a dwelling or mobile home on it.

(c) One dwelling or mobile home, not provided in conjunction with farm use, on a vacant legal lot not larger than three acres provided:

(i) The dwelling or mobile home, or activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use; and

(ii) If the legal lot is located within the Willamette Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by Lane Code relating specifically to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable; and

(iii) The dwelling complies with other conditions considered necessary by the governing body or its designate; and

(iv) The legal lot was created between January 1, 1948 and before July 1,1983.

(iv) For the purposes of the above subsection, only one legal lot exists if:

(v) Notice and review of an application under LC 16.212(3)(c) above shall occur in compliance to LC 16.100(2).

(a) The legal lot is contiguous to one or more lots or parcels in which, on July 1, 1983, greater than possessory interests are held in those contiguous lots by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) As used in the LC 16.212(3)(c)(vi) (a) above, contiguous means "lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or

lots and parcels separated only by a public road."

(d) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in a dwelling or mobile home, or other buildings normally associated with uses permitted under LC 16.212(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.212(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(vii) Will comply with any additional conditions of approval.

(viii) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(4) Special Uses - Hearings Official Approval. The following uses are allowed subject to prior approval of the Hearings Official pursuant to LC 14.300 and pursuant to compliance with the below approval criteria of this subsection and LC 16.212(5).

(a) Commercial activities that are in conjunction with farm use.

(b) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005, or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(c) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

(d) Golf courses.

(e) Commercial utility facilities for the purpose of generating power for public use by sale.

(f) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(g) A facility for the primary processing of forest products, provided that such facility is found to not seriously inferfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber growth upon a parcel of land or contiguous land where the primary processing facility is located.

(h) The boarding of horses for profit.

(i) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment facilities or buildings necessary for its operation.

(j) A dwelling or mobile home not provided in conjunction with farm use provided:

(i) The dwelling or mobile home is situated upon a legal lot with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on Oct. 12, 1983.

(ii) The dwelling or mobile home, or the activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use

(iii) The dwelling or mobile home is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(k) A transmission tower over 200 feet in height.

(5) **Hearings Official Special Use Approval Criteria.**

(a) Compatibility of the use or activities associated with the use with the Agricultural Lands Policies of the Rural Comprehensive Plan Policies, ORS 215.243 and the purpose of this zone.

(b) The use, or activities associated with the use, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(c) The use, or activities associated with the use, complies with other conditions considered necessary by the Approval Authority in order to meet the applicable approval criteria.

(6) **Farm Operations.**

(a) A farm operation is all agricultural activities occurring under a single management. For purposes of this section, it is immaterial whether the activities occur on a single parcel of land, on contiguous parcels of land or on separate parcels of land. It is also immaterial if the operator has less than fee interest in the land on which the agricultural activity occurs.

(b) Farm operations shall be classified into one of the groups set forth in LC 16.212(6)(d) below. In the event a farm operation consists of agricultural activities described by more than one group, the activity that accounts for more than half of the gross revenue of the farm operation shall determine the group classifications.

(c) Farm operations of a size equal to or greater than the size shown for its respective group in LC 16.212(6)(d) below shall be deemed as contributing in a substantial way to the agricultural economy of the County.

(d) Farm Group ----------Size

Cash grains----------120 acres
Field crops (includes grass seed production--------160 acres
Tree fruit and nuts----------40 acres
Horticultural specialties-----20 acres
General farm, primarily crop----------320 acres
Extensive animal grazing-----120 acres
Itensive animal husbandary----40 acres
Dairy farm----------240 acres
General farm, primarily livestock----------80 acres
Berries and grapes----------20 acres
Vegetables and melons--------120 acres

(7) Area. Land within the Exclusive Farm Use District shall be designated as E-25, E-30, E-40 or E-60, consistently with Agricultural Lands Policy #10 of the Lane County Rural Comprehensive Plan, and the creation of a lot or parcel shall be subject to the following:

(a) Except as provided in LC 16.212(7)(b),(c) and (d) below, the minimum area shall be:

E-25------25 acres
E-30------30 acres
E-40------40 acres
E-60------60 acres

(b) A division of land may be allowed down to 20 acres for horticultural specialties, berries and grapes. A farm management plan including the factors identified in LC 16.212(2)(g)(v)(e) above shall address and establish the suitability of the land for the intended use.

(c) A division of land may be allowed for the nonfarm uses identified in LC 16.212(4)(c),(d),(e) and (i) above, provided the parcel for the nonfarm use is not larger than the minimum size necessary for the use.

(d) A division of land may be allowed for a dwelling not provided in conjunction with farm use if the dwelling has been approved pursuant to the above LC 16.212(4)(j) above and if the division would not conflict with the purpose of this zone.

(e) Divisions pursuant to LC 16.212(7)(a),(b),(c) or (d) above are subject to the applicable application procedures of LC Chapter 13 and the applicable review procedures of LC Chapter 14. Divisions under LC

16.212(7)(a) and (b) above shall also require that a statement be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for obtaining a dwelling or mobile home are met.

(f) A person who sells or otherwise transfers real property zoned Exclusive Farm Use (E) may retain a life estsate in a dwelling or mobile home on that property and the tract of land under and around the dwelling or mobile home. Partition approval is not required for the creation of such a life estate.

(8) **Property Development Standards.** All uses or activities permitted or conditionally permitted above, except farm use, shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other proeprty lines except as provided below.

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazards.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(9) **Residence Maintenance, Repair and Replacement Standards.**

(a) Maintenance and repair of lawfully existing residences shall be permitted in the Exclusive Farm Use (E) zone.

(b) Replacement of any residence lawfully existing, occupied, suitable for occupancy or in the process of being constructed shall be permitted. The replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice versa). Any replacement authorized under this subsection shall be for a residence to be located on the same site as the previous residence and such replacement shall commence within one year of the date of removal of the previous residence.

NATURAL RESOURCE ZONE (NR-RCP)

RURAL COMPREHENSIVE PLAN

16.213 Natural Resource Zone (NR-RCP).

(1) **Purpose.** The Natural Resource Zone (NR-RCP) is intended to protect areas having unique or irreplaceable natural resource which are vital elements for a safe, healthful and pleasant environment for human life. The Natural Resource Zone may be applied to public and private lands where the Rural Comprehensive Plan requires natural resource site protection. The Zone is not intended to be applied to other types of resource land, such as agricultural land and forest land. To minimize the potential hazards of pollution, resource conversion and land development resulting from increases in human population, urbanization, income, leisure time and individual mobility, emphasis will be placed on limiting and regulating human activity in those areas where:

(a) The acceptable water quality of streams, lakes, estuaries of the ocean may be endangered;

(b) Watersheds and their streams or lakes are used for domestic water supplies;

(c) Vegetative cover is essential to maintain soil stability and prevent erosion;

(d) Natural conditions are vital for either unique vegetative ecosystems, aquatic or wildlife habitat; and

(e) Scenic quality or vistas or open space is unique and/or irreplaceable.

(2) **Permitted Buildings and Uses.** In the NR Zone, the following types of buildings and uses are permitted as hereinafter specifically provided for by this subsection, subject to the general provisions and exceptions set forth:

(a) The following recreational facilities and uses owned by a governmental agency or a nonprofit community organization limited to day use.

(i) Exhibitions of the natural conditions of shorelands, dunelands, forested areas, streams and lakes, marshlands, or similar areas of unique and irreplaceable value, and the vegetation and wildlife supported by such lands and waters, provided that in no event shall such activity destroy, or endanger the relationships between the natural conditions being exhibited.

(ii) Picnicking areas, day parks and playgrounds.

(iii) Accessory facilities for outdoor recreation activity such as fishing, clam digging and hunting (provided such activity is conducted only in those areas allowed pursuant to Federal,

State and Local fish and game regulations) and hiking and horseback riding.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

(2) Special Uses - Director Approval. The following uses are subject to approval by the Director pursuant to LC 14.100:

(a) Single-family dwelling(s) or mobile home(s) for residential purpose for watchman, caretaker or operator in conjunction with use permitted in the district.

(4) Special Uses - Director Official Approval. The following uses are subject to approval by the Hearings Official pursuant to LC 14.300:

(a) Piers and boat houses.

(b) Single-family dwelling or mobile home and accessory structures.

(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.

(d) Forest uses and any accessory uses.

(5) Conditional Use Criteria. Uses conditionally permitted under LC 16.213(4) above are subject to compliance with the following criteria:

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.

(ii) That the proposed site is on land generally unsuitable for natural resource uses.

(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;

(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby natural resource lands.

(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;

(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and

(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

(6) Property Development Standards.

(a) Front yard setback shall be 20 feet.

(b) Side yard setback shall be as follows:

(i) Interior yard -- 15 feet for a main building; five feet for an accessory building or structure.

(ii) Street side yard - 20 feet.

(c) Rear yard setback shall be 20 feet for a main building; five feet for an accessory building or structure.

MARGINAL LANDS ZONE (ML-RCP)

RURAL COMPREHENSIVE PLAN

16.214 Marginal Lands Zone (ML-RCP).

(1) Purpose. The Marginal Lands Zone (ML-RCP) is intended to:

(a) Provide an alternative to more restrictive farm and forest zoning.

(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.

(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.

(2) Permitted Uses. The following uses are permitted subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) A dwelling or mobile home on a vacant legal lot created before July 1, 1983. If the legal lot is located within the Willamette Greenway, a flood plain area or a geological hazard area, approval of the mobile home or dwelling is subject to the provisions of Lane Code relating to the Willamette Greenway, floodplain or geological hazrds, whichever is applicable.

(b) A dwelling or mobile home on a vacant legal lot created pursuant to the requirements of LC 16.214(6) below.

(c) One mobile home in conjunction with an existing dwelling or mobile home on the same legal lot as the existing dwelling or mobile home as a temporary use for the term of a hardship suffered by the existing resident or a relative of the existing resident subject to compliance with the following conditions:

(i) A resident of the existing dwelling or mobile home and a resident of the mobile home are family members.

(ii) One of the residents mentioned above suffers a hardship and needs the care of the other above-mentioned resident and family member.

(iii) Satisfactory evidence of the family member's hardship is furnished which shall include:

(a) A written statement, on a form provided by the Department, from the family member's physician, therapist, or other professional counselor, disclosing the existence and general nature of the hardship.

(b) A written statement, on the form provided by the Department, disclosing the family relationship of the person with the hardship and the person who will provide care.

(iv) The temporary mobile home will be located on the same legal lot as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(d) Part-time farms.

(e) Woodlots.

(f) Intensive farm or forest operations, including, but not limited to, farm use.

(g) Nonresidential buildings customarily provided in conjunction with farm use.

(h) Public or private schools, including all buildings essential to the operation of a school.

(i) Churches.

(j) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale.

(k) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(l) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment and facilities or buildings necessary for its operation.

(m) The propagation or harvesting of a forest product.

(n) Community centers owned and operated by a governmental agency or a nonprofit organization, hunting and fishing preserves, parks, playgrounds and publicly owned campgrounds.

(o) Personal-use airport for airplanes and helicopter pads, including associated hanger, maintenance and service facilities. A personal- use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver by the Aeronautics Division in specific

instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(3) Uses Subject To Director Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, and approval of the application pursuant to LC 14.100 and compliance with the criteria and provisions of this Chapter of Lane Code.

(a) Privately owned campgrounds.

(b) Golf courses.

(c) Commercial utility facilities for the purpose of generating power for public use by sale.

(d) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in a dwelling or mobile home, or other buildings normally associated with uses permitted under LC 16.214(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.214(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions

of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(e) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(f) The boarding of horses for profit.

(g) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(h) Commercial activities that are in conjunction with farm use.

(4) Criteria For Director Approval. Uses specified in LC 16.214 (3) and (4) may be allowed if found to comply with the following criteria:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

(5) Uses Subject To Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, approval of the application by the Hearings

Official pursuant to LC 14.300 and compliance with the approval criteria of LC 16.214(4) above and provisions of this Chapter of Lane Code:

(a) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate or other mineral resources or other subsurface resources.

(6) Area. Land in a Marginal Land zone may be divided as follows:

(a) Into lots or parcels containing at least 10 acres if the lots or parcels are not adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F-1), Impacted Forest Land (F-2), or if it is adjacent to such land, the land qualifies for designation as marginal land pursuant to ORS Chapter 197.

(b) Into lots or parcels containing 20 acres or more if the lots or parcels are adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F-1) or Impacted Forest Land (F-2), and that land does not qualify as marginal land pursuant to ORS Chapter 197.

(c) A parcel of any size necessary to accommodate any of the nonresidential uses identified in LC 16.214(2)(h),(i),(j),(l) and (n) and LC 16.214(3)(a),(c),(f) and (g).

(7) Property Development Stamdards. All uses or activities permitted or conditionally permitted above shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines, except as provided below.

(b) Class I Stream and Riparian Vegetation Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 50-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to

LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenace, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of the riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.214(7)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.214(7)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazard.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Height. None.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(f) Parking. Off street parking shall be provided in accordance with LC 16.250.

PARK AND RECREATION ZONE (PR-RCP)

RURAL COMPREHENSIVE PLAN

16.215 Park and Recreation Zone (PR-RCP).

(1) Purpose. The purpose of the Park and Recreation Zone (PR-RCP) is:

(a) To establish districts within which a variety of recreational activities may be conducted as outright permitted uses without interference from other nonrecreational uses.

(b) To establish standards and criteria to permit and conditionally permit recreational activities within areas for which a built upon or committed exception to a Statewide Planning Goal has been taken, or within a designated nonresource area, or within resource areas for which an exception to a Satewide Planning Goal has not been taken.

(c) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Area Comprehensive Plan.

(d) To implement the policies of the Lane County Rural Area Comprehensive Plan.

(2) Permitted Uses. The following uses and activities are permitted in any area zoned PR-RCP subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) General Recreation Parks including picnic areas, camping grounds, hiking trails, playfields, bathing beaches and other similar outdoor, manmade recreation facilities.

(b) Leisure and Ornamental Parks largely for scenic or ornamental purposes, including monuments, statutes, beaches and children's play facilities.

(c) Group or Organized Camps for children and adults which may include any of the above uses and activities and other uses and activities, such as swimming pools, meeting halls, sleeping shelters, cafeterias and shelters for indoor recreation.

(d) Recreation vehicle parking spaces in conjunction with any of the above three permitted uses.

(e) One residence on the subject property for a caretaker.

(f) Marine terminals and associated areas that are primarily for recreational marine craft, excluding sale or land storage of marine craft, but including any incidental sale of gas or minor repair.

(g) Forest Uses.

(h) Farm Uses.

(i) Nonresidential uses necessary and accessory to the uses listed above such as:

(i) Fire prevention, detection and suppression facilities.

(ii) Access roads and roads for management and safety.

(iii) Storage buildings.

(iv) A carport or garage in conjunction with #5 above.

(v) Restroom, washroom or shower facilities.

(vi) Offices.

(3) Permitted Uses Within An Exception Area. The following uses and activities are permitted whenever the subject property is included within an area for which a built upon or committed exception has been taken to a Statewide Planning Goal and incorporated into the Lane County Rural Area Comprehensive Plan or which has been designated as nonresource land in the Lane County Rural Comprehensive Plan:

(a) Any of the uses permitted within the above LC 16.215(2).

(b) Retail trade of food or new general merchandise conducted within a building not exceeding 750 square feet in total floor area.

(c) Golf courses with or without a country club.

(d) Riding Stables.

(e) Bowling.

(f) Gymnasium or athletic club.

(g) Yachting Clubs.

(h) Motel, hotel, lodges and other forms of recreational lodging. Any of the above lodging uses may include a restaurant, retail trade of food or new general merchandise exceeding the standard set in LC 16.215(3)(b) above.

(i) Game rooms, miniature golf, go cart tracks.

(j) Boat rentals or boat storage and incidental minor repairs and sale of gas.

(k) Country clubhouse for a golf course which may include a restaurant, retail trade of food or new general merchandise exceeding the standard set in LC 16.215(3)(b) above.

(4) Uses Subject to Hearings Official Approval. The following uses and activities are conditionally permitted subject to submital of an application pursuant to LC 14.050, approval of the application by the Hearings Official pursuant to LC 14.300, and subject to the compliance with the conditional use criteria below:

(a) Race track.

(b) Amusement Park, carnival, circus.

(c) Stadium.

(d) Fairgrounds and Amusement Park.

(e) Recreational shooting.

(f) Airport and flying field.

(5) Conditional Use Permit Criteria. Uses conditionally permitted above shall be subject to compliance with the following criteria:

(a) The subject property is included within an area for which an exception has been taken to a Statewide Planning Goal and incorporated into the Lane County Rural Area Comprehensive Plan.

(b) The proposed use will not adversely affect the livability, appropriate use, natural resources or scenic character of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and capacity of surrounding streets; and to any other relevant impact to the use.)

(c) The proposed use will not be adversely affected by natural hazards, such as floods, slides, erosion.

(d) The proposed use will not alter the stability of the overall land use pattern in the area nor interfere with farm and forest practices and will be compatible with the retention of existing and potential forest uses on the surrounding forest lands.

(e) When a use is proposed in an area designated as Major or Peripheral Big Game Range or as Sensitive Fish and Water fowl Areas as shown on the Lane County Wildlife inventory, the Oregon Department of Fish and Wildlife shall be notified and their comments shall be considered in evaluating the proposed use.

(f) The proposed use will have a water supply of sufficient quantity and quality to meet reasonably foreseesable needs.

(6) Property Development Standards. All uses or activities permitted or conditionally permitted above, except commercial forest practices regulated by the Oregon Forest Practices Act, shall be subject to the following development standards:

(a) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in

violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(b) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.215(6)(b)(i) above. Where vegetation removal beyond that allowed in LC 16.215(6)(b)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Vegetation removal necessary to provide water access for a water dependent use.

(b) Removal of dead or diseased vegetation that poses a safety or health hazards.

(c) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(c) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

QUARRY AND MINE OPERATIONS COMBINING ZONE (/QM-RCP)

RURAL COMPREHENSIVE PLAN

16.216 Quarry and Mine Operatons Combining Zone (/QM-RCP).

() Purpose. The purpose of the Quarry and Mine Operations Combining Zone (/QM-RCP) is to:

(a) Recognize that minerals and materials within the County are an unrenewable resource, and that extraction and processing are beneficial to the economy of the County and the welfare of its people.

(b) Protect major deposits of minerals, rock and related material resources with appropriate zoning.

(c) Establish procedures for the protection of public health and safety on and adjacent to land where quarry and mine blasting operations are occurring.

(d) Establish County standards in the Lane Manual to be used in reviewing referrals from State and Federal Agencies of Operation and Reclamation Plans, pollution control permits and similar permits.

(e) Provide for cooperation between private and governmental entities in carrying out the purposes of this Chapter.

(f) To implement the policies of the Lane County Rural Comprehensive Plan.

((2) Intent. The Quarry and Mine Operations Combining Zone shall be available for consideration and use by the County for new or existing operations when requests are received as part of an areawide or legislative rezoning, or a specific property or quasi-judicial rezoning.

When property under consideration for /QM zoning is in close proximity to existing and planned uses potentially incompatible with /QM uses, the application of the Quarry and Mine Operations Combining Zone may be limited to a specific portion of a property in order to encourage the compatibility and proper management of land uses.

The Quarry and Mine Operations Combining Zone is intended to be applied only to those operations which have been evaluated through the Goal #5 Administrative Rule conflict resolution process. Other quarry and mining operations of short-term or intermittent duration should be provided pursuant to the special use provisions of the various zones.

(3) Definitions. For the purposes of this section only, the following words, terms and phrases are defined and supercede definitions otherwise provided in this Code:

Minerals. Includes soil, coal, clay, stone, crushes hard rock quarry products, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use from natural deposits. "Minerals" do not include loam, sand,

gravel or other aggregate materials created and/or deposited by water movement.

Mining Refuse. All waste materials, soil, rock, mineral, liquid, vegetation and other materials resulting from or displaced by quarry and mining extraction operations within the operating permit area, including all waste materials deposited in or upon lands within such operating permit area.

Operations Plan. A written proposal submitted to the State Department of Geology and Mineral Industries under the requirements of ORS 517.790.

Operator. Any individual, public or private corporation, political subdivision, agency, board or department of this State, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in quarry and extraction operations.

Overburden. The soil, rock and similar materials that lie above natural deposits or minerals.

Owner. The person possessing legal rights to the mineral deposit being mined.

Quarry and Mine Extraction. All or any part of the process of removing mineral deposits exposed by any method, including open-pit mining operations, auger mining operations, shaft mining, the construction of borrow pits, processing of extracted minerals and exploration activities.

Reclamation. The employment of procedures in a quarry and mining extraction operation designed to minimize as much as practicable the impact such operations have on the environment, and to provide for the rehabilitation of land affected by such operations. Reclamation includes the rehabilitation of plant cover, soil stabilization, water resource protection and other measure appropriate to the subsequent beneficial use of such mined and reclaimed lands.

Reclamation Plan. A written proposal for the reclamation of the land area affected by a quarry and mine extraction operation submitted to the State Department of Geology and Mineral Industries.

(4) Permitted Buildings and Uses. In the Quarry and Mine Operations Combining District, the following types of buildings and uses are permitted as hereafter specifically provided for by this section, subject to the provisions of the Quarry and Mining Operations Reclamation Permit and exceptions set forth in this Chapter;

(a) Uses permitted in the parent zone with which the /QM zone is combined.

(b) Extracting and storing of minerals, including equipment and materials necessary to carry out these functions.

(c) Plants for the processing of minerals from quarry and mine extraction operations.

(d) Sale of products generated from the quarrying and mining operation.

(e) Activities permitted as part of the reclamation process provided for in the Reclamation Plan.

(f) Structures and buildings used in conjunction with the extracting and storing of minerals.

(5) Permits for Quarry and Mine Extraction.

(a) General. No quarry or mining extraction or related operations may be initiated on land zoned as Quarry and Mine Operations Combining Zone (/QM) until a surface mining permit has been issued by the Oregon Department of Geology and Mineral Industries.

(i) Each permit application, Operation and Reclamation Plan referred to the Director shall be reviewed following the Operation Standards and Reclamation Standards set forth in Lane Manual.

(6) Blasting Notice and Records. Operators using explosives for quarry and mine extraction shall follow explosive regulations and use commonly acceptable engineering standards based on physical conditions and atmospheric conditions of the site so as to prevent injury to persons and damage to public and private property.

(a) Notice of Blasting. When blasting is to be done within 500 feet of an occupied building, the operator, or an authorized agent, shall notify all ocucpants that a blast is to be initiated. Such notice shall be given not more than six hours nor less than 30 minutes prior to detonation and shall include the approximate time of the blast.

(b) Blasting Records. Each operator shall maintain a record of each blast for at least two years. These records shall be available to the County, the State Department of Geology and Mineral Industries and other governmental agencies with appropriate jurisdiction upon request. Such records shall show the following for each blast:

(i) Name of quarry or mine.

(ii) Date, time and location of blast.

(iii) Description of type of explosives and accessories used.

(iv) Time interval of delay in milliseconds.

(v) Number of different delays.

(vi) Number of holes per delay.

(vii) Nominal explosive weight per hole.

(viii) Total explosive weight per delay.

(ix) Total weight of explosives per blast.

(x) Blast hole diameter, depth, spacing and stemming height.

SAND, GRAVEL & ROCK PRODUCTS ZONE (SG-RCP)

RURAL COMPREHENSIVE PLAN

16.217 Sand, Gravel & Rock Products Zone (SG-RCP).
LC 10.205-05 to -81 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as SG-RCP:

(1) Delete LC 10.205-10(3)(d) and (f).

(2) Delete LC 10.205-15.

(3) Add the following to LC 10.205-05:

"(9) Implement the policies of the Lane County Rural Comprehensive Plan.

(10) Be applied only to those sites which have been evaluated consistently with the Statewide Planning Goal #5 Administrative Rule conflict resolution process."

(4) Add the following to LC 10.205-05, at the end:

"The SG-RCP zone shall only be applied to those sites which have been evaluated consistently with the Statewide Planning Goal #5 Administrative Rule conflict resolution process."

(5) Insert "and any additional dollar amounts determined by the Director to be necessary for site restoration" as follows:

(a) In LC 10.205-52(1), fourth line, following "per acre".

(b) In LC 10.205-52(1), ninth line, following "per acre".

(c) In LC 10.205-52(3), last line, following "per acre".

(6) Add the following to subsection 10.205-81(1)(c):

"5. The County Hydrologist.

6. The County Floodplain Specialist."

(7) Amend LC 10.205-10 by deleting the first four lines and substituting the following:

"-10 Permitted Uses. In the SG-RCP zone, the following uses are permitted subsequent to the following restriction: For any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal #5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100."

SAND, GRAVEL & ROCK PRODUCTS-CONTROLLED PROCESSING ZONE (SG-CP-RCP) RURAL COMPREHENSIVE PLAN

16.218 Sand, Gravel & Rock Products-Controlled Processing Zone (SG-CP-RCP).

LC 10.210-05 to -20 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as SG-CP-RCP:

(1) Delete the following portion of -20(1) and substitute the following language:

DELETION: "...for conditional use permits in this Chapter (LC 10.230-20)."

SUBSTITUTE: "...in LC 10.210-25 below."

(2) Add "-25. Operational Plan Approval Criteria. Compliance to the following criteria is required as provided in LC 10.210-20(1) above:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity; and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverge and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding."

(3) Add the following to LC 10.210-05, at the end:

"The SG-CP-RCP zone shall only be applied to those sites which have been evaluated consistently with the Statewide Planning Goal #5 Administrative Rule conflict resolution process."

(4) Amend LC10.210-10 by deleting the first four lines and substituting the following:

"-10 Permitted Uses. In the SG-CP-RCP zone, the following uses are permitted subject to the

following restriction: For any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal #5 ESEE consequences analysis per the Goal #5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100."

PUBLIC FACILITIES ZONE (PF/RCP)

RURAL COMPREHENSIVE PLAN

16.219 Public Facilities Zone (PF-RCP).

(1) Purpose. The Public Facilities Zone (PF-RCP) is intended to provide land for those public and semipublic functions that provide a service and are by nature an intensive or unusual use not normally associated with other zones. The zone is not intended for facilities that are primarily for an open space recreational nature, and is intended for those areas that have been included in an exception as part of the Rural Comprehensive Plan.

(2) Permitted Uses. The following uses are permitted subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) Utilities essential to the physical, economic and social welfare of an area such as:

(i) Electric utility: electric transmission right-of-way, electric generation plant, electricity regulating substations.

(ii) Gas utility: gas pipeline right-of-way, natural or manufactured gas storage and distribution points, gas pressure control stations.

(iii) Water utility: water pipeline right-of-way, water treatment plants, water storage.

(iv) Sewage disposal: sewage treatment plants, sewage sludge drying beds, sewage pressure control stations.

(v) Solid waste disposal: refuse incineration, central garbage grinding stations, compositing plants, sanitary landfills and refuse disposal.

(b) Educational services such as:

(i)ttNursery, primary and secondary education.

(ii) Colleges and professional schools.

(iii) Special training schools such as those for: vocational, trade, business, art, music, dancing, driving, gymnastics, correspondence, etc.

(c) Religious activities including churches, synagogues, temples, monastary or convent, etc.

(d) Welfare and charitable services.

(e) Professional membership organizations.

(f) Labor unions and similar labor organizations.

(g) Civic, social and fraternal associations.

(h) Business assocations.

(i) Sports assembly such as stadium, arenas and race tracks.

(j) Governmental services such as: post office, fire station and police station.

(k) Cemeteries.

(l) Fairgrounds which may include a race track.

(m) Health Services such as: dental, hospital, medical laboratory, dential laboratory, sanitarium, convalescent and rest home services, medical clinics.

(n) Communication and facilities such as:

(i) Telephone: exchange stations, relay towers.

(ii) Telegraph: message centers, transmitting and reciving stations.

(iii) Radio: broadcasting studios, stations, towers.

(iv) Television: broadcasting studio, transmitting stations and relay tower.

(o) Heliport.

(p) A dwelling or mobile home for one or more persons employed on the premises.

(3) **Siting Requirements.** Development of all uses in LC 16.219(2) above is subject to the requirements of LC 16.257 site review procedures.

(4) **Property Development Standards.** All uses or activities permitted or conditionally permitted above shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines, except as provided below.

(b) Class I Stream and Riparian Vegetation Setbacks. No structure other than a fence or sign shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lessor setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 50-foot setback to the location of the proposed structure, and the riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.219(4)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.219(4)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provice water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazards.

(d) Removal of vegetation necessary for the maintenance or placement of structure shoreline stabilization.

(d) Height. None.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(f) Parking. Off street parking shall be provide in accordance with LC 16.250.

LIMITED COMMERCIAL ZONE (C-1, RCP)

RURAL COMPREHENSIVE PLAN

16.220 Limited Commercial Zone (C-1, RCP). LC 10.155-10 to -40 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as C-1/RCP:

(1) Delete LC 10.155-10(1) and revise it to read, "(1) Any use permitted in the RG-RCP zone (LC 16.230) in accordance with the requirements of this zone."

(2) Delete "(LC 10.300-05)" in LC 10.155-10(6) and substitute "(LC 16.250)" in its place.

(3) Delete LC 10.155-15 and revise it to read:

"-15. Uses Subject to Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, review of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the criteria and standards specified in this Chapter of Lane Code:

(1) Heliport, together with accessory land uses relevant and appropriate to the operation.

(2) Commercial breeding kennel or commercial kennel.

(3) Amusemnet park, carnival or circus.

(4) Radio and television stations.

(5) Recreation vehicle park.

(6) Campground or picnic area."

(4) Delete "(Also see LC 10.300-10)" in LC 10.155-21 and substitute "(Also see LC 16.250)".

(5) Delete "(Also see LC 10.300-15 and LC 15.065)" LC 10.155-23 and substitute "(Also see LC 16.250 and LC Chapter 15).

(6) Delete "(Also see LC 10.300-20)" in LC 10.155-40 and substitute, "(Also see LC 16.250)".

(7) Add the following subsection:

"-20. Special Use Approval Criteria. Uses allowed under the above subsection -15 shall comply with the following criteria:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be

given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

(8) Add the following to LC 10.155-23:

"(3) The Class I Stream and Riparian Vegetation requirements of LC 16.299-35(2) and (3) shall apply to development of property in the C-1, RCP Zone."

NEIGHBORHOOD COMMERCIAL ZONE (C-2, RCP)

RURAL COMPREHENSIVE PLAN

16.221 Neighborhood Commercial Zone (C-2, RCP). LC 10.160-10 to -35 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as C-2, RCP.

(1) In LC 10.160-10(27), delete "(LC 10.300-05)" and substitute "LC 16.250)" in its place.
"LC 16.250)" in its place.

(2) Delete LC 10.160-15 and revise it to read:

"-15. Uses Subject to Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, review of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the criteria and standards specified in this Chapter of Lane Code:

(1) THeliport, together with accessory land uses relevant and appropriate to the operation.

(2) Commercial breeding kennel or commercial kennel.

(3) Amusement park, carnival or circus.

(4) Radio and television stations.

(5) Recreation vehicle park.

(6) Campground or picnic area.

(3) Delete "(Also see LC 10.300-15 and LC 15.065)" in LC 10.160-23 and substitute "(Also see LC 16.250 and LC Chapter 15)" in its place.

(4) Delete "(LC 10.300-05)" in LC 10.160-35(1) and substitute "(LC 16.250)" in its place.

(5) Delete "(LC 10.145)" in LC 10.160-35(2) and substitute "(LC 16.230) in its place.

(6) Add the following subsection:

"-20. Special Use Approval Criteria. Uses specified under the above LC 10.160-15 shall comply with the following criteria:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public

facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding."

(7) Add the following to LC 10.160-23:

"(3) The Class I Stream and Riparian Vegetation requirements of LC 16.299-35(2) and (3) shall apply to development of property in the C-2, RCP Zone."

COMMERCIAL ZONE (C-3, RCP)

RURAL COMPREHENSIVE PLAN

16.222 Commercial Zone (C-3, RCP). LC 10.165-10 to -35 is incorporated as fully set forth with the following exceptions, and shall be designated on the zoning map as C-3, RCP:

(1) Delete LC 10.165-10(1) and revise it to read, "(1) Any use permitted in the RG-RCP and C-2, RCP zones (LC 16.230 and 16.221) in accordance with the requirements of this zone."

(2) Delete LC 10.165-15 and revise it to read:

"-15. Uses Subject to Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, review of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the criteria and standards specified in this Chapter of Lane Code:

(1) Heliport, together with accessory land uses relevant and appropriate to the operation.

(2) Commercial breeding kennel or commercial kennel.

(3) Amusement park, carnival or circus.

(4) Radio and television stations.

(5) Recreation vehicle park."

(6) Campground or picnic area.

(3) Add the following subsection:

"-20. Special Use Approval Criteria. Uses allowed under the above LC 10.165-15 shall comply with the following criteria:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable and neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding."

(4) In LC 10.165-23, delete "(Also see LC 10.300-15 and LC 15.065)" and substitute "(Also see LC 16.250 and LC Chapter 15)" in its place.

(5) In LC 10.165-35(1), delete "(LC 10.300-05)" and substitute "(LC 16.250)" in its place.

(6) Add the following to LC 10.165-23:

"(4) The Class I Stream and Riparian Vegetation requirements of LC 16.299-35(2) and (3) shall apply to development of property in the C-3, RCP Zone."

RURAL COMMERCIAL ZONE (C-R, RCP)

RURAL COMPREHENSIVE PLAN

16.223 Rural Commercial Zone (C-R, RCP).

(1) Purpose. The purpose of the Rural Commercial Zone (C-R, RCP) is:

(a) To provide goods and services needed by rural residents.

(b) To provide services and facilities for tourists and travelers.

(c) To implement the policies of the Lane County Rural Area Comprehensive Plan, primarily those policies related to commercial development of areas identified as committed or built upon.

(d) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Area Comprehensive Plan.

(2) Permitted Uses. The following uses and activities are permitted subject to the general provisions and exceptions sepcified by this Chapter of Lane Code:

(a) Retail trade of food.

(b) Retail trade of new general merchandise.

(c) Retail trade of building materials, hardware or farm equipment conducted within an enclosed building.

(d) Restaurants.

(e) Service stations.

(f) Personal services.

(g) Finance, insurance, banking and real estate services.

(h) Professional services.

(i) Retail trade of secondhand general merchandise within an enclosed building.

(j) Bus passenger terminal.

(k) Civic, social and fraternal meeting places.

(l) Boat charter and rental, including fishing equipment.

(m) Hotel, motel or lodge, and related recreational facilities.

(n) Bed and breakfast accommodation.

(o) Veterinarian clinic.

(p) Bars, night clubs and taverns.

(q) Retail trade of hay, grains or goods for animal consumption.

(r) Day camp and picnic areas.

(s) Outdoor tourist attractions featuring displays of educational or historical value.

(t) Indoor or outdoor recreational activities including: tennis courts, ice skating, roller skating, riding stables, bowling, skiing and tobogganing, play

lots or tot lots, playgrounds, game rooms, gymnasium, swimming pools, etc.

(u) A dwelling or mobile home in conjunction with an above permitted use.

(v) Uses accessory to an above permitted use.

(w) A noncommercial kennel.

(x) Indoor or outdoor theaters.

(3) Special Uses Subject To Director Approval. The following uses and activities are permitted subject to prior submittal of an application pursuant to LC 14.050 and subject to Director approval of such application pursuant to LC 14.100 and the general provisions and considerations specified by this Chapter of Lane Code:

(a) Uses and activities:

(i) Retail trade of building materials, hardware or farm equipment conducted partially or wholly outdoors.

(ii) Equipment rental and leasing service.

(iii) Overnight campground and picnic areas.

(iv) Recreational Vehicle Park.

(v) Vehicle repair service.

(vi) Recreational vehicle and boat storage.

(vii) Marina.

(viii) A commercial kennel or a commercial breeding kennel.

(b) Criteria. The above uses should substantially conform to the following criteria:

(i) That the location, design, size, shape and arrangement of the uses and structures are sufficient for the proposal intent and are compatible with the surrounding vicinity.

(ii) That there is no unnecessary destruction of existing healthy trees or other major vegetation, and that due consideration is given to the preservation of distinctive historical or natural features.

(iii) That the quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas are such that they serve their intended purpose and have no undue adverse effect on existing or contemplated abutting land use.

(iv) The suitable planting of ground cover or other surfacing is provided to prevent erosion and reduce dust.

(v) That the location, design and size of the uses are such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intend uses.

(vi) That, based on anticipated traffic generation, adequate additional right-of-way and road improvements must be provided by the development in order to promote traffic safety and reduce traffic congestion. Consideration shall be given to the need and feasibility of widening and improving abutting streets to specifications of Lane Code, Chapter 15, "Roads", and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.

(vii) That there is a safe and efficient circulation pattern within the boundaries of the development. consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exits, drives, walkways, buildings and other related facilities.

(viii) That there are adequate off street parking and loading/unloading facilities provided in a safe, efficient and pleasant manner. Consideration shall include the layout of the parking and loading/unloading facilities, and their surfacing, lighting and landscaping.

(ix) That all signs and illumination are in scale and harmonious with the site and area.

(x) That adequate methods are provided to ensure continued maintenance and normal replacement of facilities, landscaping and other improvements etc. that are required.

(4) Area. No minimum established, except what is necessary to accommodate any necessary sewerage and potable water concerns. Divisions shall comply with Lane Code, Chapter 13.

(5) Property Development Standards. All uses or activities permitted or conditionally permitted above shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines except as provided below.

(b) Class 1 Stream and Riparian Vegetation Setbacks. No structure other than a fence or sign shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 50-foot setback to the location of the proposed structure and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.133(5)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.233(5)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of deed or diseased vegetation that poses a safety or health hazards.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Heights. Maximum height of any structure shall be 45 feet.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be flashing or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(iv) No sign shall project above the height of the tallest structure on the property.

(f) Parking. Off street parking shall be provided in accordance with LC 16.250.

LIMITED INDUSTRIAL ZONE (M-1, RCP)

RURAL COMPREHENSIVE PLAN

16.224 Limited Industrial Zone (M-1, RCP). LC 10.170-05 to -35 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as M-1, RCP.

(1) Delete the first four lines of LC 10.170-15 and substitute in its place the following:

"-15. Uses Subject to Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, review of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the criteria and standards specified in this Chapter of Lane Code."

(2) Add the following subsection:

"-20. Special Use Approval Criteria. Uses allowed under the above LC 10.170-15 shall comply with the following criteria:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will no create a hazardous natural condition such as erosion, landslide, flooding."

(3) TIn LC 10.170-23 delete "(Also see LC 10.300-15 and LC 15.065)" and substitute in its place "(Also see LC 16.250 and LC 15)".

(4) In LC 10.170-35, delete "(Also see LC 10.300-05)" and substitute in its place "(Also see LC 16.250)."

(5) Add the following to LC 10.170-23:

"(3) The Class I Stream and Riparian Vegetation requirements of LC 16.299-35(2) and (3) shall apply to development of property in the M-1, RCP Zone."

LIGHT INDUSTRIAL ZONE (M-2, RCP)

RURAL COMPREHENSIVE PLAN

16.225 Limited Industrial Zone (M-2, RCP. LC 10.175-05 to -35 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as M-2, RCP.

(1) In LC 10.175-10(2), delete "(LC 10.170-10)" and substitute in its place "(LC 16.224-10)".

(2) Delete LC 10.175-15 entirely and add the following:

"-15. Uses Subject to Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, review of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the criteria and standards specified in this Chapter of Lane Code:

(1) Any of the special uses allowed in the M-1, RCP zone (LC 16.224-15)".

(3) Add the following subsection:

"-20. Special Use Approval Criteria. Uses allowed under the above LC 10.175-15 shall comply with the following criteria:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate develoment of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding."

(4) In LC 10.175-23, delete "(Also see LC 10.300-15)" and substitute in its place "(Also see LC 16.250 and LC Chapter 15)."

(5) In LC 10.175-35, delete "(Also see LC 10.300-05)" and substitute in its place "(Also see LC 16.250)".

(6) Add the following to LC 10.175-23:

"(4) The Class I Stream and Riparian Vegetation requirements of LC 16.299-35(2) and (3) shall apply to development of property in the M-2/RCP Zone."

HEAVY INDUSTRIAL ZONE (M-3, RCP)

RURAL COMPREHENSIVE PLAN

16.226 Heavy Industrial Zone (M-3, RCP). LC 10.180-05 to -35 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as M-3, RCP.

(1) In LC 10.180-10(2), delete "(LC 10.175-10)" and substitute in its place "(LC 16.225-10)".

(2) Delete LC 10.180-15 entirely and substitute in its place:

"15. Uses Subject to Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, review of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the criteria and standards specified in this Chapter of Lane Code:

(1) Any of the special uses allowed in the M-1, RCP zone (LC 16.224-15)."

(3) Add the following subsection:

"-20. Special Use Approval Criteria. Uses allowed under the above LC 10.180-15 shall comply with the following criteria:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operation characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding."

(4) In LC10.180-23, delete "(Also see LC 10.300-15 and LC 15.065)" and substitute in its place "(Also see LC 16.250 and LC Chapter 15)."

(5) In LC 10.180-35, delete "(Also see LC 10.300-05)" and substitute in its place "(Also see LC 16.250)."

(6) Add the following to LC 10.180-23:

"The Class I Stream and Riparian Vegetation requirements of LC 16.299-35(2) and (3) shall apply to development of property in the M-3, RCP Zone."

SUBURBAN RESIDENTIAL ZONE (RA-RCP)

RURAL COMPREHENSIVE PLAN

16.229 Suburban Residential Zone (RA-RCP).

(1) Purpose. The purpose of the Suburban Residential Zone (RA-/RCP) is:

(a) To provide opportunities for people to live in a rural area.

(b) To allow primary and accessory residential uses and nonresidential uses which may be compatible with primary residential uses.

(c) To implement the policies of the Rural Comprehensive Plan, primarily those policies related to the residential development of areas identified as committed or built upon and located within a community area.

(d) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan.

(2) Permitted Uses. The following uses and activities are permitted subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) One single-family dwelling, mobile home or duplex on a legal lot.

(b) One single-family dwelling or mobile home on a legal lot, in addition to the above, to provide residence for an immediate family member or members of the owner, provided that the minimum average density per residential unit complies with the following standards:

(i) Where a community sewerage system and community water system is available, the ratio of residences to area shall not exceed one residence per 10,000 square feet.

(ii) Where an on-site sewage disposal system and community water system is available, the ratio of residences to area shall not exceed one residence per 20,000 square feet.

(iii) Where an individual water system and on-site sewage disposal system is available, the ratio of residences to area shall not exceed one residence per acre.

(iv) In all cases, an approved means of sewerage must be obtained.

(c) One temporary mobile home in conjunction with an existing dwelling or mobile home subject to compliance with the following conditions:

(i) A resident of the existing dwelling or mobile home and a resident of the mobile home are family members.

(ii) One of the residents mentioned above suffers a hardship and needs the care of the other above-mentioned resident and family member.

(iii) Satisfactory evidence of the family member's hardship is furnished which shall include:

(a) A written statement, on a form provided by the Department, from the family member's physician, therapist, or other professional counselor, disclosing the existence and general nature of the hardship.

(b) A written statment, on the form provided by the Department, disclosing the family relationship of the person with the hardship and the person who will provide care.

(iv) The temporary mobile home will be located on the same legal lot as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(d) Residential Home.

(e) Buildings accessory to a dwelling, mobile home or duplex, such as garages, storerooms, woodsheds, laundry, playhouses, greenhouses, hobby shop, animal or fowl shelter, or similar and related accessory uses.

(f) Bed and breakfast accommodation.

(g) Farm use, subject to conditions and limitations provided herein:

(i) The total number of livestock allowed on a property shall be limited to the area of the property divided by the total minimum area required for each animal listed below:

(a) One horse, cow or swine per acre; or,

(b) One goat or sheep per half acre.

(ii) A minimum of 500 square feet of area shall be required for each chicken, other fowl or rabbit kept on the property.

(iii) The number of colonies of bees allowed on a property shall be limited to one colony for each 10,000 square feet of lot area and shall be located no closer than 50 feet from any property line.

(h) Forest uses, including the propagation and harvesting of forest products.

(i) Roadside stand.

(j)tTPublic and semipublic buildings, structures and uses rendering direct service to the public in local areas, such as fire stations, utility substations, pump stations and wells.

(k) Noncommercial dog kennels, subject to conditions and limitations provided herein:

(i) For more than three dogs over four months of age, there shall be at least 5,000 square feet of lot area for each dog on the lot.

(ii) Where the lot area is 20 acres or less, the maximum number of dogs over four months of age shall be eight.

(iii) Where the lot area exceeds 20 acres and where more than eight dogs over four months of age are accommodated, kennel structures and fenced runs shall be required for all such dogs in excess of eight and shall be located at least 100 feet from any adjoining property.

(iv) All dogs shall be owned by the kennel owner, except those temporarily kept for purposes of breeding.

(l) Rock, sand, gravel or loam excavation or extraction, subject to conditions and limitations herein:

(i) The materials excavated or extracted are to be used solely on the subject property and are not offered for sale or remuneration.

(ii) The materials excavated or extracted do not exceed 500 cubic yards annually per acre of the subject property.

(m) Guest house.

(n) A mobile home park lawfully existing on a property prior to February 29, 1984.

(o) Noncommercial kennel.

(3) Uses Subject to Director Approval. The following uses and activities are permitted subject to prior submittal of an application pursuant to LC 14.050 and subject to Director approval of such application pursuant to LC 14.100 and the general provisions and criteria specified by this Chapter of Lane Code:

(a) One dwelling or mobile home for a person employed on the same legal lot as the owner's dwelling or mobile home, provided:

(i) The minimum acreage density per residence unit as specified in the above LC 16.229(2)(b) is maintained.

(ii) The location of the additional residence would not preclude the future parititoning of the property, if the residence and property on which it

is to be located would be partitioned from the parent parcel. A site plan locating the proposed residence and delineating the feasibility of the partition shall be submitted with the application.

(b) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in a dwelling or mobile home, or other buildings normally associated with uses permitted under the above LC 16.229(2).

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under the above LC 16.229(2).

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(c) More intensive farm use than those specified in LC 16.229(2)(c) above.

(4) Uses Subject to Hearings Official Approval. The following uses and activities are permitted subject to prior

submittal of an application pursuant to LC 14.050 and subject to Hearings Official approval pursuant to LC 14.300 and the general provisions and criteria specified by this Chapter of Lane Code:

(a) Animal hospitals.
(b) Commercial Breeding Kennel.
(c) Commercial Kennel.
(d) Campgrounds, camping vehicle parks, tourist parks.
(e) Cemeteries, human or animal.
(f) Churches.
(g) Group Care home.
(h) Day Care nurseries.
(i) Golf courses.
(j) Lodges and grange halls.
(k) Nursing homes.
(l) Parks, playgrounds, community centers.
(m) Public and private schools.
(n) Radio and television transmission facilities.
(o) Solid waste disposal facilities.
(p) Stables, riding academies and commercial riding.
(q) Storage facilities for boats and recreational vehicles.
(r) Sewage treatment facilities.
(s) Dams, water storage facilities; power generation or transmission facilities; electric transmission lines which require a right-of-way of 25 feet in width or wider; canals, flumes and pipelines; flood control facilities and irrigation projects.
(t) Fish and wildlife habitat management and any accessory uses including a dwelling or mobile home.
(u) Mobile home parks.
(v) Amusement park, carnival or circus.
(w) Correctional institution.
(x) Garbage dump, sanitary landfill or solid waste management.
(y) Jail or penal farm.
(z) TRace track.
(aa) Sewage treatment plant.
(bb) Boarding of horses for profit.

(5) Hearings Official Approval Criteria. Uses identified in LC 16.229(4) above must comply with the following criteria:

(a) Will not significantly impact existing uses on adjacent and nearby lands and other uses permitted in the zone in which the subject property is located.
(b) Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands.
(c) The proposed use is consistent with the policies contained in the Rural Comprehensive Plan.

GARDEN APARTMENT RESIDENTIAL ZONE (RG-RCP)

RURAL COMPREHENSIVE PLAN

16.230 Garden Apartment Residential Zone (RG-RCP). LC 10.145-10 to-40 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as RG-RCP.

(1) Delete LC 10.145-10(12).

(2) Delete LC 10.145-15 and revise it to read:

"-15. Uses Subject to Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, review of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the criteria and standards specified in this Chapter of Lane Code:

(1) Heliport, together with accessory land uses relevant and appropriate to the operation.

(2) Commercial breeding kennel or commercial kennel.

(3) Amusement park, carnival or circus.

(4) Radio and television stations.

(5) Sewage treatment plant.

(6) Recreation Vehicle Park.

(7) Campground or picnic area.

(8) Home occupations meeting the requirements of LC 16.231-15(2) (RR-RCP Zone).

(9) Clinic.

(10) Day nursery school.

(11) Group care home.

(12) Hospital.

(13) Nursing home.

(14) Private and public park, playground or community center.

(15) Telephone or telegraph exchange, excluding outdoor storage of vehicles or materials."

(3) Add the following subsection:

"-20. Special Use Approval Criteria. Uses allowed under LC 10.145-15 above shall comply with following criteria:

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the

surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding."

(4) In LC 10.145-21, delete "(Also see LC 10.300-10)" and substitute in its place "(LC 16.250).

(5) In LC 10.145-23, delete "(Also see LC 10.300-15 and LC 15.065)" and substitute in its place "(Also see LC 16.250 and LC 15)."

(6) In LC 10.145-25, delete "(Also see LC 10.300-20)" and substitute in its place "(Also see LC 16.250)."

(7) In LC 10.145-36(4), delete "(See LC 10.345 for permit provision)" and substitute in its place "(See LC 16.259 for permit provision)."

(8) In LC 10.145-40, delete "(Also see LC 10.300-20)" and substitute in its place "(Also see LC 16.250)."

(9) In LC 10.145-40(4), delete "...LC 10.300-20" and substitute in its place "...LC 16.250."

(10) Add the following to LC 10.145-23:

"(5) The Classs I Stream and Riparian Vegetation requirements of LC 16.299(2) and (3) shall apply to development of property in the RG-RCP zone."

(d) Where necessary, adequate provisions for access, sewerage and potable water would be provided for the intended use.

(6) **Area.** The creation of a parcel or lot for RA zoned property shall be subject to the following minimum area requirements:

(a) Where a community sewerage system and community water system is available, the minimum area requirement shall be 10,000 square feet.

(b) Where an on-site sewage disposal system and community water system is available, the minimum area requirement shall be 20,000 square feet.

(c) Where an individual water system and on-site sewage disposal system is available, the minimum area requirement shall be one acre.

(d) In all cases, an approved means of sewerage must be obtained.

(e) There is no minimum lot size for a parcel to accommodate uses allowed by LC 16.229(2)(j) above.

(7) **Property Development Standards.** All uses or activities permitted or conditionally permitted above shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines, except as provided below.

(b) Class I Stream and Riparian Vegetation Setbacks. No structure other than a fence or sign shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 50-foot setback to the location of the proposed structure, and the riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.229(7)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.229(7)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazards.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Height. 45 feet shall be the maximum allowable structural height.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(f) Parking. Off street parking shall be provided in accordance with LC 16.250.

RURAL RESIDENTIAL LANDS ZONE (RR-RCP)

RURAL COMPREHENSIVE PLAN

16.231 Rural Residential Lands Zone (RR-RCP).

(1) Purpose. The purpose of the Rural Residential Zone (RR-RCP) is:

(1) To provide opportunities for people to live in a rural area.

(2) To allow primary and accessory residential uses, and nonresidential uses which may be compatible with primary residential uses.

(3) To implement the policies of the Rural Comprehensive Plan, primarily those policies related to the residential development of areas identified as committed, built upon, or as nonresource land.

(4) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Comprehensive Plan.

-10. Permitted Uses. The following uses and activities are permitted subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) One single-family dwelling, mobile home, or duplex on a legal lot.

(b) A single-family dwelling or mobile home on a legal lot, in addition to the above, to provide residence for an immediate family member or members of the owner, provided that the minimum average density per residential unit (i.e., residences in relationship to acreages: one, two, five or ten acres, whichever is specified by the zoning map) is maintained, and proper sanitation approvals are obtained.

(c) One temporary mobile home in conjunction with an existing dwelling or mobile home subject to compliance with the following conditions:

(i) A resident of the existing dwelling or mobile home and a resident of the mobile home are family members.

(ii) One of the residents mentioned above suffers a hardship and needs the care of the other above-mentioned resident and family member.

(iv) Satisfactory evidence of the family member's hardship is furnished which shall include:

(a) A written statement, on a form provided by the Department, from the family member's physician, therapist, or other professional counselor, disclosing the existence and general nature of the hardship.

(b) A written statement, on the form provided by the Department, disclosing the family relationship of the person with the hardship and the person who will provide care.

(iv) The temporary mobile home will be located on the same legal lot as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(d) Residential home.

(e) Buildings accessory to a dwelling, mobile home or duplex, such as garages, storerooms, woodsheds, laundry, playhouses, greenhouses, hobby shop, animal or fowl shelter or similar and related accessory uses.

(f) Bed and breakfast accommodation.

(g) Farm use, subject to conditions and limitations provided herein:

(i) The total number of livestock allowed on a property shall be limited to the area of the property divided by the total minimum area required for each animal listed below:

(a) One horse, cow or swine per acre; or,

(b) One goat or sheep per half acre.

(ii) A minimum of 500 square feet of area shall be required for each chicken, other fowl or rabbit kept on the property.

(iii) The number of colonies of bees allowed on a property shall be limited to one colony for each 10,000 square feet of lot area and shall be located no closer than 50 feet from any property line.

(h) Forest uses, including the propagation and harvesting of forest products.

(i) Roadside stand.

(j Public and semipublic buildings, structures and uses rendering direct service to the public in local areas, such as fire stations, utility substations, pump stations and wells.

(k) Noncommercial dog kennels, subject to conditions and limitations provided herein:

(i) For more than three dogs over four months of age, there shall be at least 5,000 square feet of lot area for each dog on the lot.

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(ii) Where the lot area is 20 acres or less, the maximum number of dogs over four months of age shall be eight.

(iii) Where the lot area exceeds 20 acres and where more than eight dogs over four months of age are accommodated, kennel structures and fenced runs shall be required for all such dogs in excess of eight and shall be located at least 100 feet from any adjoining property.

(iv) All dogs shall be owned by the kennel owner, except those temporarily kept for purposes of breeding.

(l) Rock, sand, gravel or loam excavation or extraction, subject to conditions and limitations herein:

(i) The materials excavated or extracted are to be used solely on the subject property and are not offered for sale or remuneration.

(ii) The materials excavated or extracted do not exceed 500 cubic yards annually per acre of the subject property.

(m) Guest house.

(n) A mobile home park lawfully existing on a property prior to February 29, 1984.

(3) Uses Subject to Director Approval. The following uses and activities are permitted subject to prior submittal of an application pursuant to LC 14.050 and subject to Director approval of such application pursuant to LC 14.100 and the general provisions and criteria specified by this Chapter of Lane Code:

(a) One dwelling or mobile home for a person employed on the same legal lot as the owner's dwelling or mobile home, provided:

(i) The minimum acreage density per residence unit is maintained (i.e., not more than one residence per whatever the area requirement is as specified by the zoning map).

(ii) The location of the additional residence would not preclude the future partitioning of the property, if the residence and property on which it is to be located would be partitioned from the parent parcel. A site plan locating the proposed residence and delineating the feasibility of the partition shall be submitted with the application.

(b) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in a dwelling or mobile home, or other buildings normally associated with uses permitted under the above subsection -10.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.231(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(c) More intensive farm use than those specified in LC 16.231(2)(g) above.

(4) Uses Subject to Hearings Official Approval. The following uses and activities are permitted subject to prior submittal of an application pursuant to L 14.050 and subject to Hearings Official approval pursuant to LC 14.300 and the general provisions and criteria specified by this Chapter of Lane Code:

(a) Animal hospitals.

(b) Commercial breeding kennel.

(c) Commercial kennel.

(d) Campgrounds, camping vehicle parks, tourist parks.

(e) Cemeteries.

(f) Churches.

(g) Group care home.

(h) Day care nurseries.

(i) Golf courses.

(j) Lodges and grange halls.

(k) Nursing homes.

(l) Parks, playgrounds, community centers.

(m) Public and private schools.

(n) Radio and television transmission facilities.

(o) Solid waste management.

(p) Stables, riding academies and commercial riding.

(q) Storage facilities for boats and recreational vehicles.

(r) Sewage treatment facilities.

(s) Dams, water storage facilities; power generation or transmission facilities; electric transmission lines which require a right-of-way of 25 feet in width or wider; canals, flumes and pipelines; flood control facilities and irrigation projects.

(t) Fish and wildlife habitat management and any accessory uses including a dwelling or mobile home.

(u) An expansion of a mobile home park meeting the requirements of a permitted use under LC 16.231(2)(n) above and which does not exceed 50 percent of the area and number of mobile home spaces lawfully existing as of February 29, 1984, provided the expansion includes adequate provisions for access to and within the mobile home park and provided adequate provisions are made for sewerage and potable water.

(v) A mobile home park on property for which a conditional use permit for a mobile home park had previously been approved by Lane County and not denied on appeal to the State, provided:

(i) The previous conditional use permit was approved after January 1, 1982.

(ii) The proposed mobile home park is not substantially different than the one previously approved in LC 16.231(4)(v)(ii) above.

(iii) The application for the proposed mobile home park is received and accepted prior to January 1, 1982.

(iv) There are adequate provisions for access to and within the proposed mobile home park and adequate sewerage and potable water.

(5) Conditional Use Criteria. Uses conditionally permitted under LC 16.231(4) above are subject to compliance with the following criteria:

(a) Will not significantly impact existing uses on adjacent and nearby lands and other uses permitted in the zone in which the subject property is located.

(b) Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands.

(c) The proposed use is consistent with the policies contained in the Comprehensive Plan.

(6) **Area.** Land within the Rural Residential Zone shall be designated and adopted on the zoning map as RR-1, RR-2, RR-5 or RR-10, and the creation of a parcel or lot shall be subject to compliance with Lane Code Chapter 13 and the following minimum area requirements:

(a) RR-1: 1 acre
(b) RR-2: 2 acres
(c) RR-5: 5 acres
(d) RR-10: 10 acres

(e) In either RR-1, RR-2, RR-5 or RR-10, the minimum acreage may be less than required above and whatever size is necessary to accommodate uses specified in LC 16.231(2)(j) above.

(7) **Property Development Standards.** All uses or activities permitted or conditionally permitted above shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines, except as provided below.

(b) Class 1 Stream and Riparian Vegetation Setbacks. No structure other than a fence or sign shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 50-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenace, Removal and Replacment of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area

than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) TConstruction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.231(7)(c)(i) above Where vegetation removal beyond that allowed in LC 16.231(7)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum ot 25 percent of existing natural vegetation may be removed from the setback area.

(iv The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of deed or diseased vegetation that poses a safety or health hazard.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Height. None

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(f) Parking. Off street parking shall be provided in accordance with LC LC 16.250.

DESTINATION RESORT ZONE (DR-RCP)

RURAL COMPREHENSIVE PLAN

16.232 Destination Resort Zone (DR-RCP).

(1) Purpose. The purpose of the Destination Resort Zone (DR-RCP) is:

(a) To recognize that large-scale, destination oriented, multi-use recreational facilities are appropriate in Lane County.

(b) To implement the policies of the Lane County Rural Area Comprehensive Plan which address Destination Resorts.

(c) To establish a procedure and standards for the development of Destination Resort facilities.

(2) Permitted Uses. The following uses and activities are permitted subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) Living accommodations, including lodges, hotels, motels, cabins, condominiums, single-family and multi-family dwelling units, and structures, such as garages normally subordinate to such accommodations, provided at least 75 percent of the living accommodations shall be for other than year-round residents.

(b) All manner of outdoor and indoor recreational facilities, including, but not limited to, golf courses, tennis courts, swimming pools, racquetball and handball courts, riding stables and trails, nature trails, and pathways for walking/running/bicycling, campgrounds or camps, and parks.

(c) Convention facilities and meeting rooms.

(d) When incidential to and together with the uses described in LC 16.232(2)(a),(b) and (c) above, the following uses;

(i) Restaurants, lounges and nightclubs.

(ii) Theaters and performing arts auditoriums.

(iii) Health clubs, spas and exercise studios.

(iv) Craft and art studios and galleries.

(v) Gift shops and rtail convenience stores.

(vi) Kennels as a service to resort guests only.

(vii) Commercial services and speciality shops to provide only for the needs of vacationers and visitors.

(viii) Airport or heliport.

(ix) First aid station or infirmary.

(x) Facilities necessary for utility service.

(xi) Sewer and water treatment plant.
(xii) Farm and forest uses.
(xiii) Personal services.

(3) Special Criteria and Conditions. Application for, and decisions concerning, the Destination Resort Zone shall follow the procedures and criteria defined in LC .16.400 for amendments to the Rural Comprehensive Plan. Conditions may be established in the approval of an application for the one, such conditions to be directed toward the zoning itself, the preliminary design of the proposed development or the final design/implementation of the proposed development. A means of ensuring compliance with such condiitons may be established, such as Letter of Credit, Bond, Assignment of Savings or Contact between the applicant and the County.

(4) Special Siting and Fire/Safety Standards for Structures. All structures within an approved Destination Resort Zone shall adhere to the following:

(a) Setbacks shall comply with LC 16.211(8)(a) of the F-2 zone.

(b) Shall maintain a fuel break 50 feet around each structure, and around the entire developed portion of the proposed development, in forested and agricultural areas where measurable fire hazard exits. Such fuel breaks may contain vegetation of a type which will not readily spread fire, and shall be continually maintained for their intended uses.

(c) Shall incorporate a fire suppression system acceptable to the local fire official and to the County.

(d) Shall incorporate fireproof and fire-resistant materials in structures to the maximum feasible extent.

(5) Other Property Development Standards. All uses or activities permitted or conditionally permitted above shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local-access road and 10 feet from all other property lines, except as provided below.

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure,

and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standards has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following strandards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.232(5)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.232(5)(c)(i) above cannot be avoided, the site shall be replaced during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazards.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Development Orientation. Any commercial, cultural or entertainment services provided as a part of the Destination Resort shall be contained within the development and shall not be oriented to public highways adjacent to the property. The buildings shall be designed to be compatible in appearance with the living

accommodations and shall be constructed of similar materials.

(e) Impact on Adjacent Properties. A Destination Resort shall not significantly alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the normal permitted uses of the surrounding properties. It shall not force a significant change in or significantly increase the cost of farming or forestry practices on nearby lands devoted to such uses.

(f) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be flashing or capable of movement.

(iii) Signs shall be of a design compatible with the surrounding natural area.

(iv) Signs shall be limited to 100 square feet in area.

(6) Area. The ratio of developed (structures, paved surfaces, facilities) to undeveloped land shall not exceed 50 percent.

HISTORIC STRUCTURES OF SITES COMBINING ZONE (/H-RCP)

RURAL COMPREHENSIVE PLAN

16.233 Historic Structures Of Sites Combining Zone (/H-RCP). LC 11.300-05 to -35 is incorporated as fully set forth with the following excpetions, and shall be designated on the zoning maps as /H-RCP:

(1) Delete LC 11.300-10.

(2) In LC 11.300-15, delete "...the Building and Sanitation Division of ..." and "...of Planning and Community Development."

(3) In LC 11.300-25, delete "LC 10.316" and insert in its place "LC 14.100".

NATURAL ESTUARY ZONE (/NE-RCP)

RURAL COMPREHENSIVE PLAN

16.234 Natural Estuary Zone (/NE-RCP). LC 10.225-05 to -30 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /NE-RCP:

(1) In LC 10.225-15, delete "LC 10.275" and substitute in its place "LC 16.248".

(2) In LC 10.225-15, delete "LC 10.280" and substitute in its place "LC 16.249".

(3) In LC 10.225-20(1), delete "LC 10.305" and substitute in its place "LC 16.251".

(4) In LC 10.225-20(2), delete "LC 10.305" and substitute in its place "LC 16.251".

(5) In LC 10.225-25, delete "LC 10.315-90" and substitute in its place "LC 16.252(8)".

CONSERVATION ESTUARY ZONE (/CE-RCP)

RURAL COMPREHENSIVE PLAN

16.235 Conservation Estuary Zone (/CE-RCP). LC 10.230-05 to -35 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /CE-RCP:

(1) In LC 10.230-15, delete "LC 10.275" and substitute in its place "LC 16.248".

(2) In LC 10.230-15, delete "LC 10.280" and substitute in its place "LC 16.249"

(3) In LC 10.230-20, second sentence, delete "LC 10.275" and substitute in its place "LC 16.248".

(4) In LC 10.230-20, second sentence, delete "LC 10.280" and substitute in its place "LC 16.249".

(5) In LC 10.230-25, delete "LC 10.315-90" and substitute in its place "LC 16.252(8)".

DEVELOPMENT ESTUARY ZONE (/DE-RCP)

RURAL COMPREHENSIVE PLAN

16.236 Development Estuary Zone (/DE-RCP). LC 10.235-05 to -35 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /DE-RCP":

(1) In LC 10.235-15, delete "LC 10.275" and substitute in its place "LC 16.248".

(2) In LC 10.235-15, delete "LC 10.280" and substitute in its place "LC 16.249".

(3) In LC 10.235-20, delete "LC 10.275" and substitute in its place "LC 16.248".

(4) In LC 10.235-20, delete "LC 10.280" and substitute in its place "LC 16.249".

(5) In LC 10.235-30, delete "LC 10.315-90" and substitute in its place "LC 16.252(8)".

SIGNIFICANT NATURAL SHORELANDS COMBINING ZONE (/SN-RCP)

RURAL COMPREHENSIVE PLAN

16.237 Significant Natural Shorelands Combining Zone (/SN-RCP). LC 10.240-05 to -75 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /SN/RCP:

(1) In LC 10.240-10(6), delete "/DMR Combining District" and substitute in its place "/DMS".

(2) In LC 10.240-65, delete "LC 10.305-20" and substitute in its place "LC 16.251".

PRIME WILDLIFE SHORELANDS COMBINING ZONE (/PW-RCP)

RURAL COMPREHENSIVE PLAN

16.238 Prime Wildlife Shorelands Combining Zone (/PW-RCP). LC 10.245-05 to -75 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /PW/RCP:

(1) In LC 10.245-45(2)(c), delete "/BD District LC 10.270" and substitute in its place "/BD Zone LC 16.243".

(2) In LC 10.245-65, delete "LC 10.305-20" and substitute in its place "LC 16.251".

NATURAL RESOURCES CONSERVATION COMBINING ZONE (/NRC-RCP)

RURAL COMPREHENSIVE PLAN

16.239 Natural Resources Conservation Combining Zone (/NRC-RCP). LC 10.250-05 to -75 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /NRC-RCP:

(1) In LC 10.250-45(2)(c), delete "LC 10.270" and substitute in its place "LC 16.243".

(2) In LC 10.250-65, delete "LC 10.305-20" and substitute in its place "LC 16.251".

RESIDENTIAL DEVELOPMENT SHORELANDS COMBINING ZONE (/RD-RCP)

RURAL COMPREHENSIVE PLAN

16.240 Residential Development Shorelands Combining Zone (/RD-RCP). LC 10.255-05 to -75 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /RD-RCP:

(1) In LC 10.255-45(2)(c), delete "LC 10.270" and substitute in its place "LC 16.243".

(2) In LC 10.255-65, delete "LC 10.305-20" and substitute in its place "LC 16.251".

SHORELANDS MIXED DEVELOPMENT COMBINING ZONE (/MD-RCP)

RURAL COMPREHENSIVE PLAN

16.241 Shorelands Mixed Development Combining Zone (/MD-RCP). LC 10.260-05 to -75 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as /MD-RCP:

(1) In LC 10.260-45(2)(c), delete "LC 10.270" and substitute in its place "LC 16.243".

DREDGE MATERIAL/MITIGATION SITE COMBINING ZONE (/DMS-RCP)

RURAL COMPREHENSIVE PLAN

16.242 Dredge Material/Mitigation Site Combining Zone (/DMS-RCP). LC 10.265-05 to -25 is incorporated as fully set forth,
with the following exceptions, and shall be designated on the zoning maps as /DMS-RCP:.

(1) In LC 10.265-15, fifth line, delete "LC 10.316" and substitute in ints place "LC 14.100".

(2) In LC 10.265-15, ninth line, delete "LC 10.317 and 10.318" and substitute in its place "LC 14.300".

BEACHES AND DUNES COMBINING ZONE (/BD-RCP)

RURAL COMPREHENSIVE PLAN

16.243 Beaches and Dunes Combining Zone (/BD-RCP). LC 10.270-05 to -95 is incorporated as fully set forth, with the following exceptions and shall be designated on the zoning maps as BD/RCP:

(1) In LC 10.270-90, delete "LC 10.315-90" and substitute in its place "LC 16.___".

(c) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters.

(d) Controlling filling, grading, dredging and other development, which may increase flood damage.

(e) Preventing or regulating the construction of flood barriers, which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(3) Lands to Which This Subchapter Applies. This subchapter shall apply to all areas of flood hazard within Lane County, and overlay the regulations of the underlying zone.

(4) Basis for Establishing Areas of Flood Hazard. Areas of flood hazard for Lane County under the jurisdication of the Rural Comprehensive Plan are areas designated as special flood hazard areas (A Zones) or areas within a floodway.

Special flood hazard areas and floodways are identified by the Federal Insurance Administration in a scientific and engineering report entitled "THE FLOOD INSURANCE STUDY FOR LANE COUNTY, OREGON UNINCORPORATED AREAS", with accompanying Flood Insurance Rate Maps (FIRM) and Flood Hazard Boundary Maps.

Flood hazard studies shall be adopted by Board Order, made a part of Lane Manual (LM 11.020) and filed in the office of the Department. Such studies shall form the basis for the administration and implementation of this subchapter.

These publications shall be used as the basis for determinating which flood district applies to the property. Where these publications fail to provide data sufficient to determine the applicble flood district, the applicable flood district shall be determined on the basis of the best available information.

Areas of flood hazard shall also include any land area designated by the Director as susceptible to inundation of water from any source where the above-referenced maps have not identified any special flood areas.

(5) Compliance. No structure shall hereafter be constructed, located, extended, converted or altered, nor shall any land be developed, subdivided or partitioned without full compliance with the terms of this subchapter and other applicable regulations.

(6) Abrogation and Greater Restrictions. It is not intended by this subchapter to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this subchapter imposes greater restrictions, the provisions of this subchapter shall prevail.

(7) Warning and Disclaimer of Libability. The degree of flood protection required by this subchapter is considered reasonable for regulatory purposes. Larger floods can occur on rare occasions. The flood height may be increased by human-made or natural causes, such as log jams and bridge openings restricted by debris. This subchapter does not imply that areas outside floodways

and floodway fringe district boundaries or land uses pemritted within such districts will be free from flooding or flood damages. This subchapter shall not create liability on the part of Lane County, or any officer or employee thereof, for any flood damages that may result from reliance on this or any administrative decision lawfully made thereunder.

(8) Required Permits. A permit shall be obtained before construction or development begins within any area of flood hazard established in LC 16.244(12)(a) below. Application for such permit shall be filed with the appropriate agency of government having jurisdiction over such development. Applications required by the Director shall include the following information:

(a) Where base flood elevation data has been provided:

(i) Elevation in relation to mean sea level, of the lowest flood (including basement) of all structures;

(ii) Elevation in relation to mean sea level to which any structure has been floodproofed;

(iii) Where required, certification by a registered professional engineer or architect that criteria specified in LC 16.244(11)(f) thru (h) and LC 16.244(12)(b) below have been met;

(iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development;C

(v) Plot plan drawn to scale showing the nature, location and dimensions and elevation referenced to mean sea level, of the area in question, including existing and proposed structures, fill, storage of materials and drainage facilities. Applicants shall submit certification by an Oregon registered professional engineer or land surveyor of the site's ground elevation and whether or not the development is located in a flood hazard district. If so, the certification shall include which flood hazard district applies, the location of the floodway at the site, and the 100-year flood elevation at the site. A reference mark shall be set at the elevation of the 100-year flood at the site. The location, description and elevation of the reference mark shall be includedin the certification; and

(vi) Any other information required by the Director.

(b) When base flood elevation data has not been provided by "THE FLOOD INSURANCE STUDY FOR LANE COUNTY, OREGON," the Director shall obtain, review and reasonably utilize any base flood elevation data available from a Federal, State or other source, in order to administer this subchapter.

(c) All building and mobile home placement permits shall also be reviewed to determine the flood hazard for the proposal. Where elevation data is not available, permits shall be reviewed to assure that the proposed construction will be reasonably safe from flood. Reasonableness shall be determined on the basis of the best available information on flood conditions affecting the land. The best available information may include, but shall not be limited to, the use of historical data, high water marks, etc.

(9) Designation of Administrator. The Director shall administer and implement this subchapter by granting or denying development permit applications in accordance with its provisions. The Director shall:

(a) Review all development applications to determine that the permit requirements of this subchapter have been satisfied.

(b) Review all development applications to determine that all necessary permits have been obtained from those Federal, State or Local governmental agencies from which prior approval is required.

(c) Ensure that all provisions of this subchapter are met.

(d) Obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(e) For all new or substantially improved floodproofed structures:

(i) Verify and record the actual elevation (in relation to mean sea level); and

(ii) Maintain the floodproofing certifications required in LC 16.244(8) above.

(f) Maintain for public inspection all records pertaining to the provisions of this subchapter.

(g) Notify adjacent communities and the Division of State Lands prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration upon request.

(h) Require that a program of periodic inspection and maintenance be provided with the altered or relocated portion of said watercourse so that the flood carrying capacity of the watercourse is not diminished.

(i) Make interpretation, where needed, as to exact location of the boundaries of areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in LC 14.500.

(j)tTAlleged errors of any requirement, decision or determination made by the Director in the enforcement or administration of this subchapter can be appealed pursuant to LC 14.500.

(10) Variance Procedures. Requests for variances to any standard, procedure or requirement of this subchapter shall be filed pursuant to LC 14.050 and shall be reviewed by the Hearings Official pursuant to LC 14.300.

(a) Criteria. In passing upon such applications, the Approval Authority shall consider all technical evaluations, all relevant factors and standards specified in other sections of this subchapter, and;

(i) The danger that materials may be swept onto other lands to the injury of others;

(ii) The danger to life and property due to flooding, debris or erosion damage;

(iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(iv) The importance of the services provided by the proposed facility to the community;

(v) The necessity to the facility of a waterfront location, where applicable;

(vi) The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

(vii) The compatibilty of the proposed use with existing and anticipated development;

(viii) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;

(ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(x) The expected heights, velocity, duration, rate of rise and sediment and debris transported by the floodwaters and the effects of wave action, if applicable, expected at the site; and

(xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(xii) Generally, variances may be issued for construction, development and substantial improvements to be erected on a parcel of land of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the 100-year flood level, providing that the criteria above have been fully considered. As the parcel size increases beyond one-half acre, the technical justification required for issuing the variance increases.

Upon consideration of the above factors and purposes of this subchapter, the Approval Authority may attach such conditions to the granting of variance as he or she deems necessary to further the purposes of this subchapter.

(b) Conditions of Variances. Upon consideration of the above criteria and purposes of this subchapter, the Approval Authority may attach such conditions to the granting of variances as he or she deems necessary to further the purposes of this subchapter.

(i) Variances may be issued for the reconsideration, rehabilitation or restoration of structures listed on the National Register of Historic Places of the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

(ii) Variances shall not be issued within any desigated floodway if any increase in flood levels during the base flood discharge would result.

(iii) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(iv) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(c) A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(v) Any applicant to whom a variance is granted shall be given written notice of the approval and any conditions of the variance. In cases where a variance is granted to allow construction with a lowest floor elevation below the 100-year flood

elevation, applicant will also be notified, in writing, that the cost of flood insurance will be commensurable with the increased risk resulting from the reduced lower floor elevation.

(c) Application. Application for a variance shall be made as provided by LC 14.050.

(d) Review Procedure. Applications for variances shall be reviewed by the Director pursuant to LC 14.100.

(e) Records. The Director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(11) **Provisions for Flood Hazard Reduction.** In areas of flood hazard, the provisions of LC 16.244-11(a) through (h) below shall apply.

(a) Anchoring.

(i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(ii) All mobile homes shall be anchored in accordance with standards of the State of Oregon Department of Commerce, Mobile Home Division.

(b) Construction Materials and Methods.

(i) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) Utilities.

(i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Public water systems which utilize wells for a source(s) shall be constructed such that the top well elevation is at least one foot above the 100-year flood elevation.

(ii) New and replacement sanitary systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharged from the systems into flood waters.

(d) Roads. Adequate provisions shall be made for accessibilty during a 100-year flood, so as to ensure ingress and egress for ordinary and emergency vehicles and services during potential future flooding.

(i) No road surface of any street, road or access road shall be at an elevation less than one foot below the base flood height.

(e) Subdivison and Partitioning Proposals.

(i) All subdivision and partitioning proposals shall be consistent with the need to minimize flood damage.

(ii) All subdivision and partitioning proposals shall have public utilities and facilities such as sanitary and storm sewers, gas, electrical and water systems located and constructed and maintained to minimize flood damage.

(iii) All subdivision proposals shall have adequate drainage to reduce exposure to flood damage, including returning water.

(iv) No portion of any stream or road surface in any subdivision shall be at an elevation less than one foot below the base flood heights. The road surface is that portion of a street or way available for vehicular traffic or where curbs are laid, the portion between curbs.

(v) 100-year flood elevation data shall be provided and shown on final partition maps and subdivision plats. Application must show the boundaries of the 100-year flood and floodway on the final subdivision plat.

(vi) A permanent monument shall be established and maintained on land partitioned or subdivided, showing the elevation in feet above mean sea level. The location of such monument shall be shown on the final partition map or subdivision plat.

(f) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have either:

(i) The lowest floor, including basement, elevated to a level at least one foot above the base flood height; or

(ii) Be floodproofed:

(a) As provided in State Structural Specialty Code, Chapter 56, to one foot above the base flood level so that the structure is watertight with walls substantially impermeable to the passage of water;

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

(iii) Be certified by an Oregon licensed registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Official as set forth in LC 16.244(8) above.

(g) Residential Construction. All residential construction and substantial improvements shall:

(i) Have the lowest habitable floor height (including basement) at least one foot above the base flood height.

(b) Be certified by an Oregon licensed registered professional surveyor, engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Official as set forth in LC 16.244(8) above.

(h) Mobile Home Standards.

(i) All mobile homes and approved mobile home additions shall:

(a) Have the lowest habitable floor height at least one foot above the base flood height and be certified by an Oregon licensed registered professional surveyor, engineer or architect that the standards of this subsection are satisfied, except mobile homes in existing mobile home parks. Such certifications shall be provided to the Official as set forth in LC 16.244(8) above.

(b) Be anchored with an approved tie down system to resist flotation, collapse or lateral movement, to standards set forth by the State of Oregon, Department of Commerce, Mobile Home Division.

(c) Alternative methods of anchoring may be utilized provided certification is provided by a licensed Oregon professional engineer or architect that the system is designed to conform to Federal anchor design load requirements as specified by the State of Oregon, Department of Commerce, Mobile Home Division.

(ii) For new mobile home parks and mobile home subdivisions; for expansions to existing mobile home parks and mobile home subdivisions; for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for mobile homes not placed in a mobile home park or mobile home subdivision, it shall be required that:

(a) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at least one foot above the base flood height;

(b) Adequate surface drainage and access for hauler are provided; and

(c) In the instance of elevation on pilings, that lots are large enough to permit steps, piling foundations are placed in stable

soil no more than 10 feet apart, and reinforcement is provided for pilings more than six feet above the ground level.

(iii) No mobile home shall be placed in a floodway district, except in an existing mobile home park or existing mobile home subdivision.

(12) Establishment of Flood Districts. Flood hazard areas of Lane County are hereby divided into the following districts:

100-Year Flood District
Floodway District

Criteria for determining district boundaries are set forth in LC 16.244(4) above.

(a) 100-Year Flood District. The following uses shall be permitted in the 100-Year District to the extent they are not prohibited by any other provision of this Chapter.

(i) Structures and substantial improvements designed for human occupancy provided the lowest habitable flood (including basement) elevation is at least one foot above the base flood height.

(ii) Other structures provided they are floodproofed or otherwise protected to an elevation at least one foot above the base flood height.

(iii) Subdivision and partitioning of land provided that the development meets the standards set forth in LC 16.244(11)(e) above.

(b) Floodway District. In the Floodway District, the following restrictions shall apply:

(i) Encroachments. Including, but not limited to, fill, new construction, substantial improvements and other development are not permitted unless an Oregon registered professional engineer or architect certifies that such encroachments (and cumulative like encroachments) when combined with all other existing and anticipated encroachments shall not result in any increase in flood levels during the occurrence of a base flood. If such certification is obtained, all construction development and substantial improvements shall comply with all applicable provisions of LC 16.244(11) above.

(ii) Subdivision and partitioning of land for residential purposes is prohibited if land is located entirely within the Floodway District.

(iii) No mobile home may be placed in the Floodway District, except in an existing mobile home park. Any mobile homes placed, or additions thereto, shall conform to standrds of LC 16.244(11)(h) above.

COMMERCIAL AIRPORT SAFETY COMBINING ZONE (/CAS-RCP)

RURAL COMPREHENSIVE PLAN

16.245 Commercial Airport Safety Combining Zone (/CAS-RCP).

(1) **Purpose.** The Commercial Airport Safety Combining Zone is applied to those lands adjacent to and within the Mahlon Sweet Field airport. The /CAS Combining Zone is intended to carry out the following purposes:

(a) Prevent the creation or establishment of obstructions that are a hazard to air navigation and flight.

(b) Prevent the creation or establishment of other hazards to air navigation and flight such as distracting light and glare producing surfaces, radio interference, smoke, steam and dust, areas which attract birds and hazards of a similar nature.

(2) **Applicability.** The Commercial Airport Safety Combining Zone is applied to those lands encompassed by the surfaces set forth and described in LC 16.245(4)(ii) below and diagramed in LC 16.245(5) below.

(3) **Use Limitations.** In the /CAS Combining Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /CAS Zone is combined:

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /CAS Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the height limitations of the various areas described in LC 16.245(4)(ii) below.

(b) No use may be made of land or water in such a manner as to create electrical interference with navigational signals or radio for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(4) **Surfaces Described.**

(a) Primary Surfaces.

(i) The Primary Surface is a plan longitudinally centered on the runway centerline and extending 200 feet beyond the ends of prepared runway surfaces. The width of the Primary Surface for each runway is the same as the width of the inner portion of the Approach Surface for that runway.

(ii) For purpose of this section, the centerpoints at the ends of each runway primary

surface shall be considered as having the following coordinates and elevations:

Runway	Centerpoint Coordinates		Centerpoint Elevation
	North	East	feet above sea level
16R-34L	909410	1286622	358.2
	902848	1286530	361.54
3-21	903976	1284706	365.1
	907764	1288797	359.9
16L-34R	907793	1290513	360.0
	9044165	1290501	370.0

(iii) The elevation at any point on the Primary Surface is the same as the elevation of the nearest point on the runway centerline. For purposes of this section, the runway centerline shall be considered as having a straightline grade between the two centerpoints for that runway as described in LC 16.245(4)ii) above.

(b) Runway 16R-34L Approach Surface. This runway is a precision instrument runway aligned in a north-south direction and is designated as a primary runway. The inner edge of the Approach Surfaces coincide with the width of the Primary Surface at the ends of Runway 16R-34L and are 1,000 feet wide. Each Approach Surface extends outward uniformly to a width of 16,000 feet from the Primary Surface, its centerline being a continuation of the runway centerline. Each Approach Surface extends outward and upward at a slope of 50 horizontal feet to one vertical foot beginning at the end of and at the same elevation as the Primary Surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline, thence slopes upward 40 horizontal feet to one vertical foot to an additional distance of 40,000 feet along the extended runway centerline.

(c) Runway 3-21 Approach Surface. This runway is a nonprecision instrument runway, aligned in an east-west direction and designated as a crosswind runway. The inner edge of the Approach Surfaces coincide with the width of the Primary Surface at the ends of Runway 3-21 and are 500 feet wide. Each Approach Surface extends outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the Primary Surface, its centerline being the continuation of the runway centerline. The Approach Surface extends outward and upward at a slope of 34 horizontal feet to one vertical foot, beginning at the end of and at the same elevation as the Primary Surface.

(d) Runway 16L-34R. This is a future runway to be aligned in a north-south direction and will be designated as a secondary runway. The inner edge of the Approach Surface coincides with the width of the Primary Surface

of the ends of Runway 16L-34R and are 250 feet wide. Each Approach Surface extends outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the Primary Surface, its centerline being the continuation of the runway centerline. The Approach Surface extends outward and upward at a slope of 20 horizontal feet to one vertical foot, beginning at the end of and at the same elevation as the Primary Surface.

(e) Transitional Surfaces. These surfaces are adjacent to the primary surfaces and the approach surfaces. The surfaces slope upward and outward seven horizontal feet to one vertical foot, beginning at the side of and at the same elevation as the Primary Surfaces and the Approach Surfaces, and extend to where they intercept the Horizontal Surface at a height of 150 feet above the airport elevation. Where the Runway 16R-34L Approach Surfaces pass through the Conical Surface, there are Transitional Surfaces sloping outward and upward seven horizontal feet to one vertical foot, beginning at the sides of and at the same elevation Approach Surface, and extending to where they intersect the Conical Surface. Where the Runway 16R-34L Approach Surface extends beyond the Conical Surface, there are Transitional Surfaces sloping outward and upward seven horizontal feet to one vertical foot, beginning at the sides of and at the same elevation as the Approach Surface, and extending to a horizontal distance of 5,000 feet measured horizontally from the edge of the Approach Surface and at right angles to the runway centerline.

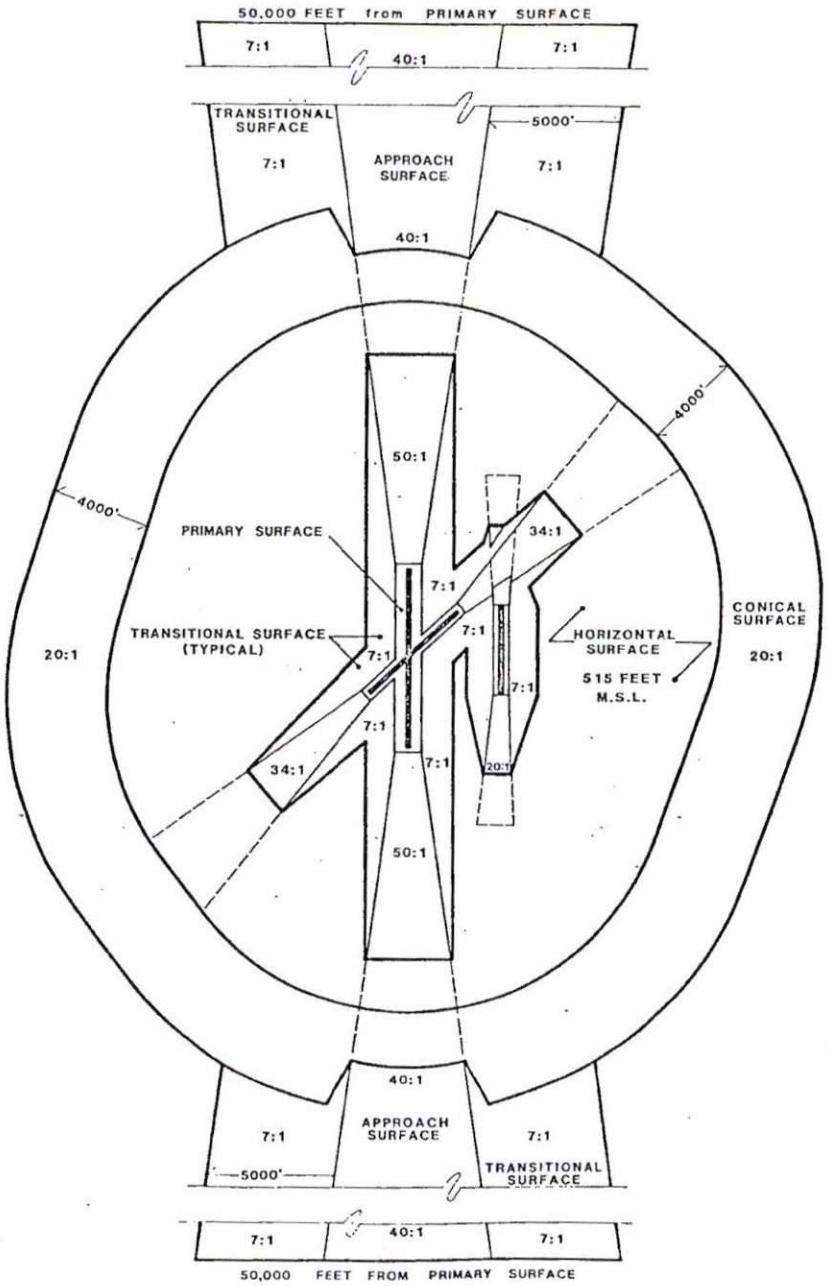
(f) Horizontal Surface. The Horizontal Surface is described by swinging arcs of 10,000 feet radii from the center of each end of the Primary Surfaces of Runway 16R-34L and Runway 3-21, and connecting the arcs with tangent lines. The Horizontal Surface is a horizontal plane 150 feet above the elevation of the airport and for purposes of this section shall be considered as having an elevation of 515 feet above mean sea level. The Horizontal Surface does not include the Approach and Transitional Surfaces.

(g) Conical Surface. The Conical Surface begins at the outer periphery of the Horizontal Surface and slopes outward and upward 20 horizontal to one vertical, starting at the elevation of the Horizontal Surface and extends outward a horizontal distance of 4,000 feet.

(5) **Marking and Lighting.** The owner of any existing structure or object that does not conform to the height limitations of this section shall be required to permit the installation, operation and maintenance thereon of such markers and lights as may be deemed necessary by the City of Eugene to indicate to the operators of aircraft in the vicinity of the airport, of the

presence of such aircraft obstructions. Such markers and lights shall be installed, operated and maintained at the expense of the City of Eugene.

(6) **Surfaces Diagramed.** The surfaces described in LC 16.245(4) above are as illustrated in the diagram below:



AIRPORT SAFETY COMBINING ZONE (/AS-RCP)

RURAL COMPREHENSIVE PLAN

16.246 Airport Safety Combining Zone (/AS-RCP).

(1) Purpose. The Airport Safety Combining Zone is applied to those lands adjacent to the Creswell Airport (Hobby Field), the Cottage Grove Airport, the Oakridge Airport, the McKenzie Airport and the Florence Airport. The /AS Zone is intended to safeguard land uses adjacent to these airports from noise and hazards associated with aircraft operations and to protect existing use and potential expansion of the airport itself from incompatible development. Specifically, the /AS Zone is intended to carry out the following purposes:

(a) Prevent the creation or establishment of obstructions that are a hazard to air navigation and flight.

(b) Prevent the creation or establishment of other hazards to air navigation and flight such as distracting light and glare producing surfaces, radio interference, smoke, steam and dust, areas which attract birds and hazards of a similar nature.

(c) Restrict new development of land uses not normally compatible with noise and safety hazards associated with airport operations.

(2) Applicability. The Airport Safety Combining Zone is applied to those lands adjacent to the Creswell Airport, the Cottage Grove Airport, the McKenzie Airport, the Oakridge Airport and Florence Airport which are encompassed by the surfaces set forth and described in LC 16.246(5) below and diagramed in LC 16.246(9) below. For purposes of this Chapter, the elevations of the five runways are established as follows:

(a) Cottage Grove - 641 feet above sea level.
(b) Creswell - 535 feet above sea level.
(b) Florence - 12 feet above sea level.
(c) Oakridge - 1419 feet above sea level.
(d) McKenzie - 1620 feet above sea level.

(3) Use Limitations. In a /AS Combining Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS Zone is combined:

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

(b) All structures and uses within the /AS Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airpot lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

(4) Uses Prohibited. The area lying beneath the Approach Surface beginning at the end of the Primary Surface and extending outward a horizontal distance of 1,000 feet shall be considered to be a clear zone. Within this clear zone, no structure or object, except for fences and navigational aids approved by the airport operator, shall be erected, placed, altered, allowed to grow or be maintained above the surface of the ground.

(5) Surface Described.

(a) Approach Surface. A surface longitudinally centered on the runway centerline, extending outward and upward from the ends of the primary surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge.

(b) Conical Surface. A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 4,000 feet. This surface rises from 150 feet above the runway and extends to a height of 350 feet above the runway.

(c) Horizontal Surface. A horizontal plan 150 feet above the airport runway, the perimeter of which is established by swinging arcs of 5,000 feet radii from the center of each end of the primary surface and connecting the arcs with tangent lines.

(d) Primary Surface. The Primary Surface is a plane longitudinally centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway surface and having a width of 250 feet. For

purposes of this subsection, the primary surface shall be considered as having the same elevation as its respective runway as the same are specified in LC 16.246(2) above. The centerpoints at the ends of each primary surface shall be considered as having the following coordinates:

	North Coordinate	East Coordinate
Cottage Grove Airport	787358	1331306
	790828	1331606
Creswell Airport	833934	1339698
	836415	1339781
Oakridge Airport	766146	1472836
	767325	1469017
McKenzie Bridge Airport	920159	1582521
	920810	1585438
Florence Airport	868731	1050341
	869823	1049883

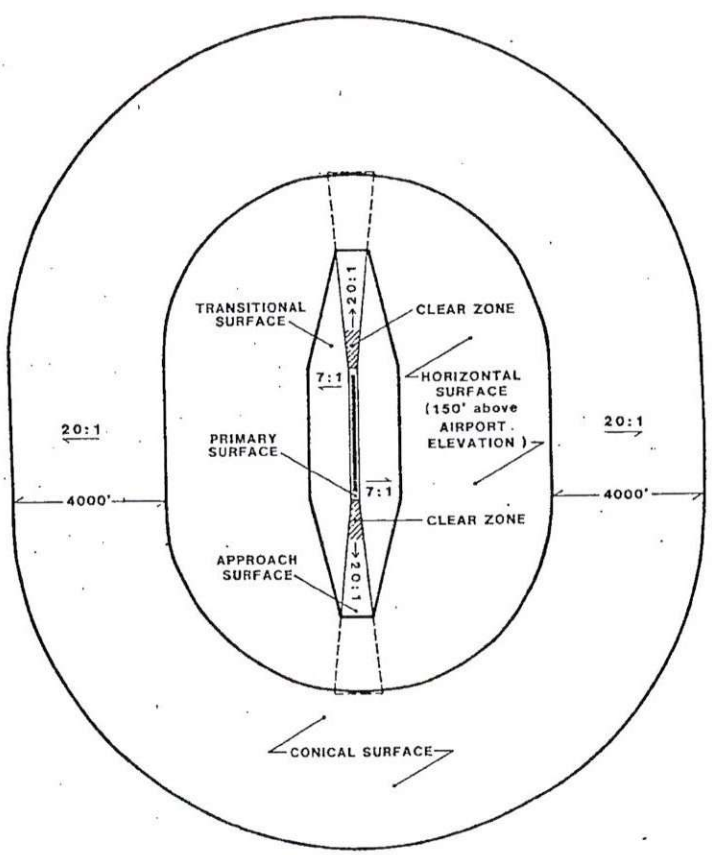
(e) Transitional Surfaces. These surfaces extend outward at 90 degree angles from the sides of the primary surface and Approach Surface at a slope of one horizontal foot to seven vertical feet to their intersection with the Horizontal Surface. This surface extends to a height of 150 feet above the runway.

(6) Marking and Lighting. The owner of any existing structure or object that does not conform to the height limitations of this subsection shall be required to permit the installation, operation and maintenance thereon of such markers and lights as may be deemed necessary by the airport operator to indicate to the operators of aircraft in the vicinity of the airport, of the presence of such aircraft obstructions. Such markers and lights shall be installed, operated and maintained at the expense of the airport operator.

(7) Special Requirements for Construction Permits. Within the area beneath the Approach Surface, no construction permit shall be issued for any building, mobile home or other structure designed and intended for human occupancy until the property owner has agreed to waive action against the County and the airport for noise, property damage or personal injuries resulting from activities connected with the airport. Such waiver shall apply only when such activities are conducted in conformance with rules and regulations of the airport and applicable Federal and State air regulations and no negligence on the part of the County or the airport is involved. The waiver shall be in a form prescribed by the Planning Director and shall be binding on the grantees, their heirs, assigns and successors in title.

(8) Area. Established by underlying, parent zone.

(9) **Surfaces Diagramed.** The surfaces described in LC 16.246(5) above are as illustrated in the diagram below:



AIRPORT OPERATIONS ZONE (AO-RCP)

RURAL COMPREHENSIVE PLAN

16.247 Airport Operatons Zone (AO-RCP). LC 10.200-05 to -23 is incorporated as fully set forth, with the following exceptions, and shall be designated on the zoning maps as AO-RCP.

(1) In LC 10.200-15, delete the first sentence and substitute in its place: "Airport related uses not specified in LC 10.200-10 above are special uses, subject to submittal of an application pursuant to LC 14.050 and approval of the application by the Hearings Official pursuant to LC 14.300."

(2) Insert the following subsection:

"-17. Special Use Approval Criteria. Uses allowed in LC 10.200-15 above must comply with the following criteria:

(a) Conformity with the Rural Comprehensive Plan for Lane County.

(b) The location, size, design and operating characteristics of the proposed use:

(i) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity.

(ii) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(iii) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(iv) Will not create a hazardous natural condition such as erosion, landslide, flooding."

16.248 Resource Capability Determination. LC 10.275-05 to -30 is incorporated as fully set forth, with the following exceptions, and shall become LC 16.248:

(1) In LC 10.275-15(2), delete "LC 10.280" and substitute in its place "LC 16.248".

16.249 Estuarine Impact Assessment. LC 10.280-05 to -20 is incorporated as fully set forth and shall become LC 16.249.

PARKING SPACE, HEIGHT, AREA, GENERAL BUILDING AND GENERAL LOT AREA AND WIDTH SETBACK REQUIREMENTS

RURAL COMPREHENSIVE PLAN

16.250 Parking Areas. Required garages and parking areas for residential and industrial development will be found under the zoning classification.

(1) Residential Properties. The regulations of this subsection are in addition to off street parking requirements of specific zones.

(a) When a single-family residence is located on a site inaccessible by automobile due to topographic conditions or excessive grades, a private garage or parking space shall not be required.

(b) Unless otherwise allowed by the zoning district, and exclusive of recreational vehicles, off street parking shall be limited to passenger cars, vans and pickups of not more than one ton manufacturer's capacity rating or comparable size. This size limitation does not apply to vehicles being used in conjunction with Rural Home Occupations.

(c) Commercial vehicles other than allowed by LC 16.250(b) above may be parked on residential properties only for reasonable periods of time for deliveries, structural repair and similar purposes.

(d) Recreational or utility vehicles, including, but not limited to, boats and boat trailers, campers and residential-type utility trailers, shall not be parked or stored on the property at any time in a location obstructing motorists' vision clearance of roadways.

(e) Unless otherwise allowed by the zoning district, off street parking areas shall not be used for the dismantling of any vehicle for the purpose of selling, trading or dealing in any manner with components thereof as a primary or secondary business.

(f) (i) Inoperable vehicles and parts thereof, junk or salvage materials may be visibly stored on the premises unless such storage interferes with the reasonable use and enjoyment of other lots within 300 feet of the lot use for storage. In that event, all automotive parts, junk, salvage material and all but one inoperable vehicle shall be stored in a location not visible from any adjacent road or from ground level of lots within 300 feet which are of similar elevation as the lot upon which the storage is taking place, or shall be screened to prevent such visibility. The allowable inoperable vehicle

may be stored within the structural setback area, but shall not be parked or stored at any time in a location obstructing motorists' vision clearance of roadways. Nothing in this subsection shall be construed as allowing storage within the front structural setback area except as otherwise allowed herein.

(ii) Names of residents filing complaints under provisions of LC 16.250(1)(f)(i) above shall be a matter of public record.

(g) Except as allowed by this Chapter, vehicles belonging to persons other than those residing on the lot shall not be stored or repaired for remuneration, traded, sold or offered for sale from the property. This includes vehicles left on consignment and vehicles owned temporarily primarily for resale. The sale of more than two vehicles per family member from one lot within a 12-month period shall be interpreted as "temporary ownership" unless the family member has owned said vehicles longer than 12 months.

(h) Storage of refrigerators, freezers or other airtight compartments containing more than one and one-half cubic feet shall not occur at any time until the doors have been removed or secured, latches removed or other precautions taken so the compartment can be easily opened from the inside. Any appliance stored in violation of this subsection may be removed by the County from the premises and stored elsewhere at the owner's expense, or other remedial action taken to secure immediate compliance.

(2) Nonresidential Private Parking.

(a Automobile parking space allowing 300 square feet per automobile (parking, plus driving space) shall be provided and maintained for any new or enlarged building as listed below:

(i) Churches, auditoriums, theaters, stadiums, clubs and business schools or similar places of assembly, at least one permanently maintained parking space for every four seats provided in said building or structure; provided that 50 percent of the require number may be supplied by off street parking facilities for other kinds of commercial establishments or uses not normally open, used or operated during the principal operating hours of the place of assembly.

(ii) For hotels and apartment hotels, at least one permanently maintained parking space for each of the first 20 individual guest rooms, and one additional parking space for every three guest rooms in excess of 20.

(iii) Auto courts shall provide at least one parking space for each lodging unit.

(iv) For fraternity, sorority and student houses, at least one parking space for each lodging unit.

(v) For hospitals and welfare institutions, at least one permanently maintained parking space for each 300 square feet of floor area.

(vi) Clinics shall provide at least two parking spaces for each consultation and operating room.

(vii) For business or commercial buildings or structures, at least one permanently maintained parking space for every 300 square feet or fraction thereof of floor space within the building, exclusive of automobile parking space.

(viii) Mortuaries shall provide parking spaces for all people employed therein, plus at least one parking space for each 200 square feet of building floor area.

(b) Parking spaces shall be on the lot with the main building or structure, or located not more than 800 feet therefrom.

(1) Loading Space. In addition to the 10-foot setback requirement from the centerline of the alley, every hospital, hotel, institution, commercial or industrial building hereafter erected or established which abuts upon an alley or is surrounded on all sides by streets shall have one permanently maintained loading space for commercial vehicles of not less than 10 feet in width and 22 feet in length for each 4,000 square feet of lot area or fraction thereof upon which the building is located; provided that not more than two such loading spaces shall be required.

(4) Public Parking Areas. Land hereafter used for public parking areas shall be developed according to the following standards:

(a) Asphaltic, concrete or other approved type of surfacing.

(b) Bumper guards where needed.

(c) An ornamental fence, wall or hedge enclosing the parking area to a height not less than three feet nor more than six feet, but adhering to the vision clearance and front and side yard setbacks established for the district in which it is located. Said fence, wall or hedge shall be maintained in good condition.

(d) When a parking lot adjoins property classified in an "R" District, the setback for the parking lot shall conform to the requirements for the adjacent "R" District and the parking lot shall be six feet in height.

(5) Height.

(a) Height limits established for the various zones or districts refer to the height of the building proper. Roof structures, such as housing for elevators, tanks, ventilating fans, towers, steeples, flagpoles, chimneys, smokestacks, wireless masts or similar structures, may exceed the height limit herein prescribed.

(b) On lots sloping downhill from the street, buildings may have an additional story, provided the ceiling of the lowest story is not more than two feet above the average curb level along the front of the lot.

(6) General Building Setback Requirements.

(a) Side Yard.

(i) No building or structure shall be hereafter erected or altered so that any portion thereof shall be nearer to the side lot line than the distance indicated under the District or Zone classification, except that eaves or cornices may extend over the required side yard for a distance of not more than two feet.

(ii) Fences, walls or hedges which tend to serve as a wall or yard enclosure may be maintained in a side yard, provided they do not exceed six feet in height.

(7) General Lot Area and Width Requirements.

(a) The site area requirements of Chapter 16 shall not apply to prohibit the erection of a single-family dwelling on a lot separately owned on or before January 8, 1969, or on any numbered lot in an approved and filed major or minor subdivision plat of record on or before January 8, 1969, except for the EFU, F-1 and F-2 Districts, where use of preexisting parcels is provided for in a different manner.

(b) The minimum area requirements of Chapter 16 shall not be construed to govern in situations where greater minimum area requirements are imposed or required by State law, State rules and regulations, the provisions of this Code, or other County rules and ordinances.

(c) Refer also to LC 13.050 to 13.105 Design and Development Standards for other lot area, width and depth requirements which may be applicable.

NONCONFORMING USES

RURAL COMPREHENSIVE PLAN

16.251 Nonconforming Uses. Except as is hereinafter provided in this Chapter, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Chapter or at the time of a change in the official zoning maps may be continued although such use does not conform with the provisions of this Chapter.

(1) Verification of Nonconforming Use. The verification of a nonconforming use may be obtained subject to Director approval pursuant to LC 14.100. Verification of a nonconforming use is required prior to requesting approval to increase, restore, alter or repair a nonconforming use. When evaluating a request for verification, the following criteria shall apply:

(a) To be valid, a nonconforming use must have been lawfully established prior to the enactment of an ordinance restricting or prohibiting the use.

(b) The use must have been in actual existence prior to the enactment of an ordinance restricting or prohibiting the use or have proceeded so far toward completion that a right to complete and maintain the use is deemed to have vested in the landowner.

(c) The nonuse of a nonconforming use of a structure or property for a period in excess of one year will prohibit the resumption of the nonconforming use.

The burden of proof for the verification of a nonconforming use is upon the applicant.

(2) Change in Nonconforming Use. A nonconforming use may be changed only insofar as it applies to the zone in which it is located. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.

(3) Increase of Nonconforming Use. A nonconforming use shall not be increased, except that permission to extend the use to any portion of a building or lot which portion was arranged or designed for such nonconforming use at the time of the passage of this Chapter may be granted subject to Director approval pursuant to LC 14.100.

(4) Vested Right. Nothing contained in this Chapter shall require any change in the plans, construction, alteration or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Chapter, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time construction was commenced.

(5) Discontinuance of Nonconforming Use. When a nonconforming use of a structure or property is discontinued for a period in excess of one year, the structure or property shall not thereafter be used, except in conformance with the zone in which it is located.

(6) Unlawful Use Not a Nonconforming Use. No unlawful use of property existing at the time of passage of this Chapter shall be deemed a nonconforming use.

(7) Restoration of Nonconforming Building or Structure.

(a) A nonconforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction may be resumed, provided that the restoration is commenced within a period of one year and is diligently prosecuted to completion and verification of the nonconforming use has been obtained.

() The restoration or reconstruction of a nonconforming building or structure may not increase the flood area or create a greater nonconformance than existed at the time of damage or destruction.

(8) Conveyance of Nonconforming Use. Nothing in this Chapter shall be construed to limit the sale, transfer, other conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer or other conveyance does not otherwise violate the provisions of this Chapter.

(9) Restoration of Conforming Use on Nonconforming Lot. Nothing in this Chapter shall be construed to prevent the reconstruction or replacement of a preexisting building or structure conforming as to use on a nonconforming lot, so long as such lot did not become nonconforming in violation of the provisions of this Chapter.

(10) Alterations or Repairs of a Nonconforming Use. Alterations or repairs of a nonconforming use may be permitted to continue the use in a reasonable manner subject to Director approval pursuant to LC 14.100 and consistent with the intent of ORS 215.130(5-8). Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.

(11) Criteria for Decision. When evaluating a proposal for increase, restoration, alteration or repair, the following criteria shall apply:

(a) The change in the use will be of no greater adverse impact to the neighborhood.

(b) The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood.

(c) Other provisions of this Chapter, such as property development standards, are met.

(12) Conditions of Approval. In order to assure compatibility of the proposed development with the surrounding area, any of the following conditions may be imposed as conditions of approval:

(a) Special yards and spaces.
(b) Fences and walls.
(c) Special parking and/or loading provisions.
(d) Street dedication and improvements or bonds in lieu of improvements.
(e) Control of points of vehicular ingress and egress.
(f) Special provisions for signs.
(g) Landscaping and the maintenance of grounds.
(h) Control of noise, vibration, odors or other similar nuisances.
(i) Limitation of time for certain activities.
(j) A time period in which a proposed use shall be developed.
(k) A limit of total duration of use.

PROCEDURES FOR ZONING, REZONING AND AMENDMENTS TO REQUIREMENTS

RURAL COMPREHENSIVE PLAN

16.252 Purpose. As the Comprehensive Plan for Lane County is implemented, changes in District and other requirements Of this Chapter will be required. Such Amendments shall be made in accordance with the procedures of this section.

(1) Criteria. Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the Zone District classification proposed, applicable Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures in this section.

(2) Initiation/Applicaton.

(a) By Planning Commission. The zoning of unzoned properties, the rezoning of properties and amendment of this Chapter may be initiated by the Planning Commission upon its own motion or upon petition by the Planning Commission upon request of the Board as provided in LC 16.252(2)(b) below.

(b) By Board. The zoning of unzoned properties, the rezoning of properties and the amendment of this Chapter may be initiated by the Board in the form of a request to the Planning Commissions that they consider the proposed zoning, rezoning or amendment.

(c) By Applicant. Application for the zoning or rezoning of properties may be made by any person as provided in LC 14.050.

(3) Moratorium on Permits and Applications-Legis-lative Matters.

(a) After any matter for zoning, rezoning or amendment to this Chapter affecting particular property has received tentative action by the Board, but has not yet become final and effective, no Zoning, Land Division or Building Code Application or request shall be accepted, granted, issued or approved, except as herein provided.

(b) After such final action, granting of pending or subsequent Applications or requests shall be in accordance with the requirements of the zoning classification or requirements as amended by the final action.

(c) The provisions of this subsection shall not be applicable to the issuance of Building, Plumbing Permits, or on-site sewage for normal repairs or corrections, nor shall the provisions apply when the proposed Application or request meets both the requirements of the existing zoning requirement and the proposed change or amendment, or to the approval of a final minor partition, a major partition map, or subdivision plant.

(4) Planning Commission Public Hearing and Notice -- Legislative Matters.

(a) The Planning Commission shall hold not less than one public hearing on each proposed legislative zoning or rezoning and amendment to the requirements of this Chapter.

(b) Notice of the time and place of hearing shall be given at least 10 days in advance by publication in a newspaper of general circulation in the County or in the territory concerned.

(c) The Planning Commission shall review the Application or proposal and shall receive pertinent evidence and testimony as to why or how the proposed change is inconsistent with the criteria provided in LC 16.252(1) above for zoning, rezoning and amendment to the requirements of this Chapter. The Commission shall determine whether the testimony at the hearing supports a finding that the proposal does or does not meet the required criteria, and shall recommend to the Board accordingly that the proposal be adopted or rejected. The Planning Commission and Board may hold one concurrent hearing.

(5) Review Procedures. Applications for zoning or rezoning of specific properties shall be heard by the Hearings Official pursuant to LC 14.300.

(6) Action by the Board.

(a) Unless the Board and Planning Commission hold a concurrent hearing, upon receipt of an affirmative Planning Commissoin recommendation for legislative matters provided in LC 16.252(5) above, the Board shall schedule a public hearing as provided in LC 16.252(6)(b) below. The Board may schedule such a public hearing in the absence of an affirmative Planning Commission recommendation.

(b) Prior to taking any action which would alter or modify a Planning Commission recommendation or Hearings Official's Order, the Board may first refer the proposed alteration or modification to the Planning Commission or Hearings Official for a recommendation. Failure of the Commission or Hearings Official to report within 20 days after the referral, or such longer period as may be designated by the Board, shall be deemed to be approval of

the proposed alteration or modification. It shall not be necessary for the Commission or Hearings Official to hold a public hearing on the proposed alteration or modification.

(7) Conditional Approval. The approving authority may impose reasonable conditions if the application is approved to be completed within one year.

(8) Official Zoning Map.

(a) The location and boundaries of the various zones established by this Chapter shall be shown and delineated on maps covering portions of the County. These maps, upon their final adoption, shall be known as the Official Zoning Map.

(b) The Zoning Map shall be established by ordinance. Subsequent amendments, either for establishing zoning for previously unzoned property or for rezoning may be made by Ordinance or Order of the Hearing Authority in accordance with the provisions of this section. Upon final adoption, the Zoning Map and all subsequent amendments thereto shall be filed with the County Recorder.

(i) Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.

(ii) Boundaries indicates as approximately following property lines shall be construed as following such property lines.

(iii) Boundaries indicated as approximately following the city limits shall be construed as following such city limits.

(iv) Boundaries indicated as following railroad lines and public utility shall be construed to be a midway between the main tracks or utility easements, whichever is applicable.

(v) Boundaries indicated as parallel to or extensions of features indicated in LC 16.252(8)(c)(i) through (iv) above shall be so construed.

(vi) Boundaries indicated as following shorelines shall be construed as following the ordinary low waterline, except where the body of water is specifically zoned Natural Estuary (/NE-RCP), Conservation Estuary (/CE-RCP) or Development Estuary (/DE, RCP) Zones in which case the boundary shall be construed as following the ordinary high waterline. In the event of a change of high or low waterline, the boundary will follow that line no matter how it shifts.

(vii) Where zones are separated by a body of water, the boundary between the zones shall be construed as being the centerline of such body of water. No matter how such centerline may shift, the boundary shall remain the centerline as shifted.

(viii) Except as hereinafter noted, where a zoning boundary divides an ownership of property, unless the same is indicated by dimensions, map coordinates, or digitized boundary or similar notation, the boundary shall be determined by the use of the scale appearing on the Zoning Map. In case of the /SN-RCP; /PW-RCP; /NRC-RCP; /RD-RCP; /MD-RCP; /DMS-RCP and /BD-RCP Combining Zones, and the/ NE-RCP; /CE-RCP and /DE-RCP Zones, the boundaries shall be determined through interpretation of the Coastal Resources Management Plan.

(ix) Where physical features existing on the ground are at variance with those shown on the Zoning Map, or in other circumstances not covered by LC 16.252(8)(c)(i) through (viii) above, the Planning Commission shall interpret the zone boundaries.

(9) Treatment of Vacated Property. Where a public street or alley is officially vacated, the Zone requirements applicable to the property to which the vacated area becomes a part shall apply to the vacated property.

(10) Error in Legal Description. Notwithstanding any other provision in this Chapter, where the sole basis for a zoning or rezoning, whether initiated by Application, the Planning Commission or the Board, is in error in a legal description, if applicable in the Ordinance or Order zoning or intended to zone the property, the zoning or rezoning shall be referred to the Planning Director for investigation and a report. After such investigation and report, the zoning or rezoning shall be considered in accordnce with the procedures for hearings provided in LC 16.252(4) and (5) above.

GREENWAY DEVELOPMENT PERMIT

RURAL COMPREHENSIVE PLAN

16.254 **Purpose.** To establish Greenway Development procedures for certain land use activities as required by the Statewide Willamette River Greenway Goal and the Lane County Willamette River Greenway Plan.

(1) **Definitions.** For the purposes of this subchapter, except as otherwise provided below, the definitions provided in LC 16.090 and the Goal adopted by the Oregon Land Conservation and Development Commission shall be used:

(a) Ordinary High Water. The high water level is defined as that high level of a river which is attained during mean annual flood. It does not include levels attained during exceptional or catastrophic floods. It is often identifiable by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in character in the soil, destruction or absence of vegetation not adapted for life in saturated soils or the presence of flotsam and debris. In the absence of identifying physical characteristics, ordinary high water may be determined by Step backwater analysis upon a two-year frequency flood as determined by the U. S. Army Corps of Engineers.

(b) Ordinary Low Water. The low watermark of a river is that point to which the waters normally recede when the volume of water is at its low level, not determined by the extraordinary year, and further means the line to which the Willamette River ordinarily recedes annually in season even though the elevation of that line may be higher as a result of the Corps of Engineers' flood control structures than would otherwise be the case without such structures. Submersible lands are also considered that land or bank area between the ordinary low and high waterline.

(c) Water Dependent Use. A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water.

(d) Water Related Use. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in public loss of quality in the goods or services offered. Except as necessary for water dependent or water related uses or facilities, residences, parking lots, spoil or dump sites, roads and highways, restaurants, businesses, factories and trailer

parks are not generally considered dependent on or related to water location needs.

(e) Greenway Development Permit; Permit. A permit authorized pursuant to this subchapter or pursuant to a permit authorized in accordance with the provisions of prior Greenway Permit Ordinances 4-76 and 11-76.

(f) Change of Use. Making a different use of the land or water than that which existed on December 5, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit has been issued as of December 5, 1975. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building. Landscaping, construction of driveways, modifications of existing structures or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for the purposes of this subchapter.

(g) Intensificaton. Any additions which increase or expand the area or amount of an existing use or the level of activity. Remodeling of the exterior of a structure is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit was issued as of December 5, 1975.

(h) Develop. To construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels or to create or terminate rights of access.

(i) Development. To act, process or result of developing.

(j) Boundaries. The boundaries for the Willamette River Greenway are those adopted by the Land Conservation and Development Commission in 1977, together with any changes when and as approved by LCDC.

(2) Uses and Activities Subject to Greenway Development Permits. Greenway Development Permits shall be required for new intensifications, change of use or developments allowed in applicable zones , including public improvements and including

partitions and subdivisions as defined in LC 13.020, which are proposed for lands within the boundaries of the Willamette River Greenway adopted and as revised from time to time by the Oregon Land Conservation and Development Commission, except as provided below:

(a) Where the location is within areas designated as "urban" on Greenway maps adopted by the Oregon Land Conservtion and Development Commission and is beyond 150 feet of the ordinary low waterline.

(b) Customary dredging and channel maintenance conducted under permit from the State of Oregon.

(c) Seasonal increases in gravel operations as provided under permit from the State of Oregon.

(d) The placing by a public agency of signs, markers, aids, etc. to serve the public.

(e) Activities to protect, conserve, enhance and maintain public lands, except that a substantial increase in the level of development of existing public recreational, scenic, historical or natural uses on public lands shall require review as provided by this subchapter.

(f) Erosion control operations required in emergency situations for the safety and protection of property.

(g) Construction or use of a building other than a dwelling whether or not within 150 feet of the ordinary low waterline when the building is customarily provided in conjunction with a farm use, provided the structure does not exceed 12 feet in height nor exists for longer than six months.

(h) Farm use.

(i) Reasonable emergency procedures necessary for the safety or protection of property.

(j) Maintenance and repair usual and necessary for the continuance of an existing use. Landscaping, construction of driveways, modification of existing structures or facilities adjacent to a residence as are usual and necessary to such use and enjoyment.

(k) The propagation of timber or the cutting of timber which is done for public safety or personal noncommercial use or where the harvest is consistent with an approved permit under the Forest Practices Act:

(i) for a farm woodlot of less than 20 acres, or

(ii) consistent with recommendations made by Oregon Department of Transportation to Oregon Department of Forestry which are designed to address criteria set forth in Statewide Goal 15, sections c-h.

(l) Irrigation pumps and water intakes and other utility lines in conjunction with an agricultural use.

(m) Uses which are pursuant to one of the following Lane County Land Development actions when such action has been approved or adopted consistent with the Greenway Development Permit approval requirements of 16.254(3) below and notification requirements of LC 16.252(6) below.

(i) Planned Unit Developments, as provided in 10.700.

(ii) Unzoned Area Development Permits, as provided in LC 9.700.

(3) Greenway Development Permit Approval. A decision to approve a Greenway Development Permit shall require findings that the proposed intensification, change of use or development conforms to the following criteria, guidelines and setback requirements"

(a) Criteria.

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the reestablishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) A development which is mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway.

(b) Guidelines. Affirmative findings of compatibility with the Willamette River Greenway based upon due consideration and the relative importance of the following applicable guidelines:

(i) Preservation and maintenance of land designated "agriculture" in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.

(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.

(iii) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resources.

(iv) Preserve areas of annual flooding, floodplains and wetlands.

(v) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.

(vi) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsujptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.

(vii) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses such as: domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.

(viii) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terraces bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(ix) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.

(x) Minimize vandalism and trespass.

(xi) Location of nonwater dependent and nonwater related development away from the river.

(xii) Protection from erosion.

(xiii) Compatibility with the site and surrounding area.

(xiv) Protection of significant fish, wildlife habitat and natural areas.

(xv) Protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan.

(c) Setback Requirement; Exceptions. New intensificatins, developments and changes of use shall be set back 100 feet from ordinary high waterline of the river, except for those in conjunction with a water related or water dependent use. Exceptions to this requirement shall be allowed when affirmative findings are made to satisfy the following criteria:

(i) The proposal would provide better protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway than would occur by observance of the setback requirement; or

(ii) The protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway are not applicable to the proposal.

(4) Conditions. Reasonable conditions may be imposed in connection with a Greenway Development Permit as necessary to meet the purposes of this subchapter. Guarantees and evidence may be required that such conditions will be or are being complied with. Such conditions may include, but are not limited to, requiring:

(a) Special yards and spaces.

(b) Fences and walls.

(c) Special off street parking and loading requirements.

(d) Street and road dedications and improvements (or bonds).

(e) Control of points of vehicular ingress and egress.

(f) Special provisions on signs.

(g) Landscaping and maintenance thereof.

(h) Maintenance of grounds.

(i) Control of noise vibration, odors or other similar nuisances.

(j) A time period within which the proposed use shall be developed.

(k) A limit on total duration of use.

(l) Control of scale, bulk and coverage of proposal.

(5) Application and Review Procedure. Application for a Greenway Development Permit shall be made as provided by LC 14.040 and reviewed by the Hearings Official as provided by LC 14.300.

(6) Additional Notice. Immediate notice of an application shall be given the State Department of Transportation by certified mail, return receipt requested, and provision shall be made to provide notice to any individual or group requesting notice in writing.

(7) Conflicting Provisions. In the case of any conflict between the provisions of this subchapter and other provisions in Lane Code, the more restrictive provisions shall apply.

(8) Nonauthority for Public Use of Private Property. Nothing in this subchapter is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in accordance with law to authorize such use.

(9) Nonconforming Uses. Except as modified in this section, LC 16.251(1) to (8) shall apply to properties within the Willamette Greenway Boundaries. Any change or intensification as those terms discussed in LC 16.254(1)(f) and (g) above of a nonconforming use shall be prohibited unless a Greenway Development Permit is issued for it.

TEMPORARY PERMITS

RURAL COMPREHENSIVE PLAN

16.255 Temporary Permits.

(1) Purpose. The purpose of the Temporary Permit procedure is to allow on an interim basis:

(a) Temporary uses in undeveloped areas of the County not otherwise allowable in the applicable Zone.

(b) Use of existing structures designed and intended for a use not allowable in a Zone and not otherwise a Nonconforming Use, and

(c) Erection of Temporary structures for activities necessary for the general welfare of an area,

provided such uses and activities are consistent with the intent of this Chapter.

No temporary Permit can be granted which would have the effect of permanently rezoning and granting a special privilege not shared by other property in the same Zone.

(2) Allowable Temporary Uses, Criteria, and Limitations.

(a) The following are allowable Temporary Uses and may be permitted in any Zone, subject to the following criteria and limitations:

(i) A different use for existing structures or structures and premises in a combination which are occupied or have been occupied by a Nonconforming Use, provided it is determined by the Hearings Official that the character and nature of the proposed use will be less incompatible to the surrounding vicinity than the existing or previous Nonconforming Use.

(ii) Use of existing structures and premises which are designed and intended for a use which is not allowable in the applicable Zone and new structures and premises and use thereof necessary for the physical and economic welfare of an area, provided it is determined by the Hearings Official that the location, size, design and operating characteristics of the proposed use and new structure, if applicable:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity; and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity.

(iii) Open land uses which do not involve structures with a combined value in excess of $1,000, provided it is determined by the Hearings

Official that the location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity.

(b) In applying the criteria for allowable Temporary Uses provided in LC 16.255(2) above

(b) In applying the criteria for allowable Temporary Uses provided in LC 16.255(2)(a)(i) and (ii) above, consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.

(c) No structural alterations may be made to a Nonconforming structure to be utilized by a Temporary Use which would materially prolong the economic life of the structure.

(d) Where new structures and use thereof and new open land uses are permitted, the premises shall be required to be restored to the prior state within three months of the termination of the Permit. A performance bond shall be required, if determined necessary by the Hearings Official, at the time of approval in sufficient amount to cover the estimated cost such restoration.

(e) Temporary Permits for any one Permit shall be approved for a maximum of five years.

(3) **Conditions.** Reasonable conditions may be imposed in this section. Guarantees and evidence may be required that such conditions will be or are being complied with. Such conditions may include, but are not limited to, requiring:

(a) Special yards and spaces.

(b) Fences and walls.

(c) Control of points of vehicular ingress and egress.

(d) Special provisions on signs.

(e) Lanscaping and maintenance thereof.

(f) Maintenance of the grounds.

(g) Control of noise, vibrations, odors or other similar nuisances.

(h) Limitation of time for certain activities.

(i) A time period within which the proposed use shall be developed.

(j) A limit on total duration of use.

(4) Application. Application for a Temporary Permit shall be made as provided by LC 14.050.

(5) Review Procedure. Applications for Temporary Permits shall be reviewed by the Hearings Official pursuant to LC 14.300.

VARIANCES

RURAL COMPREHENSIVE PLAN

16.256 Variances.

(1) Scope. Variances to a requirement of this Chapter with respect to dimensions, setback, yard uses, lot coverage, height of structures, vision clearance, fences and walls, and other quantitative requirements may be approved by the Planning Director if:

(a) An application is submitted pursuant to LC 14.050.

(b) The application is reviewed pursuant to LC 14.100.

(c) The application complies with the criteria of LC 16.256(2) below.

(2) Criteria.

(a Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity which result from lot size or shape, topography or other circumstances over which the property owner, since the enactment of this Chapter, has had no control.

(b) The variance is necessary for the preservation of a property right of the applicant which is the same as that enjoyed by other property owners in the same zones in the area.

(c) The variance would conform with the purposes of this Chapter and would not be materially detrimental to property in the same zone or vicinity in which the property is located, or otherwise conflict or reasonably be expected to conflict with the Comprehensive Plan.

(d) The variance requested is the mionimum variance which would alleviate the difficulty.

(e) The variance is not the result of a self-created hardship.

(f) The variance would not have the effect of rezoning and granting a special privilege not shared by other property in the same zone.

SITE REVIEW PROCEDURES

RURAL COMPREHENSIVE PLAN

16.257 Site Review Procedures.

(1) Purpose. It is the purpose of this section to establish a site review permit procedure for specified uses or applications requiring comprehensive review of proposed site development in orer to encourage the most appropriate development of the site compatible with the neighborhood, to prevent undue traffic and pedestrian hazards or congestion, to reduce adverse impacts upon public facilities and services, and to provide a healthful, stable, efficient and pleasant on-site environment.

(2) Site Review Permits Required. A Site Review Permit shall be required when:

(a) Nonresidential uses, except those customarily provided in conjunction with farm uses, are proposed for properties where the proposed uses and/or structures are within 200 feet of the boundaries of an RR-RCP; RA-RCP; R-2-RCP; RG-RCP or RP-RCP zone.

(b) Incidental to conditional approval to rezone as provided in this Chapter.

(c) Incidental to any Zoning or Rezoning Application approval when it is determined by the Board, Planning Commissin or Hearings Official that a Site Review Permit would be necessary to ensure that such approval would be consistent with the intent and purposes of this Chapter.

(d) Incidental to an expansion of a Nonconforming Use of land and structures as permitted in this Chapter.

(e) Superceded provisions of this Chapter for property zoned with an Architectural Control ("X") suffice require approval of initial plans, or approval of a modification of or addition to approved plans.

(f) A Zone in this Chapter specifically requires a Site Review Permit for uses permitted outright or conditionally in said Zone.

Any properties requiring a Site Review Permit pursuant to LC 16.257(2)(c) above shall be designated "SR" in the amending Ordinance or Order, on a map attached as an exhibit to the Ordinance or Order, and on the Zoning Map, as applicable.

No Building Permit shall be issued until a Site Review Permit has been obtained as required by this section. Further, said Building Permit can be issued only for development as approved according to the Site Review Permit requirements.

(3) Site Review Permits Not Required. It is not necessary to require a Site Review Permit when:

(a) The proposed uses or improvements are for a residential use or a use customarily provided in conjunction with a farm use.

(b) A Conditional Use Permit or Special Use Permit is required for the proposed uses or improvements.

(c) The proposed uses or improvements are located at least 200 feet from all exterior boundaries of the subject property.

(d) The proposed improvement is a sign for a use permitted by the parent zone and such sign is not illuminated, does not occupy more than 100 square feet in sign surface area on one side, is of no greater height than the primary buildings on the same property, and is not within the structural setback area designated by Lane Code Chapters 10 and 15.

(e) When the proposed use or improvement is a minor addition to an existing commercial or industrial use or improvement where the minor addition does not exceed 25 percent of the area of the existing use and will not be closer to a property line than the closest portion of the existing structures meeting legal setbacks required by the appropriate zone. For purposes of this section, the area of the existing use shall be calculated by including all improvements, on-site private drives and outside areas which are a part of the use (such as off street parking and loading areas and outside storage areas.)

(4) Criteria for Site Review Evaluation. The following minimum criteria should be considered in evaluating Site Review Applications:

(a) That the location, design, size, shape and arrangement of the uses and structures are sufficient for the proposal intent and are compatible with the surrounding vicinity.

(b) That there is no unnecessary destruction of existing healthy trees or other major vegetation, and that due consideration is given to the preservation of distinctive historical or natural features.

(c) That the quantity, location, height and materials of walls, fences, hedges, screen planting and landscape areas are such that they serve their intended purpose and have no undue adverse effect on existing or contemplated abutting land use.

(d) That suitable planting of ground cover or other surfacing is provided to prevent erosion and reduce dust.

(e) That the location, design and size of the uses are such that the residents or establishments to be accommodated will be adequately served by community facilities and services or by other facilities suitable for the intended uses.

(f) That, based on anticipated traffic generation, adequate additional right-of-way and road improvements must be provided by the development in order to promote traffic safety and reduce traffic congestion. Consideration shall be given to the need and feasibility of widening and improving abutting streets to specifications of Lane Code, Chapter 15, "Roads", and also to the necessity for such additional requirements as lighting, sidewalks and turn and deceleration/acceleration lanes.

(g) That there is a safe and efficient circulation pattern within the boundaries of the development. Consideration shall include the layout of the site with respect to the location and dimensions of vehicular and pedestrian entrances, exists, drives, walkways, buildings and other related facilities.

(h) That there are adequate off street parking and loading/unloading facilities provided in a safe, efficient and pleasant manner. Consideration shall include the layout of the parking and loading/unloading facilities and their surfacing, lighting and landscaping.

(i) That all signs and ilumination are in scale and harmonious with the site and area.

(j) That adequate methods are provided to ensure continued maintenance and normal replacement of facilities, landscaping and other improvements, etc. that are required by Site Review Permit.

(5) Conditions. Reasonable conditions may be established in connection with a Site Review Permit as deemed necessary to secure the purpose and requirements of this section. Guarantees, evidence, dedications or bonding may be required to ensure that such conditions will be met.

(6) Applicatoin. Application for a Site Review shall be made as provided by LC 14.050.

(7) Review Procedure. Applicatins for Site Reviews shall be reviewed by the Director pursuant to LC 14.100.

SUBDIVISION AND DIRECTION SIGNS

RURAL COMPREHENSIVE PLAN

16.259 Subdivision and Direction Signs.

(1) Standards.

(a) Subdivision signs announcing the division and improvement of property may be erected within the platted subdivision area as follows:

(i) For the first acre or fraction thereof: One sign not exceeding 64 square feet, which may have a surface area on a single-face sign of 64 square feet or a surface area on a double-face sign of 128 square feet.

(b) Two directional signs, each being six square feet or less, being either single- or double-faced, may be erected outside the platted subdivision area, not within the public right-of-way.

(c) No sign shall be constructed, erected or maintained which:

(i) Bears or contains statements, words or pictures of an obscene, indecent or immoral character, such as will offend public morals or decency.

(ii) Purports to be or is an imitation of, or resembles an official traffic sign or signal, or which bears the words "STOP", "GO SLOW", "CAUTION", "DANGER", "WARNING" or similar words.

(iii) By reason of its size, location, movement, content, coloring or manner of illumination may be confused with or construed as a traffic control device, or which hides from view any traffic of street sign or signal.

(iv) Advertises or publicizes an activity, business product or service no longer conducted on the premises upon which such signs are maintained.

(v) Carries a message on a rotating or moving part. Only minor decorative parts of signs may move or rotate.

(v) Uses banners, flags, posters, pennants, ribbons, streamers, strings, light bulbs or spinners.

(2) Procedure. A request for a permit to erect a sign or signs in accordance with the provisions of this section may be initiated by submitting an application in writing, on a standard form issued by the Planning Director, duly signed by the applicant and filed with the Planning Department.

CLUSTER SUBDIVISIONS

RURAL COMPREHENSIVE PLAN

16.260 Cluster Subdivisions.

(1) Purpose. Cluster subdivisions are explicitly permitted and encouraged by various zones as an alternative to standard subdivision development. They are intended to promote a more efficient use of land, retain more land in its natural state, reduce the overall land use impact of the subdivision process and reduce the amount of roads, services and facilities needed to serve a development.

(2) Applicability. Cluster subdivisions are permitted uses in the following zones: RR-RCP and RA-RCP.

(3) Permitted Uses.

(a) Mobile homes shall only be permitted in a cluster subdivision, if the zone applicable to the subdivision allows mobile homes as a permitted use.

(b) Two-family and multiple- family residences are permitted within a cluster subdivision provided they comply with the Development Standards of this subsection.

(4) Development Standards.

(a) Lot Density.

(i) The number of lots intended for dwellings or mobile homes within a cluster subdivision shall not exceed the density of zones and shall be determined by dividing the gross acreage by the minimum area requirement permitted by the zone.

(ii) In addition to lots intended for dwellings or mobile homes, a cluster subdivision may include a lot not intended for dwelling or mobile home use and intended for private open space and recreation purposes.

(b) Living Unit Density.

(i) A single living unit shall be considered to be a single-family dwelling, a mobile or one living unit with kitchen facilities and designed for the occupancy of one family, but sharing a common foundation, walls and roof with one or more other units in a duplex or multiple-family dwelling.

(ii) The ultimate number of living units permitted in a cluster subdivision shall be determined by multiplying the number of lots permitted for dwellings or mobile homes by:

(a) Two, if the zone permits duplexes; or

(b) One, if only single-family dwelling or mobile homes are permitted by the zone.

(iii) A cluster subdivision lot shall be limited to one of the following living units:

(a) A mobile home.

(b) A single-family dwelling.

(c) A two-family dwelling or duplex.

(d) A multiple-family dwelling.

(c) Setbacks and Lot Coverage.

(i) Except for the setback requirements of the zone for the exterior boundaries of the cluster subdivision, the setback and lot coverage requirements of the zone shall not apply.

(ii) Where cluster subdivision lots intended for dwellings or mobile homes abut a zone which does not permit a cluster subdivision, a special building setback may be established for one or more lots. Special building setback requirements shall be established only for the purposes of reducing potential conflicts relating to fire, traffic, noise or similar human-made or natural hazards, nuisances and for protection of natural resources and open space. The special building setback requirement may consist of, but is not limited to, the setback requirements of the abutting zone which does not permit cluster subdivisions.

(5) Applicaton and Additional Requirements. Cluster subdivisions shall be processed in the same manner and conform to the applicable provisions, standards and procedures as required for subdivisions as provided in LC Chapter 13.

AUTHORITY TO CHARGE FEES

RURAL COMPREHENSIVE PLAN

16.261 Authority To Charge Fees.

(1) The Department shall have the authority to charge fees for the purposes of defraying expenses involved in processing applications required by this Chapter.

(2) All fees are nonrefundable, except in cases when the processing of an application was terminated prior to the incurring of any substantial administrative expenses. Refunds shall be made for the amount of the fee remaining after the subtraction of processing expenses incurred by the Department.

ENFORCEMENT REQUIREMENTS

RURAL COMPREHENSIVE PLAN

16.262 Enforcement Requirements.

(1) Title, Purpose and Applicability. The provisions of this section shall be known as the Enforcement Requirements. The purpose of these requirements is to ensure compliance with the zoning requirements. These provisions shall apply to the enforcement of the zoning requirements, but shall not be deemed exclusive.

(2) Official Action. All officials, Departments and employees of Lane County vested with authority to issue permits, certificates or licenses, shall adhere to and require conformance with the zoning requirements.

(3) Inspection and Right of Entry. Whenever they shall have cause to suspect a violation of any provision of the zoning requirements, or when necessary to investigation of an application for or revocation of any zoning approval under any of the procedures prescribed in this Chapter, officials responsible for enforcement or administration of this Chapter, or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner. No secured building shall be entered without the consent of the owner or occupant unless under authority of a lawful warrant.

(4) Abatement. Any use which is established, operated, erected, moved, altered, enlarged, painted or maintained contrary to the zoning requirements shall be, and is hereby declared to be, unlawful and a public nuisance and may be abated as such.

(5) Enforcement Official. It shall be the duty of the Director of the Lane County Land Management Division, or said Director's duly authorized representative, to enforce the provisions of this Chapter pertaining to land use and to the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupance, equipment, use, height, area and maintenance of buildings or structures in the County. The enactment of this Chapter shall not invalidate any prior existing or future prosecutions for violation of the zoning requirements committed under previous applicable County ordinances then in effect.

(6) Legal Proceedings by District Attorney. In addition to the enforcement provisions of this Chapter, upon request of the Chief Building Inspector, the District Attorney or County Counsel may institute any additional proceedings, including, but not limited to, seeking injunctive relief to enforce the provisions of this Chapter.

(7) Enforcement by Department of Public Safety. The Director of the Department of Public Safety, or said Director's authorized representatives, shall have the power, upon request of the Chief Building Inspector, District Attorney or County Counsel, to assist in the enforcement of the provisions of this Chapter.

(8) Remedies Cumulative. It is the intent of this Chapter that the remedies provided be cumulative and not mutually exclusive.

VIOLATIONS

RURAL COMPREHENSIVE PLAN

16.263 Violations. Violations of any of the requirements of this Chapter constitute a County Infraction. Continued violations of this Chapter after 10 days from the mailing of notice of the violation by certified mail to the last known address of the alleged violator, and continued violations after an Order has been entered by the County Infractions Section for the same violation, constitute a separate County Infraction for each day the violation continues. The Director of the Lane County Land Management Division, Department of Public Works, or said Director's duly authorized representatives, shall have the authority to sign County Infraction complaints for violations of this Chapter.

LAND DIVISIONS

RURAL COMPREHENSIVE PLAN

16.300 Land Divisions.

(1) Relationship of Lane Code Chapter 13 into Lane Code Chapter 16. Lane Code Chapter 13 is the procedure for partitioning or subdividing lands under the jurisdiction of the Lane County Rural Comprehensive Plan with the following addition:

(a) Definitions. Abbreviations, terms, phrases, words and their derivatives shall be construed as specified in LC 16.090 instead of as specified in LC 13.010.

RURAL COMPREHENSIVE PLAN AMENDMENTS

RURAL COMPREHENSIVE PLAN

16.400 Rural Comprehensive Plan Amendments.

(1) Purpose. The Board shall adopt a Rural Comprehensive Plan. The general purpose of the Rural Comprehensive Plan is the guiding of social, economic and physical development of the County to best promote public health, safety, order, convenience, prosperity and general welfare. The Rural Comprehensive Plan shall be considered to be a dynamic policy instrument that can be modified to reflect changing circumstances and conditions as well as to correct errors and oversights. It is recognized that the Rural Comprehensive Plan affects the people of Lane County, and it is, therefore, important that the ability by individuals to propose amendments be free of restraint.

(2) Scope and Organization. The Rural Comprehensive Plan shall conform to the requirements of Statewide Planning Goals. The Rural Comprehensive Plan shall consist of components which shall be organized into categories by Plan type or geographic area as described in LC 16.400(3) below.

(3) Plan Categories.

(a) Rural Comprehensive Plan. This category includes all plans relating to lands beyond the Eugene-Springfield Metropolitan Area General Plan boundary and the urban growth boundaries of the cities within Lane County.

(b) Special Purpose Plan. This category includes Plans addressing a single or special need. The Plans may apply County wide or to a limited area.

(4) Rural Comprehensive Plan Described. The Rural Comprehensive Plan of Lane County shall consist of the following components:

(a) Rural Comprehensive Plan.

(i) General Plan Policies and Plan Designations applying throughout Lane County outside of the Metropolitan Area General Plan and outside of all urban growth boundaries (Adopted by Ordinance No. 883).

(b) Special Purpose Plans.

(i) Rural Transportation Plan (Adopted by Ordinance No. 3-80).

(ii) Willamette Greenway Plan (Adopted by Ordinance No. 783).

(iii) Parks and Open Space Plan (Adopted by Ordinance No. 850).

(iv) Solid Waste Management Plan (Adopted by Ordinance No. 771) (Amended by Ordinance No. 79-80).

(v) Coastal Resources Management Plan (Adopted by Ordinance No. 803) (Amended by Ordinance Nos. 862 and 876).

(vi) Siuslaw River Dredged Material Disposal Plan (Adopted by Ordinance 749) (Amended by Ordinance Nos. 861 and 877).

(vii) Housing Plan (Adopted by Ordinance No. 1-78).

(5) Interrelationship of Plan Components. New Comprehensive Plan components shall include a description of relationship to other Plan components within the respective Plan category and to the overall Rural Comprehensive Plan. Existing Plan components not containing such a description of relationship shall, at the next update of that Plan, be amended to include such a description.

(6) Plan Adoption or Amendment - General Procedures. The Rural Comprehensive Plan, or any component of such Plan, shall be adopted or amended in accordance with the following procedures:

(a) Referral to Planning Commission. Before the Board takes any action on a Rural Comprehensive Plan component, or an amendment to such Plan component, a report and recommendation thereon shall be requested from the County Planning Commission and a reasonable time allowed for the submission of such report and recommendation. In the event the Rural Comprehnsive Plan component, or amendment applies to a limited geographic area, only the Planning Commission having jurisdiction of that area need receive such referral.

(b) Planning Commission - Hearing and Notice.

(i) The Planning Commission shall hold at least one public hearing before making a recommendation to the Board on a Rural Comprehensive Plan component, or an amendment to such Plan component, and the hearing shall be conducted pursuant to LC 14.300.

(ii) Notice of the time and place of hearing shall be given, pursuant to LC 14.300.

(iii) If an exception to State Planning Goals is to be considered during the hearing, such exception shall be specifically noted in the notices of such hearing.

(iv) The proposed Rural Comprehensive Plan component, or an amendment to such Plan component, shall be on file with the Director and available for public examination for at least 10 days prior to the time set for hearing thereon.

(c) Planning Commission - Consideration With Other Agencies.

(i) In considering a Rural Comprehensive Plan component, or an amendment to such Plan component, the Planning Commission shall take account of and seek to harmonize, within the framework of the needs of the County, the Comprehensive Plans of cities, and the Plans and

planning activities of local, state, federal and other public agencies, organizations and bodies within the County and adjacent to it.

(ii) The Planning Commission, during consideration of a Rural Comprehensive Plan component or an amendment to such Plan component, shall consult and advise with public officials and agencies, public utility companies, civic, educational, professional and other organizations, and citizens generally to the end that maximum coordination of Plans may be secured.

(iii) Whenever the Planning Commission is considering a Rural Comprehensive Plan component, or an amendment to such Plan component, it shall be referred to the planning agency of every city and county affected to uniform them and solicit their comments.

(iv) The provisions of this subsection are directory, not mandatory, and the failure to refer such Plan, or an amendment to such Plan, shall not in any manner affect its validity.

(d) Planning Commission - Recommendation and Record.

(i) Recommendation of the Planning Commission on a Rural Comprehensive Plan component, or an amendment to a Plan component, shall be by resolution of the Commission and carried by the affirmative vote of not less than a majority of its total voting members.

(ii) The record made at the Planning Commission hearings on a Rural Comprehensive Plan component, or an amendment to such Plan component and all materials submitted to or gathered by the Planning Commission for its consideration, shall be forwarded to the Board along with the recommendation.

(e) Board Action - Hearing and Notice.

(i) After a recommendation has been submitted to the Board by the Planning Commission on the Rural Comprehensive Plan component, or an amendment to such Plan component, all interested persons shall have an opportunity to be heard thereon at a public hearing before the Board conducted pursuant to LC 14.300.

(ii) Notice of the time and place of the hearing shall be given pursuant to LC 14.300.

(iii) If an exception to Statewide Planning Goals is to be considered during the hearing, such exception shall be specifically noted in the notice of such hearing.

(iv) Hearings to consider amendments of the Plan Diagram that affect a single property, small group of properties or have other characteristics of a quasi-judicial proceeding shall be noticed pursuant to LC 14.300.

(f) Concurrent Consideration. The Board and Planning Commission may hold a single joint meeting to consider the proposed Plan amendment consistent with the requirements of LC 16.400(6)(e)(ii),(iii) and (iv) above.

(g) Board Referral. Before the Board makes any change or addition to a Plan component, or Plan component amendment recommended by the Planning Commission, it may first refer the proposed change or addition to the Planning Commission for an additional recommendation. Failure of the Planning Commission to report within 21 days after the referral, or such longer period as may be designated by the Board, shall be deemed to be approval of the proposed change or addition. It shall not be necessary for the Planning Commission to hold a public hearing on such change or addition.

(h) Method of Adoption and Amendment.

(i) The adoption or amendment of a Rural Comprehensive Plan component shall be by Ordinance.

(ii) The adoption or amendment shall be concurrent with an amendment to LC 16.400(4) above. In the case of a Rural Comprehensive Plan adoption, the Code amendment shall place such Plan in the appropriate category. In the case of a Rural Comprehensive Plan amendment, the Code amendment shall insert the number of the amending Ordinance.

(iii) The Board may amend or supplement the Rural Comprehensive Plan upon a finding that:

(a) The Plan component or amendment meets all requirement of local and state law including Statewide Planning Goals.

(b) The Plan amendment is made necessary by and error in the Plan, a change in circumstances pertaining to the Plan, a change in public policy, or a change in public need based on a reevaluation of the factors affecting the Plan.

(c) The proposed Plan component amendment is consistent with the unamended portions of the Plan component being amended.

(i) A change of zoning to implement a proposed Plan amendment may be considered concurrently with such amendment. In such case, the Board shall also make the final zone change decision, and the Hearings Official's consideration need not occur.

(7) Validation of Prior Action. The adoption of a Rural Comprehensive Plan component, or an amendment to such Plan component under the authority of prior acts, is hereby validated and shall continue in effect until changed or amended under the authority of these provisions.

(8) Additional Amendment Provisions. In addition to the general procedures set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components.

(a) Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:

(i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.

(ii) Major Amendment. Any amendment that is not classified as a minor amendment.

(b) Amendment proposals, either minor or major, may be initiated by the County or by individual application. Individual appliations shall be subject to a fee established by the Board and submitted pursuant to LC 14.050.

(9) Addition Amendment Provisions - Special Purpose Plans. In addition to the general provisions set forth in LC 16.400(6) above, the following provisions shall apply to any amendment of Rural Comprehensive Plan components classified in LC 16.400(4) above as Special Purpose Plans. Amendments to Special Purpose Plans may only be initiated by the County. Any individual, however, may request the Board to initiate such amendment. Requests must set forth compelling reasons as to why the amendment should be considered at this time, rather than in conjunction with a periodic Plan update. An offer to participate in costs incurred by the County shall accompany the request.

(10) Periodic Review of Plan Components. All components of the Rural Comprehensive Plan shall contain a provision requiring the Plan be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances. Any Plan component adopted under the authority of prior acts be assumed to require a review every five years.

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

June 28, 1984

The Honorable Peter DeFazio, Chairman
Board of Commissioners
Lane County Courthouse
125 East Eighth
Eugene, OR 97401

Dear Chairman DeFazio:

Enclosed is the Department's report on Lane County's request for Acknowledgment of Compliance with the Statewide Planning Goals. The Department's recommendation to the Commission is that your request be continued to the August 17, 1984 Commission meeting to complete necessary revisions to your plan and land use regulations for Goals 2, 3, 4, 7 and 11. The Department has found the plan to be thorough, innovative and well documented. Although we do not recommend acknowledgment at this time, the majority of the plan is in compliance. It is clear that the plan has significantly improved since the 1981 review, and that acknowledgment could be achieved in the near future.

The Commission will consider your acknowledgment request on July 19, 1984, at the State Capitol, Hearing Room E. You and other officials and citizens are welcome to attend this meeting and participate in the Commission's review of your acknowledgment request. The Department recommendation on Goals 5 and 15 has been postponed until the August 17, 1984 Commission meeting. However, the recommendation on these Goals will be available prior to the July 19 meeting. The Department is also recommending that the Commission hear all testimony on Goals 1-4, 5-14 and 15-18 at the July meeting, but postpone final action until the August meeting.

You have 10 calendar days from the date the attached report was mailed to file written exceptions to the report with the Commission at the Salem office (OAR 660-03-025(2)). We would urge you to send copies of any exceptions to commentors or objectors affected by exceptions.

Please contact your Field Representative, Bob Rindy at 378-4095, if you have any questions and for the time when your item will appear on the agenda.

Sincerely,

James F. Ross
Director

JFR:TMC:drw
9382B/9B

cc: Mayor, City of Eugene
Mayor, City of Springfield
County Planning Director
Planning Director, City of Eugene
Planning Director, City of Springfield
Bob Rindy, Field Representative
Glen Hale, Field Representative (Coastal)
Doug White, Lead Reviewer
Mike Rupp, Reviewer
Claire Puchy, Reviewer
Jim Knight, Special Assistant for Coordination
DLCD Library (2)
Portland Office
Coordinator
Objectors and Commentors

Please contact your Field Representative, Bob Rindy at 378-4095, if you have any questions and for the time when your item will appear on the agenda.

Sincerely,

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Portland Office
Coordinator
Objectors and Commentors

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:
July 19, 1984

I. REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow amendments to the plan to comply with Statewide Planning Goals 2-4, 7 and 11. The Commission should hear testimony on these issues July 19, 1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the Eugene/Springfield Metro Area General Plan under Goals 2 and 4. The Commission should not take final action on this until the August Commission hearing.

Recommends the Commission postpone consideration of Goals 5 and 15 for both plans until the August Commission hearing.

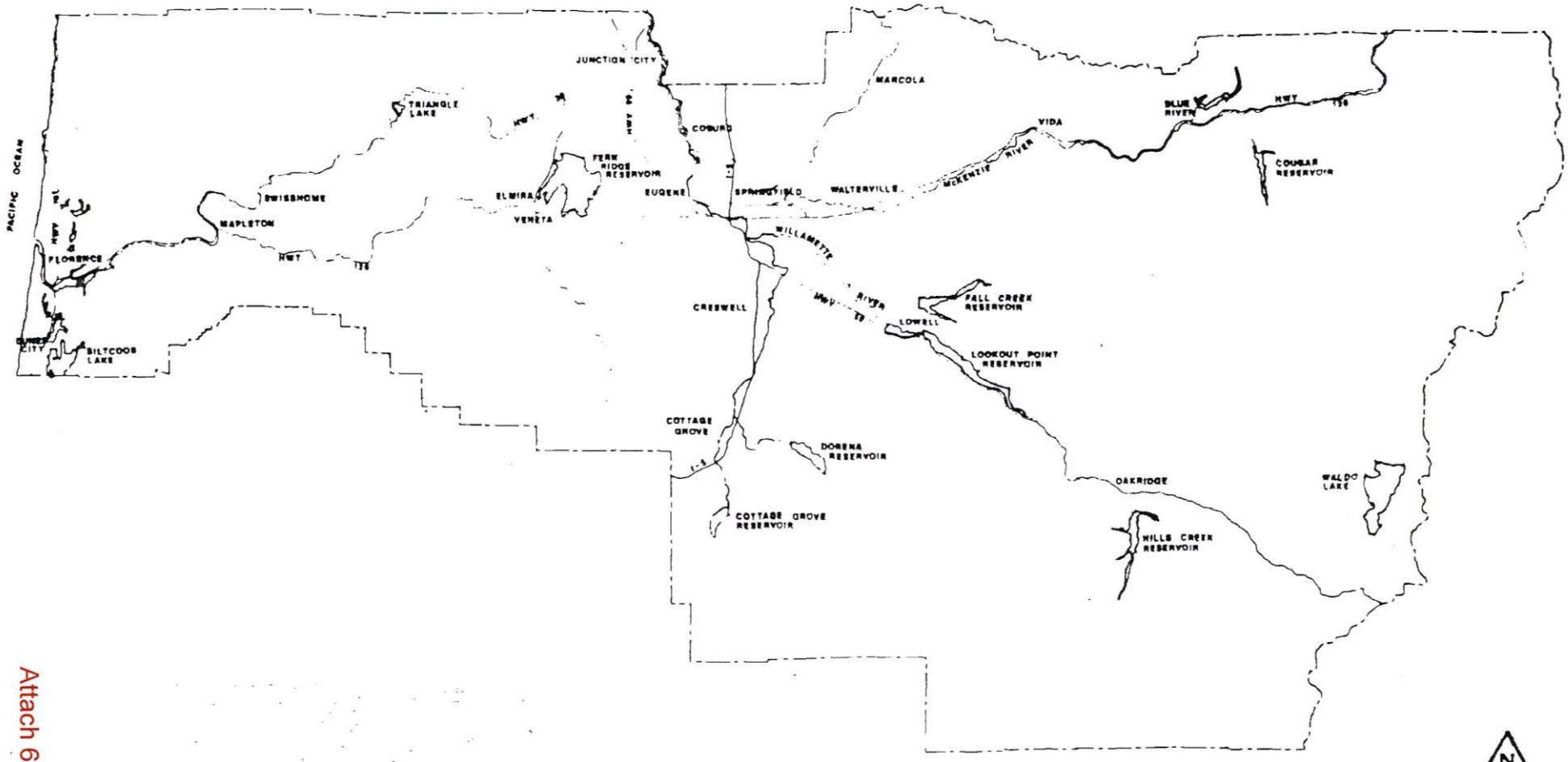
FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Doug White (Goals 2, 3, 6-10, 12-14)
Phone: 378-4926
Mike Rupp (Goals 4, 11)
Phil Quarterman (Goals 16-19)
Bob Rindy (Goals 1, 2)
Glen Hale (Destination Resort--Exception)

COORDINATOR: Gary Darnielle
Phone: 687-4283

Date of Report: June 29, 1984

BASE MAP OF LANE COUNTY



MAP 1

Attach 6 - Page 5

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III. BACKGROUND INFORMATION

Geography

Lane County is located at the southern end of the Willamette Valley and extends from the crest of the Cascades to the Pacific Ocean.

Governing Body

The County is governed by a five-member Commission elected from separate districts.

Population

2000 - 377,500 (projection)
1980 - 273,266 (102,200 unincorporated)
1976 - 240,792
1970 - 215,401
1960 - 162,890
1950 - 125,776
1940 - 69,096

Grants

Lane Count has received grant funds for the rural plan totaling 485,279 since 1975.

Resubmittal Plan Material

Document	Adopted	Ordinance
Working Papers (Factual Base):	2/29/84	PA 884
County Planning Process		
Citizen Involvement		
Marginal Land		
Agricultural Resources (incl. Addendum)		
Forest Resources (incl. Addendum)		
Historic Resources (incl. Addendum)		
Natural Resources:		
Flora and Fauna (incl. Addendum)		
Public Facilities		
Recreation		
Transportation		
Urbanization		
Energy Resources (incl. Addendum)		
Environmental Quality		
Economy		
Population		
Natural Resources:		
Minerals and Aggregate (incl. Addendum)		

Resubmittal Plan Material cont.

Document	Adopted	Ordinance
Water Resources Natural Hazards Housing Willamette Greenway (incl. Addendum) Coastal Goal Compliance		
Policies and Legislative Findings:	2/29/84	PA 883
Development Code, Chapter 16:	2/29/84	1-84
Nonresource Lands Findings	2/29/84	PA 884
Marginal Lands:	2/29/84	PA 884
Exhibit E. Renaghan Amendment:	2/29/84	PA 884
Plan Diagram Zoning Map:	2/29/84	PA 884
Exceptions to Goals Built and Committed Lands:	2/29/84	PA 884
Metro Area		
Amendments to the 1982 Metro Area Plan:		PA 885/886
1982 Metro Area General Plan including Metro plan update for exceptions, agricultural lands, and forest lands (March 1982)		

General Overview

Lane County has a long history of land use planning. A General Plan was adopted in 1972. Between 1974 and 1977, the County developed separate plans for each of 13 "sub-areas." These were incorporated into a revised General Plan adopted in 1980. The Commission denied the Lane County submittal in February 1981, stating:

> Goal deficiencies are in many cases major and widespread. Goal 2 failures touch nearly every requirement of the Land Use Planning Goals . . ." (Denial Report).

As this report demonstrates, planning in Lane County has made a quantum leap since 1981. The County has moved from 13 subarea plans into a consolidated policy document. This document is based on "Working Papers"--each containing detailed inventory and analysis information suporting the County's land use decisions and implementing ordinances.

The County has recently completed "digitizing" information on all land in the County. This will allow sophisticated computer generated maps and other data analyses. Since this process was not completed until very recently, the submital contained poor maps.

This report finds compliance with Goals 1, 6, 8-10, 12-14 and 16-18. Also, a major portion of the County's "exceptions" areas are recommended for approval, along with a significant portion of the County's forest lands (F-1 areas). It is staff's opinion that the work remaining for the County, under the recommendations of this report, could be acommplished in a very short time period.

This report also addresses the Eugene/Springfield Metro Area General Plan. The "urban" portion of that plan is acknowledged (i.e., that area inside the urban growth boundary). However, the Commission should note that Metro plan jurisdiction applies to rural areas outside the UGB and these areas are not under the Lane County Plan. Also the rural Metro Plan is under a continuance rather than a denial. Most of these continuance requirements have been met. However, some Goal 2 and 4 issues remain, necessitating an additional continuance for the rural Metro Plan as well.

Due to time constraints in completing this review for the July Commission meeting, Goals 5 and 15 reviews for both plans are not contained in this report. These reviews will be completed and distributed prior to July 19, 1984. However, the Commission will not be able to complete Goal 5 and 15 testimony on those Goals at that time due to notice requirements requiring distribution of this material three weeks prior to Commission action. Staff recommends that the Commission hear these Goal 5 and 15 issues at a subsequent hearing (August).

The Department recommends that the County's request be continued (but with postponement of final action until August) based on the following issues:

GOAL 2: Inadequate plan maps, plan/zone consistency problems and inadequate findings justifying built and committed exceptions.4

GOAL 3: Lack of plan amendment policy and inadequate findings and reasons for most areas designated Marginal Lands.

GOAL 4: Justification of minimum lot sizes is inadequate. Misapplication of the County's "Impacted Area" (F-2) Zone plan policy deficiencies for applying the F-1 and F-2 zones ordinance deficiencies in both the F-1 and F-2 Zones.

GOAL 7: Lack of implementing measures for developments in Geologic Hazard Areas.

GOAL 11: Lack of policy establishing appropriate levels of service in rural areas. Lack of assurances that authorized development in areas where subsurface sewage problems exist will not further aggrevate this problem.

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

July 19, 1984

The Honorable Peter DeFazio
Chairman, Board of Commissioners
Lane County Courthouse
125 East Eighth
Eugene, OR 97401

Dear Chairman DeFazio:

Enclosed is the Department's report on the Lane County and the Eugene/Springfield Metro area request for Acknowledgment of Compliance with Statewide Planning Goals 5 and 15. The Department's recommendation to the Commission is that your request be continued to the August 16-17, 1984 meeting to complete necessary revisions to your plan and land use regulations for Goals 5 and 15.

The Commission will consider your acknowledgment request on August 16 or 17, 1984, at the State Capitol. You and other officials and citizens are welcome to attend this meeting and participate in the Commission's review of your acknowledgment request. You have 10 calendar days from the date the attached report was mailed to file written exceptions to the report with the Commission at the Salem office (OAR 660-03-025(2)). We would urge you to send copies of any exceptions to commentors or objectors affected by exceptions.

Please contact your Field Representatives, Bob Rindy at 378-4095 or Glen Hale at 265-8869, if you have any questions and for the time when your item will appear on the agenda.

Sincerely,

James F. Ross
Director

JFR:TMC:tm/9780B/3B

cc: County Planning Director
City of Springfield
City of Eugene
Bob Rindy, Field Representative
Glen Hale, Field Representative
Claire Puchy, Lead Reviewer File
Doug White, Reviewer
Mike Rupp, Reviewer
Jim Knight, Special Assistant for Agency Coordination
DLCD Library(2)
Portland Office
Coordinator
Objectors and Commentors

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan
Goal 2--Nonresource Lands, Goal 5, Goal 15

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:
August 17, 1984

REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow amendments to the plan to comply with Statewide Planning Goals 2, 5, and 15. The Commission should hear testimony on these issues July 19, 1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the Eugene/Springfield Metro Area General Plan under Goals 2, 5, and 15. The Commission should not take final action on this until the August Commission hearing.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Mike Rupp (Goals 2--Nonresource Lands
Claire Puchy (Goals 5 and 15)
Phone: 378-4926

COORDINATOR: Gary Darnielle
Phone: 687-4283

Date of Report: July 19, 1984

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

This Goal 5 report is divided into two major parts. The first part is the review for all areas of Lane County outside the Metro Plan Boundary. The second part is for those areas inside the Metro Plan Boundary, but outside the Metro Area UGB.

PART I--AREAS OUTSIDE THE METRO PLAN BOUNDARY

Introduction

All Goal 5 resource categories are applicable to Lane County, and are addressed in separate subsections of this report.

According to Section 660-16-025 of the Goal 5 Administrative Rule (OAR 660-6-000 through 660-16-025), the Goal 5 Rule requirements apply to jurisdictions under denial orders as of the date the adoption of the Rule (June 1981). Lane County was issued a denial order in March of 1981. Therefore, the Goal 5 Rule has been used during this review for purposes of judging compliance.

In the following discussion, the numbers and letters in parentheses refer to sections of the Goal 5 Administrative Rule (e.g., (1A), (1B), (1C), (2A), (3A), (3B), (3C)). It should be noted, however, that these are the citations used by the Commission in its June 1981 adoption of the Rule. Since that time, the Secretary of State's office has recodified the Rule and has assigned different numbers and letters to its various subsections. The references in this report are to the Commission's 1981 version, since it is the one with which most readers are familiar. A copy of this Rule is attached to this report for reference.

Goals 16 and 17 establish more specific inventory and protection requirements for some Goal 5 resources that are located in estuarine or coastal shorelands areas.

Lane County's plan and implementing measures were acknowledged as being in compliance with the Coastal Goals in July, 1983. Therefore, this Goal 5 review does not address the following Goal 5 resources in those areas:

	Addressed Under	
Goal 5 Resource	Goal 16	Goal 17
Open Space	X	
Mineral and Aggregate Resources		
Energy Sources		

Fish and Wildlife	X	X (only "riparian," "major marshes and significant wildlife habitats")
Ecologically Significant Natural Areas	X	X
Scientifically Significant Natural Areas	X	
Outstanding Scenic Views and Sites		X (where the quality is primarily derived from or related to the association with coastal water areas)
Watersheds		
Groundwater Resources		
Wetlands	X	X (only "major marshes," "significant wildlife habitat," and wetlands with "exceptional aesthetic quality")
Historic/Archaeological Sites		X
Wilderness	X	X
Oregon Recreation Trails		
Wild and Scenic Rivers and Waterways		

Land Needed or Desirable for Open Space

Inventory

Lane County's Recreational Resources Working Paper contains a section addressing open space (pp. 4-5). The County discusses the various kinds of open space, and the benefits of preserving open space. The County indicates that it considers "all lands designated for agricultural or forest use, or for other clearly similar resource-production use" to be open space (p. 5). Additionally, the County concedes that recreational

areas, including parks, and significant or scientific natural areas also contain open space qualities. Because of "its broad nature, open space is not mapped as a site-specific, separate resource item. Instead...other designations with open space qualities are mapped..." (p. 5). Please refer to the Goal 3, 4, 9, 15 and other Goal 5 portions of this report for more detailed information about Lane County's inventories of lands possessing open space values. See also the July 1983 staff report adopted by the Commission for a discussion of compliance with inventory requirements of Goals 16-18.

Policies

Lane County has adopted one policy which addresses open space resources, per se (Open Space and Scenic Areas Policy 1, Plan, p. 16):

> Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals are developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

In addition, the County has adopted numerous policies regarding agricultural and forest lands, a variety of Goal 5 resources which possess open space values, the Willamette Greenway recreation areas, and coastal resources. Please refer to the Goal 3, 4, 8, 15 and remaining Goal 5 sections of this report for details. See also the July, 1983 Commission action for a discussion of policies addressing Goals 16-18.

Implementing Measures

As noted in the Goal 3 and 4 sections of this report, Lane County has several resource zones which it has applied throughout the County. It has also adopted and applied a Greenway Permit ordinance to lands within the Willamette Greenway (see the Goal 15 section of this report for details). However, these Goals have not yet been fully satisfied, nor have some Goal 2 exceptions been justified. Several coastal zones have been developed and applied in coastal shorelands, estuarine, and beaches and dunes areas (see the July, 1983 staff report adopted by the Commission regarding compliance with Goals 16-18).

Finally, as noted in the remaining subsections of the Goal 5 section of this report, the County has adopted several implementing measures for the protection and/or resolution of conflicts with Goal 5 resource sites containing open space values.

In particular, the County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213), which is intended to protect areas having unique and irreplaceable natural resources which are vital elements for a safe, healthful and pleasant environment for human life. The Natural Resource Zone states that it may be applied to public and private lands where the Rural Comprehensive Plan requires natural resource site

protection, but that the zone is not intended to be applied to other types of resource land, such as agricultural land and forest land. This is not to say, however, that the Natural Resource Zone cannot be applied to agricultural and forest lands. If a Goal 5 resource site is located on agricultural or forest land, Natural Resource zoning will be applied after an analysis of the ESEE consequences of conflicting uses has been completed demonstrating the appropriateness of Natural Resource zoning (confirmed by Jim Mann, Senior Planner, personal communication, June 20, 1984).

Emphasis of the Natural Resource Zone will be placed on limiting and regulating human activity in areas where:

(a) The acceptable water quality of streams, lakes, estuaries of the ocean may be endangered;
(b) Watersheds and their streams or lakes are used for domestic water supplies;
(c) Vegetative cover is essential to maintain soil stability and prevent erosion;
(d) Natural conditions are vital for either unique vegetative ecosystems, aquatic or wildlife habitat; and
(e) Scenic quality or vistas or open space is unique and/or irreplaceable.

In the NR Zone, the following uses are allowed outright (Section 16.213(2):

(a) The following recreational facilities and uses owned by a governmental agency of a nonprofit community organization limited to day use.

(i) Exhibitions of the natural conditions of shorelands, dunelands, forested areas, streams and lakes, marshlands, or similar areas of unique and irreplaceable value, and the vegetation and wildlife supported by such lands and waters provided that in no event shall such activity destroy, or endanger the relationships between the natural conditions being exhibited.

(ii) Picnicking areas, day parks and playgrounds.

(iii) Accessory facilities for outdoor recreation activity such as fishing, clam digging and hunting (provided such activity is conducted only in those areas allowed pursuant to Federal, State and Local fish and game regulations) and hiking and horseback riding.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

Single family dwellings or mobile homes for residential purposes for a watchman, caretaker or operator in conjunction with a permitted use, in the NR Zone above, are considered "Special Uses" subject to approval by the Planning Director (Section 16.213(3)). The following "Special Uses" are subject to approval by a Hearings Officer (Section 16.213(4)):

(a) Piers and boat houses.
(b) Single-family dwelling or mobile home and accessory structures.
(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.
(d) Forest uses and any accessory uses.

Uses in Section 16.213(4) above are subject to compliance with the following conditional use criteria (Section 16.213(5)):

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.
(ii) That the proposed site is on land generally unsuitable for natural resource uses.
(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;
(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby resource lands;
(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;
(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and
(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

Property development standards for all uses allowed in the NR Zone are set forth in Section 16.213(6) and include setbacks from front, side and rear yards.

Specific application of the Natural Resource Zone is discussed in the other Goal 5 sections of this report. A review of the County's zoning maps indicates that the NR Zone has been applied to a number of Goal 5 areas in the County.

Section 16.215 of the Zone Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses outright and conditionally. However, as noted in the Goal 2 Section of this report, the PR Zone allows a number of uses which could conflict with the purpose of the zone. Some of these uses could also conflict with a number of

Goal 5 resources including open space. This issue is dealt with in the Goal 2 portion of this report.

Conclusion--Open Space

Lane County has not inventoried any specific open space areas, per se. However, it considers farm and forest lands, recreation areas as well as natural areas to possess open space values. These have been inventoried as part of other Goal requirements. The County has a policy recognizing all resource lands as open space lands and indicating that resource-related activities shall predominate in these areas. Open space loss will be minimized where development is proposed, according to the County's policy. Resource zoning has been applied to most of the County, along with special zoning districts which help protect open space (e.g., Willamette Greenway, Natural Resource Zones).

Mineral and Aggregate Resources

Inventory

Lane County's inventory of mineral and aggregate resources is contained in its Mineral and Aggregate Working Paper.

Mineral Resources: The Working Paper addresses the following minerals: clay, copper, lead, gold, zinc, silver, mercury, antimony, arsenic, tourmaline, molybdenum, and pumice (pp. 3-5). The general locations of these mineral deposits are shown on a map (Appendix A), and are concentrated in four main areas: Hobart Butte, Bohemia, Fall Creek, and Blue River. The locations of these four areas are shown on the map as well. Information about the general quality, and quantity of these resources is provided. The County has not provided information on the location, quality, and quantity of specific sites, however.

Aggregate Resources: Lane County inventoried its aggregate supplies by examining permit lists from the Department of Geology and Mineral Industries and the Division of State Lands, by conducting telephone searches, taking on-site tours of aggregate-producing areas; and by talking with industry representatives (p. 6). The locations of 30 identified sites appear on a map in Appendix C and are listed by legal descriptions and tax lot numbers in Appendix D. A more extensive list of all tax parcels having any record of previous aggregate extraction is included in Appendices E and F. Appendix D is considered the County's (1C) inventory for lands outside the Metro Planning Area. Appendix E is the (1B) inventory for lands inside the Metro Area. Appendix F is the (1B) inventory for lands outside the Metro Area (confirmed by Mike Copely, Lane County Planner, personal communication, July 16, 1984).

Information on quantity of (1C) sites is presented in cubic yards, but the County cautions that the accuracy of this information is limited. In many cases, individual suppliers had only a cursory knowledge of the extent of their resources (p. 7). Quality of the supplies was not evaluated, due to time and budget constraints as well as the variability of resource materials.

Supply estimates were compiled by region (there are four regions in the County) and then coupled with demand estimates for each region in order to assess localized needs and supply/demand situations (p. 7). Demand forecasts were based on population projections and a per capita consumption figure of 22 tons annually (p. 7). Based on these estimates, cumulative demands for each region were projected. This analysis shows that existing supplies will be sufficient to satisfy demand to the year 2000. This will be particularly true if actual population growth rates are on the low side of the estimates. The available supply for the non-metropolitan area of the County is about three times the figure for projected consumption even when assuming the high population projections (p. 8). However, in terms of the supply/demand situation for each region, the margin of supply over demand for the southern section is relatively small. This is true also (but less so) for the western region. Also, the Metro Area will use some of the County supplies. Similarly, 5 to 10 percent of the U.S. Forest Service and BLM needs are supplied by the private market (p. 9).

Conflicting Uses/ESEE Consequences Analyses

Mineral Resources: Lane County reports that most of the mineral areas are on public lands (either the BLM or U.S. Forest Service). As such, federal laws govern prospecting, claims, and mining activities. Current forest resource designation and zoning for these areas "do not appear to preclude their development potential. Forest management and mining activities are considered to be compatible activites by most authorities" (p. 5).

Aggregate Resources: Each of the 30 inventoried sites was evaluated in terms of the following potential conflicts:

1. Areas of significant natural value contained in the Oregon Natural Heritage Program inventory;
2. Historical resources contained in the Working Paper on Historical Resources;
3. Willamette Greenway;
4. Park and recreation sites contained in the Lane County Parks and Open Space Master Plan;
5. Sensitive fish and waterfowl habitat identified in the Working Paper on Flora and Fauna; and
6. Existing or planned residential development.

Appendix J summarizes the results of the County's analysis. No conflicts were noted for any of the sites. Sites were not evaluated in terms of conflicts with agricultural or forest lands, since all of the sites are existing sites and therefore no longer available for these uses (p. 10).

Policies

A number of mineral and aggregate resources policies have been adopted (Plan, pp. 13-14). These include:

1. Known mineral resource sites within the County, which include those identified in Appendix "D" of the "Mineral and Aggregate Resources Working Paper," shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. Such designation and regulation is to follow the requirements of the Goal 5 rule (OAR 660-16-000 through 660-16-025), which is addressed in Appendix "J" of the "Mineral and Aggregate Resources Working Paper."

2. Exploration for mineral resources (in contrast to actual mining) shall be a permitted activity in the rural portions of the County. Areas designated primarily for residential purposes are to be excluded from this policy as are areas that, having undergone analysis in accordance with OAR 660-16-000, are designated as having some unique natural, historical or cultural value. Exploratory drilling for gas, oil or other hydrocarbons is not within the scope of this policy.

3. Mining operations are regulated by state and federal government agencies. County regulations shall supplement these actions only as necessary to ensure compatibility in the area, or to protect other resources.

4. Conserve and manage land, soil and mineral resources by respecting their physical limitations and environmental assets.

5. Update, in cooperation with local aggregate operations, federal, state and local agencies, past sand and gravel inventories to ensure supply/demand information is current.

6. Protect aggregate deposits from encroachment of incompatible uses and ensure that aggregate material in close proximity to its point of use will be available when needed.

7. Present and future land use controls shall be implemented to allow for the discovery of new mineral and aggregate resources when it is demonstrated that the projected demand for those resources in a given area will exceed available supply and conflict with adjacent uses can be minimized. Conflict analysis and resolution shall follow the methodology set forth in Appendix "J" of the Working Paper: Mineral and Aggregate Resources; however possible impact on agricultural lands, forest lands and residential

development (existing or planned) must also be considered. For sites within the Willamette Greenway or near Goal 5 inventoried resources, notification of the potential conflict shall be sent to the appropriate body (e.g., Pioneer Museum, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, etc.).

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacts during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listed in Appendix "J" of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

10. Sites for which not enough information is presently available to determine quality, quantity and conflicts with other uses which include those sites listed in Appendix "F" of the "Mineral and Aggregate Working Paper," shall be considered "Significant" in terms of OAR 660-16-000 through 660-16-025, but requiring that the Goal 5 evaluation process be delayed (the "1B" option). At such a time as it is clear that these sites will be needed within the County's advance framework, they shall be evaluated per the Goal 5 rule including conflict analysis and implementation of protective measures. Such evaluation will take the form of Plan amendment or revision studies. Notwithstanding the above schedule, all "1B" sites will be evaluated within five years of the date of this Policy adoption. These sites are included herein as Goal #5 Mineral and Aggregate Exhibit A.

11. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Policy 11 above indicates that significant fish and wildlife habitat areas in the Greenway shall be protected in accordance with Section C.3.i. of Goal 15. Section C.3.i. requires that aggregate extraction be allowed only when "subject to compliance with local regulations designated to minimize adverse effects on water quality,

fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation" (emphasis added). The Goal standard for significant fish and wildlife habitat areas, however, is stronger. It is spelled out in Section C.3.d. of Goal 15, rather than simply Section C.3.i. (This is also addressed in the Goal 15 section of this report).

Implementing Measures

Lane County has adopted a Quarry and Mine Operations Combining (/QM-RCP) Zone to protect major deposits of minerals, rock, and related material resources, and to resolve conflicts with surrounding uses (Lane Code, Section 16.216).

The Quarry and Mine Operations Combining Zone shall be available for use by the County for new or existing operations when requests are received as part of an areawide or legislative rezoning, or a specific property or quasi-judicial rezoning. When property under consideration of /QM zoning is in close proximity to existing and planned uses potentially incompatible with /QM uses, the application of the zone may be limited to a specific portion of a property in order to encourage the compatibility and proper management of land uses.

The Quarry and Mine Operations Combining Zone is intended to be applied only to those operations which have been evaluated through the Goal 5 Administrative Rule process. Other quarry and mining operations of short-term or intermittent duration should be provided pursuant to the special use provisions of the various zones.

In the Quarry and Mine Operations Combining Zone, the following types of buildings and uses are permitted, subject to the provisions of the Quarry and Mining Operation Reclamation Permit and exceptions set forth in the code (Section 16.216(4)).

(a) Uses permitted in the parent zone with which the /QM zone is combined.
(b) Extracting and storing of minerals, including equipment and materials necessary to carry out these functions.
(c) Plants for the processing of minerals from quarry and mine extraction operations.
(d) Sale of products generated from the quarrying and mining operation.
(e) Activities pemitted as part of the reclamation process provided for in the Reclamation Plan.
(f) Structures an buildings used in conjunction with the extracting and storing of minerals.

The zone requires that a surface mining permit first be obtained from the Department of Geology and Mineral Industries (Section 16.216(5). Section 16.216(6) sets forth blasting notice and records requirements.

Section 16.217 of the Lane Code is the County's Sand, Gravel, and Rock Products (SG-RCP) Zone. The SG Zone "shall only be applied to those sites which have been evaluated consistently with the Statewide Planning Goal No. 5 Administrative Rule conflict resolution process (Sec. 16.217(4)). In the SG-RCP Zone, sand and gravel operations are permitted subsequent to the following restrictions: For any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal No. 5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

A number of uses are allowed in the SG-RCP Zone when conducted in conjunction with a sand and gravel operation (Sec. 16.217), including asphalt paving-mix plant and accessory buildings; cement concrete batching plant; aggregate products fabrication and sale; sand and gravel resource-related equipment storage yard, maintenance and storage buildings, offices and warehouses "appropriate to the uses permitted in this District"; retail or wholesale sales of products related to the use of sand, gravel and related products; agriculture, grazing or timber raising; dwellings for owners, operators or help required; and signs. The zone contains site improvement standards, as well as setback standards, cover, planting, drainage and topsoil standards, and operating standards.

The SG-RCP Zone establishes a Sand and Gravel Review Committee to determine if operating plans or revised plans comply with the requirements of the zone or with "a river plan which may be adopted by the Board." The committee is made up of the Planning Director, the Public Works Director, the Parks and Recreation Director, the Chief Sanitarian, the County Hydrologist, and the County Floodplain Specialist. The Review Committee is notified of all operating plans and revised plans, and has seven days to approve the plan or require modification of the plan.

It appears, from an examination of zoning maps, that the SG Zone has been applied to a number of sites that are not included on any plan inventory of (1C) sites. Yet, contrary to the zone's purpose statements, the County has not applied the Goal 5 process to these sites to justify SG zoning.

Section 16.218 of the Lane Code is the County's Sand, Gravel and Rock Products-Controlled Process (SG-CP-RCP) Zone. The zone is intended to provide more restrictive control of processing activities than the SG-RCP Zone (described above) for the protection of surrounding properties or for greater control over the location and operation of processing activities. The SG-CP-RCP Zone shall apply only to sites which have been evaluated via the Goal 5 Rule process (Sec. 16.216(3)).

The requirements of the SG-CP-RCP Zone are the same as in the SG-RCP Zone except that the Sand and Gravel Review Committee, in its evaluation of operational plans, must evaluate "the location for the erection or enlargement of all processing equipment and activities, including, but not limited to asphalt paving mix and cement concrete batching plants" according to the following "Operational Plan Approval Criteria":

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity; and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverge and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

Among the permitted uses in the F-1 Zone are (1) mining and quarrying and processing of rock permitted in accordance with the FPA for forest road construction or other forest related uses, or when used solely in conjunction with a farm use on which the mining or quarrying occurs, and (2) operations conducted for the exploration of aggregate or other mineral and subsurface resources (Lane Code, Section 16.210(2)(c) and (g)). Mining, quarry, and processing of mineral, geothermal and other subsurface resources; and rock mining, quarrying and processing which exceeds the standards in 16.210(2)(c), above, are allowed conditionally subject to a Hearings Official approval. Conditional use criteria in the F-1 Zone have been discussed in the Goal 4 section of this report.

In the F-2 Zone, mining, quarrying, and processing of rock for forest or farm road construction is permitted outright on the same tract as the mining or quarrying occurs (Sec. 16.211(2)(c)), as are operations for the exploration for aggregate or other mineral or subsurface resources (Sec. 16.211(2)(e)). The mining, quarrying, and processing of mineral and other subsurface resources; and rock mining and quarrying and processing that exceeds the standards in Section 16.211(2)(c), above are

considered Special Uses, subject to Hearings Official approval (Sec. 16.211(5)(d)). This is also the case for operations conducted for the exploration, mining and processing of aggregate or other mineral resources or other subsurface resources (Sec. 16.211(5)(k)). Criteria for permitting these uses are found in Section 16.211(6).

In the Exclusive Farm Use Zone, operations for the exploration, mining and processing of aggregate and other mineral resources or other subsurface resources are Special Uses, subject to Hearings Official Approval (Sec. 16.212(4)(b)).

Please refer to the Goal 15 section of this report for a discussion of the County's approach to mineral and aggregate sites located within the Willamette Greenway.

Objections

1. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

2. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in the Goal 15 section of this report.

3. James Spickerman (on behalf of Leon Funke and Michael Horton) has objected to the zoning of farm lands for sand and gravel extraction and processing uses.

   a. Objectors are specifically concerned about the following parcels:

      17-03-06 TL 400, 500, 300, 201
      17-03-05 TL 300, 1500, 1300, 1900
      16-03-31 TL 901, 500 and 101

      The 455 acres in these parcels are primarily agricultural land and have been zoned SG-RCP according to objectors. Allowed uses include sand and gravel extraction as well as asphalt paving mix plant, concrete batching plant, aggregate products fabrication and sale, and retail or wholesale sales of products. The land was previously designated EFU. Objectors point out that in Westerburg v. Linn County, LUBA held that a Goal 2 exception to Goal 3 was required when a zone change was made from EFU to aggregate extraction and processing where the new zone permitted

manufacturing processes and activities. Objectors believe, therefore, that Lane County should have taken an exception prior to rezoning these parcels.

b. Objectors claim that the County applied SG zoning to parcel 16-03-31 Tax Lot 601 and 602 without the necessary ESEE consequences analysis of conflicts with Goal 3 uses and other Goal 5 uses. Objectors point out that the site has a "long history of documented conflict between the sand and gravel extraction use and adjacent agricultural and residential uses. Objectors further point out that in Olsen et al. vs. Scappoose Sand and Gravel Co., LUBA indicated that the Goal 5 Rule requires that, where conflicting uses have been identified, the Goal 5 resource site (e.g., mining) may itself have an impact on other uses and these impacts must be considered in analyzing the ESEE consequences.

c. Objectors believe that plan policies do not address the Goals adequately because there is no method set forth in the plan for Goal 5 conflict resolution analysis. The plan states that such analysis and resolution of conflicts shall follow the methodology in Appendix J of the Mineral and Aggregate Working Paper. Objectors, however, state that Appendix J contains no such methodology, but only a statement of conclusions regarding particular sites.

d. Objectors point out that the plan policies set forth no method to reconcile Goal 5 and Goal 3 conflicts (specifically, where agricultural soils are underlaid with aggregate resources).

e. Objectors claim that plan policies make no provision for ESEE analysis of conflicting Goal 5 uses.

f. Objectors claim that the plan does not comply with Goal 5 Guideline B9 which states:

> Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization, as well as for the primary use.

g. Objectors claim that, although a number of sites are to be considered under the (1B) process at a later date, the sites are not included on the plan inventory as a "special category," as required by the Goal 5 Rule.

h. Objectors believe the plan is not internally consistent. Specifically, objectors point out that EFU lands are zoned SG-RCP, but there is no basis for this in policies or in working papers. A number of parcels are zoned for sand and gravel extraction, but not all have been designated for such uses.

Objectors also point out that SG-RCP zoning is contrary to agricultural lands policies (to provide maximum protection for agricultural activities by minimizing activities that could conflict with such uses.

i. Objectors point out that no consideration is given to the effects of SG-RCP zoning on the groundwater resources of agricultural lands adjacent to the land designated SG-RCP.

Response to Objections

1. The response to the objections regarding the Pudding Creek heronry is presented in the Goal 15 section of this report.

2. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

3. a. Objectors contend that sites 17-03-06, TL 400, 500, 300, 201; 17-03-05 TL 300, 1500, 1300, 1900; 16-03-31 TL 901, 500, and 1001 were all rezoned from EFU to S-G-RCP without an exception. Objectors cite Westerberg vs. Linn County as requiring this be done where the new zone permits processing activities. This was based on the fact that ORS 215.213 allows processing conditionally, but at the time of Westerberg vs. Linn County, "processing" did not include the batching and blending of aggregate. However, the 1983 Legislature changed the statutory definition of "processing" (ORS 517.750(9)) to include "crushing, washing, milling, screening as well as the batching and blending of mineral aggregate into asphaltic and portland cement concrete product . . .". Therefore, objectors are not correct in suggesting that a Goal 2 exception be taken for such sites. However, this is not to say that the Goal 5 Rule process does not apply. In the case of the parcels cited by objectors, this process has been completed for only 17-03-06 TL 400, 17-03-05 TL 300, 16-03-31 TL 901, and 16-03-31 TL 1001. The Mineral and Aggregate Working Paper (p. 10) indicates that, because these are existing operating sites, these sites are no longer available for agricultural use. No conflicts were found to exist for any of these four sites.

b. Objectors are correct that parcel 16-03-31 TL 601 has not been analyzed according to the Goal 5 process. Site 16-03-31 TL 602, however, is included as Site No. 21 in Appendix D of the County's Mineral and Aggregate Working Paper. No conflicts were found to exist with Site No. 21. Conflicts with agricultural uses for the site were not analyzed because the site is an operating site and it is assumed it is no longer available for agricultural use (Working Paper, p. 10). Objectors are correct, however, that the County did not address conflicts with adjacent agricultural and residential uses. This has not been required except when a new site or expansion of an existing site is

proposed. Policies 7 and 10 require Goal 5 analysis in such circumstances, including analyzing and resolving conflicts with surrounding uses.

c. Objectors are not correct that the County lacks a method for analyzing and resolving conflicts pertaining to (1C) mineral and aggregate resources in Appendix D. The County indicates that there are no conflicting uses for these sites, and therefore either the SG ,/QM or SG/CP zone will apply. It also indicates that sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts (Mineral and Aggregate Policy 9). All (1B) sites require a full Goal 5 evaluation, including conflict resolution and plan amendments or revision studies before extraction activities are allowed, according to Mineral and Aggregate Policy 10.

Objectors are correct that Appendix J is a statement of conclusions about the conflicts with the 30 (1C) sites, and not a methodology for analyzing and resolving conflicts per se. However, the policy should be interpreted as requiring that the same methodology used in producing Appendix J will be used in future conflict/resolution situations (i.e., determining whether there are conflicts with other Goal 5, 8, and 15 resources, or with planned or existing development). The policy would also require consideration of possible impact or agricultural and forest lands in approval of any new site or expansion of an existing site.

d. Objectors are not correct that there is no plan policy method to reconcile conflicts on agricultural lands that contain aggregate resources for those (1B) sites in Appendix F. Specifically, Mineral and Aggregate Policy 10 requires a full Goal 5 Rule evaluation of (1B) sites. This will require a site-by-site analysis of conflicts (including those with agricultural lands), an ESEE consequences determination of those conflicts, and application of measures to resolve conflicts.

e. There is no specific Goal 5 requirement to adopt plan policies which require analysis of ESEE consequences of identified conflicting uses. Rather, such conflicts are to be resolved during the planning process, based on such an analysis which is to be incorporated into the plan. (The exception to this is for (1B) sites. Jurisdictions must adopt policies to apply all applicable steps of the Goal 5 Rule to such sites. Lane County has such a policy for its (1B) mineral and aggregate resources--Mineral and Aggregate Policy 10).

f. Guidelines do not carry the same weight as the Goals, and therefore, this objector's concern is not a Goal requirement. However, objectors do raise an important concern, and the County is urged to plan such sites for interim, transitional and "second" use.

g. Contrary to objector's statements, the County has placed its (1B) sites on a special category inventory--Appendix E and F of the Mineral and Aggregate Resources Working Paper. It also has expressed this in Mineral and Aggregate Policy 10.

h. Objectors are correct that some lands are zoned SG that are not on the (1C) inventory, nor has the Goal 5 process been applied to them to justify SG zoning rather than EFU, or some other zoning.

SG zoning for a particular site may be counter to the County's policy of providing maximum protection for agricultural activities by minimizing activities that could conflict with such uses. However, Goal 5 requires protection of mineral and aggregate resources. These Goal requirements must be balanced. This is done through the Goal 5 process. When analyzing the ESEE consequences of conflicting uses for a particular site, the requirements of other Statewide Goals must be considered and balanced against Goal 5 requirements.

i. Objectors have not provided information demonstrating how SG zoning will have an effect on groundwater resources of adjacent agricultural lands. Other state statutes require that this concern be addressed.

Conclusion--Mineral and Aggregate Resources

Lane County has inventoried its mineral and aggregate resources and has identified 30 specific aggregate sites which are considered (1C) sites. The amount of aggregate contained in these 30 sites is sufficient to satisfy the demand to the year 2000. The County indicates there are no conflicting uses with any of these sites, and has applied QM-RCP, SG-RCP, or SG-CP-RCP zoning to those sites. These zones assure that extraction can occur, subject to appropriate conditions regarding such things as setbacks, drainage, traffic and operation.

The County has identified a number of (1B) sites which will be evaluated according to the Goal 5 process (including plan amendments, where necessary), within the next five years.

A number of sites not in any plan inventory have been zoned for sand and gravel extraction, but have not been justified as such, based on an analysis of ESEE consequences of conflicting uses.

Energy Sources

Inventory

Lane County has adopted an Energy Working Paper which describes energy consumption and both conventional and alternative energy sources. Conventional sources includes electrical energy from seven utility

companies and natural gas and petroleum from out-of-state sources (pp. 7-15). Alternative sources include solar, hydroelectric, biomass, cogeneration, wind, and geothermal energy (pp. 15-29). Of these, the County considers only hydro power and geothermal sites to be site-specific (p. 39).

The Working Paper identifies eight dams currently generating power or having the potential to do so (p. 18), as well as eight existing nonpower dams with hydroelectric generation potentials exceeding 200kW (p. 18). Maps showing the general locations of these sites are on page 19 of the Working Paper. Information about the dam height, hydraulic head and capacity for each site is presented on page 18. Proposed dams with generation potentials exceeding 25MW and those with potentials between 200kW and 25MW are identified on page 21 of the Working Paper and mapped on page 22. Information about dam height (where known), hydraulic head, system head, and capacity is presented (p. 21).

Wind potential in Lane County is through to be highest along the Coast and Coast Range. Eugene Water and Electric Board (EWEB) and 19 public utilities operate an experimental windmill in the Coast Range north of Lane County, and PP&L operates a wind turbine near Coos Bay. Average wind speeds in Lane County, however are too low to power such windmills (p. 26).

There are two known Geothermal Resource Areas (KGRA's), both of which are in the eastern portion of the County on federal land. Both are under study by the Oregon Department of Geology and Mineral Industries (p. 29). The locations of the two KGRA's--Belknap-Foley KGRA and McCredie KGRA--are shown on Map 7 (p. 30). Information regarding their reservoir temperatures, mean reservoir volume, wellhead thermal energy and thermal power, and resource to land distance is presented in Table 11 (p. 31). The Energy Working Paper also describes the stages of geothermal energy development and discusses the constraints upon geothermal power generation (pp. 28-29). Although the potential for geothermal energy development in Lane County is "significant," further information is needed regarding its potential in the two KGRA's and the environmental impacts associated with such development (p. 29).

A cogeneration facility capable of producing 28,000 kilowatts of power exists at the Weyerhaeuser plant in Springfield, and another facility capable of producing 800 kilowatts is being installed in the Lane Plywood Company of Eugene (pp. 25-26).

The Working Paper disucsses the potential for biomass as an energy source in Lane County (pp. 23-25). There are two major sources--forest lands and farm lands. The potential for energy generation from these sources is great, but economic feasibility and environmental impacts are primary constraints to development of these sources at this time (p. 25).

Conflicting Uses/ESEE Consequences Analyses

General, non-site-specific conflicts are discussed for each of the major energy source categories identified (i.e., hydroelectric, biomass, solar, cogeneration, wind).

Regarding hydro sites, the County states:

> Maps have been presented illustrating a number of alternative hydro sites on various rivers in the County. Since these sites are, at present, in the proposal stage, it is premature to evaluate conflicting uses for each one, but the sites need to be acknowledged by designation on Plan Diagrams, and some effort made to ensure their availability when needed. Conflicting uses will be examined and resolved at such a time as the sites are actually being proposed for development; this could probably be done most efficiently as part of the elaborate permitting process hydro power must undergo before approved. In most cases, conflict resolution is a major factor in hydro development even through many of the sites are located on public land, or lands presently set aside for resource uses--especially timber lands. Existing resource-based zoning can do much to prevent them from being subjected to development if energy considerations are incorporated into the zoning requirements. In Goal 5 language, the "1B" option should be taken at this time (p. 39).

Regarding geothermal sites, the County indicates that because they are located on federal lands, they will have to go through a series of state and federal permit approvals. Zoning "only reflects the County's desire that the sites be protected from conflicting uses." Therefore, the County has not conducted an analysis of conflicting uses (p. 39).

Solar access does not appear to be endangered at this time in the rural areas. However, this is not the case in newly developing residential and commercial areas (p. 39).

Policies

Five Energy Resource policies have been adopted by Lane County (Plan, p. 17):

1. Lane County shall identify energy resource areas within the County and protect such areas through the use of existing ordinances and regulations. Such regulations shall address hydroelectirc, geothermal, and wind power sites.

2. Lane County shall encourage the exploration and development by other agencies of renewable energy resources such as geothermal, wind, biomass, hydroelectric and solar, and shall monitor such development to ensure that the development does not cause adverse effects within the County.

3. Lane County will use the work of the L-COG Committee on Energy, and its report, "Lane County Electic Energy Planning Program, Final Report (1983)" as a source of resource identification and site protection measures. This will supplement the County's own measure expressed in Policy and Zoning Statements.

4. The County shall protect the sites of hydroelectric resources through conditional or special use provisions of its resource zones. Sites for which a license has been applied for with federal and state authorities, or for which water impoundments of more than 100 acre-feet are proposed, or which will generate power in excess of 75KW, shall be shown on the Plan as a special designation, an Exception to applicable LCDC Goals taken if necessary, and a special zoning district applied. At that time, the Goal 5 rule conflict analysis shall also be carried out.

5. For additional energy policies see Goal 3.

Implementing Measures

Hydroelecric generating facilities with water impoundments of less than 100 acre-feet are allowed conditionally subject to Hearing Official approval in the F-1 and F-2 Zones (Lane Code, Sections 16.210(4)(g), 16.211(5)(g)).

A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility is also permitted conditionally (subject to Hearings Official approval) in the F-1 and F-2 zones (Section 16.210(4)(h), 16.211(5)(h)).

The conditional use criteria for approving or denying these hydroelectric facilities are those for other nonforest uses (Sec. 16.210(5)(a) through (f); 16.211(5)(f)(i) through (vi)).

Hydroelectric facilities having impoundments over 100 acre-feet are not permitted outright or conditionally in the Lane Code. Instead, the County shall analyze the conflicts per the Goal 5 Rule, take an Exception to the applicable Goal if necessary, and apply a special zone to those sites, as specified in Energy Policy 4.

As noted in the Working Paper, resource zoning will help prevent possible sites from being developed for other uses.

Conclusion - Energy Sources

Lane County has identified a number of potential energy sources, many of which are on federal land, and all of which are (1B) sites at this time. There is potential for hydroelectric developments on nonfederal land, but the County contends that it is premature to evaluate conflicting uses.

Nevertheless, the County has decided to allow small sites in its F-1 and F-2 Zones conditionally. Larger sites will require plan amendments, along with application of the Goal 5 Rule, exceptions to appropriate goals and possible development and application of a special zone. The County has adopted a policy commitment to this effect. In the meantime, resource zoning will help prevent potential sites from being lost to other uses. (See, however, the Goal 4 section of this report for a discussion of problems with the F-2 Zone.)

Fish and Wildlife Areas and Habitats

Inventory

Information about Lane County's fish and wildlife resources is contained in its Flora and Fauna Working Paper and the addendum to that working paper. Pages 5-10 describe in general each of the 11 major habitat types in the County, along with a discussion of the value of the habitat type to wildlife, and general location of each habitat type. These include:

1. Estuary and Bay
2. Inland Marsh
3. Wet Meadows
4. Lakes and Reservoirs
5. Riparian Vegetation
6. Annual and Perennial Grasslands
7. Coastal Shore Pine/Spruce
8. Douglas Fir/Trailing Blackberry
9. True Fir/Alpine
10. Deciduous Hardwoods
11. Agricultural Lands.

The County prefaces this material by stating that this information "is not considered an inventory and is not accompanied by maps. It is intended merely as background information."

The Working Paper and its addendum contain special sections addressing endangered, threatened, and special concern species, riparian and wetland areas, sensitive fish and waterfowl areas, and big game range. These are discussed separately below.

Endangered, Threatened and Special Concern Species: The Working Paper lists plants and animals which are threatened, endangered, or of special interest (pp. 11-12). Further information is provided for six of these species--northern spotted owl, northern bald eagle, wolverine, silverspot

butterfly, western snowy plover, and American osprey (pp. 12-13). This information does not provide location, quality, or quantity information on any specific habitat areas or sites. However, the County indicates that:

1. No spotted owl or bald eagle nests are known to occur on private property;

2. Wolverine habitat is in high elevation, remote areas and therefore in federal ownership;

3. Snowy plover habitat is within state jurisdiction.

4. Osprey nests are found throughout the County, although not in great numbers. The County indicates the ODFW maps show their locations, but these maps have not been adopted or submitted for review.

5. Silverspot butterfly habitat is found only "along a small section of the Oregon Coast." It is recognized in the Coastal Resource Management Plan of Lane County.

Lane County has indicated that Silverspot butterfly habitat occurs on federal land adjacent to the Big Creek (Reneghan) Exception Area as well as on the Renaghan property itself (Exhibit E--Renaghan Amendment, pp. 27, 31). It should be noted that the Exception document contains one statement (Finding 37e) on page 27 which appears to contradict this. Specifically, finding 37e states there are no sensitive species on the property, and that the Silverspot butterfly habitat is located on adjacent federal land only. The Exception document contains several other statements indicating that such habitat occurs in the northwest corner of the property.

The County provides no information at all regarding great blue heron rookeries or pigeon mineral springs, which are considered sensitive bird habitat areas by the Department of Fish and Wildlife. (The exception to this is for two rookeries in the Willamette Greenway. They are addressed in the Goal 15 section of this report.) The inventory of sensitive bird sites developed by ODFW and provided to the Department of Forestry (DOF) as part of a recent management agreement between those agencies, identifies 15 great blue heron rookeries, 21 osprey nest sites, three pigeon mineral springs, and at least one bald eagle nest site in Lane County, most of which are on nonfederal land. According to Flora and Fauna Policy 15, "currently known pigeon springs, heron and raptor (hawk, osprey, and eagle) nest sites. . . shall be placed in a '1B' category."

Riparian and Wetland Areas: Riparian lands are defined by the County as all lands along both banks of Class I streams in Lane County, to a setback line of 100 feet from ordinary high water (Addendum, p. 7).

The County indicates in its Flora and Fauna Working Paper (p. 16) that all lakes, reservoirs, and Class I streams in Lane County have been mapped, but were not included because of budgetary limitations. They are

available in the Planning Department offices. The Addendum to the Working Paper (p. 6) states that ODFW has provided maps of all Class I streams, as well as major significant wetland areas. Detailed maps are available for review in County offices, and a generalized summary map is included in the Addendum (p. 20).

The Flora and Fauna Working Paper discusses the values associated with wetlands and riparian areas for both fish and other wildlife types (pp. 14-15). The County notes that the U.S. Fish and Wildlife Service has identified a number of wetland types in its National Wetland Inventory. Currently, about half of the County has been mapped, enabling identification of major wetlands. These include:

1. Fern Ridge periphery, exclusive of parkland;

2. Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel;

3. North Fork Siuslaw fresh-water marsh;

4. Maple Creek marsh;

5. Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

The County indicates that these areas are mapped in detail on the Plan Diagram maps. More specific location, quality, and quantity information for each of these five wetland areas is contained in the Working Paper Addendum (pp. 11-13).

The County has not inventoried a wetland south of Sutton Lake and east of Highway 101, or a Darlingtonia bog east of Florence. As noted in the 1983 Coastal Goals review of Lane County (p. 8), these wetland were to be addressed under Goal 5:

> The County notes there are only two Goal 18 resource areas east of Highway 101 which do not fall within the coastal shorelands boundary. They are two wetland habitat areas identified in the coastal resource inventory maps. The County should note that it will have to adequately address these two areas later under Goal 5 when it brings the remainder of the County plan into compliance.

The Darlingtonia bog is addressed in more detail in the Natural Areas section of this report.

Sensitive Fish and Waterfowl Areas: The County notes that this is a subcategory of the previous section, Riparian and Wetland Areas (p. 20). Maps have been provided the County by ODFW showing important waterfowl nesting habitat and streams that receive high use by anglers and/or game fish (p. 20), but were not submitted for review. A large-scale map is available in the County Planning offices (Addendum, p. 5). A

generalized, small-scale map is included on page 20 of the Addendum which shows the locations of important streams and stream reaches. A list of these specific reaches, by basin, is included in the Addendum (pp. 2-4). All identified areas are of high quality and are considered important (Working Paper, p. 21). The extent of riparian vegetation is described in the previous subsection of this report. The County notes that there are native anadramous fish runs in Big Creek within the Big Creek Exception Area (Exhibit E--Renaghan Amendment, p. 44). These include coho salmon, cutthroat trout and steelhead.

Big Game Range: The County notes that ODFW divides big game range in Lane County into three categories--Major, Peripherial, and Impacted. The Major Range supports the majority of big game and, in general, consists of sparcely developed commercial forest lands. Peripheral Range is generally located on foothill areas between commercial forest lands and valley floors. Peripheral Range supports substantial big game populations and serves as wintering areas for animals in severe winters. Impacted Range consists of those areas that have existing levels of development which preclude future wildlife management options for maintaining viable wildlife populations and recreational opportunity, although they frequently contain big game populations.

All three big game range areas are depicted on Lane County Wildlife Inventory Maps, according to the Flora and Fauna Working Paper (p. 23). However, these maps were not submitted for review because of budget constraints. They are available in the Planning Department Office (p. 23). The Working Paper notes that the highest quality big game range is in the Major Range because development is limited. Peripheral Range is important, but has enough development to limit big game use and managment options. Impacted Range is of the lowest quality because of existing development (p. 23). The County provides acreages for these three categories (p. 24).

The County recognizes major elk habitat on a portion of the Big Creek Exception site (Exhibit E-Renaghan Amendment, p. 52).

Conflicting Uses/ESEE Consequences Analyses

Endangered, Threatened and Special Concern Species: As indicated earlier, Lane County knows of no spotted owl or bald eagle nest sites on private land. Similarly, wolverine habitat is on federal land. The County notes that the State Parks Division of ODOT regulates vehicular uses in snowy plover habitat (Working Paper pp. 12-13). Specific conflicts with osprey nest areas are not identified, but the County notes that protective measures in riparian areas (e.g., Willamette Greenway permit requirements, coastal shorelands overlays, riparian and wetland area provisions) will resolve conflicts (Addendum, p. 15).

The Working Paper indicates that the Coastal Resources Management Plan of Lane County recognizes the Silverspot butterfly and applies a prime wildlife managment unit to its habitat (p. 13). Specific conflicts and ESEE consequences are not discussed in the Working Paper, however.

It should be noted that a portion of the critical habitat for the Silverspot butterfly is included in the Rock Creek Federal Wilderness Area, recently approved by Congress. Another portion of the habitat is located within the County's Big Creek Exception Area. That exception indicates that the applicant "will enter into contractual arrangements with the Siuslaw National Forest or Western Oregon State College to take whatever measures are necessary to mitigate any potential conflicts or adverse impacts associated with the development" (Exhibit E--Renaghan Amendment, p. 27). According to the Exception (p. 28), the U.S. Fish and Wildlife Service's Endangered Species Office indicates that this project will have not significant adverse impact on the Silverspot's habitat.

Conflicting uses and ESEE consequences analysis have not been conducted for sensitive bird habitat areas, since these resource sites have been placed in a (1B) category.

Inasmuch as the County failed to inventory a number of nonfederal sites as (1C) resource sites (e.g., great blue heron rookeries, pigeon mineral springs, bald eagle nest, osprey nests), the County has not identified conflicting uses or ESEE consequences of those conflicting uses with these sites. Information does exist for these sites, however, as indicated earlier, enabling the County to conduct such analyses.

Riparian and Wetland Areas: Two major activities conflict with riparian and wetland habitat areas, according to the County's Working Paper (p. 17)--destruction of vegetation for any purpose (e.g., forestry, agriculture, construction, recreation, aggregate extraction), and draining surface or subsurface water which then changes the vegetative structure and generally the habitat value. The County has developed separate ESEE consequence analyses for riparian lands and wetlands.

The riparian lands ESEE consequence analysis is further divided into three categories--(1) resource areas (forest and agricultural lands), (2) rural lands (partially or sparsely developed), and (3) developed and committed lands, including communities (Addendum, pp. 7-10). Based on these analyses, the County decided to develop a (3C) approach in order to limit conflicting uses. ODFW has recommended a 50 foot setback along all class I streams in rural development zones and a 100 foot setback in rural resource zones (Addendum, p. 10).

Separate conflicting uses/ESEE consequences analyses have been conducted for each of the five major wetlands identified (Addendum, pp. 11-13). Based on these analyses, the County has determined that areas owned by the Corps of Engineers (Fern Ridge Reservoir, part of Lower Long Tom, Amazon Canal) have sufficient protection, and furthermore, cannot be regulated by the County since they are in federal ownership. Areas under Coastal Resources Zoning (North Fork Siuslaw, Maple Creek Marsh) are also assumed to be adequately protected. A (3C) approach (e.g., Natural Resource Zoning) is appropriate for all other privately-owned areas (part of Lower Long Tom) (p. 13).

Sensitive Fish and Waterfowl Areas: Removal of riparian vegetation in identified sensitive areas is considered the major conflicting use with these resources (Working Paper, p. 21). The County notes that the ESEE consequences analysis is generally the same as that for riparian areas and wetlands, summarized in the previous section of this report (Working Paper, p. 21). However, the County indicates that since the sensitive fish and waterfowl areas are considered more valuable than others in the County, the effects of vegetation removal can be more significant (p. 21). Based on these analyses, Lane County has chosen a (3C) approach to protect riparian vegetation in such areas "whenever possible" (p. 22). The County notes that ODFW has recommended setbacks of 50 to 100 feet along waterways designated as sensitive fish habitat, plus natural resource zoning for wetlands not within that riparian strip (Addendum, p. 5).

Conflicting uses and ESEE consequences of conflicting uses with fish habitat in the Big Creek Exception Area are addressed on pages 54-56 of the Exception. Based on this analysis, the applicant will be required to protect the anadromous fish through development of a management plan and protection or riparian vegetation (pp. 27, 55).

Big Game Range: The primary conflict with big game range is identified as residential use at densities over one dwelling unit per 40 acres in Peripheral Range, and one unit per 80 acres in Major Range (Working Paper, p. 24). The County indicates that its 80-acre commercial timber zoning is very restrictive in terms of dwelling unit placement, and therefore, "it is unlikely that conflicts will occur" in Major Range areas (Addendum, p. 14). Similarly, the County believes its 40-acre zone will satisfy ODFW's recommended density in Peripheral Range (p. 14). Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas (p. 14).

The conflicts and ESEE consequences of conflicts with major elk habitat in the Big Creek Exception area are discussed on pages 53-54, and 56 of the Exception document. Based on this analysis, the applicant will be required to protect elk winter forage areas (p. 27) and to develop an elk managment plan (p. 32).

Policies

Lane County has adopted numerous policies regarding its fish and wildlife resources (Flora and Fauna Policies, Plan, pp. 14-16). These policies include the following:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "Significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or, that riparian vegetation does actually extend all the way into the 500 foot or 100 foot setback to the location of the proposed improvements.

   Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife.

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per

Goal 5 requirements if it is clearly demonstrated that an unprotected signficiant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process.)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

13. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met.

14. A group known as the "Lane County Flora and Fauna Committee" is to be established and given permanent status by the Board of County Commissioners. The committee shall represent a wide array of environmental interests and the interests of property owners. Its tasks shall include: evaluation of LCDC Goal 5 concerns and resources, development of information to help the County comply with OAT [sic] 660-16-000/025 ("Goal 5 Rule"), research and provision of resource site data to the County, and response to work in progress. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

15. Currently known pigeon springs, heron and raptor (hawk, osprey and eagle) nest sites shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluation per "1B" requirements within two years of the date of plan adoption. Lane County shall consider enlarging the list of significant nest sites whenever information about additional sites becomes available. The significant nest sites shall be those identified by Jim Greer and Jim Hutchison (Department of Fish and Wildlife biologists) in a 12/20/83 letter to Jim Mann (Senior Planner, Lane County Land Management Division), and these sites shall be incorporated into the Lane County General Plan Policies document as Flora and Fauna Exhibit A.

16. Rare and endangered vascular plants, identified in the 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

17. Lane County recognizes that Douglas fir old growth stands provide valuable and unique wildlife habitat and will encourage the Forest Service and Bureau of Land Management to maintain acreage in this age class sufficient to ensure viable populations of dependent wildlife species.

Policy 22 (Plan. p. 5) states:

> Sites considered 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement

process for the "significant" sites and after sufficient information is available regarding the location, quality and quantity of the "significant" sites.

Lane County's Forest Lands Policy 17 (Plan, p. 10) states:

Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

Implementing Measures

Lane County has adopted the following riparian setback standards and riparian vegetation maintenance standards in its F-1, F-2, E-RCP, ML-RCP, PR-RCP, and DR-RCP Zones (Lane Code, Sections 16.210(7)(a) and (b), 16.211 (9)(b) and (c), 16.212 (8)(b) and (c), 16.214(7)(b) and (c), 16.215(6)(a) and (b), and 16.232(5)(b) and (c), respectively):

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazard.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

In the PF/RCP C-R, RCP, RA-RCP, and RR-RCP Zones (Sections 16.219(4)(b) and (c); 16.223(5)(b) and (c); 16.229(7)(b) and (c); and 16.231(7)(b) and (c), respectively), the setback is 50 feet, rather than 100 feet.

The following zones indicate the Class I Stream and Riparian Vegetation requirements of LC 16.229-35(2) and (3) shall apply: C-1, RCP (Section 16.220); C-2, RCP (Section 16.221); C-3,RCP (Section 16.222); M-1, RCP (Section 16.224); M-2, RCP (Section 16.225); and M-3, RCP (Section 16.226). The RG-RCP Zone (Section 16.230) indicates that Section 16.299(2) and (3) shall apply. However, the Lane Code does not contain any section with the numbers 16.299-35(2) and (3) or 16.229 (2) and (3).

As discussed in the open space section of this report, Lane County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213) which is, in part, intended to protect aquatic and other wildlife habitat areas. Please refer to that section of this report for details. It should be pointed out that the NR zone does not contain riparian setback and vegetative maintenance standards. Although major development in the NR zone is not anticipated, the NR zone permits a variety of structures. These structures should be required to be set back in order to protect riparian vegetation, just as they are in other zoning districts. In fact, since the purpose of the NR zone is to protect wildlife and aquatic habitats, there is even more reason why such setbacks should be required.

A review of the County's zoning maps indicates that the NR Zone has been applied to a number of habitat areas in the County. One of the sites zoned NR is the Big Creek Exception Area, which contains fish and big game habitat, and habitat for the endangered Silverspot butterfly.

According to the Exception (p. 27), no alteration of the riparian vegetation will occur, and the owner has agreed to enter into contractual arrangements to protect elk winter forage areas. The applicant will also take measures that may be necessary to protect the habitat of the Silverspot butterfly.

Contrary to statements contained in the Flora and Fauna Working Paper, Lane County's F-1 (Nonimpacted Forest Lands) Zone establishes a 40-acre (rather than an 80-acre) minimum lot size (Lane Code, Section 16.210(6)), except that (a) a land division to create a parcel of less than 40 acres may be allowed conditionally if it is for separating an existing residence from adjoining forest land, and (b) a common property boundary may be adjusted so long as no additional parcels are created. As noted in the Flora and Fauna Working Paper (p. 24), and as discussed earlier in this report, ODFW's recommended density in Major Big Game Range (which, according to the County, is mostly zoned F-1) is one unit per 80 acres. Inasmuch as the F-1 zone does not allow dwellings, this density standard has less meaning in Lane County's F-1 Zone.

The F-2 (Impacted Forest Lands) Zone (Lane Code, Section 16.211) requires a minimum of 20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel. However, there is no requirement that, in the Big Game Range portions of that zone, densities will not exceed those recommended by ODFW (i.e., one unit per 40 acres in the Peripheral Range, or one unit per 20 acres with clustering and siting standards; one unit per 80 acres in the Major Range, or one unit per 40 acres with clustering and siting standards).

In the Exclusive Farm Use Zone (Lane Code, Section 16.212), a dwelling or mobile home not in conjunction with farm use may be approved if it meets certain criteria; similarly, a division of land may be allowed for a dwelling not in conjunction with farm use if it meets those criteria and does not conflict with the purpose of the zone. However, none of the criteria address ODFW's dwelling density recommendations, and the purpose statement of the zone does not refer to maintaining wildlife habitat values. As noted in the Goal 3 section of this report, minimum lot size is from 20 to 60 acres, depending upon location. As noted in the Flora and Fauna Working Paper (p. 24) and as discussed earlier in this report, ODFW's recommended density in Peripheral Big Game Range (which, according to the County, is mostly zoned Exclusive Farm Use) is one unit per 40 acres. There are no standards in the zone which require lot sizes to be 40 acres or greater in the Peripheral Big Game Range portions of the zone, or alternatively, that require clustering of dwellings (to allow densities as great as one unit per 20 acres.

Lane County has adopted a Marginal Lands (ML-RCP) Zone (Lane Code, Section 16.214) which appears to have been applied to wildlife habitat areas, and could be applied to other areas in the future. (The County did not submit maps showing the locations of its big game habitat areas, so it cannot be determined with certainty whether it has been applied in big game habitat areas). ORS 197.247(8) requires that application of

such a zone satisfy all requirements of other Goals, in this case, Goal 5. The County has not adopted findings demonstrating how the specific applications of the ML zone comply with the Goal 5 Rule. Criteria for approval of future ML zoning (Section 16.214(4)) do not include compliance with Goal 5.

Section 16.215 of the Lane Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses and activities outright, and a number of others if within a built and committed exception area that is designated as nonresource land. The zone also lists uses that are subject to hearings official approval. Section 16.215(5)(e) of the zone contains the following conditional use approval critera:

> When a use is proposed in an area designated as Major Peripheral Big Game Range or as Sensitive Fish and Waterfowl areas as shown on the Lane County Wildlife inventory, the Oregon Department of Fish and Wildlife shall be notified and their comments shall be considered in evaluating the proposed use.

The PR zone allows a number of uses that could conflict with wildlife habitat and other Goal 5 values, and with the purpose of the zone, as noted in the Goal 2 section of this report.

The County has not adopted any implementing measures to protect and/or resolve conflicts with sensitive bird habitat sites.

As noted in previous acknowledgment reviews (e.g., Tillamook County), the Commission has allowed counties to adopt plan policies and ordinance language which clearly expresses the intent to rely on the FPA, Rules, and the March 1984 agreement between the Board of Forestry (BOF) and the Fish and Wildlife Commission (F&WC) to resolve conflicts between timber management activities and sensitive bird sites. Lane County has no such policy commitment, and it has not inventoried all sites on the BOF/F&WC list of sites covered by this agreement. However, even if such a policy is adopted by counties, they are still required to adopt implementing measures to resolve conflicts between other uses (e.g., development) and sensitive bird sites. Lane County has not adopted such measures.

Lane County has not identified sites that are considered to be more important than commercial forest operations based on a Goal 5 ESEE consequences analysis, per Forest Lands Policy 17 (Plan, p. 10), nor has it adopted and applied any implementing mesures to such sites which regulate timber management activities.

Objections

1. The Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon and the Legue of Women Voters of Central Lane County (LWV) have objected to the County's approach to sensitive bird nesting and use sites. Specifically objectors point out that the Flora and Fauna Working Paper discusses only some of the species considered

sensitive. Missing are designations of heron rookeries and pigeon mineral springs. Policy 15 addresses all sensitive species (bald eagle nests, heron rookeries, snowy plover habitat, spotted owl nests, osprey nests and pigeon mineral springs). Further, objectors point out that Policy 15 places these species in a (1B) category. Both ODFW and 1000 Friends indicate that the County possesses inventory information (including recent ODFW updated information) which is sufficient to complete the Goal 5 process for this resource category. ODFW indicates that the location, quality, and quantity information provided the County is similar to that provided to other counties which have completed the Goal 5 process and which have been acknowledged. The League of Women Voters is concerned that two years is too long for these resource sites to be without protection. Most are not in the Greenway, and therefore do not even receive minimal protection.

1000 Friends also objects to the fact that neither Flora and Fauna Policy 2 or 3 provides adequate protection for these sensitive species. Policy 2 simply indicates the County will recognize existing programs that protect species; it does not bind the County to any particular course of action. 1000 Friends believes the County must make an affirmative commitment to protect threatened and endangered fish and wildlife species. Policy 3 also fails to guarantee protection of sensitive species since it requires the County to seek to minimize adverse impacts through County regulations (including zoning). 1000 Friends suggests that present zoning may be construed to "minimize adverse impacts" but this may not necessarily provide adequate protection for particular sites.

1000 Friends also objects to the use of the definition of "sensitive species" used in Policy 3. Objectors believe it is overly general and could be construed by decision-makers to exclude certain species. Objectors believe that County Policy 3 should reference the list of "species of special concern" that appears in the Working Paper, rather than use a vague term in the policy. Similar comments have been filed by Oregon Forest Industries Council.

2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations "if conflicts can be resolved in accordance with OAR 660-16-000." Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.

3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements

that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting of standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

4. ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal and nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where marginal and nonresource lands are located, and therefore the extent to which they are in game range areas, since the zone map format and resource inventory map formats are not easily comparable. 1000 Friends points out the Goal 5 must be applied whereever Goal 5 resources occur, even in areas designated marginal or nonresource land.

5. ODFW, 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's treatment of the Pudding Creek Heronry. Objectors point out that the County conducted a Goal 5 ESEE consequences analysis, but that inasmuch as the sand and gravel plan and zone designations have been retained on the site, conflicts have not been resolved. Please refer to the Goal 15 section of this report for further details concerning objections to the zoning of this site.

6. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Objectors indicate that the County has not adopted a program that is adequate to protect and/or resolve conflicts with the site under Section (3C) of the Goal 5 Rule. Objectors point out that the 1981 LCDC order for the Eugene/Springfield Metro area include a requirement that the ESEE consequences of designating the island for sand and gravel use must be evaluated in the context of regional aggregate supply and demand. The IOTC further required that if the island were to retain a partial sand and gravel designation, the Metro Area Plan and the Lane Code (Section 10.210) must be amended to require that limited aggregate extraction will minimize the impact on scenic and wildlife values.

The IOTC also referenced Goal 15 requirements and IOTCs. Objectors contend that neither the Goal 5 nor Goal 15 IOTCs have been adequately addressed. These objections are also contained in the Goal 15 section of this report.

7. 1000 Friends of Oregon has objected to the fact that Lane County has placed only five noncoastal wetlands in its (1C) inventory, and has placed all others in a (1B) category. 1000 Friends believes the County has sufficient information to be able to classify the others as either (1A) or (1C), since such information was given to the County by ODFW, interested citizens, and the Lane County Flora and Fauna Committee. Objectors indicate that Goal 2 Policy 22 is inadequate for these (1B) sites since it requires only that interim protection be applied at the beginning of the plan refinement process --no sooner. Objectors point out that Goal 15 requires protective measures be applied as soon as their significance has been determined.

   Finally, 1000 Friends indicates that the U.S. Fish and Wildlife Service's National Wetland Inventory is the basis for Lane County's wetland inventory. Flora and Fauna Policy 7 states that this inventory, although incomplete in Lane County, will be used to evaluate (1B) wetlands within two years of the date of plan adoption or when the national inventory is completed. 1000 Friends points out, however, that such an inventory is not scheduled for completion for another 5-10 years, and Lane County is not within a priority inventory area. Objectors believe the County should amend Policy 7 and the Addendum to the Flora and Fauna Working Paper (p. 6) to recognize alternative sources of data shall be used to assess the significance of wetlands and to identify their boundaries.

8. 1000 Friends has objected because the County definition of wetlands in its Working Paper is much narrower than that contained in the Statewide Planning Goals or the U.S. Fish and Wildlife Service, but the County has not justified how such a definition is consistent with Goal 5. The Working Paper states that a wetland is "an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre." Objectors indicate the County has no definition of wetlands in either its plan policy document or in its zoning ordinance.

9. 1000 Friends objects to the fact that Lane County is relying on the FPA to maintain riparian corridors along Class I streams and wetlands, and will take no actions to limit conflicting uses in areas subject to the FPA. Objectors state that there is no analysis in the submittal materials which demonstrates how the FPA and Rules provide protection for riparian resources consistent with Goal 5. Therefore, 1000 Friends objects to LC 16.210(7) and 16.211(9).

10. 1000 Friends objects to the County's failure to apply riparian protection measures around lakes and along Class II streams. Objectors point out that Class II streams regulate water temperature, quality, and quantity of downstream Class I streams.

11. Friends of the Oregon Coast has objected to the County's Renaghan Amendment (Big Creek Exception) for a number of reasons, some of which relate to fish and wildlife concerns. These are as follows:

    a. Objectors believe that many of the findings are "contractory and irrelevant." Objectors cite two examples. The first is that finding 37d (p. 27) conflicts within finding 37e (p. 27). One calls for establishing permanent elk forage areas; the other calls for maintaining the property in forest. Objectors also indicate that the County's claim that there are no sensitive species on the property contradicts findings 40a (5) and 44b(6) which state that the northwest corner of the property contains Silverspot butterfly habitat.

    b. Objectors claim that because the applicant retained a consulting wildlife biologist, his statements in the record should be expected to support the establishment of a destination resort. Objectors believe that his statements are treated by the County as findings of fact although they sometimes "are argumentative of the County's Coastal Sub-Area Plan and of the Oregon Department of Fish and Wildlife's Management plans."

    c. Objectors believe that, although the applicant and ODFW will be required to work together to mitigate adverse impacts on fish and wildlife, these efforts will be "experimental" and therefore cannot justify the resort complex in the the middle of prime and sensitive habitats.

    d. Objectors point out that the Exception recognizes ODFW's concerns about increased fishing pressure on Big Creek as a result of the development, and that potential harm can only be mitigated by regulating sport fishing (through reductions) on the creek. Objectors feel that long-time anglers will therefore be penalized by the development.

Response to Objections

1. Objectors are correct in pointing out deficiencies in the County's inventory of sensitive bird nesting and use sites. Information on location, quality, and quantity is available, yet the County has taken a (1B) approach to several of the species identified. Sufficient information exists for the County to be able to complete the Goal 5 process for this resource category.

   Objectors are also correct that Flora and Fauna Policies 2 an 3, themselves, do not guarantee protection for sensitive species, particularly in light of the absence of implementing measures to provide such protection. The adequacy of these policies can be judged only after the County completes the Goal 5 process for the habitat areas of these species. Lane County has erroneously placed such species in a (1B) category, and has not yet completed the Goal 5

process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

> Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.

4. Objectors are correct that Goal 5 has not been applied by the County in the process of designating marginal lands. ORS 197.247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5.

5. The response to the objections regarding Pudding Creek Heronry is presented in the Goal 15 section of this report.

6. The response to the objections regarding Big Island is presented in the Goal 15 section of this report.

7. The County has indicated it has sufficient inventory information on only five noncoastal wetlands at this time. 1000 Friends has not provided location, quality, or quantity information on specific wetlands it believes should be (1C) sites, rather than (1B) sites.

   ODFW has not objected to the County's determination that only five wetlands are (1C) and the remainder are (1B) sites. 1000 Friends is correct that Policy 22 calls for protection of (1B) sites only at the beginning of the plan refinement process. However, the Goal 5 Rule does not require any interim protection for (1B) sites.

   Although the incomplete National Wetlands Inventory is the basis for the County's wetlands inventory, 1000 Friends is not correct that the County must wait until the National Inventory is completed before it can apply the Goal 5 process to (1B) sites. Furthermore, Policy 7 does not prevent the County from considering information about other sites not on the national inventory during its plan update process. 1000 Friends, or other parties may supply the County with information about wetlands, and the County would be required to apply the Goal 5 process to those sites. Plan Policy 7 states:

   > Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal; state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the national Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process).

While the policy does not permit the use of alternative sources of information during the update process, 1000 Friends is correct in suggesting that the policy could be improved by actually stating that other sources of information (besides the National Inventory) will be used.

8. 1000 Friends is correct in pointing out that the County's Working Paper definition of "wetlands" is narrower than that contained in the Statewide Planning Goals. Wetlands very often do not have open, standing water present at least six months out of the year. Reliance on the County's definition could result in some wetlands possibly being excluded from the County's (1C) inventory.

9. 1000 Friends is correct that the County is relying on the FPA to resolve conflicts between timber management activities and riparian areas along Class I streams and wetlands, although the County has not made a statement to this effect. It is clear in Forest Lands Policy 17 and in various sections of the Zone Code that the County is not regulating harvest activites. Objectors are also correct that the County has not provided an analysis demonstrating how the FPA and Rules provide protection for the Goal 5 resource. However, it has been Commission practice not to require counties to adopt implementing measures to resolve conflicts between timber management activities and riparian corridors.

10. 1000 Friends is correct that the County has not applied riparian protection measures around lakes or along Class II streams, or otherwise justified not providing such protection, based on an ESEE consequences analysis of conflicting uses. Information in the Flora and Fauna Working Paper (pp. 6 and 15) suggests that these are important Goal 5 resources.

11. The objections of Friends of the Oregon Coast are not sustained with regard to fish and wildlife concerns for the following reasons:

    a. Objectors are correct that the Exceptions document contains some conflicting statements, particularly whether the property contains Silverspot butterfly habitat. Specifically, finding 37e (p. 27) is misleading, since the site does contain Silverspot habitat. In light of the fact that the County's intent is clearly to take whatever actions are necessary to protect the Silverspot butterfly, this inconsistency is not a Goal violation.

       With regard to the Exception documents' statements regarding elk forage, it can be assumed that, although the main intent is to keep the property in forest, portions of the property will be in other uses. These findings are broadly written, and, as such, are not contradictory.

    b. Objectors have not indicated how findings 47d(1) through (13) violate Goal 5, only that they are sometimes "argumentative" of other documents.

c. Objectors have not indicated why they believe ODFW's attempt to mitigate impacts on habitats will be experimental, or otherwise why they cannot suceed in providing adequate protection.

d. Objectors have not indicated how regulating sport fishing on Big Creek to protect the resource long-term violates Goal 5. While it is unfortunate that long-term anglers may be "penalized," this is not a Goal issue.

Comments

Oregon Forest Industries Council (OFIC) and the Lane County Landowners Association have commented that Policy 22's intent is unclear, since it calls for interim protection measures for "significant" Goal 5 resource sites. However, the policy addresses (1B) sites. The association indicates that (1B) applies where some information exists but is inadequate for purposes of identifying a site and determining its significance. Commentors also point out that interim protective measures are neither required nor appropriate for Goal 5 compliance.

Response to Comments

Policy 22 (Plan p. 5) states:

> Sites considerd 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the 'significant' sites and after sufficient information is available regarding the location, quality, and quantity of the 'significant sites.

While it is true that Policy 22 is somewhat ambiguous, the policy appears to recognize the fact that certain Goal 5 resource categories have significance (e.g., all eagle nests are significant), although their specific locations may not be known at this time. Therefore a (1B) classification is appropriate. The Goal 5 Rule does not require interim protection measures for (1B) sites. However, the Rule does not prohibit jurisdictions from adopting and applying interim measures to (1B) sites.

Conclusion -- Fish and Wildlife Habitats

Lane County has adopted inventory information for a number of fish and wildlife habitat areas, and has identified conflicting uses and ESEE consequences of those conflicting uses. Implementing measures including riparian setbacks and vegetation maintenance standards and a Natural Resource Zone have been adopted. However, a number of deficiencies still remain and must be corrected before acknowledgement can be granted. These are summarized below.

Lane County has placed all sensitive bird habitat sites in a (1B) category, even though information is currently available and is adequate for completing the Goal 5 Rule process. The County needs to adopt a (1C) inventory for known sites and complete the Goal 5 process.

Implementing measures which carry out ODFW's development density recommendations in Major and Peripheral Big Game Range areas have not been adopted, particularly in the F-2, ML and EFU zones. The County has not applied the Goal 5 process to "nonresource" lands.

The County's three commercial, three industrial, and its garden-apartment zones reference a nonexisting code section for their riparian setback and vegetation maintenance standards. It is obvious that the County intended to apply such standards in those zones but until the zones are amended to either (1) reference the correct section of the code containing those standards, or (2) incorporate such standards themselves, there are no riparian standards in effect in those seven zones. Riparian protection measures have not been applied around lakes, in the Natural Resources Zone, or along Class II streams, or justified as not being necessary, based on an analysis of ESEE consequences of conflicting uses.

The County uses a narrower definition of "wetlands" than in the Goals, and therefore, some wetlands may be left off any future (1C) inventory.

The Parks and Recreation zone allows a number of uses which could conflict with the purpose of that zone, and with Goal 5 resources present (including fish and wildlife habitat values).

A Natural Resources Zone has been developed and applied to lands in the County, but it is unclear which habitat sites have been given NR zoning or whether it has been appropriately applied.

Ecologically and Scientifically Significant Natural Areas

Inventory

The County's Flora and Fauna Working Paper contains the County's inventory information on natural areas (pp. 26-32). This working paper indicates that the County evaluated the 86 sites on the Natural Heritage Inventory and the nine sites identified by the Natural Areas Preserves Advisory Committee. (Note: The Committee is now known as the Natural Heritage Advisory Council). These sites were evaluated by Lane County, first of all, to determine whether there was adequate information on location, quality and quantity. If this was the case, and that information suggested that a site was "significant," it was placed in a (1C) category. If information existed, but the site was determined to be not significant, it was classified (1A). If there was inadequate information, sites were placed in a (1B) category (pp. 26-27).

The County placed six sites in the (1B) category:

1. Booth Island/Siltcoos Lake
2. McKenzie River Island (not be confused with the island at the confluence of the McKenzie and Willamette Rivers)
3. South Fork Gate Creek
4. Swamp Creek
5. Marshall Island Heronry
6. Willamette Valley Quaking Aspen Grove

The County has provided justification why it believes the (1B) classification is appropriate for each of the site sites (pp. 27-28). The Nature Conservancy has indicated it has no updated information for any of the six sites at this time and that a (1B) classification is appropriate (Curt Soper, personal communication, June 15, 1984).

Fifty-six other sites were determined to be in a (1C) category and therefore constitute the County's natural areas inventory (p. 28). The County has grouped these sites according to their ownership. There are 23 sites on U.S. Forest Service land, six on BLM land, four sites within state parks, and 25 that are either in the Willamette Greenway or covered by the Coastal Resources Management Plan (pp. 30-32). Two additional sites (Upper Yachats Elk Pasture and Fern Ridge) are also (1C) sites, but do not fall into the above categories (p. 32).

No information regarding location, quality or quantity of the federally-owned sites is provided in the Working Paper. Information regarding the natural features present in the State park sites and at the 25 Greenway or Coastal sites is summarized (pp. 30-32). All are significant in terms of quality. Locations of these sites have not been provided.

It should be noted that, during the review of the coastal portion of the Lane County plan, a privately-owned Darlingtonia bog, east of Highway 101 and east of the City of Florence, was identified. The bog did not quailify as an ecologically significant natural area under the Coastal Goal requirements. It does, however, possess natural values that could qualify it as a Goal 5 (1C) natural area. However, Lane County has not addressed this site in its Working Paper or other submittal materials.

Conflicting Uses/ESEE Consequences Analyses

Because of their ownership by the U.S. Forest Service or the BLM, the County believes no conflicts exist for the 29 federal sites (Flora and Fauna Working Paper, p. 28).

The County indicates that no conflicts exist for the four state park sites based on uses allowed in zoning districts applied to those sites (p. 29). The Flora and Fauna Working Paper Addendum (p. 15) states, "the State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen." However, as noted in the Goal 2 section of this report, the Parks and Recreation zone which has been applied to these state parks, allows a number of uses which could conflict with natural area values.

No conflicts have been identified for the Coastal or Greenway sites because of programs and zoning districts applied to them (p. 30).

With regard to the two remaining sites (the Elk Pasture and Fern Ridge), the County indicates there are no conflicts. The Siuslaw National Forest and ODFW own the site and have an agreement concerning use of the site as an elk wintering area. Fern Ridge is owned by the Corps of Engineers and, under a 1980 management plan for the reservoir, the natural values present will be protected (p. 32).

It should be pointed out that public ownership, in and of itself, does not necessarily mean there are no conflicting uses, nor does it guarantee site protection. Although several of the U.S. Forest Service and BLM sites are formally protected by those agencies (e.g., wilderness areas, designated research natural areas), others are not. Unless the federal agencies have formal protection programs in place for natural areas, it cannot be assumed that no conflicts exist, nor can they be considered "2A" (protected) Goal 5 resource sites. However, since the Commission has not required counties to complete steps (2) and (3) of the Goal 5 Rule for sites on federal land, it is recommended--but not required--that Lane County correct the statement on page 28 of the Flora and Fauna Working Paper regarding conflicts on federal land.

Policies

Lane County has adopted the following policies regarding natural areas (Flora and Fauna Policies, Plan, pp. 14-16):

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

12. If uses are identified (which were not previously identified in the Plan which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

16. Rare and endangered vascular plants, identified in a 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

Policy 22 (Plan, p. 5) states:

> Sites considerd "significant" in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the "significant" sites and after sufficient information is available regarding the location, quality, and quantity of the "significant sites".

See also the Goal 15 section of this report and the coastal review of the Lane County Plan for a discussion of other relevant plan policies which address natural area.

Implementing Measures

As indicated by the County, a number of natural area sites are located on federal land, over which the County lacks jurisdiction. A number of other sites are significant natural areas within the Coastal Planning Area and the implementing measures applied to them have been acknowledged as being in compliance with the Coastal Goals. The two Greenway sites are actually riparian areas along the Middle Fork and the Coast Fork of the Willamette River. The County's Greenway Permit ordinance and its riparian setback and maintenance standards provide a degree of protection for these areas. (See, however, the Goal 15 section of this report for a discussion of specific deficiencies in the Greenway ordinance).

The four state parks have been zoned Parks and Recreation. However, as noted in the Goal 2 section of this report, the PR zone allows a number of uses that could conflict with the natural area values of the sites. ODOT has indicated it does not forsee conflicts with the four sites, according to the County. However, there are no management plans for the sites, or letters from ODOT which confirm that this is the case.

Objections

1. The League of Women Voters of Central Lane County (LWV) has objected to the fact that the County has placed rare and endangered plant species in a (1B) category with a two year time delay for their evaluation through the Goal 5 process. The LWV is concerned because it believes two years it too long for these resources to be without protection. Objectors point out that since most of these resources are not within the Willamette Greenway, they will not receive even minimum interim protection.

2. Lane County Audubon Society and 1000 Friends of Oregon have objected because the County has not provided adequate protection to a natural area known as Russel Creek Basin. This objection is described in more detail in Part II of this Goal 5 Report.

Response to Objections

1. Flora and Fauna Policy 16, which requires Lane County to evaluate the (1B) rare and endangered plant species list in two years does not refer to any particular sites containing these species, nor have objectors provided a list of sites which they believe should have been placed in a (1C) rather that a (1B) category. If sites are not known at this time, then a (1B) classification is appropriate, including policy commitment to address them in the future.

2. Objectors are correct that protection and/or conflict resolution measures have not been applied to the Russel Creek Basin natural area, in spite of an ESEE consequences analysis and recommendations regarding protection of the site in the Metro Working Paper. This issue is addressed in greater detail in the Part II section of this Goal 5 report.

Comments

1. Lane County Landowners Association has pointed out that the County's list of rare and endangered plants is simply a list of species and does not address any specific or general sites. Commentors believe, therefore, the Goal 5 Rule does not apply to these species until sites are identified. (Flora and Fauna Policy 16 indicates that certain plants are considered significant and shall be placed in a (1B) category and evaluated with two years).

2. Lane County Landowners Association also comments that, contrary to Flora and Fauna Policy 7, wetland resources cannot be considered "significant" while placed in a (1B) category.

Response to Comments

1. Commentors are correct that Policy 16 refers only to a list of species, and does not address any sites. Therefore, the Goal 5 Rule will apply if and when sites containing these species are identified.

Objection

Friends of the Oregon Coast object because they believe the proposed development in the Big Creek Exception Area will not enhance the outstanding scenic view associated with the site, and would, in fact, destroy the "picture-book" setting.

Response to Objection

Objectors have not provided specific information as to why the combination of plan and zone designations for the site, site review and the requirement for 87 percent open space is not sufficient to protect scenic resources associated with the site.

Determining what is sufficient to protect scenic views and sites is more difficult and more subjective than for other Goal 5 resource categories. However, in the absence of more specific information from objectors, the objection cannot be sustained.

Conclusion--Scenic Views and Sites

Lane County has not inventoried outstanding scenic views or sites, nor has it identified conflicting uses and ESEE consequences of conflicting uses. No implementing measures addressing this resource category have been adopted or applied on the ground. Instead, the County has a policy to initiate a program to address this resource category prior to the next plan update (five years from adoption of the revised plan).

Lane County should be commended for the serious thought and consideration it has given to this subject, and for its commitment to initiate a comprehensive program to identify and protect outstanding scenic resources. Understandably, such a program can be complex and time-consuming, particularly as it is outlined in the County's Working Paper. However, the Goal 5 Rule requires counties to develop programs prior to acknowledgment, based on information that is currently available. According to the County's own Working Paper, several inventories already exist. For example, the County recognizes that there are several state scenic highways, sites recognized in its own Parks and Open Space Master Plan, as well as sites within federal wilderness areas or on other federal lands. It should be noted that, in the 1981 denial order for Lane County, there were in-order-to-comply requirements directing the County to inventory scenic resources and to apply Goal 5 to those sites.

Neither the Goal nor the planning process itself requires that new information be generated or that information be perfect before planning decisions are made. If this were to case, nearly all planning decisions would be put off until the post-acknowledgment period. It is recommended that Lane County embark on a comprehensive scenic resources program during post-acknowledgment, as called for in its plan. However, prior to

acknowledgment, the County must, at a minimum, inventory known sites, and complete the Goal 5 process for those sites. This work may be refined during post-acknowledgment as part of the County's more detailed, comprehensive scenic resources program work.

Water Areas, Wetlands, Watersheds and Groundwater Resources

Inventory

Lane County has developed a separate document, Water Resources Working Paper, which contains inventory information, and conflicting uses/ESEE consequences analyses for this Goal 5 topic.

Watersheds: A map showing the locations of Lane County's water basins is contained in the Appendix to the Working Paper (Map 2). The County does not provide quality or quantity information for each individual basin, but rather indicates that quality and size vary (p. 5). The County does note, however, that the Upper Middle Fork Willamette, Mosby Creek, and the entire Siuslaw River have severe sedimentation problems. The remainder of the Willamette and the tributary streams to the Willamette and the Siuslaw have moderate sedimentation problems. According to DEQ, the Siuslaw River basin is a "regional hot spot," (i.e., a considerable portion has a severe problem but is not as important as compared to other hot spots, statewide). DEQ has indicated that 410 miles of streams in Lane County have streambank erosion problems, 67 of them having severe erosion. This is particularly true in the Siuslaw Basin, and in tributary streams to the Willamette and short reaches of the Willamette River itself (p. 4).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's wetlands inventory.

Surface Waters: Lane County streams are shown on Map 2 in the Appendix to the Water Resources Working Paper. More complete mapping of surface water is available in the Planning Department office, however (p. 7). Based on a 1974 Water Quality Report and its 1981 update, the County reports that the quality of water in Lane County is generally quite high (p. 7) However, the Mowhawk, Long Tom, and portions of the Coast Fork and Main Stem of the Willamette have slow, meandering reaches and are affected by extensive development (p. 7). Specific problems along these rivers are discussed briefly (pp. 7-8). The Water Resources Working Paper contains a brief discussion of minimum stream flows, particularly those on the Willamette which are regulated by reservoir releases determined by the Corps of Engineers (pp. 8-9).

The Flora and Fauna Working Paper (p. 16) indicates that all lakes and reservoirs have been mapped and are available in the County Planning Department offices. There are about 300 Alpine Cascade Lakes in the County, varying in size from Waldo Lake (6,420 acres) to Mouse Lake (.05 acres) (Water Resource Working Paper, p. 8).

Groundwater: The principal aquifiers which yield moderate to high volumes of water are located on the coast near Florence in dunal sands, along the lower McKenzie Valley, the lower Middle Fork Willamette Valley, the Lower Coast Fork Willamette Valley, and on the valley floor north of Eugene along the Willamette River (p. 10). Map 3 in the Working Paper shows the quantity of groundwater in Lane County; groundwater quality is depicted on Map 3.

Conflicting Uses/ESEE Consequences Analyses

Watersheds: The County states that the only conflict that is specifically a watershed conflict, and not a surface or groundwater conflict, is contamination or possible contamination of surface water supplies used for domestic purposes. Timber propagation and harvesting activities, particularly herbicide use and erosion caused by ground disturbance can affect municipal water sources (p. 5) Residential development and road construction also cause erosion problems (p. 5). The County notes that resolution of timber harvesting conflicts is beyond its regulatory scope. It also points out that several watersheds used for domestic water supplies are "substantially within federal owernship." The County notes that the watershed for the City of Cottage Grove is almost entirely within federal ownership. The Umpqua National Forest and the U.S. EPA have adopted a plan to address problems, yet these problems continue (p. 5). The County indicates that the potential for similar problems exist for domestic suppies from federally-owned watersheds such as Mapleton, Tide, London Springs, and Eugene's supply, the McKenzie River (p. 5).

The County has not conducted an ESEE consequences analysis because the problem is outside its jurisdiction to resolve. However, the County supports adoption of policies or amendments to state and federal laws (including the FPA) which provide greater levels of protection for watershed (p. 6).

Development -- which is regulated by the County -- could impact the Clear Lake watershed. This watershed serves the Heceta Water District and provides a portion of the water for the City of Florence (p. 6). The County discusses the possibility of designating a "protected watershed" but has decided to take no action until sufficient information is gathered on the sources of pollutants. (p. 6). An intensive study is presently underway in response to a temporary DEQ rule (p. 6).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's conflicting uses/ESEE consequences analysis for wetlands.

Surface Waters: A number of conflicts exist for surface waters of the County, but the County asserts they are not consequences of County actions. Rather, it believes they are the result of federal agency management programs (e.g., reservoirs have certain congressioally authorized uses, but these often do not include some uses that are of importance of the County, such as waste dilution, fish and wildlife and recreation). The Corps of Engineers is in the process of reviewing authorized uses on six reservoirs, and could propose reauthorization (p. 9).

Similarly, certain streams such as the Coast Fork Willamette, Coyote Creek, Long Tom River and Lost Creek, appear to have been overallocated. The County recognizes that the State Water Resources Department (WRD) has responsibility for establishing minimum streamflows. The County believes WRD should initiate adjudication, including establishing minimum streamflows for major waterways (p. 9).

Erosion from forest lands is also a conflict with water quality, but the County points out that it is regulated by the FPA or federal regulations. (p. 9). Agriculturally caused water quality problems are being addressed by DEQ and soil and water conservation districts, although three SWDs in the County have not yet adopted model Best Management Practices by DEQ (p. 9). Outside UGBs, urban runoff is primarily from industrial facilities, especially hazardous materials stored at this sites (p. 9-10). This is also regulated by DEQ.

Groundwater: Two conflicts have been identified for groundwater resources -- development in quantity-limited aquifers, and development in areas where groundwater quality may be polluted. Separate ESEE consequences analyses are presented for these two types of conflicts. The County has concluded that:

1. For a quality-limited aquifer, otherwise acceptable development should be allowed if there is an adequate showing that water will be available for a forseeable period in the future, and that the additional withdrawal will not negatively impact surrounding water users. A number of specific code revisions are recommended to carry out these requirements (p. 12).

2. For groundwater quality problem areas, the County has determined that resolution of conflicts should be different for different types of contaminants (p. 14). These include:

    a. For development in aquifers contaminated by natural means, there should be a system to inform people of potential problems, and to suggest that well drilling and testing take place prior to construcion. Areas of quality limitation could be placed on a computerized land file, and could be checked when a building permit application is reviewed. Similarly, notification would be a matter of public record and would be available to future parties interested in these properties as well.

b. Old and smaller solid waste sites in the County are mapped, but not enough is known about specific leachate problems or groundwater characteristics to designate hazard notification areas around them. The Working Paper recommends inventorying each site, including period of operation, type of wastes deposited, and groundwater characteristics. Based on the information, a hazard notification system should be established (p. 14).

c. Two sensitive aquifers are currently subject to DEQ rules for sewage system installation -- the River Road/Santa Clara area, and the North Florence area. For other developed areas located on sensitive aquifers and which have known or suspected contamination problems (Mapleton, Noti, Elmira, Crow, Coburg, Goshen, Creswell urbanizing area, Saginaw, Marcola, Dexter, Cedar Flats, Walterville, Leaburg, Vida, Blue River, and McKenzie Bridge), current County policy calls for a minimum parcel size of one acre if community water is available, or two acres if individual wells are used. The County points out that this policy does not correct the existing situation, but should prevent aggravation of the situation (p. 15). These quality-limited aquifier areas will be placed on the County computer file, and applicants for building permits involving new wells will be informed of possible sewage contamination in the groundwater.

Policies

The following policies address water resource issues in Lane County (Water Resources Policies, Plan, pp. 17-18):

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and establish priorities among the varous beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

4. The primary means of evaluating groundwater resources for land use planning purposes shall be through the land division review process. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

Additional policies regarding water resources, including wetlands, are discussed in the Fish and Wildlife section of this report, as well as in the Goal 6 and 11 sections.

Implementing Measures

As noted in the Fish and Wildlife section of this report, the County has adopted riparian setback and vegetation maintenance standards in a number of zoning districts.

A Natural Resources Zone has been applied to several wetlands (confirmed by Mike Copely, County Planner, personal communication, July 16, 1984).

Section 13.050(13) of the Lane Code addresses the provision of water in the County. This section requires lots and parcels to be served by an approved public, community, or individual water system. Aquifer and quality tests are required for public and community systems, and may be required for individual water sytems. These tests are as follows (Section 13.050(13)):

(c) Aquifer and quality tests or geological evaluation may be required by Lane County for any lot or parcel. These requirements may include, but need not be limited to, evaluation of existing well logs and preparation of a geological report on the area, and evaluation of the site by a professional geologist, or engineering geologist or full scale aquifer tests as required. In determining the detail of analysis required, the following apply:

(i) Areas designated by Board order as having problems in the quantity or quality of available water as adopted, documented in Lane Manual and filed in the office of the Department shall meet

the following requirements for all parcesl less than 20 acres in size. The applicant must affirmatively demonstrate, in a manner acceptable to Lane County, that the proposed subdivision/partition is capable of sustaining the devlopment anticipated with sufficient potable water. This demonstration must include, but need not be limited to, aquifer tests. More specifically, the aquifer test shall show coefficient of transmissivity, permeabiltiy, storage and the specific yield. The bacteriology/ chemical tests shall show compliance with standards set by the Oregon State Health Division and Lane County. The test procedure shall utilize standard acceptable practices for aquifer tests using pumped and observation wells and records of static water level, date, clock, elapsed time (in min.), depth of water, drawdown and recovery. Analysis using the non-equilibrium method (or other methods where appropriate) must be performed by a licensed geologist or engineer. A copy of all field notes and test results shall be submitted with the report, together with summary statements which indicate whether the proposed use of the aquifer could adversely impact the neighboring wells or properties or deplete the aquifer and the general impact of the proposed use.

(d) For all areas not designated as problem areas by the procedures documented in LC 13.050(13)(a) above, a pump test report or a well log report shall be supplied, unless determined by Lane County to be not necessary.

Pump test and well log reports shall be prepared according to criteria in the ordinance.

Conclusion -- Water Resources

The County has done a good job of inventorying its water resources and problems associated with those resources. The County has analyzed the ESEE consequences of conflicting uses, and has adopted some excellent implementing measures to help resolve conflicts, particularly riparian setback and vegetation maintenance standards and aquifer and quality requirements.

Wilderness Areas

Inventory

Lane County's inventory of designated wilderness areas is contained in its Recreational Resources Working Paper on a map entitled, Recreational Resources. The locations of three wilderness areas are depicted--Mt. Washington Wilderness, Three Sisters Wilderness, and Diamond Park Wilderness.

Page 4 of the Working Paper describes in general the County's role in managing such areas.

It should be noted that recently, new wilderness legislation was passed by the U.S. Congress, establishing a number of new wilderness areas in Oregon. Several of these are within Lane County. These include Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake.

Because of the fact that Congressional action occurred so recently (after Lane County submitted its plan), it is suggested--but not required until first plan update--that the plan be amended to inventory these new areas.

Conflicting Uses/ESEE Consequences Analyses

Because of their federal ownership, remote locations and federal protection for wilderness values, the County indicates that wilderness areas are "free from County-generated conflicts" (p. 4).

Policies

Lane County has one policy addressing wilderness areas (Open Space and Scenic Areas Policy 2; Plan, p. 17):

> Lane County will recommend that no new wilderness areas be designated in the County without a complete analysis of the revenue and employment impacts to Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvest on other public lands.

Implementing Measures

Forest resource zoning has been applied to wilderness areas. The County explains in its Recreational Resources Working Paper (p. 4) that this zoning "will pay homage to the concept of County 'protection' of them, but in practical fact they are simply out of the relm of County authority."

Conclusion--Wilderness Areas

Lane County has inventoried the three wilderness areas within its boundaries and has adopted a plan policy recommending that no new wilderness areas be designated without an analysis of revenue and employment impacts. The areas have been given forest resource zoning. It is recommended that, by first plan update, the County amend its plan to inventory the recently designated new wilderness areas.

Historic and Cultural Resources

Inventory

The Working Paper identifies each of the approximately 500 sites identified in Lane County on a preliminary inventory and survey of historic and archaeological resources. Each is identified by site number or name, by location (township, range, section) and by map symbol. Each appears on a quad map included in that document. A map symbol for each site indicates whether it is an archaeological site, a transportation site or route, a settlement feature, an agricultural site, a mining site, a logging site, a marine site, an historical site, or a natural feature.

Lane County has adopted an Historical Resources Working Paper which explains the process and criteria used in evaluating the "significance" of the 500 sites identified in the County (Addendum to the Working Paper, pp. 1-2). All sites on the National Register of Historic Places are considered significant and are in the (1C) category of the Goal 5 Rule. All sites or structures still in existence contained in the Statewide Inventory are also considered significant, and where sufficient information is available to carry out a conflicting uses analysis, a (1C) label has been given. Archaeological sites are considered (1B) sites, but the County indicates they should be given special interim protection until a data and a protective program for them are developed. All other sites identified are (1A) sites (pp. 1-2).

In all, the County determined there are 63 (1C) sites. These are listed on pages 3 and 4 of the Working Paper Addendum, along with their locations and map numbers. These sites are mapped on quadrangle maps that are included in the Working Paper. Each site has been given a map code which specifies the "theme" of the site (i.e., archaeological, transportation, settlement features, cemetery, century farm, grange hall, old barn, mining, logging, marine industry, historical site, natural landmark, and hot springs). Further information about each (1C) site that is also on the Statewide Inventory is appended to the addendum to the Working Paper. The Addendum to the Working Paper also summarizes the quality and quantity of these (1C) sites (pp. 5-9).

It should be noted that the County has indicated that several (1C) sites on the historic sites inventory in the Working Paper Addendum (pp. 3-4) were deleted by the Board of Commissioners during final plan adoption, including sites # 32, 34, 39, and 42 (Mike Copely, County Planner, personal communication, June 15, 1984). There is no indication of this in any of the resubmittal materials. Site 34 is within the Creswell UGB. However, there are no reasons presented supporting deletion of sites # 32, 39, or 42 (the Andrew Keeney House, the Paschelke House, and Fall Creek Christian Church, respectively).

Conflicting Uses/ESEE Consequences Analyses

Pages 5-9 of the Addendum to the Working Paper contain the County's conflicting uses identification and ESEE consequences analyses for the (1C) sites. These analyses are presented by category for the following categories: Transportation Sites (bridges), Settlement Features, Barns, Marine Sites, Historical Sites/Landmarks, and Archaeological Sites.

In its Working Paper, the County recognizes destruction of the structural sites as a conflict, but fails to recognize major exterior alteration as a conflicting activity. However, it is clear in the County's zoning ordinance that the County considers major exterior alteration as an activity which could conflict with historic resources. For archaeological sites, the County identifies any land use or activity which damages the integrity of the site as a conflict.

Policies

Lane County has adopted a number of plan policies which address historic and archaeological resources (Plan, pp. 12-13). These include the following:

1. A group known as the "Lane County Historic Resource Committee" is to be established and given permanent status by the Board of County Commissioners. The Committee shall represent a wide array of historical interests and the interest of property owners. Its tasks shall include: general concern with historical matters in the County; to monitor conditions affecting such resources; to devise criteria and methods for the selection of newly-designated historical resources; to advise the staff and officials of the County on proposed new historical sites and structures; to oversee the administration of the Historic Structures or Sites ordinance; and other related tasks and duties. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

2. The County shall administer the "Historic Structures or Sites" section of Lane Code Chapter 10 as a means of protecting historic resources. These regulations shall be applied to all sites contained in [the] list of "Historic Structures or Sites" referenced by the ordinance, which are sites deemed significant by the County, and therefore meriting protection from conflicting uses by a limitation of such conflicting uses.

3. The Goal 5 conflict resolution process (OAR 660-16-000 through 660-16-025) which has been applied in the selection of historical sites and structures contained in the General Plan and implemented through the "Historic Structures or

Sites" ordinance, shall continue to be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or change in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historic sites and resources. A long-term objective shall be in the inclusion of historical sites in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

9. The County shall work with concern local, state and federal agencies to coordinate efforts to identify and protect historical resources.

10. Archeological sites identified in the Historical Resources Working Paper and Addendum to the Historic Resources Working Paper shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. These significant sites shall be incorporated into the Lane County General Plan Policies document as Historical Resources Exhibit A.

Note: Policy 2, above, incorrectly refers to Lane Code Chapter 10, rather than Chapter 16 as its implementing measure for historic sites.

Implementing Measures

Section 16.233 of the Lane County Development Code is the Historic Structures of Sites Combining Zone (/H-RCP), the stated purpose of which is to allow the County to review building and demolition permits to

ensure historic resources are preserved. The Code specifies that "no person may alter or demolish any Historic Structure or Site" unless a permit to do so has been issued. Upon receipt of an application for such a permit, the Planning Director shall notify the Lane County Museum Director and the State Historic Preservation Officer.

A demolition permit shall be approved only if evidence is submitted demonstrating that "every reasonable effort shall be made to maintain the Historic Structure by acquisition, protection, stabilization, rehabilitation, restoration or reconstruction project (a demonstrated lack of private and public funding for maintenance of a structure is sufficient cause to allow demolition)." A permit to alter an historic site or structure shall be approved only upon submission of evidence that (a) any use or change "should be compatible with the historical nature of the property," and (2) only the minimum alteration of the structure or site and its environment necessary to achieve the intended use shall be allowed. Consideration shall be given to four alteration guidelines in satisfying the second criteria, above. These guidelines are as follows:

(1) Only the minimum alteration of the designated historic building, structure or site and its environment necessary to achieve the intended use shall be allowed.

(2) The distinguishing original qualities or character of a designated building, structure or site and its environment should not be destroyed. The removal or alteration of any historical material or distinctive architectural features should be avoided.

(3) All designated buildings, structures and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance should be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected.

It must be noted that the zoning maps do not show that the combining zone has been applied to all 63 inventoried (IC) sites as intended. Specifically, the maps do not show that the combining zone is applied to (IC) sites 1-20, 24, 35, 38, 44, 45, 46, 48, 55, 57, 59 or 61. The ordinance also does not indicate which sites fall within that zone designation. This is also contrary to Historic Policy 2, which states that the zone shall be applied to all sites on a list referenced in the ordinance.

Objections

1. The Oregon Department of Transportation (ODOT) has objected because of a conflict between the historic resources working papers and the ordinance. Specifically, ODOT finds that the historic ordinance applies only to sites and structures on the National Register of Historic Places, and does not cover other (1C) sites identified in the working papers.

2. Friends of the Oregon Coast object because of the failure of Lane County to address cultural and archaeological resources of the Big Creek Exception Area. Specifically, objectors indicate that Goal 5 requires such resources to be inventoried. Yet, according to objectors, the Exception does not address this topic "in any way." Objectors provide information indicating that such resources are common at the mouths of coastal rivers. Due to the probability of Indian graves and/or a significant archeological site at the mouth of Big Creek, and the fact that, based on the County's own definition of conflicting uses, road building, building construction and land clearing for a destination resort are considered conflicting uses, objectors believe that "the new zoning of the Renaghan property is in violation of Goal 5 until an intenstive cultural resources inventory has been conducted and this portion of Goal 5 addressed."

Response to Objections

1. ODOT has misread the Lane Code with regarding to the County's Historic Structures of Sites Combining Zone. ODOT has apparently reviewed the County ordinance which applies inside UGBs. That zone does limit the zone's application to National Register sites. However, ODOT has failed to note that the ordinance which applies outside UGB's (in rural Lane County) is somewhat different. Specifically, the rural zone does not contain language that limits application to National Register sites. Therefore, the objection is not sustained.

2. Objectors are correct that the exception for the Renaghan property does not address historic or cultural resources. However, as pointed out by the objectors themselves, the State Historic Preservation Office knows of no site on the property, nor do anthropoligists at Oregon State University. County's are required, under Goal 5, to rely on whatever information is available in producing comprehensive plans. They are not required to conduct extensive archaeological surveys. Therefore, the County's exception does not violate Goal 5 for cultural or archeological resources. If, in the event, such resources are discovered during site development, the Goal 5 Rule would have to be applied by the County, including possible plan amendments.

Conclusion--Historic Resources

Lane County has adopted an inventory of historic resources and has analyzed conflicts and ESEE consequences of conflicts with these resources. The County has a combining zone which is intended to be applied to historic sites.

The zone provides procedures and criteria for resolving conflicts with inventoried sites, particularly major exterior alterations and demolitions. However, the County has not applied the zone to all 63 (1C) sites identified in its plan, as intended.

Oregon Recreation Trails

Inventory

Lane County's inventory of Oregon Recreation Trails is included in its Recreational Resources Working Paper (p. 15, Recreational Resources Map).

The County describes these trails as follows:

1. Coast Range Trail--not developed. Funding limitations and the desire of the state not to condemn private land for trail development suggests that it will be some time before it is completed. Mapped route is general in nature.

2. TransAmerica Bike Trail--fully signed and marked, with route maps published by the state.

3. Eugene to Pacific Crest Trail--a few portions are developed with work now underway by a local chapter of the Sierra Club. Uses bikeways in Eugene Area.

4. High Divide Trail--proposal only, same as #1 above.

5. Coast Trail--Lane County developed portions occur in Cape Perpetua and Heceta Head recreational areas, with preparations being made for inclusion of Oregon Dunes National Recreation Area lands. No private lands involved at this point.

6. Coast Bicycle Trail--designated, signed and mapped.

7. Pacific Crest Trail--fully developed. No private lands involved in Lane County. Located in Willamette National Forest.

These descriptions are basically accurate. It should be noted that, according to Jack Remington, State Trails Coordinator, ODOT has proposed general routes for the unbuilt portions of the Eugene to Pacific Crest Trail and the Coast Trail. Portions of the High Divide Trail already exist since they follow several other developed trails. However, only general routes have been proposed for the unbuilt portions of the High Divide Trail (personal communication, June 20, 1984).

The general location of each of the seven trails is depicted on the County's Recreational Resources Map in the Working Paper. No specific locations have been provided in either the text or on the map, however, for existing trails. Specific routes for the Pacific Crest Trail, the TransAmerica Bike Trail, the Coast Bike Route, and portions of the High Divide Trail and the Eugene to Pacific Crest Trail are known, since these trails are developed.

Conflicting Uses/ESEE Consequences Analyses

The County has not identified specific conflicting uses with the seven proposed or existing Oregon Recreation Trails.

However, the Coast Bicycle Trail, TransAmerica Bike Trail and the Pacific Crest Trail are fully developed and are either on federal or other public lands or on public rights-of-way, as are portions of Eugene to Pacific Crest Trail and portions of the Coast Trail. Therefore, the County concludes that they are likely to experience few conflicts.

No specific routes for the Coast Range Trail or the unbuilt segments of the Coast Trail, the Eugene to Pacific Crest Trail, or the High Divide Trail have been determined by ODOT. Although most of these proposed trails would cross public lands, segments of these trails are proposed to cross private lands, and conflicts could occur. However, since their locations are only generally known at this time, specific conflicts cannot be determined.

Policies

Lane County's recreational trails policy (Open Space and Scenic Areas Policy 4, Plan, p. 17) is:

> The County shall acknowledge recreational trails which are developed by the Oregon Parks Outdoor Recreation Plan and shall display the routes on its Plan documents.

Lane County lacks a policy to cooperate with ODOT in the protection of existing trails. The County also lacks a policy to coordinate with the Oregon Department of Transportation in applying the steps of the Goal 5 Rule during any future identification or establishment of proposed trails or trail segments.

Implementing Measures

No specific implementing measures have been adopted by Lane County for the protection and/or resolution of conflicts with existing or proposed trails.

Conclusion--Recreation Trails

Lane County has identified the seven existing or potential state recreation trails in its Recreational Resources Working Paper, but has not provided a description or map of the specific locations of existing trails. It has, however, recognized the fact that ODOT has maps of these trails. The County lacks a plan policy to coordinate with ODOT in applying the Goal 5 Rule if and when any of the unbuilt trail segments are identified or proposed for construction or designation. The County also lacks a policy to cooperate with ODOT in the protection of existing trails.

No conflicts exist with developed trails and trail segments, and therefore, special implementing measures are not necessary in those areas. Implementing measures have not been adopted for the protection and/or resolution of conflicts with the proposed trails and trail segments, nor are any appropriate at this time since their specific locations are not yet known.

Potential and Approved Scenic Rivers and Waterways

Inventory

The County's Recreational Resources Working Paper briefly describes both the State Scenic Waterways Program and the Federal Wild and Scenic Rivers Program (p. 16). The County correctly notes that there are no designated federal rivers in Lane County at this time. However, the County fails to note that during the 1983 Legislative Session, a bill was passed (HB 2435) designating Waldo Lake and the North Fork of the Middle Fork of the Willamette River (from Waldo Lake to about one mile upstream from Westfir) as a State Scenic Waterway. The County's working paper incorrectly indicates there are no state designated waterways.

The Working Paper correctly recognizes that five river stretches are on the U.S. Interior Department's inventory of potential scenic rivers (p. 17):

1. Upper McKenzie (from Tamolitch Falls to McKenzie Bridge);

2. Steamboat Creek (from its source to its confluence with the Umpqua River);

3. Alsea (entire length; only a small upper portion in Lane County);

4. Siuslaw (from its source to Lake Creek confluence); and

5. Willamette (from Eugene to Corvallis).

All five of these river segments are shown in a general fashion on the Recreational Resources Map contained in the County's Recreational Resources Working Paper.

The County correctly notes that the Upper McKenzie (from Tamolitch Falls to McKenzie Bridge) is also on the state potential scenic waterways list. However, the County fails to mention that Steamboat Creek and Alsea River (the same stretches as on the federal potential list) are also on the state potential list.

The County recognizes that the area affected along each of the inventoried rivers is one-quarter mile on each side measured from ordinary high water (p. 16).

Policies

The following policy has been adopted regarding wild and scenic rivers (Open Space and Scenic Areas Policy 5, Plan, p. 17):

> The County shall cooperate with appropriate state and federal agencies in the selection of scenic and wild rivers.

This policy does not commit the County to coordinate with those agencies in applying the Goal 5 Rule process in studying rivers for possible state or federal designation and in making such selections.

Conflicting Uses/ESEE Consequences Analyses

Lane County suggests that conflicting uses and ESEE/consequences should be identified at the time a river is studied for designation (pp. 17-18). The County also suggests that resource zoning should provide protection for such rivers (p. 17).

Implementing Measures

Waldo Lake and the stretch of the North Fork of the Middle Fork of the Willamette River that is designated as a State Scenic Waterway are located entirely on federal land (confirmed by Jim Payne, State Rivers Program Coordinator, personal communication, June 14, 1984). The portion of the Alsea River that is on the state and federal potential lists is also in federal ownership. The Willamette River is within the Willamette River Greenway, to which the County has applied a Greenway Development ordinance (see the Goal 15 section of this report for details).

Portions of the McKenzie River, Steamboat Creek, and the Siuslaw River flow through federally-owned lands. However, some stretches are in non-federal, private ownership. Developed and committed exceptions have been taken along all of these stretches of the McKenzie and Siuslaw Rivers and Steamboat Creek, most of which have been found to be valid under the Goal 2 analysis in this report. However, as noted in that report section, exceptions in plats 23, 204, 230 (Siuslaw River), 627, 628, 629, 630 and 631 (McKenzie River) have not been justified. No needs exceptions have been taken along the McKenzie River, Steamboat Creek, or the Siuslaw River. It has been the practice of the Commission to require jurisdictions to analyze the ESEE consequences of taking needs exceptions along potential federal or state scenic rivers and waterways, but not to require such an analysis for built and committed exceptions.

Conclusion--Scenic Rivers and Waterways

Lane County has inventoried five federal potential scenic rivers and one state potential scenic waterway (the McKenzie River) but has failed to note that, besides the McKenzie River, two of the federal potential rivers are also potential state waterways (i.e., the Alsea River and Steamboat Creek). The County has also failed to mention that Waldo Lake and the North Fork of the Middle Fork of the Willamette River are designated State Scenic Waterways.

The County lacks a policy commitment to coordinate with appropriate state and federal agencies in applying the Goal 5 Rule process in studying rivers for possible designation as well as in the actual selection of rivers for designation.

Built and committed exceptions have been taken along all nonfederal lands along state and federal potential scenic rivers, some of which have not been found to be valid under Goal 2. The County needs to either not take these exceptions, or justify them as being built or committed.

PART II--EUGENE/SPRINGFIELD METROPOLITAN AREA OUTSIDE THE METRO UGB

In August, 1982, the Commission reviewed and acknowledged the Eugene/Springfield Metro Area Plan and implementing measures for lands within the Metro UGB. However, the cities of Eugene and Springfield as well as Lane County were granted a continuance for lands outside the UGB but within the Metro Planning Area Boundary in order to comply with Goal 5, (as well as several other Goals). The following section of this report analyzes Lane County's responses to the "in-order-to-comply" requirements contained in the August, 1982 staff report, adopted by the Commission.

Requirement

1. Amend the Metro Plan to include a separate evaluation of the "ESEE" consequences of allowing conflicting uses for those sites which are the subject of a Goal 5 objection filed pursuant to OAR 660-116-00 (i.e., Sites 4, 5, 7, 12, 19, 21 and 28 shown on Figure D-3). For specific direction on individual sites see underscored portions of Comments and Objections subsection, preceeding.

Response

The following sites were to be addressed under this requirement:

Site	Name
4	Bertelsen Slough
5	Willow Creek Wetlands
7	Confluence Heronry
12	Gillespie Butte
19	Spencer Butte Ridgetop
21	Russel Creek Basin
28	Pudding Creek Heronry

Sites 4, 5, 12 and 19 are located within the Metro UGB and have been acknowledged by the Commission (see the August 19, 1982 Commission action, pp. 10-11). Therefore, they are not addressed in this report.

The Confluence Heronry, Pudding Creek Heronry and Russel Creek Basin are outside the Metro UGB and inside the Metro Planning Area Boundary and were therefore addressed in this plan submittal. Specific Goal 5 analyses for each of the three sites are presented separately below.

Confluence (Big Island) Heronry: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Maps and Metro Area of Influence document (January 1984) contains a 1982 working paper entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas." Part V of that working paper addresses a site known as the Confluence Heronry, or the Big Island Heronry. This working paper supplements Lane Council of Governments' (L-COG's) inventory in the Natural Assets and Constraints working papers of April 1978.

As explained in the 1982 working papers, p. V-1, the 235-acre island is located in the Willamette River near the confluence with the McKenzie River. The County has specifically mapped the location of the island as well as a large Great Blue Heron rookery located on the island. The heronry has been determined to be of local and statewide significance, and is on the State Natural Heritage Inventory. The island's other resources (e.g., agricultural land, vegetation, wildlife and wildlife habitats, sand and gravel resources, scenery and water are described (pp. V-1 through V-5). The island is within the Willamette Greenway and is a potential Greenway acquisition site in the ODOT Greenway Plan (Working Paper, p. V-7).

L-COG has reassessed the significance of the resources on the island and has provided more detailed locational information about the heronry and its significances, statewide, based on information on other heronries (p. V-8). More refined information has also been adopted regarding vegetation, soils, agricultural values, and sand and gravel resources (pp. V-8, V-11 through V-17).

Conflicting uses are identified (pp. V-8 through V-10) as recreation, sand and gravel extraction, timber harvest, agricultural practices, wildlife and wildlife habitat, scenic assets and public improvements. Each of these uses is described, particularly as it could affect the heronry. Pages V-11 through V-17 contain L-COG's ESEE consequences analysis.

The analysis concludes that the heronry and vegetative fringe of the island are significant resources that should be protected. However, not allowing sand and gravel extraction on the island would result in negative impacts on property owners and the public. Extraction can be conducted in a manner that is compatible with the heronry (p. V-18). Recommendations regarding the island are made on page V-18. Among these are recommendations to:

1. Designate the heronry and buffer area as "natural resource" and designate the fringe of the island as "park and open space." The interior of the island should be designated "sand and gravel."

2. Exchange land (between property owners and the state) so that the heronry and buffer are in perpetual public ownership.

3. Protect the riparian habitat on the island periphery by maintaining an adequate Willamette River Greenway vegetative fringe.

4. Develop controls on sand and gravel extraction between the operator and ODFW in order to protect the heronry.

5. Rely on state and County permits for addressing the details of sand and gravel operations.

See also the Goal 15 section of this report.

Pudding Creek Heronry: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Maps and Metro Area of Influence document (January 1984) contains a 1982 working paper entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas." Part VI of that working paper as well as 1984 Addendum to Part VI addresses a site known as the Pudding Creek Heronry. These working appears supplement L-COG's inventory in the Natural Assets and Constraints working papers of April 1978.

The heronry is one of the largest in Western Oregon (about 54 nests) and continues to be productive (Addendum, p. 1). The heronry is currently designated and zoned "sand and gravel," and potential mining operations

could conflict with the heronry. The site is on the Middle Fork of the Willamette River (Working Paper, p. VI-5). The Addendum indicates that the site is also within the Willamette Greenway.

The 1982 Working Paper summarizes in greater detail the resource values of the site (pp. VI-1 through VI-5), as well as the nature of the potential conflicts (pp. VI-6 though VI-7). Inasmuch as the heronry is in the middle of the potential extraction operation, and the owner has an operating permit from the Oregon Department of Geology and Mineral Industries, this appears to be the greatest conflict. Timber harvest and vegetative clearing, which normally precede extraction, would also conflict with the heronry (pp. VI-5, V-6).

Pages VI-7 through VI-12 analyze the ESEE consequences of the various competing uses for the site, and conflict-resolution alternatives ranging from no protection for the heronry to full protection of the heronry through public acquisition or land trade are analyzed (pp. VI-13 and VI-14).

The Working Paper recommends interim protection for the heronry, plus possible land exchange or transfer of mining rights. It also recommends that ODFW cooperate with the landowner to develop a management plan for the site (should no land exchange take place).

The 1984 Addendum to the 1982 Working Paper reassesses the significance of the heronry, updates the inventory, and summarizes the results of negotiations which have taken place between Lane County, ODFW and the landowner (Wildish Land Company).

The 1984 Addendum to the Working Paper contains a discussion of the conflict-resolution process that took place in 1983 (pp. 1-2). ODFW drafted a trade agreement for an exchange of land and mineral rights of like value between State Parks Division, Lane County, and the Wildish Land Company (pp. 1-2). Such a trade would result in protection of the heronry and protection of the landowner's ability to extract aggregate (p. 3). Based on the analysis of conflicts, ESEE consequences, and the possibility of a land exchange, the Addendum contains the following updated recommendations (p. 4):

1. Change the plan designation for the heronry and surrounding buffer area from "sand and gravel" and "park and open space" to "natural resources."

2. Change the plan designation for an equal value land within Buford Park from "parks and open space" to "sand and gravel."

3. Lane County should rezone each area to correspond to these plan designations.

4. The potential land exchange area should be contiguous to existing Wildish holdings to avoid creating noncontiguous park boundaries.

See also the Goal 15 section of this report.

Russel Creek Basin: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Map and Metro Area of Influence document (January 1984) contains a working paper which is entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas--Russel Creek Basin Addendum." This working paper supplements Lane Council of Governments' inventory in the Natural Assets and Constraints working appers of 1978 and the 1982 Natural Assets: Conflict Resolution for Significant Areas.

The 1984 working paper provides a history of the treatment of Russel Creek in the Metro Plan update process (pp. 1-5), and notes that LCDC's 1981 review of the plan required an ESEE consequences analysis of the site (p. 4). The working paper describes the natural features of the five subbasins comprising Russel Creek Basin as well as the specific ownerships and conflicting uses present (pp. 5-10). Maps are also provides showing the specific location of the basin, its subbasins, and vaious natural features. Species lists--both plant and animal--are appended to the working paper as well. The site is a significant natural area and, among other things, contains at least one threatened plan species, and several other species of special significance. Major conflicting uses on the 410-acre site include timber harvesting, agriculture, and certain types of recreation (p. 10).

The ESEE consequences of these conflicting uses are presented on pages 11-12 of the working paper, and, based on this analysis, the following recommendations are made (p. 14):

1. Lane County should adopt interim protective measures that prohibit grazing, logging and any other activity that may adversely affect future protection of the proposed natural area.

2. Conflict resolution and resulting plan amendments required for preserving Russel Creek should occur in conjunction with the Metropolitan Plan mid-period review.

3. Russel Creek property owners should be contacted, and negotiations should commence regarding conflict resolution for the proposed natural area.

4. The options of acquisition, donation or long-term lease should be explored along with the possibility of a joint program of interest among identified groups and governments.

Conclusion: Requirement 1 has been satisfied.

The Metro Plan has been amended to include separate evaluations of ESEE consequences of allowing conflicting uses for sites within the Metro Planning Area Boundary but outside the Metro UGB, namely, Confluence Heronry, Pudding Creek Heronry, and Russel Creek Basin.

Requirement

2. Amend the Metro Plan to include mandatory policy language requiring local governments to adopt resource protection/conflict resolution measures consistent with the plan's adopted text and findings.

Response

The Metro Plan was amended to include mandatory policy language requiring local governments to adopt implementing measures consistent with the plan's text and findings. These amendments were made and acknowledged by the Commission in August 1982 as part of the review of Metro Area (see Commission action, p. 12). Since these policies also apply outside the Metro UGB and inside the Metro Planning Area Boundary, this requirement has been satisfied.

Conclusion: Requirement 2 has been satisfied.

The Metro Plan has been amended as required, and acknowledged in August 1982.

Requirement

3. Eugene, Springfield and Lane County must amend their implementing measures to clarify the meaning of Policy 12 in habitat/scenic areas, as applied in the "Forest" and "Parks and Open Space" plan designation outside the UGB.

Response

Policy 12 referred to in this IOTC is on page III-C-8 of the 1980 Metro Plan. It reads:

> When evaluating the desirability of harvesting commercial timber on forest lands within the jurisdictional boundary but outside the urban growth boundary, great emphasis shall be placed on preserving scenic and water quality, as well as protection of wildlife, open space, and recreational potential.

In its most recent submittal, Lane County has not amended its implementing measures to clarify how this policy will be carried out in habitat or scenic areas that are designated "Forest" or "Parks and Open Space."

The meaning of Policy 12 is further confused by the more recent adoption by Lane County of Forest Lands Policy 17 (Plan, p. 10) which states:

> Lane County recognizes the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest trees species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict

resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

As noted in Part I of the Goal 5 section of this report, the County has not indicated which sites are "more important" based on a Goal 5 ESEE consequences analysis, nor has it adopted implementing measures to protect such sites through the regulation of forest management activities, or to otherwise resolve such conflicts, per Policy 12.

The Cities of Eugene and Springfield have adopted "tree-cutting" ordinances in response to this IOTC and have been acknowledged by the Commission.

Conclusion: Requirement 3 has not been satisfied.

Lane County has not amended its implementing measures to clarify how Policy 12 is to be carried out in habitat and scenic areas designated "Forest" and "Parks and Open Space."

Requirement

4. Eugene, Springfield and Lane County must ensure that Metro Area Plan policies are implemented in all natural resource areas as mapped in accordance with compliance requirements outlined above.

Response

As noted earlier, the plans for lands within the cities of Springfield and Eugene and lands within the Metro UGB have been acknowledged as being in compliance with Goal 5. Implementing measures that are adequate for protection and/or conflict resolution for the resource sites outside the Metro UGB but inside the Metro Planning Area Boundary (i.e., Russel Creek Basin, Confluence Heronry, Pudding Heronry) have not been adopted. The Russel Creek site is designated and zoned for forestry and residential use. Recommendations contained in the Working Paper of the Metro Plan Update document have not been carried out. Implementing measures for Pudding Creek and Confluence Heronries are addressed in the Goal 15 section of this report, since they are located within the Willamette River Greenway, and Goal 15 implementation requirements are more stringent than--and therefore supercede--those for Goal 5. As explained in the Goal 15 section of this report, adequate implementing measures for these two Greenway sites have not yet been adopted.

Objections

1. 1000 Friends of Oregon and Lane County Audubon Society have objected to the fact that Russel Creek Basin has been designated "Forest" and has been zoned for forest and residential uses. Specifically, objectors point out that in its 1981 review of the Metro Plan, LCDC found that the County identified this 410-acre site as a significant Goal 5 resource (because of its diversity, wetland, riparian

vegetation, unique species, wildlife, and climax ecosystems, including old growth). LCDC also found, however, that the County needed to analyze the ESEE consequences of conflicting uses with the site, and to complete the Goal 5 process. Objectors contend that although the County's resubmittal indicates that continued logging and future grazing may destroy these values, and the site is designated "forest" in the Metro Plan, and zoned for forest and residential uses. This would allow timber harvest, grazing and development which could adversely affect the resource. Objectors indicate the County has not taken steps to resolve these conflicts in accordance with the Goal 5 Rule, or with recommendations in the plan itself. Objectors also indicate that the County's "conflict resolution" document simply postpones the resolution of conflicts by recommending a negotiation phase and because interim protection (which is also recommended) has not been implemented.

2. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

3. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willametter Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in th Goal 15 section of this report.

Response to Objections

1. Objectors are correct that Lane County has taken no action to resolve conflicting uses for Russel Creek Basin, based on its own ESEE consequences analysis.

2. The response to the objections regarding the Pudding Creek Heronry is presented in the Goal 15 section of this report.

3. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

Conclusion: Requirement 4 has not been satisfied.

Adequate implementing measures have not yet been adopted for the Confluence Heronry, Pudding Creek Heronry, or Russel Creek Basin.

Conclusion - Goal 5

Lane County does not comply with Goal 5.

Lane County has compiled inventory information for most Goal 5 resource categories and has made (1A), (1B) and (1C) decisions, based on this information. Conflicting uses for most categories have been analyzed. Based upon this work, the County has made protection/nonprotection decisions and has adopted plan policies and applied several implementing measures to many Goal 5 sites. Most noteworthy of these implementing measures are the County's riparian setback and vegetation maintenance standards, its groundwater protection provisions, and its Natural Resource zone. However, there are a number of deficiencies in the County's Goal 5 element which must be corrected before acknowledgement can be granted. These deficiencies have been summarized in the previous sections of this report.

In order to comply with Goal 5, Lane County and the Cities of Springfield and Eugene must:

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SG which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

2. Fish and Wildlife Habitats:

   a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

   b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation maintenance standards, or (2) incorporate by reference another section of the Lane Code which contains such standards.

   c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.

   e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.(*)

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

i. Carry out Forest Lands Policy 17 (Plan, p. 10) by identifying sites that are considered more important than commercial timber management activities, based on a Goal 5 ESEE consequences analysis, and adopt appropriate implementing measures to protect and/or resolve timber management conflicts with those sites, consistent with that policy.

4. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.(*)

5. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

6. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

7. Oregon Recreation Trails:

   a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

8. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.(*)

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.(*)

9. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflict-resolution recommendations contained in the Metro Plan Update Working Paper.

Note: Those IOTC's which pertain only to Lane County are followed by an asterisk (*).

Suggestions for Plan and Implementing Measures Improvement

It is suggested that on or before the first plan update, Lane County:

1. Amend the plan to inventory the recently designated wilderness areas (Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake).

2. Amend page 28 of the Flora and Fauna Working Paper to indicate that not all sites on federal land are necessarily protected (i.e., there may be conflicts with sites unless they are formally protected by the federal resource agency).

3. Amend Flora and Fauna Policy 7 to indicate that in evaluating (1B) wetland sites for possible inclusion on its (1C) inventory, information sources besides the National Wetlands Inventory will be used.

4. Adopt implementing measures to carry out Flora and Fauna Policy 9 (requiring residential building permits in Big Game Range areas to include a note indicating that the site is in Big Game Range and conflicts may occur).

GOAL 15: WILLAMETTE RIVER GREENWAY

This Goal 15 report is divided into two major parts. The first part is the review for all areas within the Willamette Greenway Boundary in Lane County outside the Metro Plan Boundary. The second part is for those Greenway areas inside the Metro Plan Boundary, but outside the Metro UGB.

PART I--GREENWAY AREAS
OUTSIDE THE METRO PLAN BOUNDARY

Inventory

Lane County has adopted a Willamette Greenway Working Paper which states (p. 7) that inventories of various Greenway resources are contained in the Greenway Plan. This Greenway Plan is incorporated into the Working Paper by reference (p. 7). As noted in the 1981 review of the Lane County plan and ordinances, the County's Greenway inventories are contained in its Greenway Technical Report, and are summarized in its Greenway Plan. This information was determined to adequately address the fifteen resource topics listed in Section B of Goal 15.

Greenway Boundary

Lane County has displayed the LCDC-approved Greenway Boundary on both its plan maps and its zoning maps, as required under sections E.1 and F.1 of the Goal. The boundary is clearly labeled and, for the most part, its location is accurately drawn. However, there are several minor inconsistencies on map Nos. 304, 304A, 305, 347, 437, and 528. The boundary is not shown on map Nos. 330, 332, 396, 411, 417, 418, 425, 440, 448, 471, 1005, 1006, 1008, 1010, 1011, 1012, and 1013.

The recently adopted Willamette Greenway Working Paper (p. 8) states that the Greenway Boundary is correctly displayed in the County's Greenway Plan and in the Eugene-Springfield Metro Area General Plan (which supercedes the 1990 Plan).

The County notes that the separate subarea plans and diagrams are being replaced by single documents for Coastal and Inland Regions. The Greenway is in the Inland Region (p. 8). The County indicates that in future documents, the LCDC-approved Greenway Boundary maps will be referenced and the Boundary will be shown on the Plan Diagram (p. 8).

Section 16.254(1)(j) of the Lane Code (the Greenway Development Ordinance) states that the boundaries for the Willamette River Greenway are those adopted by the Land Conservation and Development Commission in 1977, together with any changes when and as approved by LCDC.

Policies

Lane County has adopted 37 policies address the Willamette Greenway (Plan, pp. 33-35). These policies address all Use Management Considerations of Goal 15 (Section C.3.). Among these policies are the following:

1. Maintain and support continuation of existing uses within the Greenway Boundary.

2. Intensification and change of use of lands within the Greenway Boundary shall remain compatible with the protection, conservation and enhancement of the natural, scenic, historic, agricultural, economic and recreational qualities of the Willamette River Greenway Program.

3. Recognize that the Greenway consists of a multitude of resources and due to continued growth, 100 percent protection to all resources will never be realized.

4. Protect, conserve and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands and timber within the Greenway.

5. Maintain sufficient water flows to support water uses such as municipal, agricultural, industrial, natural resources (i.e., fish, aquatic life, wildlife) and recreation within the Greenway.

6. Prioritize water quality management controls along the Coast Fork and the Main Stem, especially in the Metropolitan area.

7. Acquisitions for Greenway purposes must be consistent with noninterference or interruption of farm uses.

8. Recognize that DOT cannot condemn for a scenic or use easements of lands devoted to farm use; however, easements may be given by owners of lands being used for farm purposes.

9. Protect water rights and access to the river for irrigation purposes.

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, is not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occuring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

19. The County shall require to the maximum feasible extent the protection of the vegetative fringe within the Greenway, and shall require the re-establishment of vegetative cover where it has been significantly removed during the land development process.

20. Conserve the rural character of the river bank as a primary objective within the Greenway.

21. Encourage a river-related mixture of industrial, commercial, residential and public land uses where appropriate in the Greenway.

22. In instances where a public agency has acquired productive farmlands or other resource lands as long-range reserve for recreational use, if possible, such property should be leased back for agricultural or other resource use until it is required for public purposes.

23. Provide and encourage use of public lands within the Greenway.

24. Accommodate public access to the river and to public lands within the Greenway by:
    a. Controlled, clearly designated, access points;
    b. Establishment of an integrated system of safe river lands, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
    c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

25. Provide appropriate levels of police protection in those areas subject to public use.

26. Encourage additional police security for private and publicly owned lands within the Greenway.

27. Protect, conserve or preserve the scenic and recreational qualities of the land within the Greenway Boundary.

28. Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.

29. The sensitivity of lands within the Greenway shall determine the level of human activity.

30. Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.

31. Consider and minimize the possibility that public recreation use might disturb adjacent private property owners.

32. Scenic easements shall not be acquired through the exercise of the power of eminent domain on lands in farm use.

33. Control vehicle access to the river.

34. Consider and adopt policies that would not hinder the physically handicapped from using public recreation facilities within the Greenway Boundary.

35. Emphasize public access to the river in the metropolitan area and other urban areas which discouraging upland access in rural areas.

36. Measures should be taken to minimize disturbance to private property, including the implementation of programs to eliminate trespass and vandalism on private lands and destruction of ecological fragile areas.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Mineral and Aggregate Policy 11 also addresses mineral and aggregate sites within the Greenway:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise, and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

As discussed in the Goal 5 section of this report, the policy fails to reference Section C.3.d. of Goal 15 regarding the protection of significant fish and wildlife habitats. Therefore, the policy is inconsistent with Goal 15 as well as with the County's Greenway Policy 37.

Plan Designations

In the 1981 review of Lane County's Greenway element, the Commission determined that plan designations in subarea plans, the 1990 Plan, and the County Greenway Plan were inconsistent in several locations. The new Greenway Working Paper explains that subarea plans in the Greenway are

being replaced by the Inland Region document, whose Plan Diagram will show land use designation "in a manner consistent with other County and metro area plan documents" (p. 8). See the Goal 2 section of this report for further discussion regarding the County's plan designations.

Implementing Measures

Included in the Lane Code are Greenway Development Permit procedures for the review of certain land use activities in the Willamette River Greenway (Lane Code, Section 16.254). A Greenway Development Permit is required for any new intensification, change of use or development, including public improvements and partitions and subdivisions. The County's ordinance defines the terms "intensification," "change of use," and "development" consistent with definitions contained in Goal 15.

Section 16.254(2) of the Lane Code lists those uses and activities that do not require a Greenway Development Permit. All are consistent with Goal 15 except subsections (a) and (k). Subsection (a) exempts uses "where the location is within areas designated as 'urban' on Greenway maps adopted by the Oregon Land Conservation and Development Commission and is beyond 150 feet of the ordinary low waterline." As noted in the 1981 denial order for Lane County, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15, and as designated in the ODOT Greenway Plan, is subject to local Greenway review. (Note: The term, "urban" as used in the context of Goal 15 is not the same as that used in Goal 14. In this case, "urban" refers to designations in the ODOT Greenway Plan). However, as noted in the 1981 review of the County's ordinance, there was only one area where this provision applies--just outside of the Cottage Grove UGB. The County has not requested that LCDC change the designation of this area from "urban" to "rural" nor has it deleted Section 16.254(2)(a).

Subsection 16.254(2)(k) exempts the propagation of timber or the cutting of timber for public safety or personal noncommercial use or where the harvest is consistent with an approved permit under the FPA "(i) for a farm woodlot of less than 20 acres, or (ii) consistent with recommendations made by" ODOT to the Department of Forestry, designed to address Goal 15, Sections c-h. It is acceptable to exempt timber propagation and harvest for public safety or personal noncommercial use, under Goal 15. However, subsection (i) in the second part of subsection (k) appears to be based on language in the Greenway Interim Order. Such language was eliminated in the adoption of Goal 15. Subsection (ii) of subsection (k) has no procedure for implementation, since, according to the Department of Forestry's directive for operations in the Greenway, it can make recommendations to operations regarding Greenway concerns, but cannot enforce them.

A decision to approve a Greenway Development Permit--where one is required by the Code--requires findings that the proposed intensification, change of use or development conforms to certain criteria, guidelines and setback requirements set forth in Sections 16.254(3)(a), (b), and (c), respectively. Specifically, the "criteria" in subsection (a) include the following:

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the re-establishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) A development which is mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway.

Affirmative findings of compatibility with the Willamette River Greenway "based on due consideration and the relative importance" of guidelines must also be made. These "Guidelines" under subsection (b) are as follows:

(i) Preservation and maintenance of land designated "agricultural" in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.
(iii) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resouces.
(iv) Preserve areas of annual flooding, floodplains and wetlands.
(v) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.
(vi) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.
(vii) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses such as: domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.
(viii) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terrances bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(ix) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.
(x) Minimize vandalism and trespass.
(xi) Location of nonwater dependent and nonwater related development away from the river.
(xii) Compatibility with the site and surrounding area.
(xiv) Protection of significant fish, wildlife habitat and natural areas.
(xv) Protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan.

It must be noted that compliance with these "Guidelines" is to be judged based on their "relative importance." However, there is no clear guidance as to how "relative importance" will be determined. This is particularly a problem where Goal 15 requires certain types of resources to be protected, regardless of other completing values (e.g., significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints) (Goal 15, Sections C.3.d., a., and e.). To the extent that the County's "Guidelines" do not require protection of such areas, the County's Greenway ordinance does not comply with Goal 15.

Section 16.254(c) requires new intensifications, developments and changes of use to be set back 100 feet from ordinary high waterline of the river "except for those in conjunction with a water related or water dependent use" (emphasis added). Exceptions to this requirement shall be allowed when affirmative findings are made to satisfy two criteria:

(i) The proposal would provide better protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway than would occur by observance of the setback requirment; or
(ii) The protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway are not applicable to the proposal.

It should be noted that, according to the Goal, only water-dependent and water-related intensifications, developments, or changes of use themselves are exempt from Greenway setback requirements. However, Lane County also exempts uses in conjunction with water-related and water-dependent uses. As noted in a number of other reviews, this is inconsistent with the Goal, since it would allow a number of uses to be exempt from the setback which are not envisioned by the Goal. The County's ordinances also identify two ways in which exceptions to the 100-foot setback are permitted. One of these is if a proposal would provide better protection of Greenway values, and the other is if such protection is not applicable to the proposal. The Goal does not permit exceptions to the setback, except for water-dependent and water-related uses, even if a proposal might enhance Greenway values. This is because the intent of the Goal is to keep structures separated from the river and

to protect areas immediately adjacent to the river for water-dependent and water-related uses. For example, a restaurant, including landscaping and other amenities may, in the opinion of a Hearings Officer, enhance Greenway values. However, it is not, by definition, a water-related or water-dependent use and therefore is not permitted within the established Greenway setback.

The Commission amended its administrative rule on exceptions to set forth standards for taking exceptions to the Greenway setback. These standards apply to urban areas only. The Commission did not adopt standards for taking exceptions to the setback requirement in rural areas. It should be pointed out that juridictions may structure their Greenway ordinances to permit establishment of a setback on a case-by-case basis, as long as it meets the requirements of Section C.3.k. of the Goal. Alternatively, jurisdictions may adjust established setback standards through the plan amendment process.

Conditions may be imposed in conjunction with a Greenway Development Permit, as necessary (Section 16.254(4).

Section 16.254(5) sets forth the application and review procedure by a Hearings Officer for Greenway Development Permits.

Section 16.254(6) requires the County to notify the Department of Transportation when an application is made. The ordinance does not require the County to also notify that agency of actions taken on an application. This is required by Goal 15 (Section G).

As noted in the Goal 7 section of this report, Lane County has adopted adequate flood hazard provisions.

Objections

1. The Oregon Department of Transportation (ODOT), Parks and Recreation Division, has objected to an inconsistency between the inventoried aggregate sites within the Greenway, and those which are shown on plan maps and designated Sand/Gravel. ODOT states there are a number of aggregate sites in the ODOT Greenway Plan which are not included in the County's inventory. Further, the County's plan maps show a Sand/Gravel designation for some areas which are not in the County's aggregate sites inventory, according to objectors.

2. ODOT objects because of the lack of an inventory of sites for potential acquisition within the Greenway. ODOT points out that this is required by Section E.3. of the Goal, and that the ODOT Greenway Plan identifies such areas.

3. ODOT objects because Plan Policy 7 conflicts with Goal 15. Policy 7 states that acquisitions for Greenway purposes must be consistent with non-interference or interruption of farm uses. ODOT points out that Goal 15 is intended to protect farm uses, but does not prohibit farmland acquisition for public Greenway purposes. Objectors believe Policy 7 also conflicts with Policy 24 (which encourages development of a system of river access points).

4. ODOT objects because Policy 8 and Policy 32 are inconsistent with ORS 390.334, which allows condemnation of scenic easements on farmland. Objectors recommend that the policies be deleted or amended to be consistent with that statute.

5. ODOT objects to the County's inadequate compatibility review provisions for commercial timber harvest. Objectors indicate adequate provisions are a requirement of Goal 15. Further, ODOT believes the zoning ordinance fails to carry out Policy 12.

6. ODOT objects because Policy 13 is inconsistent with Policies 2, 4, 18, 20, 21, 23, 24, 27, 29 and 37. ODOT indicates that Policy 13 appears to give the highest use protection to sites designated and zoned for sand and gravel. However, objectors state that Policy 13 does not consider Greenway river processes and values.

7. ODOT objects to Policies 28, 30 and 35 because they conflict with Policy 24. Specifically, Policies 28, 30, and 35 call for a Greenway public access program aimed at serving urban residents in urban areas, and discouraging access to the river in the more attractive rural settings with greater recreational amenities. Policy 24 calls for a system of access points and trails, which is inconsistent with Policies 28, 30 and 35, according to ODOT.

8. ODOT objects to the lack of an inventory of "significant natural and scenic areas and vegetative cover," as required in Section B, Subsection 6 of the Goal. Without such an inventory, ODOT believes Policies 2, 4, 11, 12, 18 an 27 an the zoning ordinance "cannot be carried out with consistency.

9. ODOT objects to Section 16.254(2) (Exemptions from Permits) of the County's zoning ordinance. Objectors believe it should be deleted. Specifically, subsection (k) exempts certain timber harvest operations from Greenway Development Permit requirements. ODOT believes all commercial timber harvest activities must obtain such a permit. Objectors point out that the Forest Practices Act (FPA) notification does not cover scenic, recreational or historical impacts of harvesting. The Comprehensive Plan requires ODOT to make recommendations to the Department of Forestry (DOF). However, objectors point out that DOF is not required to act on ODOT's recommendations. Objectors feel this establishes a complex and misleading enforcement process.

10. ODOT objects to the County's Greenway setback provisions because it does not believe exceptions to the 100-foot requirement should be allowed unless criteria in LCDC's Exception Rule for the Greenway are met.

Response to Objections

1. Goal 15 (Section B.2) requires Greenway jurisdictions to inventory "all current aggregate excavation and processing sites, and all known extractable aggregate sources." The Goal also requires local

plans to be consistent with the ODOT Greenway Plan, which shows the location of such sites. ODOT has not specified which aggregate sites have been omitted from the County's inventory which are included in the ODOT Greenway Plan. In the 1981 review of Lane County's plan, the Commission found the County's inventory of Greenway sites to be adequate. The County has adopted this inventory by reference as part of its new Working Paper for the Greenway. ODOT is correct that a number of sites which are not included on the County's inventory of aggregate sites have been given a sand and gravel plan and zone designation, however. As indicated in the Goal 5 section of this report, the County has not justified such designations. This is more of a Goal 5 than a Goal 15 concern, however.

2. Aquisition sites were inventoried by Lane County in its 1981 Greenway Plan. In its 1981 review of that plan, the Commission found that inventory to be in compliance with Goal 15. The County has adopted its Greenway Plan by reference as part of its new Greenway Working Paper. Therefore, the objection is not sustained.

3. ODOT is correct that the Goal does not prohibit acquisition of farmland for public Greenway purposes. However, Section C.4.b. of the Goal indicates that areas to be acquired must "to the maximum extent practicable, be consistent with non-interference or non-interruption of farm uses as defined in ORS Chapter 215.203(2)." Policy 7 indicates such acquisitions must be consistent with non-interference or non-interruption of farm uses. While Policy 7 certainly carries out the intent of Section C.4.b. of the Goal, ODOT is apparently concerned that neither the County nor ODOT would be able to acquire farmland for Greenway purposes in the future unless Policy 7 is modified to use the term "should," rather than "shall." ODOT is also concerned that because Policy 7 is so restrictive, Policy 24 cannot be carried out, since it calls for providing public access to the river and public lands through access points, establishment of river lands, hiking and cycle paths, and public roads. There is no Goal violation in County Policy 7 being more restrictive and protective of farmland than the Goal, unless this restrictiveness prevents the County from meeting other Goal requirements or carrying out other policies. While Policy 7 certainly limits the County's options (as well as ODOT's options) in implementing Greenway programs, there are other means available, short of acquiring land which results in interfering with, or interrupting farm uses. The County is therefore urged, but not directed, to modify Policy 7 to use the term, "should," rather than "shall."

4. ODOT is incorrect in its interpretation of ORS 390.334. That provision (particularly subsection (2)) expressly prohibits the use of condemnation for acquiring scenic easements on farmland in the Greenway. Therefore, County Greenway Policy 32 is consistent with ORS 390.334. The objection is not sustained.

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.(*)

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

i. Carry out Forest Lands Policy 17 (Plan, p. 10) by identifying sites that are considered more important than commercial timber management activities, based on a Goal 5 ESEE consequences analysis, and adopt appropriate implementing measures to protect and/or resolve timber management conflicts with those sites, consistent with that policy.

4. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.(*)

5. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

6. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

7. Oregon Recreation Trails:

   a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

8. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.(*)

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.(*)

9. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflict-resolution recommendations contained in the Metro Plan Update Working Paper.

Note: Those IOTC's which pertain only to Lane County are followed by an asterisk (*).

Suggestions for Plan and Implementing Measures Improvement

It is suggested that on or before the first plan update, Lane County:

1. Amend the plan to inventory the recently designated wilderness areas (Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake).

2. Amend page 28 of the Flora and Fauna Working Paper to indicate that not all sites on federal land are necessarily protected (i.e., there may be conflicts with sites unless they are formally protected by the federal resource agency).

3. Amend Flora and Fauna Policy 7 to indicate that in evaluating (1B) wetland sites for possible inclusion on its (1C) inventory, information sources besides the National Wetlands Inventory will be used.

4. Adopt implementing measures to carry out Flora and Fauna Policy 9 (requiring residential building permits in Big Game Range areas to include a note indicating that the site is in Big Game Range and conflicts may occur).

GOAL 15: WILLAMETTE RIVER GREENWAY

This Goal 15 report is divided into two major parts. The first part is the review for all areas within the Willamette Greenway Boundary in Lane County outside the Metro Plan Boundary. The second part is for those Greenway areas inside the Metro Plan Boundary, but outside the Metro UGB.

PART I--GREENWAY AREAS
OUTSIDE THE METRO PLAN BOUNDARY

Inventory

Lane County has adopted a Willamette Greenway Working Paper which states (p. 7) that inventories of various Greenway resources are contained in the Greenway Plan. This Greenway Plan is incorporated into the Working Paper by reference (p. 7). As noted in the 1981 review of the Lane County plan and ordinances, the County's Greenway inventories are contained in its Greenway Technical Report, and are summarized in its Greenway Plan. This information was determined to adequately address the fifteen resource topics listed in Section B of Goal 15.

Greenway Boundary

Lane County has displayed the LCDC-approved Greenway Boundary on both its plan maps and its zoning maps, as required under sections E.1 and F.1 of the Goal. The boundary is clearly labeled and, for the most part, its location is accurately drawn. However, there are several minor inconsistencies on map Nos. 304, 304A, 305, 347, 437, and 528. The boundary is not shown on map Nos. 330, 332, 396, 411, 417, 418, 425, 440, 448, 471, 1005, 1006, 1008, 1010, 1011, 1012, and 1013.

The recently adopted Willamette Greenway Working Paper (p. 8) states that the Greenway Boundary is correctly displayed in the County's Greenway Plan and in the Eugene-Springfield Metro Area General Plan (which supercedes the 1990 Plan).

The County notes that the separate subarea plans and diagrams are being replaced by single documents for Coastal and Inland Regions. The Greenway is in the Inland Region (p. 8). The County indicates that in future documents, the LCDC-approved Greenway Boundary maps will be referenced and the Boundary will be shown on the Plan Diagram (p. 8).

Section 16.254(1)(j) of the Lane Code (the Greenway Development Ordinance) states that the boundaries for the Willamette River Greenway are those adopted by the Land Conservation and Development Commission in 1977, together with any changes when and as approved by LCDC.

Policies

Lane County has adopted 37 policies address the Willamette Greenway (Plan, pp. 33-35). These policies address all Use Management Considerations of Goal 15 (Section C.3.). Among these policies are the following:

1. Maintain and support continuation of existing uses within the Greenway Boundary.

2. Intensification and change of use of lands within the Greenway Boundary shall remain compatible with the protection, conservation and enhancement of the natural, scenic, historic, agricultural, economic and recreational qualities of the Willamette River Greenway Program.

3. Recognize that the Greenway consists of a multitude of resources and due to continued growth, 100 percent protection to all resources will never be realized.

4. Protect, conserve and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands and timber within the Greenway.

5. Maintain sufficient water flows to support water uses such as municipal, agricultural, industrial, natural resources (i.e., fish, aquatic life, wildlife) and recreation within the Greenway.

6. Prioritize water quality management controls along the Coast Fork and the Main Stem, especially in the Metropolitan area.

7. Acquisitions for Greenway purposes must be consistent with noninterference or interruption of farm uses.

8. Recognize that DOT cannot condemn for a scenic or use easements of lands devoted to farm use; however, easements may be given by owners of lands being used for farm purposes.

9. Protect water rights and access to the river for irrigation purposes.

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, is not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occuring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

19. The County shall require to the maximum feasible extent the protection of the vegetative fringe within the Greenway, and shall require the re-establishment of vegetative cover where it has been significantly removed during the land development process.

20. Conserve the rural character of the river bank as a primary objective within the Greenway.

21. Encourage a river-related mixture of industrial, commercial, residential and public land uses where appropriate in the Greenway.

22. In instances where a public agency has acquired productive farmlands or other resource lands as long-range reserve for recreational use, if possible, such property should be leased back for agricultural or other resource use until it is required for public purposes.

23. Provide and encourage use of public lands within the Greenway.

24. Accommodate public access to the river and to public lands within the Greenway by:
    a. Controlled, clearly designated, access points;
    b. Establishment of an integrated system of safe river lands, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
    c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

25. Provide appropriate levels of police protection in those areas subject to public use.

26. Encourage additional police security for private and publicly owned lands within the Greenway.

27. Protect, conserve or preserve the scenic and recreational qualities of the land within the Greenway Boundary.

28. Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.

29. The sensitivity of lands within the Greenway shall determine the level of human activity.

30. Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.

31. Consider and minimize the possibility that public recreation use might disturb adjacent private property owners.

32. Scenic easements shall not be acquired through the exercise of the power of eminent domain on lands in farm use.

33. Control vehicle access to the river.

34. Consider and adopt policies that would not hinder the physically handicapped from using public recreation facilities within the Greenway Boundary.

35. Emphasize public access to the river in the metropolitan area and other urban areas which discouraging upland access in rural areas.

36. Measures should be taken to minimize disturbance to private property, including the implementation of programs to eliminate trespass and vandalism on private lands and destruction of ecological fragile areas.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Mineral and Aggregate Policy 11 also addresses mineral and aggregate sites within the Greenway:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise, and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

As discussed in the Goal 5 section of this report, the policy fails to reference Section C.3.d. of Goal 15 regarding the protection of significant fish and wildlife habitats. Therefore, the policy is inconsistent with Goal 15 as well as with the County's Greenway Policy 37.

Plan Designations

In the 1981 review of Lane County's Greenway element, the Commission determined that plan designations in subarea plans, the 1990 Plan, and the County Greenway Plan were inconsistent in several locations. The new Greenway Working Paper explains that subarea plans in the Greenway are

being replaced by the Inland Region document, whose Plan Diagram will show land use designation "in a manner consistent with other County and metro area plan documents" (p. 8). See the Goal 2 section of this report for further discussion regarding the County's plan designations.

Implementing Measures

Included in the Lane Code are Greenway Development Permit procedures for the review of certain land use activities in the Willamette River Greenway (Lane Code, Section 16.254). A Greenway Development Permit is required for any new intensification, change of use or development, including public improvements and partitions and subdivisions. The County's ordinance defines the terms "intensification," "change of use," and "development" consistent with definitions contained in Goal 15.

Section 16.254(2) of the Lane Code lists those uses and activities that do not require a Greenway Development Permit. All are consistent with Goal 15 except subsections (a) and (k). Subsection (a) exempts uses "where the location is within areas designated as 'urban' on Greenway maps adopted by the Oregon Land Conservation and Development Commission and is beyond 150 feet of the ordinary low waterline." As noted in the 1981 denial order for Lane County, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15, and as designated in the ODOT Greenway Plan, is subject to local Greenway review. (Note: The term, "urban" as used in the context of Goal 15 is not the same as that used in Goal 14. In this case, "urban" refers to designations in the ODOT Greenway Plan). However, as noted in the 1981 review of the County's ordinance, there was only one area where this provision applies--just outside of the Cottage Grove UGB. The County has not requested that LCDC change the designation of this area from "urban" to "rural" nor has it deleted Section 16.254(2)(a).

Subsection 16.254(2)(k) exempts the propagation of timber or the cutting of timber for public safety or personal noncommercial use or where the harvest is consistent with an approved permit under the FPA "(i) for a farm woodlot of less than 20 acres, or (ii) consistent with recommendations made by" ODOT to the Department of Forestry, designed to address Goal 15, Sections c-h. It is acceptable to exempt timber propagation and harvest for public safety or personal noncommercial use, under Goal 15. However, subsection (i) in the second part of subsection (k) appears to be based on language in the Greenway Interim Order. Such language was eliminated in the adoption of Goal 15. Subsection (ii) of subsection (k) has no procedure for implementation, since, according to the Department of Forestry's directive for operations in the Greenway, it can make recommendations to operations regarding Greenway concerns, but cannot enforce them.

A decision to approve a Greenway Development Permit--where one is required by the Code--requires findings that the proposed intensification, change of use or development conforms to certain criteria, guidelines and setback requirements set forth in Sections 16.254(3)(a), (b), and (c), respectively. Specifically, the "criteria" in subsection (a) include the following:

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the re-establishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) A development which is mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway.

Affirmative findings of compatibility with the Willamette River Greenway "based on due consideration and the relative importance" of guidelines must also be made. These "Guidelines" under subsection (b) are as follows:

(i) Preservation and maintenance of land designated "agricultural" in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.
(iii) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resouces.
(iv) Preserve areas of annual flooding, floodplains and wetlands.
(v) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.
(vi) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.
(vii) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses such as: domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.
(viii) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terrances bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(ix) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.
(x) Minimize vandalism and trespass.
(xi) Location of nonwater dependent and nonwater related development away from the river.
(xii) Compatibility with the site and surrounding area.
(xiv) Protection of significant fish, wildlife habitat and natural areas.
(xv) Protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan.

It must be noted that compliance with these "Guidelines" is to be judged based on their "relative importance." However, there is no clear guidance as to how "relative importance" will be determined. This is particularly a problem where Goal 15 requires certain types of resources to be protected, regardless of other completing values (e.g., significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints) (Goal 15, Sections C.3.d., a., and e.). To the extent that the County's "Guidelines" do not require protection of such areas, the County's Greenway ordinance does not comply with Goal 15.

Section 16.254(c) requires new intensifications, developments and changes of use to be set back 100 feet from ordinary high waterline of the river "except for those in conjunction with a water related or water dependent use" (emphasis added). Exceptions to this requirement shall be allowed when affirmative findings are made to satisfy two criteria:

(i) The proposal would provide better protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway than would occur by observance of the setback requirment; or
(ii) The protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway are not applicable to the proposal.

It should be noted that, according to the Goal, only water-dependent and water-related intensifications, developments, or changes of use themselves are exempt from Greenway setback requirements. However, Lane County also exempts uses in conjunction with water-related and water-dependent uses. As noted in a number of other reviews, this is inconsistent with the Goal, since it would allow a number of uses to be exempt from the setback which are not envisioned by the Goal. The County's ordinances also identify two ways in which exceptions to the 100-foot setback are permitted. One of these is if a proposal would provide better protection of Greenway values, and the other is if such protection is not applicable to the proposal. The Goal does not permit exceptions to the setback, except for water-dependent and water-related uses, even if a proposal might enhance Greenway values. This is because the intent of the Goal is to keep structures separated from the river and

to protect areas immediately adjacent to the river for water-dependent and water-related uses. For example, a restaurant, including landscaping and other amenities may, in the opinion of a Hearings Officer, enhance Greenway values. However, it is not, by definition, a water-related or water-dependent use and therefore is not permitted within the established Greenway setback.

The Commission amended its administrative rule on exceptions to set forth standards for taking exceptions to the Greenway setback. These standards apply to urban areas only. The Commission did not adopt standards for taking exceptions to the setback requirement in rural areas. It should be pointed out that juridictions may structure their Greenway ordinances to permit establishment of a setback on a case-by-case basis, as long as it meets the requirements of Section C.3.k. of the Goal. Alternatively, jurisdictions may adjust established setback standards through the plan amendment process.

Conditions may be imposed in conjunction with a Greenway Development Permit, as necessary (Section 16.254(4).

Section 16.254(5) sets forth the application and review procedure by a Hearings Officer for Greenway Development Permits.

Section 16.254(6) requires the County to notify the Department of Transportation when an application is made. The ordinance does not require the County to also notify that agency of actions taken on an application. This is required by Goal 15 (Section G).

As noted in the Goal 7 section of this report, Lane County has adopted adequate flood hazard provisions.

Objections

1. The Oregon Department of Transportation (ODOT), Parks and Recreation Division, has objected to an inconsistency between the inventoried aggregate sites within the Greenway, and those which are shown on plan maps and designated Sand/Gravel. ODOT states there are a number of aggregate sites in the ODOT Greenway Plan which are not included in the County's inventory. Further, the County's plan maps show a Sand/Gravel designation for some areas which are not in the County's aggregate sites inventory, according to objectors.

2. ODOT objects because of the lack of an inventory of sites for potential acquisition within the Greenway. ODOT points out that this is required by Section E.3. of the Goal, and that the ODOT Greenway Plan identifies such areas.

3. ODOT objects because Plan Policy 7 conflicts with Goal 15. Policy 7 states that acquisitions for Greenway purposes must be consistent with non-interference or interruption of farm uses. ODOT points out that Goal 15 is intended to protect farm uses, but does not prohibit farmland acquisition for public Greenway purposes. Objectors believe Policy 7 also conflicts with Policy 24 (which encourages development of a system of river access points).

4. ODOT objects because Policy 8 and Policy 32 are inconsistent with ORS 390.334, which allows condemnation of scenic easements on farmland. Objectors recommend that the policies be deleted or amended to be consistent with that statute.

5. ODOT objects to the County's inadequate compatibility review provisions for commercial timber harvest. Objectors indicate adequate provisions are a requirement of Goal 15. Further, ODOT believes the zoning ordinance fails to carry out Policy 12.

6. ODOT objects because Policy 13 is inconsistent with Policies 2, 4, 18, 20, 21, 23, 24, 27, 29 and 37. ODOT indicates that Policy 13 appears to give the highest use protection to sites designated and zoned for sand and gravel. However, objectors state that Policy 13 does not consider Greenway river processes and values.

7. ODOT objects to Policies 28, 30 and 35 because they conflict with Policy 24. Specifically, Policies 28, 30, and 35 call for a Greenway public access program aimed at serving urban residents in urban areas, and discouraging access to the river in the more attractive rural settings with greater recreational amenities. Policy 24 calls for a system of access points and trails, which is inconsistent with Policies 28, 30 and 35, according to ODOT.

8. ODOT objects to the lack of an inventory of "significant natural and scenic areas and vegetative cover," as required in Section B, Subsection 6 of the Goal. Without such an inventory, ODOT believes Policies 2, 4, 11, 12, 18 an 27 an the zoning ordinance "cannot be carried out with consistency.

9. ODOT objects to Section 16.254(2) (Exemptions from Permits) of the County's zoning ordinance. Objectors believe it should be deleted. Specifically, subsection (k) exempts certain timber harvest operations from Greenway Development Permit requirements. ODOT believes all commercial timber harvest activities must obtain such a permit. Objectors point out that the Forest Practices Act (FPA) notification does not cover scenic, recreational or historical impacts of harvesting. The Comprehensive Plan requires ODOT to make recommendations to the Department of Forestry (DOF). However, objectors point out that DOF is not required to act on ODOT's recommendations. Objectors feel this establishes a complex and misleading enforcement process.

10. ODOT objects to the County's Greenway setback provisions because it does not believe exceptions to the 100-foot requirement should be allowed unless criteria in LCDC's Exception Rule for the Greenway are met.

Response to Objections

1. Goal 15 (Section B.2) requires Greenway jurisdictions to inventory "all current aggregate excavation and processing sites, and all known extractable aggregate sources." The Goal also requires local

plans to be consistent with the ODOT Greenway Plan, which shows the location of such sites. ODOT has not specified which aggregate sites have been omitted from the County's inventory which are included in the ODOT Greenway Plan. In the 1981 review of Lane County's plan, the Commission found the County's inventory of Greenway sites to be adequate. The County has adopted this inventory by reference as part of its new Working Paper for the Greenway. ODOT is correct that a number of sites which are not included on the County's inventory of aggregate sites have been given a sand and gravel plan and zone designation, however. As indicated in the Goal 5 section of this report, the County has not justified such designations. This is more of a Goal 5 than a Goal 15 concern, however.

2. Aquisition sites were inventoried by Lane County in its 1981 Greenway Plan. In its 1981 review of that plan, the Commission found that inventory to be in compliance with Goal 15. The County has adopted its Greenway Plan by reference as part of its new Greenway Working Paper. Therefore, the objection is not sustained.

3. ODOT is correct that the Goal does not prohibit acquisition of farmland for public Greenway purposes. However, Section C.4.b. of the Goal indicates that areas to be acquired must "to the maximum extent practicable, be consistent with non-interference or non-interruption of farm uses as defined in ORS Chapter 215.203(2)." Policy 7 indicates such acquisitions must be consistent with non-interference or non-interruption of farm uses. While Policy 7 certainly carries out the intent of Section C.4.b. of the Goal, ODOT is apparently concerned that neither the County nor ODOT would be able to acquire farmland for Greenway purposes in the future unless Policy 7 is modified to use the term "should," rather than "shall." ODOT is also concerned that because Policy 7 is so restrictive, Policy 24 cannot be carried out, since it calls for providing public access to the river and public lands through access points, establishment of river lands, hiking and cycle paths, and public roads. There is no Goal violation in County Policy 7 being more restrictive and protective of farmland than the Goal, unless this restrictiveness prevents the County from meeting other Goal requirements or carrying out other policies. While Policy 7 certainly limits the County's options (as well as ODOT's options) in implementing Greenway programs, there are other means available, short of acquiring land which results in interfering with, or interrupting farm uses. The County is therefore urged, but not directed, to modify Policy 7 to use the term, "should," rather than "shall."

4. ODOT is incorrect in its interpretation of ORS 390.334. That provision (particularly subsection (2)) expressly prohibits the use of condemnation for acquiring scenic easements on farmland in the Greenway. Therefore, County Greenway Policy 32 is consistent with ORS 390.334. The objection is not sustained.

5. Lane County's Greenway Policy 12 states:

> The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or if not covered by the FPA, then with an approved plan under the Greenway compatibility review provisons. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

This above policy language repeats language in Goal 15, Section C.3.1. Section 16.254(3)(ix) of the Lane Code specifies that affirmative findings must be made, including "Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved, or restored and otherwise result in only the partial harvest of timber beyond the vegative fringe." This is consistent with Goal 15. However, Section 16.254(2)(k) of the ordinance specifically exempts certain harvest activities, not consistent with the Goal. These problems are addressed in the response to ODOT's objection 9.

6. Greenway Policy 13 states:

> Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resources.

Policies 2, 4, 18, 20, 21, 23, 24, 27, 29, and 37 are aimed at preserving other values in the Greenway (e.g., vegetation, fish and wildlife habitat, scenic qualities, recreational opportunities), and where appropriate, balancing such uses with the need for sand and gravel resources. Policy 13 in and of itself would not preclude protection of other Greenway values present. Presumably, the County's Greenway ordinance should ensure that extraction will not occur unless adequate safeguards for other resources are provided. Policy 13 simply indicates that uses that are incompatible with extraction activities will not be permitted on sites that are either active, zoned, or designated for aggregate extraction or processing. This policy presumes that the plan and zone designations for aggregate extraction and processing have been applied appropriately. However, even if the plan and zone designations are applied correctly, the policy does seem to ignore the fact that such operations can be allowed only if they are conducted in a manner consistent with the Goal's intent of protecting natural, scenic, historic, and recreational values. Other plan policies for the Greenway do express this, however (e.g., Policies 2, 3, 4, 15, 16, and 37). Therefore, the objection is not sustained. However, it is recommended that the policy be clarified to indicate that such operations are still subject to local Greenway Permit review or must be conducted in a manner consistent with the protection of other Greenway values.

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> The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or if not covered by the FPA, then with an approved plan under the Greenway compatibility review provisons. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

This above policy language repeats language in Goal 15, Section C.3.1. Section 16.254(3)(ix) of the Lane Code specifies that affirmative findings must be made, including "Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved, or restored and otherwise result in only the partial harvest of timber beyond the vegative fringe." This is consistent with Goal 15. However, Section 16.254(2)(k) of the ordinance specifically exempts certain harvest activities, not consistent with the Goal. These problems are addressed in the response to ODOT's objection 9.

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7. Policy 24 states:

> Accommodate public access to the river and to public lands within the Greenway by:
> a. Controlled, clearly designated, access points;
> b. Establishment of an integrated system of safe river landings, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
> c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

Policies 28, 30, and 35 are:

> Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.
>
> Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.
>
> Emphasize public access to the river in the metropolitan area and other urban areas while discouraging upland access in rural areas.

Section C.3.b. of Goal 15 indicates that recreational needs must be provided for, but must be consistent with the carrying capacity of the land, must not substantially interfere with the long-term capacity of the land for farm use, and must minimize disturbance to adjacent property. Section C.3.c. of Goal 15 indicates that adequate public access to the river shall be provided for, with emphasis on urban and urbanizable uses. County Policies 24, 28, 30, and 35 are consistent with these Goal directives. The objection is not sustained.

8. As indicated earlier, the County's inventory of Greenway values and resources is the same as the one submitted and reviewed in 1981. The Commission found the inventory to be adequate.

9. ODOT is in error in requesting that the entirety of Section 16.254(2) be deleted from the Greenway ordinance. The Goal 15 definitions of "intensification," "change of use" and "development" specify certain uses and activities that may be exempt from local Greenway permit review. Most of Lane County's exemptions are consistent with the Goal and are similar to those exempted by other Greenway jurisdictions whose plans and ordinances have been acknowledged by the Commission.

ODOT is correct, however, that subsection (k), which exempts certain kinds of timber harvest activities, is inappropriate. That subsection is consistent with the Greenway Interim Order, but the Goal itself does not exempt such activities from local Greenway review. It has been the Commission's practice to allow propagation of timber or cutting of timber for public safety or personal non-commercial use to be exempt from local Greenway permit review. To that extent, the first part of subsection (k) is acceptable. However, the second part (which exempts harvest activities if consistent with an approved permit under the FPA, for a farm woodlot less than 20 acres, or if consistent with recommendations of ODOT to DOF), is not. Therefore the objection is only partly sustained.

10. ODOT is correct that the County's Greenway setback exceptions are not consistent with the Goal. However, ODOT is not correct in suggesting that the LCDC Exception Rule be followed to allow such exceptions. This is because the Commission's Exception Rule contains criteria for taking exceptions to the Greenway setback requirement in urban areas only. Therefore, they do not apply to most of the Lane County planning area.

PART II--EUGENE/SPRINGFIELD METROPOLITAN AREA OUTSIDE THE METRO UGB

In August 1982, the Commission reviewed and acknowledged the Eugene/Springfield Metro Area Plan for lands within the Metro UGB. However, the cities of Eugene and Springfield as well as Lane County were granted a continuance for lands within the UGB but within the Metro Planning Area Boundary in order to comply with Goal 15 (as well as several other Goals).

The following section of this report analyzes Lane County's responses to the Goal 15 'in-order-to-comply" requirements contained in the August 1982 staff report, adopted by the Commission.

Requirement

1. Ensure that the LCDC-approved Greenway Boundary is shown or referenced in the appropriate subarea plans.

Response

As noted in Part I of this report, the County is replacing subarea plans with two documents--one for the Coastal region and one for the Inland Region. The Greenway is within the Inland Region. The County indicates in its Greenway Working Paper (p. 8) that the LCDC-approved Greenway boundary will be referenced in that document and the Boundary will be shown on the Plan Diagram. Please refer to Part I of this Goal 15 report for a discussion of the County's plan and zone maps and the extent to which they correctly display the Greenway Boundary.

Mining and processing activities in the Greenway must comply with provisions in the County's Greenway ordinance, including the following:

> A development which is mining or mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway (Section 16.254(3)(a)(iii)).

In addition, affirmative findings of compatibility must be made with regard to a number of "Guidelines," including those addressing the protection of scenic and historic resources, areas of flooding and wetlands, the protection and enhancement of water quality, maintenance of natural riparian vegetation, erosion, protection of significant fish and wildlife habitat and natural areas, and compatibility with the site and the surrounding area (Section 16.254(3)(b)).

At the same time, Guideline (xv) calls for protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan. However, Section 16.254(3)(b)(i) through (xv) are "Guidelines" and compliance with them is to be judged according to their "relative importance." To this intent, the County does not have a clear procedure for assuring protection of significant fish and wildlife habitat areas within the Greenway on sites that also have sand and gravel resources. This is most evident in two particular areas--the Confluence Heronry and the Pudding Creek Heronry. Both have unquestionably significant wildlife resources present, and both contain significant aggregate resources. Application of plan policies, the Greenway ordinance, and various other zones does not result in clear policy direction for these sites. In that respect, the conflicts between these various resource uses have not been resolved.

Conclusion

Requirement 8 has not been satisfied.

Lane County has not adopted satisfactory procedures for carrying out Requirements C.3.d. and C.3.i. of Goal 15.

Requirement

9. Amend the Metro Area General Plan or the Lane County Willamette Greenway Plan to assure that land use designations are consistent.

Response

A new Metro Area General Plan Map was submitted as part of the 1982 Metro Plan review. It corrects the inconsistencies identified in 1981.

Response

The County has adopted the following Greenway policies regarding sand and gravel extraction and significant fish and wildlife habitats (Plan, pp. 33-35):

4. Protect, conserve, and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands, and timber within the Greenway.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occurring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity to urban areas and other points of use. Such monitoring shall be conducted in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with sections C.3.d. and C.d.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Conclusion

Requirement 4 has been satisfied.

Lane County has adopted "shall" policies regarding sand and gravel extraction and significant fish and wildlife habitats in the Greenway. However, as noted in Part I of the Goal 15 section of this report, as well as in several of the following sections, not all of them have been implemented consistent with Goal 15.

Requirement

5. Adopt policies that address Sections C.3.h., j., and k. of Goal 15 (regarding timber resources, development away from the river, and Greenway setback).

Response

The following Greenway policies have been adopted by Lane County (Plan, pp. 33-35):

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, it not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

Conclusion

Requirement 5 has been satisfied.

Lane County has adopted Greenway policies that adequately address Sections C.3.h., j., and k. of the Goal.

Requirement

6. Amend Section 10.322 of the Lane Code to require either:

a. Greenway permits in areas designated "urban" beyond 150 feet of ordinary low water.

b. Some other mechanism which ensures protection of Greenway values in "urban" areas beyond 150 feet of ordinary low water.

This could also be accomplished by LCDC amendment of the DOT Greenway Plan to change the designation of the area south of the Cottage Grove UGB from "urban" to "rural."

Response

As indicated in the 1981 denial of the County's Greenway ordinance, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15 and designated in the ODOT Greenway Plan, must either be reviewed locally according to Greenway Permit review procedurs or must comply with other measures designed to ensure protection of Greenway values. (Note: The term "urban" as used in the context of Goal 15 is not equivalent to "urban" as used in Goal 14, or to areas within UGB's. In this case, "urban" refers to designations in the ODOT Greenway Plan. In Lane County, there is land outside the Cottage Grove UGB which has an "urban" designation in the ODOT Greenway Plan.)

The County's Greenway Working Paper recommends requesting that the "urban"/"rural" boundary line be relocated to coincide with the adopted UGB of Cottage Grove (p. 10). However, neither the County nor ODOT have reguested LCDC change this designation.

As noted in the Metro Area Acknowledgment Report, approved by LCDC in August 1982, Section 10.322-15(1)(b) of the Lane Code was amended so that it no longer distinguishes between "rural" and "urban" areas.

Conclusion

Requirement 6 has been satisfied.

The Greenway Ordinance has been amended to require Greenway permits or other measures in "urban" areas beyond 150 feet of ordinary low water.

Requirement

7. Apply EFU zoning to all agricultural lands in the Greenway (see also the Goal 3 section of this report).

Response

The County has not applied EFU zoning to 85 acres of agricultural lands on the "Confluence Island." Instead, the majority of this land is zoned "sand and gravel." All other agricultural lands in the Greenway have been zoned EFU.

Conclusion

Requirement 7 has not been satisfied.

Requirement

8. Adopt a procedure for minimizing the impacts of sand and gravel extraction on significant fish and wildlife so that the Goal's requirements (Section C.3.d. and C.3.i.) are met.

Response

Section C.3.d. of Goal 15 states: "Significant fish and wildlife habitats shall be protected."

Section C.3.i. states that aggregate extraction:

> . . . may be permitted when compatible with the purposes of the Willamette River Greenway, and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety, and to guarantee necessary reclamation.

Lane County has adopted several plan policies which address this issue. The first set of policies address Section C.3.d. They include the following:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose (Greenway Policy 37).

As noted earlier (in the Mineral and Aggregate portion of the Goal 5, and the previous section of the Goal 15 sections of this report), Mineral and Aggregate Policy 11 is similar, except that it refers only to Section C.3.i. of Goal 15 for the protection of significant fish and wildife habitat areas. Section C.3.d. is the appropriate section of this Goal regarding significant habitat areas, whereas Section C.3.i. covers other less significant habitat areas and is less protective than Section C.3.d. (i.e., it requires only that the impacts of mining are minimized). Section C.3.d., on the other hand, requires that all significant habitat areas to be protected. The County needs to amend Mineral and Aggregate Policy 11 to be consistent with Goal 15 as well as with Greenway Policy 37.

The second set of Greenway policies address Section C.3.i. of the Goal, since they are aimed at minimizing the impact of any intensification, change of use, or development on Greenway values (e.g., Policies 2, 5, 15, 16, 18, 19, 27, 29).

Mining and processing activities in the Greenway must comply with provisions in the County's Greenway ordinance, including the following:

> A development which is mining or mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway (Section 16.254(3)(a)(iii)).

In addition, affirmative findings of compatibility must be made with regard to a number of "Guidelines," including those addressing the protection of scenic and historic resources, areas of flooding and wetlands, the protection and enhancement of water quality, maintenance of natural riparian vegetation, erosion, protection of significant fish and wildlife habitat and natural areas, and compatibility with the site and the surrounding area (Section 16.254(3)(b)).

At the same time, Guideline (xv) calls for protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan. However, Section 16.254(3)(b)(i) through (xv) are "Guidelines" and compliance with them is to be judged according to their "relative importance." To this intent, the County does not have a clear procedure for assuring protection of significant fish and wildlife habitat areas within the Greenway on sites that also have sand and gravel resources. This is most evident in two particular areas--the Confluence Heronry and the Pudding Creek Heronry. Both have unquestionably significant wildlife resources present, and both contain significant aggregate resources. Application of plan policies, the Greenway ordinance, and various other zones does not result in clear policy direction for these sites. In that respect, the conflicts between these various resource uses have not been resolved.

Conclusion

Requirement 8 has not been satisfied.

Lane County has not adopted satisfactory procedures for carrying out Requirements C.3.d. and C.3.i. of Goal 15.

Requirement

9. Amend the Metro Area General Plan or the Lane County Willamette Greenway Plan to assure that land use designations are consistent.

Response

A new Metro Area General Plan Map was submitted as part of the 1982 Metro Plan review. It corrects the inconsistencies identified in 1981.

Conclusion

Requirement 9 has been satisfied.

Requirement

10. Amend the Lane County Greenway ordinance to ensure that the only erosion control activities that are exempt from Greenway review are those for emergency situations, safety, and protection of property.

Response

Lane County's Greenway ordinance has been amended so that the only erosion control activities that are exempt from Greenway Permit review are those "erosion control operations required in emergency situations for the safety and protection of property" (Lane Code, Section 16.254(2)(f)).

Conclusion

Requirement 10 has been satisfied.

Objections

1. A number of objections have been received regarding the County's treatment of the 300-acre area known as "Big Island" or "Confluence Island" at the confluence of the McKenzie and Willamette Rivers. Specifically, 1000 Friends of Oregon, League of Women Voters of Central Lane County (LWV), Harold Chapman, and Lane County Audubon Society have objected because the County has failed to provide adequate protection for the great blue heron rookery on the island. The heronry is one of the largest in the Willamette River Basin (about 55 nests) and is identified in the State Natural Heritage Inventory. Objectors point out that the County has zoned the site for sand and gravel use except for the heronry itself and an unspecified buffer area. Objectors feel this is not only inadequate, but also fails to carry out specific in-order-to-comply requirements adopted by the Commission. Specifically:

   a. Objectors note that Goal 15 (Section C.3.a.) requires that agricultural land in the Greenway be protected. Further, the denial order of Lane County's plan issued in 1981 as well as the 1982 continuance order for the Eugene/Springfield Metro Area specified that EFU zoning had to be applied to all agricultural lands in the Greenway. Several objectors have provided information demonstrating that a large portion of the island contains soils which are SCS Class II and IV. The area has been farmed historically, and about 85 acres are currently farmed. The County has not applied EFU zoning to all these areas. Some areas with these soils are zoned Natural Resource, but the majority are not. Instead, they have been zoned for sand and gravel.

year 2000. In the island alone, there is about five to ten times the total Metro Area demand to the year 2000. Therefore, objectors contend that the County cannot demonstrate the need to zone Big Island for sand and gravel extraction.

f. Objectors indicate that the entire island is within the floodway as determined by FEMA. County adoption of the current zoning for the island was based on a misunderstanding that the island was in the floodway fringe. Objectors indicate that a sand and gravel operation on the island will require dikes and other protective construction projects. FEMA standards do not normally permit dikes or other above-grade type development to be constructed in a floodway. Objectors also point out that Goal 7, Guideline 2 indicates that uses that do not require protection through dams, dikes and levies should be given preference over uses requiring such protection.

g. Objectors contend that the noise from a sand and gravel operation on the island would not be compatible with the purpose of the Greenway relative to a County park on the opposite bank. This is the only site with public access to the river in a natural state in the River Road-Santa Clara area.

2. A number of objections have been received regarding the County's treatment of the Pudding Creek Heronry on the Middle Fork of the Willamette River, within the Willamette Greenway. Specifically, Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County (LWV), and Lane County Audubon Society have objected to the Sand and Gravel Zone designation applied to the site.

Objectors point out that this great blue heron rookery is one of the largest in the Greenway and in Western Oregon (54 nests in 31 trees), and is on the State Natural Heritage Inventory. The site is within the Metro Planning area but outside the UGB. Objectors note that the heronry is recognized by the Lane Council of Governments (LCOG) as a significant wildlife resource. Objectors state that, during 1983, extensive negotiations occurred between Lane County, ODFW and the Wildish Land Company regarding the site, and that a land trade agreement was drafted in order to protect the heronry. Objectors point out that the Metro Plan Update Addendum indicates that a "Natural Resource" plan designation is to be applied to the site and buffer area and that land exchange is to be the means to resolve sand and gravel use conflicts. However, objectors indicate that Lane County has not zoned the rookery for natural resource protection and instead has applied Sand and Gravel zoning.

Several objectors note the similarity between the Pudding Creek Heronry and the Big Island Heronry (i.e., both are in the Greenway, and both have sand and gravel operation conflicts). Objectors note Goal 15 requirements regarding protection of significant fish and wildlife habitats and conditions which must be satisfied in order to allow mining activities.

Several objectors note that the County's failure to evaluate the Pudding Creek Heronry site in terms of the Goal 5 Administrative Rule process also violates Goal 5 as well as LC 10.205-05 and Ordinance 16.217 (Sand, Gravel and Rock Products Zone, SG-RCP). The Code states that the SG-RCP Zone shall only apply to sites which have been evaluated consistently with the Statewide Planning Goal 5 Administrative Rule conflict resolution process.

Response to Objections

1. Many of the objections regarding the Big Island Confluence Heronry are valid. Specifically,

   a. Objectors are correct that EFU zoning has not been applied to the 85 acres of agricultural lands on Big Island. Goal 15 (Section C.3.a.) requires this to be done.

   b. There is no evidence in the County's policies or implementing measures that a 300 foot buffer around the heron rookery was adopted, although such a buffer was proposed in the Metro Plan update document. Objectors are correct, however, that there is not sufficient information in that document as to why a 300 foot buffer--as opposed to a 400 foot or 700 foot buffer (for example) is adequate to protect the heronry. This is particularly true if, as objectors point out, such a proposed buffer was based upon incorrect information about the location of the rookery.

      On the other hand, objectors have indicated what buffer distances would not be acceptable, but have not recommnded a specific buffer in this case. In light of these facts, the objection is sustained in part. If sand and gravel extraction is to be permitted on the island, the County needs to reexamine what would constitute an adequate buffer for protection of the rookery, based on accurate locational information, and based on advice from objectors as well as ODFW biologists. Based on this re-examination, the County needs to adopt justification for an appropriate buffer, and must adopt such a buffer in plan policies and implementing measures for the site (see, however, response (e) below).

   c. Objectors are correct that the County has not discussed the importance of providing future habitat, such as trees in the inland portion of the island, although the County does recognize that the entire island has habitat value. The County needs to address this when developing a program to protect the site.

   d. Objectors are correct that neither the SG Zone nor the County's Greenway ordinance clearly require protection for significant wildlife habitats, such as the Confluence Heronry. Objectors are correct in saying that the Greenway ordinance does not contain provisions for carrying out Section C.3.i. of Goal 15, inasmuch as it is unclear that extraction will be allowed to occur only if certain conditions are met (these are spelled out

in Section C.3.i. of the Goal). The ordinance refers to most of the topics in Section C.3.i. in its "Guidelines" but does not relate these guidelines to aggregate extraction activities per se. It only requires that findings of compatibility be made based on the "relative importance" of individual Guidelines in any given case. This is not sufficient to ensure that Sections C.3.d. and C.3.i. of Goal 15 will be achieved. Objectors are not correct that Mineral and Aggregate Policy 11 contains adequate assurance, since it fails to reference Section C.3.d. of Goal 15.

e. Objectors are correct that the ESEE consequences analysis for designation of the island did not take into account the regional aggregate supply and demand, although the County's analysis does indicate that "from 3-7 times the amount of land needed for urban aggregate consumption during the planning period has been allocated for this use" (p. V-7). Objectors are correct that the County has not demonstrated a need to zone the island for sand and gravel extraction.

f. Objectors are correct that the entire island is within the floodway. However, this is not a Goal 15 compliance issue, per se, since Goal 15 simply requires floodplain zoning of all areas subject to flooding. As noted in the Goal 7 section of this report, this has been accomplished. Such zoning, plus FEMA regulations will limit activities that can take place on the island.

g. The County has not assessed the impact of noise from a sand and gravel operation in the County park on the opposite bank. However, this would be required according to Sections 16.254(3)(a)(iii) and (3)(b)(xiii) of the Greenway ordinance.

2. Goal 15 (Section C.3.d.) states: "Significant fish and wildlife habitats shall be protected" (emphasis added). Section C.3.i. of the Goal addresses aggregate extraction, and indicates that it "may be permitted when compatible with the purposes of the Willamette River Greenway, and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation."

Although the heronry is a significant Goal 5 resource as well as a significant Goal 15 resource, the requirements of Goal 15 are stricter than those for Goal 5 and the Goal 5 Administrative Rule. Goal 15 requires protection of significant fish and wildlife habitats; it does not allow the "balancing" that is permitted under Goal 5, based on specific circumstances and ESEE consequences of conflicting uses. Extraction in the Greenway may occur only when certain criteria are satisfied. In no instance can it occur if it results in non-protection of a significant habitat area.

There is apparently some confusion as to the actual zoning of the Pudding Creek Heronry, based on the comments and objections received, the various plan and zoning maps submitted for review, and information from the Planning Department itself. This is probably due to the fact that the zoning of the site has changed several times. The plot maps submitted indicate that part of the Pudding Creek Heronry site has been zoned for sand and gravel extraction, and part has been zoned NR. However, the Planning Department indicates that the entire site is zoned SG (Jim Mann, personal communication, July 17, 1984). Criteria in the County's Sand and Gravel Zone and Greenway ordinance do not ensure that the requirement of Section C.3.i. of Goal 15 will be satisfied for reasons discussed earlier. The adopted background materials which analyze the conflicts and ESEE consequences for the site call for protection of the heronry. There is no basis for SG zoning of the entire site, not is there any basis for the current configuration of NR zoning and SR zoning shown on the plot maps. There is no assurance that this configuration would be adequate to protect the heronry. The objections are sustained.

It should be noted that in 1983, extensive negotiations took place between the landowner, Lane County, ODOT, and ODFW for resolution of these conflicts. A proposal for a land exchange (involving land in a nearby state park being rezoned for sand and gravel, and the rookery to be zoned for protection) was drafted, but never executed. The draft proposal was not submitted as part of this current review, but a review of the proposal submitted informally to DLCD by LCOG indicates that, if adopted, it would satisfy Goal 5 and 15 concerns. Other implementing strategies and measures may also be available which would satisfy these Goals as well.

Comment

Wildish Land Company supports the County's plan and zone designations for the Pudding Creek Heronry, as submitted. Wildish (the property owner) indicates that, although the LCOG Working Paper, "Natural Resource Areas: Conflict Resolution for Significant Areas," recommends a land exchange or transfer of mining rights in order to resolve conflicts, redsignation and rezoning proposals were part of a preliminary draft and unadopted addendum to the Working Paper. To date, there has been no land exchange or rezoning. Wildish indicates that Policy 32 of the Environmental Resources Element of the Metro Plan simply requires further study of this issue. Wildish indicates that such a study has been completed and a decision made. The Mineral and Aggregate Resources Element of the County Plan specifies that the Goal 5 Rule will be followed (Policy 1, p. 13). Wildish indicates that LC10.205-10 of the Sand, Gravel and Rock Products Zone implements this policy.

Response

As noted earlier, while the Pudding Creek Heronry is a significant Goal 5 resource, it is also a significant Goal 15 habitat area. As such, the more restrictive standards of Goal 15 must be applied (i.e., the rookery

must be protected). Mining can occur only if the rookery is protected and other Goal 15 criteria are met. Contrary to the Wildish Land Company's statement in its letter, the County must be directed to amend its plan and implementing measures to protect the site.

Conclusion - Goal 15

Lane County does not comply with Goal 15.

Lane County has made many improvements to its Greenway element, in terms of both policies and implementing measures. However, there remain several deficiencies which must be corrected in both the rural plan element and in the Metro Planning Area outside the Metro UGB, in order to fully satisfy Goal 15. Summaries of these deficiencies have been presented in the previous subsections of this report.

In order to comply with Goal 15, Lane County and the Cities of Eugene and Springfield must:

1. Amend zoning maps 304, 304A, 305, 330, 332, 347, 396, 411, 417, 418, 425, 437, 440, 448, 471, 528, 1005, 1006, 1008, 1010, 1011, 1012, and 1013 to display the correct LCDC-approved Greenway Boundary.

2. Amend the Greenway ordinance to clearly require protection of significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints, per Sections C.3.d., a., and e. of the Goal.

3. Amend Section 16.254(2)(k) of the Greenway Ordinance to eliminate all language following the phrase, "or personal noncommercial use."

4. Amend Section 16.254(c) of the Lane Code to ensure that only water-dependent and water-related uses themselves are exempt from the 100-foot Greenway setback requirement.

5. Amend Section 16.254(6) of the Lane Code to require notification of ODOT of actions taken on applications for intensification, change of use or development in the Willamette Greenway.

6. Amend Section 16.254(2)(a) of the Greenway Ordinance to require either:

   a. Greenway permits in areas designated "urban" beyond 150 feet of the ordinary low water line, or

   b. Some other mechanism which ensures protection of Greenway values in these areas.

   (Note: This could also be accomplished by LCDC amendment of the ODOT Greenway Plan by changing the designation of the area south of the Cottage Grove UGB from "urban" to "rural.")

7. Adopt implementing measures that protect the Pudding Creek Heronry.

8. Adopt implementing measures that protect the Confluence Heronry.

In order to comply with Goal 15, Lane County must:

Modify Mineral and Aggregate Resources Policy 11 to also reference Section C.3.d. of Goal 15 to ensure protection of significant fish and wildlife habitats in the Willamette Greenway.

Suggestions for Plan and Implementing Measures Improvement

It is suggested that, by the first plan update, Lane County:

Amend Greenway Policy 13 to indicate that such operations are subject to local Greenway Permit review, or (alternatively) they must be conducted in a manner consistent with protection of other Greenway values.

CP:MJR:11t
9472B:168A; 9279B/9168B:167A

Lane County's Nonresource Lands Process (Part II)

In the Lane County Acknowledgment Review of June 29, 1984, Lane County's Nonresource/Nonexception Lands designation process is reviewed. Information presented in the June 29 review includes (1) the County's plan policies for designating lands as nonresource/nonexception and applying residential densities to these lands (Policies 16(a) and 17, respectively, Plan, p. 4) and (2) the "general criteria" for determining nonresource lands contained in the County's marginal lands working paper (Marginal Lands Working Paper, pp. 7-9).

The County's process for determining that Goals 3 and 4 do not apply was found to be consistent with applicable Goal requirements. The information regarding Lane County's nonresource/nonexception lands contained on pages 47 through 50 of the June 29 review is considered Part I of a two part review of the issue. Part II of the review consists of an evaluation of six site specific areas for which information has been adopted indicating that these six areas qualify for the nonresource/nonexception designations.

The County's findings and record regarding these six areas were submitted for review in two parts. Part I was submitted with the rest of Lane County's plan on May 24, 1984. On June 25, 1984, Part II of the County's record regarding nonresource/nonexception lands was received by the Department. The information received on June 25, 1984, was adopted by the Lane County Commissioners without proper notification of objectors as required by OAR 660-03-032(1) (Expedited Review Requirements).

Therefore, Lane County must satisfy the requirements of OAR 660-03-032, before the Commission can formally accept relevant findings contained in materials submitted for review on June 25, 1984.

Evaluation of the Six Site Specific Areas Found to Qualify as Nonresource by the County

Lane County indicates that (1) Agate Creek Planned Unit Development (Wolf), (2) McKenzie Ridge (Thurmond), (3) Addition to Dillard and Highlands (Hemmenway), (4) Second Addition to Dillard Highlands (Hemmenway), (5) Meltebeke's on Van Duyn Road, and (6) Cerro Gordo (Canfield) qualify as nonresource lands. In assessing whether these six areas do qualify as lands for which Goals 3 and 4 do not apply, the Department found that in some cases, a determination could be made based on the information submitted in May of 1984. In other cases, the information submitted on June 25 was necessary to complete the record. The Department also found that adequate justification to support the County's "nonresource" claim for a couple of the areas in question was lacking despite the additional June 25 information. The following matrix will assist in clarifying this issue discussed above:

	Original Submittal (5-24-84)		Supplemental Findings (6-25-84)	
	Adequate	Deficient	Adequate	Deficient
1. Agate Creek PUD		X	X	
2. McKenzie Ridge	X			
3. Addition to Dillard Highlands		X	X	
4. Second addition to Dillard Highlands	No information submitted			X
5. Meltebeke's on Van Duyn Road	X			
6. Cerro Gordo	X			

Agate Creek Planned Unit Development (PUD)

This proposal is for 16 lots to be developed in two stages. Findings for this designated nonresource site consist of two pages of supplementary findings, the official public hearing notice and a memorandum to the Lane County Hearings Official from staff member George Currin regarding the PUD (5/5/83). Contained in the "original submittal" (5-24-84) is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. A statement that the "majority of soils on the subject property possess no woodland suitability." (NOTE: reference is made to an "Attachment A"--LCPC staff report PZC-82-190. This attachment was not furnished as part of the original submittal.)

2. Statements are provided indicating that 1) no site characteristics are present which make this site desirable for open space, 2) no mineral or energy resources are present, 3) no known ecological or scientifically significant natural areas are identified, 4) designation of this land for non-resource will not affect management of the land for wildlife habitat, 5) this site does not contain or impact scenic areas, 6) the site is not part of a water area, wilderness, wetland, groundwater resource area, or watershed, or 7) this site is not part of a known historical area or a potential or approved recreation trail or scenic waterway. (Supplementary Findings);

Contained in the "supplemental findings" of June 25, 1984, is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

that a clustering of dwelling through a Planned Unit Development will significantly minimize the impact on black-tail deer habitat. Such a development will offer better protection to the habitat than scattering dwellings on the acreage which could occur under current land divisions. The dwelling density allowed under this proposal will not exceed the overall dwelling to acre ratio of 1-40 recommended by the State Fish and Wildlife Department for this type of black-tail deer habitat. The overall dwelling to acre ratio will not be exceeded in that the habitat in question is only a part of the total black-tail deer habitat in this area. Adjacent habitat areas will be maintained due to other prime forest land qualities. It is preferable to accommodate dwellings in this location given the poor resource soils and impact of surrounding development than on surrounding lands which are not impacted or of marginal capability.

With regard to the Fish and Wildlife Department's concern about deer damage to gardens and shrubs and the state's obligation to respond to complaints, the applicant will include deed provisions with all sales of property that black-tail deer inhabit the area and that the associated risks should be recognized.

Objection

1000 Friends of Oregon objects to the claim that Goals 3 and 4 do not apply to the Agate Creek PUD because the findings submitted on March 15, 1984, fail to address Goal 3. Regarding Goal 4, 1000 Friends objects to the conclusion that "the majority of soils on the subject property possess no woodland suitability" without specific soils and specific acreages as supportive evidence.

In addition, specific referenced attachments were not included in the County's original submittal of May 24, 1984.

Response to Objection

This objection is partially sustained. 1000 Friends' objection is generally correct with respect to the information contained in the original May 24, 1984, submittal. However, objectors will find that their specific objection is addressed by the Supplemental Findings submitted for review on June 25, 1984.

Conclusion for Agate Creek PUD

The claim that Goals 3 and 4 do not apply is not sustained.

Substantial evidence is provided in the record supporting the claim that Goals 3 and 4 do not apply to the property in question and that Goal 5 big game habitat value will be protected through clustering provisions.

McKenzie Ridge (also known as Camp Creek Ridge)

This PUD proposal would establish 79 dwellings on 385 acres of land north of Springfield.

Information in the record includes: (1) an affidavit by the applicant, Robert E. Thurmond, detailing the history of and expenses incurred for this development; and (2) a statement of findings, reasons and conditions. This latter statement includes findings addressing all applicable Statewide Planning Goals as well as applicable County requirement and conditions of approval.

This particular claim that Goals 3 and 4 do not apply to this property has been previously before LUBA and the Commission in Osborne v. Lane County [LUBA No. 81.107].

In their March 18, 1982 decision, LUBA found and the Commission affirmed, that the land in question is not subject to Goal 3 because it is not agricultural land be definition. Also, LUBA found that this land is not subject to Goal 4 primarily because the land is not predominantly forested nor suitable for commercial forest use.

Objection

1000 Friends objects to the McKenzie Ridge PUD because the assumptions regarding the interpretation of soils information are correct. The County has relied totally on SCS soils maps even though such maps can be incorrect.

Response to Objection

This objection is not sustained.

Objectors do not present any specific information regarding the property in question to justify invalidating the Commission's earlier decision in Osborne v. Lane County.

Conclusion for McKenzie Ridge

The County's decision indicating that Goals 3 and 4 do not apply to the 385 acres in question is sustained (see Osborne v. Lane County [LUBA No. 81.107]) and the County's finding contained in the May 24, 1984, submittal.

Dillard Highlands Addition

This subdivision is located approximately two miles south of the Eugene city limits. Phase 1 of Dillard Highlands consists of 14 parcels on 100 acres and is "committed" to non-resource use. The second phase of this development consists of 24 parcels.

Findings from the "original" May 24, 1984, submittal supporting this

nonresource/nonexception claim consist of a five-page statement (prepared by David Pedersen and Associates for applicant David Hemenway) titled "Application For Addition to Dillard Highlands Subdivision."

Information from the "original" submittal (5-24-84) relevant to the requirements for substantiating that Goals 3 and 4 do not apply are as follows:

1. A statement indicating "that the predominant soils on the property consist of:

   Dixonville-Philomath Hazelair complex (SCS Class VIe); Philomath SC (SCS Class VIs; Panther CL (SCS Class VIw) and Witzel CL (SCS Class VIs). These non-agricultural soils comprise approximately 92% of the subject property. A small patch (about 10 acres) of Hazelair soils is located on 20-30% slopes on the northern edge of the proposed division. These soils have SCS Classes IVe, subject to severe erosion (Pederson Statement, p. 3).

   Reference is made to an attached soils map which was not forwarded as part of the original submittal (May 24, 1984).

2. Regarding the "other land suitable for farm use" and "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands," the following statement is provided:

   This land does not meet the second definition of agricultural land. That is, it cannot be used for farm use (the current employment of land for the primary purpose of obtaining a profit) nor is it related to the continuation of agricultural activities on adjacent or nearby lands. Other lands in this area are either developed as rural residential or have physical characteristics similar to the subject proprty: gently rolling to steep terrain, a predominance of SCS Class VI soils and little if any potential "farm use". In addition, there is very little physical connection between the subject property and surrounding lands because of the variation in topography. Thus, even if farm use were possible on nearby lands, this proposal would not impact on or adversely affect such activities.

   In summary, the subject property is not agricultural land either in terms of its soil classification or its relationship to other surrounding lands. The surrounding lands are also not agricultural lands as defined by Goal 3 (Pedersen Statement, p. 4).

3. In response to Goal 4 requirements, statements are made that (1) the subject property has no timber site class ratings; (2) that it is predominantly open land; (3) that adjacent lands are similar in character and not used for commercial forest purposes; (4) that other forest uses (i.e., watershed protection, wildlife and fisheries

habitat, recreation, extreme conditions of climate, forested lands in urban and agricultural areas) are not applicable or present on the subject property.

In support of the above statement, the following is provided:

The general area slopes south and east towards Dillard Road and Camas Swale. It contains no rivers or creeks and only a small water natural drainage channel flows southeast towards Dillard Road and into Camas Swale. This drainage basin has no watershed value, nor would the proposed subdivision at the low densities proposed impact on any watershed if one were present. The subject property lies in a low, open area surrounded by steep hillsides. The Significant Vegetation and Wildlife Areas working paper indicates that the vegetation on the property is not unique and contains no elements which contribute to making it a signicant Wildlife Area.

4. Additional statements are provided indicating that (1) the subject property has not been considered for nor does it have recreational value; (2) no extreme climatic conditions exist; (3) this land is not needed for open space, wind breaks; and (4) no scenic values are present on the property.

Contained in the "supplementary findings" submittal of June 25, 1984, are (1) a chart titled "Soil Types on Dillard Highlands, 1st Addition," (2) a SCS Soils map for the subject property, and (3) a soils investigation report apparently prepared by Lane County including soils maps. The chart is relevant to the review of this proposed nonresource site summarized as follows:

1. The chart indicates that of the approximately 107 acres of the Dillard Highlands, 1st Addition, (a) 31.5 acres consists of the Dixonville-Philomath-Hazelaire Complex which has no woodland suitability and has SCS Class IVe agricultural soils; (b) 27 acres consists of Panther Silty Clay Loam which has no woodland suitability and has SCS Class VIw agricultural soils; and (c) 22.4 acres consists of Hazelaire Silty Clay Loam which has not woodland suitability and has SCS Class IVe agricultural soils.

   Of the approximate 107 acres, only 2.6 acres have a woodland suitability while only 22.4 acres are SCS agricultural suitability Class IV.

Objections

1000 Friends of Oregon objects because the findings presented are actually conclusionary statements for which supporting factual information is lacking.

Response to Objection

This objection is not sustained. Additional soils information contained in the supplementary findings submitted for review on June 25, 1984 supports the statements presented by the County in their original submittal indicating that Goals 3 and 4 do not apply. (Also see conclusion)

Conclusion for Dillard Highlands Addition

The claim that Goals 3 and 4 do not apply is sustained. Findings contained in the original submittal of May 24, 1984, are supported by information contained in the "supplemental findings" submitted for review on June 25, 1984, of particular significance is the information indicating that only 22.4 acres of the soils present on this property are SCS Class IV with no SCS Class I-III soils and that only 2.6 acres of the 107 acres in question have any woodland suitability rating at all.

Dillard Highlands, 2nd Addition

This proposal involves approximately 154 acres consisting of 29 five acre lots. It is located approximately one third of a mile southeast of the Eugene city limits and the UGB (application for the Second Addition to the Dillard Highlands Subdivision, p. 3).

Findings addressing this proposal were submitted for review on June 25, 1984 (supplementary findings). Included within the County's record for Dillard Highlands 2nd Addition review as lands for which Goals 3 and 4 do not apply is (1) a document titled "Application for the Second Addition to the Dillard Highlands Subdivision," (2) a list of soils with marginal woodland potential, and (3) a soils investigation report (apparently prepared by Lane County) which includes "forest" and "Ag" soils mapping.

Findings indicating why Goal 3 does not apply to the subject property are as follows:

1. Based on SCS soils mapping, the subject property is composed of 53 percent "nonagricultural soils"--Classes V-VIII--Exhibits A, B, and D are referenced.

2. Table 1 on page 11 indicates that 64% of the property is Class I-IV soils.

3. The soils investigation and accompanying "Ag" soils maps appear to indicate that the majority of the property in question is in fact composed of SCS Class I-IV soils. Also, handwritten statements on the "soils investigation report" indicate that "the application is general concerning soils if there are several more than mentioned" (Request for Soils Investigation, pp. 1 and 2).

4. The subject property is not "other lands" suitable for grazing "because of a combination of problems affecting the growth of pasture and the adverse effects of erosion which would accompany the grazing cattle." The County continues its assesssment of agricultural capabilities by stating the following:

The various limitations on grazing described upon the applicable SCS soil sheets include low fertility, strong acidity, seasonal high water table, clayey topsoil susceptible to compaction when wet, summer droughtiness, slow permeability, and susceptibility to erosion. Climatic conditions of winter rainfall and summer drought lead to the aforementioned soils problems and do not lead to favorable grazing conditions. The soils can become very dry in the summer, and given the high cost of drilling wells and the restricted grazing time, the prospect of irrigation for this purpose is rendered infeasible now and in the future. Existing rural residential land use patterns within the area and the subject property's proximity to the Metropolitan area make it most valuable for rural residential development. The technological and energy inputs required to farm the subject property due to the combination of soils and slope render it not farmable by a reasonable and prudent farmer for the primary purpose of obtaining a profit in money. Even if there were accepted farming practices which made grazing profitable on this site, the erosion potential of this activity makes this property unsuitable for grazing (Application for Dillard Highlands 2nd Addition, pp. 10 and 12--hereby referenced on Application).

5. The subject property is not lands in other classes necessary to permit farm practices to be undertaken on adjacent or nearby lands "as none of the adjacent lands are engaged in farming practices" (Application, p. 12).

Findings indicating why Goal 4 does not apply to the subject property are as follows:

1. In assessing whether this land is lands composed of existing and potential forest lands which are suitable for commercial forest uses the County indicates that of the 154 acrs, 57 acres is composed of Site Class III (site index 140), 31 acres is composed of Site Class IV (site index 110), 43 acres is composed of noncommercial forest lands, 18 acres is used for utility easements, and 5 acres is "deemed" as necessary lands for management (Application, p. 14). The County indicates that for this discussion, Site Class 125 (borrowed from Douglas County) was used to assess commercial forest land suitability (Application, p. 16).

   The County concludes that "only 57 acres, or 37 percent of the subject property has any commercial forest potential" (Application, p. 16).

2. The soils investigation and accompanying "Forest" soils maps indicate that additional soils not discussed by the County exist on the subject property (Request for Soils Investigation, pp. 1 and 2).

2. Exhibit B is a copy of the Lane county Planning Commission's findings in support of this zone change.

3. Exhibit C is a map of the subject property depicting its soil types.

4. Exhibit D is a list of the soil types along with each soil's SCS classification and percentage of occurance on the subject property.

5. Lane County Planning Commission--Addendum to Staff Report (8/23/83).

6. Area map depicting the property to be rezoned.

7. Applicant's supplemental statement to the Lane County Planning Commission.

Contained in this "original" submittal is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. That the land is not SCS Class I-IV agricultural lands. Lane County Exhibit B--Lane County Planning Commission (LCPC), Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

   A detailed soils investigation of the subject property was undertaken for the applicant by Consulting Environmental Sanitarians, Ltd. (See June 21, 1983, transmittal letter from Terry M. Rahe of CES, Ltd. to Bob Meltebeke.) The results of the soils analysis are summarized in the Applicants' Statement at 5-7.)

   Only 5.9% of the 258 acres proposed for rezoning are SCS Class I-IV soils.

   When the entire Meltebeke ownership of 598 acres is considered together, ony 27.1% has an SCS Class of IV or better (LCPC, p. 2).

2. That the land is not other lands suitable for farm uses . . . suitable for grazing . . . some finding addressing this issue are as follows:

   Almost all of the Bashaw Clay and Conser Silty Clay Loam (Class III and IV soils) occupy the flat field in the northwest portion of the property that is not to be rezoned. These soils have drainage and overflow problems, based upon SCS data. They are subject to winter flooding and are very droughty in summer. (SCS soils tables.)

   The Dixonville/Philomath/Hazelaire complex and Panther Silty Clays (Class VI soils) are the predominate soil types. They occupy 33.7 percent of the entire ownership

and 42 percent of the area propoed to be rezoned. These soils have low permeability, low available water capacity, moderate erosion potential, high plasticity, thin and rocky soils, and droughty conditions. They are poorly suited for production of conifers, which tend to suffer from root rot and windthrow. (SCS soils tables.)

The present lessee of the Meltebeke property raises cattle on this and several other tracts in the vicinity. The property is suitable for grazing less than six months a year due to wetness in winter (which causes cattle to destroy the pasture) and dryness in summer (which inhibits growth of grass). (Letter from DuWayne Penfold, July 10, 1983).

The entire Meltebeke property is not a viable economic unit as a farm. It is incapable of producing a cash crop, including grazing of animals, that would be sufficient to cover operating expenses and retire indebtedness on the land. (See letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.) (LCPC, p. 3).

On page 9 of "Attachment 2," Meletebeke supplemental zoning App. Statement, the County provides the following assessment of this property's agricultural suitability:

In addition, Floyd Holbrook, Agricultural Management Specialist, has submitted a report stating that, while the property can be grazed, it would be necessary to do intensive clearing and planting, with a resulting production level that would not support an income adequate to retire the debt on the property, based on current farmland values in the area:

"The major problem with improving the property for grazing is that the acreage can not support enough animals in either beef or sheep in order to pay operating expenses and retire the land debt. The main reason for not being able t (sic) support adequate livestock is due to the moisture availability and the shallow soil depth. The soil types are such that fertilizers are restrictedby (sic) chemical bonds and do not allow for maximum pasture production."

"These figures [see letter] clearly show that the subject property will not support an economic unit." August 4 Holbrook letter.

3. That the land is not "lands in other classes . . . necessary to permit farm practices to be undertaken on adjacent or nearby lands. Some findings regarding this issue are as follows:

No adjacent or nearby farmer has voiced opposition to this rezoning proposal.

Dr. Penfold leases Meltebeke land to the northwest of the area to be rezoned. It is a hayfield on which he raises cattle. Dr. Penfold also raises cattle on several other tracts near the Coburg/I-5 interchange.

The Meltebeke property leased by Penfold has little value for grazing, and the proposed rezoning will have little impact on the productivity of the Penfold farm. (Letter of DuWayne Penfold, July 10, 1983.)

The area to the north of the subject property is scrub hillside and part of the Coglietti ranch. The immediately abutting area is not cultivated and receives limited grazing use.

All other agricultural lands are isolated from the subject property by the ridge to the east and south, and the residential land to the west.

A Wildlife Management Plan has been submitted by the Applicant and is a condition on zoning approval. Under this management plan there will be protective corridors running the length of the property which will buffer residential and farm uses. Under the plan animals will be restrained through fencing and deed restrictions.

Purchase of the subject property by adjacent farmers might increase their total income but reduce their return per acre. (Letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.)

4. That the land is not inventoried as forest land, not predominantly forested, and is not suitable for commercial forest production. County Exhibit B--Lane County Planning Commission (LCPC)--Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

Neither the 258 acres to be rezoned nor the entire 598 acres is inventoried as forest land.

Neither the 258 acres nor the 598 acres is presently "forested" in the meaning of the goal. A majority of neither acreage is covered with a commercial stand of conifers. Neither is a greater portion of either acreage covered with oak or similar noncommercial species.

The vast majority of both the 258 acres and the 598 acres has no forest site class at all.

Only 54 acres or 21 percent of the 258 acres to be rezoned has soil with commercial forest potential, and this acreage is in four scattered locations. (Letter from Robert Hoenhaus, Consulting Forester, June 28, 1983.)

5. That the land is not forested land based on the following findings:

The upland areas between the subject property and the crest of the Coburg Hills, which contains the most densely wooded area, will be left in forest use, and will be managed under a management plan submitted by the applicnt's consulting forester.

Wildlife corridors provided in the wildlife management plan will provide protection for wildlife resources. (See Goal 3 findings above.)

The proposed 24 units will be clustered. Clustering will minimize impacts on wildlife and will permit protection of vegetative cover.

Development density will be more than 10 acres per unit on the property to be rezoned, about 30 acres per unit for all the Meltebeke property, and far more than 40 acres per unit in the surrounding area.

Grazing on the dry slopes of the subject property is a use that presently conflicts with goals of protecting vegetative cover and preventing soil erosion.

Conversion of the property to low density, clustered residential use with extensive wildlife corridors under the wildlife management plan will displace grazing, a use that conflicts with vegetation, soil, watershed and wildlife protection, with a use that will improve forest land, open space, wildlife values that the site does possess.

County General Plan Policy 5C13 requires application of Goal 5 conflict-resolution procedures and administrative (OAR 660-16-000) when, as here, the proposed development density is below that recommended by the Oregon Department of Fish and Wildlife for big game (LCPC, Exhibit B, pp. 5-6).

Some information contained in the record, contlicts with the findings adopted by the County. No specific discussion is contained in the "original submittal" clarifying the relationship of this information to that used by the County in making its decision is provided. (However, information contained in the supplemental findings--letter from Rober A. Holenhaus--indicates that the revised proposal of 258 acres excludes the majority forest soils discussed on page two of the "LCPC Addendum."

Relevant information regarding the "Nonresource" claim included in the "supplementary findings" submitted on June 25, 1984, are:

1. An area map showing the proposed 258 acres;

2. An aerial photo and a series of overlays which consists of a soils map, a colored overlay showing "Ag and forest soils" and the development area;

3. A sheet listing specific soils and acreages;

4. A large scale soils map prepared by Terrance Rahe;

5. Another aerial map containing soil lines;

6. A letter from R. Holenhaus, professional forester;

7. A letter from T. Rahe, soil scientist, describing the soils found on the property; and

8. A letter from J. Lockard, SCS District Conservationist, discussing the soil known as the Dixonville-Philomath-Hazelaire complex.

With the exception of a statement indicating that only 54 scattered acres are suitable for commercial forest use (Hoenhaus) specific findings or conclusions were contained in the supplemental findings. This information apparently was supplied to corroborate the statements contained in the "original submittal."

Objection:

1000 Friends of Oregon objects because information in the record contradicts findings that Goal 4 does not apply. Also, the County relies on soils mapping for this determination.

Response to Objection

This objection is partially sustained.

The objectors are correct that information in the record (page 2 of the "Lane County Planning Commission Addendum to Staff Report") indicates that Goal 4 does apply to this land or a portion of the property in question. However, information contained in the supplementary findings of June 25, 1984, addresses this issue (letter from R. Hohenhaus and also personal communication from J. Mann, Lane County Planning Department, 7/16/84).

Regarding the County's reliance on soils mapping, this objection is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable

on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Meltebecke's on Van Duyn Road

When considering both the original submittal of "May 24, 1984" and the "supplementary findings" of June 25, 1984, substantial evidence is provided to sustain the claim that Goals 3 and 4 do not apply to the 258 acres in question.

Cerro Gordo

This proposal is for 60 residential lots and one common area lot on 604 acres on Dorena Reservoir in southern Lane County. Findings for this designated nonresource site were submitted with the County's original submittal of March 15, 1984, as well as with the supplemental findings submitted on June 25, 1984.

The "original" submittal for Cerro Gordo consists of a number of exhibits which are as follows:

1. A map of the property displaying (a) the nonforest soils, forest soils, and committed lands; (b) ridge lines, Row River Road, and Dorena Lake; and (c) adjacent ownerships and the area zoned RR-10 for which the nonresource claim is made.

2. Findings and conclusions in support of nonresource designation for Cerro Gordo Ranch--CPR Application No. 1102.

This statement consists of 173 pages including a 44 page wildlife management plan, a forest lands assessment by Woodland Management, Inc., an appraisal by Terrance Rahe (registered sanitarian) of the area's suitability for subsurface sewage disposal, and a detailed discussion addressing each Statewide Planning Goal as well as numerous letters generally in support of the proposed development.

The "supplemental findings" (June 25, 1984) for Cerro Gordo consists of (1) a five page document labeled "Incorporation of Applicant's Findings and Conclusions," (2) the "Cerro Gordo Preliminary Cluster Subdivision Plan," as well as (3) a number of letters addressing a range of issues, some of which not directly associated with the Goal 3 and 4 applicability question while others are duplicate information contained in the original submittal.

Contained in the "original" submittal (3-15-84) is the following information addressing the Commission's requirement for substantiating that Goals 3 and 4 do not apply:

1. In addressing Goal 3, the County indicates that 76 acres of the 604 acres consists of soils with SCS agricultural suitability Classes III-IV (12 percent). The dominant soil type (302.6 acres) is the Dixonville-Philomath-Hazelaire Complex (Findings and Conclusions . . ., p. 12).

2. Regarding the other aspects of the Goal 3 defintion, the County indicates:

   a. That there is no evidence of recent agricultural activity;

   b. Due to the lack of rainfall in the summer, the southern exposure of this site and no source for water for irrigation agricultural productivity is limited;

   c. The Dixonville-Philomath-Hazelaire Complex is rated three to six AUMs per acre for grazing and no suitability for crop production while the soils;

   d. Ninety percent of the property products less than ten AUMs of pasture per acre;

   e. Two hundred ten acres (35 percent) of the property is situated on Cerro Gordo Mountain which rises 1,200 feet above the lowest elevation point.

   Based on the preceding findings, the County concluded that the property as a whole would not be an economic farming unit (nor would be purchased for agricultural use) under Goal 3's "other lands suitable for agricultural use . . .definition (Findings and Conclusions . . ., pp. 12-14).

3. Regarding whether this site qualifies as "lands in other classes necessary to permit farm practice to be undertaken on adjacent or nearby lands," Lane County indicates that (a) there are no agricultural lands or agricultural uses in the imediate vicinity of the subject property, (b) Dorena Lake and the ridges of the mountain combine to surround the property, and (c) the nearest agricultural uses are approximately one mile from the property in question. Given the preceding facts, the County concludes that this site does not qualify as "lands in other classes necessary to permit farm practice on adjacent or nearby lands" (Findings and Conclusions . . ., p. 14).

4. Regarding whether the site is composed of existing and potential forest land suitable for commercial forest use, the County indicates that 507 acres of the 604 acres is composed of soils with no woodland suitability indicated by the U.S. Soil Conservation Service (Findings and Conclusions . . ., p. 16).

5. In addressing the other aspects of the Forest Lands definition, the County responds as follows:

   a. From aerial photographs, the forested and nonforested acreages were calculated. Douglas Fir is growing on 198 or 32.8 percent of this site. Oak is growing on 119 acres or 19.7 percent of this site while 287 acres or 47.5 percent remains nonforested. Fifty-two point five percent of the site is covered by trees. The County recites from LUBA's Osborne v. Lane County decision

(5 Or LUBA 172) that LUBA does "not view the fact that trees may be growing on the property in various places, as the record seems to indicate, to mean the land is forested within the meaning of Goal 4." The County indicates that the opinion implies that when considering species such as oak, not a simple majority, but rather " the far greater area" must be covered by trees to conclude that a property is forested (Findings and Conclusions . . ., p. 17). Thus, the County indicates that 52 percent forest cover alone does automatically qualify this land under the forest land definition. The County concludes by stating, "Considering the total extent of tree cover, the subject property is not forested within the meaning of Goal 4.

b. With regard to "lands where extreme conditions of climate, soil, and topography require vegetative cover irrespective of use," and "other forested lands in urban and agricultural areas which provide buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use, the County indicates the following:

(1) The property is not (a) identified as an important watershed, (b) an agricultural or urban area, (c) needed for recreation, (d) necessary to be maintained in its present condition to provide buffers, scenic corridors, livestock habitat, or windbreaks (Findings and Conclusions . . ., pp. 18-21).

(2) The conditions imposed during this development's approval will resolve any potential problems presented by extreme soil and slope conditions as well as conflicts with big game (Findings and Conclusions . . ., pp. 18-20).

Also, findings addressing other relevant Statewide Planning Goals were included. Of particular significance to the "nonresource" designation issue are findings addressing wildlife habitat and the "Goal 5 process." The following are findings contained within the "Findings and Conclusions" document presented in the County's original submittal (5-24-84):

1. On pages 123 and 123, a detailed statement of potential consequences on big game habitat from residential development is presented.

2. A series of recommendations for mitigating asdverse impacts from residential development on big game habitat are presented on pages 125-127.

3. A discussion of residential densities and deer habitat is presented on page 217. As stated, the recommended density for big game is one unit per 80 acres preferred; one unit per 40 acres is acceptable with clustering. The County states that, "The Cerro Gordo property is requesting a subdivision of 100 lots with clustering, thus maintaining an average lot size of 10 acres" (p. 217).

4. The County indicates that "residential development in rural areas rarely acts to exclude or reduce deer populations," "the contrary usually occurs (Jim Greer, 1983)." The main impact of development is the loss of hunting lands. Cerro Gordo prohibits hunting (p. 128).

5. On page 125, the County concludes its discussion of density as follows:

> The Cerro Gordo project, which calls for a density of one lot for every 10 acres, can be thought of in the larger ecological context of the drainage basin (approximately 2000 acres) as resulting in a density approaching one lot for 20 acres. Again considering the clustered design of the development this leaves considerable land for natural processes to occur.

6. On pages 129-131, the County discusses the wildlive habitat and the Goal 5 Rule requirements. These are excerpts from this discussion:

   a. In identifying conflictihg uses there has previously been discussion as to whether residential development actually negatively impacts wildlife. Experts tend to feel that deer populations usually are minimally affected by rural residential development and tend to adapt to people's presence quite rapidly (Jim Greer, ODF&W; Lane County Extension Service, 1983) (p. 130).

   b. The ESEE consequences on both wildlfe and rural residents have been fully detailed in the previous section--"Potential Impacts of Development in Wildlife." The primary consequence on wildife is loss of habitat (environmental) while the primary consequence on rural residents is damage to landscaping and gardens (economic) and ultimately not being allowed to live in a rural setting (social). The section on "Mitigation of Impacts" gives recommendations for resolving these issues.

      Therefore, in section 660-16-010 of LCDC's interpretive rules the way to resolve the conflict of uses is seen as (3) limiting conflicting uses (pp. 130-131).

7. On pages 133 through 147, present a detailed "wildlife and development plan" which was designed to satisfy OAR 660-16-010(3), "Limit Conflicting Uses."

   As indicated, Lane County also submitted information regarding this developmental in their "supplemental findings" received by the Department on June 25, 1984. The information regarding Cerro Gordo contained within the supplemental findings was a reiteration of the conclusions and findings already present in the original submittal of May 24, 1984.

Objection

1000 Friends objects to the designation of Cerro Gordo as "nonresource" because of the County's reliance on SCS soils mapping information. Objectors claim that this information is inappropriate to judge the capability of this land for commercial forest use.

Response to Objection

This objectin is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Cerro Gordo

The claim that Goals 3 and 4 do no apply is sustained; however, one unresolved Goal 3 issue as well as a Goal 14 issue (see Goal 2) remains substantial evidence is contained within the "original submittal" to indicate that this land is not agricultural land under the Goal 3 definition. The approximately 604 acres in question is not predominantly SCS Class I-IV soils nor do findings indicate that it is reasonable to conclude that this property is "other lands" suitable for farm use or "lands in other classes" necessary to permit farm practices to be undertaken or adjacent or nearby lands.

Substantial evidence is provided also indicating that the property in question is not (1) "lands composed of existing and potential forest lands which are suitable for commercial forest uses and (2) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock, scenic corridors, and recreational use.

Also, the County has adequately addressed through open space requirements and developmental conditions the issue raised regarding extreme conditions of soil and topography where maintenance of vegetative cover qualifies as forest lands.

The question of whether this property qualifies as "other forested lands needed for wildlife habitat" has also been addressed. Substantial evidence has been provided showing that this two part definition, ((1) other forested land and needed for wildlife habitat) does not apply as the County's findings adequately address OAR 660-16-000 requirements; thus, indicating tht this land is not needed for wildlife habitat.

However, one unresolved Goal 5 issue remains. The County needs to address the issue of how the "acceptable" density of one unit per 40 acres with clustering is satisfied by authorizing one dwelling per ten acres as zoned or 60 lots under a cluster provision allowing duplexes (or 120 units per 600 acres or one unit per five acre overall density.

In order to comply, Lane County must:

1. Amend the plan (a) to include additional fundings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the county chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

2. Amend the plan to justify the potential one dwelling unit per 5 acre density authorized for Cerro Gordo's 600 acres in view of ODFW's accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (see also Goal 2's cluster development issue)

MJR:prs
9472B/168A

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 9-84

IN THE MATTER OF REVISING CHAPTER 16 THE RURAL DEVELOPMENT CODE OF LANE COUNTY TO:

1. MAKE CERTAIN HOUSEKEEPING RE - VI S IONS .
2. ESTABLISH EXPLOSIVE STORAGE AS A SPECIAL USE IN THE IMPACTED FOREST ZONE (HEREINAFTER RE- FERRED TO AS F-2) ZONING DISTRICT.
3. MAKE NUMEROUS REVISIONS TO THE DEVELOPMENT CODE TO BRING IT INTO COMPLIANCE WITH THE REQUIREMENTS OF THE DLCD STAFF REPORTS DATED JUNE 28, 1984 AND JULY 19, 1984 THESE REVI SI ONS I NCLUDE :
   - A. CHANGING THE EFU DISTRICT TO REQUIRE DISQUALIFICATION FROM THE TAX DEFERRAL PROGRAM IF NON-FARM DWELLING PERMITS ARE ISSUED.
   - B. CONDITIONING DEVELOPMENT IN AREAS OF KNOWN GEOLOGIC HAZARDS.
   - C . ADDING A NEW DIVISION STAN- DARD OF 80 ACRES FOR CERTAIN PARCELS OF LAND ZONED F-2 WHICH ARE IN EXCESS OF 160 ACRES.
   - D. REQUIRING "LODGES" TO MEET THE GENERALLY UNSUITABLE TEST BEFORE PERMIT ISSUANCE.
   - E. ESTABLISHING A MINIMUM OF 10 ACRES BEFORE A PARCEL IS ELI- GIBLE FOR A FOREST RELATED DWELLING.
   - F . REVISING THE PARKS AND REC- REATION ZONE TO MAKE IT CON- SISTENT WITH ORS 215 .213 (2) .
   - G. CONDITIONING DEVELOPMENT IN UNINCORPORATED RURAL COM- MUNITIES WITH KNOWN OR SUS- PECTED SEWAGE PROBLEMS.
   - H. CLARIFYING THE STANDARD FOR DWELLINGS IN THE F-,2 DIS- TRICT.
   - I. ESTABLISHING ADDITIONAL

CRITERIA WHEN DETERMINING THE APPROPRIATE DENSITY OF CLUSTER SUBDIVISIONS, AND

4. ADOPT A SAVINGS AND SEVERABILITY CLAUSE

WHEREAS, on March 1, 1983, Lane County submitted its Rural Comprehensive Plan to the Land Conservation and Development Commission for acknowledgment, and

WHEREAS, since submitted, objections to the plan have been received, and the Department of Land Conservation and Development Commission staff have reviewed the plan, and

WHEREAS. we have now received DLCD's staff reports dated June 28, 1984 and July 19, 1983, and we are now in a position to revise the Development Code to bring it to an acknowledgeable standard, now, therefore

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

The attached complete copy of Chapter 16, is hereby adopted in total replacement of the Chapter 16 enacted on February 29, 1984, via Ordinance No. 1-84.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

The application of Chapte 16 to rural Lane County repealed by this Ordinance shall remain in force to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

While not part of this Ordinance, we adopt the attached Exhibit "A" as finding in support of this decision.

Enacted this _____ dav of August 1984.

Chair, Lane County Board of Commissioners

APPR 9/6/84

4)p sew/W(6a)
Recording Secretary for this Meeting of the Board

amending the provisions of this Chapter. Any interpretation of the Chapter shall be deemed an administrative action and shall be based on the following considerations:

(1) The Lane County Comprehensive Plan.

(2) The purpose and intent of the Chapter as applied to the particular section in question.

(3) The opinion of the County Counsel.

Copies of such interpretations shall be indexed and kept on file in the Department and may be reviewed by the public upon request.

16.009 Restrictiveness. Where the conditions imposed by a provision of this Chapter overlap, the provisions which are more restrictive shall govern.

16.010 Severability. If any section, paragraph, subsection, clause, sentence or provision of this Chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this Chapter, and the effect thereof shall be confined to the section, paragraph, subsection, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this Chapter notwithstanding the parts so declared unconstitutional or invalid. Further, should any section, paragraph, subsection, clause, sentence or provision of this Chapter be judicially declared unreasonable or inapplicable to a particular premises or to a particular use at any particular location, such declaration or judgment shall not affect, impair, invalidate or nullify such section, paragraph, subsection, clause, sentence or provision as to any other premises or use.

16.011 Introductory Provisions. In order to achieve the purposes outlined in LC 16.003, and to assure that the development and use of land in Lane County conforms to the Rural Comprehensive Plan, zone classifications have been established for all unincorporated areas outside of adopted urban growth boundaries and within Lane County. These zones specify regulations for the use of land and property development standards, and use applied by boundaries indicated on the Lane County Rural Comprehensive Plan Zoning Maps.

16.012 Zone Classifications. For the purpose of this Chapter of Lane Code, the following zones are hereby established:

Zone Classification	Abbreviation	Section No.
Nonimpacted Forest Lands	F-1, RCP	16.210
Impacted Forest Lands	F-2, RCP	16.211
Exclusive Farm Use	E-RCP	16.212
Natural Resource	NR-RCP	16.213
Marginal Lands	ML-RCP	16.214
Park and Recreation	PR-RCP	16.215
Quarry and Mining Operations Combining	/QM-RCP	16.216
Sand, Gravel and Rock Products	SG-RCP	16.217
Sand, Gravel and Rock Products Combining Processing	SG-CP-RCP	16.218
Public Facility	PF-RCP	16.219
Limited Commercial	C-1, RCP	16.220
Neighborhood Commercial	C-2, RCP	16.221
Commercial	C-3, RCP	16.222
Rural Commercial	C-R, RCP	16.223
Limited Industrial	M-1, RCP	16.224
Light Industrial	M-2, RCP	16.225
Heavy Industrial	M-3, RCP	16.226
Suburban Residential	RA-RCP	16.229
Garden Apartment Residential	RG-RCP	16.230
Rural Residential	RR-RCP	16.231
Destination Resort Historic Structures or Sites Combining	DR-RCP /H-RCP	16.232 16.233
Natural Estuary	/NE-RCP	16.234
Conservation Estuary	ICE-RCP	16.235
Development Estuary	/DE-RCP	16.236
Significant Natural Shorelands Combining	/SN-RCP	16.237
Prime Wildlife Shorelands Combining	/PW-RCP	16.238
Natural Resources Conservation Combining	/NRC-RCP	16.239
Residential Development Shorelands Combining	/RD-RCP	16.240
Shorelands Mixed Development Combining	/MD-RCP	16.241
Dredge Material/Mitigation Site Combining	/DMS-RCP	16.242
Beaches and Dunes Combining	/BD-RCP	16.243
Floodplain Combining	/FP-RCP	16.244
Commercial Airport Safety District	/CAS-RCP	16.245'
Airport Safety District	/AS-RCP	16,246
Airport Operation	AO-RCP	16.247

16.013 Location of Zones. The boundaries of the zones indicated on the Lane County Zoning Maps are hereby adopted by reference.

16.014 Plan Designation and Zoning Maps.

(1) The Plan Designation and Zoning Maps shall consist of a set of base maps and detailed map sheets. The base maps will cover the entire County and will indicate plan designation and zoning where an entire section is in a single designation and zone. Where more than one plan designation and zone is used within a section, the zoning shall be shown on a detailed map sheet and the base map shall reference the detailed map sheet. The Flood Insurance Rate Maps (FIRM) and Flood Hazard Boundary Maps shall constitute the zone maps for the /FP-RCP zone.

(2) Final maps sheets (i.e., the maps actually adopted) will be 8-1/2 x 14 inches overall. Working maps may be drawn at a larger size and reduced to produce a final map. Scale of the final maps will adhere to a standard engineer's scale to the maximum extent feasible, however, this shall not be an absolute requirement. A graphic representation of map scale must be shown on each map sheet. Final maps are to be on durable material and be of sufficient contrast to allow high quality reproduction through microfilming or standard office equipment.

(3) Each map sheet shall contain the following information:

(a) Sheet number.
(b) Scale.
(c) North Point.
(d) Adoption ordinance number, effective date and file reference number.
(e) Revision number, ordinance or order number and effective date of map amendment.
(f) Title "Lane County Official Plan Designation and Zoning Map".

(4) Base map sheets will be numbered sequentially (i.e., 1, 2, 3, etc.). Detailed map sheets will be numbered with the same numbering system used by the County Assessor (i.e., township, range, section, 1/4 section, 1/4 1/4 section). When two sections are shown on the same sheet, that sheet will be indentified by both County Assessor map numbers (i.e, 17-04-06/17-04-07).

(5) The exterior boundaries of the individual detailed map sheets shall be determined by the polygons used by the County Geographic Data System Parcel File to represent the properties within the sections being displayed.

(6) To the maximum extent feasible, plan designation and zone boundaries shall follow features recognizable or reproducible line preference shall be given to going from a known point to a known point (i.e., property corner, section corner, etc.). In the event a zone boundary does not or cannot conform to the above, angle points and intersection points of that boundary shall be annotated

with the coordinates of the points or with the distance and bearing of the boundary.

(7) Where uncertainty exists as to the boundaries of any zone shown upon the Zoning Map, the following rules shall apply:

(a) Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.

(b Boundaries indicated as approximately following property lines shall be construed as following such property lines.

(c) Boundaries indicated as approximately following the city limits shall be construed as following such city limits.

(d) Boundaries indicated as following railroad lines and public utility shall be construed to be midway between the main tracks or utility easements, whichever is applicable.

(e) Boundaries indicated as parallel to or extensions of features indicated in LC 16.014(7)(a) through (d) above shall be so construed.

(f) Boundaries indicated as following shorelines shall be construed as following the ordinary low waterline, except where the body of water is specifically zoned /NE-RCP, /CE-RCP or /DE-RCP, in which case the boundary shall be construed as following the ordinary high waterline. In the event of a change of high or low waterline, the boundary will follow that line no matter how it shifts.

(g) Where zones are separated by a body of water, the boundary between the zones shall be construed as being the centerline of such body of water. No matter how such centerline may shift, the boundary shall remain the centerline as shifted.

(h) Except as hereinafter noted, where a zone boundary divides an ownership of property, unless the same is indicated by dimensions, map coordinates or similar notation, the boundary shall be determined by the use of the scale appearing on the Zoning Map. In the case of the /SN-RCP, /PW-RCP, /NRC-RCP, /RD-RCP, /MD-RCP, /DMS-RCP and /BD-RCP Zones and the /NE-RCP, /CE-RCP and /DE-RCP Zones, the boundaries shall be determined through interpretation of the Coastal Resources Management Plan.

(i) Where physical features existing on the ground are at variance with those shown on the Zoning Map, or in other circumstances not covered by LC 16.014(7)(a) through (h) above, the Planning Commission shall interpret the zone boundaries.

(j) Treatment of Vacated Property. Where a public street or alley is officially vacated, the Zone requirements applicable to the property to which the

vacated area becomes a part shall apply to the vacated property.

16.015 Amendments to the Lane County Plan Designation and Zoning Maps.

(1) All amendments to the Lane County Zoning Maps shall be made by Ordinance, for legislative matters, and by Order, for quasi-judicial matters, of the Approval Authority as specified in this Chapter of Lane Code.

(2) The Lane County Plan Designation and Zoning Maps shall be amended by substituting new map sheets for existing map sheets, adding new map sheets, or removing existing map sheets.

(3) Each time a map sheet is added to or substituted for an existing map sheet in the Plan Designation and Zoning Map, that action shall be indicated by placing a revision number in parenthesis following the map sheet number. The revision numbers will represent the sequential changes made to that sheet as follows:

Original Map Sheet	17-04-06/17-04-07
1st Revision	17-04-06/17-04-07(1)
2nd Revision	17-04-06/17-04-07(2)
New Map Sheet Added	18-05-06/18-05-07(1)

16.020 Interim Plan Designation and Zoning Maps. For legislative plan and zone adoption or amendment proceedings, the maps initially adopted may be on regular paper (8 1/2" x 11"). In addition, CPR change request summaries may be used to modify these maps. Upon adoption, the County shall have 120 days to adopt Plan Designation and Zoning Maps in conformity with LC 16.014 above.

16.090 Definitions. For the purpose this Chapter, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this Chapter. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1961, shall be considered as providing ordinary accepted meanings.

Acceptance. Received by and considered by the Director as sufficiently complete to begin processing according to the application or appeal review procedures of this Chapter.

Accessory. Incidental, appropriate and subordinate to the main use of a tract or structure.

Agriculture. Synonymous with definition of "farm use".

Agricultural Building. A structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged; nor shall it be a place used by the public.

Alter or Alteration. Any change, addition or modification in use construction or occupancy.

Amendment, Minor. A change to a preliminary plan, plat or map which:

(1) Does not change the number of lots or parcels created by the subdivision or partition;

(2) Does not "substantially enlarge or reduce" the boundaries of subdivided or partitioned area;

(3) Does not change the general location or amount of land devoted to a specific land use; or

(4) Includes only minor shifting of the proposed parcel or lot lines, location of buildings, proposed public or private streets, pedestrian ways, utility easements, parks or other public open spaces, septic tank drainfield locations and well locations.

Amendment, Major. A change to preliminary plan, plat or map which is not a minor amendment.

Animal Hospital. A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.

Appearance. Submission of testimony or evidence in the proceeding, either oral or written. Appearance does not include a name or address on a petition.

Approval Authority. A person, or a group of persons, given authority by Lane Code to review and/or make decisions upon certain applications according to the review procedures of Lane Code Chapter 14.

Approximate Flood Hazard Study Area. Flood hazard areas as shown on the Federal Flood Hazard Boundary Maps where base flooding elevations have not been determined.

Aquaculture. The raising, feeding, planting and harvesting of fish, shell fish or waterborne plants and associated facilities necessary for the use.

Area. The surface included within any set of lines which may be further defined in square feet or acres, exclusive of County or local access - public street.

Area **of Flood Hazard.** The land in the floodplain within a community subject to a one percent chance of flooding in any given year.

Base Flood. A flood that has a one percent chance of being equaled or exceeded in any given year.

Beach. Gently sloping area of loose material (e.g., sand, gravel and cobbles) that extends landward from the low waterline to the uppermost line of wave and tidal action.

Bed and Breakfast Accommodation. An accessory use to be carried on within a structure designed for and occupied as a single-family dwelling in which no more than two sleeping rooms are provided on a daily or weekly period, not to exceed 29 consecutive days, for the use of travelers or transients for a charge or fee. Provision of a morning meal is customary as implied by title. Bed and Breakfast shall be considered a Home Occupation where not specifically listed as a permitted or conditionally permitted use.

Board. Board of County Commissioners of Lane County.

Boarding of Horses. The boarding of horses for profit shall include the following:

(1) The stabling, feeding and grooming for a fee, or the renting of stalls for the care of horses not belonging to the owner of the property; and

(2) Related facilities, such as training arenas, corrals and exercise tracks.

The boarding of horses for profit does not include the following:

(1) The mere pasturage of horses or the boarding of horses not owned by the property owner for the purpose of breeding with the owner's stock.

(2) The incidental stabling of not more than four horses.

(3) The boarding of horses for friends or guests where no charge is made.

(4) Equestrian activities when the raising, feeding, training or grooming of horses is a farm use by the property owner of the land qualifying for farm assessment under regulations of the State Department of Revenue.

Boarding House. A dwelling or part thereof, in which lodging is provided by the owner which equals or exceeds the limitations of a bed and breakfast accommodation.

Building. The terms "building" and "structure" shall be synonymous, and shall mean that which is framed, erected, constructed or placed to stand temporarily or permanently on a tract of land. This definition shall specifically include a mobile home and accessories thereto. Driveways or walks not more than six inches higher than the ground on which they rest shall not be considered buildings.

Building Site. That portion of the lot, parcel or unpartitioned or unsubdivided tract of land upon which the building appurtenances are to be placed, or are already existing, including adequate areas for sewage disposal, light, air clearances, proper drainage, appropriate easements and, if applicable, other items required by the Lane Code.

Camp. An area designed for organizational recreation which may include facilities such as; swimming pools, meetinglialls and indoor shelters for recreation.

Campground. An area designed for short-term recreational purposes and where facilities, except commercial activities such as grocery stores and laundromats, are provided to accommodate that use. Space for tents, campers, recreational vehicles and motor homes are allowed and permanent open air shelters (adirondacks) may be provided on the site by the owner of the development.

Camping Vehicle Park. Synonymous with definition of Recreational Vehicle Park.

Cemetery. Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including

columbariums, crematoriums, mausoleums and mortuaries, when operated in conjunction with and within the boundary of such cemetery.

Church. A building, together with its accessory buildings and uses, where persons regularly assemble for worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship. A church does not include a school.

Clinic. Single or multiple offices for physicians, surgeons, dentists, chiropractors, osteopaths and other members of the healing arts, including a dispensary in each such building to handle only merchandise of a nature customarily prescribed by occupants in connection with their practices.

Cluster Subdivision. A subdivision for which the applicable zoning district allows relaxed lot area, coverage and setback requirements and alternative types of dwellings as specified in Lane Code Chapter 16, and which is consistent with the cluster subdivision Policy #24 set forth under Goal 2, Land Use Planning of the Lane County General Plan Policies.

Communication Facility. A facility constructed for the purpose of transmitting telegraph, telephone, microwave, television, radio and other similar signals.

Comprehensive Plan. A generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including, but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities and natural resources and air and water quality management programs. "Comprehensive" means all inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

Contiguous. Having at least one common boundary line greater than eight feet in length. Tracts of land under the same ownership and which are intervened by a street (local access, public, County, State or Federal street) shall not be considered contiguous.

County Official. The Director of a Lane County Department or Division, or any Lane County advisory committee or commission acting in its official capacity.

Day. A calendar day, computed consistent with ORS 174.120.

Day Care Nurseries. Any institution, establishment or place in which are commonly received at one time, six or more

children not of common parentage, under the age of six years, for a period or periods not exceeding 12 hours, for the purpose of being given board, care or training apart from their parents or guardians for compensation or reward.

Department. The Lane County Department of Public Works.

Depth. The horizontal distance between the front and rear boundary lines measured in the mean direction of the side boundary lines.

Development. The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or grading.

Development, Minimal. Development which is of minimal economic value and is essentially impermanent. Examples are dune boardwalks, fences which do not substantially affect sand erosion or migration, temporary open-sided structures or approved septic drainfield serving permitted development.

Director. The Director of the Land Management Division of the Lane County Public Works Department, or the Director's delegated representative within the Department.

Divide. To separate a tract or contiguous tracts of land under the same ownership into smaller tracts and different ownerships by deed, contract or lease; and when used herein refers collectively to partitions and subdivisions. To divide land shall not include the following:

(1) Leasing or financing of apartments, offices, stores or similar spaces within an apartment building, industrial building.

(2) Renting or leasing of spaces within a mobile home park, vacation (recreational) trailer park, motel, tourist court, campground or industrial development.

(3) Minerals, oil or gas leases.

(4) A lease for agricultural purposes.

(5) Foreclosures of liens.

(6) Foreclosures of recorded contracts for sale of real property.

(7) The creation of cemetery lots.

(8) Any adjustment of a property boundary line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning.

(9) The transfer of ownership of a lot or parcel in an approved and recorded subdivision plat or partition map.

Dune. A hill or ridge of sand built up by wind along sandy coasts.

Dune, Active. A dune that migrates, grows and diminishes primarily according to the force of wind and supply of sand. The dune has no soil development and little, if any, cohesion of underlying sand. Active dunes include all open sand (vegetation-free) areas and active (sparsely vegetated) hummocks and foredunes. Soil types are 72K and occasionally Westport series soils.

Dune, Older Stabilized. A dune which presently has sufficient vegetation to be stabilized from wind erosion, but which exhibits little, if any, soil development or cohesion of underlying sand. This includes soilless dunes recently stabilized with beach grass and younger stabilized dunes which may possess forest communities and some soil development, but which lack consolidation of underlying sands. Soil types are of Westport and Netarts series soils.

Dwelling. A building or portion thereof which is occupied in whole or in part as a residence or sleeping place, either permanently or temporarily, by one or more families, but excluding hotels, motels, auto courts, mobile homes and camping vehicles.

Dwelling, Multiple. A building designed and used for occupancy by three or more families, all living independently of each other, and having separate housekeeping facilities for each family.

Dwelling, SingleFamily. A detached dwelling designed or used exclusively for the occupancy of one family and having housekeeping facilities for one family.

Dwelling, TwoFamily (Duplex). A building consisting of two separate dwelling units with a common roof and common foundation, designed and used exclusively for the occupancy of two families living independently of each other and having housekeeping facilities for each family.

Estuary. A body of water semienclosed by land, connected with the open ocean and within which salt water is usually diluted by fresh water derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater.

Existing Mobile Home Park. Any lot where two or more permanent mobile homes are located or proposed to be located for the primary purpose of being rented or leased for residential purposes, for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed.

Expansion of an Existing Mobile Home Park. The preparation of additional sites by the construction of facilities for servicing the lots on which the mobile homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

Exploration. Surficial survey measures which do not include active seismic surveys or prospect well drilling.

Family. An individual or two or more persons related by blood or marriage or group of not more than five persons (excluding servants), who need not be related by blood or marriage, living together in a dwelling unit.

Farm Use. The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section.

(1) "Current employment" of land for farm use includes:

(a) Land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P.L. 84-540,70 Stat. 188);

(b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(c) Land planted in orchards or other perennials prior to maturity;

(d) Any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land specially valued at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(e) Wasteland, in an exclusive farm use zone, dry or covered with water, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(f) Land under dwellings customarily provided in conjunction with the farm use in an exclusive farm use zone; and

(g) Land under buildings supporting accepted farm practices.

(2) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a species for which the Department of Revenue requires a "Report of Christmas Trees Harvested" for purposes of ad valorem taxation;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation.

Fill. The placement by humans of sand, gravel, earth, sediment or other material to create new uplands or raise the elevation of land. Activities such as diking, jetties, groins, breakwaters (nonfloating) and dredge material can also be considered fill if they: (a) involve the human placement of materials; and (b) create new uplands or raise the elevation of land.

Flood or Flooding. A general or temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters from any source.

Flood Elevation Determination. A determination by the Admnistrator of the water surface elevations of the base flood from the approved flood hazard studies.

Flood Hazard Boundary Map, (FHBM). An official map of the County furnished by the Federal Insurance Administration, labeled a Flood Hazard Boundary Map (FHBM) and delineating the boundaries of flood hazard areas.

Floodplain. A physical geographic term describing any land area susceptible to being inundated by water from any source.

Floodplain Management. The operation of an overall program of corrective and preventative measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain Management Regulations. This Floodplain ordinance, together with building code requirements, health regulations and any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing. Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway, Regulatory. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the waters of a base flood without cumulatively increasing the water surface elevation.

Floor, Habitable. A floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a habitable floor.

Foredune. The first ridge of sand or hummock, dunes situated immediately above the highest tide line and parallel to the beach. This includes active foredunes, conditionally stable foredunes and older foredunes. These may be sparsely vegetated or vegetated to the degree that they are wind stable. Soil types are Heceta fine sand 204A and Westport soils 205C and 206D.

Forest Uses. Are (1) the production of trees and the processing of forest products; (2) open space, buffers from noise and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.

Freeboard. A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

Garage, Private Parking. A publicly or privately-owned structure having one or more tiers of height used for the parking of automobiles for the tenants, employees or owners of the property for which the parking spaces contained in or on said garage are required by this Chapter, and which is not open for use by the general public.

Garage, Public Parking. A publicly or privately-owned structure having one or more tiers of height used for the parking of automobiles and open for use by the general public, either free or for remuneration. Public parking garages may include parking spaces for customers, patrons or clients which are required by this Chapter, provided said parking spaces are clearly identified as free parking space(s) for the building or use which is required to provide said space(s).

General Merchandise. Items for human use, including: books and stationary, newspapers and magazines, clothing, furniture, drugs, curios and antiques, plants and flowers, household goods and furnishings, musical instruments and supplies, seeds and garden supplies, sporting goods, jewelry, art objects and supplies, pottery, handicrafts, photographic supplies, optical goods.

Grazing. The use of land for the pasture of horses, cattle, sheep, goats and/or other domestic herbivorous animals alone or in conjunction with agricultural pursuits.

Grazing, Low Intensity. Low intensity grazing is the use of land for pasture of horses, cattle, sheep, goats and/or other domestic herbivores at levels which will not damage permanent ground cover.

Group Care Home. Any home or institution maintained and operated for the care, boarding, housing or training of six or more physically, mentally or socially handicapped persons or delinquent or dependent persons by any person who is not the parent or guardian of and who is not related by blood, marriage or legal adoption to such persons.

Guest House, Servants' Quarters. An accessory building without kitchen or cooking facilities and occupied solely by nonpaying guests or by servants employed on the premises.

Hearings Official. A person who has been appointed by the Board of County Commissioners to serve at its pleasure and at a salary fixed by it.

Horticultural Specialties. A crop distinguishable from typical commercial crops mentioned in the farm groupings of the EFU zone which are conducive to intensive management techniques.

Improvement Agreement. An agreement that under prescribed circumstances may be used in lieu of required improvements of a performance agreement. It is a written agreement that is executed between the County and a developer, in a form approved by the Board of County Commissioners, in which the developer agrees to sign at a time any and all petitions, consents, etc., and all other documents necessary to improve an abutting road or other required improvements to County standards and to waive all rights or remonstrances against such improvements, in exchange for which the County agrees that the execution of the improvement agreement will be deemed to be in compliance with the improvement requirements of the Code.

Intensification. Any additions which increase or expand the area or amount of an existing use or the level of activity. Remodeling of the exterior of a structure is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit was issued as of December 5, 1975.

Interior Lot. A lot, other than a corner lot, having frontage on only one street.

Kennel; Commercial Breeding. A place of business for the breeding and/or selling of dogs. The term is not intended to include an animal hospital or noncommercial kennel.

Kennel; Commercial. A place of business for the breeding and/or selling of dogs. The term is not intended to include an animal hospital or noncommercial kennel.

Kennel; Noncommercial. An establishment or premises where three or more dogs, over six months of age, are kept or maintained. No more than two of the dogs shall be used for breeding. The term does not include any animal hospital.

Legal Interest. An interest in property not confined solely to ownership or possessory interest, but including all interests in property which in the discretion of the Planning Director, are not inconsistent with the intent and purposes of this Chapter. Such interests may include, but are not limited to, the following: owner, contract purchaser, lessee, renter, licensee, easement, resolution or ordinance of necessity to acquire or condemn adopted by a public or private condemnor.

Legal Lot. A tract of land which has been legally created in compliance with Lane County land division regulations and ORS Chapter 92:

(1) Any lot within a subdivision plat approved by the Board and recorded with the Lane County Clerk.

(2) Any lot within a minor subdivision plat endorsed and dated by the Secretary of the Lane County Planning Commission.

(3) Any parcel within a final partition map approved and recorded by Lane County.

(4) A tract of land created as a result of a deed or real property sales contract, which was not created as a result of (1)-(3) above, but which at the date the conveyance occurred, the creation of the tract was not subject to any Lane County land division regulations. However, contiguous units of unsubdivided or unpartitioned land under the same ownership shall constitute a single legal lot.

Loading Space. An off street space or berth on the same lot with a building for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials and which abuts upon a street, alley or other appropriate means of access.

Lot. A unit of land that is created by a subdivision of land.

Lot Line, Front. The private property line contiguous with the public street line or place. For corner lots, the front lot line shall be the narrowest street frontage or as shown on the official plat of the property.

Lot Line, Rear. A lot line which is opposite and most distant from the front lot line. In the case of a triangular-shaped lot, the rear lot line for building purposes shall be assumed to be a line 10 feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Lot Line, Side. Any lot line which is not a front or rear line.

Lot of Record. A legal lot which meets all of the lot of record standards specified in ORS Chapter 215 (Sections 9 to 13, Chapter 884, Oregon Laws) and is entitled to a dwelling or mobile home irrespective of land use regulations.

Low Intensity. An activity or use conducted at a level that does not require developed facilities and can be accommodated without change to an area or resource.

Map, Partition. A final diagram and other documentation relating to a major or minor partition.

Marsh, High Salt. Includes immature high marsh, mature high marsh and diked salt marsh. These marshes are from two to three feet above tide flat areas and are characterized by at least occasional tidal inundation at higher, high tides or, in the case of diked salt marshes, more infrequently with the opening of tide gates or with periodic flooding.

Mobile Home. A vehicle or structure constructed for movement on the public highways, that has sleeping, cooking and plumbing facilities, is intended for human occupancy and is being used for residential purposes.

Mobile Home Park. Any place where four or more mobile homes are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or

patronage of such person. "Mobile Home Park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one mobile home per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.160.

Natural Hazards. Natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, groundwater, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.

Nursing Home. Any home, place or institution which operates and maintains facilities providing convalescent or chronic care, or both, which exceeds that as defined by "Residential Home".

100 Year Flood. See "Base Flood".

Ordinary High Water. The high water level is defined as that high level of a river which is attained during mean annual flood. It does not include levels attained during exceptional or catastrophic floods. It is often identifiable by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in character in the soil, destruction or absence of vegetation not adapted for life in saturated soils or the presence of flotsam and debris. In the absence of identifying physical characteristics, ordinary high water may be determined by Step backwater analysis upon a two-year frequency flood as determined by the US Army Corps of Engineers.

Ordinary Low Water. The low watermark of a river is that point to which the waters normally recede when the volume of water is at its low level, not determined by the extraordinary year, and further means the line to which the Willamette River ordinarily recedes annually in season even though the elevation of that line may be higher as a result of the Corps of Engineers' flood control structures than would otherwise be the case without such structures. Submersible lands are also considered that land or bank area between the ordinary low and high waterline.

Outdoor Advertising and Structure. Any card, cloth, paper, metal, wood, plastic or painted sign of any kind or character whatsoever, placed for outdoor advertising purpose on the ground, on any tree, wall, rock, post, fence, building or structure: The term "placed" as used in this definition of "Outdoor Advertising Sign" and "Outdoor Advertising Structure" shall include erecting, constructing, posting, painting, printing, tacking, nailing, gluing, sticking, carving or otherwise fastening, affixing or making visible in any manner whatsoever.

Panhandle. A narrow extension of a tract, 60 feet or less in width, which is used as access to the main portion of the tract.

Parcel. A unit of land that is created by a partitioning of land.

Parking Area, Automobile. Space within a public parking area or a building, exclusive of driveways, ramps, columns, office

and work areas, for the temporary parking or storage of one automobile.

Parking Area, Private. Privately or publicly-owned property, other than streets and alleys, on which parking spaces are defined, designated or otherwise identified for use by the tenants, employees or owners of the property for which the parking area is required by this Chapter and which is not open for use by the general public.

Parking Area, Public. Privately or publicly-owned property, other than streets or alleys, on which parking spaces are defined, designated or otherwise identified for use by the general public, either free or for remuneration. Public parking areas may include parking lots for retail customers, patrons and/or clients as required by this Chapter.

Parking Space. A permanently maintained space with proper access for one standard sized automobile.

Partition. Either an act of partitioning land or an area or tract of land partitioned. Partitions shall be divided into the following two types:

(1) Major Partition. A partition which includes the creation of a road.

(2) Minor Parition. A partition that does not include the creation of any road.

Partition Land. Divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year.

Party. With respect to actions pursuant to LC 14.100 and LC 14.200, the following persons or entities are defined as parties:

(1) The applicant and all owners or contract purchasers of record, as shown in the files of the Lane County Department of Assessment and Taxation, of the property which is the subject of the application.

(2) Any County official.

(3) Any person, or his or her representative, and entity who is specially, personally or adversely affected by the subject matter, as determined by the Approval Authority.

Performance Agreement. A written agreement executed by a subdivider or partitioner in a form approved by the Board of Commissioners and accompanied by a security also approved by the Board. The security shall be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

Person. A natural person, his heirs, executors, administrators or assigns, or a firm, partnership or corporation, its heirs or successors or assigns, or the agent of any of the aforesaid, or any political subdivision, agency, board or bureau of the State.

Personal Services. Laundering, dry cleaning and dyeing; rug cleaning and repair; photographic services; beauty and barber shops; apparel repair and alterations; shoe repair and maintenance; etc.

Planning Commission. The Planning Commission of Lane County, Oregon, which shall consist of two Planning Commissions referred to as the Lane County Planning Commission and the West Lane Planning Commission.

Plat. A final diagram and other documents relating to a subdivision.

Primary Processing Facility. A facility for the primary processing of forest products. The primary processing of a forest product means the use of a portable chipper, stud mill or other similar equipment for the initial treatment of a forest product, to facilitate its shipment for further processing. Forest products, as used in this definition, means timber and other resources grown upon the land or contiguous units of land where the primary processing facility is located.

Professional Services. Medical and health services, legal services and other professional services, including those related to: engineering, architecture, education, scientific research, accounting, planning, real estate, etc.

Received. Acquired by or taken into possession by the Director.

Recreational Vehicle. A vacation trailer or other unit, with or without motive power, which is designed for human occupancy and to be used temporarily for recreational or emergency purposes and has a floor space of less than 220 square feet, excluding built-in equipment, such as wardrobes, closets, cabinets, kitchen units or fixtures and bath or toilet rooms. The unit shall be identified as a recreational vehicle by the manufacturer.

Recreational Vehicle Park. A development designed primarily for transient service on which travel trailers, pickup campers, tent trailers and self-propelled motorized vehicles are parked and used for the purpose of supplying to the public a temporary location while traveling, vacationing or recreating.

Refinement Plan. Refinement plans are a detailed examination of the service needs and land use problems peculiar to a particular area. Refinements of the Comprehensive Plan can include specific neighborhood or community plans, or special purpose or functional plans (such as water, sewer or transportation plans). In addition, refinement plan can be in the form of major planned unit developments, annexation and zoning applications, or other special area studies.

Replacement in Kind. The replacement of a structure of the same size as the original and at the same location on the property as the original.

Residential Home. A residence for five or fewer unrelated physically or mentally handicapped persons and staff persons who need not be related to each other or to any other home

resident. A "handicapped person" means an individual who has a physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities. "Major life activity" means self-care, ambulation, communication, transportation, education, sociaization, employment and the ability to acquire and maintain adequate, safe and decent shelter.

Restoration. Revitalizing, returning or replacing original attributes and amenities such as natural biological productivity, aesthetic and cultural resources which have been diminished or lost by past alterations, activities or catastrophic events.

Restoration, Active. Use of specific positive remedial actions, such as removing fills, installing water treatment facilities or rebuilding deteriorated urban waterfront areas.

Restoration, Passive. The use of natural processes, sequences and timing which occurs after the removal or reduction of adverse stresses without other specific remedial action.

Roadside Stand. A use providing for the retail sale of any agricultural produce where more than one-half of the gross receipts result from the sale of produce grown on the unit of land where the roadside stand is located.

School. A place or institution for learning and teaching in which regularly scheduled and suitable instruction meeting the standards of the Oregon State Board of Education is provided.

Service Station. Any building, land area or other premises, or portion thereof, used or intended to be used for the retail dispensing or sales of vehicular fuels; and including as an accessory use the sale and installation of lubricants, tires, batteries and similar accessories.

Sewerage Facility or Sewage Facility. The sewers, drains, treatment and disposal works and other facilities useful or necessary in the collection, treatment or disposal of sewage, industrial wastes, garbage or other wastes.

(1) Sewerage Facility, Community. A sewerage facility, whether publicly or privately owned, which serves more than one parcel or lot.

(2) Sewerage Facility, Individual. A privately owned sewage facility which serves a single parcel or lot for the purpose of disposal of domestic waste products.

(3) Sewerage Facility, Public. A sewerage facility, whether publicly or privately owned, which serves users for the purpose of disposal of sewage and which facility is provided for or is available for public use.

Sign. Any fabricated sign for use outdoors, including its structure, consisting of any letter(s), figure, character, mark, point, plane, design, poster, picture, stroke, stripe, line, trademark, reading matter or illuminating device which is constructed, attached, erected, fastened or manufactured in any manner whatsoever to attract the public in any manner for recognized

purposes to any place, subject, person, firm, corporation, public performance, article, machine or merchandise display. However, the term "sign" shall not include any display of official, court or public notices, nor shall it include the flag, emblem or insignia of a nation, government unit, school or religious group, except such emblems shall conform to illumination standards set forth in this Chapter.

Site, Residential. An area of more or less intensive development, surrounding a dwelling, not less than 60 feet wide, nor less than 6,000 square feet in area and comparable to a normal city lot.

Solid Waste Management. A planned program providing for the collection, storage and disposal of solid waste including, where appropriate, recycling and recovery.

Start of Construction. The first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. For mobile homes not within mobile home parks, "start of construction" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is complete.

State Plane Coordinate System. The system of plane coordinates which has been established by the U.S. Coast & Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Oregon.

Structure. Synonymous with the definition of building.

Structure in a Flood Hazard Area. A walled and roofed building, a mobile home or a tank used in the storage of gas or liquid which is principally above ground.

Subdivide Land. To divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

Subdivision. Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

Substantial Improvement. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project or improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of

a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract.

Urban. Those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also: (a) have concentrations of persons who generally reside and work in the area, and (b) have supporting public facilities and services.

Urbanizable. Those lands within an urban growth boundary and which are identified and (a) determined to be necessary and suitable for future urban use areas, and (b) can be served by urban services and facilities, and (c) are needed for the expansion of an urban area.

Use. The purpose for which land, submerged or submersible lands, the water surface or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

Veterinary Clinic. Synonymous with the definition of "animal hospital".

Water Dependent Use. A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water.

Water Related Use. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in public loss of quality in the goods or services offered. Except as necessary for water dependent or water related uses or facilities, residences, parking lots, spoil or dump sites, roads and highways, restaurants, businesses, factories and trailer parks are not generally considered dependent on or related to water location needs.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines.

Yard. An open space on the same lot with a building unoccupied and obstructed from the ground upward, except as otherwise provided herein.

Yard, Front. A yard between the front line of the building (exclusive of steps) and the front property line.

Yard, Rear. An open, unoccupied space on the same lot with a building, between the rear line of the building (exclusive of steps, porches and accessory buildings) and the rear line of the lot.

Yard, Side. An open, unoccupied space on the same lot with a building, between the sidewall line of the building and the side line of the lot.

DEVELOPMENT APPROVAL PROCEDURES

RURAL COMPREHENSIVE PLAN

16.100 Development Approval Procedures - Relationship of Lane Code Chapter 14 into Lane Code Chapter 16. Lane Code Chapter 14 is the procedure for submittal, acceptance, investigation and review of applications for development of lands under the jurisdiction of the Lane County Rural Comprehensive Plan with these additions:

(1) Definitions. Abbreviations, terms, phrases, words and their derivatives shall be construed as specified in LC 16.090 above instead of as specified in LC 14.015.

(2) Special Notice and Review Requirements for a dwelling or Mobile Home Subject to Director Approval in the Exclusive Farm Use (E) Zone, LC 16.212(3)(c). When reviewing an application for a dwelling or mobile home conditionally permitted by LC 16.212(3)(c) below, the Director shall:

(a) In addition to the requirements of LC 14.070 (1) for a decision to approve an application in LC 16.100(2) above, specify in the notice that, "persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or mobile home, or activities associated with either residence, would force a significant change in or significantly increase the costs of accepted farming practices on nearby lands devoted to farm use."

(b) In addition to the requirements of LC 14.100(4), notice of a decision to approve an application in LC 16.100(2) above shall be mailed to persons who have requested notice of such applications and who have paid a reasonable fee imposed by the County to cover the cost of such notice.

(c) In addition to the requirements of LC 14.515(3)(d), an objection received within 15 days of the notice which factually alleges a significant change in or significant increase in the costs of accepted farming practices on nearby lands devoted to farm uses ,shall constitute sufficient assignment of error by the Approval Authority.

(d) A decision to approve or deny an application identified in LC 16.100(2) above shall become final unless appealed in the manner provided in LC 16.100(2)(a)-(c) above and LC Chapter 14, and unless the appeal is submitted to the Department within 15 days of the date of postmark for the notice of the decision by the Approval Authority.

(3) **Ex Parte Contacts.** A communication between County staff and the Planning Commission or Board shall not be considered an ex parte contact for the purposes of LC 14.200(5)(a).

NONIMPACTED FOREST LANDS ZONE (F.1, RCP)

RURAL COMPREHENSIVE PLAN

16.210 Nonimpacted Forest Lands Zone(F-1, RCP).

(1) Purpose. The purpose of the Nonimpacted Forest Lands District (F-1, RCP) is:

(a) To conserve forest land for forest uses in accordance with Statewide Planning Goal #4.

(b) To recognize that the preservation and protection of commercial forest lands within Lane County is necessary for the continuous production of forest crops, and that such are beneficial to the economy of the County and to the welfare of its people.

(c) To encourage multiple -use of forest land for commercial timber management, watershed protection, maintenance and protection of fish and wildlife resources, livestock habitat and recreation.

(d) To protect commercial forest lands from intrusion of noncompatible uses by prohibiting or restricting nonforest uses that create potential impacts.

(e) To implement the forest land policies of the Lane County Rural Comprehensive Land Use Plan.

It is the County's policy to protect forest operations from conflicting land uses. Nothing in this section is intended to interfere with normal forestry practices that might result in conditions such as noise, dust, smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest uses (i.e. dwellings) within the Forest Lands Zones must recognize the intent of the Zone is to protect resource management activities and that in the event of conflict between residential uses and forestry practices, this Chapter will be interpreted in favor of these resource management practices.

(2) **Permitted Uses.** The following uses and activities are permitted subject to the general provisions and exceptions set forth by this Chapter of Lane Code:

(a) Forest uses, not including a residence.

(b) Farm uses, not including a residence.

(c) Mining and quarrying and processing of rock as follows:

(i) Permitted in accordance with the Forest Practices Act (ORS 527.610 to 527.730) and for the purpose of forest road construction and other forest related uses, exclusive of the sale of rock for nonforest uses.

(ii) ,When used solely in conjunction with a farm use on the same property on which the mining and quarry activity occurs, exclusive of sales of the rock.

(d) Nonresidential uses necessary and accessory to the uses listed above, such as:

(i) Fire prevention, detection and suppression facilities;

(ii) Landing strips or heliports;

(iii) Roads for management and safety;

(iv) Maintenance, repair and storage of forest management and processing equipment, logging equipment, and farm equipment by the owner or operator of such equipment, exclusive of sales.

(v) Utility facilities and transmission lines limited in size for permitted or accessory use.

(vi) Log scaling and weigh stations.

(vii) Sorting yards and log storage areas located on the same unit of land from which the logs are harvested or on a nearby unit of land.

(viii) Solid waste disposal sites for industrial forest wastes on the same unit of land from which the wastes originated.

(ix) Communication facility necessary and accessory to forest uses.

(e) Public parks, campgrounds, boating facilities, camps and such other recreational facilities, including accessory parking areas.

(f) Water impoundments with less than 100 acre feet storage capacity and in conjunction with beneficial uses of water customarily associated with fire prevention, forest uses or farm uses.

(g) Operations conducted for the exploration of geothermal resources, aggregate and other mineral or subsurface resources.

(h) Maintenance and repair of any lawfully existing residence.

(i) Fish and wildlife habitat management and any necessary and accessory uses.

(j) Facilities for the primary processing of forest products.

(k) Facilities and test plots, excluding a residence, for experimental and research activities associated with forest management and forest products.

(l) A dwelling or mobile home on a lot of record as defined by ORS Chapter 215 provided such lot of record does not already have a residence on it. The applicant shall provide factual documentation of compliance with each lot of record criterian.

(3) **Uses Subject to Director Approval.** The following uses and activities are permitted subject to prior submittal of an application pursuant to LC 14.050 and subject to Director approval of such application pursuant to LC 14.100 and the general provisions and exceptions set forth by this Chapter of Lane Code:

(a) Replacement of any legal residence existing, occupied, suitable for occupancy or in the process of being constructed, and such replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice-versa). Any replacement authorized under this subsection shall be for a dwelling or mobile home to be located on the same site as the previous residence or on a site that has less impact on surrounding uses, and such replacement shall commence within one year of the date of removal of the previous residence.

(b) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is lcoated.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in an existing dwelling or mobile home, or other existing buildings normally associated with uses permitted under LC 16.210(2)(j) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.210(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification"for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval shall not receive extended approval by the Director, and the Director shall mail written

notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(4) **Uses Subject to Hearings Official Approval.** The following uses and activities are conditionally permitted subject to submittal of an application pursuant to LC 14.050 and approval of the application by the Hearings Official pursuant to LC 14.300 and subject to compliance with the conditional use criteria of LC 16.210(5) below:

(a) Sorting yards and log storage areas exceeding the standards of an accessory use specified under LC 16.210(2)(d)(vii) above.

(b) Maintenance repair and storage of forest management and processing equipment, logging equipment, and farm equipment when incidental to a forest repair and storage facility, as a business-enterprise operated by someone other than the owner of such equipment, exclusive of sales.

(c) Solid waste disposal sites exceeding the standards of an accessory use specified under LC 16.210(2)(d)(viii) above and not exceeding 10 acres in size.

(d) The mining, quarrying and processing of mineral, geothermal and other subsurface resources; and exploration, rock mining, quarrying and processing which exceeds the standards as specified under specified under LC 16.210(2)(c) above.

(e) Power distribution and/or telephone lines which exceed the standard as specified under LC 16.210(2)(d)(i) and (v) above.

(f) Communication facility.

(g) A hydroelectric generating facility with a water impoundment of less than 100 acre feet.

(h) A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility.

(i) Privately owned parks, campgrounds, , boat facilities, camps and other such recreational facilities, including accessory parking areas where overnight lodging is provided upon satisfying the following conditions:

(j) Lodges and any accessory facilities.

(i) Domestic water supplies for all development within designated forest lands shall emanate from surface or subsurface water sources contained within the boundary of the property in question; except as provided in LC 16.210(4)(i)(ii) below.

(ii) The domestic water supply is obtained from another source with the documented approval of

all other affected parties, with the condition that such use will not affect the right of the owner of that water source to undertake forest management practices on his or her property.

(iii) The water supply system shall: have a delivery capability of sustaining a volume of 20 gallons per minute for not less than 50 minutes; sufficient water outlets and serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach nearby improvements; be maintained as a connected operating unit ready for immediate use during periods of fire danger.

(5) **Conditional Use Criteria.** Uses conditionally permitted under LC 16.210(4) above are subject to compliance with the following criteria; except that uses conditionally permitted under LC 16.210(4)(j) above are subject to compliance with the below criteria (a)(ii) and (b-(f).

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in forest lands, or;

(ii) That the proposed site is on land generally unsuitable for forest uses;

(b) That the proposed use will not significantly impact forest uses on adjacent and nearby forest lands;

(c) That the proposed use will not significantly increase the costs of forest management on adjacent and nearby forest lands;

(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;

(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby forest lands, and these measures may be established as conditions of approval; and

(f) That the proposed use is consistent with the forest policies contained in the Rural Comprehensive Plan.

(6) **Area.** The minimum area requirement for the division of land shall be 40 acres or a 1/4 of a 1/4 section, except as provided below:

(a) A division of land to create a parcel of less than 40 acres may be conditionally allowed pursuant to compliance with Lane Code Chapter 13 if it is for the purpose of separating an existing residence from the adjoining forest land and the parcel containing the residence is limited to the least amount of area reasonably possible so as to maximize forest use on the other parcel.

(b) The adjustment of a common property boundary which results in no additional parcels and if, where the

parent parcel reduced in size is below 40 acres, the adjusted common property boundary is the most conducive one for forest management considering the unique physical characteristics of the land, including terrain, stream courses, soils, existing nonforest uses, etc.

(7) **Property Development Standards.** All uses or activities permitted or conditionally permitted above, except the growing and harvesting of tree species regulated by the Oregon Forest Practices act, shall be subject to the following development standards, etc.

(a) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(1) The Department -of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100 foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 below with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(b) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall be conducted in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.210(7)(b)(i) above. Where vegetation removal beyond that allowed in LC 16.210(7)(b)(i) above cannot be avoided,, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Vegetation removal necessary to provide water access for a water dependent use.

(bb) Removal of dead or diseased vegetation that poses a safety or health hazards.

(cc) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(c) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access public road and 10 feet from all other property lines, except as provided above.

(d) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

IMPACTED FOREST LANDS ZONE (F-2, RCP)

RURAL COMPREHENSIVE PLAN

16.211 Impacted Forest Lands Zone (F-2, RCP).

(1) **Purpose.** The purpose of the Impacted Forest Lands Zone (F-2, RCP) is:

(a) To implement the forest land policies of the Lane County Rural Comprehensive Plan which recognize that certain forest lands are impacted by nonforest uses and merit different treatment than nonimpacted forest lands.

(b) To conserve forest land for forest uses consistent with Statewide Planning Goal #4, including commercial timber management, watershed protection, maintenance and protection o4 fish and wildlife resources, livestock habitat and recreation.

(c) In areas of mixed farm/forest uses where forest uses do not predominate, to conserve such land for uses consistent with Statewide Planning Goals #3 and #4.

(d) To protect lands mentioned in LC 16.211(1)(b) and (c) above from the intrusion of noncompatible uses by restricting nonforest uses or nonforest and nonfarm uses that create potential impacts.

(2) **Permitted Uses.** The following uses and activities are permitted subject to the general provisions and exceptions prescribed by this Chapter of Lane Code, except that for any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as "1B", a Goal 5 ESEE consequences analysis per the Goal #5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

(a) Forest use.

(b) Farm uses as defined by ORS 215.203(2).

(c) Mining, quarrying and processing of rock for forest or farm road construction on the same tract on which the mining and quarrying occurs.

(d) Water impoundments with less than 100 acre feet storage capacity and in conjunction with beneficial uses of water customarily associated with fire prevention, forest uses or farm uses.

(e) Operations conducted for the exploration of geothermal resources, aggregate and other mineral or subsurface resources.

(f) Public parks, campgrounds, boating facilities, camps and such other recreational facilities, including accessory parking areas.

shall be for a residence to be located on the same site as the previous residence or on one that has lessor impact on surrounding forest uses, and such replacement shall commence within one year of the date of removal of the previous residence.

(b) A dwelling or mobile home, and any accessory structures, on a vacant legal lot containing at least 10 acres shall be deemed accessory and necessary to the forest management of the legal lot provided:

(i) A detailed forest management plan sufficient to obtain a tax deferral is submitted for the legal lot which demonstrates forest production will be enhanced by on site forest management from the residence, and

(ii) Based upon the above-referred forest management plan, the property has qualified for a tax deferral pursuant to State law, and

(iii) The forest management plan shall specify how the following practices, when applicable, are to be addressed: road and fire trail construction and maintenance, site preparation, reforestation, stand conversion, planting of nonstocked openings, competition reduction/release, precommercial thinning, harvest scheduling/rotation and special site treatments for topography and other concerns.

(iv) If the legal lot does not have a forest deferral pursuant to State law, then upon substantial completion of the details represented in the forest management in LC 16.211(3)(b)(i) above, the dwelling or mobile home shall be allowed on the property. Substantial completion of the details represented in the forest management plan shall be verified by a qualified private forester and such verification shall be submitted in writing to the Department. During the interim, while the forest management plan is being implemented on the subject legal lot, a temporary mobile home in conjunction with the forest use shall be allowed for a period not to exceed five years. If the forest management plan is not implemented within the five-year period, the temporary mobile home shall be removed.

(c) A dwelling or mobile home, and any accessory structures, in conjunction with the propagation or harvesting of a forest product on a vacant legal lot that is managed as part of a woodlot meeting the Douglas-fir cubic foot site index and acreage requirements below, provided sufficient factual documentation concerning the forest management, the soils, cubic foot site indices and acreage of the legal lot is presented by the applicant to verify that the legal lot meets the minimum cubic foot site index/acreage requirements specified below:

Whenever a legal lot has cubic foot site indices which fall into more than one of the below categories, compliance with the minimum acreage requirements may be determined by:

(i) Identifying the number of acres in each cubic foot site index category.

(ii) Identifying the percentage of the acreage requirement met for each category. This percentage shall be determined by dividing the number of acres in each category by the acreage minimum number for the same category.

(iii) Adding the percentages identified in LC 16.211(3)(c)(ii) above. The minimum acreage requirement shall have been met if the percentage total is 100 or greater.

Cubic Foot Site Class	Potential Yield Acreage cu.ft./acre/yr	Minimum
6	(20-49 cf/ac)	64
	(50-84 cf/ac)	43
5	(85-119 cf/ac)	34
	(120-164 cf/ac)	24
4	(165-224 cf/ac)	17

subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in an existing dwelling or mobile home, or other existing buildings normally associated with uses permitted under LC 16.211(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.211(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications fore. home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as

provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located. –

(e) A dwelling when necessary and accessory to the use permitted in LC 16.211-2(i) above

(4) **Uses Subject to Director Approval and Located in Mixed Agricultural and Forest Areas.** The uses specified in LC 16.211(4)(c) through (m) below, are conditionally permitted upon:

(1) A positive determination that agricultural uses predominate on the subject property. This determination can be made either of two ways:

(i) The applicant demonstrates that generally accepted agricultural practices regularly occur over 50 percent of the property.

(ii) The applicant demonstrates that annual gross income for the subject property when obtained from farm use is greater than the annual gross income if managed for forest purposes. This will require a comparison of the actual annual gross farm income from accepted farm practices to the estimated annual gross income derived from accepted forest practice when managed on a sustained yield basis. In addition, the applicant must demonstrate that the area in which the subject property is located is characterized as a mixed farm forestry area.

(b) Prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 and compliance with the applicable approval criteria and standards of this Chapter of Lane Code.

(c) Public or private schools, including all buildings essential to the operation of a school.

(d) Churches.

(e) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale.

(f) A dwelling or mobile home customarily provided in conjunction with farm use existing on the subject

property and which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) zone, LC 16.212(2)(f).

(g) A dwelling or mobile home customarily provided in conjunction with a farm use not yet existing on the subject property and which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(g).

(h) A dwelling or mobile home customarily provided in conjunction with farm use existing on the subject property, where another residence already exists on the subject property, and which complies with the requirements, for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(h).

(i) A dwelling or mobile home to be occupied by a relative of the farm operator which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(i).

(j) A mobile home in conjunction with an existing dwelling or mobile home, on the same legal lot as the existing residence, and as a temporary use for the term of a hardship suffered by the existing resident or a relative of the existing resident which is necessary and accessory to continued forest management or, complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(j).

(k) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(i) Consists of 20 or more acres.

(ii) Is not smaller than the average farm or woodlot in the County producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(iii) Does not already have a dwelling or mobile home on it.

(l) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot smaller than required under LC 16.212(6) (Exclusive Farm Use Zone) if the legal lot:

(i) Has produced at least $10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $10,000 in annual gross farm income.

(ii) Is a woodlot capable of producing an average over the growth cycle of $10,000 in gross annual income.

(iii) Does not already have a dwelling or mobile home on it.

(m) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(5) Special Uses - Hearings Official Approval. The following uses are conditionally permitted subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.300 and subject to compliance with the criteria specified in LC 16.211(6) below:

(a) Sorting yards and log storage areas on a temporary site not exceeding 10 acres in size and exceeding the standards specified under LC 16.211(2)(k)(vi) above.

(b) Maintenance, repair and storage of forest management and processing equipment, logging equipment and farm equipment as a business enterprise operated by someone other than the owner of such equipment, exclusive of sales.

(c) Solid waste disposal sites for industrial forest wastes exceeding the standards specified under LC 16.211(2)(k)(viii) above and not exceeding 10 acres in size.

(d) The mining, quarrying and processing of mineral, geothermal and other subsurface resources; rock mining, quarrying and processing which exceeds the standards as specified under LC 16.211(2)(c) above; and explosives storage in conformity with state and federal requirements.

(e) Power distribution and/or telephone lines which exceed the standard as specified under LC 16.211(2)(k)(v) above.

(f) Communication facility.

(g) A hydroelectric generating facility with a water impoundment of less than 100 acre feet.

(h) A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility.

(i) Privately owned parks, campgrounds, boat facilities, camps and other such recreational facilities, including accessory parking areas, where overnight lodging is provided, upon satisfying the following conditions:

(i) Domestic water supplies for all development within designated forest lands shall emanate from surface or subsurface water sources contained within the boundary of the property in question; except as provided in LC 16.211(5)(i)(ii) below.

(ii) The domestic water supply is obtained from another source with the documented approval of all other affected parties, with the condition that such use will not affect the right of the owner of that water source to undertake forest management practices on his or her property.

(iii) The water supply system shall: have a delivery capability of sustaining a volume of 20 gallons per minute for not less than 50 minutes; sufficient water outlets aid serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach nearby improvements; be maintained as a connected operating unit ready for immediate use during periods of fire danger.

(j) Commercial activities that are in conjunction with farm use.

(k) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

(l) Golf courses.

(m) Commercial utility facilities for the purpose of generating power for public use by sale.

(n) Personal-use airports for airplanes and helicopter pads, including associated hanger, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(o) The boarding of horses for profit.

(p) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with

equipment facilities or buildings necessary for its operation.

(q) A dwelling or mobile home which is not necessary and accessory to forest use or customarily provided in conjunction with farm use and which is located upon a vacant legal lot.

(r) Lodges and any accessory facilities.

(6) Hearings Official/Special Use Approval Criteria.

The uses specified in LC 16.211((5) above, as identified below, are subject to compliance with the following criteria:

(a) Uses under LC 16.211(5)(a),(b),(c),(e),(f),(g),(h) and (i) above subject to compliance with the criteria identified in LC 16.211(6)(f)(i) through (vi) below. Uses under LC 16.211(5)(r) above are subject to compliance with the criteria identified in LC 16.211(6)(f(ii) through (iv) and (ix) below.

(b) Use under LC 16.211(5)(d) above subject to compliance with the criteria identified in LC 16.211 (6)(f)(i) through (vi) and (xi) below.

(c) Uses under LC 16.211(5)(j),(1),(m),(n),(o),and (p) above subject to compliance with the criteria identified in LC 16.211(6)(f)(i) through (viii) below, and upon a positive determination that agricultural uses predominate on the subject property. This determination can be made either of two ways:

(i) The applicant demonstrates that generally accepted agricultural practices regularly occur over 50 percent of the property.

(ii) The applicant demonstrates that annual gross income for the subject property when obtained from farm use is greater than the annual gross income if managed for forest purposes. This will require a comparison of the actual annual gross farm income from accepted farm practices to the estimated annual gross income derived from accepted forest practice when managed on a sustained yield basis. In addition, the applicant must demonstrate that the area in which the subject property is located is characterized as a mixed farm forestry area.

(d) Use under LC 16.211(5)(k) above subject to compliance with the criteria identified in the LC 16.211(6)(c)(i) and (ii) above, and the criteria identified in LC 16.211(6)(f)(iii) through (viii) and (xi) below.

(e) Use under LC 16.211(5) (q) and (r) above, subject to compliance with the criteria identified in LC 16.211(6)(f)(v), (vii),(viii),(ix) and (x) below.

(f) Criteria.

(i) Evidence is provided supporting reasons why the proposed use should be sited in forest

lands, or that the proposed site is on land generally unsuitable for forest uses.

(ii) That the proposed use will not significantly impact forest uses on adjacent and nearby forest land.

(iii) That the proposed use will not significantly increase the costs of forest management on adjacent and nearby forest lands.

(iv) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use.

(v) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby forest or agricultural lands, and these measures may be established as conditions of approval.

(vi) That the proposed use is consistent with the forest policies contained in the Rural Comprehensive Plan.

(vii) That the proposed use will not interfere seriously with forest practices as regulated by the Forest Practices Act on nearby or adjacent lands devoted to forest use, and that the proposed use will not interfere seriously with accepted farming practices, as defined in ORS 215.203(2)(c), on adjacent lands devoted to farm use.

(viii) That the proposed use does not materially alter the stability of the overall land use pattern of the area.

(ix) That the proposed use is situated upon land generally unsuitable for the production of farm crops, livestock and the growing and harvesting of tree species regulated by the Forest Practices Act, considering terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract.

(x) That the proposed use is compatible with farm use as described in ORS 215.203(2) and the purpose and intent set forth in ORS 215.243, and the proposed use is compatible with forest uses as regulated by the Forest Practices Act and the purpose and intent set forth in ORS 527.630.

(xi) That the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity.

(7) **Area.** The minimum area requirement for the division of land shall be as follows:

(a) Except as provided in LC 16.211(7)(b) below, for the creation of a woodlot for the purpose of the

propagation or harvesting of a forest product, the minimum area shall be at least 20 acres and that which is necessary to meet the acreage minimum requirements specified in LC 16.211(3)(c) above, and additional area to accommodate a homesite, access and fire breaks required by LC 16.211(8) below and a logical parcel layout or use of the parcel. The applicant shall submit sufficient factual documentation to verify that each proposed tract meets the above requirements. Area computations shall be measured consistent with the LC 16.211 (3)(c) above.

(b) The minimum area for the creation of a woodlot, or lot or parcel, for the purpose of the propogation or harvesting of a forest product shall be 80 acres in the following situation:

(i) The tract to be divided contains at least 160 acres, and

(ii) The proposed lot or parcel is adjacent to land zoned F-1, RCP.

The 80 acres shall be of sufficient dimensions to accommodate a logical lot or parcel layout and forest use of each tract. The applicant shall submit sufficient factual documentation to verify that the proposed lots or parcels comply with the criteria of LC 16.211(7)(b) herein. The provisions of LC 16.211(7)(a) above shall not apply to the division of an 80-acre lot or parcel created pursuant to the criteria of LC 16.211(7)(b) herein unless the property adjacent to the 80-acre lot or parcel is no longer zoned F-1, RCP.

(c) For the creation of a farm parcel, the minimum area shall be 40 acres. A farm management plan including the information required by the Exclusive Farm Use (E) Zone, LC 16.212(2)(g)(v)(e) below shall be presented by the applicant and shall factually demonstrate the suitability of the land for the intended use. A statement shall be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for a residence in a mixed farm/forest area are met. The provisions of LC 16.211(7)(a) above shall not apply to the division of a lot or parcel created pursuant to LC 16.211(7)(c) herein.

(d) For the creation of a farm parcel for the purpose of growing grapes, berries or horticultural specialities, the minimum area shall be 20 acres. The management plan and map statement requirements of LC 16.211(7)(b) above shall also apply.

(e) The remaining portion of the parent parcel being divided must also comply with either LC 16.211(7)(a),(b) (c) and (d) above.

(8) Siting and Fire/Safety Standards for Dwellings.

All dwellings and mobile homes conditionally permitted above:

(a) The Approval Authority shall balance the setback standards of LC 16.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts and to assure optimal siting of proposed residences consistent with the purposes of the F-2 zone. Where possible, residences shall maintain a setback of 500 feet from the adjoining lines of property zoned F-1 or 300 feet from adjoining lines of property zoned F-2 or EFU. Residences should be sited on the least valuable forest and farm areas on the property, or clustered with residences on other tracts in order to lessen impacts on forest or farm uses, and should be sited to avoid intruding unnecessarily on acres -free from existing roads and residences. In cases where residences are clustered, sited to avoid intruding onto resource areas, or where property dimensions do not allow it, the 500 foot or 300 foot setback may not be the most desirable or possible standard and should not be applied.

(b) Shall maintain a fuel break of 50 feet around the residence. Fuel breaks shall be free of hazardous fuels in the form of native vegetation. Irrigation or fire resistent vegetation shall be planted within the fuel break to prevent undue soil erosion. Fuel breaks shall be continually maintained and may contain individual tree specimens, however plant material shall not provide a means of readily spreading fire. Fuel breaks shall comply with the riparian vegetation protection standards of LC 16.211(9)(b) and (c) below.

(c) Shall provide an adequate fire suppression system. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:

(1) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capabl'e of sustaining a volume of 20 gallons per minute for not less than 20 minutes.

(ii) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(iii) TThe water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period of fire danger.

(d) Shall have a spark arrestor on any chimneys and a fire retardant roof.

(9) Other Property Development Standards. All uses or activities permitted or conditionally permitted above, except the growing and harvesting of tree species regulated by the Oregon Forest Practices Act, shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines except as provided below.

(b) Class I Stream Setbacks. A residence shall not be located closer than 100 feet from ordinary high water of a Class I stream and no other structure except a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by-the Comprehensive Plan. A lesser setback may be allowed if:

(1) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(1) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.211(9)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.211(9)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall

EXCLUSIVE FARM USE ZONE (E-RCP)

RURAL COMPREHENSIVE PLAN

16.212 Exclusive Farm Use Zone (E-RCP).

(1) Purpose. The purpose of the Exclusive Farm Use (E-RCP) Zone is to provide areas for the continued practice of commercial agriculture, guarantee the preservation and maintenance of areas so classified and minimize activities that may be incompatible with commercial agriculture. The Exclusive Farm Use Zone is to be applied to land designated as agricultural by the Rural Comprehensive Plan.

It is the County's policy to protect forestry and agricultural operations from conflicting land uses. Nothing in this section is intended to interfere with normal forestry or agricultural management or practices that might result in conditions such as noise, dust, smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest or nonfarm uses (i.e. dwellings) within the Exclusive Farm Use Zone must recognize that the intent of the Zone is to protect resource management activities and that, in the event of conflict between residential uses and farm forestry or forestry practices, this Chapter will be interpreted in favor of these resource management practices.

(2) Permitted Uses. In the EFU Zone, the following uses and activities are permitted subject to the general provisions and exceptions set forth by this Chapter.

(a) Farm Use (See farm use definition)

(b) Propagation or harvesting of a forest product.

(c) Public or private schools, including all buildings essential to the operation of a school.

(d) Churches.

(e) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale and transmission towers over 200 feet in height.

(f) A dwelling or mobile home customarily provided in conjunction with farm use (existing), provided it complies with the following requirements:

(i) The proposed dwelling or mobile home will be the only dwelling or mobile home on the subject property, contiguous property in the same ownership and any noncontiguous property which is managed as part of the same farm operation.

(ii) The proposed dwelling or mobile home will be located on a legal lot that is currently managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, and will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iii) At least one occupant of the proposed dwelling or mobile home will be employed in conjunction with the current farm use of the farm operation.

(iv) Sufficient information is submitted by the person applying for the proposed dwelling or mobile home which factually documents compliance with the above criteria. Such information shall include, but not necessarily be limited to:

(aa) The size, location and ownership of the total property involved in the farm operation.

(bb) A copy of any farm use, lease agreements for the total property involved in the farm operation.

(cc) Identification of the specific farm uses conducted on the total property involved in the farm operation and the number of acres for each specific farm use.

(dd) Identification of the extent of involvement in the farm use activity by the occupants of the proposed dwelling or mobile home.

(ee) Identification by reference to LC 16.212(6)(d) below of the type of farm nnpratinn (i ᵽ farm arnunl that the nrnnricrad dwelling or mobile home would be customarily provided in conjunction with.

(g) A dwelling or mobile home customarily provided in conjunction with farm use (contemplated) which complies with the following requirements:

(i) The proposed dwelling or mobile home will be located on a legal lot which will be managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, but is not currently so managed.

(ii) The proposed dwelling or mobile, home will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iii) At least one occupant of the proposed dwelling or mobile home would be employed in conjunction with the proposed farm operation.

(iv) There is no other dwelling or mobile home on the subject property, contiguous property in the same ownership and any noncontiguous property which would be managed as part of the same farm operation.

(v) Sufficient information is submitted by the persons applying for the proposed dwelling or

mobile home which factually addresses the above criteria. Such information shall include:

(aa) The size, location and ownership of the total property involved in the farm operation.

(bb) A copy of any farm use lease agreements for the total property involved in the farm operation and the number of acres for each specific farm use.

(cc) Identification by reference to LC 16.212(6)(d) below of the type of farm operation (farm group) that the proposed dwelling or mobile home would be in conjunction with.

(dd) Identification of the planned extent of involvement in the proposed farm use activity by the occupants of the proposed dwelling or mobile home and the experience of the occupants in prior farm use activities.

(ee) A copy of a farm management plan for the proposed farm operation which provides factual details addressing the farm operation concerns pertinent to the farm operation proposed, including:

Land preparation.
Ripping and plowing.
Fencing.
Surveying.
Crop cultivation.
Irrigation.
Herbicide; fungicide and/or fertilizer application.
Machinery.
Accessory farm buildings.
Breeding and livestock raising concerns.
Labor.
Projected expenses associated with the above.
Date by which the farm management plan would be substantially implemented.

(ff) The residence shall be so located on the subject property as to provide the least interference with farming activities which will thereon occur. A site plan shall be submitted which shows the location of the residence and explains the rationale of the location in reference to the above criterion.

(vi) Upon substantial completion of the details represented in the above farm management plan, the dwelling or mobile home shall be allowed on the subject property. During the interim while the farm management plan is being implemented on the subject property, a temporary mobile home in conjunction with the farm use may be allowed for a period not to exceed five years. If the farm management plan is not implemented within the five-year period, the temporary mobile home shall be removed or another special permit under this subsection may be made.

(h) A dwelling or mobile home customarily provided in conjunction with farm use (existing) which complies with the following requirements:

(i) The proposed dwelling or mobile home would be in addition to another dwelling or mobile home already on the subject property, contiguous property in the same ownership and any noncontiguous property which is managed as part of the same farm operation.

(ii) The occupant or occupants of the proposed dwelling or mobile home will be employed in conjunction with the current farm use of the farm operation and the occupant or occupants of the existing dwellings or mobile homes are employed in conjunction with the current farm use of the farm operation.

(iii) The proposed dwelling or mobile home will be located on a legal lot that is currently managed as part of a farm operation of a size equal to or greater than that described in LC 16.212(6)(d) below, and will be located on a legal lot that is not smaller than the minimum size allowed for the division of land as described in LC 16.212(7) below.

(iv) Sufficient information is submitted by the person applying for the proposed dwelling or mobile home which factually documents compliance with the above criteria. Such information shall include, but not necessarily be limited to:

(aa) The size, location and ownership of the total property involved in the farm operation.

(bb) A copy of any farm use, lease agreements for the total property involved in the farm operation.

(cc) Identification of the specific farm uses conducted on the total property involved in the farm operation and the number of acres for each specific farm use.

(dd) Identification of the extent of involvement in the farm use activity by the occupant's of the proposed dwelling or mobile home, and by the occupant's of the existing dwellings or mobile homes.

(ee) Identification by reference to LC 16.212(6)(d) below to the type of farm operation (i.e., farm group) that the proposed dwelling or mobile home would be customarily provided in conjunction with.

(i) A dwelling or mobile home on real property used for farm use if the dwelling or mobile home is:

(i) Located on the same legal lot as the dwelling or mobile home of the farm operator; and

(ii) Occupied by a relative, which means grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(iii) Establishment of the second dwelling or mobile home may not be used for future justification of land division, and Lane County shall not approve any subdivision or partition of a lot or parcel for which such a second dwelling or mobile home has been approved.

(iv) The farm operator submits a statement that:

(aa) The second dwelling or mobile home is necessary for his or her farm operation.

(bb) Identifies the family relationship of the persons who will occupy the second dwelling or mobile home

(cc) He or she fully understands the conditions under which the building permit is being approved.

(j) One mobile home in conjunction with an existing dwelling or mobile home on the same legal lot as the existing dwelling or mobile home as a temporary use for the term of a hardship suffered by the existing resident or a relative of the existing resident subject to compliance with the following conditions:

(i) A resident of the existing dwelling or mobile home and a resident of the mobile home are family members.

(ii) One of the residents mentioned above suffers a hardship and needs the care of the other above-mentioned resident and family member.

(iii) Satisfactory evidence of the family member's hardship is furnished which shall include:

product on a legal lot that is managed as part of a farm operation or woodlot smaller than required under LC 16.212(6)(d) below if the legal lot:

(i) Has produced at least $10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $10,000 in annual gross farm income; or

(ii) Is a woodlot capable of producing an average over the growth cycle of $10,000 in gross annual income.

(iii) Does not already have a dwelling or mobile home on it.

(c) One dwelling or mobile home, not provided in conjunction with farm use, on a vacant legal lot not larger than three acres provided:

(i) The dwelling or mobile home, or activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use; and

(ii) If the legal lot is located within the Willamette Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by Lane Code relating specifically to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable; and

(iii) The dwelling complies with other conditions considered necessary by the governing body or its designate; and

(iv) The legal lot was created between January 1, 1948 and before July 1,1983.

(v) For the purposes of the above subsection, only one legal lot exists if:

(aa) The legal lot is contiguous to one or more lots or parcels in which, on Ally 1, 1983, greater than possessory interests are held in those contiguous lots by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(bb) As used in the LC 16.212(3)(c)(v)(aa) above, contiguous means "lots, parC'els or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road."

(vi) Notice and review of an application under LC 16.212(3)(c) above shall occur in compliance to LC 16.100(2)•

(d) Home occupations, subject to the following conditions and annual review:

(I) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in a dwelling or mobile home, or other buildings normally associated with uses permitted under LC 16.212(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.212(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(vii) Will comply with any additional conditions of approval.

(viii) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(4) **Special Uses Hearings Official Approval..** The following uses are allowed subject to prior approval of the Hearings Official pursuant to LC 14.300 and pursuant to compliance with the below approval criteria of this subsection and LC 16.212(5).

(a) Commercial activities that are in conjunction with farm use

(b) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005, or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(c) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

(d) Golf courses.

(e) Commercial utility facilities for the purpose of generating power for public use by sale.

(f) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(g) A facility for the primary processing of forest products, provided that such facility is found to not seriously inferfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber growth upon a parcel of land or contiguous land where the primary processing facility is located.

(h) The boarding of horses for profit.

(i) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment facilities or buildings necessary for its operation.

(j) A dwelling or mobile home not provided in conjunction with farm use provided:

(i) The dwelling or mobile home is situated upon a legal lot with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on Oct. 12, 1983.

(ii) The dwelling or mobile home, or the activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use

(iii) The dwelling or mobile home is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(iv) The approval of a dwelling or mobile home shall comply with the provisions of ORS 215.236, 1983 Replacement Part, regarding establishment of the nonfarm residence; procedures; disqualification for farm use valuation; and additional tax or penalty.

(k) A transmission tower over 200 feet in height.

(5) **Hearings Official Special Use Approval Criteria.**

(a) Compatibility of the use or activities associated with the use with the Agricultural Lands Policies of the Rural Comprehensive Plan Policies, ORS 215.243 and the purpose of this zone.

(b) The use, or activities associated with the use, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(c) The use, or activities associated with the use, complies with other conditions considered necessary by the Approval Authority in order to meet the applicable approval criteria.

(6) **Farm Operations.**

(a) A farm operation is all agricultural activities occurring under a single management. For purposes of this section, it is immaterial whether the activities occur on a single parcel of land, on contiguous parcels of land or on separate parcels of land. It is also immaterial if the operator has less than fee interest in the land on which the agricultural activity occurs.

(b) Farm operations shall be classified into one of the groups set forth in LC 16.212(6)(d) below. In the event a farm operation consists of agricultural activities described by more than one group, the activity that accounts for more than half of the gross revenue of the farm operation shall determine thegroup classifications.

(c) Farm operations of a size equal to or greater than the size shown for its respective group in LC 16.212(6)(d) below shall be deemed as contributing in a substantial way to the agricultural economy of the County.

(d)

Farm Group	Size
Cash grains	120 acres
Field crops (includes grass seed production	160 acres
Tree fruit and nuts	40 acres
Horticultural specialties	20 acres
General farm, primarily crop	320 acres
Extensive animal grazing	120 acres
Itensive animal husbandary	40 acres
Dairy farm	240 acres
General farm, primarily livestock	80 acres
Berries and grapes	20 acres
Vegetables and melons	120 acres

(7) **Area.** Land within the Exclusive Farm Use District shall be designated as E-25, E-30, E-40 or E-60, consistently with Agricultural Lands Policy #10 of the Lane County Rural Comprehensive Plan, and the creation of a lot or parcel shall be subject to the following:

(a) Except as provided in LC 16.212(7)(b),(c) and (d) below, the minimum area shall be:

E-25 ----- 25 acres
E-30 ---- 30 acres
E-40 ---- 40 acres
E-60 ---- 60 acres

(b) A division of land may be allowed down to 20 acres for horticultural specialties, berries and grapes. A farm management plan including the factors identified in LC 16.212(2)(g)(v)(ee) above shall address and establish the suitability of the land for the intended use

(c) A division of land may be allowed for the nonfarm uses identified in LC 16.212(4)(c),(d),(e) and (i) above, provided the parcel for the nonfarm use is not larger than the minimum size necessary for the use.

(d) A division of land may be allowed for a dwelling not provided in conjunction with farm use if the

dwelling has been approved pursuant to the above LC 16.212(4)(j) above and if the division would not conflict with the purpose of this zone.

(e) Divisions pursuant to LC 16.212(7)(a),(b),(c) or (d) above are subject to the applicable application procedures of LC Chapter 13 and the applicable review procedures of LC Chapter 14. Divisions under LC 16.212(7)(a) and (b) above shall also require that a statement be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for obtaining a dwelling or mobile home are met.

(f) A person who sells or otherwise transfers real property zoned Exclusive Farm Use (E) may retain a life estate in a dwelling or mobile home on that property and the tract of land under and around the dwelling or mobile home. Partition approval is not required for the creation of such a life estate.

(8) Property Development Standards. All uses or activities permitted or conditionally permitted above, except farm use, shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines except as provided below.

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Ripari-ian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercialforest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazards.

(dd) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(9) Residence Maintenance, Repair and Replacement Standards.

(a) Maintenance and repair of lawfully existing residences shall be permitted in the Exclusive Farm Use (E) zone.

(b) Replacement of any residence lawfully existing, occupied, suitable for occupancy or in the process of being constructed shall be permitted. The replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice versa). Any replacement authorized under this subsection shall be for a residence to be located on the same site as the previous residence and

such replacement shall commence within one year of the date of removal of the previous residence.

NATURAL RESOURCE ZONE (NR-RCP)

RURAL COMPREHENSIVE PLAN

16.213 Natural Resource Zone (NR-RCP).

(1) **Purpose.** The Natural Resource Zone (NR-RCP) is intended to protect areas having unique or irreplaceable natural resource which are vital elements for a safe, healthful and pleasant environment for human life. The Natural Resource Zone may be applied to public and private lands where the Rural Comprehensive Plan requires natural resource site protection. The Zone is not intended to be applied to other types of resource land, such as agricultural land and forest land. To minimize the potential hazards of pollution, resource conversion and land development resulting from increases in human population, urbanization, income, leisure time and individual mobility, emphasis will be placed on limiting and regulating human activity in those areas where:

(a) The acceptable water quality of streams, lakes, estuaries of the ocean may be endangered;

(b) Watersheds and their streams or lakes are used for domestic water supplies;

(c) Vegetative cover is essential to maintain soil stability and prevent erosion;

(d) Natural conditions are vital for either unique vegetative ecosystems, aquatic or wildlife habitat; and

(e) Scenic quality or vistas or open space is unique and/or irreplaceable.

(2) **Permitted Buildings and Uses.** In the NR Zone, the following types of buildings and uses are permitted as hereinafter specifically provided for by this subsection, subject to the general provisions and exceptions set forth:

(a) The following recreational facilities and uses owned by a governmental agency or a nonprofit community organization limited to day use.

(i) Exhibitions of the natural conditions of shorelands, dunelands, forested areas, streams and lakes, marshlands, or similar areas of unique and irreplaceable value, and the vegetation and wildlife supported by such lands and waters, provided that in no event shall such activity destroy, or endanger the relationships between the natural conditions being exhibited.

(ii) Picnicking areas, day parks and playgrounds.

(iii) Accessory facilities for outdoor recreation activity such as fishing, clam digging and hunting (provided such activity is conducted only in those areas allowed pursuant to Federal, State and Local fish and game regulations) and hiking and horseback riding.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

(3) Special Uses Director Approval. The following uses are subject to approval by the Director pursuant to LC 14.100:

(a) Single-family dwelling(s) or mobile home(s) for residential purpose for watchman, caretaker or operator in conjunction with use permitted in the district.

(4) Special Uses Director Official Approval. The following uses are subject to approval by the Hearings Official pursuant to LC 14.300:

(a) Piers and boat houses.

(b) Single-family dwelling or mobile home and accessory structures.

(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.

(d) Forest uses and any accessory uses.

(5) **Conditional Use Criteria.** Uses conditionally permitted under LC 16.213(4) above are subject to compliance with the following criteria:

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.

(ii) That the proposed site is on land generally unsuitable for natural resource uses.

(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;

(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby natural resource lands.

(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;

(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and

(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

(6) **Property Development Standards.**

(a) Front yard setback shall be 20 feet.

(b) Side yard setback shall be as follows:

(i) Interior yard -- 15 feet for a main building; five feet for an accessory building or structure.

(ii) Street side yard - 20 feet.

(c) Rear yard setback shall be 20 feet for a main building; five feet for an accessory building or structure.

MARGINAL LANDS ZONE (ML-RCP)

RURAL COMPREHENSIVE PLAN

16.214 Marginal Lands Zone (ML-RCP).

(1) Purpose. The Marginal Lands Zone (ML-RCP) is intended to:

(a) Provide an alternative to more restrictive farm and forest zoning.

(b) Provide opportunities for persons to live in a rural environment and to conduct intensive or part-time farm or forest operations.

(c) Be applied to specific properties consistently with the requirements of ORS 197.005 to 197.430 and the policies of the Lane County Rural Comprehensive Plan.

(2) **Permitted Uses.** The following uses are permitted subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) A dwelling or mobile home on a vacant legal lot created before July 1, 1983. If the legal lot is located within the Willamette Greenway, a flood plain area or a geological hazard area, approval of the mobile home or dwelling is subject to the provisions of Lane Code relating to the Willamette Greenway, floodplain or geological hazrds, whichever is applicable.

(b) A dwelling or mobile home on a vacant legal lot created pursuant to the requirements of LC 16.214(6) below.

(c) One mobile home in conjunction with an existing dwelling or mobile home on the same legal lot as the existing dwelling or mobile home as a temporary use for the term of a hardship suffered by the existing resident or a relative of the existing resident subject to compliance with the following conditions:

(i) A resident of the existing dwelling or mobile home and a resident of the mobile home are family members.

(ii) One of the residents mentioned 'above suffers a hardship and needs the care of the other above-mentioned resident and family member.

(iii) Satisfactory evidence of the family member's hardship is furnished which shall include:

(aa) A written statement, on a form provided by the Department, from the family member's physician, therapist, or other professional counselor, disclosing the existence and general nature of the hardship.

(bb) A written statement, on the form provided by the Department, disclosing the family relationship of the person with the hardship and the person who will provide care.

(iv) The temporary mobile home will be located on the same legal lot as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(d) Part-time farms.

(e) Woodlots.

(f) Intensive farm or forest operations, including, but not limited to, farm use.

(g) Nonresidential buildings customarily provided in conjunction with farm use.

(h) Public or private schools, including all buildings essential to the operation of a school.

(i) Churches.

(j) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale.

(k) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(1) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment and facilities or buildings necessary for its operation.

(m) The propagation or harvesting of a forest product.

(n) Community centers owned and operated by a governmental agency or a nonprofit organization, hunting and fishing preserves, parks, playgrounds and publicly owned campgrounds.

(o) Personal-use airport for airplanes and helicopter pads, including associated hanger, maintenance and service facilities. A personal- use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on, an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver by the Aeronautics Division in specific

instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable regulations of the Aeronautics Division.

(3) **Uses Subject To Director Approval.** The following uses are permitted subject to submittal of an application pursuant to LC 14.050, and approval of the application pursuant to LC 14.100 and compliance with the criteria and provisions of this Chapter of Lane Code.

(a) Privately owned campgrounds.

(b) Golf courses.

(c) Commercial utility facilities for the purpose of generating power for public use by sale.

(d) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in a dwelling or mobile home, or other buildings normally associated with uses permitted under LC 16.214(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.214(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the Director shall review each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions

of approval shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(e) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203(2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(f) The boarding of horses for profit.

(g) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality, together with equipment, facilities or buildings necessary for its n-naratlnn

(h) Commercial activities that are in conjunction with farm use.

(4) Criteria For Director Approval. Uses specified in LC 16.214(3) and (4) may be allowed if found to comply with the following criteria:

(a) Will be compatible with and will not adversely affect the livability 'or appropriate development of abutting properties and the surrounding vicinity, and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

(5) Uses Subject To Hearings Official Approval. The following uses are permitted subject to submittal of an application pursuant to LC 14.050, approval of the application by the Hearings

Official pursuant to LC 14.300 and compliance with the approval criteria of LC 16.214(4) above and provisions of this Chapter of Lane Code:

(a) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate or other mineral resources or other subsurface resources.

(6) **Area.** Land in a Marginal Land zone may be divided as follows:

(a) Into lots or parcels containing at least 10 acres if the lots or parcels are not adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F-1), Impacted Forest Land (F-2), or if it is adjacent to such land, the land qualifies for designation as marginal land pursuant to ORS Chapter 197.

(b) Into lots or parcels containing 20 acres or more if the lots or parcels are adjacent to land zoned Exclusive Farm Use (E), Nonimpacted Forest Land (F-1) or Impacted Forest Land (F-2), and that land does not qualify as marginal land pursuant to ORS Chapter 197.

(c) A parcel of any size necessary to accommodate any of the nonresidential uses identified in LC 16.214(2)(h),(i),(j),(1) and (n) and LC 16.214(3)(a), (c),(f) and (g).

(7) **Property Development Standards.** All uses or activities permitted or conditionally permitted above shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines, except as provided below.

(b) Class I Stream and Riparian Vegetation Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 50-foot, setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to

LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of the riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.214(7)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.214(7)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercial forest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazard.

(dd) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Height. None.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(f) Parking. Off street parking shall be provided in accordance with LC 16.250.

PARK AND RECREATION ZONE (PR-RCP)

RURAL COMPREHENSIVE PLAN

16.215 Park and Recreation Zone (PR-RCP).

(1) **Purpose.** The purpose of the Park and Recreation Zone (PR-RCP) is:

(a) To establish zones within which a variety of recreational activities may be conducted as outright permitted uses without interference from other nonrecreational uses.

(b) To establish standards and criteria to permit and conditionally permit recreational activities within areas for which a built upon or committed exception to a Statewide Planning Goal has been taken, or within a designated nonresource area, or within resource areas for which an exception to a Statewide Planning Goal has not been taken.

(c) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Area Comprehensive Plan.

(d) To implement the policies of the Lane County Rural Area Comprehensive Plan.

(2) **Permitted Uses.** The following uses and activities are permitted in any area zoned PR-RCP subject to the general provisions and exceptions specified by this Chapter of Lane Code:

(a) Forest Uses.

(b) Farm Uses.

(c) Nonresidential uses necessary and accessory to the uses listed above such as:

(i) Fire prevention, detection and suppression facilities.

(ii) Access roads and roads for management and safety.

(iii) Storage buildings.

(iv) A carport or garage in conjunction with #5 above.

(v) Restroom, washroom or shower facilities.

(vi) Offices.

(d) Minor betterments and general improvements of existing park or recreational facilities.

(3) Uses Subject to Director Approval. The following uses are allowed subject to prior submittal of an application pursuant to LC 14.050 and approval by the Director pursuant to LC 14.100, and subject to conformance with the applicable, approval criteria of LC 16.215(3)(h) below:

(a) General Recreation Parks including picnic areas, camping grounds, hiking trails, playfields, bathing beaches and other similar outdoor, manmade recreation facilities.

(b) Leisure and Ornamental Parks largely for scenic or ornamental purposes, including monuments, statutes, beaches and children's play facilities.

(c) Group or Organized Camps for children and adults which may include any of the above uses and activities and other uses and activities, such as swimming pools, meeting halls, sleeping shelters, cafeterias and shelters for indoor recreation.

(d) Recreation vehicle parking spaces in conjunction with any of the above three permitted uses.

(e) Marine terminals and associated areas that are primarily for recreational marine craft, exclusing sale or land storage of marine craft, but including any incidental sale of gas or minor repair.

(f) One resident on the subject property for a caretaker employed in conjunction with any of the uses in LC 16.215(3)(a)-(e) above.

(g) Nonresidential uses necessary and accessory to the uses listed above.

(h) Approval Criteria.

(i) The proposed use is limited in size and location so as to be compatible with existing forest, farm or natural resource uses on nearby lands

(ii) The location, design, size, shape and arrangement of the proposed uses are sufficient for the intent of the proposed uses.

(iii) Where necessary to accomplish compliance with LC 16.215(3)(h)(i) and (ii) above, conditions may be placed upon the approval of the use applicatoin.

(4) Permitted Uses Within An Exception Area. The following uses and activities are permitted whenever the subject property is included within an area for which a built upon or committed exception has been taken to a Statewide Planning Goal and incorporated into the Lane County Rural Area Comprehensive Plan:

(a) Any of the uses permitted within the above LC 16.215(2) or the below LC 16.215(3).

(b) Retail trade of food or new general merchandise conducted within a building not exceeding 750 square feet in total floor area.

(c) Golf courses with or without a country club.

(d) Riding stables.

(e) Bowling.

(f) Gymnasium or athletic club.

(g) Yachting clubs.

(h) Motel, hotel, lodges and other forms of recreational lodging. Any of the above lodging uses may include a restaurant, retail trade of food or new general merchandise exceeding the standard set in LC 16.215(4)(b) above.

(i) Game rooms, miniature golf, go cart tracks.

(j) Boat rentals or boat storage and incidental minor repairs and sale of gas.

(k) Country clubhouse for a golf course which may include a restaurant, retail trade of food or new general merchandise exceeding the standard set in LC 16.215(4)(b) above.

(5) **Uses Subject to Hearings Official Approval.** The following uses and activities are conditionally permitted subject to submital of an application pursuant to LC 14.050, approval of the application by the Hearings Official pursuant to LC 14.300, and subject to the compliance with the conditional use criteria below:

(a) Race track

(b) Amusement park, carnival, circus.

(c) Stadium.

(d) Fairgrounds and amusement park.

(e) Recreational shooting.

(f) Airport and flying field.

(6) **Conditional Use Permit Criteria.** Uses conditionally permitted above shall be subject to compliance with the following criteria:

(a) The subject property is included within an area for which an exception has been taken to a Statewide Planning Goal and incorporated into the Lane County Rural Area Comprehensive Plan.

(b) The proposed use will not adversely affect the livability, appropriate use, natural resources or scenic character of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and capacity of surrounding streets; and to any other relevant impact to the use.)

(c) The proposed use will not be adversely affected by natural hazards, such as floods, slides, erosion.

(d) The proposed use will not alter the stability of the overall land use pattern in the area nor interfere with farm and forest practices and will be compatible with the retention of existing and potential forest, uses on the surrounding forest lands.

(e) When a use is proposed in an area designated as Major or Peripheral Big Game Range or as Sensitive Fish and Water Fowl Areas as shown on the Lane County Wildlife inventory, the Oregon Department of Fish and Wildlife shall be notified and their comments shall be considered in evaluating the proposed use.

(f) The proposed use will have a water supply of sufficient quantity and quality to meet reasonably foreseesable needs.

(7) **Property Development Standards.** All uses or activities permitted or conditionally permitted above, except commercial forest practices regulated by the Oregon Forest Practices Act, shall be subject to the following development standards:

(a) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(b) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.215(7)(b)(i) above. Where vegetation removal beyond that allowed in LC 16.215(7)(b)(i) above cannot be avoided, tithe site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Vegetation removal necessary to provide water access for a water dependent use.

(bb) Removal of dead or diseased vegetation that poses a safety or health hazards.

(cc) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(c) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

QUARRY AND MINE OPERATIONS COMBINING ZONE (/QM-RCP)

RURAL COMPREHENSIVE PLAN

16.216 Quarry and Mine Operatons Combining Zone (/QM-RCP).

(1) **Purpose.** The purpose of the Quarry and Mine Operations Combining Zone (/QM-RCP) is to:

(a) Recognize that minerals and materials within the County are an unrenewable resource, and that extraction and processing are beneficial to the economy of the County and the welfare of its people.

(b) Protect major deposits of minerals, rock and related material resources with appropriate zoning.

(c) Establish procedures for the protection of public health and safety on and adjacent to land where quarry and mine blasting operations are occurring.

(d) Establish County standards in the Lane Manual to be used in reviewing referrals from State and Federal Agencies of Operation and Reclamation Plans, pollution control permits and similar permits.

(e) Provide for cooperation between private and governmental entities in carrying out the purposes of this Chapter.

(f) To implement the policies of the Lane County Rural Comprehensive Plan.

(2) **Intent.** The Quarry and Mine Operations Combining Zone shall be available for consideration and use by the County for new or existing operations when requests are received as part of an areawide or legislative rezoning, or a specific property or quasi-judicial rezoning.

When property under consideration for /QM zoning is in close proximity to existing and planned uses potentially incompatible with /QM uses, the application of the Quarry and Mine Operations Combining Zone may be limited to a specific portion of a property in order to encourage the compatibility and proper management of land uses.

The Quarry and Mine Operations Combining Zone is intended to be applied only to those operations which have, been evaluated through the Goal #5 Administrative Rule conflict resolution process. Other quarry and mining operations of short-term or intermittent duration should be provided pursuant to the special use provisions of the various zones.

(3) **Definitions.** For the purposes of this section only, the following words, terms and phrases are defined and supercede definitions otherwise provided in this Code:

Minerals. Includes soil, coal, clay, stone, crushes hard rock quarry products, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use from natural deposits. "Minerals" do not include loam, sand, gravel or other aggregate materials created and/or deposited by water movement.

Mining Refuse. All waste materials, soil, rock, mineral, liquid, vegetation and other materials resulting from or displaced by quarry and mining extraction operations within the operating permit area, including all waste materials deposited in or upon lands within such operating permit area.

Operations Plan. A written proposal submitted to the State Department of Geology and Mineral Industries under the requirements of ORS 517.790.

Operator. Any individual, public or private corporation, political subdivision, agency, board or department of this State, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in quarry and extraction operations.

Overburden. The soil, rock and similar materials that lie above natural deposits or minerals.

Owner. The person possessing legal rights to the mineral deposit being mined.

Quarry and Mine Extraction. All or any part of the process of removing mineral deposits exposed by any method, including open-pit mining operations, auger mining operations, shaft mining, the construction of borrow pits, processing of extracted minerals and exploration activities.

Reclamation. The employment of procedures in a quarry and mining extraction operation designed to minimize as much as practicable the impact such operations have on the environment, and to provide for the rehabilitation of land affected by such operations. Reclamation includes the rehabilitation of plant cover, soil stabilization, water resource protection and other measure appropriate to the subsequent beneficial use of such mined and reclaimed lands.

Reclamation Plan. A written proposal for the reclamation of the land area affected by a quarry and mine extraction operation submitted to the State Department of Geology and Mineral Industries.

(4) Permitted Buildings and Uses. In the Quarry and Mine Operations Combining District, the following types of buildings and uses are permitted as hereafter specifically provided for by this section, subject to the provisions of the Quarry and Mining Operations Reclamation Permit and exceptions set forth in this Chapter;

(a) Uses permitted in the parent zone with which the /QM zone is combined.

(b) Extracting and storing of minerals, including equipment and materials necessary to carry out these functions.

(c) Plants for the processing of minerals from quarry and mine extraction operations.

(d) Sale of products generated from the quarrying and mining operation.

(e) Activities permitted as part of the reclamation process provided for in the Reclamation Plan.

(f) Structures and buildings used in conjunction with the extracting and storing of minerals.

(5) Permits for Quarry and Mine Extraction.

(a) General. No quarry or mining extraction or related operations may be initiated on land zoned as Quarry and Mine Operations Combining Zone (/QM) until a surface mining permit has been issued by the Oregon Department of Geology and Mineral Industries.

(i) Each permit application, Operation and Reclamation Plan referred to the Director shall be reviewed following the Operation Standards and Reclamation Standards set forth in Lane Manual.

(6) Blasting Notice and Records. Operators using explosives for quarry and mine extraction shall follow explosive regulations and use commonly acceptable engineering standards based on physical conditions and atmospheric conditions of the site so as to prevent injury to persons and damage to public and private property.

(a) Notice of Blasting. When blasting is to be done within 500 feet of an occupied building, the operator, or an authorized agent, shall notify all occupants that a blast is to be initiated. Such notice shall be given not more than six hours nor less than 30 minutes prior to detonation and shall include the approximate time of the blast.

(b) Blasting Records. Each operator shall maintain a record of each blast for at least two years. These records shall be available to the County, the State Department of Geology and Mineral Industries and other governmental agencies with appropriate jurisdiction upon request. Such records shall show the following for each blast:

(i) Name of quarry or mine.
(ii) Date, time and location of blast.
(iii) Description of type of explosives and accessories used.
(iv) Time interval of delay in milliseconds.
(v) Number of different delays.
(vi) Number of holes per delay.
(vii) Nominal explosive weight per hole.
(viii) Total explosive weight per delay.
(ix) Total weight of explosives per blast.
(x) Blast hole diameter, depth, spacing and stemming height.

SAND, GRAVEL & ROCK PRODUCTS ZONE (SG-RCP)

RURAL COMPREHENSIVE PLAN

16.217 Sand, Gravel & Rock Products Zone (SG-RCP).

(1) **Purpose.** The intent of the Sand, Gravel and Rock Products Zone (SG-RCP) is to:

(a) Recognize that sand and gravel deposits within the County are an unrenewable natural resource and beneficial to the economy of the County and the welfare of its people.

(b) Identify and zone under this zone major deposits of sand and gravel, rock and related material resources.

(c) Provide for the utilization of this resource in a manner compatible with other land uses in the area.

(d) Encourage the regular, systematic and uninterrupted extraction and processing of such resources.

(e) Establish procedures for assuring protection of public health and safety on and adjacent to land used for extraction and processing.

(f) Prevent irresponsible extraction of material resources, to the detriment of the public.

(g) Provide standards to be observed during the extraction process with a view to ultimate utilization of the site.

(h) Carry out these purposes with the recognition of a need for said resources and the right of each property owner to make a reasonable use of his or her land.

(i) Implement the policies of the Lane County Rural Comprehensive Plan.

(j) Be applied only to those sites which have been evaluated consistently with the Statewide Planning Goal #5 Administrative Rule conflict resolution process.

(2) **Definitions.** Where conflicting, for the purposes of this section only, the following definitions supersede definitons otherwise provided in this Code:

Director. The Director of the Department of Public Works of Lane County.

Overburden. All materials lying on top of valuable sand and gravel deposits which must be moved in order to extract those valuable sand and gravel deposits.

Review Committee. The Sand and Gravel Review Committee authorized to administrate the provisions of this section.

(3) **Permitted Uses.** In the SG-RCP zone, the following uses are permitted subsequent to the following restriction: For any property designated in the Eugene-Springfield Metropolitan Plan as

significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal #5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

(a) Sand and gravel operations which entail the extraction, stockpiling and processing of sand, gravel, overburden and topsoil shall be permitted, subject to the requirements of the subsections of this section, but quarrying, smelting, ore reduction and other similar uses shall be excluded.

(b) The following uses shall be permitted, subject to the requirements of the subsections of this section, when conducted in conjunction with a sand and gravel operation as defined in LC 16.217(3)(a) above, on the same parcel or continguous parcels of land on which the operation is being conducted.

(i) Asphalt paving-mix plant.

(ii) Cement concrete batching plant.

(iii) Aggregate products fabrication and sale.

(iv) Sand and gravel resource-related contractor's equipment storage yard.

(v) Sand and gravel resource-related contractor's maintenance and storage buildings.

(vi) Offices and warehouses appropriate to the uses permitted in this zone.

(vii) Retail or wholesale sales of products related to the use of sand, gravel and related products.

(c) Other uses permitted:

(i) Agriculture, grazing or timber raising.

(ii) Dwellings for owners, operators or help required to carry out LC 16.217(3)(b)(i) above.

(iii) Accessory buildings normally required in LC 16.217(3)(b)(i) above.

(iv) Extraction of sand, gravel and overburden, any combination of which does not exceed 1,000 cubic yards in any calendar year.

(v) Electrical facilities providing only direct service to a use authorized in this zone.

(d) Signs to be used in connection with sand and gravel operations:

(i) Identification signs (exterior) shall be limited to two per business establishment, and shall be designed as part of the building.

(4) **Site Improvement Standards.**

(a) General. Site improvement standards hereunder are minimum standards to be observed during extraction

(bb) The Director may grant an administrative variance to waive the setback from adjoining property in a Sand, Gravel and Rock Products Zone, if no flood hazard will result.

(cc) The setback area may be excavated to reduce the elevation thereof to the grade of an adjoining public street or road.

(dd) Excavation may be conducted within the setback area under a plan approved by the Director through an administrative variance whereby the excavated area will be refilled with other materials which will neither decompose nor pollute underground waters.

(ee) When excavation is completed adjoining a setback, the setback area shall be smoothed, all excavation debris removed, and all trees which are in an unsafe condition removed. However, such setback areas may be used for permitted uses under LC 16.217(3)(b) and (c) above, subject to other provisions of this Chapter.

(vi) Cleanup and Removal of Structures.

(aa) During operations, the site shall be kept free of debris. All overburden shall be stockpiled or disposed of and all stumps, brush or other debris resulting from cleaning or excavating shall be burned or otherwise disposed of.

(bb) Within three years after the termination of an operation as defined in LC 16.217(3)(a) above, all buildings, structures or plants which were used incidental to the operation and were abandoned with the termination of the operation shall be dismantled and removed.

(vii) Site Improvements for Nonconforming Pre-existing Uses.

(aa) To the extent to which operations upon property have been completed when said property is included within the Sand, Gravel and Rock Product Zone, the provisions of the zone shall not be applicable.

(bb) If the operator shall resume excavations on property which had been excavated when it was included in the Sand, Gravel and Rock Products Zone, then:

(i-i) If banks cannot be sloped to the ratios required because the same are within minimum setback

areas, or if the excavation is within the minimum setback areas, the operator shall either:

(aaa) Obtain an administrative variance from the minimum setback in order to accomplish such sloping; or

(bbb) Erect a fence along such nonconforming banks according to specifications ordered by the Director.

(ii-ii) Grading shall not be required after securing an administrative variance if such area has been covered by brush or vegetation which would make such work burdensome and uneconomic.

(iii-iii) Additional depth of excavation shall not be mandatory to conform to minimum depth standards.

(iv-iv) The operator shall not be required to change nonconforming setback areas.

(5) **Operation Standards.** All facilities shall be constructed, maintained and operated, and all operations shall be conducted in the zone in accordance with the standards set forth in this section.

(a) Setbacks.

(i) All equipment for processing operations shall not be built, erected or located closer than 50 feet to the perimeter boundary line of the property under the ownership or control of the operator or the right-of-way of an existing road, except when said boundary adjoins a residence or residential (R) zone, in which case no equipment shall be located within 150 feet of said residence or zone.

(ii) Stockpiling of sand and gravel and sedimentation ponds shall not be located closer than 25 feet to the perimeter boundary line or the right-of-way of an existing road.

(iii) If provisions of Chapter 11 of this Code as existing or hereinafter amended shall require greater setbacks than provided herein, then such Chapter shall apply.

(iv) The Director may allow smaller setbacks after following administrative variance procedure.

(b) Frontage and Access. Each tract of land used for uses permitted in LC 16.217(3)(a) and (b) above shall have 60-foot frontage on a public road or easement of

access to a public road connecting with the public road system of Lane County.

(c) Screen Landscape. Existing trees and natural vegetation along a public park or public road, or adjoining a residential (R) zone, shall be preserved for a width of 25 feet or within the minimum setback, whichever is less.

(d) Signs.

(i) Business and Directional Signs. See LC 16.217(3)(d) above.

(ii) SG-RCP Zone Identification. The County, at its expense, shall have the right to put signs on the boundaries of any active operation which read:

THIS PROPERTY MAY BE USED FOR SAND AND GRAVEL EXTRACTION PROCESSING.

(e) Road Condition. All private access and service roads shall be maintained in a dust-free condition during intensive operations.

(f) Off Street Parking - Parking Areas. All parking facilities for employees and customers shall be located within the boundaries of the property under the control of the operator.

(g) Safety Fencing. During operations, when any open excavation will have a depth of 10 feet or more, and will create a slope steeper than one vertical to two horizontal (1:2) for a period of more than 120 days, and is located within 200 feet f residentially occupied structures or a public road, a fence shall be erected at least 10 feet outside the edge of such excavation at least four feet in height, to control access to such excavation.

(h) Stream Operations. Operations in or adjacent to streams shall conform to the following standards:

(i) The turbidity of the stream adjacent to the operations shall not be increased by more than five Jackson Turbidity Units.

(ii) There shall be no direct discharge of gravel-washing waters into an adjacent stream

(iii) Operators shall work behind dikes which are of sufficient height to control turbidity during low water seasons. Where the dike forms the permanent river bank according to a river plan which may be adopted by the Board, the berm of the dike shall be of sufficient width and height to contain annual high water.

(iv) Equipment shall not be operated in the flowing streams, except to construct or maintain berms or to make channel improvements according to a river plan that may be adopted by the Board.

(v) After a river plan is adopted, the river channel shall not be diverted from its normal course unles a permanent river channel is developed.

(vi) The Director may waive the requirements of LC 16.217(5)(h)(iv) and (v) above for limited periods of time.

(6) **Performance Bond.**

(a) Except during the 60-day period provided for by LC 16.217(9)(a)(i) below, no excavation shall be permitted within this zone in areas which are not covered by a performance bond in the amount of $500 per acre, and any additional dollar amounts determined by the Director to be necessary for side restoration, which has been submitted to the Director and accepted by the Board. The amount of acreage to be bonded shall be left to the choice of the operator, but no excavation shall be permitted within this zone in areas which are not covered by a performance bond in the amount of $500 per acre, and any additional dollar amounts determined by the Director to be necessary for site restoration, which has been submitted to the Director and accepted by the Board. The amount of acreage to be bonded shall be left to the choice of the operator, but no excavation shall be permitted in any area which has not been bonded.

(i) The performance bond shall be issued by a corporate surety licensed to issue surety bonds in the State of Oregon, or shall be in another form approved by the Director.

(ii) The bond shall guarantee the faithful performance of all applicable site improvement standards specified in LC 16.217(4) above for all areas excavated after the land is zoned hereunder.

(b) The operator may at any time make application to the Board for release of any bond as to specified acreage which either has not been excavated or has been excavated and restored to the standards contained herein. Within 30 days after the date of such application, the Board shall consider the application and, if the Board shall determine that the site improvement standards have been performed on specified acreage, then the bond shall be released as to such acreage.

(c) If acreage excavated is not restored according to the applicable site improvement standards, the County, or its designated representative, may enter upon such property, make the required improvements and present the operator and the corporate surety with a statement of expenses. The surety bond shall guarantee payment to the County for its expenses incurred, not to exceed $500 per acre, and any additional dollar amount determined by the Director to be necessary for site restoration.

NATURAL ESTUARY ZONE (/NE.RCP)

RURAL COMPREHENSIVE PLAN

16.234 Natural Estuary Zone (/NE-RCP).

(1) Purpose. The purpose of the Natural Estuary Zone (/NE-RCP) is to assure the protection of significant fish and wildlife habitats and the continued biological productivity of the estuary and to accommodate the uses which are consistent with these objectives.

(2) Permitted Uses. In the /NE-RCP Zone, the following types of uses are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this Chapter.

(a) Low intensite recreation which is water dependent.

(b) Educational and scientific observation.

(c) Navigational aids.

(d) Passive estuarine restoration.

(e) Protection of habitat, nutrient, fish, wildlife and aesthetic resources.

(f) Low intensity grazing provided the area is a high salt marsh.

(3) **Special Uses Approved by the Hearings Official.** The following specified uses and no others, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of the applicable criteria. A Resource Capability Determination is required as set forth in LC 16.248, except for major projects requiring an Impact Assessment as set forth in LC 16.249.

(a) (i) Uses

(aa) Communication facilities.

(bb) Active restoration measures.

(ii) Criteria.

(aa) No fill or dredging is required.

(bb) The use will have minimal impact on natural resources in the area affected by the proposed use. These natural resources are as identified in the Lane County Rural Comprehensive Plan.

(cc) The location and actions proposed for restoration measures are adequate to achieve the stated restoration objective. Restoration objectives shall set forth the original conditions to be restored and the cause of the loss or degradation.

(dd) Any restoration action related to the distribution and attributes (e.g., long-term environmental, social or economic values) that have been lost or diminished shall be consistent with the original conditions.

(b) (i) Uses. Aquaculture facilities.

(ii) Criteria.

(aa) No dredge or fill is required.

(bb) The use is consistent with the Lane County Rural Comprehensive Plan.

(c) (i) Uses. Riprap and associated minor fills.

(ii) Criteria and Conditions.

(aa) The use is required to protect human-made structures existing prior to October 7, 1977 or critical wildlife habitat in adjacent shorelands areas as identified in the Lane County Rural Comprehensive Plan.

(bb) Natural bank stabilization measures are inadequate.

(4) Nonconforming Use Exceptions.

(a) Docks and Piers. Actively utilized pier, docks and other structures occupying the water surface by means other than fill existing as of July 1, 1980 may be rebuilt within two years, but not expanded if damaged or destroyed notwithstanding the provisions of LC 16.251 regarding nonconforming uses.

(b) Log Storage. Notwithstanding the provisions of LC 16.251 regarding nonconforming uses, log storage sites in the /NE-RCP Zone under lease from the Division of State Lands shall be allowed to continue and be renewed. Leases for storage sites in new areas are prohibited.

(5) Applicable Natural Features. The boundaries of the /NE-RCP Zone are determined by the natural estuarine features. The /NE-RCP Zone includes all major tracts of salt marsh, tideflats, eelgrass and algae beds. The entire estuarine areas of the Siltcoos River and Berry, Sutton, Big and Tenmile Creeks are within the /NE-RCP Zone. These are as defined on the Lane County zoning maps as specified by LC 16.252(8).

(6) Uses Subject to State and Federal Permits.

(a) When State or Federal permits, ~~leases~~, easements or similar types of authorization are also required for a use, subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application for all requisite State and/or Federal permits, leases, easements or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special use review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement or similar type of authorization.

CONSERVATION ESTUARY ZONE (ICE-RCP)

RURAL COMPREHENSIVE PLAN

16.235 Conservation Estuary Zone (/CE-RCP).

(1) Purpose. The purpose of the Conservation Estuary Zone /CE-RCP is to provide for the long-term use of the estuary's renewable resources in ways which do not require major alteraton of the estuary. Providing for recreational and aesthetic uses of the estuarine resources as well as maintenance and restoration of biological productivity are primary objectives in this zone.

(2) Permitted Uses. In the /CE-RCP Zone, the following types of uses are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this Chapter.

(a) Low-intensity recreation which is water dependent.

(b) Scientific and educational observation.

(c) Navigational aids.

(d) Passive estuarine restoration.

(e) Active estuarine restoration not requiring dredge and/or fill.

(f) Natural resource preservation, including protection of habitat, nutrient, fish, wildlife and aesthetic resources.

(g) Aquaculture facilities not requiring dredge or fill.

(h) Communication facilities not requiring dredge and/or fill.

(i) Noncommercial clamming and fishing.

(j) Low-intensity grazing; provided the area is a high salt marsh and has been so used within the 10 years prior to July 24, 1980.

(k) Log storage; provided the storage occurs at sites under lease from Division of State Lands on (date of ordinance adoption) and provided all State and Federal agency requirements are met.

(3) **Special Uses Approved by the Director.** The following specified uses and no others, subject to approval by the Director pursuant to LC 14.300. A Resource Capability Determination is required as set forth in LC 16.248, except for major projects requiring an impact assessment as set forth in LC 16.249.

(a) (i) Uses. Private single-family, single-purpose piers or docks.

(ii) Criteria and Conditions.

(aa) The use will have minimal adverse impact on natural resources in the area affected by the proposed use. The resources are as identified in the Lane County Rural Comprehensive Plan.

(bb) The use is compatible with requirements of adjacent shorelands' Rural Comprehensive Plan designation.

(cc) The applicant attests in writing on a form provided by the Planning Director that no alternatives to the proposed structure are feasible.

(dd) The size and design of the structure is limited to that required for the intended use.

(4) **Special Uses Approved by the Hearings Official.** The following specified uses and not others, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of the applicable criteria. A Resource Capability Determination is required as set forth in LC 16.248, except for major projects requiring an Impact Assessment as set forth in LC 16.249.

(a) (i) Uses. New or expanded log storage sites

(ii) Criteria and Conditons.

(aa) Water storage is integral to continued operation of the associated wood processing facility.

(bb) There are no feasible upland alternatives.

(cc) The log storage operation meets Department of Environmental Quality Standards for log storage.

(dd) The use is not proposed at sites which have long-established use for public recreation such as a boat launching site or a marina site.

(ee) Public need is demostrated.

(b) (i) Uses.

(aa) Public docks nd piers.

(bb) Private multifamily docks an piers.

(cc) Mooring buoys which are permanently anchored to estuary floor.

(dd) Dolphins.

(ii) Criteria and Conditions. The use will have minimal impact on natural and recreational resources in the area affected by the proposed use. The resources are as identified in the Lane County Rural Comprehensive Plan.

(c) (i) Uses.

(aa) Boat launching ramps.

(bb) Public beaches requiring estuarine modificaton.

(cc) Minor dredging to improve navigability.

(ii) Criteria and Conditons.

(aa) An estuarine location is required.

(bb) No alternative locations exist which are designated as Development in the Lane County Rural Comprehensive Plan.

(cc) Adverse impacts on resources are minimized. These resources are as identified in the Lane County Rural Comprehensive Plan.

(dd) No alternative shoreland locations exist for the portions of the use requiring fill.

(ee) Public need is demonstrated.

(d) (i) Uses. Bridge crossing support structures.

(ii) Criteria.

(aa) An estuarine location is required.

(bb) No alternative locations exist which are designated as Development in the Lane County Rural Comprehensive Plan.

(cc) Adverse impacts on resources are minimized. These resources are as identified in the Lane County Rural Comprehensive Plan.

(dd) Public need is demonstreated.

(ee) The requirements of LC 16.235(5) and (6) are met.

(e) (i) Uses. Erosion control structure, including, but not necessarily limited to, seawalls, bulkheads, groins and jetties.

(ii) Criteria.

(aa) The criteria and conditions specified under Special Uses, LC 16.235(4)(c)ii)(aa)-(ee) above are met.

(bb) The use being protected is water dependent.

(cc) Adverse impacts on water currents, erosion and accretion patterns are minimized as much as feasible.

(dd) Nonstructural solutions are inadequate to protect the use.

(f) (i) Uses. Active estuarine restoration involving dredge or fill.

(ii) Criteria.

(aa) Public need is demonstrated.

(bb) The location and actions proposed for restoration measures are adequate to achieve the stated restoration objective. Restoration objectives shall set forth the original conditions to be restored and the cause of the loss or degradation.

(cc) Any restoration action related to the distribution and abundance of relevant amenities and attributes (e.g., long-term environmental, social or economic values) that have been lost or diminished shall be consistent with the original conditons.

(g) (i) Uses. Riprap and associated minor fills to protect preexisting structures or specified values.

(ii) Criteria.

(aa) The use is required to protect human-made structures existing prior to October 7, 1977 or critical wildlife habitat in adjacent shorelands as identified in the Lane County Rural Comprehensive Plan.

(bb) Natural bank stabilization measures are inadequate.

(h) (i) Uses.

(aa) Recreational use marinas requiring dredge or fill.

(bb) Aquaculture requiring dredge and/or fill.

(ii) Criteria and Conditions.

(aa) The criteria and conditions listed under Special Uses LC 16.235(4)(c)(ii)(aa)-(ee) above are met.

(bb) The use is consistent with the resource capabilities of the area and the purposes of the management unit.

(5) Applicable Natural Features. The boundaries of the /CE-RCP Zone are defined by natural features. The /CE-RCP Zone includes minor tracts of salt marsh, tideflats, eelgrass and algae beds; those not included in the Natural Estuary Zone (/NE-RCP). This zone also includes oyster and clam beds and areas immediately adjacent to developed estuarine areas. These are as defined on the Lane County zoning maps as specified by LC 16.252(8).

(6) Uses Subject to State and Federal Permits.

(a) When State or Federal permits, ~~leases~~, easements or similar types of authorization are also required for a use, subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application ffor all requisite State and/or Federal permits, leases, easements or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special use review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement or similar type of authorization.

(7) Additional Criteria Required for Projects Involving Dredge or Fill. Any use or activity permitted above which requires dredging or filling of the estuary must meet the following criteria:

(a) The use is water dependent.

(b) An estuarine location is required.

(c) A public need is demonstrated.

(d) No alternative upland locations exist.

(e) Adverse impacts on identified estuarine values are minimized.

(f) Mitigation requirements of ORS 541.605 to 541.695 are met.

DEVELOPMENT ESTUARY ZONE (/DE-RCP)

RURAL COMPREHENSIVE PLAN

16.236 Development Estuary Zone (/DE-RCP).

(1) Purpose. The primary purpose of the Development Estuary Zone /DE-RCP is to provide for navigational needs and public, commercial and industrial water dependent uses which require an estuarine location. Uses which are water related or nonwater dependent, nonrelated which do not damage the overall integrity of estuarine resources and values should be considered; provided they do not conflict with the primary purpose of the zone.

(2) Permitted Uses. In the /DE-RCP Zone, the following types of uses are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exception set forth in this Chapter; provided that no such use may be permitted which involves dredging or filling of the estuary.

(a) The following waterborne transportation and associated water dependent activities and uses:

(i) Navigational aides.

(ii) Maintenance dredging of navigation channel.

(b) The following commercial activities and uses which are water dependent:

(i) Marine fueling facilities.

(ii) Marinas

(iii) Loading and unloading facilities such as piers or docks.

(c) The following industrial activities and uses which are water dependent:

(i) Marine construction and repair facilities.

(ii) Log storage.

(d) The following public facilities which are water dependent.

(i) Marinas.

(ii) Docks and piers and other moorages.

(ii) Boat launching ramps.

(3) **Special Uses Approved by the Planning Director.** The following specified uses and no others, subject to approval by the Planning Director pursuant to LC 14.100, upon satisfaction of the applicable criteria. A Resource Capability Determination is required as set forth in LC 16.248, except for major projects requiring an Impact Assessment as set forth in LC 16.249.

(a) (i) Uses. Any water dependent use not specifically authorized in LC 16.236(2) above; provided that no such use may be permitted which involves dredging or filling of the estuary.

(ii) Criteria. The use is water dependent.

(4) Special Uses Approved by the Hearings Official.

The following specified uses and no others, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of the applicable criteria. A Resource Capability Determination is required as set forth in LC 16.248, except for major projects requiring an Impact Assessment as set forth in LC 16.249.

(a) (i) Uses. Flood and erosion control structures, including, but not necessarily limited to, jetties, seawalls, groins and bulkheads.

(ii) Criteria and Conditoins.

(aa) The criteria specified in LC 16.236(5) below are met.

(bb) The structures are designed and sited to minimize erosion and human-induced sedimentation in adjacent areas.

(cc) The structures are designed and sited to minimize adverse impacts on water currents, water quality and fish and wildlife habitat.

(dd) The use or uses to be protected by the proposed structures are water dependent.

(b) (i) Uses. Riprap and associated minor fills to protect human-made structures existing prior to October 7, 1977.

(ii) Criteria and Conditons. Natural bank stabilization measures are inadequate.

(c) (i) Uses. All other uses; provided no dredging or filling is required.

(ii) Criteria.

(aa) A public need is demonstrated.

(bb) The use will not irrevocably limit future use of the area for water dependent commercial or industrial facilities.

(cc) The use will have minimal impact on resources, as identified in the Lane County Rural Comprehensive Plan, in the area affected by the proposed use.

(d) (i) Uses.

(aa) Low-intensity recreation which is water dependent.

(bb) Scientific and educational observation

(cc) Active estuarine restoration.

(dd) Aquaculture.

(ee) Communication facilities.

(ff) Bridge support crossing structures.

(ii) Criteria and Conditions.

(aa) The criteria specified in LC 16.236(5) below are met for any use or activity requiring dredge or fill.

(bb) The use or activity will not irrevocably limit the future or present use of the area for water dependent commercial or industrial facilities.

(cc) The location and actions proposed for restoration measures are adequate to achieve the stated restoration objective. Restoration objectives shall set forth the original conditions to be restored and the cause of the loss or degradation.

(dd) Any restoration action related to the distribution and abundance of relevant amenities and attributes (e.g., long-term environmental, social or economic values) that have been lost or diminished shall be consistent with the original conditoins.

(e) (i) Uses. Any uses specified in LC 16.236(2) or (3) above which involve dredging or filling of the estuary.

(ii) Criteria. The criteria specified in LC 16.236(5) below.

(5) **Additional Criteria Required for Projects Involving Dredge or Fill.** Any use or activity permitted above which requires dredging or filling of the estuary must meet the following criteria:

(a) The use is water dependent.

(b) An estuarine location is required.

(c) A public need is demonstrated.

(d) No alternatige upland locations exist.

(e) Adverse impacts on identified estuarine values are minimized.

(f) Mitigation requirements of ORS 541.605 to 541.695 are met.

(6) Applicable Physical, Geographical or Natural Features. The /DE-RCP Zone is designed to apply to navigation channels, subtidal areas for in-water disposal of dredged material, major navigational appurtenances, deep water areas adjacent to the shoreline and areas of minimal biological significance needed for uses requiring alteration of the estuary. These are as defined on the Lane County zoning maps as specified by LC 16.252(8).

(7) **Uses Subject to State and Federal Permits.**

(a) When State or Federal permits, ~~leases~~, easements or similar types of authorization are also required for a use, subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application for all requisite State and/or Federal permits, leases, easements

or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special use review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement or similar type of authorization.

SIGNIFICANT NATURAL SHORELANDS COMBINING ZONE

(/SN-RCP)

RURAL COMPREHENSIVE PLAN

16.237 Significant Natural Shorelands Combining Zone(SN-RCP).

(1) Purpose. The Significant Natural Shorelands Combining Zone /SN-RCP is applied to those coastal shorelands identified in inventory information and designated generally in the Lane County Rural Comprehensive Plan as possessing a combination of unique physical, social or biological characteristics requiring protection from intensive human disturbances. Those areas serve multiple purposes, among which are education, preservation of habitat diversity, water quality maintenance and provision of intangible aesthethic benefits. The /SN-RCP Zone is applied to prominent aesthetic features, such as coastal headlands and open sand expanses in proximity to coastal waters, sensitive municipal watersheds and significant freshwater marsh areas.

The /SN-RCP Zone provides a procedure by which to define the exact geographical boundaries of the shorelands within the /SN-RCP Zone that require protection beyond that provided by the zone or zones with which the /SN-RCP Zone is combined and imposes additional development requirements within these boundaries.

(2) Intent. The requirements imposed by the /SN-RCP Zone shall be in addition to those imposed by the respective zone or zones with which the /SN-RCP Zone is combined. Where the requirements of the /SN-RCP Zone conflict with the requirements of the zone or zones with which it is combined, the more restrictive requirements shall apply.

(3) **Permitted Uses.** In areas found subject to the requirements of the /SN-RCP Zone by the Preliminary Investigation specified in LC 16.237(11) below, the following structures and uses and no others are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this section. The Forest Practices Act requirements for the maintenance of riparian vegetation shall be enforced to provide shading and filtration and protect wildlife habitat at those sites indicated in the Lane County Coastal Resources Inventory as "riparian vegetation" or "significant wildlife habitat". These areas will be specially evaluated prior to approval of timber harvest plans to ensure the habitat has been adequately considered.

(a) Propagation and harvesting of forest products consistent with the Oregon Forest Practices, Act as permitted by the zone or zones with which the /SN-RCP Zone is combined.

(b) Low-intensity grazing.

(c) Harvesting of wild crops.

(d) Low-intensity recreation.

(e) Shore-secured floating moorage facilities in adjacent water areas.

(f) Dredged material disposal when the /SN-RCP Zone is used in conjunction with the /DMS-RCP Zone.

(g) Mooring buoys, multipurpose-multifamily piling docks and piers, dolphins and other moorage facilities in adjacent lakes or a Development Estuary Zone (/DE-RCP).

(4) Special Uses Approved by the Planning Director. If found subject to the requirements of the /SN-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.237(11) below, the following specified uses and no others are permitted, subject to approval by the Planning Director pursuant to LC 14.100, upon satisfaction of the applicable criteria and determination that the use is consistent with protection of natural values specified in the Coastal Resources Management Plan.

(a) (i) Uses. Single-family homes, mobile homes and such accessory buildings as allowed in the underlying zones.

(ii) Criteria. All requirements set forth in LC 16.237(7),(8) and (9) below are met.

(b) (i) Uses. Single-family dwelling units and mobile homes as allowed in the zone or zones with which the /SN-RCP Zone is combined where existing parcel size is insufficient for the development to meet the development, setback and area requirements set forth in LC 16.237(7),(8) and (9) below.

(ii) Criteria and Conditions.

(aa) The said parcel existed prior to July 24, 1980.

(bb) The structures shall not occupy more than 30 perent of the lot area.

(cc) All applicable height restrictions are observed.

(dd) The parcel is of sufficient size to meet all applicable standards for subsurface sewage disposal.

(ee) Clearance of vegetation on the remainder of the lot area, including that portion in the setback area otherwise permitted for vegetation clearance, is minimized.

(ff) All otherwise applicable requirements of this section are met.

(c) (i) Uses. The following moorage facilities attached or connected to the shorelands and located in the estuary:

(aa) Public or commercial piling-type docks or piers.

(bb) Private, multifamily or multiuse piling-type docks or piers.

(cc) Mooring buoys which are permanently anchored to the estuary floor.

(dd) Dolphins.

(ii) Criteria.

(aa) The moorage facility is located within a Conservation Estuary Zone (/CE-RCP).

(bb) The use is not in violation of the purposes of the respective zone or zones with which the /SN-RCP Zone is combined.

(cc) The use meets all criteria and conditions of the appropriate estuary zone.

(d) (i) Uses. All buildings and uses allowed as permitted uses in the respective zone or zones with which the /SN-RCP Zone is combined, subject to the requirements of this section, except as expressly prohibited by LC 16.237(6) below.

(ii) Criteria.

(aa) The use will not adversely affect the aesthetic and biological characteristics of the site, as identified in the Rural Comprehensive Plan.

(bb) Surface, subsurface and aquifer waters are protected from pollution and sedimentation.

(cc) All requirements set forth in LC 16.237(7),(8) and (9) below are met.

(5) **Special Uses Approved by the Hearings Official.** If found subject to the requirements of the /SN-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.237(11) below, the following specified uses and no others are permitted, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of all applicable criteria and determination that the use is consistent with protection of natural values specified in the Coastal Resources Management Plan.

(a) (i) Uses. Artificial bank stabilization adjacent to estuaries and lakes.

(ii) Criteria.

(aa) The stabilization is necessary to protect structures existing on or before October 7, 1977.

(bb) Natural bank stabilization methods are unfeasible or less appropriate.

(b) (i) Uses. All buildings and uses permitted conditionally or by special use permit in the respective zone or zones with which the /SN-RCP Zone is combined, subject to the development, setback and area requirements of this setion, or except as expressly prohibited by LC 16.237(6) below.

(ii) Criteria and Conditions.

(aa) All applicable criteria provided within the respective zone with which the /SN-RCP Zone is combined are met.

(bb) The use will not adversely affect the aesthetic and biological characteristics of the site as identified in the Rural Comprehensive Plan.

(cc) Surface, subsurface and aquifer waters are protected from polltion and sedimentation. The Lane County Department of Public Works, Land Management Division, shall be the proper consulting agency in this regard.

(dd) All requirements set forth in LC 16.237(7),(8) and (9) below are met.

(c) (1) Uses. Single-family, single-purpose, piling-type docks and piers.

(ii) Criteria.

(aa) No reasonable alternatives exist to the construction of a single-family, single-use pier. Alternatives shall include mooring buoys, public piers within a reasonable distance from the proposed use, cooperative use of existing private piers located within a reasonable distance or nonpiling-type floating piers.

(bb) The dock or pier shall not be located within a Natural Estuary Zone (/NE-RCP).

(cc) If located within the estuary, the use must meet all criteria and conditions of the appropriate estuary zone.

(6) **Prohibited Uses.** If found subject to the requirements of the /SN-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.237(11) below, the following uses are specially prohibited:

(a) Fill in coastal lakes.

(b) Fill in freshwater marsh areas as identified in the Lane County Rural Comprehensive Plan.

(7) **Site and Development Requirements.** If found subject to the requirements of the /SN-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.237(11), the below-specified development requirements shall be in addition to those provided by the respective zone or zones with which the /SN-RCP Zone is combined. These requirements shall not apply to timber harvesting activities. Timber harvesting activities, where permitted by the respective zone with which the /SN-RCP Zone is combined, shall conform to Oregon Forest Practices Act rules.

(a) No more of a parcel's existing vegetation shall be cleared than is necessary for the permitted use,

accessory buildings, necessary access, septic requirements and fire safety requirements.

(b) To the maximum degree possible, building sites shall be located on portions of the site which exhibit the least vegetative cover.

(c) Construction activities occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that area required for the facilities indicated in LC 16.237(7)(a) above. Where vegetation removal beyond that allowed in LC 16.237(7)(a) above cannot be avoided, the site shall be replanted during the next replanting season to avoid sedimentation of coastal waters. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(d) The requirements for parking and vision clearance shall be as provided by the respective zone or zones with which the /SN-RCP Zone is combined.

(e) No topographic modification is permitted within the 100-foot setback area specified by LC 16.237(8) below.

(f) The shoreward half of the setback area specified by LC 16.237(8) below must be left in indigenous vegetation, except where unsurfaced trails are provided.

(g) Cornices, canopies and eaves may extend two feet into the setback area specified by LC 16.237(8) below.

(h) Decks, uncovered porches, stairways and fire escapes may extend a distance of 10 feet into the setback area specified by LC 16.237(8) below.

(i) All mature trees must be retained within the setback area specified by LC 16.237(8) below, except where removal is subject to requirements of the Oregon Forest Practices Act.

(j) Structures shall be sited and/or screened with natural vegetation so as not to impair the aesthetic quality of the site.

(k) The exterior building materials shall blend in color, hue and texture to the maximum amount feasible with the surrounding vegetation and landscape.

(8) **Additional Setback Requirements.** Setbacks shall be as required in the zone or zones with which the /SN-RCP Zone is combined, except for the additional below-specified setback requirements.

(a) Structures shall be set back 100 feet from coastal lakes and the estuary measured at right angles to the high waterline. Use of this 100 feet shall be as specified in LC 16.237(7)(e)-(h) above.

(b) Building setbacks on oceanfront parcels are determined in accord with the rate of erosion in the area to provide reasonable protection to the site through the expected lifetime of the structure. Setback shall be determined by doubling the estimated average annual erosion rate and multiplying that by the expected life of the structure.

(9) **Special Land Division Requirements.** The following criteria shall be met for land divisions on property within the /SN-RCP Zone, based on the Preliminary Investigation in LC 16.237(11) below. These criteria are in addition to minimum area requirements of any zone combined with the /DN-RCP Zone.

(a) For lands within urbanizable areas:

(i) Land divisions must be consistent with shoreland values as identified in the Coastal Resources Management Plan, not adversely impact quality, and not increase hazard to life or property.

(ii) There is a lack of suitable shoreland areas within urban or urbanizable areas.

(10) **Additional Area Requirements.** Land divisions meeting the above-specified criteria are permitted, subject to the minimum area requirements of the respective zone or zones with which the /SN-RCP Zone is combined or 10 acres, whichever is greater.

(11) **Preliminary Investigation.** Any proposal for development within the /SN-RCP Zone shall require a Preliminary Investigation by the Planning Director to determine the specific area to which the requirements of the /SN-RCP Zone shall apply. The requirements of the /SN-RCP Zone shall apply in an area in which the Planning Director determines that one or more of the criteria specified below apply.

(a) Lands which limit control or are directly affected by the hydraulic action of the coastal waterways. These lands are composed of the following:

(i) Floodways and floodway fringe.

(ii) Land lying between the mean high water and mean low watermark of the coastal water bodies.

(iii) Dikes, dams, levees or steep embankments which control the coastal water body.

(iv) Lands along the ocean coast at or below the 26-foot elevation line.

(b) Adjacent areas of geologic instability which are composed of:

Areas of geologic instability in which the instability is attributable to the hydraulic action of the water body.

(ii) Areas of geologic instability which have a direct impact on water quality, water temperature or on shoreline stability.

(iii) Shorelands in dunal areas in which the enforcement of the use restrictions of the /BD-RCP Zone would be inadequate to protect water quality, water temperature or shoreline stability.

(c) Natural or human-made riparian resources. These lands are as follows:

(i) Extend from 10 to 65 feet landward from the mean high water, within which area the existing vegetation serves one or more of the following functions:

(aa) Shading of coastal water body.

(bb) Stabilization of shoreline.

(cc) Habitat for rate or endangered wildlife species.

(dd) Significant riparian vegetation areas as identified in the Lane County Coastal Inventory.

(d) Areas of significant shoreland and wetland biological habitat composed of:

(i) Freshwater marshes identified in the Lane County Rural Comprehensive Plan.

(ii) Areas currently identified by Nature Conservancy and included in the Lane CountyCoastal Inventory as significant natural areas or other areas which the Lane County Board of Commissioners may deem significant natural areas based on new inventory information.

(iii) Habitat. Other than that listed in LC 16.237(11)(c)(i)(cc) above, which supports rare or endangered species.

(e) Areas necessary for water dependent and water related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities and areas having characteristics suitable for aquaculture. These are as identified in the Lane County Rural Comprehensive Plan.

(f) Areas identified in the Lane County -Rural Comprehensive Plan as having exceptional aesthetic or scenic quality derived from or related to the association with coastal water areas.

(g) Coastal headlands, identified in the Lane County Coastal Inventory.

(12) Fees for Preliminary Investigation. To partially defray the expense in performing the Preliminary Investigation, a fee to be based on the scale of development proposal shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

(13) Notification of Preliminary Investigation Determination. The Planning Director shall notify the applicant of the

determination of the Preliminary Investigation by certified mail within 10 days of completion of the Preliminary Investigation. The notification shall include a map at an appropriate scale detailing the portions of the parcel or parcels subject to the requirements of the /SN-RCP Zone, and shall set forth the basis for the determination based on the criteria specified in LC 16.237(11) above.

(14) Appeal to Hearings Official. An applicant may appeal to the Hearings Official the determination of the Preliminary Investigation, and the manner for such appeal shall be as provided by LC 14.500.

(15) Exceptions to Nonconforming Uses. If damaged or destroyed, piling-type docks or piers may be rebuilt, but not expanded , notwithstanding the provisions of LC 16.251.

(16) **Uses Subject to State and Federal Permits.**

(a) When State or Federal permits, ~~leases~~, easements or similar types of authorization are also required for a use, subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application for all requisite State and/or Federal permits, leases, easements or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special use review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement or similar type of authorization.

(d) Proposals subject to special use approval or for building permits for uses otherwise allowed shall be forwarded in writing to the Oregon State Department of Fish and Wildlife within 14 days of final action to evaluate the impact upon habitats and to make recommendations concerning ways to avoid adverse impacts.

(e) Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

(17) **Application of Zone to Federal Lands.** The application of the /SN-RCP Zone shall be held in abeyance until such a time as these lands or portions of these lands may pass into private, State or County ownership. The Rural Comprehensive. Plan designation shall provide appropriate Federal agencies with local recommendation for proper use of these lands.

PRIME WILDLIFE SHORELANDS COMBINING ZONE (/PW-RCP)

RURAL COMPREHENSIVE PLAN

16.238 Prime Wildlife Shorelands Combining Zone (/PW-RCP).

(1) **Purpose.** The Prime Wildlife Shorelands Combining Zone (/PW-RCP) is applied to those coastal shorelands identified in inventory information and designated generally in the Lane County Rural Comprehensive Plan as possessing areas of unique biological assemblages, habitats of rare or endangered species or a diversity of wildlife species. Lands in this zone serve to protect wildlife habitat, water quality, bank stability and provide flood control. The /PW-RCP Zone is applied to areas of riparian vegetation and to the habitat limits of specific species of concern.

The /PW-RCP Zone provides a procedure by which to define the exact geographical boundaries of the shorelands within the /PW-RCP Zone that require protection beyond that provided by the zone or zones with which the /PW-RCP Zone is combined and imposes additional development requirements within these boundaries.

(2) Intent. The requirements imposed by the /PW-RCP Zone shall be in addition to those imposed by the respective zone or zones with which the /PW-RCP Zone is combined. Where the requirements of the /PW-RCP Zone conflict with the requirements of the zone or zones with which it is combined, the more restrictive requirements shall apply.

(3) **Permitted Uses.** In areas found subject to the requirements of the /PW-RCP Zone by the Preliminary Investigation specified by LC 16.238(10) below, the following structures and uses and no others are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this section. The Forest Practices Act requirements for the maintenance of riparian vegetation shall be enforced to provide shading and filtration and protect wildlife habitat at those sites indicated in the Lane County Coastal Resources Inventory as "riparian vegetation" or "significant wildlife habitat". These areas will be specially evaluated prior to approval of timber harvest plans to ensure the habitat has been adequately considered.

(a) Propagation and harvesting of forest products consistent with the Oregon Forest Practices Act as permitted by the zone or zones with which the /PW-RCP Zone is combined.

(b) Low-intensity grazing.

(c) Harvesting of wild crops.

(d) Low-intensity recreation.

(e) Dredged material disposal when the /PW-RCP Zone is used in conjunction with the /DMS-RCP Zone.

(f) Shore-secured floating moorages, mooring buoys, multipurpose-multifamily, piling-docks and piers, dolphins and other moorage facilities in adjacent lakes and Development Estuary Zone (/DE-RCP).

(4) Special Uses Approved by the Planning Director.

If found subject to the requirements of the /PW-RCP Zone based on the results of the Preliminary Investigation specified by LC 16.238(10) below, the following specified uses and no others are subject to approval by the Planning Director pursuant to LC 14.100, upon satisfaction of the applicable criteria and determination that the use is consistent with protection of natural values specified in the Coastal Resources Management Plan.

(a) (i) Uses. Single-family homes, mobile homes and such accessory buildings as allowed in the underlying zone.

(i) Criteria. All requirements set forth in LC 16.238(7),(8) and (9) below are met.

(b) (i) Uses. Single-family dwelling units and mobile homes as allowed in the zone or zones with which the /PW-RCP Zone is combined where existing parcel size is insufficient for the development to meet the development, setback and area requirements set forth in LC 16.238(7),(8) and (9) below.

(ii) Criteria and Conditions.

(aa) The said parcel existed prior to July 24, 1980.

(bb) The structures shall not occupy more than 30 percent of the lot area.

(cc) The parcel is of sufficient size to meet all applicable standards for subsurface

(dd) Clearance of vegetation on the remainder of the lot area, including that portion in the setback area otherwise permitted for vegetation clearance, is minimized.

(ee) All otherwise applicable requirements of this section are met.

(c) (i) Uses. The following moorage facilities attached or connected to the shorelands and located in the estuary.

(aa) Public or commercial piling-type docks or piers.

(bb) Private, multifamily or multiuse piling-type docks or piers.

(cc) Mooring buoys which are permanently anchored to the estuary floor.

(dd) Dolphins.

(ii) Criteria.

(aa) The moorage facility is located within a Conservation Estuary Zone (/CE-RCP).

(bb) The use is not in violation of the purposes of the respective zone or zones with which the /PW-RCP Zone is combined.

(cc) The use meets all criteria and conditions of the appropriate estuary zone.

(d) (i) Uses. All buildings and uses allowed as permitted uses in the respective zone or zones with which the /PW-RCP Zone is combined, subject to the requirements of this section, except as expressly prohibited by LC 16.238(6) below.

(ii) Criteria.

(aa) Maintain the natural quality of surface and subsurface waters.

(bb) Maintain bank stability.

(cc) Avoid sedimentation of coastal waters.

(dd) Maintain a shorefront zone of riparian vegetation at least comparable to that required in LC 16.238(7),(8) and (9) below or greater, if necessary, to provide flood control and preserve important riparian wildlife habitat.

(ee) Avoid disturbance of the remainder of the vegetation cover beyond a point where the disturbance would be a detriment to the wildlife community which utilizes this area.

(ff) Any other applicable criteria provided within the respective zone within which the /PW-RCP Zone is combined.

(gg) All requirements set forth in LC 16.238(7),(8) and (9) below are met.

(5) Special Uses Approved by the Hearings Official If found subject to the requirements of the /PW-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.238(10) below, the following specified uses and no others are subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of all applicable criteria and determination that the use is consistent with protection of natural values specified in the Coastal Resources Management Plan.

(a) (i) Uses. Artificial bank stabilization adjacent to estuaries and lakes.

(ii) Criteria.

(aa) The stabilization is necessary to protect structures existing on or before October 7, 1977.

(bb) Natural bank stabilization methods are unfeasible or less appropriate.

(b) (i) Uses. All buildings and uses permitted conditionally or by special use permit in the respective zone or zones with which the /PW-RCP Zone is combined, subject to the development, setback and area requirements of this section, or except as expressly prohibited by LC 16.238(6) below.

(ii) Criteria.

(aa) Maintain the natural quality of surface and subsurface waters.

(bb) Maintain bank stability.

(cc) Avoid sedimentation of coastal waters.

(dd) Maintain a shorefront zone of riparian vegetation at least comparable to that required in LC 16.238(7),(8) and (9) below or greater, if necessary, to provide flood control and preserve important riparian wildlife habitat.

(ee) Avoid disturbance of the remainder of the vegetation cover beyond a point where the disturbance would be a detriment to the wildlife community which utilizes this area.

(ff) Any other applicable criteria provided within the respective zone within which the /PW-RCP Zone is combined.

(gg) All requirements set forth in LC 16.238(7),(8) and (9) below are met.

(c) (i) Uses. Single-family, single-purpose, piling-type docks and piers.

(ii) Criteria.

(aa) No reasonable alternatives exist to the construction of a single-family, single-use pier. Alternatives shall include mooring buoys, public piers within a reasonable distance from the proposed use, cooperative use of existing private piers located within a reasonable distance or nonpiling type floating piers.

(bb) The dock or pier shall not be located within a Natural Estuary Zone (/NE-RCP).

(cc) If located within the estuary, the use must meet all criteria and conditions of the appropriate estuary zone.

(6) **Prohibited Uses.** If found subject to the requirements of the /PW-RCP Zone, based on the results of the Preliminary Investigations specified by LC 16.238(10) below, the following uses are specifically prohibited:

(a) Fill in coastal lakes.

(b) Fill in freshwater marsh areas as identified in Lane County Rural Comprehensive Plan.

(c) New piling-type piers of any descriptions when adjacent to a Natural Estuary Zone (/NE-RCP).

(d) Dredged material disposal.

(7) **Site and Development Requirements.** If found subject to the requirements of the /PW-RCP Zone, based on the results

of the Preliminary Investigation specified by LC 16.238(10) below, the below-specified development requirements shall be in addition to those provided by the respective zone or zones with which the /PW-RCP Zone is combined. These requirements shall not apply to timber harvesting activities. Timber harvesting activities, where permitted by the respective zone with which the /PW-RCP Zone is combined, shall conform to Oregon Forest Practices Act rules.

(a) No more of a parcel's existing vegetation shall be cleared than is necessary for the permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(b) To the maximum degree possible, building sites shall be located on portions of the site which exhibit the least vegetative cover.

(c) Construction activities occur in such a manner so as to avoid unnecessary excavation and/or removal or existing vegetation beyond that area required for the facilities indicated in LC 16.238(7)(a) above. Where vegetation removal beyond that allowed in LC 16.238(7)(a) above cannot be avoided, the site shall be replanted during the next replanting season to avoid sedimentation of coastal waters. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(d) The requirements for parking and vision clearance shall be as provided by the respective zone or zones with which the /PW-RCP Zone is combined.

(e) No topographic modification is permitted within the 50-foot setback area specified by LC 16.238(8).

(f) The shoreward half of the setback area specified by LC 16.238(8) below must be left in indigenous vegetation, except where unsurfaced trails are provided.

(g) Cornices, canopies and eaves may extend two feet into the setback area specified by LC 16.238(8) below.

(h) Decks, uncovered porches, stairways and fire escapes may extend a distance of 10 feet into the setback area specified by LC 16.238(8) below.

(i) All trees must be retained within the setback area specified by LC 16.238(8) below, except where removal is subject to requirements of the Oregon Forest Practices Act.

(j) Structures shall be sited and/or screened with natural vegetation so as not to impair the aesthetic quality of the site.

(k) The exterior building materials shall blend in color, hue and texture to the maximum amount feasible with the surrounding vegetation and landscape.

(8) Additional Setback Requirements. Setbacks shall be as required in the zone or zones with which the /PW-RCP Zone is combined, except for the additional below-specified setback requirements.

(a) Structures shall be set back 50 feet from coastal lakes and the estuary measured at right angles to the high waterline. Use of this 50 feet shall be as specified in LC 16.238(7)(e)-(h) above.

(b) Building setbacks on oceanfront parcels are determined in accord with the rate of erosion in the area to provide reasonable protection to the site through the expected lifetime of the structure. Setback shall be determined by doubling the estimated average annual erosion rate and multiplying that by the expected life of the structure.

(9) Special Land Division Requirements. The following criteria shall be met for land divisions on property within the /PW-RCP Zone, based on the Preliminary Investigation in LC 16.238(10) below. These criteria are in addition to minimum area requirements of any zone combined with the /PW-RCP Zone.

(a) For lands within urbanizable areas:

(i) Land divisions must be consistent with shoreland values as identified in the Coastal Resources Management Plan, not adversely impact water quality, and not increase hazard to life or property.

(ii) The use will not result in loss of significant wildlife habitat or aesthetic values as identified in the Coastal Resources Management Plan.

(iii) Minimum area requirements for the division of land shall be based on the minimum parcel size in the zone with which the /PW-RCP Zone is combined, or five acres, whichever is greater.

(b) For lands outside urban or urbanizable areas, the above criteria, plus the following:

(I) There is a need which cannot adequately be accommodated on nonshoreland locations.

(ii) There is a lack of suitable shoreland areas within urban or urbanizable areas.

(10) Preliminary Investigation. Any proposal for development within the /PW-RCP Zone shall require a Preliminary Investigation by the Planning Director to determine the specific area to which the requirements of the /PW-RCP Zone shall apply. The requirements of the /PW-RCP Zone shall apply in an area in which the Planning Director determines that one or more of the criteria specified below apply.

(a) Lands which limit control or are directly affected by the hydraulic action of the, coastal waterways. These lands are composed of the following:

appropriate for navigation and port facilities and areas having characteristics suitable for aquaculture. These are as identified in the Lane County Rural Comprehensive Plan.

(f) Areas identified in the Lane County Rural Comprehensive Plan as having exceptional aesthetic or scenic quality derived from or related to the association with coastal water areas.

(g) Coastal headlands identified in the Lane County Coastal Inventory.

(11) Fees for Preliminary Investigation. To partially defray the expense in performing the Preliminary Investigation, a fee to be based on the scale of development proposal shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

(12) Notification of Preliminary Investigation Determination. The Planning Director shall notify the applicant of the determination of the Preliminary Investigation by certified mail within 10 days of completion of the Preliminary Investigation. The notification shall include a map at an appropriate scale detailing the portions of the parcel or parcels subject to the requirements of the /PW-RCP Zone and shall set forth the basis for the determination based on the criteria specified in LC 16.238(10) above.

(13) Appeal to Hearings Official. An applicant may appeal to the Hearings Official the determination of the Preliminary Investigation, and the manner for such appeal shall be as provided by LC 14.500.

(14) Exceptions to Nonconforming Uses. If damaged or destroyed, piling-type docks or piers may be rebuilt, but not expanded, notwithstanding the provisions of LC 16.251.

(15) **Uses Subject to State and Federal Permits.**

(a) When State or Federal permits, ~~leases~~, easements or similar types of authorization are also required for a use, subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application for all requisite State and/or Federal permits, leases, easements or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special use review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement or similar type of authorization.

(d) Proposals subject to special use approval or for building permits for uses otherwise allowed shall be forwarded in writing to the Oregon State Department of Fish and Wildlife within 14 days of final action to evaluate the impact upon habitats and to make recommendations concerning ways to avoid adverse impacts.

(e) Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

(16) Application of Zone to Federal Lands. The application of the /PW-RCP Zone shall be held in abeyance until such a time as these lands or portions of these lands may pass into private, State or County ownership. The Rural Comprehensive Plan designation shall provide appropriate Federal agencies with local recommendation for proper use of these lands.

NATURAL RESOURCES CONSERVATION COMBINING ZONE

(/NRC-RCP)

RURAL COMPREHENSIVE PLAN

16.239 Natural Resources Conservation Combining Zone (/NRC-RCP).

(1) Purpose. The Natural Resources Conservation Zone (/NRC-RCP) is applied to those coastal area shorelands identified in inventory information as timber lands, agricultural lands or shorelands in dune areas. It is the purpose of the /NRC-RCP Zone to encourage long-term human use of these coastal resources in a manner which protects the qualities of coastal water bodies and respects the natural systems. Activities which protect or enhance renewable resources are encouraged, as are recreation and public access to coastal waters.

The /NRC-RCP Zone is specifically designed to carry out the following purposes:

(a) Conservation and maintenance of renewable resources, primarily silvicultural and agricultural.

(b) Protecction of such natural resources as soil and such natural systems as drainage courses and waterways.

(c) Enhancement of renewable resources such as the coastal fisheries and timber industries.

(d) Allow for recreation and public access to coastal waters.

The /NRC-RCP Zone provides a procedure by which to define the exact geographical boundaries of the shorelands within the /NRC-RCP Zone which require protection beyond that provided by the zone or zones with which the /NRC-RCP Zone is combined and imposes additional development requirements within these boundaries.

(2) Intent. The requirements imposed by the /NRC-RCP Zone shall be in addition to those imposed by the respective zone or zones with which the /NRC-RCP Zone is combined. Where the requirements of the /NRC-RCP Zone conflict with the requirements of the zone or zones with which it is combined, the more restrictive requirements shall apply.

(3) **Permitted Uses.** In areas found subject to the requirements of the /NRC-RCP Zone by the Preliminary Investigation specified by LC 16.239(9) below, the following structures and uses and no others are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this section. The Forest Practices Act requirements for the maintenance of riparian vegetation shall be enforced to provide shading filtration and protect wildlife habitat at those sites indicated in the Lane County Coastal Resources Inventory as "riparian vegetation" or "significant wildlife

habitat". These areas will be specially evaluated prior to approval of timber harvest plans to ensure the habitat has been adequately considered.

(a) Propagation and harvesting of forest products consistent with the Oregon Forest Practices Act as permitted by the zone or zones with which the /NRC-RCP Zone is combined.

(b) Agricultural activities and general farming uses and structures as permitted by the zone or zones with which the /NRC-RCP Zone is combined.

(c) Dredged material disposal when the /NRC-RCP Zone is in conjunction with the /DMS-RCP Zone.

(d) Shore-secured floating moorage facilities in adjacent water areas.

(e) Public, commercial or private, multifamily, multiuse piling docks and piers in adjacent lakes and in estuary zones, subject to the requirements of the respective estuary zones.

(f) Boat launching ramps, except where adjacent to a Natural Estuary Zone (/NE-RCP).

(g) Harvesting of wild crops.

(h) Low-intensity recreational activities.

(4) **Special Uses Approved by the Planning Director.** If found subject to the requirements of the /NRC-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.239(9) below, the following specified uses and no others are permitted, subject to approval by the Planning Director pursuant to LC 13.100, upon satisfaction of the applicable criteria.

(a) (i) Uses. Single-family dwelling units and mobile homes and such accessory buildings as allowed in the underlying zone.

(ii) Criteria. All requirements set forth in LC 16.239(6),(7) and (8) below are met.

(b) (i) Uses. Single-family dwelling units and mobile homes as allowed in the zone or zones with which the /NRC-RCP Zone is combined where existing parcel size is insufficient for the development to meet the development, setback and area requirements set forth in LC 16.239(6),(7) and (8) below.

(ii) Criteria.

(aa) The said parcel existed prior to July 24, 1980.

(bb) The structures shall not occupy more than 30 percent of lot area.

(cc) All applicable height restrictions are observed.

(dd) The parcel is of sufficient size to meet all applicable standards for subsurface sewage disposal.

(ee) Clearance of vegetation on the remainder of the lot area, including that portion in the setback area otherwise permitted for vegetation criteria by LC 16.239(6) below is minimized.

(ff) All otherwise applicable requirements of this section are met.

(c) (i) Uses. Single-family, single-purpose docks and piers in adjafent coastal lakes or Development or Conservation Estuary Zones.

(ii) Criteria.

(aa) The applicant shall attest in writing that there are no viable alternatives to the construction of a private, single-family structure. Alternatives include dryland storage, mooring buoys, public piers or the cooperative use of existing private piers.

(bb) The size of the structure is limited to that required for the intended use.

(cc) All requirements of the respective estuary zones are met.

(d) (i) Uses. Removal of individual hazardous trees within the required 50-foot strip of shorefront vegetation specified by LC 16.239(6)(d) below.

(ii) Criteria. It can be clearly determined that the trees are a hazard to life or existing property.

(e) (i) Uses. All permitted buildings and uses allowed in the respective zone with which the /NRC-RCP Zone is combined.

(ii) Criteria.

(aa) All requirements set forth in LC 16.239(6),(7) and (8) below are met.

(bb) Surface, subsurface and aquifer waters are protected from pollution and sedimentation.

(cc) The use will not adversely affect the resource use of adjacent timber or agricultural lands.

(5) **Special Uses Approved by the Hearings Official.**

If found subject to the requirements of the /NRC-RCP Zone, based on the results of the Preliminary. Investigtion specified by LC 16.239(9) below, the following specified uses and no others are permitted, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of all applicable criteria.

(a) (i) Uses. Artificial bank stabilization adjacent to estuaries and lakes

(ii) Criteria.

(aa) The stabilization is necessary to protect structures existing on or before October 7, 1977, or to protect public or private roads, bridges or railroads.

(bb) Natural bank stabilization methods are unfeasible.

(b) (i) Uses. Fills in coastal lakes adjacent to the /NRC-RCP Zone.

(ii) Criteria and Conditions.

(aa) The applicant must submit an analysis of the physical and biological impacts of the proposed fill to be conducted by a person or team of persons qualified by education and experience to conduct such studies.

(bb) Cumulative and direct impacts on water quality must be minimized.

(cc) The benefits of the proposed fill to long-term economic development or improved public recreational use shall outweigh the negative impacts on water quality.

(c) (i) Uses. All buildings and uses allowed conditionally or by special use permit in the respective zone or zones with which the /NRC-RCP Zone is combined, except where expressly prohibited by this sectoin.

(ii) Criteria.

(aa) All applicable criteria provided with the respective zone with which the /NRC-RCP Zone is combined are met.

(bb) The use will not adversely affect the resource use of adjacent designated timber and agricultural lands.

(cc) Surface, subsurface and aquifer waters are protected from pollution and sedimentation.

(dd) All requirements set forth in LC 16.239(6),(7) and (8) below are met. '

(6) **Site and Development Requirements.** If found subject to the requirement of the /NRC-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.239(9) below, the below-specified development requirements shall be in addition to those provided by the respective zone or zones with which the /NRC-RCP is combined. These requirements shall not apply to timber harvesting activities. Timber harvesting activities, where permitted by the respective zone with which the /NRC-RCP Zone is combined, shall conform to Oregon Forest Practices Act rules.

(a) Development on shorelands within dune areas shall not result in clearance of a parcel's existing vegetation in excess of what is necessary for the

construction of the proposed structure or structures, accessory buildings, necessary access, septic requirements and fire safety requirements.

(b) In all cases, vegetative cover shall be retained on lands within the shoreland area. Construction activities shall occur in such a manner as to avoid unnecessary excavation and removal of indigenous vegetation, unless cleared vegetation is to be replaced immediately following the construction activity. Interim soil stabilization methods shall be required during the construction phase of any project.

(c) Thirty feet of indigenous riparian vegetation shall be retained along all coastal water bodies. This shall be measured at right angles from the mean high waterline of the coastal water body.

(d) Existing trees must be retained with an area 50 feet in width measured at right angles from the mean high waterline of the coastal water body.

(e) Cornices, canopies and eaves may extend two feet into the setback area specified by LC 16.239(7) below.

(f) Decks, uncovered porches, stairways and fire escapes may extend a distance of 10 feet into the setback area specified by LC 16.239(7) below.

(g) The requirements for parking and vision clearance shall be as provided by the respective zone or zones with which the /NRC-RCP Zone is combined.

(7) Additional Setback Requirements. Setbacks shall be as required in the zone or zones with which the /NRC-RCP Zone is combined, except for the additional below-specified setback requirements.

(a) Structures shall be set back 50 feet from the coastal lakes measured at right angles to the high waterline. Use of this 50 feet shall be as specified in LC 16.239(6)(c)-(f) above.

(b) Building setbacks on oceanfront parcels are determined in accord with the rate of erosion in the area to provide reasonable protection to the site through the expected lifetime of the structure. Setback shall be determined by doubling the estimated average annual erosion rate and multiplying that by the expected life of the structure.

(8) Special Land Division Requirements. The following criteria shall be met for land divisions on property within the /NRC-RCP Zone, based on the Preliminary Investigation in LC 16.239(9) below. These criteria are in addition to minimum area requirements of any zone combined with the /NRC-RCP Zone.

(a) For lands within urbanizable areas: Land divisions must be consistent with shoreland values as identified in the the Coastal Resources Management Plan,

not adversely impact water quality, and not increase hazard to life or property.

(b) For lands outside urban or urbanizable areas, the above criterion, plus the following:

(i) There is a need which cannot adequately be accommodated on nonshoreland locations.

(ii) There is a lack of suitable shoreland locations within urban or urbanizable areas.

(9) **Preliminary Investigation.** Any proposal for development within the /NRC-RCP Zone shall require a Preliminary Investigation by the Planning Director to determine the specific area to which the requirements of the /NRC-RCP Zone shall apply. The requirements of the /NRC-RCP Zone shall apply in an area in which the Planning Director determines that one or more of the criteria specified below apply:

(a) Lands which limit control or are directly affected by the hydraulic action of the coastal waterways. These lands are composed of the following:

(i) Floodways and the floodway fringe.

(ii) Land lying between the mean high, high water and mean low watermark of coastal water bodies.

(iii) Dikes, dam, levees or steep embankments which control the coastal water body.

(iv) Lands along the ocean coast at or below the 26-foot elevation line.

(b) Adjacent areas of geologic instability are composed of:

(i) Areas of geologic instability in which the instability is attributable to the hydraulic action of the water body.

(ii) Areas of geologic instability which have a direct impact on water quality, water temperature or on shoreline stability.

(iii) Shorelands in dunal areas in which the enforcement of the use restrictions of the /BD-RCP Zone, LC 16.243, would be inadequate to protect water quality, water temperature or shoreline stability.

(c) Natural or human-made riparian resources. These lands are as follows:

(i) Extend from 10 to 65 feet landward from the mean high water, within which area the existing vegetation serves one or more of the following functions:

(aa) Shading of coastal water body.

(bb) Stabilization of shoreline.

(cc) Habitat for rare or endangered wildlife species.

(dd) Significant riparian vegetation areas as identified in the Lane County Coastal Inventory.

(d) Areas of significant shoreland and wetland biological habitat composed of:

(i) Freshwater marshes identified in the Lane County Rural Comprehensive Plan.

(ii) Areas currently identified by Nature Conservancy and included in the Lane County Coastal Investory as significant natural areas or other areas which the Lane County Board of Commissioners may deem significant natural areas based on new inventory information.

(iii) Habitat, other than that listed in LC 16.239(9)(c)(i)(cc) above, which supports rare or endangered species.

(e) Areas necessary for water dependent and water related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities and areas having characteristics suitable for aquaculture. These are as identified in the Lane County Rural Comprehensive Plan.

(f) Areas identified in the Lane County Rural Comprehensive Plan as having exceptional aesthetic or scenic quality derived from or related to the association with coastal water areas.

(g) Coastal headlands identified in the Lane County Coastal Inventory.

(10 **Fees for Preliminary Investigation.** To partially de- fray the expense in performing the Preliminary Investigation, a fee to be based on the scale of development proposal shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

(11) Notification of Preliminary Investigation Determination. The Planning Director shall notify the applicant of the determination of the Preliminary Investigation by certified mail within 10 days of completion of the Preliminary Investigation, The notification shall include a map at an appropriate scale detailing the portions of the parcel or parcels, subject to the requirements of the /SN-RCP Zone, and shall set forth the basis for the determination based on the criteria specified in LC 16.239(9) above.

(12) Appeal to Hearings Official. An applicant may appeal to the Hearings Official the determination of the Preliminary Investigation, and the manner for such appeal shall be as provided by LC 14.500.

(13) **Exceptions to Nonconforming Uses.** If damaged or destroyed, piling-type docks or piers may be rebuilt, but not expanded, notwithstanding the provisions of LC 16.251.

(14) Uses Subject to State and Federal Permits.

(a) When State or Federal permits, leases, easements or similar types of authorization are also required for a use subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application for all requisite State and/or Federal permits, leases, easements or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special use review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement or similar type of authorization.

(d) Where applications for development are received for lands zoned for timber production, said applications shall be referred to the District Forester of the Oregon Department of Forestry. The District Forester shall have a 14-day "review and comment" period to evaluate the impact of the proposed development on the timber productivity of the parcel and adjacent lands.

(e) Improvements to ocean shore areas (as defined in ORS 390.065) are subject to a permit from the Oregon Department of Transportation.

(15) Application of Zone to Federal Lands. The application of the /NRC-RCP Zone shall be held in abeyance until such a time as these lands or portions of these lands may pass into private, State or County ownership. The Rural Comprehensive Plan designation shall provide appropriate Federal agencies with local recommendation for propery use of these lands.

RESIDENTIAL DEVELOPMENT SHORELANDS COMBINING ZONE

(/RD-RCP

RURAL COMPREHENSIVE PLAN

16.240 Residential Development Shorelands Combining Zone(RD-RCP).

(1) **Purpose.** The Residential Development Combining Zone (/RD-RCP) is applied to coastal shorelands areas suited to residential development within urbanizable areas and to lands outside of urbanizable areas which have been committed to residential use by their development pattern, including actual development and the platting of subdivision lots. Within these areas, the /RD-RCP Zone is designed to ensure:

(a) Development in a manner that will protect water quality.

(b) Preservation and enhancement of riparian vegetation.

(c) Provision of recreational use of shorelands.

(d) Diversification of shorelands uses.

The /RD-RCP Zone provides a procedure by which to define the exact geographical boundaries of the shorelands within the /RD-RCP Zone that require protection beyond that provided by the zone or zones with which the /RD-RCP Zone is combined and imposes additional development requirements within these boundaries.

(2) Intent. The requirements imposed by the /RD-RCP Zone shall be in addition to those imposed by the respective zone or zones with which the /RD-RCP Zone is combined. Where the requirements of the /RD-RCP Zone conflict with the requirements of the zone or zones with which it is combined, the more restrictive requirements shall apply.

(3) **Permitted Uses.** In areas found subject to the requirements of the /RD-RCP Zone by the Preliminary Investigation specified by LC 16.240(10) below, the following structures and uses and no others are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this section:

(a) Shore-secured floating moorage facilities in adjacent estuaries and lakes.

(b) Private multifamily, multiuse type docks and piers in adjacent lakes and estuarine areas, if permitted by the respective estuary zone.

(c) Dredged material disposal when the /RD-RCP Zone is used in conjunction with the /DMS-RCP Zone.

(d) Commercial or public docks and piers; provided such uses conform to the purposes of the zone or zones with which the /RD-RCP Zone is combined and provided such uses conform to the requirements of the respective estuary zone.

(e) Boat launching ramps, except where adjacent to a Natural Estuary Zone (/NE-RCP).

(f) Harvesting of wild crops.

(g) Low intensity recreational activities.

(4) Special Uses Approved by the Planning Director. If found subject to the requirements of the /RD-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.240(10) below, the following specified uses and no others are permitted, subject to approval by the Planning Diretor pursuant to LC 14.100, upon satisfaction of the applicable criteria.

(a) (i) Uses. Single-family homes, mobile homes and such accessory buildings as allowed in the underlying zones.

(ii) Criteria. All requirements set forth in LC 16.240(7),(8) and (9) below are met.

(b) (i) Uses. Single-family dwelling units and mobile homes as allowed in the zone or zones with which the /RD-RCP Zone is combined, but where existing parcel size is insufficient for the development to meet the development, setback and area requirements set forth in LC 16.240(7),(8) and (9) below.

(ii) Criteria and Conditions.

(aa) The said parcel existed prior to July 24, 1980.

(bb) The structures shall not occupy more than 30 percent of the lot area.

(cc) All applicable height restrictions are observed.

(dd) The parcel is of sufficient size to meet all applicable standards for subsurface sewage disposal.

(ee) Clearance of vegetation on the remainder of the lot area, including that portion in the setback area otherwise permitted for vegetation clearance, is minimized.

(ff) All otherwise applicable requirements of this section are met.

(c) (i) Uses. All buildings and uses allowed as permitted uses in the respective zone or zones with which the /RD-RCP Zone is combined, subject to the requirements of this section, except as expressly prohibited by LC 16.240(6) below.

(ii) Criteria.

(aa) Surface, subsurface and aquifer waters are protected from pollution and sedimentation. The Lane County Water Pollution Control Division shall be the proper consulting agency in this regard.

(bb) All requirements set forth in LC 16.240(7),(8) and (9) below are met.

(d) (i) Uses. Single-family, single-purpose docks and piers in adjacent coastal lakes and estuary. (No piling-type piers are permitted in the Natural Estuary Zone (/NE-RCP)).

(ii) Criteria.

(aa) The applicant shall attest in writing, subject to confirmation by the Planning Director, that there are no viable alternatives to the construction of a private, single-family pier or dock structure. Alternatives include dryland storage, mooring buoys, public piers or the cooperative use of existing private piers.

(bb) The size of the structure is limited to that required for the intended use.

(cc) All requirements of the respective estuary zone are met.

(e) (i) Uses. Removal of individual hazardous trees within the required 50-foot strip of shorefront vegetation specified by LC 16.240(7).

(ii) Criteria. It can be clearly determined that the trees are a hazard to life or existing property.

(5) **Special Uses Approved by the Hearings Official.** If found subject to the requirements of the /RD-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.240(10) below, the following specified uses and no others are permitted, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of all applicable criteria.

(a) (i) Uses. Artificial bank stabilization adjacent to estuaries and lakes.

(ii) Criteria.

(aa) The stabilization is necessary to protect structures existing on or before October 7, 1977.

(bb) Natural bank stabilization methods are unfeasible.

(b) (i) Uses. All buildings and uses permitted conditionally or by special use permit in the respective zone or zones with which the /RD-RCP Zone is combined, subject to the development, setback and area requirements of this section, or except as expressly prohibited by LC 16.240(6) below.

(ii) Criteria.

(aa) All applicable criteria provided within the respective zone or zones with which the /RD-RCP Zone is combined are met.

(bb) Surface, subsurface and aquifer waters are protected from pollution and sedimentation.

(cc) All requirements set forth in LC 16.240(7),(8) and (9) below are met.

(6) Prohibited Uses. The following uses or activities are expressly prohibited in the /RD-RCP Zone: Fills in coastal lakes adjacent to the /RD-RCP Zone.

(7) Site and Development Requirements. If found subject to the requirements of the /RD-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.240(10) below, the below-specified development requirements shall be in addition to those provided by the respective zone or zones with which the /RD-RCP Zone is combined. These requirements shall not apply to timber harvest activities where the underlying zone allows timber harvesting as a permitted use. In such areas, timber harvesting activities shall conform to Oregon Forest Practices Act rules.

(a) Development on shorelands within dune areas shall not result in clearance of a parcel's existing vegetation in excess of what is necessary for the construction of the structures, necessary access, septic requirements and fire safety requirements.

(b) In all cases vegetative cover shall be retained on lands within the shoreland area. Construction activities shall occur in such a manner as to avoid unnecessary excavation and removal of indigenous vegetation, unless cleared vegetation is to be replaced immediately following the construction activity. Interim soil stabilization methods shall be required during the construction phase of any project.

(c) Within the setback area specified under LC 16.240(8) below, all indigenous riparian vegetation, except that removed to provide paths to the water body, shall be retained within an area 30 feet in width measured at right angles from the mean high waterline of the water body. For the remainder of the required setback area, brush may be removed, but trees shall be retained.

(d) Where riparian vegetation does not exist along the shoreline of the estuary or coastal lakes, an area 30 feet in width, measured at right angles to the shoreline, shall be planted in indigenous vegetation or other vegetation which will aid in bank stabilization and prevent sedimentation of the water body. Areas necessary for access to the water body are exempted from this requirement. Continued maintenance of this vegetation shall be the responsibility of the landowner.

(e) Cornices, canopies and eves may extend two feet into the setback area specified by LC 16.240(8) below.

(f) Decks, uncovered porches, stairways and fire escapes may extend a distance of 10 feet into the setback area specified by LC 16.240(8) below.

(g) The requirements for parking and vision clearance shall be as provided by the respective zone or zones with which the /RD-RCP Zone is combined.

(8) **Additional Setback Requirements.** Setbacks shall be as required in the zone or zones with which the /RD-RCP Zone is combined, except for the additional below-specified setback requirements.

(a) Structures shall be set back 50 feet from coastal lakes and the estuary measured at right angles to the high waterline. Use of this 50 feet shall be as specified in LC 16.240(7)(c)-(f) above.

(b) Building setbacks on oceanfront parcels are determined in accord with the rate of erosion in the area to provide reasonable protection to the site through the expected lifetime of the structure. Setback shall be determined by doubling the estimated average annual erosion rate and multiplying that by the expected life of the structure.

(9) **Special Land Division Requirements.** The following criteria shall be met for land divisions on property within the /RD-RCP Zone, based on the Preliminary Investigation in LC 16.240(10) below. These criteria are in addition to minimum area requirements of any zone combined with the /RD-RCP Zone.

(a) For lands within urbanizable areas: Land divisions must be consistent with shoreland values as identified in the Coastal Resources Management Plan, not adversely impact water quality, and not increase hazard to life or property.

(b) For lands outside urban or urbanizable areas, the above criterion, plus the following:

(i) There is a need which cannot adequately be accommodated on nonshoreland locations.

(ii) There is a lack of suitable shoreland locations within urban or urbanizable areas.

(10) **Preliminary Investigation.** Any proposal for development within the /RD-RCP Zone shall require a Preliminary Investigation by the Planning Director to determine the specific area to which the requirements of the /RD-RCP Zone shall apply. The requirements of the /RD-RCP Zone shall apply in an area in which the Planning Director determines that one or more of the criteria specified below apply.

(a) Lands which limit control or are directly affected by the hydraulic action of the coastal waterways. These lands are composed of the following:

(i) Floodways and the floodway fringe.

(ii) Land lying between the mean high, high water and mean low watermark of coastal water bodies.

(iii) Dikes, dams, levees or steep embankments which control the coastal water body.

(iv) Lands along the ocean coast at or below the 26-foot elevation line.

(d) Adjacent areas of geologic instability which are composed of:

(i) Areas of geologic instability in which the instability is attributable to the hydraulic action of the water body.

(ii) Areas of geologic instability which have a direct impact on water quality, water temperature or on shoreline stability.

(iii) Shorelands in dunal areas in which the enforcement of the use restrictions of the /BD-RCP Zone, LC 16.243, would be inadequate to protect water quality, water temperature or shoreline stability.

(c) Natural or human-made riparian resources. These lands are as follows:

(i) Extend from 10 to 65 feet landward from the mean high water, within which area the existing vegetation serves one or more of the following functions:

(aa) Shading of coastal water body.

(bb) Stabilization of shoreline.

(cc) Habitat for rare or endangered wildlife species.

(dd) Significant riparian vegetation areas as identified in the Lane County Coastal Inventory.

(d) Areas of significant shoreland and wetland biological habitat composed of:

(i) Freshwater marshes identified in the Lane County Rural Comrehensive Plan.

(ii) Areas currently identified by Nature Conservancy and included in the Lane County Coastal Inventory as significant natural areas or other areas which the Lane County Board of Commissioners may deem significant natural areas based on new inventory information.

(iii) Habitat, other than that listed in LC 16.240(10)(c)(i)(cc) above, which supports rare or endangered species.

(e) Areas necessary for water dependent and water related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities and areas having characteristics suitable for aquaculture. These are as identified in the Lane County Rural Comprehensive Plan.

(f) Areas identified in the Lane County Rural Comprehensive Plan as having exceptional aesthetic or

scenic quality derived from or related to the association with coastal water areas.

(g) Coastal headlands identified in the Lane County Coastal Inventory.

(11) Fees for Preliminary Investigation. To partially de- fray the expense in performing the Preliminary Investigation, a fee to be based on the scale of development proposal shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

(12) Notification of Preliminary Investigation Determination. The Planning Director shall notify the applicant of the determination of the Preliminary Investigation by certified mail within 10 days of completion of the Preliminary Investigation. The notification shall include a map at an appropriate scale detailing the portions of the parcel or parcels subject to the requirements of the /RD-RCP Zone, and shall set forth the basis for the determination bsed on the criteria specified in LC 16.240(10) above.

(13) Appeal to the Hearings Official. An applicant may appeal to the Hearings Official the determination of the Preliminary Investigation, and the manner for such appeal shall be as provided by LC 14.500.

(14) Exceptions to Nonconforming Uses. If damaged or destroyed, piling-type docks or piers may be rebuilt, but not expanded, notwithstanding the provisions of LC 16.251.

(15) **Uses Subject to State and Federal Permits.**

(a) When State or Federal permits, ~~leases~~, easements or similar types of authorization are also required for a use, subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application for all requisite State and/or Federal permnits, leases, easements or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special use review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement or similar type of authorization.

(d) Improvements to ocean shore areas (as defined in ORS 390.605) are subject to a permit from the Oregon Department of Transportation.

(16) **Application of Zone to Federal Lands.** The application of the /RD-RCP Zone shall be held in abeyance until such a time as these lands or portions of these lands may pass into private,

State or County ownership. The Rural Comprehensive Plan designation shall provide appropriate Federal agencies with local recommendation for proper use of these lands.

SHORELANDS MIXED DEVELOPMENT COMBINING ZONE

(/MD-RCP

RURAL COMPREHENSIVE PLAN

16.241 Shorelands Mixed Development Combining Zone (/MD-RCP).

(1) **Purpose.** The Shorelands Mixed Development Combining Zone (/MD-RCP) is applied to those coastal shorelands which are recognized in the Lane County Rural Comprehensive Plan and supportive technical data as being all or partially committed to commercial and industrial uses. The proximity of these lands to the dredged channel of the Siuslaw River dictates that they be preserved for the expansion of existing water dependent and water related commercial or industrial uses; provided such uses cannot be accommodated within the urbanizable or urbanized area of the City of Florence.

The /MD-RCP Zone provides a procedure by which to define the exact geographical boundaries of the shorelands within the /MD-RCP Zone that require protection beyond that provided by the zone or zones with which the /MD-RCP Zone is combined, and imposes additional development requirements within those boundaries.

In addition, the /MD-RCP Zone is specifically intended to carry out the following purposes:

(a) Provision, adjacent to deep water environments or shoreland sites for use by water dependent and water related commercial and industrial uses.

(b) Protection of previously existing water dependent and water related commercial and industrial sites in shoreland areas.

(c) Provision of opportunities for nonwater dependent or nonwater related uses within the parameters of the Lane County Rural Comprehensive Plan and Statewide planning requirements.

(d) Protection of coastal waters and avoidance of geologic and hydrologic hazards.

(2) Intent. The requirements imposed by the /MD-RCP Zone shall be in addition to those imposed by the respective zone or zones with which the /MD-RCP Zone is combined. Where the requirement of the /MD-RCP Zone conflict with the requirement of the zone or zones with which it is combined, the more restrictive requirements shall apply. Nonwater dependent or nonrelated uses shall only be allowed if the parcel in question has been demonstrated unsuited for water dependent or water related uses.

(3) **Permitted Uses.** In areas found subject to, the requirements of the /MD-RCP Zone by the Preliminary Investigation specified by LC 16.241(9) below, the following structures and uses and no others are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this section:

(a) The following boat moorage and storage facilities:

(i) Dry land storage.

(ii) Shore-secured floating moorage facilities, mooring buoys, piling-type piers and launch ramps; provided such facilities are located within adjacent Development Estuary Zones (/DE-RCP) or a lake.

(b) The three wood processing facilities identified and found to be water dependent in the Coastal Goals Compliance Report element of the Lane County Rural Comprehensive Plan.

(4) Special Uses Approved by the Planning Director. If found subject to the requirements of the /MD-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.241(9) below, the following specified uses and no others are permitted subject to approval by the Planning Director pursuant to LC 14.100, upon satisfaction of the applicable criteria.

(a) (i) Uses. Water dependent and water related commercial and industrial uses outside of urban and urbanizable areas.

(ii) Conditions and Criteria.

(aa) Uses cannot be accommodated within an urban or urbanizable area.

(bb) The site has the potential for water dependent and water related uses.

(cc) Short-term economic gain or convenience in development shall be evaluated in relation to potential long-term effects on the estuary and shoreland, as well as the long-term economy of the area.

(dd) Visual attractiveness of design and layout is considered.

(ee) Maintain or encourage riparian vegetation for erosion control, bank stabilization, maintenance of water quality and temperature aesthetics where feasible.

(b) (i) Uses. New single-family dwelling-units and mobile homes or other residential units and accessory buildings as allowed in the underlying zones outside of urban and urbanizable areas.

(ii) Criteria and Conditions.

(aa) The parcel is unsuited to water dependent or water related uses.

(bb) All requirements set forth in LC 16.241(7),(8) and (9) below are met.

(c) (i) Uses. The following moorage facilities attached or connected to the shorelands and located in other than a Development Estuary Zone (/DE-RCP) or a lake.

(aa) Public or commercial piling-type docks or piers.

(bb) Private, multifamily or multiuse piling-type docks or piers.

(cc) Mooring buoys which are permanently anchored to the estuary floor.

(dd) Dolphins.

(ii) Criteria.

(aa) The moorage facility meets the requirements of the respective estuary zone.

(bb) The use is not in violation of the purposes of the respective zone or zones with which the /MD-RCP Zone is combined.

(d) (i) Uses. All permitted buildings and uses allowed in the respective zone with which the /MD-RCP Zone is combined, except as may be provided otherwise by the provisions of LC 16.241(3),(4),(5) and (6) above and below.

(ii) Criteria and Conditions. The use is water dependent or water related, or if the parcels are unsuited to water dependent uses, then uses which are nondependent, nonrelated, conforming to the requirements of the underlying zone and the requirements of LC 16.241(3),(4),(5) and (6) above and below.

(5) **Special Uses Approved by the Hearings Official.** If found subject to the requirements of the /MD-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.241(9) below, the following specified uses and no others are permitted, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of all applicable criteria.

(a) (i) Uses. Artificial bank stabilization.

(ii) Criteria.

(aa) NAtural erosion processes are threatening structures existing as of October 7, 1977, or is required to protect a water dependent use.

(bb) Natural bank stabilization methods are deemed unfeasible or less appropriate.

(b) (i) Uses. Filling coastal lakes or estuary adjacent to /MD-RCP Zone.

(ii) Criteria and Conditions.

(aa) Cumulative effects of all such fills shall be considered.

(bb) The fill is required to protect a water dependent use from erosion.

(cc) All requirements set forth in LC 16.241(7)(b) and (c) and LC 16.241(8) and (9) below apply.

(dd) If the fill meets the requirements of the respective estuary zone and the requirements of State and Federal agencies.

(c) (i) Uses. All buildings and uses permitted conditionally or by special use permit in the respective zone or zones with which the /MD-RCP Zone is combined, subject to the development, setback and area requirements of this section, or except as expressly prohibited by LC 16.241(6) below.

(ii) Criteria. The use is water dependent or water related or, if the parcel(s) are unsuited to water dependent uses, then uses which are nondependent, nonrelated, conforming to the requirements of the underlying zone and the requirements of LC 16.241(3),(4),(5) and (6) above and below.

(6) **Determination of Land Suitable for Water Dependent/ Water Related Uses.** The following criteria shall be used to determine the suitability of land found subject to the requirements of the /MD-RCP Zone, based on the results of the Preliminary Investigation, for water dependent, water related uses. Land not possessing one or more of the following characteristics shall be considered unsuitable for such uses:

(a) Land adjacent to deep water close to shore with supporting land transport facilities suitable for ship and barge facilities.

(b) Aquaculture suitability.

(c) Protected areas adjacent to shore, subject to scour which would require little dredging for marina use.

(d) Potential for high intensity recreational use of water body and existing riparian resources. Such areas include those areas used traditionally for high intensity recreation or exceptional aesthetic resources.

(7) **Site and Development Requirements.** If found subject the requirements of the /MD-RCP Zone, based on the results of the Preliminary Investigation specified by LC 16.241(9) below, the below-specified development requirements shall be in addition to those provided by the respective zone or zones with which the /MD-RCP Zone is combined. These requirements shall not apply to timber harvesting activities. Timber harvesting activities, where permitted by the respective zone with which the /MD-RCP Zone is combined, shall conform to Oregon Forest Practices Act rules.

(a) Riparian vegetation shall be maintained, or encouraged to promote bank stabilization, maintain water quality and temperature, reduce erosion and for general aesthetics, except where unfeasible in connection with a water dependent or water related use.

(b) The applicant must submit a complete analysis of all physical and biological impacts upon the shorelands area and upon coastal waters and water

resources. The report shall consider, at a minimum, the critical relationships which exist between coastal shorelands and coastal water resources and the potential for geological and hydrological hazards.

(c) The benefits of the proposed activity to the long-term economic development or improved public recreational use shall outweigh the negative impacts on water quality, temperature and resources, bank stabilization, erosion control and general aesthetics.

(8) Special Land Division Requirements. The following criteria shall be met for land divisions on property within the /MD-RCP Zone, based on the Preliminary Investigation in LC 16.241(9) below. These criteria are in addition to minimum area requirements of any zone combined with the /MD-RCP Zone.

(a) For lands within urbanizable areas: land divisions must be consistent with shoreland values as identified in the Coastal Resources Management Plan, not adversely impact water quality, and not increase hazard to life or property.

(b) For lands outside urban or urbanizable areas, the above criterion, plus the following:

(i) There is a need which cannot adequately be accommodated on nonshoreland locations.

(ii) There is a lack of suitable shoreland locations within urban or urbanizable areas.

(9) Preliminary Investigation. Any proposal for development within the /MD-RCP Zone shall require a Preliminary Investigation by the Planning Director to determine the specific area to which the requirements of the /MD-RCP Zone shall apply. The requirements of the /MD-RCP Zone shall apply in an area in which the Planning Director determines that one or more or the criteria specified below apply:

(a) Lands which limit control or are directly affected by the hydraulic action of the coastal waterways. These lands are composed of the following:

(i) Floodways and floodway fringe.

(ii) Land lying between the mean high, high water andmean low watermark of coastal water bodies.

(iii) Dikes, dams, levees or steep embankments which control the coastal water body.

(iv) Lands along the ocean coast at or below the 26-foot elevation line.

(b) Adjacent areas of geologic instability which are composed of;

(i) Areas of geologic instability in which the instability is attributable to the hydraulic action of the water body.

(ii) Areas of geologic instability which have a direct impact on water quality, water temperature or on shoreline stability.

(iii) Shorelands in dunal areas in which the enforcement of the use restrictions of the /BD-RCP Zone, LC 16.243, would be inadequate to protect water quality, water temperature or shoreline stability.

(c) Natural or human-made riparian resources. These lands are as follows:

(i) Extend from 10 to 65 feet landward from the mean high water, within which area the existing vegetation serves one or more of the following functions:

(aa) Shading of coastal water body.

(bb) Stabilization of shoreline.

(cc) Habitat for rare or endangered wildlife species.

(dd) Significant riparian vegetation areas as identified in the Lane County Coastal Inventory.

(d) Areas of significant shoreland and wetland biological habitat, composed of:

(i) Freshwater marshes identified in the Lane County Rural Comprehensive Plan.

(ii) Areas currently identified by Nature Conservancy and included in the Lane County Coastal Inventory as significant natural areas or other areas which the Lane County Board of Commissioners may deem significant natural areas based on new inventory information.

(iii) Habitat, other than that listed in LC 16.241(9)(c)(i)(cc) above, which supports rare or endangered species.

(e) Areas necessary for water dependent and water related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities and areas having characteristics suitable for aquaculture. These are as identified in the Lane County Rural Comprehensive Plan.

(f) Areas identified in the Lane County Rural Comprehensive Plan as having exceptional aesthetic or scenic quality derived from or related to the association with coastal water areas.

(g) Coastal headlands identified in the Lane County Coastal Inventory.

(10) Fees for Preliminary Investigation. To partially de- fray the expense in performing the Preliminary Investigation, a fee to be based on the scale of development proposal shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

DREDGE MATERIAL/MITIGATION SITE COMBINING ZONE

(/DMS-RCP)

RURAL COMPREHENSIVE PLAN

16.242 Dredge Material/Mitigation Site Combining Zone (/DMS-RCP)

(1) Purpose. The Dredge Material/Mitigation Site Combining Zone (/DMS-RCP) is intended for application to all dredge material disposal sites or mitigation sites within the Siuslaw Estuary as identified in the Lane County Rural Comprehensive Plan. The purpose of the /DMS-RCP Zone is to ensure that sites designated for use for dredged material disposal or mitigation are not developed in a manner which would preclude that use. The /DMS-RCP Zone may only be applied, where appropriate, in combination with the three Estuary Zones (/NE-RCP, /CE-RCP, or /DE-RCP), or with the Significant Natural (/SN-RCP), Natural Resources Conservation (/NRC-RCP), Residential Development (/RD-RCP) and Mixed Development (/MD-RCP). Shorelands Combining Zones and the underlying zones with which the Shorelands zones are combined.

(2) Permitted Uses and Buildings.

(a) Farm uses as allowed in the respective zone or zones with which the /DMS-RCP Zone is combined.

(b) Propagation and harvesting of forest products as allowed in the respective zone or zones with which the /DMS-RCP Zone is combined.

(c) Dredged material deposition; provided, however, such activity is limited to sites identified for that purpose in the Siuslaw River Dredged Material Disposal Plan.

(d) Activities in conjunction with a mitigation plan approved by the Division of State Lands; provided, however, such activities are limited to sites identified for that purpose by the Coastal Resources Management Plan.

(3) **Special Uses Subject to Further Review.** Farm or forestry uses, as allowed in the underlying zone, are permitted without further review. All other uses which are permitted in the underlying zone are subject to approval of the Planning Director as provided for in LC 14.100, based on the criteria below. All uses which are Conditional or Special Uses in the underlying zone are subject to approval of either the Planning Commission or the Hearings Official (whichever body hears the Special Use) as provided for in LC 14.300, based on the criteria below. The following criteria apply to review of a use in the /DMS-RCP, Zone:

(a) The proposed use is temporary in nature or design and will be removed if or when the site is required for the purposes of this zone; or

(b) The proposed use is designed or sited on the parcel so as not to limit or preclude future use of the parcel for dredged material disposal as indicated in the Siuslaw River Dredged Material Disposal Plan, or for a potential mitigation project.

(4) Stabilization of Dredged Materials. It shall be the responsibility of the party depositing dredged materials on a site to stabilize the site with appropriate vegetation when the materials are adequately drained.

(5) Responsibility to Acquire Mitigation/Restoration Sites. It shall not be the responsibility of Lane County to acquire for use sites to mitigate for actions for which other agencies or persons are responsible, including the dredging of the navigation channel and development of the estuary. It shall also not be the responsibility of Lane County to acquire sites for restoration to the estuary.

BEACHES AND DUNES COMBINING ZONE (/BD-RCP)

RURAL COMPREHENSIVE PLAN

16.243 Beaches and Dunes Combining Zone (/BD-RCP).

(1) **Purpose.** The Beaches and Dunes Combining Zone (/BD-RCP) is intended to be used in conjunction with the underlying zones in all coastal beach and dune areas in order to:

(a) Ensure the protection and conservation of coastal beach and dune resources.

(b) To prevent economic loss by encouraging development consistent with the natural capability of beach and dune landforms.

(c) To provide for clear procedures by which the natural capability of dune landforms can be assessed prior to development.

(d) To prevent cumulative damage to coastal dune resources due to the incremental effects of development.

(e) To provide for such protection of beach and dune resources above and beyond that provided by the underlying zone.

(2) Intent. The requirements imposed by the /BD-RCP Zone shall be in addition to those imposed by the underlying zone. Where the requirements of the /BD-RCP Zone conflict with those of the underlying zone, the more restrictive requirements shall apply.

(3) Permitted Uses. All permitted buildings and uses allowed in the respective zone with which the /BD-RCP Zone is combined, except as may be provided otherwise by the provisions of LC 16.243(3),(4) and (5) below.

(4) Special Uses Approved by the Hearings Official. The following specified uses or activities and no others, subject to approval by the Hearings Official pursuant to LC 14.300, upon satisfaction of the applicable criteria:

(a) (i) Uses. Buried fuel tanks.

(ii) Criteria.

(aa) The tanks are entirely free of leaks and have an impermeable coating.

(bb) The tank is located, to, the greatest extent feasible, in a well-drained area.

(cc) The tank is not located in active foredunes, on other conditionally stable foredunes which are subject to ocean undercutting or wave overtopping, and on deflation plains subject to ocean flooding.,

(b) (i) Uses. Commercial removal of sand..

(ii) Criteria.

(aa) The area is not an ocean beach.

(bb) Historic surplus accumulations of sand exist.

(ii) Criteria and Conditions.

(aa) Applicable criteria provided within the respective zone with which the /BD-RCP Zone is combined.

(bb) All other provisions of this section.

(5) Prohibited Development Areas. No development, with the exception of minimal development, shall be permitted on the following dune landforms:

(a) Beaches, except as provided for in LC 16.243(4) above.

(b) Foredunes, if subject to wave overtopping or ocean undercutting.

(c) Active dune forms.

(d) Nearshore deflation plain.

The prohibition of development of active dune areas is not intended to prohibit the stabilization of open sand areas with appropriate pioneer and successional species, thereby removing these lands from the active dune classification.

(6) **Uses Subject to State and Federal Permits.**

(a) When State or Federal permits, ~~leases~~, easements or similar types of authorization are also required for a use, subject to special use approval, information required as part of the State or Federal permit process may be required to be made available to the County for the determination that applicable criteria are satisfied.

(b) Applicants shall make application for all requisite State and/or Federal permits, leases, easements or similar type of authorization within 10 days following application for a special use approval in order to avoid unnecessary delays caused by the unavailability of State or Federal processing information which may be deemed necessary for special permit review.

(c) Any use authorized by the provisions of this zone shall also require the securing of any necessary State or Federal permit, lease, easement of similar type of authorization.

(7) **Coastal Shore Setback Requirements.** Any development, with the exception of development provided for as special uses in LC 16.243(4) above, which is permitted adjacent to ocean beaches must be setback from the mean high tide line a minimum of 50 feet measured horizontally. This setback may be increased if the Preliminary Investigation indicates hazard to the site due to:

(a) Low elevation of the site with respect to potential for wave action.

(b) Instability of dune landforms protecting the site from wave action.

(8) **Additional Site and Development Requirements.** The following requirements apply to all development, except the

harvesting of timber as allowed by the Zone with which the /BD-RCP Zone is combined. Timber harvesting activities shall conform to Oregon Forest Practices Act rules regulating logging practices in dune areas:

(a) Development shall not result in the clearance of natural vegetation in excess of that which is necessary for the structures, required access, fire safety requirements and the required septic and sewage disposal system.

(b) Vegetation-free areas which are suitable for development shall be used instead of sites which must be artificially cleared.

(c) Areas cleared of vegetation during construction in excess of those indicated in LC 16.243(8)(a) above shall be replanted within nine months of the termination of major construction activity.

(d) Sand stabilization shall be required during all phases of construction and post-construction as specified by standards set forth in the Lane Manual.

(e) Development shall result in the least topographic modification of the site as is possible.

(f) Slopes in excess of 25 percent shall be prohibited from development.

(g) Significant structural loads or structural fills to be placed on dune areas where, based on the Development Hazards Checklist, compressible subsurface areas are suspected, shall be allowed only after a thorough foundation check and positive findings are reported.

(h) The requirements for yards, setback, area, vision clearance and parking spaces shall be as provided in the respective zone with which the /BD-RCP Zone is combined, unless specifically provided otherwise by the provision of the /BD-RCP Zone.

(9) Area Requirements. The minimum area for the division of land may be increased where the requirement otherwise is insufficient to meet the following standards:

(a) Environmental Quality Commission nitrate nitrogen loading standards for subsurface sewage disposal.

(b) No more than five percent impermeable surface shall be allowed.

(10) Prelimary Investigation Required. Any proposal for development, with the exception of minimal development or timber harvesting zone is combined, shall require a Preliminary Investigtion (Development Hazards Checklist) by the Planning Director to determine:

(a) The dune landform(s) present on the site.
(b) Hazards associated with the site.

(c) Hazards presented by adjacent sites.

(d) Existence of historical or archeological sites.

(e) Existence of critical fish or wildlife habitat as indentified in the Lane County Coastal Inventory or sites identified by Nature Conservancy.

(f) Potential development impacts, including cumulative impacts.

(g) If a full or partial Site Investigation Report shall be required, the form of the Developmnet Hazards Checklist is as specified by the Lane Manual.

(11) Fee for Preliminary Investigation. To partially defray the expense in performing the Preliminary Investigation, a fee to be based on the scale of the development proposal shall be charged the applicant. Such fees shall be as established by order of the Board of County Commissioners.

(12) Site Investigation Reports (SIR). The Preliminary Staff Investigation (Development Hazards Checklist) shall determine if a Site Investigation Report is required and, if so, what components of the SIR must be completed.

(13) Notification of SIR Requirement. The Planning Director shall notifiy the applicant of the results of the Preliminary Investigation and if a SIR shall be required. The notification shall be by certified mail within 10 days of completion of the Preliminary Investigation.

(14) Responsibility For SIR Preparation. Preparation of the SIR is the responsibility of the applicant. All costs borne in prepartion shall be paid by the applicant.

(15) **Qualifications for SIR Preparation** The SIR shall be prepared by a person or team of persons qualified by experience, training and area. The applicant shall either:

(a) Choose a person or team of persons from a current list of qualified persons or firms to be compiled and maintained by the Department of Public Works, Land Management Division, and approved by the Board of County Commissioners; or

(b) Designate a person or team of persons to prepare the SIR with said persons' qualifications, subject to the approval of the Planning Commission,. based on standards established by the Board of County Commissioners.

(16) **Contents of SIR.** The contents of the Site Investigation Report are specified in the standard SIR document as set forth in the Lane Manual.

(17) Conditions Imposed Based on SIR Recommendations. Based on the information and recommendations provided in the SIR, the Planning Director may impose conditions upon the proposed development for the purposes of safety, health, welfare and in keeping with the purpose of the /BD-RCP Zone.

(18) Appeal to Hearings Official. An applicant may appeal to the Hearings Official the determination of the

Preliminary Investigation, or the imposition of conditions based on the SIR, and the manner for such an appeal shall be as provided by LC 14.500.

(19) Applicable Geographical Features. The /BD-RCP Zone is applied to all coastal beach and dune landforms as specified in the Lane County Rural Comprehensive Plan. These are:

(a) Beaches.
(b) Foredunes.
(c) Active dune forms.
(d) Recently stabilied dune forms.
(e) Older stabilized dune forms.
(f) Interdune forms.

The boundaries of the /BD-RCP Zone are shown on the Lane County zoning maps as specifed by LC 16.252.

(20) Application of Zone to Federal Lands. The application of the /BD-RCP Zone shall be held in abeyance until such a time as these lands or portions of these lands may pass into private, State or County ownership. The Rural Comprehensive Plan designation shall provide appropriate Federal agencies with local recommendation for proper use of these lands.

FLOODPLAIN COMBINING ZONE (/FP-RCP)

RURAL COMPREHENSIVE PLAN

16.244 Floodplain Combining Zone (/FP-RCP).

(1) **Purpose.** The flood hazard areas of Lane County are subject to periodic inundation, resulting in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief impairment of the tax base, and adverse effects on the public health, safety and general welfare. Flood losses are caused by the cumulative effect of obstructions in floodways causing increases in flood heights and velocities and the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to those which are inadequately elevated or otherwise protected from flood damages.

It is the purpose of this section to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas. The provisions of this section are designed to:

(a) Protect human life and health.

(b) Minimize expenditure of public money and costly flood control projects.

(c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.

(d) Minimize prolonged business interruptions.

(e) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazards.

(f) Help maintain a stable tax base by providing for the sound use and development of areas as special flood hazard so as to minimize future flood blight areas.

(g) Ensure that potential buyers are notified that property is in an area of special flood hazard.

(h) Ensure that those who occupy the areas of special flood hazard assume responsibility for -their actions.

(2) **Methods of Reducing Flood Losses.** In order to accomplish its purpose, this section includes methods and provisions for:

(a) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.

(b) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(c) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters.

(d) Controlling filling, grading, dredging and other development, which may increase flood damage.

(e) Preventing or regulating the construction of flood barriers, which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(3) Lands to Which This Section Applies. This section shall apply to all areas of flood hazard within Lane County, and overlay the regulations of the underlying zone.

(4) Basis for Establishing Areas of Flood Hazard. Areas of flood hazard for Lane County under the jurisdication of the Rural Comprehensive Plan are areas designated as special flood hazard areas (A Zones) or areas within a floodway.

Special flood hazard areas and floodways are identified by the Federal Insurance Administration in a scientific and engineering report entitled "THE FLOOD INSURANCE STUDY FOR LANE COUNTY, OREGON UNINCORPORATED AREAS", with accompanying Flood Insurance Rate Maps (FIRM) and Flood Hazard Boundary Maps.

Flood hazard studies shall be adopted by Board Order, made a part of Lane Manual (LM 11.020) and filed in the office of the Department. Such studies shall form the basis for the administration and implementation of this section.

These publications shall be used as the basis for determining which flood district applies to the property. Where these publications fail to provide data sufficient to determine the applicable flood district, the applicable flood district shall be determined on the basis of the best available information.

Areas of flood hazard shall also include any land area designated by the Director as susceptible to inundation of water from any source where the above-referenced maps have not identified any special flood areas.

(5) Compliance. No structure shall hereafter be constructed, located, extended, converted or altered, nor shall any land be developed, subdivided or partitioned without full compliance with the terms of this section and other applicable regulations.

(6) Abrogation and Greater Restrictions. **It** is not intended by this section to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this section imposes greater restrictions, the provisions of this section shall prevail.

(7) **Warning and Disclaimer of Libability.** The degree of flood protection required by this section is considered reasonable for regulatory purposes. Larger floods can occur on rare occasions. The flood height may be increased by human-made or natural causes, such as log jams and bridge openings restricted by debris. This section does not imply that areas outside floodways and floodway

fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This section shall not create liability on the part of Lane County, or any officer or employee thereof, for any flood damages that may result from reliance on this or any administrative decision lawfully made thereunder.

(8) Required Permits. A permit shall be obtained before construction or development begins within any area of flood hazard established in LC 16.244(12)(a) below. Application for such permit shall be filed with the appropriate agency of government having jurisdiction over such development. Applications required by the Director shall include the following information:

(a) Where base flood elevation data has been provided:

(i) Elevation in relation to mean sea level, of the lowest flood (including basement) of all structures;

(ii) Elevation in relation to mean sea level to which any structure has been floodproofed;

(iii) Where required, certification by a registered professional engineer or architect that criteria specified in LC 16.244(11)(f) thru (h) and LC 16.244(12)(b) below have been met;

(iv) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development;

(v) Plot plan drawn to scale showing the nature, location and dimensions and elevation referenced to mean sea level, of the area in question, including existing and proposed structures, fill, storage of materials and drainage facilities. Applicants shall submit certification by an Oregon registered professional engineer or land surveyor of the site's ground elevation and whether or not the development is located in a flood hazard district. If so, the certification shall include which flood hazard district applies, the location of the floodway at the site, and the 100-year flood elevation at the site. A reference mark shall be set at the elevation of the 100-year flood at the site. The location, description and elevation of the reference mark shall be included in the certification; and

(vi) Any other information required by the Director.

(b) When base flood elevation data has not been provided by "THE FLOOD INSURANCE STUDY FOR LANE COUNTY, OREGON," the Director shall obtain, review and reasonably utilize any base flood elevation data available from a Federal, State or other source in order to administer this section.

(c) All building and mobile home placement permits shall also be reviewed to determine the flood hazard for the proposal. Where elevation data is not available, permits shall be reviewed to assure that the proposed construction will be reasonably safe from flood. Reasonableness shall be determined on the basis of the best available information on flood conditions affecting the land. The best available information may include, but shall not be limited to, the use of historical data, high watermarks, etc.

(9) **Designation of Administrator.** The Director shall administer and implement this section by granting or denying development permit applications in accordance with its provisions. The Director shall:

(a) Review all development applications to determine that the permit requirements of this section have been satisfied.

(b) Review all development applications to determine that all necessary permits have been obtained from those Federal, State or Local governmental agencies from which prior approval is required.

(c) Ensure that all provisions of this section are met.

(d) Obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(e) For all new or substantially improved floodproofed structures:

(i) Verify and record the actual elevation (in relation to mean sea level); and

(ii) Maintain the floodproofing certifications required in LC 16.244(8) above.

(f) Maintain for public inspection all records pertaining to the provisions of this section.

(g) Notify adjacent communities and the Division of State Lands prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration upon request.

(h) Require that a program of periodic inspection and maintenance be provided with the altered or relocated portion of said watercourse so that the flood carrying capacity of the watercourse is not diminished.

(i) Make interpretation, where needed, as to exact location of the boundaries of areas of special, flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in LC 14.500.

(j) Alleged errors of any requirement, decision or determination made by the Director in the enforcement or administration of this secton can be appealed pursuant to LC 14.500.

(10) Variance Procedures. Requests for variances to any standard, procedure or requirement of this section shall be filed pursuant to LC 14.050 and shall be reviewed by the Hearings Official pursuant to LC 14.300.

(a) Criteria. In passing upon such applications, the Approval Authority shall consider all technical evaluations, all relevant factors and standards specified in other subsections of this section, and;

(i) The danger that materials may be swept onto other lands to the injury of others;

(ii) The danger to life and property due to flooding, debris or erosion damage;

(iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(iv) The importance of the services provided by the proposed facility to the community;

(v) The necessity to the facility of a waterfront location, where applicable;

(vi) The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

(vii) The compatibilty of the proposed use with existing and anticipated development;

(viii) The relationship of the proposed use to the Rural Comprehensive Plan and floodplain management program for that area;

(ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(x) The expected heights, velocity, duration, rate of rise and sediment and debris transported by the floodwaters and the effects of wave action, if applicable, expected at the site; and

(xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(xii) Generally, variances may be issued for construction, development and substantial improvements to be erected on a parcel of land of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the 100-year flood level,

considered. As the parcel size increases beyond one-half acre, the technical justification required for issuing the variance increases.

Upon consideration of the above factors and purposes of this section, the Approval Authority may attach such conditions to the granting of variance as he or she deems necessary to further the purposes of this section.

(b) Conditions of Variances. Upon consideration of the above criteria and purposes of this section, the Approval Authority may attach such conditions to the granting of variances as he or she deems necessary to further the purposes of this section.

(i) Variances may be issued for the reconsideration, rehabilitation or restoration of structures listed on the National Register of Historic Places of the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this subsection.

(ii) Variances shall not be issued within any desigated floodway if any increase in flood levels during the base flood discharge would result.

(iii) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(iv) Variances shall only be issued upon:

(aa) A showing of good and sufficient cause;

(bb) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(cc) A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(v) Any applicant to whom a variance is granted shall be given written notice of the approval and any conditions of the variance. In cases where a variance is granted to allow construction with a lowest floor elevation below the 100-year flood elevation, applicant will also be notified, in writing, that the cost of flood insurance will be commensurable with the increased risk resulting from the reduced lower floor elevation.

(c) Application. Application for a variance shall be made as provided by LC 14.050.

(d) Review Procedure. Applications for variances shall be reviewed by the Director pursuant to LC 14.100.

(e) Records. The Director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(11) Provisions for Flood Hazard Reduction. In areas of flood hazard, the provisions of LC 16.244-11(a) through (h) below shall apply.

(a) Anchoring.

(i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(ii) All mobile homes shall be anchored in accordance with standards of the State of Oregon Department of Commerce, Mobile Home Division.

(b) Construction Materials and Methods.

(i) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) Utilities.

(i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system. Public water systems which utilize wells for a source(s) shall be constructed such that the top well elevation is at least one foot above the 100-year flood elevation.

(ii) New and replacement sanitary systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharged from the systems into flood waters.

(d) Roads.

(i) Adequate provisions shall be made for accessibilty during a 100-year flood, so as to ensure ingress and egress for ordinary and emergency vehicles and services during potential future flooding.

(ii) No road surface of any street, road or access road shall be at an elevation less than one foot below the base flood height.

(e) Subdivison and Partitioning Proposals.

(1) All subdivision and partitioning proposals shall be consistent with the, need to minimize flood damage.

(ii) All subdivision and partitioning proposals shall have public utilities and facilities such as sanitary and storm sewers, gas, electrical

and water systems located, constructed and maintained to minimize flood damage.

(iii) All subdivision proposals shall have adequate drainage to reduce exposure to flood damage, including returning water.

(iv) No portion of any stream or road surface in any subdivision shall be at an elevation less than one foot below the base flood heights. The road surface is that portion of a street or way available for vehicular traffic or where curbs are laid, the portion between curbs.

(v) 100-year flood elevation data shall be provided and shown on final partition maps and subdivision plats. Application must show the boundaries of the 100-year flood and floodway on the final subdivision plat.

(vi) A permanent monument shall be established and maintained on land partitioned or subdivided, showing the elevation in feet above mean sea level. The location of such monument shall be shown on the final partition map or subdivision plat.

(f) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have either:

(i) The lowest floor, including basement, elevated to a level at least one foot above the base flood height; or

(ii) Be floodproofed:

(aa) As provided in State Structural Specialty Code, Chapter 56, to one foot above the base flood level so that the structure is watertight with walls substantially impermeable to the passage of water;

(bb) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,

(iii) Be certified by an Oregon licensed registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the Official as set forth in LC 16.244(8) above.

(g) Residential Construction. All residential construction and substantial improvements shall:

(i) Have the lowest habitable floor height (including basement) at least one foot above the base flood height.

(ii) Be certified by an Oregon licensed registered professional surveyor, engineer or architect that the standards of this subsection are

satisfied. Such certifications shall be provided to the Official as set forth in LC 16.244(8) above.

(h) Mobile Home Standards.

(i) All mobile homes and approved mobile home additions shall:

(aa) Have the lowest habitable floor height at least one foot above the base flood height and be certified by an Oregon licensed registered professional surveyor, engineer or architect that the standards of this subsection are satisfied, except mobile homes in existing mobile home parks. Such certifications shall be provided to the Official as set forth in LC 16.244(8) above.

(bb) Be anchored with an approved tie down system to resist flotation, collapse or lateral movement, to standards set forth by the State of Oregon, Department of Commerce, Mobile Home Division.

(cc) Alternative methods of anchoring may be utilized; provided certification is provided by a licensed Oregon professional engineer or architect that the system is designed to conform to Federal anchor design load requirements as specified by the State of Oregon, Department of Commerce, Mobile Home Division.

(ii) For new mobile home parks and mobile home subdivisions; for expansions to existing mobile home parks and mobile home subdivisions; for existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50 percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for mobile homes not placed in a mobile home park or mobile home subdivision, it shall be required that:

(aa) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at least one foot above the base flood height;

(bb) Adequate surface drainage and access for hauler are provided; and

(cc) In the instance of elevation on pilings, that lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart, and reinforcement is provided for pilings more than six feet above the ground level.

(iii) No mobile home shall be placed in a floodway district, except in an existing mobile home park or existing mobile home subdivision.

(12) **Establishment of Flood Districts.** Flood hazard areas of Lane County are hereby divided into the following districts:

100-Year Flood District
Floodway District

Criteria for determining district boundaries are set forth in LC 16.244(4) above.

(a) 100-Year Flood District. The following uses shall be permitted in the 100-Year District to the extent they are not prohibited by any other provision of this Chapter.

(i) Structures and substantial improvements designed for human occupancy provided the lowest habitable flood (including basement) elevation is at least one foot above the base flood height.

(ii) Other structures provided they are floodproofed or otherwise protected to an elevation at least one foot above the base flood height.

(iii) Subdivision and partitioning of land provided that the development meets the standards set forth in LC 16.244(11)(e) above.

(b) Floodway District. In the Floodway District, the following restrictions shall apply:

(i) Encroachments. Including, but not limited to, fill, new construction, substantial improvements and other development are not permitted unless an Oregon registered professional engineer or architect certifies that such encroachments (and cumulative like encroachments), when combined with all other existing and anticipated encroachments, shall not result in any increase in flood levels during the occurrence of a base flood. If such certification is obtained, all construction development and substantial improvements shall comply with all applicable provisions of LC 16.244(11) above.

(ii) Subdivision and partitioning of land for residential purposes is prohibited if land is located entirely within the Floodway District.

(iii) No mobile home may be placed in the Floodway District, except in an existing mobile home park. Any mobile homes placed, or additions thereto, shall conform to standards, of LC 16.244(11)(h) above.

COMMERCIAL AIRPORT SAFETY COMBINING ZONE (/CAS-RCP)

RURAL COMPREHENSIVE PLAN

16.245 Commercial Airport Safety Combining Zone (/CAS-RCP).

(1) Purpose. The Commercial Airport Safety Combining Zone (/CAS-RCP) is applied to those lands adjacent to and within the Mahlon Sweet Field airport. The /CAS-RCP Zone is intended to carry out the following purposes:

(a) Prevent the creation or establishment of obstructions that are a hazard to air navigation and flight.

(b) Prevent the creation or establishment of other hazards to air navigation and flight such as distracting light and glare producing surfaces, radio interference, smoke, steam and dust, areas which attract birds and hazards of a similar nature.

(2) **Applicability.** The /CAS-RCP Zone is applied to those lands encompassed by the surfaces set forth and described in LC 16.245(4)(ii) below and diagramed in LC 16.245(5) below.

(3) **Use Limitations.** In the /CAS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /CAS-RCP Zone is combined:

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /CAS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the height limitations of the various areas described in LC 16.245(4)(ii) below.

(b) No use may be made of land or water in such a manner as to create electrical interference with navigational signals or radio for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(4) **Surfaces Described.**

(a) Primary Surfaces.

(i) The Primary Surface is a plan longitudinally centered on the runway centerline and extending 200 feet beyond the ends of prepared runway surfaces. The width of the Primary Surface for each runway is the same as the width of the inner portion of the Approach Surface for that runway.

(ii) For purpose of this section, the centerpoints at the ends of each runway Primary Surface shall be considered as having the following coordinates and elevations:

Runway	Centerpoint Coordinates		Centerpoint Elevation
	North	East	feet above sea level
16R-34L	909410	1286622	358.2
	902848	1286530	361.54
3-21	903976	1284706	365.1
	907764	1288797	359.9
16L-34R	907793	1290513	360.0
	9044165	1290501	370.0

(iii) The elevation at any point on the Primary Surface is the same as the elevation of the nearest point on the runway centerline. For purposes of this section, the runway centerline shall be considered as having a straightline grade between the two centerpoints for that runway as described in LC 16.245(4)ii) above.

(b) Runway 16R-34L Approach Surface. This runway is a precision instrument runway aligned in a north-south direction and is designated as a primary runway. The inner edges of the Approach Surfaces coincide with the width of the Primary Surface at the ends of Runway 16R-34L and are 1,000 feet wide. Each Approach Surface extends outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the Primary Surface, its centerline being a continuation of the runway centerline. The Approach Surface extends outward and upward at a slope of 50 horizontal feet to one vertical foot beginning at the end of and at the same elevation as the Primary Surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline, thence slopes upward 40 horizontal feet to one vertical foot to an additional distance of 40,000 feet along the extended runway centerline.

(c) Runway 3-21 Approach Surface. This runway is a nonprecision instrument runway, aligned in an east-west direction and designated as a crosswind runway. The inner edge of the Approach Surfaces coincide with the width of the Primary Surface at the ends of Runway 3-21 and are 500 feet wide. Each Approach Surface, extends outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the Primary Surface, its centerline being the continuation of thee. runway centerline. The Approach Surface extends outward and upward at a slope of 34 horizontal feet to one vertical foot, beginning at the end of and at the same elevation as the Primary Surface.

(d) Runway 16L-34R. This is a future runway to be aligned in a north-south direction and will be designated as a secondary runway. The inner edge of the Approach Surface coincides with the width of the Primary Surface of the ends of Runway 16L-34R and are 250 feet wide. Each

Approach Surface extends outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the Primary Surface, its centerline being the continuation of the runway centerline. The Approach Surface extends outward and upward at a slope of 20 horizontal feet to one vertical foot, beginning at the end of and at the same elevation as the Primary Surface.

(e) Transitional Surfaces. These surfaces are adjacent to the primary surfaces and the approach surfaces. The surfaces slope upward and outward seven horizontal feet to one vertical foot, beginning at the side of and at the same elevation as the Primary Surfaces and the Approach Surfaces, and extend to where they intercept the Horizontal Surface at a height of 150 feet above the airport elevation. Where the Runway 16R-34L Approach Surfaces pass through the Conical Surface, there are Transitional Surfaces sloping outward and upward seven horizontal feet to one vertical foot, beginning at the sides of and at the same elevation Approach Surface, and extending to where they intersect the Conical Surface. Where the Runway 16R-34L Approach Surface extends beyond the Conical Surface, there are Transitional Surfaces sloping outward and upward seven horizontal feet to one vertical foot, beginning at the sides of and at the same elevation as the Approach Surface, and extending to a horizontal distance of 5,000 feet measured horizontally from the edge of the Approach Surface and at right angles to the runway centerline.

(f) Horizontal Surface. The Horizontal Surface is described by swinging arcs of 10,000 feet radii from the center of each end of the Primary Surfaces of Runway 16R-34L and Runway 3-21, and connecting the arcs with tangent lines. The Horizontal Surface is a horizontal plane 150 feet above the elevation of the airport and for purposes of this section shall be considered as having an elevation of 515 feet above mean sea level. The Horizontal Surface does not include the Approach and Transitional Surfaces.

(g) Conical Surface. The Conical Surface begins at the outer periphery of the Horizontal Surface and slopes outward and upward 20 horizontal to one vertical, starting at the elevation of the Horizontal Surface and extends outward a horizontal distance of 4,000 feet.

(5) Marking and Lighting. The owner of any existing structure or object that does not conform to the height limitations of this section shall be required to permit the installation, operation and maintenance thereon of such markers and lights as may be deemed necessary by the City of Eugene to indicate to the operators of aircraft in the vicinity of the airport, of the presence of such aircraft obstructions. Such markers and lights

shall be installed, operated and maintained at the expense of the City of Eugene.

(6) Surfaces Diagramed. The surfaces described in LC 16.245(4) above are as illustrated in the diagram below:

AIRPORT SAFETY COMBINING ZONE (/ASRCP)

RURAL COMPREHENSIVE PLAN

16.246 Airport Safety Combining Zone (/AS-RCP).

(1) **Purpose.** The Airport Safety Combining Zone (/AS-RCP) is applied to those lands adjacent to the Creswell Airport (Hobby Field), the Cottage Grove Airport, the Oakridge Airport, the McKenzie Airport and the Florence Airport. The /AS-RCP Zone is intended to safeguard land uses adjacent to these airports from noise and hazards associated with aircraft operations and to protect existing use and potential expansion of the airport itself from incompatible development. Specifically, the /AS-RCP Zone is intended to carry out the following purposes:

(a) Prevent the creation or establishment of obstructions that are a hazard to air navigation and flight.

(b) Prevent the creation or establishment of other hazards to air navigation and flight such as distracting light and glare producing surfaces, radio interference, smoke, steam and dust, areas which attract birds and hazards of a similar nature.

(c) Restrict new development of land uses not normally compatible with noise and safety hazards associated with airport operations.

(2) **Applicability.** The /AS-RCP Zone is applied to those lands adjacent to the Creswell Airport, the Cottage Grove Airport, the McKenzie Airport, the Oakridge Airport and Florence Airport which are encompassed by the surfaces set forth and described in LC 16.246(5) below and diagramed in LC 16.246(9) below. For purposes of this Chapter, the elevations of the five runways are established as follows:

(a) Cottage Grove - 641 feet above sea level.
(b) Creswell - 535 feet above sea level.
(b) Florence - 12 feet above sea level.
(c) Oakridge - 1419 feet above sea level.
(d) McKenzie - 1620 feet above sea level.

(3) **Use Limitations.** In a /AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined:

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airpot lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

(4) Uses Prohibited. The area lying beneath the Approach Surface beginning at the end of the Primary Surface and extending outward a horizontal distance of 1,000 feet shall be considered to be a clear zone. Within this clear zone, no structure or object, except for fences and navigational aids approved by the airport operator, shall be erected, placed, altered, allowed to grow or be maintained above the surface of the ground.

(5) Surface Described.

(a) Approach Surface. A surface longitudinally centered on the runway centerline, extending outward and upward from the ends of the Primary Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge.

(b) Conical Surface. A surface extending outward and upward from the periphery of the Horizontal Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 4,000 feet. This surface rises from 150 feet above the runway and extends to a height of 350 feet above the runway.

(c) Horizontal Surface. A horizontal plan 150 feet above the airport runway, the perimeter of which is established by swinging arcs of 5,000 feet radii from the center of each end of the Primary Surface and connecting the arcs with tangent lines.

(d) Primary Surface. The Primary Surface is a plane longitudinally centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway surface and having a width of 250 feet. For

purposes of this section, the Primary Surface shall be considered as having the same elevation as its respective runway as the same are specified in LC 16.246(2) above. The centerpoints at the ends of each Primary Surface shall be considered as having the following coordinates:

	North Coordinate	East Coordinate
Cottage Grove Airport	787358	1331306
	790828	1331606
Creswell Airport	833934	1339698
	836415	1339781
Oakridge Airport	766146	1472836
	767325	1469017
McKenzie Bridge Airport	920159	1582521
	920810	1585438
Florence Airport	868731	1050341
	869823	1049883

(e) Transitional Surfaces. These surfaces extend outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of one horizontal foot to seven vertical feet to their intersection with the Horizontal Surface. This surface extends to a height of 150 feet above the runway.

(6) Marking and Lighting. The owner of any existing structure or object that does not conform to the height limitations of this section shall be required to permit the installation, operation and maintenance thereon of such markers and lights as may be deemed necessary by the airport operator to indicate to the operators of aircraft in the vicinity of the airport, of the presence of such aircraft obstructions. Such markers and lights shall be installed, operated and maintained at the expense of the airport operator.

(7) Special Requirements for Construction Permits. Within the area beneath the Approach Surface, no construction permit shall be issued for any building, mobile home or other structure designed and intended for human occupancy until the property owner has agreed to waive action against the County and the airport for noise, property damage or personal injuries resulting from activities connected with the airport. Such waiver shall apply only when such activities are conducted in conformance with rules and regulations of the airport and applicable Federal and State air regulations and no negligence on the part of the County or the airport is involved. The waiver shall be in a form prescribed by the Planning Director and shall be binding on the grantees, their heirs, assigns and successors in title.

(8) Area. Established by underlying, parent zone.

(9) **Surfaces Diagramed.** The surfaces described in LC 16.246(5) above are as illustrated in the diagram below:

AIRPORT OPERATIONS ZONE (AO-RCP)

RURAL COMPREHENSIVE PLAN

16.247 Airport Operatons Zone (AO-RCP).

(1) Purpose. The Airport Operations Zone (AO-RCP) is intended to recognize those areas devoted to or most suitable for the immediate operational facilities necessary for commercial and noncommercial aviation. It is also intended to provide areas for those activities directly supporting or dependent upon aircraft or air transportation when such activities, in order to function, require a location within or immediately adjacent to primary flight operations and passenger or cargo service facilities. In addition, the AO-RCP Zone is intended to provide areas for certain open space uses for airfield grounds maintenance and as a buffer to minimize potential dangers from, and conflicts with, the use of aircraft.

(2) Permitted Buildings and Uses. In the AO RCP Zone, the following types of buildings and uses are permitted as hereinafter specificlly provided for by this section, subject to the general provisions and exceptions set forth in this Chapter:

(a) Uses and buildings which are necessary for airport operation, including aircraft hangars, fuel storage facilities, control tower, passenger and air freight terminals, aircraft runways, taxi-ways and tie-down areas, etc.

(b) Retail sales and commercial services for air passengers or flight connected activities.

(c) Air cargo warehousing and distribution facilities.

(d) Aerial mapping and surveying.

(e) Aircraft or aircraft component manufacturing or assembly.

(f) Aircraft related research and testing.

(g) Aircraft sales, repair, service and storage.

(h) Schools relating to aircraft operations.

(i) Public parking and/or auto storage.

(j) Aircraft or air transportation business, or professional uses.

(k) Aviation clubs.

(1) Auto rental agencies.

(m) Hotels and motels.

(n) Restaurants.

(o) Taxi, bus and truck terminals.

(p) Environmental monitoring and enforcement agencies.

(q) General farming, including the growing of trees, vines, shrubs, berries, vegetables, nursery stock, hay grains, seed and similar food and fiber products.

(r) Pastures and grazing.

(s) Forest or open land preserves.

(t) Game and fish preserves.

(u) Accessory buildings normally required in connection with a use as specified in this subsection.

(v) Public and semipublic buildings, structures and uses essential to the physical and economic welfare of an area

(3) Uses Subject to Hearings Official Approval. Airport related uses not specified in LC 16.247(2) above are special uses, subject to submittal of an application pursuant to LC 14.050 and approval of the application by the Hearings Official pursuant to LC 14.300. An airport related use is defined as an activity or use of the land whose immediate presence on or proximity to an airport is necessary to proper airport function, to meet the needs of the use when a significant portion of its business or activity is derived from the airport, or when special transportation cost or time factors make operation from less immediate sites prohibitively expensive.

(4) Special Use Approval Criteria. Uses allowed in LC 16.247(3) above must comply with the following criteria:

(a) Conformity with the Rural Comprehensive Plan for Lane County.

(b) The location, size, design and operating characteristics of the proposed use:

(i) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity.

(ii) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(iii) Will not be adversely affected by-known natural hazards, such as floods, slides, erosion.

(iv) Will not create a hazardous natural condition such as erosion, landslide, flooding.

(5) Conformance Requirement. All structures and uses within the AO-RCP Zone shall conform to the requirements of Federal Aviation Agency Regulation FAR-77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105 or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

(6) Setback Requirements.

(a) Front Yard. Front yards shall not be less than 20 feet deep.

(b) Side Yard. Side yards shall be not less than five feet for residential use. Side yards shall not be required for nonresidential permitted uses, but if provided shall be not less than five feet.

(7) Vision Clearance. Vision clearance for corner lots shall be a minimum of 15 feet.

(8) Area.

(a) The minimum area for the division of land shall be five acres.

(b) Notwithstanding the provisions of LC 16.247(8)(a) above, the minimum area for a parcel or lot may be reduced when it is intended as a site for a commercial, industrial, public or semipublic use allowed within the zone if there is a finding that the location, design and arrangement of the proposed lot or parcel can be integrated in a logical manner with the location, design and arrangement of lots or parcels and uses, existing and potential, of (a) adjacent properties, and (b) the remainder of the contiguous ownership proposed for division.

(c) The following animal use area regulations shall apply on lots of less than five acres: Cows, horses, sheep or goats cannot be kept on lots having an area of less than one acre. The minimum area for such animals (other than their young under the age of six months) on less than five acres shall be as follows:

Horses	One per acre, plus one additional for every 15,000 square feet.
Cows	One per acre, plus one additional for every 10,000 square feet.
Goats or sheep	Five per acre, plus one additional for every 2,000 square feet.

The area of a property may be utilized one time only for the computation of the above allowable animal usage.

RESOURCE CAPABILITY DETERMINATION

RURAL COMPREHENSIVE PLAN

16.248 Resource Capability Determination.

(1) Purpose. Special uses in the Natural Estuary (/NE-RCP), Conservation Estuary (/CE-RCP) and Development Estuary (/DE-RCP) Zones are allowed only if determined to meet the resource capability and purpose of the management unit in which the use or activity occurs. The purpose of this section is to establish a procedure for making a Resource Capability Determination. Major activities or uses in the estuary may require an Estuarine Impact Assessment; those uses do not also require this Resource Capability Determination.

(2) Definition of Resource Capability. Resource capability is defined as the degree to which the natural resource can be physically, chemically or biologically altered, or otherwise assimilate an external use and still function to achieve the purpose of the zone in which it is located.

(3) Identification of Resources and Impacts. The applicant for a proposed use or activity in which a Resource Capability Determination must be made shall submit the following:

(a) Information on the resources present. The County shall assist the applicant in locating sources of information. Sources which can be used include Lane County Coastal Resources Inventory, Environmental Impact Statements for the Siuslaw River or other published information concerning the Siuslaw estuary, or more current resource information.

(b) Information on impacts to be expected if the proposed use or activity is carried out. This is not intended to be a full Impact Assessment as specified in LC 16.249, but presentation of the major effects on water circulation and flushing patterns, water quality significant adverse impacts which may occur and impacts on the aquatic and shoreland life forms.

(4) Resource Capability Determination. Information on resources present and impacts to be expected will be evaluated as part of the special use permit procedure, based on the requirement that the estuary can still function to achieve the purpose of the zone in which the activity will be located. Information developed by resource agencies and information submitted by the applicant may be used in the determination and will be used whenever possible to reduce duplication of effort between agencies.

(5) Resource Capability Findings. Based on analysis of resources and impacts, one of the following findings shall be concluded in approving or disapproving the use permit:

(a) The proposed use or activity does not represent a potential significant adverse impact or reduction of significant fish and wildlife habitats or essential

properties of the estuarine resource. It is consistent with the resource capabilities of the management unit and corresponding zone.

(b) The proposed use or activity presents a potential significant impact or reduction of significant fish and wildlife habitats or essential properties of the estuarine resource, but reasonable alternative or mitigating measures are proposed which will eliminate, or minimize to an acceptable level, adverse environmental impact or the mitigation requirement of ORS 541.626 have been met. It is consistent with the resource capabilities of the management unit and corresponding zone.

(c) The proposed use or activity will result in unacceptable loss, considering the purpose of the management unit in which the use is proposed. The use or activity represents irreversible changes and actions and unacceptable significant adverse impact or reduction of significant estuarine fish and wildlife habitat or essential properties of the estuary will result; or that the adverse consequences of the proposed use or activity would be likely to result in irreversible trends or changes in estuarine resource properties and functions. It is not consistent with the resource capabilities of the management unit and corresponding zone.

(6) Notification of Agencies.

(a) Any application that is subject to the provisions of this section shall, at a minimum, be referred to the following:

(i) U. S. Fish and Wildlife Service.
(ii) U. S. Environmental Protection Agency.
(iii) Oregon State Department of Fish and Wildlife.
(iv) Oregon State Department of Land Conservation and Development.
(v) Oregon State Division of State Lands.
(vi) National Marine Fishery Service.
(vii) Army Corps of Engineers.

(b) Agencies receiving referrals shall be afforded 15 calendar days from the date of mailing to review and comment on the proposed activity.

ESTUARINE IMPACT ASSESSMENT

RURAL COMPREHENSIVE PLAN

16.249 Estuarine Impact Assessment.

(1) Purpose. The purpose of this section is to provide a procedure for evaluation of uses or activities which are major in nature and which could potentially alter the integrity of the estuarine ecosystem. Activities which require an Impact Assessment do not also require a Resource Capability Determinatoin.

Uses which are permitted outright do not require an Impact Assessment. Uses requiring a Special Use Permit will require an Impact Assessment only when an Environmental Impact Statement (EIS) is required through the Corps of Engineers section 20/4-04 permit process.

(2) Information to be Presented in the Impact Assessment. Information contained in an Impact Assessment shall be used in the evaluation of a use or activity during a Special Use Permit or Conditional Use Permit procedure. As part of the permit review, information developed by resource agencies may be requested and used in the determination. Any possibilities of reducing duplication of effort by the city and other agencies will be utilized so long as the necessary information is adequately analyzed. Information contained in the Impact Assessment may be drawn from available data and analysis contained in the Lane County Coastal Resources Inventory, Environmental Impact Statements and Assessments for Projects in the Siuslaw estuary, other published studies pertaining to the Siuslaw River estuary, or more current information provided by applicant. The Impact Assessment should apply available information to the following general areas of analysis. The Planning Director may waive inapplicable items for any particular use of project.

(a) Aquatic life forms and habitat, including information on habitat type and use (e.g., rearing, spawning, feeding/resting, mitigation), species present, seasonal abundance, sediment type and characteristics and vegetation present. The type of alteration, including information detailing the extent of alteration (e.g., area measurement, depths to which alteration will extend, volumes of materials removed and/or placed as fill), impacted species (including threatened and endangered species), life states and life cycles affected with regard to timing of the proposed alteration, percent of total available habitat type subject to alteration.

(b) Shoreland life forms and habitat, including information on habitat type and use (e.g., feeding, resting or watering areas, flyways), species present, seasonal abundance, soil types and characteristics and vegetation present. Impacted species (including threatened and endangered species), life stages and life

cycles affected with regard to timing of the proposed alteration, percent of total available habitat type subjected to alteration.

(c) Water quality, including information on increases in sedimentation and turbidity, decreases in dissolved oxygen concentrarion, changes in biological and chemical oxygen demand, contaminated sediments, alteration of salinity regime, disruption of naturally occurring water temperatures, changes due to reduction, diversion or impoundment of water.

(d) Hydraulic characteristics, including information on changes in water circulation patterns, shoaling patterns, potential of erosion in or accretion in adjacent areas, changes in the floodplain, decreases in flushing capacity or decreases in rate of water flow from reduction, diversion or impoundment of water resources.

quality

(e) Air including information on quantities of emissions of particulates, expected inorganic and organic airborne pollutants.

(f) Impact of the proposed project on navigation and public access to the shoreline and aquatic areas.

(g) Demonstration of public need to warrant such a modification to the estuary.

(h) Demonstration that nonwater dependent uses will not preempt existing or future water dependent use of the area.

(i) Determination of the potential cumulative impact of the proposed development, including alteration of adjacent significant fish and wildlife habitat and essential properties of the estuary.

(j) Presentation of upland alternatives and methods to minimize preventable adverse impacts.

(k) Determination of need for mitigation.

(3) Impact Assessment Findings. Based on results of Impact Assessment analysis and the approval criteria contained in the applicable zone, one of the following findings shall be concluded in approving or disapproving the use permit:

(a) The proposed development does not represent a potential significant adverse impact or reduction of significant fish and wildlife habitats or essential properties of the estuarine resource.

(b) The proposed development presents a potential significant adverse impact or reduction of significant fish and wildlife habitats or essential properties of the estuarine resource, but no reasonable alternatives exist and mitigating measures are proposed which will eliminate or minimize to an acceptable level, adverse environmental impacts. If mitigation is requied under ORS 541.626, a mitigation plan shall have been approved by the Division of State Lands before this finding can be made.

(c) The proposed development will result in unacceptable loss. The proposed use or activity represents irreversible changes and actions. Unacceptable significant adverse impact or reduction of significant fish and wildlife habitat or reduction of essential properties of the estuary will result; or that the adverse consequences of the proposed activity would be likely to result in irreversible trends or changes in estuarine resource properties or functions.

(4) Notification of Agencies.

(a) Any application that is subject to the provisions of this section shall, at a minimum, be referred to the following:

(i) U. S. Fish and Wildlife Service.
(ii) U. S. Environmental Protection Agency.
(iii) Oregon State Department of Fish and Wildlife.
(iv) Oregon State Department of Land Conservation and Development.
(v) Oregon State Division of State Lands.
(vi) National Marine Fishery Service.
(vii) Army Corps of Engineers.

(b) Agencies receiving referrals shall be afforded 15 calendar days from the date of mailing to review and comment on the proposed activity.

PARKING SPACE, HEIGHT, AREA, GENERAL BUILDING AND GENERAL LOT AREA AND WIDTH SETBACK REQUIREMENTS RURAL COMPREHENSIVE PLAN

16.250 Parking Areas. Required garages and parking areas for residential and industrial development will be found under the zoning classification.

(1) **Residential Properties.** The regulations of this subsection are in addition to off street parking requirements of specific zones.

(a) When a single-family residence is located on a site inaccessible by automobile due to topographic conditions or excessive grades, a private garage or parking space shall not be required.

(b) Unless otherwise allowed by the zone, and exclusive of recreational vehicles, off street parking shall be limited to passenger cars, vans and pickups of not more than one ton manufacturer's capacity rating or comparable size. This size limitation does not apply to vehicles being used in conjunction with Rural Home Occupations.

(c) Commercial vehicles other than allowed by LC 16.250(b) above may be parked on residential properties only for reasonable periods of time for deliveries, structural repair and similar purposes.

(d) Recreational or utility vehicles, including, but not limited to, boats and boat trailers, campers and residential-type utility trailers, shall not be parked or stored on the property at any time in a location obstructing motorists' vision clearance of roadways.

(e) Unless otherwise allowed by the zone, off street parking areas shall not be used for the dismantling of any vehicle for the purpose of selling, trading or dealing in any manner with components thereof as a primary or secondary business.

(f) (i) Inoperable vehicles and parts thereof, junk or salvage materials may be visibly stored on the premises unless such storage interferes with the reasonable use and enjoyment of other lots within 300 feet of the lot use for storage. In that event, all automotive parts, junk, salvage material and all but one inoperable vehicle shall be stored in a location not visible from any adjacent road or from ground level of lots within 300 feet which are of similar elevation as the lot upon which the storage is taking place, or shall be screened to prevent such visibility. The allowable inoperable vehicle

may be stored within the structural setback area, but shall not be parked or stored at any time in a location obstructing motorists' vision clearance of roadways. Nothing in this subsection shall be construed as allowing storage within the front structural setback area except as otherwise allowed herein.

(ii) Names of residents filing complaints under provisions of LC 16.250(1)(f)(i) above shall be a matter of public record.

(g) Except as allowed by this Chapter, vehicles belonging to persons other than those residing on the lot shall not be stored or repaired for remuneration, traded, sold or offered for sale from the property. This includes vehicles left on consignment and vehicles owned temporarily primarily for resale. The sale of more than two vehicles per family member from one lot within a 12-month period shall be interpreted as "temporary ownership" unless the family member has owned said vehicles longer than 12 months.

(h) Storage of refrigerators, freezers or other airtight compartments containing more than one and one-half cubic feet shall not occur at any time until the doors have been removed or secured, latches removed or other precautions taken so the compartment can be easily opened from the inside. Any appliance stored in violation of this subsection may be removed by the County from the premises and stored elsewhere at the owner's expense, or other remedial action taken to secure immediate compliance.

(2) Nonresidential Private Parking.

(a) Automobile parking space allowing 300 square feet per automobile (parking, plus driving space) shall be provided and maintained for any new or enlarged building as listed below:

(i) Churches, auditoriums, theaters, stadiums, clubs and business schools or similar places of assembly, at least one permanently maintained parking space for every four seats provided in said building or structure; provided that 50 percent of the required number may be supplied by off street parking facilities for other kinds of commercial establishments or uses not normally open, used or operated during the principal operating hours of the place of assembly.

(ii) For hotels and apartment hotels, at least one permanently maintained parking space for each of the first 20 individual guest rooms, and one additional parking space for every three guest rooms in excess of 20.

(iii) Auto courts shall provide at least one parking space for each lodging unit.

(iv) For fraternity, sorority and student houses, at least one parking space for each lodging unit.

(v) For hospitals and welfare institutions, at least one permanently maintained parking space for each 300 square feet of floor area.

(vi) Clinics shall provide at least two parking spaces for each consultation and operating room.

(vii) For business or commercial buildings or structures, at least one permanently maintained parking space for every 300 square feet or fraction thereof of floor space within the building, exclusive of automobile parking space.

(viii) Mortuaries shall provide parking spaces for all people employed therein, plus at least one parking space for each 200 square feet of building floor area.

(b) Parking spaces shall be on the lot with the main building or structure, or located not more than 800 feet therefrom.

(3) Loading Space. In addition to the 10-foot setback requirement from the centerline of the alley, every hospital, hotel, institution, commercial or industrial building hereafter erected or established which abuts upon an alley or is surrounded on all sides by streets shall have one permanently maintained loading space for commercial vehicles of not less than 10 feet in width and 22 feet in length for each 4,000 square feet of lot area or fraction thereof upon which the building is located; provided that not more than two such loading spaces shall be required.

(4) Public Parking Areas. Land hereafter used for public parking areas shall be developed according to the following standards:

(a) Asphaltic, concrete or other approved type of surfacing.

(b) Bumper guards where needed.

(c) An ornamental fence, wall or hedge enclosing the parking area to a height not less than three feet nor more than six feet, but adhering to the vision clearance and front and side yard setbacks established for the zonerict in which it is located. Said fence, wall or hedge shall be maintained in good condition.

(d) When a parking lot adjoins property clasified in an "R" Zone, the setback for the parking lot shall conform to the requirements for the adjacent "R" Zone and the parking lot shall be six feet in height.

(5) Height.

(a) Height limits established for the various zones refer to the height of the building proper. Roof structures, such as housing for elevators, tanks, ventilating fans, towers, steeples, flagpoles, chimneys, smokestacks, wireless masts or similar structures, may exceed the height limit herein prescribed.

(b) On lots sloping downhill from the street, buildings may have an additional story; provided the ceiling of the lowest story is not more than two feet above the average curb level along the front of the lot.

(6) General Building Setback Requirements.

(a) Side Yard.

(i) No building or structure shall be hereafter erected or altered so that any portion thereof shall be nearer to the side lot line than the distance indicated under the Zone classification, except that eaves or cornices may extend over the required side yard for a distance of not more than two feet.

(ii) Fences, walls or hedges which tend to serve as a wall or yard enclosure may be maintained in a side yard, provided they do not exceed six feet in height.

(7) General Lot Area and Width Requirements.

(a) The site area requirements of Chapter 16 shall not apply to prohibit the erection of a single-family dwelling on a lot separately owned on or before January 8, 1969, or on any numbered lot in an approved and filed major or minor subdivision plat of record on or before January 8, 1969, except for the E-RCP, F-1, RCP and F-2, RCP Zones, where use of preexisting parcels is provided for in a different manner.

(b) The minimum area requirements of Chapter 16 shall not be construed to govern in situations where greater minimum area requirements are imposed or required by State law, State rules and regulations, the provisions of this Code, or other County rules and ordinances.

(c) Refer also to LC 13.050 to 13.105 Design and Development Standards for other lot area, width and depth requirements which may be applicable.

NONCONFORMING USES

RURAL COMPREHENSIVE PLAN

16.251 Nonconforming Uses. Except as is hereinafter provided in this Chapter, the lawful use of a building or structure or of any land or premises lawfully existing at the time of the effective date of this Chapter or at the time of a change in the official zoning maps may be continued although such use does not conform with the provisions of this Chapter.

(1) **Verification of Nonconforming Use.** The verification of a nonconforming use may be obtained subject to Director approval pursuant to LC 14.100. Verification of a nonconforming use is required prior to requesting approval to increase, restore, alter or repair a nonconforming use. When evaluating a request for verification, the following criteria shall apply:

(a) To be valid, a nonconforming use must have been lawfully established prior to the enactment of an ordinance restricting or prohibiting the use.

(b) The use must have been in actual existence prior to the enactment of an ordinance restricting or prohibiting the use or have proceeded so far toward completion that a right to complete and maintain the use is deemed to have vested in the landowner.

(c) The nonuse of a nonconforming use of a structure or property for a period in excess of one year will pronioit tne resumption or tne nonconrorming use.

The burden of proof for the verification of a nonconforming use is upon the applicant.

(2) **Change in Nonconforming Use.** A nonconforming use may be changed only insofar as it applies to the zone in which it is located. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.

(3) Increase of Nonconforming Use. A nonconforming use shall not be increased, except that permission to extend the use to any portion of a building or lot which portion was arranged or designed for such nonconforming use at the time of the passage of this Chapter may be granted subject to Director approval pursuant to LC 14.100.

(4) Vested Right. Nothing contained in this Chapter shall require any change in the plans, construction, alteration or designated use of a structure on which construction has physically, lawfully and substantially commenced prior to the adoption of this Chapter, provided the structure, if nonconforming or intended for a nonconforming use, is completed and in use within two years from the time construction was commenced.

(5) **Discontinuance of Nonconforming Use.** When a nonconforming use of a structure or property is discontinued for a period in excess of one year, the structure or property shall not thereafter be used, except in conformance with the zone in which it is located.

(6) Unlawful Use Not a Nonconforming Use. No unlawful use of property existing at the time of passage of this Chapter shall be deemed a nonconforming use.

(7) Restoration of Nonconforming Building or Structure.

(a) A nonconforming building or structure which is damaged by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, may be restored and the occupancy or use of such building or structure or part thereof, which existed at the time of such partial destruction may be resumed; provided that the restoration is commenced within a period of one year and is diligently prosecuted to completion and verification of the nonconforming use has been obtained.

(b) The restoration or reconstruction of a nonconforming building or structure may not increase the flood area or create a greater nonconformance than existed at the time of damage or destruction.

(8) Conveyance of Nonconforming Use. Nothing in this Chapter shall be construed to limit the sale, transfer, other conveyance of property on which exists a nonconforming building, structure or use, so long as such sale, transfer or other conveyance does not otherwise violate the provisions of this Chapter.

(9) Restoration of Conforming Use on Nonconforming Lot. Nothing in this Chapter shall be construed to prevent the reconstruction or replacement of a preexisting building or structure conforming as to use on a nonconforming lot, so long as such lot did not become nonconforming in violation of the provisions of this Chapter.

(10) Alterations or Repairs of a Nonconforming Use. Alterations or repairs of a nonconforming use may be permitted to continue the use in a reasonable manner subject to Director approval pursuant to LC 14.100 and consistent with the intent of ORS 215.130(5-8). Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.

(11) Criteria for Decision. When evaluating a proposal for increase, restoration, alteration or repair, the following criteria shall apply:

(a) The change in the use will be of no greater adverse impact to the neighborhood.

(b) The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood.

(c) Other provisions of this Chapter, such as property development standards, are met.

(12) **Conditions of Approval.** In order to assure compatibility of the proposed development with the surrounding area, any of the following conditions may be imposed as conditions of approval:

(a) Special yards and spaces.
(b) Fences and walls.
(c) Special parking and/or loading provisions.
(d) Street dedication and improvements or bonds in lieu of improvements.
(e) Control of points of vehicular ingress and egress.
(f) Special provisions for signs.
(g) Landscaping and the maintenance of grounds.
(h) Control of noise, vibration, odors or other similar nuisances.
(i) Limitation of time for certain activities.
(j) A time period in which a proposed use shall be developed.
(k) A limit of total duration of use.

PROCEDURES FOR ZONING, REZONING AND AMENDMENTS TO REQUIREMENTS

RURAL COMPREHENSIVE PLAN

16.252 Procedures for Zoning, Rezoning and Amendments to Requirements.

(1) Purpose. As the Rural Comprehensive Plan for Lane County is implemented, changes in zone and other requirements of this Chapter will be required. Such Amendments shall be made in accordance with the procedures of this section.

(2) Criteria. Zonings, rezonings and changes in the requirements of this Chapter shall be enacted to achieve the general purpose of this Chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures in this section.

(3) I nitiation/Applicaton

(a) By Planning Commission. The zoning of unzoned properties, the rezoning of properties and amendment of this Chapter may be initiated by the Planning Commission upon its own motion or upon petition by the Planning Commission upon request of the Board as provided in LC 16.252(3)(b) below.

(b) By Board. The zoning of unzoned properties, the rezoning of properties and the amendment of this Chapter may be initiated by the Board in the form of a request to the Planning Commissions that they consider the proposed zoning, rezoning or amendment.

(c) By Applicant. Application for the zoning or rezoning of properties may be made by any persbn as provided in LC 14.050.

(4) Moratorium on Permits and Applications-Legislative Matters.

(a) After any matter for zoning, rezoning or amendment to this Chapter affecting particular property has received tentative action by the Board, but has not yet become final and effective, no Zoning, Land Division or Building Code Application or request shall be accepted, granted, issued or approved, except as herein provided.

(b) After such final action, granting of pending or subsequent Applications or requests shall be in

accordance with the requirements of the zoning classification or requirements as amended by the final action.

(c) The provisions of this subsection shall not be applicable to the issuance of Building, Plumbing Permits, or on-site sewage for normal repairs or corrections, nor shall the provisions apply when the proposed Application or request meets both the requirements of the existing zoning requirement and the proposed change or amendment, or to the approval of a final minor partition, a major partition map or subdivision plant.

(5) **Planning Commission Public Hearing and Notice -- Legislative Matters.**

(a) The Planning Commission shall hold not less than one public hearing on each proposed legislative zoning or rezoning and amendment to the requirements of this Chapter.

(b) Notice of the time and place of hearing shall be given at least 10 days in advance by publication in a newspaper of general circulation in the County or in the territory concerned.

(c) The Planning Commission shall review the Application or proposal and shall receive pertinent evidence and testimony as to why or how the proposed change is inconsistent with the criteria provided in LC 16.252(2) above for zoning, rezoning and amendment to the requirements of this Chapter. The Commission shall determine whether the testimony at the hearing supports a finding that the proposal does or does not meet the required criteria, and shall recommend to the Board accordingly that the proposal be adopted or rejected. The Planning Commission and Board may hold one concurrent hearing.

(6) **Review Procedures.** Applications for zoning or rezoning of specific properties shall be heard by the Hearings Official pursuant to LC 14.300.

(7) **Action by the Board.**

(a) Unless the Board and Planning Commission hold a concurrent hearing, upon receipt of an affirmative Planning Commissoin recommendation for legislative matters provided in LC 16.252(6) above, the Board shall schedule a public hearing as provided in LC 16.252(7)(b) below. The Board may schedule such a public hearing in the absence of an affirmative Planning Commission recommendation.

(b) Prior to taking any action which would alter or modify a Planning Commission recommendation or Hearings Official's Order, the Board may first refer the proposed alteration or modification to the Planning Commission or Hearings Official for a recommendation. Failure of the

Commission or Hearings Official to report within 20 days after the referral, or such longer period as may be designated by the Board, shall be deemed to be approval of the proposed alteration or modification. It shall not be necessary for the Commission or Hearings Official to hold a public hearing on the proposed alteration or modification.

(8) Conditional Approval. The approving authority may impose reasonable conditions if the application is approved to be completed within one year.

(9) Official Zoning Map.

(a) The location and boundaries of the various zones established by this Chapter shall be shown and delineated on maps covering portions of the County. These maps, upon their final adoption, shall be known as the Official Zoning Map.

(b) The Zoning Map shall be established by ordinance. Subsequent amendments, either for establishing zoning for previously unzoned property or for rezoning may be made by Ordinance or Order of the Hearing Authority in accordance with the provisions of this section. Upon final adoption, the Zoning Map and all subsequent amendments thereto shall be filed with the County Recorder.

(i) Boundaries indicated as approximately following the centerlines of streets, highways or alleys shall be construed to follow such centerlines.

(ii) Boundaries indicates as approximately following property lines shall be construed as following such property lines.

(iii) Boundaries indicated as approximately following the city limits shall be construed as following such city limits.

(iv) Boundaries indicated as following railroad lines and public utility shall be construed to be a midway between the main tracks or utility easements, whichever is applicable.

(v) Boundaries indicated as parallel to or extensions of features indicated in LC 16.252(9)(b)(i) through (iv) above shall be so construed.

(vi) Boundaries indicated as following shorelines shall be construed as following the ordinary low waterline, except where the body of water is specifically zoned Natural Estuary (/NE-RCP), Conservation Estuary (/CE-RCP) or Development Estuary (/DE, RCP) Zones in which case the boundary shall be construed as following the ordinary high waterline. In the event of a change of high or low

waterline, the boundary will follow that line no matter how it shifts.

(vii) Where zones are separated by a body of water, the boundary between the zones shall be construed as being the centerline of such body of water. No matter how such centerline may shift, the boundary shall remain the centerline as shifted.

(viii) Except as hereinafter noted, where a zoning boundary divides an ownership of property, unless the same is indicated by dimensions, map coordinates, or digitized boundary or similar notation, the boundary shall be determined by the use of the scale appearing on the Zoning Map. In case of the /SN-RCP; /PW-RCP; /NRC-RCP; /RD-RCP; /MD-RCP; /DMS-RCP and /BD-RCP Combining Zones, and the /NE-RCP; /CE-RCP and /DE-RCP Zones, the boundaries shall be determined through interpretation of the Coastal Resources Management Plan.

(ix) Where physical features existing on the ground are at variance with those shown on the Zoning Map, or in other circumstances not covered by LC 16.252(8)(b)(i) through (viii) above, the Planning Commission shall interpret the zone boundaries.

(10) Treatment of Vacated Property. Where a public street or alley is orricially vacatea, tne Lone requirements applicable to the property to which the vacated area becomes a part shall apply to the vacated property.

(11) Error in Legal Description. Notwithstanding any other provision in this Chapter, where the sole basis for a zoning or rezoning, whether initiated by Application, the Planning Commission or the Board, is in error in a legal description, if applicable in the Ordinance or Order zoning or intended to zone the property, the zoning or rezoning shall be referred to the Planning Director for investigation and a report. After such investigation and report, the zoning or rezoning shall be considered in accordnce with the procedures for hearings provided in LC 16.252(5) arid (6) above.

GREENWAY DEVELOPMENT PERMIT

RURAL COMPREHENSIVE PLAN

16.254 Greenway Development Permit

(1) Purpose. To establish Greenway Development procedures for certain land use activities as required by the State-wide Willamette River Greenway Goal and the Lane County Willamette River Greenway Plan.

(2) Definitions. For the purposes of this section, except as otherwise provided below, the definitions provided in LC 16.090 and the Goal adopted by the Oregon Land Conservation and Development Commission shall be used:

(a) Ordinary High Water. The high water level is defined as that high level of a river which is attained during mean annual flood. It does not include levels attained during exceptional or catastrophic floods. It is often identifiable by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in character in the soil, destruction or absence of vegetation not adapted for life in saturated soils or the presence of flotsam and debris. In the absence of identifying physical characteristics, ordinary high water may be determined by Step backwater analysis upon a two-year frequency flood as determined by the U. S. Army Corps of Engineers.

(b) Ordinary Low Water. The low watermark of a river is that point to which the waters normally recede when the volume of water is at its low level, not determined by the extraordinary year, and further means the line to which the Willamette River ordinarily recedes annually in season even though the elevation of that line may be higher as a result of the Corps of Engineers' flood control structures than would otherwise be the case without such structures. Submersible lands are also considered that land or bank area between the ordinary low and high waterline.

(c) Water Dependent Use. A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water.

(d) Water Related Use. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in public loss of, quality in the goods or services offered. Except as necessary for water dependent or water related uses or facilities, residences, parking lots, spoil or dump sites, roads and

highways, restaurants, businesses, factories and trailer parks are not generally considered dependent on or related to water location needs.

(e) Greenway Development Permit; Permit. A permit authorized pursuant to this section or pursuant to a permit authorized in accordance with the provisions of prior Greenway Permit Ordinance Nos. 4-76 and 11-76.

(f) Change of Use. Making a different use of the land or water than that which existed on December 5, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit has been issued as of December 5, 1975. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building. Landscaping, construction of driveways, modifications of existing structures or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for the purposes of this section.

(g) Intensificaton. Any additions which increase or expand the area or amount of an existing use or the level of activity. Remodeling of the exterior of a structure is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit was issued as of December 5, 1975.

(h) Develop. To construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels or to create or terminate rights of access.

(i) Development. To act, process or result of developing.

(j) Boundaries. The boundaries for the Willamette River Greenway are those adopted by the Land Conservation and Development Commission in 1977, together with any changes when and as approved by LCDC.

(3) Uses and Activities Subject to Greenway Development Permits. Greenway Development Permits shall be required for new intensifications, change of use or developments allowed in applicable zones , including public improvements and including partitions and subdivisions as defined in LC 13.020, which are

proposed for lands within the boundaries of the Willamette River Greenway adopted and as revised from time to time by the Oregon Land Conservation and Development Commission, except as provided below:

(a) Where the location is within areas designated as "urban" on Greenway maps adopted by the Oregon Land Conservtion and Development Commission and is beyond 150 feet of the ordinary low waterline.

(b) Customary dredging and channel maintenance conducted under permit from the State of Oregon.

(c) Seasonal increases in gravel operations as provided under permit from the State of Oregon.

(d) The placing by a public agency of signs, markers, aids, etc. to serve the public.

(e) Activities to protect, conserve, enhance and maintain public lands, except that a substantial increase in the level of development of existing public recreational, scenic, historical or natural uses on public lands shall require review as provided by this section.

(f) Erosion control operations required in emergency situations for the safety and protection of property.

(g) Construction or use of a building other than a dwelling whether or not within 150 feet of the ordinary low waterline when the building is customarily provided in conjunction with a farm use; provided the structure does not exceed 12 feet in height nor exists for longer than six months.

(h) Farm use.

(i) Reasonable emergency procedures necessary for the safety or protection of property.

(j) Maintenance and repair usual and necessary for the continuance of an existing use. Landscaping, construction of driveways, modification of existing structures or facilities adjacent to a residence as are usual and necessary to such use and enjoyment.

(k) The propagation of timber or the cutting of timber which is done for public safety or personal noncommercial use or where the harvest is consistent with an approved permit under the Forest Practices Act:

(i) For a farm woodlot of less than 20 acres, or

(ii) Consistent with recommendations made by Oregon Department of Transportation to Oregon Department of Forestry which are designed to address criteria set forth in Statewide Goal 15, sections ch

(1) Irrigation pumps and water intakes and other utility lines in conjunction with an agricultural use.

(m) Uses which are pursuant to one of the following Lane County Land Development actions when such action has been approved or adopted consistent with the Greenway Development Permit approval requirements of 16.254(4) below and notification requirements of LC 16.254(7) below.

Planned Unit Developments, as provided in 10.700.

(ii) Unzoned Area Development Permits, as provided in LC 9.700.

(4) **Greenway Development Permit Approval.** A decision to approve a Greenway Development Permit shall require findings that the proposed intensification, change of use or development conforms to the following criteria, guidelines and setback requirements:

(a) Criteria.

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the reestablishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) A development which is mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway.

(b) Guidelines. Affirmative findings of compatibility with the Willamette River Greenway based upon due consideration and the relative importance of the following applicable guidelines:

(i) Preservation and maintenance of land designated "agriculture" in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.

(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.

(iii) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resources.

(iv) Preserve areas of annual flooding, floodplains and wetlands.

(v) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.

(vi) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.

(vii) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses, such as domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.

(viii) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terraces bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(ix) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.

(x) Minimize vandalism and trespass.

(xi) Location of nonwater dependent and nonwater related development away from the river.

(xii) Protection from erosion.

(xiii) Compatibility with the site and surrounding area.

(xiv) Protection of significant fish, wildlife habitat and natural areas.

(xv) Protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan.

(c) Setback Requirement; Exceptions. New iutensifications, developments and changes of use shall be set back 100 feet from ordinary high waterline of the river, except for those in conjunction with a water related or water dependent use. Exceptions to this requirement shall be allowed when affirmative findings are made to satisfy the following criteria:

(i) The proposal would provide better protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway than would occur by observance of the setback requirement; or

(ii) The protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway are not applicable to the proposal.

(5) Conditions. Reasonable conditions may be imposed in connection with a Greenway Development Permit as necessary to meet the purposes of this section. Guarantees and evidence may be required that such conditions will be or are being complied with. Such conditions may include, but are not limited to, requiring:

(a) Special yards and spaces.

(b) Fences and walls.

(c) Special off street parking and loading requirements.

(d) Street and road dedications and improvements (or bonds).

(e) Control of points of vehicular ingress and egress.

(f) Special provisions on signs.

(g) Landscaping and maintenance thereof.

(h) Maintenance of grounds.

(i) Control of noise vibration, odors or other similar nuisances.

(j) A time period within which the proposed use shall be developed.

(k) A limit on total duration of use.

(1) Control of scale, bulk and coverage proposal.

(6) Application and Review Procedure. Application for a Greenway Development Permit shall be made as provided by LC 14.040 and reviewed by the Hearings Official as provided by LC 14.300.,

(7) Additional Notice. Immediate notice of an application shall be given the State Department of Transportation by certified mail, return receipt requested, and provision shall be made to provide notice to any individual or group requesting notice in writing.

(8) Conflicting Provisions. In the case of any conflict between the provisions of this section and other provisions in Lane Code, the more restrictive provisions shall apply.

(9) Nonauthority for Public Use of Private Property. Nothing in this section is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in accordance with law to authorize such use.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 11-84

IN THE MATTER OF REVISING CHAPTER 16 THE RURAL DEVELOPMENT CODE OF LANE COUNTY TO:

1. MAKE CERTAIN HOUSEKEEPING REVISIONS TO THE HEARINGS OFFICIAL SPECIAL USE APPROVAL CRITERIA OF THE EXCLUSIVE FARM USE (E) ZONE TO ADOPT THE GREENWAY DEVELOPMENT PERMIT APPROVAL CRITERIA FOR AGGREGATE EXTRACTION, AND NOT TO APPLY ANY OTHER CRITERIA FOR AGGREGATE EXTRACTION, FOR LANDS ZONED E AND IN THE GREENWAY.
2. MAKE NUMEROUS REVISIONS TO THE DEVELOPMENT CODE TO BRING IT INTO COMPLIANCE WITH THE REQUIREMENTS OF THE DLCD STAFF REPORT DATED JULY 26, 1984. THESE REVISIONS INCLUDE:
   A. ADDING A SUBSECTION TO LC 16.005 TO PROVIDE STANDARDS, PROCEDURES AND CRITERIA FOR THE PROTECTION OF AREAS DESIGNATED BY THE RURAL COMPREHENSIVE PLAN AS SENSITIVE BIRD HABITAT.
   B. ADDING THE DEFINITION OF "HISTORIC STRUCTURE OR SITE."
   C. REVISING THE DEFINITION OF "WETLAND" IN ORDER TO BE CONSISTENT WITH THE STATEWIDE PLANNING GOAL DEFINITION OF THAT TERM.
   D. REVISING THE SITING REQUIREMENTS IN THE IMPACTED FOREST, F-2 ZONE TO PROVIDE FOR CLUSTERING OF RESIDENCES ON EXISTING TRACTS.
   E. REVISING THE PROPERTY DEVELOPMENT STANDARDS OF THE EXCLUSIVE FARM USE, E, ZONE TO ADD REQUIREMENTS FOR CLUSTERING OF RESIDENCES ON EXISTING TRACTS.
   F. ADDING RIPARIAN SETBACK AND MAINTENANCE STANDARDS TO THE NATURAL RESOURCE, NR, ZONE.
   G. REVISING THE GREENWAY DELOPMENT PERMITS TO:

i. ELIMINATE ALL THE LANGUAGE FOLLOWING THE PHRASE "OR PERSONAL NONCOMMERCIAL USE" IN LC 16.254(3) (k).

ii. ENSURE THAT ONLY WATER-DEPENDENT AND WATER-RELATED USES ARE EXEMPT FROM THE 100-FOOT GREENWAY SETBACK REQUIREMENT.

iii. PROVIDE NOTICE OF DEPARTMENT ACTIONS FOR A GREENWAY DEVELOPMENT PERMIT TO ODOT.

iv. REQUIRE A GREENWAY DEVELOPMENT PERMIT FOR DEVELOPMENT IN DESIGNATED "URBAN" AREAS.

OR IN THE ALTERNATIVE OF "G" ABOVE

H. ADOPT A NEW GREENWAY PERMIT SECTION

3. ADOPT A SAVINGS AND SEVERABILITY CLAUSE.

WHEREAS, on March 1, 1983, Lane County submitted its Rural Comprehensive Plan to the Land Conservation and Development Commission for acknowledgment, and

WHEREAS, since submitted, objections to the plan have been received, and the Department of Land Conservation and Development Commission staff have reviewed the plan, and

WHEREAS. Lane County has now received DLCD's staff reports and is now in a position to revise the Development Code to bring it to an acknowledgeable standard, now, therefore

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

Chapter 16 of Lane Code is hereby amended by removing and substituting the following pages:

REMOVE THESE PAGES	INSERT THESE PAGES
16-3 to 16-4 (a total of two pages)	16-3 to 16-4b (a total of four pages)
-------	16-16a (a total of one new page)
16-24	16-24 to 16-24a

(a total of one page)	(a total of two pages)
16-44 (a total of one page)	16-44 to 16-44a (a total of two pages)
16-56 (a total of one page)	16-56 to 16-56a (a total of two pages)
16-58 to 16-60 (a total of three pages)	16-58 to 16-60 (a total of three pages)
16-62 (a total of one page)	16-62 to 16-62b (a total of three pages)
16-241 to 16-245 (a total of five pages) or in the alternative 16-239 to 16-245 (a total of seven pages)	16-241 to 16-244 (a total of four pages) 16.239 to 16.245 (a total of seven pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these substitutions is to:

1. Make certain housekeeping revisions to the Hearings Official Special Use Approval Criteria of the Exclusive Farm Use (E) Zone to adopt the Greenway Development Permit Approval Criteria for aggregate extraction, and to not apply any other criteria for aggregate extraction, for lands zoned E and in the Greenway.

2. Make numerous revisions to the Development Code to bring it into compliance with the requirements of the DLCD staff reportdated July 26, 1984. These revisions include:

   A. Adding a subsection to LC 16.005 to provide standards, procedures and criteria for the protection of areas designated by the Rural Comprehensive Plan as sensitive bird habitat.

   B. Adding the definition of "Historic Structure or Site".

   C. Revising the definition of "wetland" in order to be consistent with the Statewide Planning Goal definition of that term.

   D. Revising the siting requirements in the Impacted Forest, F-2, Zone to provide for clustering of residences on existing tracts.

   E. Revising the property development standards of the Exclusive Farm Use, E, Zone to add requirements for clustering of residences on existing tracts.

F. Adding riparian setback and maintenance standards to the Natural Resource, NR, Zone.

G. Revising the Greenway Development Permit requirements to:

i. Eliminate all the language following the phrase "or personal noncommercial use" in LC 16.254(2)(k).

ii. Ensure that only water-dependent and water-related uses are exempt from the 100-foot Greenway setback requirement.

iii. Provide notice of Department actions for a Greenway Development Permit to ODOT.

iv. Require a Greenway Development Permit for development in designated "urban" areas.

OR IN THE ALTERNATIVE

H. Adopt a new Greenway Permit section.

If any section, subsection, sentence, clause, phrase of portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

The application of Chapter 16 to rural Lane County repealed by this Ordinance shall remain in force to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

While not part of this Ordinance, we adopt the attached Exhibit "A" as findings in support of this decision.

Enacted this 12th day of Sept., 1984.

Chair, Lane County Board of Commissioners

Debbie E. Mohr
Recording Secretary for this Meeting of the Board

(3) Conditions. The following conditions may be imposed at the time of approval of a development for which a permit or application is required and for which a finding has been made as required in LC 16.005(2) above in order to ensure site and area stability:

(a) Maintain vegetation and eliminate widespread destruction of vegetation.

(b) Carefully design new roads and buildings with respect to:

(i) Placement of roads and structures on the surface topography.

(ii) Surface drainage on and aroung the site.

(iii) Drainage from buildings and road surfaces.

(iv) Placement of septic tank disposal fields.

(c) Careful construction of roads and buildings:

(i) Avoid cutting toeslopes of slump blocks.

(ii) Careful grading around the site, especially avoiding oversteepened cut banks.

(iii) Revegetating disturbed areas as soon as possible.

(d) Certification by a geologist or engineer that the above conditions have been complied with and/or that a hazard does not exist.

(4) Sensitive Bird Habitat Protection Standards and Criteria. All uses or activities permitted or conditionally permitted within the zones identified in LC 16.005(4)(a) below shall be subject to the additional procedures and requirements in LC 16.005(4)(b)-(g) below, provided such uses are located on property identified as a sensitive bird habitat area via Rural Comprehensive Plan Flora and Fauna Policy 18 and LM 11.400.

(a) Applicable Zones.

Zone Classification	Abbreviation	Section No.
Nonimpacted Forest Lands	F-1, RCP	16.210
Impacted Forest Lands	F-2, RCP	16.211
Exclusive Farm Use	E-RCP	16.212
Natural Resource	NR-RCP	16.213
Marginal Lands	ML-RCP	16.214
Park and Recreation	PR-RCP	16.215
Sand, Gravel and Rock Products	SG-RCP	16.217
Sand, Gravel and Rock Products Combining Processing	SG-CP-RCP	16.218
Public Facility	PF-RCP	16.219
Limited Commercial	C-1, RCP	16.220
Neighborhood Commercial	C-2, RCP	16.221
Commercial	C-3, RCP	16.222
Rural Commercial	C-R, RCP	16.223
Limited Industrial	M-1, RCP	16.224

Light Industrial	M-2, RCP	16.225
Heavy Industrial	M-3, RCP	16.226
Suburban Residential	RA-RCP	16.229
Garden Apartment Residential	RG-RCP	16.230
Rural Residential	RR-RCP	16.231
Destination Resort	DR-RCP	16.232

(b) Development Plan Submittal. The person proposing the development shall submit plans to the Department which sufficiently identify the location, nature and scope of the proposed use or activity.

(c) Referral. Upon receipt of the plans identified in LC 16.005(4)(b) above, the Department shall refer a copy of the plans to the Oregon Department of Fish and Wildlife (ODFW).

(d) ODFW Review. Upon receipt of the plans identified in LC 16.005(4)(b) above, the ODFW shall review the proposed use of activity and make a determination of whether or not the use or activity would affect a sensitive bird habitat. In making this review and determination, the ODFW shall consult with the affected landowner(s) and appropriate state agencies, and shall address the standards in LC 16.005(4)(d)(i) and (ii) below. The basis for the determination shall be stated in writing, completed within seven working days of receipt, and then submitted to the Department (Lane County).

(i) A sensitive bird habitat will be considered affected by a use or activity if the use or activity is located within 660 feet of an eagle or osprey site or within 300 feet of a heron rookery or pigeon mineral spring.

(ii) A sensitive bird habitat may also be considered affected by a use or activity if the use or activity is located a greater distance than specified in LC 16.005(4)(d)(i) above, considering unique conditions of topograph or the individual habits of the bird(s).

(e) No Affects Determined. If the ODFW determines that the sensitive habitat area will not be affected, then the ODFW will give the Department written notice of its determination, and Lane County may proceed with authorization of the use or activity, or with the processing of any other required applications.

(f) Affects Determined and Protection Plan. If the ODFW determines that the sensitive habitat area will be affected, the ODFW shall work with the affected landowner(s) in the development of a site specific habitat protection plan. The plan shall consider the proposed use or activity and its interrelationship to and

affects upon nesting trees, perch trees, critical nesting period roosting sites and/or buffers for wind, vision and noise. The plan must contain a statement of reasons, supported by facts, explaining why the sensitive bird habitat would not be adversely affected by the proposed use or activity. The plan shall then be submitted to the Department.

(g) Director Approval. The proposed uses or activities identified in the habitat protection plan shall be reviewed by the Director pursuant to LC 14.100 and shall be allowed if in conformance with the following approval criteria:

(i) The proposed use or activity would not adversely impact a sensitive wildlife habitat.

(ii) Conditions placed upon the approval of the habitat protection plan would avoid or eliminate any adverse impacts upon a sensitive wildlife habitat. Conditions may include setbacks, limitations upon the time period for the operation of the use or activity and/or prohibition of conflicting uses.

(h) LC 16.005(4)(a)-(g) do not apply to the protection of sensitive bird habitat from forest practices as regulated by the Forest Practices Act and as regulated by the COOPERATIVE AGREEMENT BETWEEN OREGON STATE BOARD OF FORESTRY AND OREGON STATE FISH AND WILDLIFE COMMISSION as adopted by Lane County in Rural Comprehensive Plan Goal 5 Flora and Fauna Policy 17.

16.006 Compliance Required.

(1) No person shall engage in, or cause to occur, a development which does not comply with the Lane County Land Use and Development Chapter.

(2) A development shall be approved by the Director, or other Approving Authority, according to the provisions of this Chapter.

(3) Unless appealed, a decision on any application shall be final upon expiration of the period provided for filing an appeal or, if appealed, upon rendering of the decision by the reviewing body.

16.007 Compliance With Rural Comprehensive Plan. In the event of any conflict between any provision of this Chapter and provisions of the Rural Comprehensive Plan of Lane County, or duly adopted portions, elements or amendments of such Plan, the more restrictive provisions shall prevail.

16.008 Interpretation. When in the administration of this Chapter there is doubt regarding the intent of the Chap-

ter or the suitability of uses not specified, the Director shall request an interpretation of the provision by the Board of County Commissioners. The Board shall issue an interpretation to resolve the doubt, but such interpretation shall not have the effect of amending the provisions of this Chapter. Any interpretation of the Chapter shall be deemed an administrative action and shall be based on the following considerations:

(1) The Lane County Comprehensive Plan.

(2) The purpose and intent of the Chapter as applied to the particular section in question.

(3) The opinion of the County Counsel.

Copies of such interpretations shall be indexed and kept on file in the Department and may be reviewed by the public upon request.

16.009 Restrictiveness. Where the conditions imposed by a provision of this Chapter overlap, the provisions which are more restrictive shall govern.

16.010 Severability. If any section, paragraph, subsection, clause, sentence or provision of this Chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this Chapter, and the effect thereof shall be confined to the section, paragraph, subsection, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this Chapter notwithstanding the parts so declared unconstitutional or invalid. Further, should any section, paragraph, subsection, clause, sentence or provision of this Chapter be judicially declared unreasonable or inapplicable to a particular premises or to a particular use at any particular location, such declaration or judgment shall not affect, impair, invalidate or nullify such section, paragraph, subsection, clause, sentence or provision as to any other premises or use.

16.011 Introductory Provisions. In order to achieve the purposes outlined in LC 16.003, and to assure that the development and use of land in Lane County conforms to the Rural Comprehensive Plan, zone classifications have been established for all unincorporated areas outside of adopted urban growth boundaries and within Lane County. These zones specify regulations for the use of land and property development standards, and use applied by boundaries indicated on the Lane County Rural Comprehensive Plan Zoning Maps.

Historic Structure or Site. Property which had been identified by Lane County in its adopted Rural Comprehensive Plan findings as:

(1) Historically significant.

(2) In need of protection in order to preserve its historical significance, and for which the means of protection shall be the application of the Historic Structures or Sites Combining (/H-RCP) Zone.

The above sites are also identified separately in LM 11.300.

a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract.

Urban. Those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also: (a) have concentrations of persons who generally reside and work in the area, and (b) have supporting public facilities and services.

Urbanizable. Those lands within an urban growth boundary and which are identified and (a) determined to be necessary and suitable for future urban use areas, and (b) can be served by urban services and facilities, and (c) are needed for the expansion of an urban area.

Use. The purpose for which land, submerged or submersible lands, the water surface or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

Veterinary Clinic. Synonymous with the definition of "animal hospital".

Water Dependent Use. A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water.

Water Related Use. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in public loss of quality in the goods or services offered. Except as necessary for water dependent or water related uses or facilities, residences, parking lots, spoil or dump sites, roads and highways, restaurants, businesses, factories and trailer parks are not generally considered dependent on or related to water location needs.

Wetlands. Land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semiaquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines.

Yard. An open space on the same lot with a building unoccupied and obstructed from the ground upward, except as otherwise provided herein.

Yard, Front. A yard between the front line of the building (exclusive of steps) and the front property line.

Yard, Rear. An open, unoccupied space on the same lot with a building, between the rear line of the building (exclusive of steps, porches and accessory buildings) and the rear line of the lot.

Yard, Side. An open, unoccupied space on the same lot with a building, between the sidewall line of the building and the side line of the lot.

(8) Siting and Fire/Safety Standards for Dwellings. All dwellings and mobile homes conditionally permitted above:

(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes of the F-2 zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.

(ii) Residences to be sited upon all other tracts shall be sited as follows:

(aa) Where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from adjoining lines of property zoned F-1 and 100 feet from adjoining lines of property zoned F-2 or EFU.

(bb) On the least valuable farm or forest areas of the tract or located near residences on other tracts.

(b) Shall maintain a fuel break of 50 feet around the residence. Fuel breaks shall be free of hazardous fuels in the form of native vegetation. Irrigation or fire resistent vegetation shall be planted within the fuel break to prevent undue soil erosion. Fuel breaks shall be continually maintained and may contain individual tree specimens, however plant material shall not provide a means of readily spreading fire. Fuel breaks shall comply with the riparian vegetation protection standards of LC 16.211(9)(b) and (c) below.

(c) Shall provide an adequate fire suppression system. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:

(i) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capable of sustaining a volume of 20 gallons per minute for not less than 20 minutes.

(ii) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(iii) The water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period of fire danger.

(d) Shall have a spark arrestor on any chimneys and a fire retardant roof.

(j) A dwelling or mobile home not provided in conjunction with farm use provided:

(i) The dwelling or mobile home is situated upon a legal lot with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on Oct. 12, 1983.

(ii) The dwelling or mobile home, or the activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use

(iii) The dwelling or mobile home is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(iv) The approval of a dwelling or mobile home shall comply with the provisions of ORS 215.236, 1983 Replacement Part, regarding establishment of the nonfarm residence; procedures; disqualification for farm use valuation; and additional tax or penalty.

(k) A transmission tower over 200 feet in height.

(5) Hearings Official Special Use Approval Criteria.

(a) Compatibility of the use or activities associated with the use with the Agricultural Lands Policies of the Rural Comprehensive Plan Policies, ORS 215.243 and the purpose of this zone.

(b) The use, or activities associated with the use, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(c) The use, or activities associated with the use, complies with other conditions considered necessary by the Approval Authority in order to meet the applicable approval criteria.

(d) The above criteria shall not be applicable to uses identified under LC 16.212(4)(b) above if such uses are also subject to review under Willamette Greenway requirement LC 16.254(3).

(6) Farm Operations.

(a) A farm operation is all agricultural activities occurring under a single management. For purposes of this section, it is immaterial whether the activities occur on a single parcel of land, on contiguous parcels of

land or on separate parcels of land. It is also immaterial if the operator has less than fee interest in the land on which the agricultural activity occurs.

dwelling has been approved pursuant to the above LC 16.212(4)(j) above and if the division would not conflict with the purpose of this zone.

(e) Divisions pursuant to LC 16.212(7)(a),(b),(c) or (d) above are subject to the applicable application procedures of LC Chapter 13 and the applicable review procedures of LC Chapter 14. Divisions under LC 16.212(7)(a) and (b) above shall also require that a statement be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for obtaining a dwelling or mobile home are met.

(f) A person who sells or otherwise transfers real property zoned Exclusive Farm Use (E) may retain a life estate in a dwelling or mobile home on that property and the tract of land under and around the dwelling or mobile home. Partition approval is not required for the creation of such a life estate.

(8) Property Development Standards. All uses or activities permitted or conditionally permitted above, except farm use, shall be subject to the following development standards:

(a) The Approval Authority shall balance the setback standards of LC 16.212(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.212 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes of the E zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.212(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.

(ii) Residences to be sited upon all other tracts shall be sited as follows:

(aa) Where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from adjoining lines of property zoned F-1 and 100 feet from adjoining lines of property zoned F-2 or EFU.

(bb) On the least valuable farm or forest areas of the tract or located near residences on other tracts.

(b) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines except as provided below.

(c) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(d) Maintenance Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercial forest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazards.

(dd) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(9) Residence Maintenance, Repair and Replacement Standards.

(a) Maintenance and repair of lawfully existing residences shall be permitted in the Exclusive Farm Use (E) zone.

(b) Replacement of any residence lawfully existing, occupied, suitable for occupancy or in the process of being constructed shall be permitted. The replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice versa). Any replacement authorized under this subsection shall be for a residence to be located on the same site as the previous residence and such replacement shall commence within one year of the date of removal of the previous residence.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

(3) Special Uses - Director Approval. The following uses are subject to approval by the Director pursuant to LC 14.100:

(a) Single-family dwelling(s) or mobile home(s) for residential purpose for watchman, caretaker or operator in conjunction with use permitted in the district.

(4) Special Uses - Director Official Approval. The following uses are subject to approval by the Hearings Official pursuant to LC 14.300:

(a) Piers and boat houses.

(b) Single-family dwelling or mobile home and accessory structures.

(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.

(d) Forest uses and any accessory uses.

(5) Conditional Use Criteria. Uses conditionally permitted under LC 16.213(4) above are subject to compliance with the following criteria:

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.

(ii) That the proposed site is on land generally unsuitable for natural resource uses.

(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;

(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby natural resource lands.

(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;

(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and

(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

(6) Property Development Standards. All uses or activities permitted or conditionally permitted above, shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines, except as provided below.

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from a wetland or from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of wetlands, Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation within wetlands or along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.213(6)(b)(i) above. Where vegetation removal beyond that allowed in LC 16.213(6)(b)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Vegetation removal necessary to provide water access for a water dependent use.

(bb) Removal of dead or diseased vegetation that poses a safety or health hazard.

(cc) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

proposed for lands within the boundaries of the Willamette River Greenway adopted and as revised from time to time by the Oregon Land Conservation and Development Commission, except as provided below:

(a) Customary dredging and channel maintenance conducted under permit from the State of Oregon.

(b) Seasonal increases in gravel operations as provided under permit from the State of Oregon.

(c)tThe placing by a public agency of signs, markers, aids, etc. to serve the public.

(d) Activities to protect, conserve, enhance and maintain public lands, except that a substantial increase in the level of development of existing public recreational, scenic, historical or natural uses on public lands shall require review as provided by this section.

(e) Erosion control operations required in emergency situations for the safety and protection of property.

(f) Construction or use of a building other than a dwelling whether or not within 150 feet of the ordinary low waterline when the building is customarily provided in conjunction with a farm use; provided the structure does not exceed 12 feet in height nor exists for longer than six months.

(g) Farm use.

(h) Reasonable emergency procedures necessary for the safety or protection of property.

(i) Maintenance and repair usual and necessary for the continuance of an existing use. Landscaping, construction of driveways, modification of existing structures or facilities adjacent to a residence as are usual and necessary to such use and enjoyment.

(j) The propagation of timber or the cutting of timber which is done for public safety or personal noncommercial use.

(k) Irrigation pumps and water intakes and other utility lines in conjunction with an agricultural use.

(l) Uses which are pursuant to one of the following Lane County Land Development actions when such action has been approved or adopted consistent with the Greenway Development Permit approval requirements of 16.254(4) below and notification requirements of LC 16.254(7) below.

(i) Planned Unit Developments, as provided in 10.700.

(ii) Unzoned Area Development Permits, as provided in LC 9.700.

(4) Greenway Development Permit Approval. A decision to approve a Greenway Development Permit shall require findings that the proposed intensification, change of use or development conforms to the following criteria, and setback requirements:

(a) Criteria.

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the reestablishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) Preservation and maintenance of land inventoried as "agriculture" in the adopted Willamette River Greenway Plan for farm use, as provided for in Goal 3, and minimize interference with the long-term capacity of lands for farm use.

(iv) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.

(v) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.

(vi) Minimize vandalism and trespass.

(vii) Location of development away from the river to the greatest possible degree.

(viii) Protection of significant fish, wildlife habitat and natural areas.

(ix) Is compatible with the Willamette River Greenway based upon the following considerations:

(aa) A development which is a mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which are designed to minimize adverse effects upon water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety and to guarantee necessary reclamation.

(bb) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resources.

(cc) Preserve areas of annual flooding, floodplains and wetlands.

(dd) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.

(ee) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.

(ff) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses, such as domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.

(gg) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terraces bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(hh) Protection from erosion.

(ii) Protection and conservation of lands designated as aggregate resources within the adopted Willamette Greenway Plan.

(b) Setback Requirement; Exceptions. New intensifications, developments and changes of use shall be set back 100 feet from ordinary high waterline of the river, except for a water related or water dependent use.

(5) **Conditions.** Reasonable conditions may be imposed in connection with a Greenway Development Permit as necessary to meet the purposes of this section. Guarantees and evidence may be required that such conditions will be or are being complied with. Such conditions may include, but are not limited to, requiring:

(a) Special yards and spaces.

(b) Fences and walls.

(c) Special off street parking and loading requirements.

(d) Street and road dedications and improvements (or bonds).

(e) Control of points of vehicular ingress and egress.

(f) Special provisions on signs.

(g) Landscaping and maintenance thereof.

(h) Maintenance of grounds.

(i) Control of noise vibration, odors or other similar nuisances.

(j) A time period within which the proposed use shall be developed.

(k) A limit on total duration of use.

(l) Control of scale, bulk and coverage of proposal.

(6) Application and Review Procedure. Application for a Greenway Development Permit shall be made as provided by LC 14.040 and reviewed by the Hearings Official as provided by LC 14.300.

(7) Additional Notice. Immediate notice of an application shall be given the State Department of Transportation by certified mail, return receipt requested, and provision shall be made to provide notice to any individual or group requesting notice in writing. Notice of the action taken by Lane County on an application shall be furnished by regular mail to the State Department of Transportation.

(8) Conflicting Provisions. In the case of any conflict between the provisions of this section and other provisions in Lane Code, the more restrictive provisions shall apply.

(9) Nonauthority for Public Use of Private Property. Nothing in this section is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in accordance with law to authorize such use.

(10) Nonconforming Uses. Except as modified in this section, LC 16.251(1) to (8) shall apply to properties within the Willamette Greenway Boundaries. Any change or intensification as those terms discussed in LC 16.254(2)(f) and (g) above of a nonconforming use shall be prohibited unless a Greenway Development Permit is issued for it.

Legislative Findings in Support of Ordinance No. 11-84
Exhibit A

The Board of County Commissioners of Lane County finds that it is necessary to make the following changes in Lane Code Ch 16 to bring it to an acknowledgeable standard:

1. Make certain housekeeping revisions to the hearings official special use approval criteria of the Exclusive Farm Use (E) zone to adopt the greenway development permit approval criteria for aggregate extraction, and not to apply any other criteria for aggregate extraction, for lands zoned E and in the greenway.

This change insures that, for all areas within the Willamette River Greenway and zoned Exclusive Farm Use (E), the more stringent requirements of Goal 15 sections C.3.d. will be applied to aggregate extraction. Unlike Exclusive Farm Use lands not within the Willamette River Greenway, those within the greenway require protection of water quality, fish and wildlife habitats, vegetation, bank stabilizaiton, streamflow, visual quality, noise, safety and required reclamation. Section C.3.d. requirements are necessary to insure protection of those areas within the greenway.

2A. Adding a subsection to LC 16.005 to provide standards, procedures and criteria for the protection of areas designated by the rural comprehensive plan is sensitive bird habitat.

These changes to Lane Code require the County to submit development plans for uses located on property identified as a sensitive bird habitat area to the Oregon Department of Fish and Wildlife (ODFW) for evaluation as to the impact the development will have on the habitat. It also deems habitats to be affected if development occurs in close proximity thereto. If the ODFW determines that the habitat will be affected, the changes call for cooperation between the landowner and ODFW to avoid or eliminate those adverse impacts. Only then is the plan taken under advisement by the Director. These changes, providing a two step process and coordination among the landowner, ODFW and the County, insure that sensitive bird habitats will be protected. It bears noting that, for activities regulated by the Forest Practices Act, the requirements of the Cooperative Agreement Between the Oregon State Board of Forestry and the Oregon State Fish and Wildlife Commission as adopted by Lane County in its Goal 5, Flora and Fauna policy 17, prevail.

B. Adding the definition of "Historic Structure or Site".

This change is basically a housekeeping measure as historic structures and sites were referred to in the Code, Working Papers and Policies, but that term was not defined. In addition, (2) makes it clear that the application of the Historic Structures or Sites Combining zone shall be the means of protection of these sites.

C. Revising the definition of "wetland" in order to be consistent with the state-wide planning goal definition of that term.

This is also a housekeeping measure, designed to clearly establish in the implementing measures a definition of "wetlands" which is consistent with the Statewide Planning Goal definition of that term.

D. Revising the siting requirement in the impacted forest, F-2 Zone to provide for clustering of residences on existing tracts.

Under Lane Code Ch. 16 as amended here, residences in the Impacted Forest zones (F-2) which are also located within a designated big game range will be required to be sited near existing residences and with minimal intrusions into forest areas undeveloped by non-forest uses. Setback dimension guidelines (balanced with lot dimensions, proximity to other residences and intrusions into forests area) are also set forth. Notwithstanding the fact that the property is zoned F-2, a concerted effort should be made to locate new residences so as to avoid adversely impacting resource uses and big game habitats. This change in LC 16.211(8) will, on the whole, provide for siting criteria which will protect those interests.

For properties zoned F-2 which are not within a designated big game range, the first criteria to be addressed is that of the suggested setback requirements, taking into account the particular dimensional characteristics of the property. Once a range of possible locations for the dwelling is established, a particular spot should be chosen based on location of the areas in the tract of areas of least natural resource value or in closest proximity to existing residences. Proximity to existing residences is less important for parcels not within designated big game ranges for the reason that wildlife will not be adversely affected by a scattering of residences in these areas.

E. Revising the property development standards of the Exclusive Farm Use, E, zone to add requirements for clustering of residences on existing tracts.

This change to LC 16.212(8) mimics the change reviewed, supra, for LC 16.211(8) and is inserted into the Code for the same reasons. Small groupings of residences will have less of an adverse impact on wildlife and resource uses in the big game range than would more scattered residences. However, if not within the big game range, mitigation of possible adverse effects on the resource uses of neighboring properties is a more important consideration. In any given case, either clustering the residences or scattering them somewhat may be preferable, given the characteristics both of the property upon which the development is proposed and the characteristics and uses of the surrounding properties. This balancing test will ensure a mitigation of adverse impacts to wildlife as well as resource uses.

F. Adding riparian setback and maintenance standards to the Natural Resource, NR, zone.

The Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213) which is, in part, intended to protect aquatic and other wildlife habitat areas. Although major developemnt in the NR zone is not anticipated, the NR zone permits a variety of structures which should be required to be set back in order to protect riparian vegetation just as they are in other zoning districts. For this reason, riparian setback and vegetation maintenance standards have been added to the NR zone. These provisions require cooperation between the County and the Department of Fish and Wildlife for Class I stream setbacks, and closely parallel the riparian requirements to be applied in other zones.

G. Revising the Greenway Development Permits to:

i. Eliminate all the language following the phrase "or personal noncommercial use" in LC 16.254(3)(k)

ii. Ensure that only water-dependent and water-related uses are exempt from the 100-foot greenway setback requirement.

iii. Provide notice of department actions for a greenway development permit to ODOT, and

iv. Requiring a greenway development permit for development in designated "urban" areas.

These changes in the Code are direct results of the requirements of the DLCD staff as outlined in their July 19, 1984, staff report. Excerpts from that report which explain why these changes are made follow:

> "...(S)ubsection (k), which exempts certain kinds of timber harvest activities, is inappropriate. That subsection is consistent with the Greenway Interim Order, but the Goal itself does not exempt such activities from local Greenway review. It has been the Commission's practice to allow propagation of timber or cutting of timber for public safety or personal non-commercial use to be exempt from local Greenway permit review. To that extent, the first part of subsection (k) is acceptable. However, the second part (which exempts harvest activities if consistnet with an approved permit under the FPA, for a farm woodlot less than 20 acres, or if consistent with recommendations of ODOT to DOF), is not." page 91

> "...(A)ccording to the Goal, only water-dependent and water-related intensifications, developments, or changes of use themselves are exempt from Greenway setback requirements. However, Lane County also exempts uses <u>in conjuction with</u> water-related and water-dependent uses. As noted in a number of other reviews, this is inconsistent with the Goal, since it would allow a number of uses to be exempt from the setback which are not envisioned by the Goal. The County's ordinances also identify two ways in which exceptions to the 100-foot setback are permitted. One of these is if a proposal would provide better protection of Greenway values, and the other is if such protection is not applicable to the proposal. The Goal does not permit exceptions to the setback, except for water-dependent and water-related uses, even if a proposal might enhance Greenway values. This is because the intent of the Goal is to keep structures separated from the river and to protect areas immediately adjacent to the river for water-dependent and water-related uses. For example, a restaurant, including landscaping and other amenities may, in the opinion of a Hearings Officer, enhance Greenway values. However, it is not, by definition, a water-related or water-dependent use and therefore, is not permitted within the established Greenway setback." pages 85 and 86

"Section 16.254(6) requires the County to notify the Department of Transportation when an application is made. The ordinance does not require the County to also notify that agency of actions taken on an application. This is required by Goal 15 (Section G)." page 86

"Section 16.254(2) of the Lane Code lists those uses and activities that do not require a Greenway Development Permit. All are consistent with Goal 15 except subsections (a) and (k). Subsection (a) exempts uses "where the location is within areas designated as 'urban' on Greenway maps adopted by the Oregon Land Conservation and Development Commission and is beyond 150 feet of the ordinary low waterline." As noted in the 1981 denial order for Lane County, and intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15, and as designated in the ODOT Greenway Plan, is subject to local Greenway review. (Note: The term, 'urban' as used in the context of Goal 15 is not the same as that used in Goal 14. In this case, 'urban' refers to designations in the ODOT Greenway Plan)." page 83

The changes listed in 2G of this ordinance are designed to alleviate the concerns of DLCD staff, noted above, and to bring the Lane Code into compliance with Goal 15.

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE
Lane County
(Rural Portion, Excluding Eugene Metro Area)
Supplement to Staff Reports of June 29, 1984 and July 19, 1984 as Amended

DATE RECEIVED:
August 16, 1984 through September 13, 1984

DATE OF COMMISSION ACTION:
September 13, 1984

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission acknowledge the rural portion of Lane County's plan and land use regulations to be in compliance with Statewide Planning Goals 1-~~14~~ 15.

FIELD REPRESENTATIVES: Bob Rindy, Glen Hale
Phone: 378-4095

LEAD REVIEWER: Doug White, Mike Rupp, Claire Puchy
Phone: 378-4926

PLANNING DIRECTOR: Roy Burns
Phone: 687-3958

Date of Supplemental Report: September 12, 1984

III. BACKGROUND INFORMATION

On June 29, 1984, the Department issued a staff recommendation for Goals 1-4, 6-14, in response to Lane County's request for acknowledgment. The Commission took testimony but did not take final action on the request at the July 19, 1984 meeting. Also, on July 19, 1984, the Department issued a staff recommendation regarding Goals 5 and 15, and Goal 2 nonresource lands. At their August 17, 1984 meeting, the Commission again postponed final action on the June 29, 1984 report, and on the July 19, 1984 report, except for the portions pertaining to the rural areas in the Eugene/Springfield Metro Plan. These areas were granted a continuance to October 11, 1984.

In the period following the issuance of the Department recommendations, Lane County has made numerous revisions to their comprehensive plan and implementing ordinances in response to the Department's recommended in-order-to-comply requirements. These amendments were made under the provisions of the Expedited Notice Procedure for Acknowledgment (OAR 660-03-033). According to County Notices (July 19, 1984 and August 23, 1984), commentors and objectors were notified and provided opportunities for review and comment on these amendments prior to County adoption.

Section IV below summarizes the DLCD proposed requirements from the June 29 and July 19 reports and summarizes the County's response to each requirement. These are intended as supplemental findings, rather than as amendments to the previous DLCD recommendations.

Submitted Documents

Document	Ordinance	Adoption
Revisions to Development Code (Chapter 16)	9-84; 11-84	8-9-84; 9-12-84
Amendments to Plan Policies and Comprehensive Plan	889; 892	8-9-84; 9-12-84
Revisions to Development Code (Chapters 13 and 14)	10-84	8-9-84
Amendments to Comprehensive Plan	888	9-12-84
Supplemental Findings for Exceptions, Maringal Lands and Non-Resource Areas	84-9-11-22 (Order) 84-9-11-23 (Order)	9-12-84 9-12-84
Revised Comprehensive Plan Map and Zoning Map	891; PA 884	9-12-84

IV. FINDINGS

GOAL 2: LAND USE PLANNING

Requirement

1. Provide legible maps for all rural lands showing adopted plan categories.

Response

Lane County adopted a set of revised plan maps (ORD. No. 884). These plan maps replace previously submitted plan maps. The plan designations are site specific following legally identifed boundaries. Each plan designation is identified by a specific code symbol and defined in the County's plan.

Conclusion

The requirement has been met.

Requirement

2. Clearly define which zones are intended to implement each plan category.

Response

The County's plan was amended (ORD. 889) to include the following plan policy (Goal 2, Policy 26):

> "Each of the land use designations applied to the Plan Diagram shall be implemented by one or more zoning districts as follows:

Plan Designation(s)*	Zone Classification
Forest land	Nonimpacted Forest Lands
Forest Land	Impacted Forest Lands
Agriculture Land	Exclusive Farm Use
Natural Resource	Natural Resource
Marginal Land	Marginal Lands
Park and Recreation	Park and Recreation
Natural Resource	Quarry and Mining Operations Combining
Natural Resource	Sand, Gravel and Rock Products
Natural Resource	Sand, Gravel and Rock Products Processing
Public Facility, Community	Public Facility
Commercial, Community	Limited Commercial
Comercial, Community	Neighborhood Commercial
Commercial, Community	Commercial
Rural Commercial	Rural Commercial
Industrial, Community	Limited Industrial

Industrial, Community	Light Industrial
Industrial, Community	Heavy Industrial
Rural, Community	Suburban Residential
Rural, Community	Garden Apartment Residential
Rural, Community	Rural Residential
Destination Resort	Destination Resort
Historical Structure/Site	Historic Structures or Sites Combining
Natural Estuary	Natural Estuary
Conservation Estuary	Conservation Estuary
Development Estuary	Development Estuary
Sign. Natural Shorelands	Significant Natural Shorelands Combining
Prime Wildlife	Prime Wildlife Shorelands Combining
Natural Resources Consv.	Natural Resources Conservation Combining
Residential Development	Residential Development Shorelands Combining
Shorelands Mixed Develop.	Shorelands Mixed Development Combining
Dredge Material/Mitigation	Dredge Material/Mitigation Site Combining
Beaches & Dunes	Beaches and Dunes Combining
	Floodplain Combining
Airport	Commercial Airport Safety District
Airport	Airport Safety District
Airport	Airport Operation
Nonresource	Rural Residential

* Note: The 'Community' Plan Designation is implemented by various zoning districts as indicated, zones which also implement specific Plan designations other than 'Community'."

Conclusion

The requirement has been met.

Requirement

3. Delete the provision in Sections 16.015 and 16.252 which permit legislative zone amendments to be adopted by order rather than by ordinance.

Response

Lane County's Development Code (Section 16.015) was amended (Ord. 9-84) to require that only quasi-judicial zone amendments be adopted by order. The section in the County Code which permits adoption by order applies to the County Board, Planning Commission and Hearings Official. An adoption by Ordinance is required for all legislative amendments.

Conclusion

The requirement has been met.

Requirement

4. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone these lands identified in the Goal 2 Exception with the appropriate resource zone.

Response

Early in the review of the County's built and committed exceptions areas, Department staff identified certain areas that were not justified. In response to these noted deficiencies, the County adopted the first set of supplemental findings prior to issuance of the DLCD June 29, 1984 report (Order No. 84-6-19-16). These findings were reviewed in that report and found to address most of the deficiencies identified by Department staff. However, the Commission did not accept and approve these findings at their July 19, 1984 meeting because the County had not complied with the Expedited Notice Procedures for Acknowledgment (OAR 660-04-033) (See Lane County Acknowledgment Report, June 29, 1984, p. 26). To correct the oversight, the County followed the Expedited Notice Procedures leading up to the adoption of the second set of supplemental findings and provided oportunities for commentors and objectors to review the first set of supplemental findings. As a result of compliance with OAR 660-03-033, the first set of supplemental findings (Order No. 84-6-19-16) along with the other revisions can be affirmed.

In response to IOTC (4), Lane County redesignated 870 acres to an appropriate resource desigation (ORD. No. 891). For the remaining areas, the County adopted the second set of supplemental findings (Order No. 84-9-11-23) to justify the areas as committed. These findings provide additional information on recent partitions and subdivision activities along with information on more recent development. This information was not provided in the earlier submittal because of outdated maps and ownership listings. Address maps showing location of dwellings, mobile homes and recent road development provide most of the information addressing the deficiencies noted earlier. In addition, specific findings provide reasons why it is impracticable to apply a resource goal to areas that are not built upon but are irrevocably committed to nonresource uses.

Conclusion

The requirement has been met.

Based on the information contained in the County's original exception document and supplemental findings (Order No. 84-6-19-16 and Order No. 84-9-11-23), the County has provided substantial evidence consistent with OAR 660-04-025 and OAR 660-04-028 to support the conclusion that all areas, for which the County has taken a Goal 2 exception are no longer available for resource use and are irrevocably committed in their entirety.

Requirement

5. Amend the plan to clearly identify areas zoned PR which are within built and committed exception areas. For those areas within an exception area, provide for information addressing OAR 660-04-025 requirements or exclude those lands from areas designated as a built and committed exception area.

Response

The plan was amended (Ord. No.889) to include a list of tax lots zoned PR that are within built and committed exception areas. This action satisfies the first part of the above requirement. Information addressing the exception criteria can be found in the County's original exception document (Ord. No. 884) and the two sets of supplemental findings (Order No. 84-6-19-16 and Order No. 84-8-11-23). The adequacy of these findings is discussed under Goal 2 requirement 4 of this report.

Conclusion

The requirement has been met.

Requirement

6. Amend the PR-RCP Zone to include standards for uses permitted outright (consistent with ORS 215.213(2)). Note: These should not include review of minor betterment activities as described in ODOT's State Agency Coordination Program.

Response

The PR-RCP Zone was amended (ORD. 9-84) to require that uses authorized under ORS 215.213(2)(G) be subject to Director approval consistent with ORS 215.213(2)(LC 16.215(3)). Minor betterments and general improvement of existing parks or recreational facilities are permitted outright (LC 16.215(2)(d)).

Conclusion

The requirement has been met.

Requirement

7. Amend the zoning code to exempt maintenance and improvments in Jennie B. Harris State Park and Squaw Creek State Wayside from conditional use procedures. This is most easily accomplished by zoning all of these parks to PR.

Response

The County plan and zoning maps were amended (Ord. No. 898) redesignating Jennie B. Harris State Park and Squaw Creek State Wayside as Park and Recreation (PR).

Conclusion

The requirement has been met.

Requirement

8. In conjunction with compliance requirements under Goal 11 of this report, the County must (1) clearly define uses, densities, unit quantity, and levels of service appropriate to rural "cluster" subdivisions, and (2) adopt appropriate ordinance amendments implementing these standards. Densities exceeding those appropriate for rural areas shall additionally require a Goal 14 exception.

Response

The County has amended the plan to contain a policy which insures that urban levels of development will not occur in rural areas under the Cluster Subdivision Standards. The policy contains language parallel to the Commission's administrative rule on establishing new urban uses in rural areas (OAR 660-14-040). Prior to approving a cluster subdivision, with more than 20 units and which includes any lots less than 5 acres, the County must make findings similar to those required for an exception under Goal 14. These amended requirements are as follows (Ordinance PA 889):

> "Cluster subdivisions shall be deemed appropriate to a rural area when the following criteria are satisfied:
> 1. Consistent with the intent and requirements of OAR 660-14-040(2) and (3), a showing must be made that the development will not represent an urban population or demand an urban level of facilities and services. For purposes of meeting this standard, affirmative findings must be made addressing the following:
> a. The level of development represented by the development cannot be reasonably accommodated through the expansion of an existing urban growth boundary or by intensification oif development at an existing rural center.
> b. The long-term environmental, economic, social and energy consequences resulting from the development, considering measures designed to mitigate negative impacts, are appropriate to the rural area. Factors to be considered include whether the size of the development is appropriate to the proposed rural area and whether the air, water, energy and land resources of the surrounding area are adequate to serve and not adversely affected by the development.
> c. The proposed development is compatible with or can be made compatible with adjacent uses considering:

(1) Whether the development detracts from the ability of existing cities and service districts to provide services, and
(2) Whether the potential for continued resource management of the land at present levels surrounding and nearby the development is assured.

d. An appropriate level of rural facilities and services are available or can be provided in a timely and efficient manner.
e. The approval of the development is coordinated with affected jurisdictions and is consistent with the comprehensive plans of the affected jurisdictions and the Lane County Rural Comprehensive Plan.

2. The development will not:
   a. Generate traffic which will exceed the carrying capacity, as defined by Lane Code Chapter 15, of adjacent public and private roads.
   b. necessitate a higher level of police service than presently provided to the surrounding area.
   c. Occur within one mile of an existing urban growth boundary and/or share any urban service provided within a neighboring urban growth boundary.
   d. On the whole require an urban level of service.
3. Reasonable assurances must be provided that the cluster shall not generate students in excess of the capacity of affected facilities within the appropriate school district.
4. The development represents a concentration of people who generally reside and work in the area.
5. Deed restrictions which ensure that commucnity water and sewer systems shall remain viable and under private ownership shall be required. Cluster subdivisions which propose to form or use a public water or sewer system shall not be allowed.
6. Cluster subdivsions shall be limited to residential use. No commercial or industrial uses will be allowed within existing or proposed cluster subdivisions.
7. All cluster subdiviions must be within an existing Rural Fire Protection District.
8. No other identifiablke substantial increase of a public service shall be necessitated by the approval of a cluster subdivision."

The cluster development standards also contain provisions to assure their application to a series of small cluster developments (i.e., less than 20 units and therefore, exempt from standards 1 through 8 above).

Conclusion

The requirement has been met.

The Lane County cluster development standards contain the same standards as OAR 660-014-040. These standards assure that urban development will not occur in rural areas except where OAR 660-14-040 criterion are met.

Requirement

9. Amend Lane Code Chapter 16 to correct inconsistencies in the cross-referencing system, where subsections are referred to within the same section of the ordinance.

Response

The County Rural Zoning Ordinance (Chapter 16) has been codified eliminating cross referencing from the older Zoning Ordinance (Chapter 10). As a result, all inconsistencies previously identified have been corrected.

Conclusion

The requirement has been met.

Requirement

10. Amend the plan (a) to include additional findings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the County chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

Response

Lane County amended its nonresource findings for Dillard Highland's Second Addition to include additional findings supporting the claim that Goals 3 and 4 do not apply as well as information indicating that the Goal 5 wildlife habitat issue has been resolved. The contents of the County's supplementary findings includes the following information: (1) amended soils information, introduced by soil scientist Joel A Norgren, PHD, which concludes that (a) 99.5 acres (65 percent) of the 154-acre parcel consists of SCS agricultural capability classes VI, and (b) 85.5 acres (56 percent of the 154-acre parcel consist of soils with no woodland site class; and (2) findings indicating why it is impractical to apply Goals 3 and 4 to this property. Reasons supporting these findings include the following:

"a) The Dillard Highlands is located on the east side of Dillard Road and the south hills ridgeline approximately one-third of a mile southeast of the Eugene city limits and the urban growth boundary.

It is within an area of very poor soils as indicated by the Soil Conservation Service maps. It is surrounded by a sloping terrain and a 'Developed and committed' area to the west, a 'developed and committed' area and a major BPA powerline to the north, a 'developed and committed' 260 feet power line and natural gas easement to the east, and an approved 'Non-Resource' area to the south. Although man-created boiundaries, they make it impracticable to apply the resource goals to he subject property (Dillard Highland's 2nd Addition; Supplemental Findings, August 24, 1984, pp. 15, 16).

b) Dillard Highland's status as a significant wildlife habitat has already experienced significant impacts because of existing urban and rural residential development in the area. Areas with 'built and committed' exceptions and this level of existing conflict are defined as 'Impacted Big Game Range' by Lane County's Flora & Fauna working paper (March 1982). These are areas 'that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity...the subject property is already impacted as big game habtat..." (Dillard Highlands, 2nd Addition, Supplemental Findings, August 24, 1984, pp. 18-19).

Conclusion for Dillard Highland's Second Addition

The claim that Goals 3 and 4 do not apply to Dillard Highland's Second Addition is sustained.

Substantial evidence has been provided by the County indicating that the 154 acres of Dillard Highland's Second Addition is not composed of predominantly SCS Class I-IV agricultural soils or soils with a cubic foot site index capable of producing commercial forest species.

In addition, the County indicates that the property is considered "impacted" big game habitat because of surrounding development activities and that, issues regarding Goals 4 and 5's habitat requirements are therefore resolved.

The supplemental findings of August 24, 1984, when combined with the findings previously discussed in the Departments' July 19, 1984 (addressing the "other lands" tests contained in Goal 3's definition and the remaining aspects of Goal 4's definition) are adequate to support the position that Goals 3 and 4 do not apply.

Requirement

11. Amend the plan to justify the potential one dwelling unit per 5-acre density authorized for Cerro Gordo's 600 acres in view of ODFW's

accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (See also Goal 2's cluster development issue.)

Response

The County's policy is to abide by ODFW's density recommendations unless the entire Goal 5 process is applied and a decision to exceed these recommendations is justified. Lane County has adopted supplementary findings (Order No. 84-9-11-23) and has revised its ESEE consequences analysis and wildlife habitat management plan for Cerro Gordo to justify development in a recognized big game habitat area, in excess of ODFW's recommended density standards. A meeting was held on August 14, 1984, with ODFW, Cerro Gordo and DLCD representatives to discuss this issue. It was determined that, in this case, ODFW density recommendations do not have as much bearing on the acceptability of the development as do other factors. These factors include the overall number and location of dwellings and roads, as well as mitigating measures incorporated into the development. The following factors in the revised Cerro Gordo proposal are particularly relevant (Order No. 84-9-11-23):

1. There is an overall "cap" on the number of lots which could be developed (i.e., 60 lots).

2. No more than one-third of the residences will be located north of the BLM road (the habitat area considered more sensitive to human disturbances).

3. Wildlife corridors from 600 to 1800 feet in width shall be provided along streams.

4. Residential development will be confined to a band 2,400 feet in width along an existing BLM road.

5. Residences must be clustered.

6. Goal 2 cluster subdivision requirements shall apply (see the Goal 2 section of this report for details).

7. Cerro Gordo is either adjacent to or near large tracts of federal and private forest land.

8. Lane County will provide ODFW with the opportunity to review and comment on the preliminary subdivision application to assure mitigation measures are achieved through proper clustering.

9. Road development will be minimized and private roads within forested areas will be closed to vehicular use except for emergencies, maintenance, and forest management activities.

10. A Cerro Gordo Design Committee as well as the Cerro Gordo Cooperative itself shall review and monitor actions and changes in wildlife conditions on an ongoing basis.

11. Pets shall be limited.

Because of these and other factors addressed in the County's amended findings, the impacts on big game range are thought to be acceptable by ODFW. Allowing such conflicts to occur, but with restrictions outlined above, is a (3C) decision under the Goal 5 Administrative Rule. The County has justified this decision.

Conclusion

The requirement has been met.

Requirement

12. Remove the AO zoning from all privately owned parcels within the Mahlon Sweet Airport Exception Area consistent with Transportation Policy 11 and apply an appropriate resource zone to these lands.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

13. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone TL 1600 in the Royal Avenue Exception area with the appropriate resource zone.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

14. Amend the zoning code to exempt maintenance and improvements in Armitage State Park from conditional use procedures. This is most easily accomplished by zoning all of this park to PR.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 2

Lane County complies with Goal 2 for the rural portions of the County, excluding the Metro Plan area.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 2.

GOAL 3: AGRICULTURAL LANDS

Requirement

1. Amend the EFU Zone to require disqualification from farm tax deferral of parcels prior to final building permit approval for nonfarm dwellings pursuant to ORS 197.236.

Response

Lane County's Development Code was amended (ORD. 9-84) to include a provisions requiring compliance with ORS 215.236 regarding the establishment of nonfarm dwellings in the EFU Zone (LC 16.215(4)(j)(IV)).

Conclusion

The requirement has been met.

Requirement

2. Adopt a plan policy requiring a plan amendment to the County Plan when designating land as Marginal Lands.

Response

The County plan was amended (ORD 889) to include the following plan policy (Goal 2, Policy 25):

> "Outside of designated 'Community' areas, all changes to Plan Diagram designations shall be evaluated through the County's Plan Amendment procedure (LC 16.400) and approval based upon fulfillment of criteria therein."

Conclusion

The requirement has been met.

Although this policy might imply that plan amendments are not necessary to change designations in community aras, in fact there is only one category--"community"--that can be applied to community areas. The policy should be clarified in the future to indicate that it is zoning within community areas that maybe changed without a plan amendment.

Requirement

3. Amend the plan to include adequate findings and reasons for applying the marginal lands zone to the Merz/603, Harrison, Peters, Hledik, G.E. Credit Corp., and KVAL properties and provide the required information to determine compliance with ORS 197.247. If the information provided shows that the land does not qualify as marginal land under ORS 197.247, plan and rezone the properties with appropriate resource designations and implementing zones.

Response

The County's plan was amended (Order No. 84-9-11-23) to include additional findings and reasons for applying marginal lands to the Merz/602, Harrison, Mathers and G.E. Credit Corp. properties. The County has also amended the plan and adopted an additional marginal land area known as the Moshofsky property (Order No. 84-19-11-22). The Peters, Hledix, and KVAL properties have been redesignated an appropriate resource designation (Ord. No. 898).

Information regarding the five marginal land areas is described below (Source: Order No. 84-9-11-22 and 84-9-11-23 (Moshofsky)):

Merz/603 - 70 acres

57.3 acres - SCS Class VIII (Dune Land)
12.7 acres - SCS Class III/Forest Site Class 3

Harrison - 45 acres

13.5 acres - SCS Class III
7. acres - SCS Class IV
49.5 acres - SCS Class VI
No woodland suitability

Mathers - 111 acres

4.7 acres - SCS Class III/Forest Site Class 3
13.7 acres - SCS Class IV/Forest Site Class 3
92.6 acres - SCS Class VI

G.E. CREdit - 20 acres

20 acres - SCS Class VI
No woodland suitability

Moshofsky - 68 acres

14.5 acres - SCS Class III
8.7 acres - SCS Class IV
42.6 acres - SCS Class VI
2.1 acres - SCS Class VII

MOSHOFSKY SOIL CALCULATIONS
AS PER F-2 WOODLAND SITE CLASS STANDARDS

Woodland Site Class	Acreage Needed Disqualification	Acreage Found Moshofsky	Percentage Of Standard
2	17	8.7	51.1%
3	24	0	0%
4	34	14.5	42.6%
5	43	2.1	4.8%
None		42.65	

Percentage Total = 98.5%

Conclusion

The requirement has been met.

The previous findings found lacking for these properties have now been corrected as is required under ORS 197.247.

Based on the evidence submitted, and along with the findings in the previous staff recommendations, the following areas qualify as marginal lands under ORS 197.247:

Mertz/603
Harrison
Mathers
G.E. Credit Corp
Moshofsky

Requirement

4. Amend the Plan Map and Zoning Map for the Cuddeback and Rodman properties to an appropriate resource designation and implementing zone.

Response

The Cuddeback and the Rodman properties have been redesignated Impacted Forest Lands (Ord. No. 898).

Conclusion

The requirement has been met.

Conclusion - Goal 3

Lane County complies with Goal 3.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 3.

GOAL 4: FOREST LANDS

Requirement

1. Amend the Forest Working Paper and addendum to:

   a. Provide justification for the F-1 Zone's 40 acre minimum.

   b. (1) include information on the pattern of contiguous ownerships (either map or statistical) in support of a decision to retain current F-2 zoning. Such information must show that the minimum lot size is representative of the ownership pattern of the area

and that the zone actually limits further opportunity for development; or (2) include information justifying an alternative approach consistent with Goal 4 taken to resolve issues raised regarding the F-2 Zone.

c. Amend the Forest Working Paper Appendix 1--Lane County Forest Soils--to include "all commercial forest soils" in a manner consistent with an appropriate definition of commercial forest lands.

Response

1. a. Lane County has adopted additional information supporting its decision for assigning a 40-acre minimum lot size in the F-1 Zone. Specifically, the County has included as findings, two letters from Carl Ehlen (Lane County Landowners Assoc. and Rex Timber Co.) regarding the viability of a 40-acre parcel to be commercially managed as a forest parcel and Exhibit "D" from Ordinance No. PA 889 which cites the following findings:

"1) In support of the proposed Comprehensive Plan developed in 1982 the Lane County Landowners Association provided written testimony that the minimum land division size of 40 acres in the F-1 Zone represented an acreage that could be an operationally and economically manageable unit within the industry. At that time, the F-1 Zone proposal allowed dwellings on parcels down to the minimum size. (See attached letter dated November 23, 1982)

2) The Addendum to the Forest Lands Working Paper dated November 1983, justifies the 40 acre minimum land division from the data which show a significant number of parcels and amount of acreage that represent that size class within the industrial forest land ownership.

The following excerpt is from Suggestion Policy XI. 1) of the Addendum to the Forest Lands Working Paper:

'92% of the Industrial forest land acreage that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to 80 acres, with approximately 25% of that area occuring at the 40 acre parcel size category.'

'75% of the number of parcels in the Industrial owned forest land that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to

80 acres, with approximately 28% of the number of parcels occuring within that range at the 40 acre parcel size category.'

3) The letter received June 21, 1984, from the Lane County Landowners Association reiterates their former position in support of the 40 acre minimum land division standard noting that under the current proposal the F-1 Zone excludes residences. (See copy attached.)

4) In addition, preliminary data from the computerized zoning file of the current F-1 proposal indicates that of the parcels zoned F-1 that are between 40 and 80 acres in size, 27% of the acreage occurs on parcels of the 40 acre size class which represents 39% of the number of parcels between 40 and 80 acres in size."

The County has indicated further that the County's decision establishing the 40-acre minimum lot size in the F-1 Zone is supported because:

"Commercial forest representatives in Lane County requested 40 acres as a minimum lot size in the F-1 Zone based upon 40 acres being a commonly acquired, managed and exchanged unit of commercial forest land in Lane County."

Because Lane County's F-1 Zone does not allow dwellings, the price of forest land will reflect forest land values instead of rural residential values and conflicts with forest management activities will be minimal. Thus, a small minimum lot size conducive to commercial forest management, such as the F-1's 40-acre minimum is appropriate.

b. Lane County has rezoned approximately 56,080 acres of land from F-2 to F-1 and EFU in accordance with requirement "1.b(1)." Lands for which the F-2 zone was retained generally exhibit one or more of the characteristics for impacted forest lands presented in the response to requirement "2a." In addition, the County's revised Goal 4 Policy 12 provision (discussed under Goal 4 Response 3 of this report) presents additional limitations on divisions of resource land by establishing a 80-acre minimum lot size for all forest parcels which are (1) 160 acres in size, (2) zoned F-2, and (3) adjacent to F-1 zoned lands.

c. Lane County has amended, through Ordinance No. PA 889 (p. 6), their definition of commercial forest land to be 50 cubic feet per acre per year. By adopting a single commercial forest lands definition in its forest lands working paper rather than relying

on inconsistent references to 20 cubic feet, 50 cubic feet or the list of forest soils contained in Appendix 1, a consistent standard for inventorying forest lands and evaluating nonresource lands is established.

Conclusion

Lane County satisfies this requirement.

Requirement

2. Amend the comprehensive plan to:

   a. Include a Forest Policy which establishes precise criteria for applying the F-1 and F-2 Zones. (At a minimum, criteria for applying the F-1 Zone must include ownerships of a size capable of being managed as commercial forest lands.)

   b. Amend the four characteristics discussed under the Goal 4 conclusion for policies to establish criteria which apply only to lands appropriately zoned F-2 as per the examples discussed under "application;" or

   c. Include a policy which requires a plan amendment to rezone lands from F-1 to F-2.

   d. Delete the following from Forest Policy 11(a) "if adjacent to other nonimpacted forest lands.

Response

2a. In response to the above requirement, Lane County revised the criteria for applying the Non-Inpacted (F-1) and Impacted (F-2) Zone designations to eliminate the specific "vague" criteria discussed in the June 29, 1984 review. The revised criteria can be used to more specifically determine the proper zone designation. Ordinance No. P. 899 (p. 5, Item 10) adds Goal 4, Policy 19 which reads as follows:

"Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

'a. A conclusion that characteristics of the land correspond more closely to the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

'b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantely ownerships not developed by residences or nonforest uses.
'ii. Predominantely contiguous ownerships of 80 acres or larger in size.
'iii. Predominantely ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.
'iv. Accessed by arterial roads or roads intended primarily under commercial forest management.

'c Impacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantly ownerships developed by residences or nonforest uses.
'ii. Predominantely ownerships 80 acres or less in size.
'iii. Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.
'iv. Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences."

In addition, nonforest uses authorized under the F-1 Zone (LC 16.2104) can not be used as the basis for supporting a zone change from F-1 to F-2; the criteria established in LC 16.210(5) require as a condition of approval that findsigs be provided indicating such uses do not significantly impact forest uses. Thus, establishment of such nonforest uses in an F-1 Zone can not be the basis for a zone change to F-2 under the "impacted" criteria adopted by Lane County.

2b. or c.

Lane County revised its plan to delete the four vague characteristics used in applying the F-1 and F-2 zones. As indicated in the conclusion to "2a," the revised criteria successfully address the issue.

2d. On page 4 of Lane County Ordinance "No. PA 889, #8," the County states: "Goal No. 4, Policy No. 11a--delete if adjacent to other nonimpacted forest lands."

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend the County zoning map by rezoning private non-industrial ownerships capable of commercial forest management (including forested portions of commercial farm-forest operations) currently zoned F-2 with an appropriate resource zone. An acceptable forest zone is the F-1 Zone or forest zone containing a minimum lot size of

at least 80 acres as justified by the County's "Forest Working Paper Addendum."

Also, where the County can justify such a decision, the County may apply the marginal lands zone or rural residential zones to "committed" or nonresource lands.

Response

Lane County has rezoned 24,075 acres of land from F-2 to F-1 and rezoned 32,005 acres from F-2 to EFU. Generally, ownerships greater than 120 acres in size capable of being managed as a farm unit were rezoned to EFU. Ownerships of 160 acres or greater capable of being managed as commercial forest lands were rezoned to F-1. Some large ownerships were zoned with more than one zone depending on adjacent land uses and impacts. Also, the F-2 zone was retained on a few large ownerships, where soils information indicated that non-commercial forest soils predominate.

In order to reduce potential conflicts between authorized land uses in the F-2 Zone and commercial forest management activities occuring on F-1 lands, Lane County adopted a new version of Goal 4 Policy 12 (Ordinance No. PA 889, p. 4, Item 9) which contains the following provision:

> "(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:
> '(i) zoned F-2
> '(ii) containing at least 160 acres
> '(iii) for the creation of lots or parcels adjacent to F-1, RCP zoned lands."

Conclusion

Lane County has satisfied this requirement.

The County has amended its zoning map, through the rezoning of some lands previously zoned F-2, in a manner consistent with this requirement. With the elimination of 56,080 acres from the F-2 Zone, the County's current application of the F-2 Zone is more representative of the ownership patterns within areas where non-commercial forest management and other non-resource activities occur.

Requirement

4. Amend LC 16.210(4)(i) of the F-1 Zone and LC 16.211(5)(ii) to require that "lodges" be evaluated against the "generally unsuitable test" in addition to the other review standards already applied to this specific use.

Response

Lane County through the adoption of Ordinance No. 9-84 amended LC 16.210(4)(i) and LC 16.211(5)(ii) to require under LC 16.210(4)(i) and LC 16.211(5)(r) that in addition to other review criteria, lodges will be required to locate on land generally unsuitable for forest uses in the F-1 and F-2 Zones or an exception to Goal 4 would be necessary.

The County also adopted Plan Policy No. 27 which requires an exception to resource Goals for transmission lines with right-of-way widths in excess of 50 feet (Ord. No. PA 889, p. 4). In addition, the County has limited farm equipment maintenance to that "incidental to a forest repair" (Ord. No. 9-84, p. 16-29).

Conclusion

Lane County satisfies this requirement.

Requirement

5. Amend the F-2 zoning provisions as follows:

   a. In 16.211(3)(b), adopt informational requirements for the "detailed forest management plan." At a minimum, such provisions must require sufficient information to establish adequate findings that a proposed "forest" dwelling is "necessary" and "incidental and subordinate to" the primary forest management activities described in the forest management plan.

   b. Include in LC 16.211(3)(b) a "floor" or minimum parcel size requiring parcels below 10 acres to be assessed against the nonforest dwelling or lot of record provisions.

   c. Amend 16.211(7)(b) to apply to all commercial forest grazing operations zoned F-2 the larger size (120 acres) for extensive animal grazing as required by LC 16.212(6)(d).

Response

5a. Lane County has amended LC 16.211(3)(b), through the adoption of Ordinance NO.9-84, to include specific requirements for preparing an acceptable forest management plan. Included within the revised LC 16.211(3)(b) is the following additional requirement:

"(iii) The forest management plan shall specify how the following practices, when applicable, are to be addressed: road and fire trail construction and maintenance, site preparation, reforestation, stand conversion, planting of nonstocked openings, competition reduction/release, precommercial thinning, harvest scheduling/rotation and special site treatments for topography and other concerns."

Because active forest management is required to retain forest land taxation rates and failure to implement the forest management plan is a violation of LC 15.211(3)(b). The combination of the above requirements for forest related dwellings in the F-2 Zone assures that active forest management must occur on forest lands in order to establish a forest related dwelling; thus, satisfying the accessory and necessary test. These requirements for approving a forest related dwellings in Lane County's F-2 Zone are similar to the provisions contained in Benton County's acknowledged secondary forest zone.

5b. Through the adoption of Ordinance No. 9-84, Lane County amended LC 16.211(3)(b) of the F-2 Zone to include a "10 acre" floor which will be used for assessing "forest" dwelling applications. Applications for dwellings on parcels zoned F-2 which are less than 10 acres will be reviewed as nonforest dwellings.

5c. Upon further review of LC 16.211(7)(c) regarding the F-2 zone's minimum lot size requirements for farm unit size requirements for commercial grazing operations, it was determined that this provision's 40-acre minimum "farm unit size" requirement is identical to the County's EFU Zone minimum farm unit size requirement. For specific uses, such as dwellings, LC 16.212(2)(f) of the EFU Zone must be satisfied before approval can be granted.

Conclusion

The County satisfies this requirement.

Conclusion - Goal 4

Lane County complies with Goal 4.

Lane County's approach to conserving forest lands contains some plan policy and ordinance provisions unique to Lane County. The strength of their forest lands conservation program is the F-1 Zone which prohibits the siting of all dwellings (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.

The County's F-2 Zone is applied to 145,356 acres of privately owned lands which consist generally of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands. Lands zoned F-2 are generally located adjacent to or near developed urban or rural areas and well travelled transportation routes; all of which have an impact on the commercial management of forest lands.

In the F-2 Zone, the County requires that before a permanent dwelling is sited on forest land, assurances are obtained that forest production on the lot will be enhanced by active forest management. The requirements associated with the siting of dwellings in the F-2 Zone are similar to those provisions approved by the Commission in Benton County's acknowledgment with recent changes to the County's forest policies and

ordinance provisions. The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 4.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

Requirement

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SC which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

Response

In responding to this IOTC, Lane County discovered that not only were there sites zoned SG which were not on its (1C) inventory, but that there were other errors on its inventory. Therefore, the County revised its (1C) inventory as well as its (1B) inventory. Supplemental findings to Ord. No. PA 892 state:

> "The IOTC to correct the zoning citations was the stimulus for a complete review of sites listed in Appendix D vs. zoned sites. Several of those in the original Appendix D have been deleted--none of which carried SG or QM zoning. No "unzoning" will be necessary. Most of those deleted are also reflected in Appendix F of the Working Paper, which is the "pool" for later evaluation under the Goal 5 Rule "1B" option. Thus, any sites deleted in this effort are not lost from consideration, merely set aside for more detailed examination later on. All but one of the sites of Appendix D correspond with on-the-ground zoning of SG or QM."

The one site referred to in the last sentence of the previous quote (site #21) is an active site. The County completed all steps of the Goal 5 Administrative Rule for the site, and subsequently zoned it QM (Ord. No. PA 891). These findings are now part of the County's Mineral and Aggregate Resources Working Paper.

The County's three Mineral and Aggregate Resources inventories--Appendices D, E, and J--have been revised as follows: Appendix D has been reorganized to read more clearly, the Conflict Analysis (Appendix J) expanded to deal with new sites per the IOTC, and a third map (Appendix E) created to display the sites on new Appendix D. The original Appendix E--a listing of sites in the Metro Area--has been deleted since it was inconsistent with the list contained in the Metro Plan.

Conclusion

Requirement 1 has been met.

Requirement

2. Fish and Wildlife:

a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

Response

Lane County has amended its Natural Resource Zone to include riparian setback and vegetation maintenance standards similar to those in other resource zones (Ord. No. 11-84).

Conclusion

Requirement 2a has been met.

Requirement

2. Fish and Wildlife Habitats:

b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation and maintenance standards, or (2) incorporate by reference anothr section of the Lane Code which contains such standards.

Response

Lane County has amended the above zoning districts to include appropriate riparian setback and vegetation maintenance standards as required (Ord. No. 9-84).

Conclusion

Requirement 2b has been met.

Requirement

2. Fish and Wildlife Habitats:

c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(1)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

Department which sufficiently identify the location, nature and scope of the proposed use or activity.

(c) Referral. Upon receipt of the plan identified in LC 16.005(4)(b) above, the Department shall refer a copy of the plans to the Oregon Department of Fish and Wildlife (ODFW).

(d) ODFW Review. Upon receipt of the plans identified in LC 16.005(4)(b) above, the ODFW shall review the proposed use or activity and make a determination of whether or not the use or activity would affect a sensitive bird habitat. In making this review and determination, the ODFW shall consult with the affected landowner(s) and appropriate state agencies, and shall address the standards in LC 16.005(4)(d)(i) and (ii) below. The basis for the determination shall be stated in writing, completed within seven working days of receipt, and then submitted to the Department (Lane County).

(i) A sensitive bird habitat will be considered affected by a use or activity if the use or activity is located within 660 feet of an eagle or osprey site or within 300 feet of a heron rookery or pigeon mineral spring.

(ii) A sensitive bird habitat may also be considered affected by a use or activity if the use or activity is located a greater distance than specified in LC 16.005(4)(d)(i) above, considering unique conditions of topography to the individual habitats of the bird(s).

(e) No Affects Determined. If the ODFW determines that the senstive habitat area will not be affected, then the ODFW will give the Department written notice of its determination, and Lane County may proceed with authorization o the use or activity, or with the processing of any other required applications.

(f) Affects Determined and Protection Plan. If the ODFW determines that the sensitive habitat area will be affected, the ODFW shall work with the affected landowner(s) in the development of a site specific habitat protection plan. The plan shall consider the proposed use or activity and its interrelationship to and affects upon nesting trees, perch trees, critical nesting period roosting sites and/or buffers for wind, vision and noise. The plan must contain a statement of reasons, supported by facts, explaining why the sensitive bird habitat would not be adversely affected by the proposed use or activity. The plan shall then be submitted to the Department.

(g) Director Approval. The proposed uses or activities identified in the habitat protection plan shall be reviewed by the Director pursuant to LC 14.100 and shall be allowed if in conformance with the following approval criteria:

(i) The proposed use or activity would not adversely impact a sensitive wildlife habitat.

(ii) Conditions placed upon the approval of the habitat protection plan would avoid or eliminate any adverse impacts upon a sensitive wildlife habitat. Conditions may include setbacks, limitations upon the time period for the operation of the use or activity and/or prohibition of conflicting uses.

(h) LC 16.005(4)(a)-(g) do not apply to the protection of sensitive bird habitat from forest practices as regulated by the Forest Practices Act and as regulated by the COOPERATIVE AGREEMENT BETWEEN OREGON STATE BOARD OF FORESTRY AND OREGON STATE FISH AND WILDLIFE COMMISSION as adopted by Lane County in Rural Comprehensive Plan Goal 5 Flora and Fauna Policy 17."

The following new Policy 17 has been adopted to replace old Flora and Fauna Policy 15 (Ord. No. PA 892):

"The Cooperative Agreement between Oregon State Board of Forestry and Oregon State Fish and Wildlife Commission shall constitute Lane County's means of protecting sensitive bird habitat sites from conflicts which may result from forest practices as regulated by the Forest Pracices Act. Within two years of the date of acknowledgment of the Rural Comprehensive Plan, Lane County shall evaluate the effectiveness of the use of this agreement in providing actual protection to sensitive bird habitat sites, and if necessary, shall consider the adoption of more effective means of protecting sensitive bird habitat sites. This agreement is incorporated into the Lane County General Plan Policies as Flora and Fauna, Exhibit 'A'."

The following new Flora and Fauna policy has also been adopted (Ord. No. PA 892):

"18. Owners of property designated as a sensitive bird habitat and as identified in Lane Manual 11.400 shall be encouraged to develop a management plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any development which may adversely affect the habitat. Such management plans shall consider nesting trees, perch trees, critical nesting period, roosting sites and buffer zones, and shall demonstrate how the proposed development will not adversely affect the sensitive bird habitat site. The policy shall not apply to forest practices covered by the above Flora and Fauna Policy 17."

Conclusion

Requirement 2e has been met.

Requirement

2. Fish and Wildlife Habitats:

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

Response

Lane County has replaced its definition of "wetland" with the following definition (Ord. No. PA 892):

> "For purposes of County management, wetlands should be defined as land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands."

This new definition is consistent with that contained in the Statewide Planning Goals.

The Working Paper has also been amended to contain the following explanation:

> "For purposes of County management, principal concern shall be given to wetlands of an acre or greater in size, to exclude small 'backyard' areas, unless the future County evaluation of the National Wetlands Inventory and/or information from ODFW indicate that specified wetlands smaller than one acre in size require the same level of protection as their larger counterparts."

Conclusion

Requirement 2f has been met.

Requirement

2. Fish and Wildlife Habitats:

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.

Response

The County examined this site ("Blueberry Acres") and documented its location, quality and quantity. Conflicting uses were identified, and an ESEE consequences analysis was performed by the County. Based on this analysis, the County determined that the wetland required additional protection. It, therefore, has applied its Natural Resource Zone to the site. The Addendum to the Flora and Fauna Working Paper has been amended to contain background information and findings regarding application of the Goal 5 process to "Blueberry Acres" (Ord. No. PA 892).

Conclusion

Requirement 2g has been met.

Requirement

2. Fish and Wildlife Habitats:

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

Response

Section 13.050(1) of the Lane Code requires conformity with the Comprehensive Plan (including all plan policies) when considering partition or subdivision plans.

Also, Policy 14 (Goal 3) has been amended so as to require compliance with Goal 5 policies 11 and 12 in the future application of the ML Zone. Policy 11 requires conformance to ODFW density recommendations, unless justified through a separate Goal 5 analysis. Policy 12 requires a Goal 5 analysis if conflicting uses are identified that were not contemplated in the Plan.

Findings have been added to the Flora and Fauna Working Paper Addendum (p. 14) which discuss application of current ML zoning in Goal 5 resource areas. Goal 5 conflicts with many of these sites are primarily with big game habitat. The County has analyzed the ESEE consequences of conflicting uses for these areas and has decided to apply the ML Zone in spite of the conflicts.

Conclusion

Requirement 2h has been met.

Requirement

3. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.

Response

Supplementary Findings to Ordinance No. PA 892 adopted by Lane County provide the following explanation:

> "This site is shown on the Coastal Resources Inventory maps as being located east of North Fork Road, near the Chief Drew historical site. It was field-checked by County and ODFW staff. Neigher effort could locate Darlingtonia, although a small bog existed in the approximate area of the site. A larger bog to the north (within the Florence UGB) may be the one referred to in the Inventory, but has been partially filled by structures and is not within the concern of the Rural Comprehensive Plan--the Florence plan having been acknowledged in 1983. It too was found to contain no Darlingtonia.
>
> Thus, it appears that no rezoning action will be necessary to preserve the reported bog."

Page 27 of the Flora and Fauna Working Paper has been amended to include the following new paragraph:

> "1A Category
>
> One site--identified on the Coastal Resources Inventory as a significant natural area--has been placed in the '1A' category because it was either erroneously identified in the Inventory or because conditions have changed since the Inventory was done which have destroyed the feature that first caused its inclusion. This area is noted as "unique Darlingtonia habitat" east of North Fork Road in 18-12-24. Because DLCD raised the issue of preservation of this resource under Goal 5 Rule requirements, field checks were conducted by both County staff and staff of the Oregon Fish & Wildlife Department. Neither effort could locate any Darlingtonia. A bog north of the one shown on the inventory map (excerpt attached) may have been the one referred to, but that particular bog has been partially filled and is also located within the UGB of Florence.

which has an acknowledged Plan. Even assuming the Plan should be changed, that northern bog (at the intersection of Munsel Lake and North Fork Roads) is not significant enough Darlingtonia area to merit further action by the City/County. In sum, the area should be deleted from the Plan inventory as a '1A' site, with no further action required on it."

Conclusion

Requirement 3 has been met.

Requirement

4. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

Response

Lane County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892) which contains an inventory of scenic resources in the County, including the coastal strip, the Willamette River Greenway, Coburg Ridge, McKenzie River Valley, Willamette Highway/Salt Creek Valley Corridor, and ODOT-identified scenic areas. Each is described and location, quality and quantity documented. Each is evaluated in terms of conflicting uses and ESEE consequences. Based on these analyses, the County has determined that existing coastal zoning is sufficient protection for the coastal zone, and that the County Greenway Plan and Permit process should be the implementing measure in the Willamette Greenway. No conflicts were identified with ODOT scenic areas. Coburg Ridge is essentially undeveloped and partly in BLM ownership or in ranchland. Slopes exceed 100 percent in many places. Therefore, conflicts appear to be limited primarily to forestry activities, which are regulated by the FPA. Most of the McKenzie Valley and the Willamette Highway/Salt Creek Corridor is within the Willamette National Forest.

Conclusion

Requirement 4 has been met.

Requirement

5. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

Response

The County has ensured that all (1C) sites appear on zoning maps with the "/H" symbol, except for 20 covered bridge sites (Supplementary Findings to Ord. No. PA 892). The County indicates that these are not on maps because they are bridges and are not keyed to tax lot citations. This prevents the digitized Plan Diagram maps from properly displaying them. However, all are publicly-owned, and are covered by the /H Combining Zone (Ord. No. 892).

Lane County has added a definition of "Historic Structure or Site" to the definition section of its ordinance. This definition specifically includes property which had been identified by Lane County in its adopted Rural Comprehensive Plan findings as historically significant. (This list includes the 20 covered bridges as well as all other (1C) sites.)

Conclusion

Requirement 5a has been met.

Requirement

5. Historic Sites:

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

Response

Lane County has deleted sites 34 and 57 as well as sites 32, 39 and 42 from its historic sites inventory, and has amended the Addendum to its Historical Resources Working Paper as follows:

> "From the above list, five sites have been deleted by County action: sites 32, 34, 49, 42 & 57. Sites 34 and 57 are not within the purview of the Rural Comprehensive Plan and thus are the responsibility of other planning efforts. Site 32 (Keeney House) is no longer considered historically significant because the structure has been relocated on its site and has been remodeled both inside and outside. Site 39 (Paschelke House) is incorrectly represented in the State Inventory and has been extensively remodeled. Site 42 (Fall Creek Christian Church) has been remodeled several times from its original use as a school building, and is being expanded. These sites should be exempted from the Historical Combining District which is being applied to the other sites on the above list."

Conclusion

Requirement 5b has been met.

Requirement

6. Oregon Recreation Trails:

a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

Response

Lane County has amended the Recreational Resources Working Paper (p. 15) by inserting a new paragraph indicating that ODOT has supplied the County with detailed maps of trail segments. Such information is included as Appendix A to the Working Paper (Ord. No. PA 892).

Conclusion

Requirement 6a has been met.

Requirement

6. Oregon Recreation Trails:

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

Response

Goal 5 (Policy 4) has been replaced with the following new policy (Ord. No. PA 892):

"The County shall recognize and acknowledge existing and potential recreational trails designated by the Oregon Parks Outdoor Recreation Plan, shall cooperate with the Oregon Department of Transportation in the identification of specific routes for potential trails, and in the completion of applicable steps of OAR 660-160-000/025. Existing developed trails shall be displayed on the County's planning documents."

Conclusion

Requirement 6b has been met.

Requirement

7. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.

Response

The County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892). This addendum recognizes Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir as within the State Scenic Waterway system (p. 8). It also recognizes portions of the Alsea River and Steamboat Creek that are on the federal and state potential lists (p. 9).

Conclusion

Requirement 7a has been met.

Requirement

7. Scenic Rivers and Waterways:

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.

Response

Policy 5 has been replaced with the following policy language:

"The County shall cooperate with appropriate state and federal agencies in the selection of wild and scenic rivers, and will cooperate with these agencies in the completion of applicable steps of OAR 660-16-00/025 in making such selections" (Ord. No. PA 892).

Conclusion

Requirement 7b has been met.

Requirement

8. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflicting-resolution recommendations contained in the Metro Plan Update Working Paper.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 5

Lane County complies with Goal 5.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

Requirement

1. Amend the Development Code to require review of any proposed development within known geologic hazard areas.

Response

Lane County Development Code was amended (ORD. 9-84) to include the following provision (LC 16.005):

> "(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of an application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose."

Conclusion

The requirement has been met.

The County Development Code has been amended to require a review of any proposed development that is found to present a threat to life and property.

Requirement

2. Adopt standards which will be applied to development in known geologic hazardous areas.

Response

Lane County Development Code was amended (Ord. 9-84) to include the following standards pursuant to LC 16.005(2) cited previously under Goal 7, Requirement 1 (LC 16.005):

"(3) Conditions. The following conditions may be imposed at the time of approval of a development for which a permit or application is required and for which a finding has been made as required in LC 16.005(2) above in order to ensure site and area stability:

(a) Maintain vegetation and eliminate widespread destruction of vegetation.

(b) Carefully design new roads and buildings with respect to:

(i) Placement of roads and structures on the surface topography.

(ii) Surface drainage on and around the site.

(iii) Drainage from buildings and road surfaces.

(iv) Placement of septic tank disposal fields.

(c) Careful construction of roads and buildings:

(i) Avoid cutting toeslopes of slump blocks.

(ii) Careful grading around the site, especially avoiding oversteepened cut banks.

(iii) Revegetating distubed areas as soon as possible.

(d) Certification by a geologist or engineer that the above conditions have been complied with and/or that a hazard does not exist."

Conclusion

The requirement has been met.

Lane County has adopted appropriate standards which will be applied to development in geologic hazard areas.

Conclusion - Goal 7

Lane County complies with Goal 7.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 7.

GOAL 11: PUBLIC FACILITIES AND SERVICES

Requirement

1. Adopt a plan policy which specifies the appropriate levels of service for rural areas, including unincorporated minor development centers and rural service centers. Note: This IOTC can be satisfied by adopting a policy identifying land classifications and service levels similar to those contained in the Public Facilities and Service Working Paper--Appendix B. If Appendix B is used, the classification titles must be amended to correspond with "current" classification titles (Example: Forest Lands I is now called Non-Impacted).

Response

Through the adoption of Ordinance No. PA 889 (Item 13), Lane County deleted Goal 11 Policies 1 and 2 and replaced them with the following:

"Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category, either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category."

The County also adopted Policy No. 6 which references descriptions of their plan designations and service levels which are as follows:

Forest Land

Nonimpacted (F-1):

"Service Level: No minimum level of services is established for this category as it is intended primarily for resource management and not for habitation."

Impacted (F-2):

"Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur space population patterns are expected."

Agricultural Land

Exclusive Farm Use:

"Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur, sparce population patterns are expected."

Natural Resource

Mineral:

"Service Level: No minimum level of services is established. Category is intended for resource management and not habitation."

Rural Residential:

"Service Level: Schools, on-site sewage disposal, individual water supply systems, electrical service, telephone service, rural level fire and police protection, reasonable access to solid waste disposal facility."

Community:

"Service Level: Schools, on-site or community sewage disposal, individual or community water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility."

Rural Commercial:

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Industrial (outside community designation):

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Park or Recreation:

"Service Level: No minimum level of services is established for Park or Recreation areas outside committed areas. Service level for Park or Recreation areas inside committed areas shall be consistent with that level required for the Community or committed area outside of a Community."

Marginal Lands:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation."

Nonresource:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation. The service level for cluster subdivisions of nonresource shall be consistent with Goal 2 policy 24."

Conclusion

Lane County satisfies this requirement.

Requirement

2. a. By policy or zoning provisions, limit development (in a manner consistent with Goal 11 (and the County's decisions regarding rural sewage systems) within unincorporated rural communities with known or suspected sewerage problem (Chesire, Elmira, Heceta, Goshen, Mapleton, Marcola and Vaughn); or

   b. Provide additional information which justifies in a manner consistent with the discussion under Goal 11, the county's decisions regarding development in rural communities with known or suspected sewerage problems.

Response

With the adoption of Ordinance 9-84, Lane County amended Chapter 16.004(5) of their Development Code to address IOTC 2a by including the following:

> "Prior to the zoning or rezoning of land under this Chapter, for lands situated within the designated community areas listed below, an affirmative conclusion stating the reasoning and facts relied upon, must be made that densities allowed by the proposed rezoning are low enough to provide reasonable assurance that any existing sewage problems will not be further aggrevated by development of the subject property:
>
> (a) Cheshire
> (b) Elmira
> (c) Goshen
> (d) Heceta
> (e) Mapleton
> (f) Marcola
> (g) Vaughn"

In addition, LC 13.050(12)(b), which established the County's requirements for obtaining individual sewage disposal systems, requires "reasonable proof that each prosposed parcel or lot can accommodate an individual sewage disposal system and at least one acceptable replacement area which meets the criteria established by OAR Chs.340-71-005 to 45." The above requirement provides adequate assurance that additional development in the seven referenced communities with existing or potential sewage problems will not aggrevate the sewerage situation.

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend Sections 13.050(12) and 13.050(13) to indicate that the establishment of rural sewage or water systems must be consistent with the appropriate of levels of service policies required by Goal 11, IOTC 1.

Response

Ordinance 10-84 amends Chapter 13.010(12) and (13) of Lane County's Development Code to require that the establishment of rural sewerage facilities and water systems shall be consistent with RCP Goal 2 Policy 24 and RCP Goal 11 Policies, including level of service definitions. Lane County also indicates the following:

> "With this ordinance, Land County has amended Sections 13.050(12) and (13) to provide that the

establishment of rural sewerage and water facilities must be consistent with RCP Goal 2 Policy #24, provision of services to cluster subdivisions in the rural area, and RCP Goal 11 policies. By requiring consistency between the proviion of services in the rural areas and the above-mentioned policies, Lane County is ensuring the 'timely, orderly and efficient provision of services' to new development approved within the rural areas. Sections 13.050(12) and 13.050(13) now require community sewer or community water systems be established only in a manner consistent with public facility and service policies (including appropriate levels of service for rural areas)" (Ordinance 10-84, Exhibit A, p. 2).

Conclusion

Lane County satisfies this requirement.

Conclusion - Goal 11

Lane County complies with Goal 11. Lane County's Public Facilities Working Paper, Goal 11 Plan Policies and Development Code requirements as well as specific amendments which include: (1) level of service definitions for each plan designation, (2) a requirement to examine proposed zone changes in suspected rural "sewerage" problem areas to insure that any existing problems will not be aggrevated through an intensification of density, and (3) policy and ordinance requirments that rural development consistent with the specified rural level of service definitions, all contribute to the orderly provision of public facilities and services in rural Lane County.

GOAL 15: WILLAMETTE RIVER GREENWAY

Requirement

1. Amend zoning maps 304, 304A, 305, 330, 332, 347, 396, 411, 417, 418, 425, 437, 440, 448, 471, 528, 1005, 1006, 1008, 1010, 1011, 1012, and 1013 to display the correct LCDC-approved Greenway Boundary.

Response

The County has amended the zoning maps listed above that apply to areas outside the Eugene/Springfield Metro Area so as to display the correct LCDC-approved Greenway Boundary. Changes to maps 347, 396, 411, 437, 528, 1005, 1006, 1008 and 1012 will be corrected in conjunction with the Eugene/Springfield Metro Area continuance.

Conclusion

The requirement has been met.

Requirement

2. Amend the Greenway ordinance to clearly require protection of significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints, per Sections C.3.d., a., and c. of the Goal.

Response

Lane County has eliminated the term "guidelines" from the Greenway Development Permit Approval section of its Greenway Ordinance (Section 16.254(4)) and has added the following as criteria for permit approval:

> "(i) Preservation and maintenance of land inventoried as 'agriculture' in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
>
> (ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas...
>
> (xiv) Protection of significant fish, wildlife habitat and natural areas."

A decision to approve a Greenway Development Permit must require findings that the proposed intensification, change of use or development conforms to these (as well as other) criteria, according to Section 16.254(4) of the Greenway Ordinance.

Conclusion

The requirement has been met.

Requirement

3. Amend Section 16.254(2)(k) of the Greenway Ordinance to eliminate all language following the phrase, "or personal noncommercial use."

Response

Section 16.254(2)(k) of the Greenway Ordinance has been amended to eliminate all language following the phrase, "or personal noncommercial use." This was done so that only the propagation or cutting of timber for public safety or personal noncommercial use is exempt from local Greenway Permit review, consistent with Goal 15.

Conclusion

The requirement has been met.

Requirement

4. Amend Section 16.254(c) of the Lane Code to ensure that only water-dependent and water-related uses themselves are exempt from the 100-foot Greenway setback requirement.

Response

Section 16.254(b) has been amended (Ord. No. 11-84) so as to eliminate the phrase "those in conjunction with." Therefore, the Code exempts only water-dependent and water-related uses themselves from the Greenway setback requirement.

Conclusion

The requirement has been met.

Requirement

5. Amend Section 16.254(6) of the Lane Code to require notification of ODOT of actions taken on applications for intensification, change of use or development in the Willamette Greenway.

Response

Section 16.254(6) of the Code has been amended to require notification of ODOT of actions taken on applications for a Greenway Permit, as required.

Conclusion

The requirement has been met.

Requirement

6. Amend Section 16.254(2)(a) of the Greenway Ordinance to require either:

   a. Greenway permits in areas designated "urban" beyond 150 feet of the ordinary low water line, or

   b. Some other mechanism which ensures protection of Greenway values in these areas.

(Note: This could also be accomplished by LCDC amendment of the ODOT Greenway Plan by changing the designation of the area south of the Cottage Grove UGB from "urban" to "rural.")

Response

Section 16.254(2)(a) has been deleted from the Greenway Ordinance. This has the effect of requiring Greenway permits in areas designated "urban" beyond the 150-foot line.

Conclusion

The requirement has been met.

Requirement

7. Adopt implementing measures that protect the Pudding Creek Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan, which has been segmented and continued until October 11, 1984.

Requirement

8. Either adopt findings which explain how the current zone designations for Big Island protect the Confluence Heronry, or adopt other implementing measures that protect the Confluence Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Requirement

9. Modify Mineral and Aggregate Resources Policy 11 to also reference Section C.3.d. of Goal 15 to ensure protection and significant fish and wildlife habitats in the Willamette Greenway.

Response

Lane County has amended Mineral and Aggregate Policy 11 to also reference Section C.3.d. of Goal 15 (Ord. No. PA 892).

Conclusion

This requirement has been met.

Conclusion - Goal 15

Lane County complies with Goal 15.

The findings contained in this supplemental report and those contained in the Department's July 19, 1984 review support the decision that Lane County complies with Goal 15.

DW/MJR/CP:mg
0559D/517A

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF LANE COUNTY'S RURAL COMPREHENSIVE PLAN AND LAND USE REGULATIONS	))))	COMPLIANCE ACKNOWLEDGMENT ORDER 84-ACK-201

This matter came before the Commission on September 13, 1984, as a request for acknowledgment of compliance pursuant to ORS 197.251 and the Commission Acknowledgment Rule, OAR 660-03-000 to 660-03-033. The Commission, having fully considered Lane County's comprehensive plan and land use regulations, comments and objections of interested parties and the report of the Department of Land Conservation and Development, now enters its:

Findings of Fact and Conclusions

1. Lane County's request for Acknowledgment of Compliance was reviewed by the Commission previously on February 13, 1981, pursuant to ORS 197.251 and the Commission Acknowledgment Rule, OAR 660-03-000 to 660-03-033. For this review, the Commission found Lane County's Rural comprehensive plan and land use regulations did not comply with certain specified Statewide Planning Goals and denied the request for acknowledgment (Denial Order of February 26, 1981 as amended, (Exhibit A)).

2. The Commission reviewed the attached written report of the Director of the Department of Land Conservation and Development on September 13, 1984 regarding the compliance of the plan and regulations with the Statewide Planning Goals.

3. Based on its review, the Commission finds that Lane County's comprehensive plan and land use regulations comply with the Statewide Planning Goals for the reasons set forth in Section IV of the Department's report adopted by the Commission on September 13, 1984, and made a part of this Order (Exhibit B).

THEREFORE, IT IS HEREBY ORDERED THAT:

The Land Conservation and Development Commission acknowledges that the comprehensive plan and land use regulations of Lane County are in Compliance with the Statewide Planning Goals for the rural portion.

Severability

If, upon judicial review, this order is reversed or remanded solely with respect to an identifiable geographic area, the remainder of the order shall remain valid and shall be treated as a limited acknowledgment order under ORS 197.251(6). If requested by the affected local government or if otherwise necessary, the Director may issue, without further review by the Commission, an amended acknowledgment order describing the geographic area that remains acknowledged.

DATED THIS 3RD DAY OF OCTOBER 1984.

FOR THE COMMISSION:

James F. Ross, Director,
Department of Land
Conservation and Development

NOTICE: You are entitled to Judicial Review of the Order. Judicial Review may be obtained by filing a petition for review within 60 days from the service of this final Order. Judicial Review is pursuant to the provisions of ORS 183.482 and 197.650.

** Copies of all Exhibits are available for review at the Department's office in Salem.

JFR:TMC:drw
1055D/5B

Lane County

Gary Darnielle
Lane County Heanings Official
North Plaza Level PSB
125 E. 8th Ave.
Eugene, OR 97401

September 11, 1986

RE: PA2131-86

Dear Mr. Darnielle:

In your September 9, 1986 memorandum to Roy Burns, you requested staff to prepare responses to 2 questions in regards to the above referenced application. This memorandum is in response to your request.

Question 1). Which Rural Comprehensive Plan policies and implementation regulations determine allowable residential densities within areas designated as Big Game Range? Specifically, how does County staff reconcile the clear language of Rural Comprehensive Plan Flora and Fauna Policy #11 with the residential density analysis suggested by the "Flora & Fauna Working Paper" (March 1982) and the revised language to the working paper in the "Addendum to Working Paper: Flora & Fauna" (November 1983)?

Response: Goal 5 Flora and Fauna Policy #11 together with the clustering requirements of the F-2/RCP zone (LC16.211(8)) and of the EFU/RCP zone (LC16.212(8)) determine allowable residential densities within Big Game Range Habitat areas.

A better understanding of how Policy #11 and the implementing measures for clustering in the F-2/RCP and EFU/RCP zones can be obtained by reviewing the DLCD review comments for Lane County's Rural Comprehensive Plan.

In the DLCD Report, July 19, 1984, page 75, 2.e., DLCD indicated that the F-2/RCP and EFU/RCP zones must either be amended to contain larger minimum lot sizes or to contain clustering requirements for residences in Big Game Range Habitat areas. The reasoning for this recommendation was discussed in pages 33, 34, 35, 36 and 39 of the July 19, 1984 DLCD Staff Report.

In response to the DLCD recommendations in their July 19, 1984 report, Lane County amended it's F-2/RCP and EFU/RCP zones to contain clustering provisions for the siting of residences. In the Sept. 12, 1984 DLCD report, pp 25-26, DLCD noted their recommendations from their July 19th report and the amendments Lane County enacted to its F-2/RCP and EFU/RCP zones and concluded that the intent of Flora & Fauna Policy #11 had been carried out and met the Goal 5 requirements.

EXHIBIT T
Attch 12 - Page 1

Question 2) To what extent has County staff been pursuing the development of a Goal #2 "developed and committed" exception to the Baxter's Acres Subdivision? What specific factors have the staff examined or will the staff be examining which they believe will determine whether the subdivision is committed to nonresource use?

Response: County Staff have discussed a "developed" exception with Dave Pedersen who has represented Weyerhaeuser and a number of lot owners in Baxter's Acres. Our last discussion with Dave Pedersen occurred on September 9, 1986 during which we agreed that it would not be appropriate to proceed with initiating a Plan Amendment at this time due to the multiple applications for the same property being contested with the Hearings Official. Staff had intended to bring to the Lane County Planning Commission facts relating to the developed nature of Baxter's Acres and to let the LCPC decide if there appears to be a basis for taking a developed exception. The LCPC could then initiate a Plan Amendment/ Zone Change to more formally consider the matter.

Another impetus for initiating an amendment is the fact that if, through an arduous hearing process, dwellings could be allowed in the F-2/RCP zone, then a much simpler process would be to amend the Plan and change the zoning. The factors to be considered for a developed exception would be those required by the OAR for a developed exception (i.e., roads, utilities, sewage disposal systems, etc.).

Kent Howe - Associate Planner

Jim Mann - Senior Planner

Attachments: Excerpts from DLCD Reports.

cc: Roy Burns

Applicant's Table of Contents Decisions Relevant to Interpreting Big Game Policy 11		
Name	**PA #**	**Date**
Tarjoto	PA 1841-96	1.8.1997
Goodman	PA 19-05299	1.27.2020
Nimpkish	PA 19-05298	2.4.2020
EJK King	PA 20-05054	4.19.2021

FILE # PA 1841-96
EXHIBIT # 4b (7pp)

AGENDA COVER MEMO

DATE: February 11, 1997 (Date of Memo)
February 26, 1997 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department, Land Management Division

PRESENTED BY: Bill Sage, Planner, Land Management Division

AGENDA ITEM TITLE: Order No._____ In the Matter of Electing Whether or Not to Hear an Appeal of a Hearings Official's Decision and Affirming the Planning Director's Approval For Dwelling Within the Impacted Forest Land Zone F2/RCP (Bartlett/PA 1841-96).

I. MOTION

MOVE TO ADOPT AN ORDER ESTABLISHING THE BOARD'S ELECTION TO NOT HEAR ARGUMENT IN AN APPEAL OF THE HEARINGS OFFICIAL'S DECISION AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF LANE CODE 16.211(7)(e) ON THE RECORD.

II. ISSUE OR PROBLEM

An appeal to the Board, contesting a Hearings Official denial of an appeal and affirmation of the Planning Director's approval of a special use permit to allow a dwelling within the Impacted Forest Land Zone F2, has been accepted by the Director. The Hearings Official has reviewed the appeal and reaffirmed his decision. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal.

III. DISCUSSION

A. Background

1. June 6, 1996: The applicant (Frank Bartlett) requested a Planning Director approval of a special use permit, PA 1841-96, for a dwelling in the Impacted Forest Land Zone (F-2) pursuant to ORS 215.730, .750; OAR 660-06-027(1)(d), 029, 035, 040, and LC 16.211(7) and (8) criteria and standards.

2. July 29, 1996: Special use permit PA 1841-96 was conditionally approved by the Planning Director. Pursuant to Lane Code 14.100(4), notice of the decision was provided on August 7, 1996.

3. August 19, 1996: Heru Tarjoto submitted a timely application for an appeal of the Planning Director's approval on the grounds that the Director had failed to follow the procedures applicable to the matter and misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria. The appeal was set for public hearing on October 3, 1996. A request for continuance from the applicant was granted and the hearing was rescheduled to November 7, 1996.

4. November 7, 1996: The Lane County Hearings Official conducted a de novo hearing of the appeal.

5. November 26, 1996: Hearings Official issued a decision allowing an appeal, reversing the Planning Director's decision, and denying the request for a special use permit to allow a dwelling in the Impacted Forest Land Zone on the basis that the applicant omitted proof of one of the criteria necessary to establish a dwelling in the zone.

6. December 6, 1996: The applicant (Bartlett) filed a timely application for an appeal requesting reconsideration of the Hearings Official's decision. The appeal was received and accepted by the Planning Director and referred to the Hearings Official for reconsideration.

7. December 12, 1996: The Hearings Official agreed to reconsider his November 26, 1996 decision and to allow an opportunity for submission of additional evidence related to the number and date of creation for parcels and residences within the applicable template test area. An opportunity for rebuttal of the new evidence by the appellant (Tarjoto) was also granted.

8. January 8, 1997: The Hearings Official issued a decision on reconsideration affirming the Planning Director's approval of the request for a special use permit, PA 1841-96, to allow a dwelling in the Impacted Forest Land Zone.

9. January 21, 1997: The appellant (Tarjoto) submitted an application for an appeal of the Hearings Official's January 8, 1997 reconsidered decision.

10. January 23, 1997: The Hearings Official reviewed the reconsidered decision and the Tarjoto appeal and determined that he did not concur with the appellant's allegations that the Hearings Official failed to follow procedure applicable to the matter or misinterpreted the Lane Code or Manual, State Law or other applicable criteria, and reaffirmed his January 8, 1997.

B. <u>Elective Board Review Procedure</u>

The *<u>Elective Board Review Procedure</u>* in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,

- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections are:

(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an order and findings specifying the tentative date for a hearing and the parties who qualify to participate in a hearing on the record for the appeal. In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, is satisfied:

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must include the issue raised in the appeal to the Board could have been raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

a) The issue is of Countywide significance.
b) The issue will reoccur with frequency and there is a need for policy guidance.
c) The issue involves a unique environmental resource.
d) The Planning Director or Hearings Official recommends review.

C. Analysis

Appellant's grounds for appeal.

The appellant's (Heru Tarjoto) application for an appeal to the Board contends the Hearings Official misinterpreted Lane Code and state law by concluding the subject parcel was lawfully created prior to January 25, 1990, as required by Lane Code 16.211(7)(e). The grounds for the appeal centered on the determination as to whether or not the subject parcel's metes and bounds was a lawful creation by a 1981 lot line adjustment, or an illegal land division requiring review under Lane Code partition regulations. The appellant further alleged the granting of private access easements across the subject parcel should have also been subject to review under Lane Code partition regulations.

The Planning Director's analysis of the appeal and decision criteria is developed below in two sections. The review of the Hearings Official's decision and interpretation pursuant to Lane Code 14.600(2)(c) and (d) is taken first in order. The analysis of the decision criteria of Lane Code 14.600(3) follows thereafter.

Hearings Official's interpretation.

The Hearings Official's reconsidered decision dated January 8, 1997 (refer to Attachment 7, pages 24 and 25) included an interpretation of Lane Code 16.211(7)(e) which requires that:

(e) The parcel on which the dwelling would be located was lawfully created prior to January 25, 1990;

The Hearings Official concluded the record included evidence that the subject parcel's metes and bounds description had been lawfully created with a warranty deed as a lot line adjustment in 1981. He found that:

"This is the primary target of the opponent's attack on approval. Key to this issue is the transaction in 1981, when a portion of the larger lot that contained what is now the subject property was transferred to the owner of the adjacent parcel to the northeast. If this transfer of ownership was a partition, it would have been improper because it was not subject to partition approval."

"This transaction could be viewed as a not permitted partition or an appropriate lot line adjustment. It had all the characteristics of a lot line adjustment described in ORS 92.010(7)(b); the lot line affected was a common boundary between two parcels, no additional unit of land was created and the existing unit of land, the subject property, remained in compliance with the applicable zoning ordinances."

"It is Lane County policy to regard a real estate transaction as legal if that is technically and legally possible. The fact that the transaction was later redone in a manner that specifically recognized that it was a lot line adjustment does not affect the earlier transaction."

"Appellant also argues that the property in question was re-aggregated into one parcel during the time that it was held by George Zellneer, from 1949 to 1979. For a time the idea of aggregation by common ownership at the beginning of a calendar year was popular in some parts of Oregon. This notion was created by the language in the then applicable partition law, ORS 92.010. The notion was also ended by statute with the passage of ORS 92.017. In this case, the owner of the several parcels had not done anything to indicate that he regarded the parcels as being aggregated. In fact, he had done exactly the opposite, having sold one of the parcels. After the passage of ORS 92.017, common ownership of adjacent parcels is not enough to show that the parcels have been aggregated into a single parcel. Since there is no evidence of anything else in this case, appellant's arguments that the parcels were aggregated and thus required partition review are not correct."

"In the same way, appellant's arguments that the transactions wherein the owner of the subject property granted an easement across the property were partitions is not correct. Earlier definitions of partition in ORS 92.010 did focus on the creation of a road, and place special requirements on partitions that involved creation of a road. There is, however, a distinction between a sale of land that creates a separate parcel and the grant of an easement for road purposes. The transactions about which appellant is concerned were easements and not the actual sale of property, and thus do not fall within the regulation of partitions."

"The subject property was created as a separate parcel in 1907. It was reduced in size in 1981 but no new parcel was created at that time. The subject parcel qualifies under the criteria of Lane Code 16.211(7)(e)."

In the Hearings Official's memorandum dated January 23, 1997, (see Attachment 9), declining to reconsider his January 8th decision, the Hearings Official states his recommendation to the Board on page one:

"Because the appeal involves an interpretation of L.C. 16.211(7)(e), I recommend either that the Board entertain the appeal and apply their own interpretation, or that the Board specify, pursuant to LC 14.600(2)(d), what portions of the interpretation of the Lane Code by the Hearings Official they accept or do not accept."

Continuing on page two, the Hearings Official reinforces his January 8, 1997 interpretation in the following manner:

"Finally, Mr. Tarjoto claims error because, he asserts, streets or ways, or roads were created as a part of the transactions that resulted in the subject parcel, and the definition of partition makes any such action the subject of partition review. The evidence in this matter was that some of the transactions in question included a grant of an easement for access purposes. An easement does not divide land, and thus is not a partition, according to the definition of partition in ORS 92.010(6). Here the context of the definition suggests that creating access by an easement is categorically different from the type of transaction subject to partition approval. For that reason, Mr. Tarjoto's arguments that the property could only be lawfully created if there had been a partition review were not accepted."

If the Board agrees with the Hearings Official's interpretation it is appropriate to not hear arguments on the appeal and to expressly agree with the Hearings Official's justification for the decision, findings of fact, and conclusions of law as written in his reconsidered decision dated January 8, 1997 and his decision not to reconsider dated January 23, 1997.

Election to hear criteria

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

a. *The issue is of Countywide significance.*

The appeal alleges improper conveyance of the subject and adjacent properties. The lawfully created status of the subject property is specific to the subject parcel's history and is not of countywide significance.

b. *The issue will reoccur with frequency and there is a need for policy guidance.*

The lawfully created status of the subject parcel has been supported by the evidence in the record and the site specific issue is unlikely to reoccur with frequency on similar applications in the forest resource base. The Planning Director has reviewed the interpretation by the Hearings Official of Lane Code 16.211(7)(e) and agrees with the Hearings Official's conclusion that the applicable implementing regulations are clear in meaning. The issues were adequately briefed before the Hearings Official and further argument before the Board is not necessary. Board action to affirm the Hearings Official will provide adequate policy guidance and indicate the Board approval of the interpretation.

c. *The issue involves a unique environmental resource.*

The issue is whether the applicant has met the burden of proof to allow a dwelling in the Impacted Forest Land Zone and no unique environmental resources have been identified in the record.

d. *The Planning Director or Hearings Official recommends review.*

The Hearings Official has recommended that the Board review this appeal and elect to either affirm the Hearings Official's reconsidered decision dated January 8, 1997 and his interpretation of Lane Code 16.211(7)(e) therein, or hear this appeal on-the-record with the intent to modify the Hearings Official's interpretation.

The Planning Director agrees with the Hearings Official's interpretation and decision and recommends the Board adopt the attached Board Order affirming both.

D. Alternatives/Options

1. To hear the appeal on-the-record;
2. To not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations; or
3. To not hear arguments on the appeal, affirm the Hearings Official's decision, and to expressly agree with the interpretation of Lane Code 16.211(7)(e) made by the Hearings Official in the decision being appealed.

E. Recommendation

Option 3 is recommended

F. Timing

The Board is scheduled to review the issues and make this decision on February 26, 1997.

IV. IMPLEMENTATION/FOLLOW-UP

Adopt an order and findings. Notify the parties of the Board decision.

V. ATTACHMENTS

1. Board Order
2. Application For Appeal: Tarjoto, August 19, 1996;
   Supplemental Grounds For Appeal: Tarjoto, November 7, 1996.
3. Applicant's Memorandum to Hearings Official: Bartlett/Johnson, October 18, 1996.
4. Hearings Official's Decision: Mecham, November 26, 1996.
5. Application For Appeal/Request for Reconsideration: Bartlett/Taylor, December 6, 1996.
6. Hearings Official's Memorandum Granting Reconsider: Mecham, December 12, 1996.
7. Hearings Official's Reconsidered Decision: Mecham, January 8, 1997.
8. Application For Appeal: Tarjoto, January 21, 1997.
9. Hearings Official's Memorandum Declining to Reconsider: Mecham, January 23, 1997.

More background information can be supplied if needed. If an on-the-record appeal hearing is scheduled, a complete copy of the file with all evidence will be supplied to the Board.

FILE # PA 1841-96
EXHIBIT # 48

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. 97-2-26-1

(In the Matter of Electing Whether or Not to
(Hear an Appeal of a Hearings Official's Decision
(Affirming the Planning Director's Approval For a
(Dwelling Within the Impacted Forest Land Zone
(F2/RCP. (Bartlett/PA 1841-96)

WHEREAS, the Lane County Hearings Official has made a decision on application PA 1841-96; and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on application PA 1841-96; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board; NOW

THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A".

2. That the Lane County Hearings Official decisions interpreting Lane Code 16.211(7)(e), dated January 8 and 23, 1997, attached as Exhibit "B", are affirmed and adopted by the Board of County Commissioners as its own interpretation in reaching a final decision on this application.

DATED this 26th day of February, 1997.

Cindy Wheeldreyer

Chairperson, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 2-18-97 Lane County

OFFICE OF LEGAL COUNSEL

Exhibit "A"

Findings In Support of Order No. 97-2-26-1

1. The subject parcel is owned by Frank Bartlett, contains approximately 40 acres, identified as tax lot 400 of Lane County Assessor's Map 19-04-04 and is located southeast of Sarvis Berry Road, south of Eugene.

2. In 1984, the subject property was designated for Forest use in the Rural Comprehensive Plan and zoned Impacted Forest Land (F-2/RCP) consistent with the designation.

3. June 6, 1996: The applicant (Frank Bartlett) requested a Planning Director approval of a special use permit, PA 1841-96, for a dwelling in the Impacted Forest Land Zone (F-2), pursuant to ORS 215.730, 750, OAR 660-06-027(1)(d), 029, 035, 040, and LC 16.211(7) and (8) criteria and standards.

4. July 29, 1996: Special use permit PA 1841-96 was conditionally approved by the Planning Director. Pursuant to Lane Code 14.100(4), notice of the decision was provided on August 7, 1996.

5. August 19, 1996: Heru Tarjoto submitted a timely application for an appeal of the Planning Director's approval on the grounds that the Director had failed to follow the procedures applicable to the matter and misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria. The appeal was set for public hearing on October 3, 1996. A request for continuance from the applicant was granted and the hearing was rescheduled to November 7, 1996.

6. November 7, 1996: The Lane County Hearings Official conducted a de novo hearing of the appeal.

7. November 26, 1996: Hearings Official issued a decision allowing an appeal, reversing the Planning Director's decision, and denying the request for a special use permit to allow a dwelling in the Impacted Forest Land Zone on the basis that the applicant omitted proof of one of the criteria necessary to establish a dwelling in the zone.

8. December 6, 1996: The applicant (Bartlett) filed a timely application for an appeal requesting reconsideration of the Hearings Official's decision. The appeal was received and accepted by the Planning Director and referred to the Hearings Official for reconsideration.

9. December 12, 1996: The Hearings Official agreed to reconsider his November 26, 1996 decision and to allow an opportunity for submission of additional evidence related to the number and date of creation for parcels and residences within the applicable template test area. An opportunity for rebuttal of the new evidence by the previous appellant (Tarjoto) was also granted.

10. January 8, 1997: The Hearings Official issued a decision on reconsideration affirming the Planning Director's approval of the request for a special use permit, PA 1841-96, to allow a dwelling in the Impacted Forest Land Zone.

11. January 21, 1997: The appellant (Tarjoto) submitted an application for an appeal of the Hearings Official's January 8, 1997 reconsidered decision.

12. January 23, 1997: The Hearings Official reviewed the reconsidered decision and the Tarjoto appeal and determined that he did not concur with the appellant's allegations that the Hearings Official failed to follow procedure applicable to the matter or misinterpreted the Lane Code or Manual, State Law or other applicable criteria, and reaffirmed his January 8, 1997.

13. In order for the Board to hear arguments on the appeal, LC 14.600(3) requires one or more of the following findings:

    A decision by the Board to hear the appeal on the record must comply with one or more of the following criteria:

    The issue is of Countywide significance.
    The issue will reoccur with frequency and there is a need for policy guidance.
    The issue involves a unique environmental resource.
    The Planning Director or Hearings Official recommends review.

14. The appeal alleges improper conveyance of the subject and adjacent properties. The lawfully created status of the subject property is specific to the subject parcel's history and is not of countywide significance.

15. The lawfully created status of the subject parcel has been supported by the evidence in the record and the site specific issue is unlikely to reoccur with frequency on similar applications in the forest resource base. The Planning Director has reviewed the interpretation by the Hearings Official of Lane Code 16.211(7)(e) and agrees with the Hearings Official's conclusion that the applicable implementing regulations are clear in meaning. The issues were adequately briefed before the Hearings Official and further argument before the Board is not necessary. Board action to affirm the Hearings Official will provide adequate policy guidance and indicate the Board approval of the interpretation.

16. The contested issues are limited to whether the applicant has met the burden of proof to allow a dwelling in the Impacted Forest Land Zone and no unique environmental resources have identified in the record.

17. The Hearings Official recommended that the Board review this appeal and elect to either affirm the Hearings Official's reconsidered decision dated January 8, 1997 and his interpretation of Lane Code 16.211(7)(e) therein, or hear this appeal on-the-record with the intent to modify the Hearings Official's interpretation. The Planning Director agreed with the Hearings Official's interpretation and decision and recommended the Board affirm both.

18. To meet the requirements of LC 14.600(2)(b) the Board was required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal,

19. The Board of County Commissioners reviewed this matter at a meeting on February 26, 1997 and found that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and elected to not hold an on-the-record hearing.

20. The Board of County Commissioners expressly agrees with the Lane County Hearings Official's decisions interpreting Lane Code 16.211(7)(e) dated January 8 and 23, 1997, attached as Exhibit "B". The Hearings Official's decision and interpretation are affirmed and adopted by the Board of County Commissioners as its own interpretation.

Exhibit B

LCOG Lane Council of Governments

125 East Eighth Avenue Eugene, Oregon 97401 (541) 682-4283 Fax: (541) 682-4099 TDD: (541) 682-4567

January 8, 1997

Mr. Kent Howe
Lane County Land Management Division
Public Service Building
125 East 8th Avenue
Eugene, OR 97401

Re: PA 1841-96 (Bartlett)

Dear Mr. Howe:

Enclosed is a copy of a Hearings Official's decision on reconsideration denying an appeal and approving the Director's decision allowing a special use permit for the location of a dwelling on impacted forest land. The property involved was a parcel zoned F-2, identified as tax lot 400, assessor's map 19-04-04. The applicant was Frank Bartlett, assisted by Harry Taylor. The matter was contested.

Please contact me if you have any questions.

Sincerely,

Milo Mecham
Lane County Hearings Official

LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A REQUEST FOR A SPECIAL USE PERMIT TO ALLOW A DWELLING NOT RELATED TO FOREST MANAGEMENT WITHIN AN IMPACTED FOREST LANDS ZONE

(CONTESTED)

Application Summary

Frank Bartlett, 88711 Knight Road, Veneta, Oregon, requested Planning Director approval for a special use permit to allow a dwelling not related to forest management within an Impacted Forest Lands (F-2) zone on Tax Lot 400, Assessor's Map 19-04-04. The application was approved, subject to conditions, on July 29, 1996. This approval was appealed in a timely manner by Heru Tarjoto to the Lane County Hearings Official. After the appeal was upheld and the Director's decision reversed on the grounds of insufficient evidence, applicant filed a timely appeal and sought reconsideration of the Hearings officer's decision. Reconsideration was granted.

Parties of Record

Frank Bartlett	Harry Taylor	Allen Johnson
Heru Tarjoto	Mike Farthing	

Application History

Hearing Date: November 7, 1996

Record Remained Open on Reconsideration until January 2, 1997

Decision Date: January 8, 1997

Appeal Deadline

An appeal must be filed on or before January 21, 1997, using the appeal form that accompanies this decision. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

ORS 215.730
ORS 215.750
OAR 660-06-025(1)(d)
OAR 660-06
Lane County Rural Comprehensive Plan
Lane Code 16.211

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is identified as tax lot 400, assessor's map 19-04-04. The subject parcel is a 40.41 acre parcel located southeast of Sarvis Berry Road, south of Eugene. The subject parcel is designated as Forest Land and zoned Impacted Forest Land (F-2/RCP).

2. The subject parcel was originally created in 1907. It passed through a series of owners until it came into the ownership of George Zellner in 1944. Mr. Zellner also acquired an adjoining parcel, which now composes the larger portion of what is identified as tax lot 1600. Through a scrivener's error the deed for this property incorrectly described it as lying in a different section. Mr. Zellner conveyed this property (tax lot 1600) to Penn Timber Company in 1979. In 1981, Mr. Zellner conveyed the eastern and southern portion of the parcel then designated as tax lot 400, which was adjacent to tax lot 1600, to Penn Timber Company. The remaining portion of the property retained by Mr. Zellner constituted the present subject property. Mr. Zellner conveyed the subject property to the present owner in 1991.

3. The subject property is located in an area that consists primarily of Impacted Forest Land (F2). Properties to the west, south and east are zoned F-2. Lands to the north are zoned Rural Residential (RR-10). There is one parcel to the northeast that is zoned F-1, non impacted forest land. This property is near, but does not touch the northeast corner of the subject property. The subject property currently does not have a residence on it. The applicant does not own any contiguous property.

4. Access to the subject property comes from Laughlin Road across adjacent property by way of a recorded 40 foot easement. The proposed dwelling would be located approximately 600 feet south of Laughlin Road and approximately 1200 feet east of the point where Laughlin Road has its closest approach to the subject property.

5. Laughlin Road is a dedicated road, classified as a Rural Local road, that is not maintained by the County. The dedication for Laughlin Road extends from Peaceful Valley Road to Sarvis Berry Road. The middle segment of Laughlin Road is not improved. Access to the portion of Laughlin Road from which the subject property would in turn gain access comes from Sarvis Berry Road.

6. The dwelling site for the proposed dwelling is located approximately in the middle of the subject property, some 300 feet south of the northern border, a little further from the southern border. No property zoned EFU (Exclusive Farm Use) or F-1 (Nonimpacted Forest Land) is nearby.

7. The applicant requests a special use permit to construct a single family dwelling on the subject property. In connection with construction of the dwelling, a well and septic system will be located on the subject property.

8. None of the subject property is within the 100 year flood hazard zone. The National Wetlands Inventory maps indicate that a portion of the property contains jurisdictional wetlands. The proposed access road to the dwelling site would cross through this wetlands. The subject property lies within an area designated in the Lane County acknowledged Rural Comprehensive Plan as Peripheral Big Game Range. No sensitive wildlife habitat areas have been identified on or near the property. The property is characterized by some relatively steep but not extreme slopes. The proposed dwelling will be located on a relatively level portion of the property, surrounded by areas with slopes of from ten to fifteen percent. No areas of natural hazard have been identified on the property.

9. The subject property receives fire protection from the Lane County Rural Fire Protection District #1, and police protection from the Lane County Sheriff's Office and the Oregon State Police. Water for the subject property will be provided by an on-site well and sewage disposal will be provided by an on-site septic system. The Lane Electric Coop provides electrical services to the subject property, and telephone service is provided by U.S. West. The subject property is within the boundaries of the Eugene School District #4J. No increase in the need for or level of services is expected because of this proposal.

10. Slightly more than half of the subject property is composed of Bellpine 11D soils. The reminder of the subject property includes Hazelair 52D, Panther 102C and Witzel 138E soil. The only soils of the subject property that have any rated productivity are the Bellpine soils, which have a productivity rating of 3933 cf/ac/yr.

11. If a square 160-acre template is laid over a map of the area surrounding the subject parcel pursuant to the requirements of OAR 660-06-027(1)(d), twenty tax lots are identified by the assessor as existing within the template. Tax lots do not constitute "lots or parcels" within the meaning of the rule. Examining each of these tax lots for proof of legal parcel status, beginning with the property in the northwest corner, the following can be determined:

The parcel in the extreme northwest of the template, identifiable as tax lot 2003 of assessor's map 18-04-32, has been in existence as a parcel described by a separate metes and bounds description since December 9, 1993. Prior to that date what is now tax lot 2003 was described in a deed that referenced the entire southeast quarter of the southeast quarter of section 32, and noted that the sixteenth section was divided by a 60 foot strip deeded to Lane County for a road recorded July 12, 1943.

The parcel east of this parcel is identified as tax lot 1401, TRS 18-04-33. A building permit was issued on March 9, 1981 for the construction of a residence on the parcel.

The evidence shows that the residence was given final inspection and approval on August 24, 1981.

Continuing east across a parcel that appears on the assessor's maps to be a roadway within the template area, the next parcel about which evidence was submitted is identified as tax lot 1410, TRS 18-04-33. The evidence is that this parcel was first described in a land sale contract, executed on December 15, 1973, recorded the next year, and completed by a deed recorded on December 8, 1976. An appraisal report shows that a dwelling existed on the parcel since 1975.

The next two parcels to the east comprise a roadway that was first created by deed in 1978, and then divided as part of a partition approved August 30, 1978. The parcels are numbered 1407 and 1414 on the assessor's map, 18-04-33.

The next parcel to the east is across Laughlin Road, and is designated as tax lot 500, TRS 18-04-33. This parcel was created in its present configuration when a lot line adjustment was approved on January 6, 1988. The lot line adjustment was reviewed and approved because it involved the creation of a parcel smaller than the minimum parcels size of ten acres.

The next parcels to the east for which evidence was submitted were created as the result of an approved partition on March 17, 1981. The are now identified as tax lots 525 and 521 of assessor's map 18-04-33.The easternmost of these parcels, tax lot 521, has had an approved mobile home placed on it since September 1985. The appraiser's reports submitted after the hearing show that the other parcel has had a mobile home on it since May 1981.

Also south of Laughlin Road, and west of the parcels discussed so far are two parcels, identified as tax lots 520 and 523. These parcels were created as the result of a partition approval granted by Lane County on March 8, 1979. A dwelling was approved for the parcel identified as tax lot 523 in May 1986, and the appraiser's report indicates that the dwelling was completed in 1987.

The remaining parcel north of the subject parcel about which evidence of the date of creation was submitted is identified as tax lot 522, assessor's map 18-04-33. This parcel was created by deed on April 17, 1973. The assessment report shows a dwelling on the parcel in 1981.

To the east and south of the subject parcel lies a parcel identified as tax lot 1600 and 401. This parcel was created as the result of the lot line adjustment that created the subject parcel in 1981.

South of this parcel lie three parcels created as the result of a partition (PA 3346-90) approved November 13, 1992.

To the south and west of the subject parcel lie two parcels, identified as tax lots 800 and 803 on assessor's map 19-04-05. These parcels were discussed in the Hearings

Official's decision on PA 4375-92 and PA 4374-92. Tax lot 803 was created in its present configuration in 1976. Tax lot 800 was created in its present configuration at the same time.

12. The subject application was submitted in accordance with Lane Code 14.050, and the public hearing on the appeal of approval of the application was conducted in accordance with Lane Code 14.200. Notice of the scheduled hearing was sent to interested parties, including the Oregon Department of Forestry on October 3, 1996.

Decision

THE APPEAL OF THE DECISION OF THE PLANNING DIRECTOR IS DENIED. THE DECISION OF THE PLANNING DIRECTOR APPROVING A REQUEST FOR A SPECIAL USE PERMIT TO ALLOW A DWELLING WITHIN AN IMPACTED FOREST LANDS (F-2) ZONE IS AFFIRMED, SUBJECT TO THE FOLLOWING CONDITIONS:

1. The owner of the subject property, or the owner's representative, shall complete and submit to Lane County Land Management Division the APPLICATION TO VERIFY COMPLIANCE WITH CONDITIONS OF LAND USE APPROVAL available from the Land Management Division, together with the required processing fees, showing that compliance has been achieved with conditions 2 through 9 of this decision. Verification of compliance must be obtained before building permits or placement permits for the proposed residence are issued.

2. The proposed dwelling, septic tank and drainfields, water system, and driveway shall be located as indicated on the plot plan approved by the director. Any substantial deviation from this approved location shall invalidate this conditional approval. The designated water supply shall be connected with a delivery system capable of sustaining the delivery of a volume of 20 gallons per minute for not less than 20 continuous minutes. Documentation verifying the ability of the proposed system and verifying that permits or registrations for water diversion or storage have been obtained or are not required shall be submitted with the APPLICATION TO VERIFY COMPLIANCE WITH CONDITIONS OF LAND USE APPROVAL.

3. The owner of the subject property shall complete and record with the Lane County Deeds and Records Division the written easement attached to the director's decision, recognizing the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules. A copy of this recorded easement, showing the recording information, shall be attached to the completed APPLICATION TO VERIFY COMPLIANCE WITH CONDITIONS OF LAND USE APPROVAL.

4. The owner of the subject property shall plant a sufficient number of trees on the subject property to demonstrate that the subject property is reasonably expected to meet Department of Forestry stocking requirements as specified in ORS 527 and OAR 629. The owner of the subject property shall submit a stocking survey report to the Lane County Assessor and the Lane County Assessor shall verify that the minimum stocking requirements have been met by the time required in ORS 527 and OAR 629. The Lane County Assessor shall inform the Department of Forestry if the property owner has not submitted a stocking survey report or if the survey report indicates that minimum stocking requirements have not been met. Upon notification by the Lane County Assessor, the Department of Forestry shall determine whether the subject property meets minimum stocking requirements of ORS 527. If the Forestry Department determines that the subject property does not meet those requirements, the Forestry Department shall notify the owner of the subject property and the Lane County Assessor that the land is not being managed as forest land. No building permit for the proposed dwelling shall be issued until compliance with the stocking requirements is attained.

5. Prior to applying for a building permit, the primary and secondary fuel breaks surrounding each of the proposed dwellings shall be established in accordance with Lane Code 16.211(8)(c). These fuel breaks shall be maintained in perpetuity. The following documents shall be attached to the APPLICATION TO VERIFY COMPLIANCE WITH CONDITIONS OF LAND USE APPROVAL in sufficient detail to verify compliance with the above Lane Code requirements:

   a. A final plot plan of the subject property, drawn to scale, showing the distances in feet of the boundaries of the subject property; the location of the foundations of the proposed dwelling and its distance in feet to at least two boundaries of the subject property; the location of the primary safety zone and secondary fuel break and their contours at five foot intervals for the proposed dwelling; the location of the source of the water supplies for fire suppression and domestic use, and any related facilities or structures such as water lines, water storage, and access to the water supply; and the location and grades of the roads and driveways for the proposed dwelling.

   b. Photographs showing the extent and condition of the primary safety zones and secondary fuel breaks for the proposed dwelling.

6. Prior to construction of the proposed access road or driveway, the applicant shall secure authorization from the Oregon Division of State Lands for any permits required for construction within wetlands identified on the National Wetlands Inventory Cottage Grove NW1 panel. Proof of compliance shall be supplied to the Lane County Land Management Division in the form of an approved DSL permit.

for the proposed work. Prior to applying for a building permit, the applicant shall supply documentation establishing that the driveway or access road from Laughlin Road to the proposed dwelling site and to within 15 feet of any source(s) of water supply to be used for fighting residential fires complies with the design standards for roads and driveways in Lane Code 16.211(8)(c)(ii) and (e). This documentation shall also show the existence of passage turnouts and emergency turnarounds sufficient for fire fighting equipment and of permanent signs indicating the location of a ~~water source. Any addition~~ to the easement to accommodate turnouts in excess of 20 feet in width must be recorded in the same manner as the existing easement. The length of the driveway requires that the applicant consult with Lane County Rural Fire Protection District #1 personnel concerning the location of the dwelling and the special characteristics of the access road. To assure that this consultation is adequate, documentation of compliance with the design standards of Lane Code 16.211(8) must be a signed statement from the Lane County Rural Fire Protection District #1, stating that the location and construction of the driveways and/or roads to the proposed dwelling and to any source(s) of water supply complies with the above Lane Code requirements for such roads and driveways. This statement must be made on the ROAD AND DRIVEWAY COMPLIANCE form available from the Land Management Division.

7. The owner of the subject property shall provide evidence that the domestic water supply for the proposed dwelling is from a source authorized in accordance with the Department of Water Resources' Oregon Administrative Rules for the appropriation of ground water or surface water, and is not from a Class II stream, and that a water use permit is not required for the proposed use. If the domestic water supply for the proposed dwelling is not available from existing public sources or sources located entirely upon the subject property, the owner of the subject property shall provide evidence that a legal easement has been obtained permitting water lines to cross the properties of affected owners and granting the owner of the subject property the right to water from the source. Any well constructed to supply domestic water shall comply with the requirements of OAR 690, and the well construction report shall be submitted to Lane County upon construction.

8. Unless appealed, approval of this special use permit shall be valid for a two year period after the date the approval becomes final. The building or placement application or construction plans for the proposed dwelling shall be submitted within two years from the date this decision becomes final and shall include the location of all components of the proposed fire suppression and domestic water systems. The applicant shall obtain all permits required by ORS 455 and OAR 918 prior to construction of the dwelling.

9. Prior to final inspection for legal occupancy as defined by the Building Code, the owner of the subject property shall provide the following for the proposed dwelling:

a. Sufficient water outlets and serviceable hose with an interior diameter of not less than ¾" and a nozzle which can reach the dwelling and nearby improvements.

b. A residence or other structure with chimneys shall have a spark arrester on each chimney, and the residence shall have a fire retardant roof.

10. This proposal ~~must be implemented~~ (*i. e.*, substantial construction completed) within two years from the date that this conditional approval becomes final. This period may be extended if a written request for an extension is received by the Hearings Official prior to the expiration of this two year period and approved by the Hearings Official.

11. The owner of the subject property shall maintain the required water supply, pump, hose, and nozzle as a connected, operating unit ready for immediate use during all periods of fire danger.

Justification for the Decision

I. PROCEDURAL BACKGROUND

The appeal of the Planning Director's conditional approval of the subject application was based on an assertion that the Director's decision misinterpreted the Lane Code, State law and other applicable criteria. Under Lane Code 14.300, however, appeals of a Planning Director decision are heard *de novo* by the Hearings Official. Accordingly, each approval criteria relevant to this request must be addressed for each of the applications in reaching a decision.

Applicant requested that the record of PA4374-92 and 4375-92 be included in the record of this matter. To avoid burdening this record with the volumes of information in the record of those other planning actions, the Hearings Official incorporates the final Hearings Official decision on those matters into the record on this matter, and accepts for the purposes of this decision, the factual findings made in those decisions.

II. STATEWIDE PLANNING GOALS

The subject property is within an area subject to the Lane County Rural Comprehensive Plan. This Plan has been acknowledged by the Land Conservation and Development Commission in a series of acknowledgment orders. Acknowledgment indicates that the Plan is generally in compliance with the applicable standards of the statewide planning goals, and that appropriate exceptions have been approved for any matters of noncompliance. Byrd v. Stringer, 295 Or. 311, 666 P.2d 1332 (1983). Accordingly, the state statutes and administrative rules, the standards of the Plan, and the Lane Code provisions implementing the Plan, are the standards relevant to this application.

III APPLICABLE STATE STATUTES

A. **ORS 215.750(1) In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:**

* * *

(c): "Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993, on the other lots or parcels."

This same standard is adopted and applied in Lane Code 16.211(7)(g) to govern when Lane County will allow single-family dwellings in Impacted Forest Land. The predominant soil type on the subject property is capable of producing 3,933 cubic feet of timber per year per acre, making (c) the applicable subsection. Within a 160 acre square centered on the subject property, there are 17 other lots listed in the Lane County Assessor's files.

There is evidence in the record concerning the date of creation of sixteen parcels, which have on them, according to the evidence, four dwellings. Evidence was submitted concerning the of creation of an additional dwelling, but no evidence was submitted concerning the date of creation of the parcel upon which the dwelling sits (tax lot 1401). The wording of the statute indicates that, to be considered as one of the qualifying dwellings, the dwelling must be on one of the qualifying parcels.

The evidence clearly indicates that fifteen of the parcels were created before January 1, 1993. The evidence concerning one parcel, tax lot 2003 of assessor's map 18-04-32 is uncertain. The parcel was divided by a road from the other portion of the land described in the metes and bounds description given on the relevant deeds. According to Lane County policy, as stated in Lane Code 13.010, in the definition of "Contiguous," the northern portion of this property, what is now tax lot 2003, was a separate parcel. However, in 1991 the state legislature amended ORS 92.010(7)(d) to provide that 'any property divided by the sale or grant of property for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned." Arguments can be made for either interpretation of the facts concerning this parcel. Since a determination of the date of creation of this parcel is not necessary for the application to meet the template test, no determination is made concerning the availability of this parcel to meet the template test.

There is evidence that this property qualifies under the criteria of ORS 215.750(1).

B. **ORS 215.750(3): "Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements under this subsection."**

None of the lots or parcels described above is within an urban growth boundary.

C. ORS 215.750(4): **"A proposed dwelling under this subsection is not allowed:**

(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law.

(b) Unless it complies with the requirements of ORS 215.730.

(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under ORS 215.740(3) for the other lots or parcels that make up the tract are met.

(d) If the tract upon which the dwelling will be sited includes a dwelling."

How this request complies with the applicable comprehensive plan and land use regulations is considered in the following sections of this decision. The requirements of ORS 215.730 are considered below in this section. The subject property is a single tract, so paragraph (c) is inapplicable here. There is presently no dwelling on the subject property.

D. ORS 215.730(1)(a): **"The property owner submits a stocking survey report to the assessor and the assessor verifies that the minimum stocking requirements adopted under ORS 527.610 to 527.770 have been met."**

Compliance with this provision is required as a condition of approval of this application.

E. ORS 215.730(1)(b): **"The dwelling meets the following requirements:**

(A) The dwelling has a fire retardant roof.

(B) The dwelling will not be sited on a slope of greater than 40 percent.

(C) Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.

(D) The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract.

(E) If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district.

(F) If the dwelling has a chimney or chimneys, each chimney has a spark arrester.

(G) The owner provides and maintains primary fuel-free break and secondary break areas."

The proposed dwelling and dwelling site either satisfy each of these requirements presently, or are required to do so through conditions of approval. The dwelling will be required to have a fire

retardant roof as a condition of approval. The subject property does not have slopes greater than 40 percent, so the dwelling will not be located on an extreme slope. The domestic water supply is to be provided by an on-site well, which is consistent with Water Resources Department standards in ORS 537 and OAR 690. The subject property is located within the Lane County Rural Fire Protection District #1. The use of spark arresters in any chimneys and provision and maintenance of primary and secondary fuel break areas are required as conditions of approval. As conditioned, the proposed dwelling meets each of the applicable requirements of this statute.

No other statutory provisions appear relevant to this request.

IV. OREGON ADMINISTRATIVE RULES

OAR 660-06-025(1)(d) allows, among other uses in Forest zones, "[d]wellings authorized by ORS 215.720 to 215.750". Such dwellings are defined in OAR 660-06-027, and are subject to the siting and other standards of OAR 660-06-029. These regulations are considered here.

A. OAR 660-06-027(1)(d): **"In western Oregon, a governing body or its designate may allow the establishment of a single family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:**

...

(C) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(i) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the subject tract; and

(ii) At least three dwellings existed on January 1, 1993 on the other lots or parcels;".

This requirement is the same as discussed above for ORS 215.750, and thus will not be repeated here.

B. OAR 660-06-027(4): **"A proposed dwelling under this rule is not allowed:**

(a) If it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan or acknowledged land use regulations or other provisions of law.

(b) Unless it complies with the requirements of OAR 660-06-029 and 035.

(c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under subsection (6) of this rule for the other lots or parcels that make up the tract are met.

(d) If the tract on which the dwelling will be sited includes a dwelling."

With the exception of item (b), these criteria are the same as those of ORS 215.750(4), and were found to be met or to be inapplicable. The Administrative Rule requirements listed here are considered below.

C. OAR 660-06-029(1): **"Dwellings and structures shall be sited on the parcel so that:**

(a) They have the least impact on nearby or adjoining forest or agricultural lands;

(b) The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

(c) The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

(d) The risks associated with wildfire are minimized."

There are no nearby agricultural lands. Forest lands adjoin the subject parcel on the northwest, west, south and east. The proposed dwelling will be located almost exactly in the middle of the property, nearly the maximum possible distance from the forest land. The effect of the proposed dwelling will be minimized because in addition to the distance from forest land, the forest land in the vicinity has already been developed to a significant extent by itself having dwellings located on the forest land, or being adjacent to land with dwellings. The largest expanse of relatively undisturbed forest land lies adjacent to the south and east of the property, in tax lots 1600 and 401. The proposed dwelling is located approximately 1200 feet from the forest land to the east, and more than 300 feet from the land to the south. This distance includes crossing the watercourse that flows through the property. Access to the subject property is by way of a private easement that does not cross onto any forest land There should be no effect on the adjacent forest lands from the proposed dwelling.

The proposed dwelling site is located on a relatively level portion of the subject property. This will reduce the size of the required firebreak, and will therefore minimize the amount of property lost to forest production.

The risks associated with wildfires are minimized through the conditions for approval. The installation of a fire retardant roof and a spark arrester for the chimney, will minimize the risk of a wildfire, as will the construction of the required firebreaks.

D. OAR 660-06-029(2): **"Siting criteria satisfying subsection OAR 660-06-029(1) may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees."**

These standards are implemented through the more specific criteria of Lane Code 16.211(8)(a), which are considered below.

E. OAR 660-06-029(3): **"The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources department's [*sic*] administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629). For purposes of this subsection, evidence of a domestic water supply means:**

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(b) A water use permit issued by the Water Resources department [*sic*] for the use described in the application; or

(c) Verification from the Water Resources department [*sic*] that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well."

The proposed dwelling is to obtain water from an on-site well, so compliance with paragraph (c) is required as a condition of approval.

F. OAR 660-06-029(4): **"As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance."**

The applicant has supplied proof of a recorded easement allowing access from Laughlin Road.

G. OAR 660-06-029(5): **"Approval of a dwelling shall be subject to the following requirements:**

(a) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules.

(b) The planning department shall notify the county assessor of the above condition at the time the dwelling is approved.

(c) The property owner shall submit a stocking survey report to the county assessor and the assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry Rules. The assessor shall inform the Department of Forestry in cases where the property owner has not

submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met.

(d) Upon notification by the assessor the Department of Forestry shall determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the department determines that the tract does not meet those requirements, the department shall notify the owner and the assessor that the land is not being managed as forest land. The assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372."

Compliance with these stocking standards is required as a condition of approval of this application. Compliance is determined by achievement with objective criteria, so no further discretionary review is required.

H. OAR 660-06-035(1): **"The dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection by contract. . . ."**

The dwelling is within the Lane County Rural Fire Protection District #1.

I. OAR 660-06-035(2): **"Road access to the dwelling shall meet road design standards described in OAR 660-06-040."**

The standard from OAR 660-06-040 reads as follows:

> **"The governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards."**

The established road design standards are provided in Lane Code 16.211(8)(e), and are considered below.

J. OAR 660-06-035(3): **"The owners of the dwellings and structures shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break area in accordance with the provisions in "Recommended**

Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991 and published by the Oregon Department of Forestry."

The relevant fuel break standards are provided in Lane Code 16.211(8)(c), and are considered below.

K. OAR 660-06-035(4): **"The dwelling shall have a fire retardant roof."**

A fire retardant roof is required as a condition of approval.

L. OAR 660-06-035(5): **"The dwelling shall not be sited on a slope of greater than 40 percent."**

As noted in the Findings of Fact above, there are no slopes of this degree on the subject property. The dwelling will be located on a portion of the property with a moderate slope.

M. OAR 660-06-035(6): **"If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester."**

Compliance with this provision is required as a condition of approval.

No other Oregon Administrative Rules appear to apply to this request.

V. APPLICABLE PLAN POLICIES

The subject property is designated as forest land in the Lane County Rural Comprehensive Plan and is zoned F-2 (Impacted Forest Lands) consistent with that designation. The following policies of the Plan apply to this application:

A. Forest Lands Policy #1: **"Conserve forest lands by maintaining the forest land base and protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture. . . ."**

Forest Land Policy #6: **"Dwellings shall be allowed in the Impacted Forest Land (F-2/RCP) Zone District as provided in OAR 660-06."**

These policies are incorporated in or can be implemented through the standards contained in the OAR provisions considered above and in Lane Code 16.211, which adopts many of the OAR 660-

06 standards and addresses the minimizing of effects on forestry and forest practices resulting from dwellings not related to forest management.

B. Forest Lands Policy #8: **"New structures must comply with the Siting and Fire Safety Standards of OAR 660-06-029 and 660-06-035."**

The siting and fire safety standards of the administrative rule are incorporated in Lane Code 16.211(8), ~~which is considered below~~.

C. Public Facilities and Services Policy #6b (Impacted Forest Land): **"... Uses that are not forest or farm related should be allowed only after assurance that such uses will not adversely affect the surrounding forest land."**

This policy is implemented by Lane Code 16.211(8)(a)(i), which considers potential adverse impacts on surrounding forest land. Accordingly, this policy will be considered in the light of this Lane Code provision.

D. Flora and Fauna Policy #9: **"Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range, and a note that computability problems, such as damage to vegetation may occur."**

Flora and Fauna Policy # 10: **Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.**

Flora and Fauna Policy # 11: **"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program."**

The subject property is within the Peripheral Big Game Range. This raises the question of how the subject property is to comply with the Rural Comprehensive Plan policies concerning Big Game Range, and whether there is evidence in the record to show that the proposed location of a dwelling on the subject property can comply with the policies.

The above quoted Rural Comprehensive Plan policy statements do not reflect the current state of the regulation of big game habitat. Taken as a whole, however, the policies and the working papers that are referenced in the policies do establish the direction which regulation of big game habitat began to take in and after adoption of the policies. The 1982 working paper identified Peripheral Big Game Range as being composed of the foothill areas of the County generally located between commercial forest lands and valley floors. Peripheral Range was identified as important habitat which "can be particularly crucial in severe winters, but has enough development to limit big game use and management options." The 1982 working paper recognized that "[m]anagement of land for timber production does not conflict with big game habitat. With proper forest management techniques, big game habitat can be significantly enhanced. The forage provided deer and elk in clear-cut areas is very important, but the combination of areas in various successional stages is probably the vital factor in enhancing numbers of deer and elk." Finally, the 1982 working paper recognized that "[t]he primary conflict to big game, is residential use at certain densities." The 1982 paper suggested that the ODFW standards of one dwelling unit for 40 acres in Peripheral Range would set the standard for maximum density without conflict.

The 1983 revisions questioned that assumption and therefore made important changes in the standards.

> "Although [the ODFW 40 and 80 acre standards are] a useful index, officials of the ODFW stress the fact that a mere "numbers game" is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.
> A prime example is that of 'clustering' dwelling units in Peripheral or Major Range areas – siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.
> The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirements of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.
> * * * *
> The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner – including the involvement of that agency in land use regulation development. If the zoning procedures described above do not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with conflicts * * * "

It was this reevaluation of the original standards that led the County to add the final sentence concerning working through land use regulations, siting requirements and similar activities to the original Flora and Fauna policy # 11 quoted above.

The text and context of these policies and the working paper makes it clear that the standard is not the simple "40 acres or ESEE" standard suggested in the first working paper. The first working paper reflected the standards and concerns appropriate to a time before the Rural Comprehensive Plan was finalized and implemented by the present zoning ordinances. When the first working paper was developed Lane County was facing a choice of alternatives. One alternative was to preserve the Big Game Range as a separate criteria, requiring and extensive inventory of the actual range areas and the related ESEE analysis of OAR 660-16 to resolve conflicts, leading to the creation of a big game overlay zone in the zoning regulations. The other alternative was to incorporate the big game/residential development conflict resolution into the zoning code as a whole, using such factors as the connection between appropriate forest management and beneficial big game habitat to make certain that the value of big game habitat was preserved.

Lane County chose the second alternative. Instead of inserting a special set of big game criteria into each section of the zoning code, as was done with riparian and sensitive wildlife criteria, Lane County melded big game concerns with other relevant concerns relating to the possible development of resource lands. The first step in this melding was the distinction between F-1 and F-2 lands, with the greater than normal restrictions on development of F-1 lands. As developmental conditions on resource lands and state laws concerning development on resource lands has changed, the Lane Code has continued to adapt to maintain the protection of Big Game Range through the zoning regulations. The Lane Code now contains measures relating to restocking, clustering, reduction of impacts to forest practices and so forth. All of these provisions are consistent with the first working paper's discussion of how to resolve conflicts between residences and big game. Thus, Flora and Fauna Policy ## 9, 10 and 11 are met when the proposed development complies with the relevant portions of Lane Code 16.211(7) and 16.211(8).

VI. LANE CODE CRITERIA

Lane Code 16.211(7) provides that a dwelling not related to forest management may be located in an Impacted Forest Lands (F-2) Zone if application is made to the Director pursuant to Lane Code 14.050 and the procedural requirements of Lane Code 14.100 are satisfied (both of which have occurred with respect to this application), and proof of each of the following matters is provided. The concept of "a dwelling not related to forest management" has been dropped from ORS 215.750 by Chapter 792 of 1993 Oregon Laws, and from the implementing Administrative Rules in OAR 660-06. However, because of the latitude given by those authorities to local governments to implement the foregoing standards, and because the Lane Code provisions have not been repealed and are mostly consistent with the foregoing authorities, these Lane Code provisions remain valid criteria applicable to the application.

A. **Lane Code 16.211(7)(a): "The dwelling would not force a significant change in, significantly increase the costs of, or impede accepted farming or forest practices on agriculture or forest lands;"**

Lane Code 16.211(7)(c): "A written statement recorded with the deed or written contract with the County or its equivalent is obtained from the landowner which recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules;"

The conditions of approval require the applicant to execute and record a statement in the form of the easement attached as Attachment B. This requirement may be obviated by the additions to ORS 30.930-947 made by Chapter 792 of 1993 Oregon Laws, which provide additional protections for forest practices on forest lands, but until this Lane Code provision is repealed or deemed expressly negated, it should be applied. The easement is one significant means whereby the dwelling will comply with the requirement that the dwelling not force a change in forest practices on adjacent lands. There are no agricultural lands in the vicinity. In addition to the easement, the location of the dwelling away from the forest lands to the south and east assures that there is a significant buffer between the dwelling and any other forest lands where forest practices would be carried out. The requirement that the applicant develop a stocking plan on his own property assures that the dwelling will not have an adverse effect on this part of forest practices. There is little risk that there will be trespassing or nuisance claims arising from the location of this dwelling. The addition of a few daily trips on the local roads should have no significant impact on the forest practices.

B. **Lane Code 16.211(7)(b): "The parcel of the proposed dwelling is located within a rural fire protection district or the proposed resident has contracted for residential fire protection;"**

The parcel is located in the Lane Rural Fire Protection District.

C. **Lane Code 16.211(7)(d): "The dwelling meets the siting and safety standards in LC 16.211(8) below;"**

Lane Code 16.211(8) imposes numerous siting and safety standards on dwellings not related to forest management in Impacted Forest Lands zones. While these standards apply to all new dwellings in such zones, they are not absolute; the standards of Lane Code 16.211(8)(a)-(b) are to be weighed against the standards in Lane Code 16.211(8)(c) and (e) to determine the appropriate dwelling location.[1] The relevant standards are:

[1] This does not affect the standards of Lane Code 16.211(7), however, which are described in absolute terms.

1. **Lane Code 16.211(8)(a): "Setbacks. Residences and structures shall be sited as follows:**

(i) Near residences on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope;"

This subparagraph imposes five different siting standards, each of which must be applied to the dwelling proposed in this application.

Near Residences on Other Tracts: There are no residences especially near the subject property, except to the north, where two residences , on tax lots 522 and 520 lie near the center of the subject property. The proposed residence is as close to these residences as is practical, given the layout of the subject property and the need for setbacks to preserve the freedom to carry on forest practices.

Near Existing Roads: One existing road ends near the northwest corner of the subject property; while another county road crosses north of the subject property. The subject property is also crossed by several private easements. The proposed dwelling site is located near one of these private easements.

On the Least Suitable Portion of the Tract for Forest Use: The entire parcel produces timber, although only a portion of the parcel is of a soil type classified as productive. The proposed dwelling is located on a relatively level portion of the property, and will occupy a small area, whereas location elsewhere on the property would require a larger dwelling site. In this way the proposed location is better and less suitable for forest use.

At Least 30 Feet Away from any Ravine, Ridge or Slope: The proposed dwelling site is on a relatively level portion of the property away from the watercourse that runs through the property.

2. **Lane Code 16.211(8)(a)(ii): "With minimal intrusion into forest areas undeveloped by nonforest uses;"**

The only parcel adjacent to the subject property which has been undeveloped by nonforest uses is to the northeast. The dwelling site proposed for the subject property is located at least 1200 feet from this non-impacted forest land. The proposed dwelling site thus minimizes intrusion into forest areas undeveloped by nonforest uses.

3. **Lane Code 16.211(8)(a)(iii): "Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the**

tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU;"

The proposed dwelling site is at least 300 feet from the borders of adjoining F-2 land. There are no EFU or F-1 parcels abutting the subject property, so the 100 foot setback thus applies and has been met.

4. **Lane Code 16.211(8)(a)(iv): "Not closer than 100 feet from ordinary high water of a Class I stream;"**

No class I streams are present on or near the subject property.

5. **Lane Code 16.211(8)(a)(v): "Not closer than**
   (aa) 20 feet from the planned right of way of a state road, County road or a local access public road specified in Lane Code Chapter 15; and
   (bb) 20 feet from an existing right-of-way of a state road, County road or a local access public road; and
   (cc) 10 feet from all other property lines."

An undeveloped public road ends at the northwest corner of the property. The proposed dwelling site is at least 1200 feet from the end of this road. The proposed dwelling site is further than ten feet from all property lines.

6. **Lane Code 16.211(8)(b): "The amount of lands used to site access roads, service corridors and structures shall be minimized."**

The location of the proposed dwelling does not absolutely minimize the length of the required access road. The location of proposed dwelling on a level portion of the property does minimize the amount of land used for the structure. Once access is gained to the property, the location of the proposed dwelling does not improperly increase the amount of forest land lost to an access road. Portions of the property have greater slopes than the portion where the dwelling is to be located. Location of the dwelling where it is proposed will reduce the amount of property dedicated to fire breaks, and in that way the proposed location does minimize the amount of land used to site the dwelling. This standard sets a goal toward which one can strive, not an absolute beyond which one must pass. Within the flexibility of the standard, the criteria are met.

7. **Lane Code 16.211(8)(c): "Fire Safety Measures. Residences, structures and roads shall comply with the following fire safety measures:**

(i) Fuel Breaks. Fuel breaks around residences shall be maintained as follows:

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings. . . . As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. . . ."

As can be seen from the above table, the more level the proposed dwelling site, the smaller the fuel breaks need to be to satisfy this requirement. For this reason, locating dwellings in the most level parts of a tract minimizes the size of the required safety zone and fuel break, which thus preserves the greatest amount of forest resources. The subject property here has varying slopes, some portions of which would require much larger fire breaks. In connection with the construction and placement of the dwelling, the applicant will be required to provide these safety zones and fuel breaks by the Conditions of Approval.

8. **Lane Code 16.211(8)(c)(ii): "Fire Suppression Water Supplies. An adequate fire suppression system shall be provided. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:**

(aa) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capable of sustaining a volume of 20 gallons per minute for not less than 20 minutes. If a water supply is available and suitable for fire protection, such as a swimming pool, pond,

stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(bb) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling, and nearby improvements.

(cc) The water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period [*sic*] of fire danger."

Compliance with each of these standards for the proposed dwelling is required by Conditions of Approval.

9. **Lane Code 16.211(8)(c)(iii): "Chimneys and Roofs. Residences or structures with any chimneys shall have a spark arrester on the chimneys, and residences shall have a fire retardant roof."**

Compliance with these conditions for the proposed dwelling is required by the Conditions of Approval.

10. **Lane Code 16.211(8)(d): "Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream . . . ."**

The proposed dwelling plans to use ground water for its domestic water supply. Compliance with this requirement is included as a condition of approval.

11. **Lane Code 16.211(8)(e): "Fire Safety Design Standards for Roads and Driveways. Except for private driveways, roads or bridges accessing only commercial forest uses, an applicant shall provide evidence and a clear explanation which demonstrates why the route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways will comply with the standards specified below in LC 16.211(8)(e). . . .**

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel . . . .

. . .

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 feet except for short distances when topographic conditions make lesser grades impractical. . . ."

Access to the proposed dwelling site will be over a private driveway on the subject property. This driveway must be constructed to satisfy these requirements. Compliance with these standards for the final driveways is required by the Conditions of Approval.

The siting standards of Lane Code 16.211(8) indicate that the proposed dwelling site does not maximize all of the criteria of this subsection. These criteria are, however, not minimum standards, but are a series of measures which are used to locate the best site for the dwelling. In this case greater proximity to nearby dwellings has been reduced so as to reduce the length of the driveway. However, no matter where the dwelling was located on the property, it could not significantly increase its proximity to other dwellings because these other dwellings are located so far from the adjoining property lines. Therefore, the proposed dwelling site has complied with the requirements of LC 16.211(8).

E. **Lane Code 16.211(7)(e): "The parcel on which the dwelling would be located was lawfully created prior to January 25, 1990;"**

This is the primary target of the opponent's attack on approval. Key to this issue is the transaction in 1981, when a portion of the larger lot that contained what is now the subject property was transferred to the owner of the adjacent parcel to the northeast. If this transfer of ownership was a partition, it would have been improper because it was not subject to partition approval.

The transaction in question was a warranty deed where George Zellner transferred ownership of 84.39 acres to Penn Timber. Penn Timber already owned the parcel that was adjacent to the north of the 89.39 acre property transferred by the 1981 deed. This transaction could be viewed as a not permitted partition or an appropriate lot line adjustment. It had all the characteristics of a lot line adjustment described in ORS 92.010(7)(b): the lot line affected was a common boundary between two parcels, no additional unit of land was created and the existing unit of land, the subject property, remained in compliance with the applicable zoning ordinances. The fact that the assessor gave the enlarged parcel two tax lot numbers does not indicate that two parcels were created.

It is Lane County policy to regard a real estate transaction as legal if that is technically and legally possible. The fact that the transaction was later redone in a manner that specifically recognized that it was a lot line adjustment does not affect the earlier transaction.

Appellant also argues that the property in question was re-aggregated into one parcel during the time that it was held by George Zellneer, from 1949 to 1979. For a time the idea of aggregation by common ownership at the beginning of a calendar year was popular in some parts of Oregon. This notion was created by the language in the then applicable partition law, ORS 92.010. The notion was also ended by statute with the passage of ORS 92.017. In this case, the owner of the several parcels had not done anything to indicate that he regarded the parcels as being aggregated. In fact, he had done exactly the opposite, having sold one of the parcels. After the passage of ORS 92.017, common ownership of adjacent parcels is not enough to show that the parcels have been aggregated into a single parcel. Since there is no evidence of anything else in this case, appellant's arguments that the parcels were aggregated and thus required partition review are not correct.

In the same way, appellant's arguments that the transactions wherein the owner of the subject property granted an easement across the property were partitions is not correct. Earlier definitions of partition in ORS 92.010 did focus on the creation of a road, and place special requirements on partitions that involved the creation of a road. There is, however, a distinction between a sale of land that creates a separate parcel and the grant of an easement for road purposes. The transactions about which appellant is concerned were easements and not the actual sale of property, and thus do not fall within the regulation of partitions.

The subject property was created as a separate parcel in 1907. It was reduced in size in 1981 but no new parcel was created at that time. The subject parcel qualifies under the criteria of Lane Code 16.211(7)(e).

F. **Lane Code 16.211(7)(f): "The parcel on which the dwelling would be located has been disqualified from receiving a farm or forest tax deferral."**

This criterion existed to implement a now-repealed Oregon Administrative Rule, which considered dwellings not related to forest management. Because of the stocking requirements imposed on the subject property by the now-effective rules, this disqualification is not appropriate. To comply with the conditions necessary to obtain an occupancy permit, the owner must comply with a stocking plan, which will also qualify the property for the continued tax deferral.

G. **Lane Code 16.211(7)(g): "The parcel is composed of soils which are:**

...

(i) Capable of 0 to 49 cubic feet per acre per year (cf/ac/yr) and where this parcel and at least all or part of three other parcels exist within a 160-acre square when centered on the center of the subject parcel; or

(ii) Capable of 50 to 85 cf/ac/yr and where this parcel and at least all or part of seven other parcels exist within a 160 acre square when centered on the center of the subject parcel; or

(iii) Capable of above 85 cf/ac/yr and where this parcel and at least all or part of eleven other parcels exist within a 160 acre square when centered on the center of the subject parcel."

This criteria was considered above with regard to the similar requirement of ORS 215.750, and was satisfied.

H. **Lane Code 16.211(7)(h): "Parcels within urban growth boundaries shall not be counted to satisfy the eligibility requirements under Lane Code 16.211(7)(g) above."**

None of the parcels within the 160 acre square centered on the subject property are located within an urban growth boundary, so this requirement is satisfied.

I. **Lane Code 16.211(7)(i): "If road access to the dwelling is by a road owned and maintained boy [*sic*] a private party or the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance."**

The subject property is accessed by way of a recorded easement from Laughlin Road. This criteria is satisfied.

J. **Lane Code 16.211(7)(k): "Notice of a decision for an application pursuant to LC 16.211(7) above shall occur in compliance with LC 16.100(3)."**

This paragraph requires notice of a consideration of an application under Lane Code 16.211(7) to be sent to the Departments of Land Conservation and Development and Forestry ten days before the decision is made. Such notice has been sent.

VII. EXPIRATION OF APPROVAL

Consistent with Lane Code 14.700(4), this approval will be valid for a two year period from the date this decision becomes final. All conditions of approval must be satisfied within this time. This approval shall become null and void unless all such conditions are satisfied within that time, or a written request for an extension is received and approved by the Hearings Official in accordance with the Conditions of Approval.

Conclusion

State law and the Lane Code allows placement of dwellings on impacted forest land if the dwelling complies with a long list of rather onerous requirements. If the proposed dwelling can comply with

all the conditions imposed by the present zoning laws, the resource value of the property will be preserved to a greater extent than historically it has been on the properties that made this into impacted forest land. Subject to the conditions listed herein the Director's decision is affirmed and the appeal is denied. The proposed dwelling is allowed, subject to these conditions.

Respectfully submitted,

Milo Mecham
Lane County Hearings Official

LCOG
Lane Council of Governments
125 East Eighth Avenue Eugene, Oregon 97401 (541) 682-4283 Fax: (541) 682-4099 TDD: (541) 682-4567

January 23, 1997

Kent Howe
Director, Land Management Division
Lane County Public Service Building

Re: Declining reconsideration of PA 1841-96 (Bartlett)

Dear Kent:

I received an appeal of the Hearings Official's decision in PA 1841-96, which approved the Director's decision allowing a dwelling in an impacted forest zone. For the reasons stated here, I decline to reconsider the Hearings Official's decision and affirm that decision. Because this appeal involves an interpretation of L.C. 16.211(7)(e), I recommend either that the Board entertain the appeal and apply their own interpretation, or that the Board specify, pursuant to LC 14.600(2)(d), what portions of the interpretation of the Lane Code by the Hearings Official they accept or do not accept.

This appeal by Heru Tarjoto raises some of the same issues Mr. Tarjoto raised at the hearing. Although the issues were not all discussed in the Hearings Official's decision, they were all considered in the course of reaching a decision. Because Mr. Tarjoto's present appeal is based on, but does not fully explain the contentions he made during the hearing, a brief explanation of his arguments and why I do not feel they warrant reconsideration may assist you in your evaluation of the appeal.

Mr. Tarjoto's appeal is based on his assertion that the subject parcel is not a legal parcel. This is an issue because of the requirement of LC 16.211(7)(e): "The parcel on which the dwelling would be located was lawfully created prior to January 25, 1990." Although Mr. Tarjoto quotes from several state laws, the dispute in this case is really centered around how Lane County wishes to apply the language of these state laws to determine whether or not the subject parcel was lawfully created prior to January 25, 1990.

Mr. Tarjoto begins his appeal with an assumption that was not made in the Hearings Official's decision: that the subject parcel was an undivided part of a single large 284 acre parcel in 1944. The Hearings Official's decision found that this was not the case because of the language in ORS 92.017[1], among other reasons. Contrary to Mr. Tarjoto's assumption, the evidence indicated that two parcels acquired by Mr. Zellner were separate parcels and were not merged into a single parcel. Because the Hearings Official's decision does not

[1] 92.017 A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided as provided by law.

accept the idea of a merger of the two properties, the Hearings Official's decision did not conclude that partition review was necessary, as Mr. Tarjoto would have preferred.

Mr. Tarjoto also relies on the definitions of "lot" and "parcel" given in ORS 92.010(3) and (5). In this portion of the argument, Mr. Tarjoto is contending that because the properties in question were not created as a part of a subdivision, or as the product of a partitioning proceeding, the properties in question do not fit within the protection of ORS 92.017. In this argument, as in a similar argument made during the hearing, Mr. Tarjoto ignores the introductory language of ORS 92.010, which states that "unless the context requires otherwise" the definitions Mr. Tarjoto quotes apply. When we are dealing with properties created by deeds written before any law governed the creation of subdivisions or recognized the concept of partitioning, the context of the language obviously requires a slightly different meaning than the definition Mr. Tarjoto offers. Insisting on the statutory definition would defeat the legislature's intent in creating ORS 92.017.

Finally, Mr. Tarjoto claims error because, he asserts, streets or ways, or roads were created as a part of the transactions that resulted in the subject parcel, and the definition of partition makes any such action the subject of partition review. The evidence in this matter was that some of the transactions in question included a grant of an easement for access purposes. An easement does not divide land, and thus is not a partition, according to the definition of partition in ORS 92.010(6). Here the context of the definition suggests that creating access by an easement is categorically different from the type of transaction subject to partition approval. For that reason, Mr. Tarjoto's arguments that the property could only be lawfully created if there had been a partition review were not accepted.

Mr. Tarjoto's description of the holding in Higgins v. Marion County is correct, but it does not require reconsideration. I assume that by this argument Mr. Tarjoto is responding to the applicant's argument that he was entitled to rely on a previous legal lot determination that the subject parcel was lawfully created. For several reasons the Hearings Official's decision did not use the previous legal lot determination as evidence upon which the decision approving the application was based. Thus, the ruling in the Higgins case does not matter in these proceedings, however it may apply in other circumstances.

For these reasons, after reviewing the appeal and request for reconsideration, I have determined that reconsideration of the previous Hearings Official decision is not warranted, and I affirm that decision.

Respectfully submitted,

Milo Mecham
Lane County Hearings Official

LCOG
WorkingTogether
FOR OUR COMMUNITY

January 27, 2020

Mr. Keir Miller, Division Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Appeal of Planning Director approval of the request (PA 19–05299) by Gray & Dorotea Goodman for a forest template dwelling on Tax Lot 506, Assessor's Map 18–02–11.

Dear Mr. Miller:

Please find the Lane County Hearings Official's decision affirming the Planning Director's approval of the request (PA 19–05299) by Gray & Dorotea Goodman for a forest template dwelling on Tax Lot 506, Assessor's Map 18–02–11.

Sincerely,

Gary L. Darnielle
Lane County Hearings Official

cc: Shawna Adams (file)

LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On April 18, 2019, a request to establish a dwelling in the Impacted Forest Lands (F–2) zone was submitted to Lane County Land Management Division by James Belknap. The application was deemed complete on May 29, 2019. On September 20, 2019, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On October 2, 2019, a timely appeal was submitted by LandWatch Lane County.

Parties of Record

James Belknap	LandWatch Lane County	Lauri Segel–Vaccher
Michael Farthing	Gray & Dorotea Goodman	Sean Malone

Application History

Hearing Date: November 12, 2019
(Record Held Open Until January 16, 2020)

Decision Date: January 27, 2020

Appeal Deadline

An appeal must be filed within 12 days of the mailing of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(5) & (8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 506, assessor's map 18–02–11, 0.2 miles southeast of the City of Springfield's Urban Growth Boundary, north of Wallace Creek road. It takes access off of RR Baker Road, a private easement road. The subject property is vacant and is zoned F–2 Impacted Forest Lands. It is located within a Major Big Game Range and is not part of a tract.

The subject property slopes upward to the east with an elevation range between approximately 980 to 1120 feet above mean sea level (MSL) per Lane County GIS contour data. County contour and LiDAR data show that slopes range from less than 10 percent to greater than 40 percent, with a level area in the center. Lane County GIS aerial imagery shows that a majority of the property open pasture with scattered brush and a mixture of vegetation in the northern portion of the site. According to County GIS data layers, the property has areas rated by DOGAMI as "high" and "very high" for landslide susceptibility and does not contain floodplain, a Class 1 stream, or mapped wetlands.

The subject property is largely clear of timber and is open pasture with low vegetation. The home site is proposed in an area already clear of timber and will be serviced by an existing access that will be extended and improved to meet driveway standards.

2. The subject property abuts properties zoned F-2 Impacted Forest Lands on all sides. The surrounding area can generally be characterized as a mix of forest and low-density, rural residential uses.

3. The following table represents the soils on the subject property:

Map Symbol	Unit Name	Acreage	% of Tax Lot	Forestry Capability Class Cubic Feet per Acre per year
108F	Philomath cobbly silty clay; 12–45% slopes	6.94	57%	Oregon Department of Forestry Estimate ~ 45 Cu./Ft./Ac./yr.
107C	Philomath silty clay; 3–12% slopes	2.43	20%	Oregon Department of Forestry Estimate ~ 45 Cu./Ft./ Ac./yr.
113G	Ritner cobbly silty clay loam; 30–60 % slopes	2.31	19%	Oregon Department of Forestry Estimate ~ 149 Cu./Ft./Ac./yr.
116G	Rock outcrop–Witzel complex; 10–70 % slope	0.37	3%	Oregon Department of Forestry Estimate ~ 21 Cu./Ft./ Ac./yr.

4. Because 80 percent of the subject property's soils have less than a capability of 49 cubic feet per acre per year of wood fiber, the application qualifies for the 3-parcel template test required by Lane Code 16.211(5)(c)(i)(aa). The following table documents 11 parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(i)(aa).

Count	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	18–02–11	402 (now 405)	1915	Preliminary LLV PA04-5479 and Notice PA07-5918 / PA05-05303
2	18–02–11	1602	1898	Book 486 Page 298; LL PA04-05486; PA05-05303
3	18–02–11	1400	1964	Deed R452/90923
4	18–02–11	1401	1969	Deed R449/77304; Preliminary LLV PA 94-02225
5	18–02–11	500	1973	Deed R655/7342064
6	18–02–11	503	1964	Deed R245/61357
7	18–02–11	1300	1940	Deed V390/274
8	18–02–11	1200	1940	Deed V197/631
9	18–02–11	502	1964	R245/60012; Preliminary LLV PA91-01252
10	18–02–11	701	1976	Preliminary LLV PA92-00285
11	18–02–11	600	1983	Parcel 1 M43-81

5. Lane Code 16.211(5)(c)(i)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The Applicant has relied upon the following dwellings/tax lots:

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
1	18–02–11	503	1966
2	18–02–11	1300	1948
3	18–02–11	502	1964

6. Three dwellings are located within 1,000 feet of the subject property, all being located to the east and southeast across RR Baker Road on intervening ownership. The closest of these dwellings is located on Tax Lot 600 and is nearly 500 feet away from the subject property, and just over 700 feet from the proposed home site. With consideration of the access and slope limitations of the property, the proposed home site is located as close to these other dwellings as appears to be feasible considering the topography of the subject property.

The nearest public road is Wallace Creek Road, located to the south of the subject property. The subject property is proposed to take access from R.R. Baker Road, a private road built over a 40–foot wide easement, adjacent to the subject property.

Access from Wallace Creek Road is proposed via R.R. Baker Road and a 450–foot driveway leading to the development site. Per the application, the driveway access will be provided via an existing logging skid road that will be improved and extended approximately 200 feet to the dwelling site. The Applicants do not document the extent of the skid road and it is not clearly visible from recent County GIS imagery, but does appear on imagery dating back to 2000. The Applicants have provided a recorded easement document that allows for permanent use of the road for access and utilities with provisions for maintenance in compliance with LC 15.055(4), (5), and (7). Compliance with LC 15.055 has been made a condition of approval and any changes to this easement are subject to further review and approval as part of the Verification of Conditions application process.

September 16, 2019 driveway slope map with details stamped by the Applicants' surveyor indicate that the grade of the proposed road varies between two and 13 percent and the proposed driveway contains two segments with slopes that exceed 16 percent. These segments include a 32–foot span with a 16.1 percent slope near RR Baker Road and an 85–foot span with a slope up to 18.1 percent slope past the proposed turnout.

The proposed home site is approximately 450 feet from RR Baker Road, and as close to the road as appears to be feasible with consideration of slopes between the road and the dwelling site and other reasonably level portions of the property.

The Applicants' July 11, 2019 response includes a site plan that shows the primary and secondary fuel breaks around the proposed home site. The site plan detail is stamped by a registered professional land surveyor and includes 5–foot contours near the proposed home site and the slope percentages within 30 feet of the dwelling. The detail indicates the downslope within 30 feet of the home site to be 12 percent to the southwest, 2 percent to the northwest, and 10 percent to the northeast. These slopes dictate a 30–foot primary fuel break around the home site with an additional 50–foot safety zone downslope to the northwest and southwest of the dwelling, as shown on the site plan. The precise break point between the downslopes to the northwest, northeast, and southwest are not indicated in detail and need not be provided to demonstrate that compliance with fuel break standards is feasible, as it is clear that the 50–foot additional safety downslope could be accommodated regardless of the precise location of the transition. The site plan detail also shows a secondary fuel break around the primary safety zone.

7. The applicant proposes to install a private well for domestic water supply. Given the residential uses on properties surrounding the subject property, compliance with the above standard is feasible as proposed.

8. The subject property is located within the Pleasant Hill Goshen Rural Fire Protection District. The Applicant's submittal includes a March 14, 2019 letter from the Goshen Pleasant Hill Rural Fire Protection District confirming that the subject property will be serviced by the district. The Applicant's submittal also includes an April 15, 2019 email follow-up to a site visit by the fire district that confirms the equipment the firefighting equipment that the district has access to and would use to respond to a fire on the property from the nearest fire station at 36745 Jasper–Lowell Road, approximately 2.4 miles from the subject property.

9. On July 11, 2019, the Applicants submitted a revised access plan showing eight turnarounds spaced at intervals not less than 500 feet between Wallace Creek Road and the base of the driveway. The Applicants' submittal included photographs of the turnaround points as they exist in addition to the June 21, 2019 letter from the owner's Hendrickson Well Drilling attesting to the ability to construct the road in accordance with County standards as designed. The company has experience in road excavation, site preparation land clearing, and general contracting.

10. The subject property is bordered on the south by tax lot 508, on the southeast by tax lot 600, on the east by tax lot 507, on the north by tax lot 201 and on the west by tax lots 401 and 404; all within assessor's map 18–02–11. Adjacent on the east to tax lot 507 is tax lot 501, which has a dwelling. The development site (as amended 5/21/19) is located in the lower one–third portion of the subject property. Tax lots 506, 501 and 508 are owned by Gray and Dorotea Goodman, the applicants. Tax lots 507 and 509 are owned by Nimpkish LLC, whose registered agents are Gray Goodman and Dorotea Goodman.

    The secondary fuel break around the development site is 100 feet beyond the primary fuel break to the north, east and south. However, it does not extend its full length to the west where the subject property borders tax lots 401 and 404. These latter two properties are not owned by either the Applicants or Nimpkish, LLC.

11. The record contains an index of well logs for the township, range, and section within which the subject property lies. The well log for tax lot 506 shows a capacity of eight gallons per minute; the well logs for two wells on tax lot 501 show capacity of 3 and 5 gallons per minute, respectively; and well lots for two wells on tax lot 404 show a capacity of 1.5 and 2.6 gallons per minute. The well log for tax lot 600 shows a capacity of 5 gallons per minute. This data is relevant to LC 16.211(8)(d).

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 19–05299) BY GRAY AND DOROTEA GOODMAN FOR A TEMPLATE FOREST

DWELLING ON TAX LOT 506, ASSESSOR'S MAP 18–02–11 IS AFFIRMED subject to the following modification to Condition of Approval #3:

3. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose. Prior to building approval, the Applicants shall submit a Level II geotechnical report to the County. If the building inspector finds problems that would require a restriction on mechanical grading and/or clearing, that issue shall be reviewed by the Hearings Official through a Type III Modification of Decision.

Justification for the Decision (Conclusion)

The subject property is zoned F–2 Impacted Forest Land. The Applicant is requesting approval to construct a single–family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160–acre rectangle template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on non–impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

The allegations of error raised by the Appellant in its appeal are as follows:

1. ***The subject property is located within a Major Big Game Range and the application must conform to the requirement that the proposal must not result in a density greater than one dwelling unit per 80 acres.***

   The Appellant contends that the proposed template dwelling does not comply with the 80–acre minimum density requirement for Major Big Game Habitat mandated by OAR 660–006–0027(1)(d) and (f), and Goal 4, Policy #11 of the Rural Comprehensive Plan. Policy #11 states:

   "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660–16–000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

As determined in earlier decisions,[1] the Flora and Fauna Working Paper (1982 and 1983 Addendum) of the Rural Comprehensive Plan and Flora and Fauna Policy #11 of the Plan explain that the Big Game Range density standards were never integrated into the zoning classifications and minimum lot size recommendations on a regional basis. The density recommendations were not applicable to existing parcels but were to be considered in rezoning applications. Therefore, the approval of template dwellings does not require a determination of consistency with Big Game Range density standards.

The Appellant relies upon LUBA's decision in *Cattoche v. Lane County*[2] for the proposition that density in the Impacted Forest Lands District is determined by the Rural Comprehensive Plan's March 1992 Flora & Fauna Working Paper as it applies to Flora & Fauna Policy #11 of the Rural Comprehensive Plan. The working paper stated that the county would be divided into regions and that the recommendations of the Oregon Department of Fish & Wildlife (ODF&W) would be used to determine appropriate densities in the peripheral and major big game ranges. Any proposed density above the ODF&W would represent a conflict with Statewide Planning Goal 5 and would require an ESEE analysis.

The record contains portions of the July 19 and September 12, 1984 DLCD staff reports for the acknowledgment of compliance of the Rural Comprehensive Plan. The version of Chapter 16 of the Lane Code that DLCD staff was reviewing included a minimum lot size of 40 acres for dwellings in the Non–Impacted Forest Lands District (F–1) and minimum lot sizes of 20 and 40 acres in the Impacted Forest Lands District (F–1). There were no provisions in the F–2 zoning district for residential siting standards that included the clustering of dwellings.

Kent Howe, former Lane County Planning Director, and Jim Mann, Former Principle Planner with Lane County, were working on the adoption of the Rural Comprehensive Plan in 1983 and 1984. Their recollection was that at the last hour, facing a negative DLCD staff review regarding compliance with Goal 5 issues dealing with wildlife and big game habitat, Lane County made significant changes to how big game habitat was to be protected. The primary change was to virtually eliminate residential development in the F–1 District, which represented 84 percent of the forest lands in Lane County. The second change was to require the clustering of dwellings in the F–2 District. Finally, the minimum lot size for F–2 zoned forest lands was set at 80 acres. With these changes, the Rural Comprehensive Plan was found to be consistent with Statewide Planning Goal 5 by the Land Conservation and Development Commission.

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[1] See *Application of Michelle Miller*, Lane County Hearings Official Decision in PA 18–05471 (4/10/2019)
[2] *Cattoche v. Lane County*, __LUBA __ (LUBA No. 2018–109, May 22, 2019).

The Lane County Hearings Official, in the *Green* decision,[3] opined that Flora and Fauna Policy #11 is not an approval criterion but rather directs the County towards a method of determining the "overall" residential densities in different regions of the County. As noted above, Lane County planning staff never did divide the County into regions although big game habitat was inventoried and adopted through maps that identified major, peripheral, and impacted big game habitat.

As pointed out in the *Green* decision, the Oregon Legislature adopted HB 3661 in 1993. This bill provided for large tract dwellings in western Oregon, lot of record dwellings, and template dwellings. It was noted that Subsection (1)(f) of ORS 215.705 required the siting of lot of record dwellings to consider density standards based upon acknowledged big game habitat inventories. No such requirement was necessary for the siting of template dwellings. The Lane Code adopts the statutory language concerning template dwellings almost verbatim.

The siting standards for template dwellings primarily heavily rely upon forest soil productivity and the clustering of dwellings. Imposing a 40– or 80–acre dwelling per acre standard is contradictory with this rationale. In evaluating objections regarding Flora & Fauna Policy #11, DLCD staff noted that the adoption of ODF&W's density standards was an approach to resolve conflicts between dwellings and big game habitat but that Lane County had not adopted such standards in its zoning ordinance. DLCD staff recommendation in their September 12, 1984 report to LCDC was as follows:

"*Amend the F–2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum parcel sizes in the Big Game Habitat portions of those zones, **or** contain clustering requirements in those areas.*"[4]

As noted above, Lane County chose to require clustering of dwellings in the F–2 and EFU zones while enlarging the minimum lot size in the F–1 zone and eliminating dwellings in that zone.

The Appellant adopts the opposite conclusion from the acknowledgment process than the Applicants. It assumes that since the standards in Policy #11 were not explicitly incorporated into ordinance format, that Policy #11 applies directly. The Applicants conclude that other changes to the Code obviated the necessity of applying those standards directly to the land use permitting process. This latter conclusion is more consistent with the explanation from the planners who were

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[3] *Application of Connie and Charles Green*, Lane County Hearings Official Decision in PA 18–05913 (11/25/2019)

[4] Pages 24 and 25, September 12, 1984 DLCD supplemental staff report on the Acknowledgment of Compliance for Lane County and Rural Portion of Eugene/Springfield Metro Plan.

working in the acknowledgment of compliance process at the time, the recommendation of DLCD staff, and the acknowledged version of LC Chapter 16.

This allegation of error is dismissed.

2. ***The secondary fuel break should be required to extend into adjoining properties under the control of the Applicants.***

As noted in Finding of Fact #10 above, the Applicants' site plan shows that the secondary fuel break around the development site is 100 feet beyond the primary fuel break to the north, east and south and is located entirely within the subject property. However, it does not extend its full length to the west where the subject property borders tax lots 401 and 404. These latter two properties are neither owned nor controlled by the Applicants.

This allegation of error is dismissed.

3. ***Goal 7 Policies 1, 2, and 3 of the Rural Comprehensive Plan must be applied to this application.***

Goal 7, Policy #1: "*The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate.*"

Goal 7, Policy #2: "*Development shall be commensurate with the type and degree of any natural hazards(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to the sole means of safeguard against natural hazards.*"

Goal 7, Policy #3: "*When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact, (including financial and economic considerations) of such safeguards on the environment and the public shall be considered.*"

In regard to Policy #1, the 1982 Natural Hazards Working paper does not contain any maps but it does indicate that "*...steep slopes -- specifically those greater than 15 percent -- present severe limitations for development and therefore should normally be left in a natural state.*" Other information in the record includes topographic mapping of the subject property that identify some steep slopes and DOGAMI's landslide map that shows a very high landslide potential on portions of the subject property.

Policies #2 and #3 indicate that development should be commensurate with the type and degree of hazards present and that after taking into account the immediate and ultimate impact of the development, safeguards on the environment and the public shall be considered when extensive or drastic safeguards must be employed in conjunction with development proposals. Consistent with Policy #3 is LC 16.005(2) which states:

"*Local governments shall require site–specific soil surveys and geologic studies where potential problems exist. When problems are identified, local governments shall require special design considerations and construction measures be taken to offset the soil and geologic constraints present, to protect life and property, public investments, and environmentally–sensitive areas.*"

R.R. Baker Road and the proposed driveway have been reviewed by Michael Remboldt, P.E., G.E. of K & A Engineering, Inc. Mr. Remboldt is a geotechnical engineer. Mr. Remboldt noted that R.R. Baker Road has not been the source of or impacted by large–scale, deep–seated landslide or debris flow. He concluded that any instability noted was limited to roadway cuts with slope movement impact constrained to the area from the road ditch to the top of the cut embankment. After inspection of the driveway, Mr. Remboldt's was of the opinion that its location would not inherently present a significant landslide hazard. Mr. Remboldt recommended that a Level II geotechnical investigation occur for the subject property prior to development because of the slopes in the area and the DOGAMI high–hazard mapping designation.

Lane Code 16.005(2) requires that the restrictions upon grading and clearing by mechanical equipment occur at the time of approval of a development permit or of an application if the concerns it identifies are present. It does not appear that the above–described Level I geotechnical report addresses all of those concerns.

In a prior appeal of a template dwelling in the general area of the subject property[5], this Hearings Official addressed the implications of the *Rhyne* case[6] in regard to LC16.005(2). In its decision in the *Rhyne* case, LUBA noted that local government had the option of deferring its determination of compliance of a standard to a subsequent proceeding. Lane County has a process where an applicant may be compelled to apply for a Type III Modification of Decision[7] when a substantial change in an approved application is necessary. This review would be before the Hearings Official and would require notice to the Appellant.

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[5] *Application of McDougal Bros. Investments*, Lane County Hearings Official decision in PA 19–05768 (11/12/2019)

[6] *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992).

[7] As authorized by LC 60.851(3).

Thus, the building inspector will review the Level II geotechnical report provided by the Applicants' engineer. Section 1803 of the Oregon Structural Specialty code gives the Building Official the authority to require and review geotechnical information. If the Building Official finds problems that would require a restriction on mechanical grading and/or clearing, that issue would be reviewed by the Hearings Official. Condition of Approval #3 has been modified to reflect this change.

This allegation of error is dismissed.

4. ***The subject property is part of a tract and therefore does not comply with LC 16.211(5)(a).***

Lane Code 16.211(5)(a) states that a template dwelling may not be approved if it is part of a tract that already contains a dwelling. ORS 215.010(2) defines "tract" as one or more contiguous lots or parcels under the same ownership. The Appellant argues that tax lots 501, 506, 507, 508 and 509 are a tract. As explained in Finding of Fact #10 above, tax lots 501, 506 and 508 are owned by Gray and Dorotea Goodman, the applicants, and tax lots 507 and 509 are owned by Nimpkish LLC, whose registered agents are Gray Goodman and Dorotea Goodman. The Goodman's have a membership interest in the limited liability company which is personal property but do not have "ownership" of the property.

The term "ownership" must be distinguished from the term "control." The former has a very precise legal meaning. For example, two contiguous parcels, one owned by Mr. and Mrs. Smith, tenants in entirety, and one owned by Smith, LLC, whose members are Mr. and Mrs. Smith, would not be under the same legal ownership. In the former, legal liability would attach to the collective assets of Mr. and Mrs. Smith, while in the latter example liability will be limited to the assets "owned" by the LLC. Thus, in the present case, if Nimpkish, LLC is sued then tax lots 507 and 509 might be in jeopardy but normally tax lots 501, 506 and 508 would not.

This allegation of error is dismissed.

5. ***The record does not demonstrate compliance with LC 16.211(8)(c).***

Lane Code 16.211(8)(c) contains fire siting standards. The Appellant has suggested that the record is not adequate to satisfy LC 16.211(8)(e), in regard to evidence of the adequacy of the access for fire-fighting equipment, or LC 16.211(8)(e)(iv), in regard to road grades.

The record contains an itemized list of the fire–fighting equipment that would be used by the Pleasant Hill Goshen Fire & Rescue Department to serve the subject property.[8] Andrew Smith, Fire Chief with the Pleasant Hill Goshen Fire & Rescue Department has taken a site view of R.R. Baker Road and the Applicants' driveway. He found that the grades and nine turn–outs (turnarounds) would provide adequate access for the departments vehicles.[9] He specifically noted that the portion of the driveway, which was less than 100 feet in length, that was about 18 percent before grading and would be 16 percent after grading, would provide acceptable access. He also noted that the required compliance with LC 16.211(8)(c) would greatly reduce or eliminate the risk factors of chimney draw effect.

It should also be mentioned that LC 16.211(8)(e)(vii) allows the standards of LC 16.211(8)(e)(i) through (vi) to be modified with a showing of objective evidence demonstrating that an alternative standard would ensure adequate access for fire–fighting equipment. The written assurances from the Fire Chief would provide this evidence had it been necessary.

This allegation of error is dismissed.

6. ***The application does not satisfy various road standards of LC 15.138.***

Lane Code 15.138 applies spacing standards to driveways and roads that intersect with County Roads. This standard is not applicable as the Applicants' driveway, as well as the other driveways, intersect with R.R. Baker Road, a private road.

This allegation of error is dismissed.

7. ***The frontage requirements of LC 15.120 are not met.***

The Hearings Official recognizes that Lane County Assessor's map for Township 18 South, Range 2 West, Section 11, is in this record and that it shows all properties taking access onto R.R. Baker Road to have at least 30 feet of frontage on that private facility.

This allegation of error is dismissed.

8. ***The entire roadway must be constructed to the standards of LC 16.211(8).***

The Appellant argues that the Applicant must improve RR Baker Road to the east because the adjoining properties are part of a tract that includes the subject property. As addressed in "Allegation of Error No. #4, the subject property is not within a tract of multiple properties. Further, there is no authority to require the

[8] See May 7, 2019 letter from Andrew Smith, Fire Chief, to Jim Belknap.
[9] See December 9, 2019 letter to Jim Belknap from Andrew Smith.

reconstruction of the road to properties that are not currently seeking land use approval.

This allegation of error is dismissed.

Summary

The application is consistent with applicable sections of the Rural Comprehensive Plan and LC 16.211(5) and (8). The appeal is therefore dismissed.

Respectfully Submitted,

Gary Darnielle
Lane County Hearings Official

February 4, 2020

Mr. Keir Miller, Division Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Appeal of Planning Director approval of the request (PA 19–05298) by the Nimpkish LLC for a forest template dwelling on Tax Lot 507, Assessor's Map 18–02–11.

Dear Mr. Miller:

Please find the Lane County Hearings Official's decision affirming, with modifications, the Planning Director's approval of the request (PA 19–05298) by the Nimpkish LLC for a forest template dwelling on Tax Lot 507, Assessor's Map 18–02–11.

Sincerely,

Gary L. Darnielle
Lane County Hearings Official

cc: Rachel Serslev (file)

LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On April 18, 2019, a request to establish a dwelling in the Impacted Forest Lands (F–2) zone was submitted to Lane County Land Management Division by James Belknap, an agent for Nimpkish, LLC. The application was deemed complete on May 17, 2017. On August 2, 2019, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On August 14, 2019, a timely appeal was submitted by LandWatch Lane County.

Parties of Record

Nimpkish LLC	LandWatch Lane County	Lauri Segel–Vaccher
James Belknap	Michael Farthing	Sean Malone
1000 Friends of Oregon	Andrew Mulkey	

Application History

Hearing Date: September 26, 2019
(Record Held Open Until January 23, 2020)

Decision Date: February 4, 2020

Appeal Deadline

An appeal must be to the Oregon Land Use Board of Appeals within 21 days from the date that this decision becomes final. [ORS 197.830(9)] This decision becomes final after 12 days from the mailing of the decision if no request for reconsideration is made. [LC 14.080(1)(b)]

Statement of Criteria

Lane Code 16.211(5) & (8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 507, assessor's map 18–02–11, approximately one–half mile east of the City of Springfield's Urban Growth Boundary. The property is about 10 acres in size, is vacant, and does not have an address. The

subject property is not a part of a tract as the property owner does not own any adjacent property.

The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The property abuts F–2 zoned properties on all sides. The surrounding area can generally be characterized as a mix of forest and low-density, rural residential uses. The property does not contain floodplain, a Class 1 stream, or mapped wetlands but is located within a Major Big Game Range.

2. The property slopes from the north-west corner to the east property boundary, from a mean sea level (MSL) of approximately 1060 feet to 1200 feet MSL determined with Lane County contour data. The County LiDAR data show that slopes range from less than 10% to 40% or more with steep slopes located in the north-west and north-central portion of the subject property. More gentle slopes on the subject property are located in the south-west corner. The property is primarily open pasture with some scattered, low-lying brush and Douglas Fir.

3. Soils data show that the property is composed of two soil types, 107C Philomath silty clay and 113G Ritner cobbly clay loam, which have forestland capability of an estimated 45 and 149 cubic feet per acre per year, respectively. Soil type 107C composes approximately 53% of the subject property. The proposed development site is located on the Philomath soils.

4. The Applicant has is required to apply the 3–parcel template test required by Lane Code 16.211(5)(c)(i)(aa). The following table documents seven parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(i)(aa).

Count	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	18-02-11	600	1982	Parcel 1 of M43-81
2*	18-02-11	601	1982	Parcel 2 of M43-81
3*	18-02-12	201	1909	Final Legal Lot Verification 509-PA14-05513
4	18-02-12	303	1992	Parcel 1 of 92-P0221
5	18-02-12	302	1992	Parcel 2 of 92-P0221
6*	18-02-11	100	1953	460/235
7	18-02-10	100	1941	222/81

5. Lane Code 16.211(5)(c)(i)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The Applicant has relied upon the following dwellings/tax lots:

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
1	18-02-12	201	1910; RLID
2	18-02-11	601	1982/1999; Verification of Replacement Rights 509-PA98-5159
3	18-02-11	100	1958/2001; Verification of Replacement Rights 509-PA01-05596

6. The properties surrounding the subject property to the north and west do not contain any dwellings; although some of those properties have conditional approval for dwellings. Tax Lot 501, to the east of the subject property, and Tax Lot 600, across R.R. Baker Road to the south, contain the nearest existing dwellings. These dwellings are approximately 460 and 880 feet from the proposed home site.

7. The nearest public road is Wallace Creek Road, located to the south of the subject property. The subject property is proposed to take access from R.R. Baker Road, a private road adjacent to the subject property. The proposed homesite is approximately 189 feet from R.R. Baker Road and will be accessed by an existing spur road that will be improved to serve as the dwelling's driveway.

   R.R. Baker Road currently serves more than one dwelling and thus the portion of this road from Wallace Creek Road to the subject property must meet County standards. The Applicant's access site plan shows R.R. Baker Road as having a easement width of 40 feet. The application indicates that the road has a travel width that varies between 16 and 18 feet. Further, the Applicant's site plan shows the proposed driveway from R.R. Baker Road to the homesites as having a 12–foot width. The Applicant has access to the road via a March 21, 2019 easement (#2019-010337).

   The portion of R.R. Baker Road from Wallace Creek to the subject property must have nine turnarounds given the standard of LC 16.211(8)(e)(ii) and the road's length. Photographs of the turnaround points as they are located on the Applicant's site plan, given the topography and width of the road, indicate that it is feasible that the road can be improved to meet the above standards. These improvements will be accomplished by Hendrickson Well Drilling, a 25–year old company that does road excavation, site preparation, land clearing, general contracting and well drilling. The owner of the company has reviewed the plans for the widening of R.R. Baker Road, its improved road surface, and the construction of the turnarounds and has stated that his company if prepared to complete the reconstruction of the road. The record includes photographs of the road construction equipment used by the company.

Slopes for the proposed driveway vary between zero and 14 percent. The driveway slopes are indicated on the Applicant's site plan and are stamped by a registered professional land surveyor, David J. Collier. The Applicant also provides a letter from the Pleasant Hill Goshen Fire and Rescue that provides preliminary verification of compliance regarding access to the subject property.

There are several existing culverts that provide drainage for R.R. Baker Road as presently constructed. Two new culverts are proposed, one where R.R. Baker Road meets the proposed driveway and another along the proposed driveway. These culverts must be constructed to meet the Road Fire Safety Design requirements of LC 16.211(8)(e).

8. Based upon contour maps, the homesite is located at least 30 feet from a ravine ridge or slope greater than 40%. The proposed homesite is located on the Philomath soil, which is the soil type with a lowest capability of the soils on the subject property. The homesite is located in an area already clear of timber and developed with a roadway that will be improved to meet driveway standards.

9. The record contains an index of well logs for the township, range, and section within which the subject property lies. The well log for tax lot 506 shows a capacity of eight gallons per minute; the well logs for two wells on tax lot 501 show capacity of 3 and 5 gallons per minute, respectively; and well lots for two wells on tax lot 404 show a capacity of 1.5 and 2.6 gallons per minute. The well log for tax lot 600 shows a capacity of 5 gallons per minute. This data is relevant to LC 16.211(8)(d).

10. The subject property is located within the boundaries of the Pleasant Hill Rural Fire Protection District. The Applicant provides a letter (d. 5/14/2019) from the Fire Protection District that confirms service to the R.R. Baker Road area. Specifically, the review pertains to Map 18–02–11 Tax Lots 501 and 506, which were the tax lot numbers associated with the land that is now Tax Lot 507, the subject property.

    A letter in the record from the Pleasant Hill Rural Fire Protection District confirms that the subject property will be serviced by the District and a list of the fire–fighting equipment that the District has access to and would use to fight a fire on the property.[1] The Applicant also provides information regarding the nearest fire station at 36745 Jasper–Lowell Road, approximately 2.5 miles from the subject property. The way of access from the fire station to the subject property involves paved County roads and R.R. Baker Road. Fire Chief Andrew Smith, Pleasant Hill Goshen Fire and Rescue Department took a site view of R.R. Baker Road and the driveway of the subject property on December 6, 2019. Chief Smith had previously taken a site view of the road in regard to an earlier forest template dwelling application regarding tax lot 506. The Chief reviewed updated proposals

[1] Three Type 1Structure Firefighting Engines, three Type 1 Water Tenders, and one rescue vehicle.

for R.R. Baker Road improvements, which included nine turnarounds, and noted that the grade for the road and the proposed driveway was sufficient for Fire Department access. The Chief stated that the proposed defensible space around the proposed homesite, as depicted on the Applicant's site plan, would greatly reduce or eliminate the risk factors of chimney draw effect.

11. The proposed development site accounts for the required primary and secondary safety zones surrounding the dwelling. The primary safety zone is proposed as 30 feet on the east side of the home site. West of the home site, there is a 17% down slope which requires an additional 75 feet of primary safety zone down slope. This requirement is depicted on the applicant's site plan with an 80–foot primary fire break on the west side of the homesite. The primary safety zone with the additional down slope fit entirely within the boundaries of the subject property. Surrounding the primary safety zone will be a secondary safety zone of 100 feet in all directions on property owned or controlled by the owner. The secondary fuel break extends into tax lot 506, to the west. The Goodmans, owners of tax lot 506, have indicated that they would approve an easement for the extension of the secondary fuel break

12. The subject property is bordered on the south by tax lot 600, on the east by tax lot 501, on the west by tax lot 506, and on the north by tax lot 201; all within assessor's map 18–02–11. Tax lot 501, adjacent on the east, has a dwelling. The development site (as amended 5/21/19) is located in the lower one–third portion of the subject property. Tax lots 506, 501 and 508 are owned by Gray and Dorotea Goodman. Tax lots 507 and 509 are owned by Nimpkish LLC, whose registered agents are Gray Goodman and Dorotea Goodman. Tax lot 201 is owned by Betz/Evans Associates. Tax lot 600 is not owned by neither the Applicant nor Gray and Dorotea Goodman

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 19–05298) BY NIMPKISH, LLC FOR A TEMPLATE FOREST DWELLING ON TAX LOT 508, ASSESSOR'S MAP 18–02–11 IS AFFIRMED, with modifications to Condition of Approvals #6 and #13:

6. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(6)(c) and as depicted on the applicant's site plan. **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope, as identified on the Applicant's site plan. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner. For purposes of this approval, the Applicant is deemed to have control over adjacent tax lot 506.

13.c. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of the subject property made usable by means of fill shall be suitable for the intended purpose. Prior to building approval, the Applicants shall submit a Level II geotechnical report to the County. If the building inspector finds problems that would require a restriction on mechanical grading and/or clearing, that issue shall be reviewed by the Hearings Official through a Type III Modification of Decision.

Justification for the Decision (Conclusion)

The subject property is zoned F–2 Impacted Forest Land. The Applicant is requesting approval to construct a single–family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160–acre square template centered on the center of the subject property. In the present case, the Applicant has correctly centered the 160–acre rectangle, that is one mile long and a quarter mile wide, on the subject property. The abutting road is R.R. Baker Road, which is described on a 1982 survey, indicating that the road existed prior to January 1, 1993. The template appears to be aligned with the R.R. Baker Road to the maximum extent possible. Additionally, the placement of a dwelling on non–impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

The allegations of error raised by the Appellant in its appeal are as follows:

1. The dwelling on Tax Lot 601, Assessor's Map 18–02–11 did not exist in 1993 and cannot be used to find compliance with LC 16.211(c)(i)(aa)(B).

The Appellant has argued that the Regional Land Information Database (RLID) does not show a dwelling on the subject property being on the tax rolls between 1993 and 1998.

County records include a mobile home placement permit BP 81–2367 that indicates the placement of a dwelling on the subject property in 1982. RLID actually shows an improvement value of zero from 1998 to 1999. This time frame aligns with the verification of a replacement rights planning action, which secured the replacement rights in 1998. A site–built structure was approved under PA 98–05159 and replaced the mobile home.

As a matter of policy, the Lane County Board of Commissioners has held that a replacement dwelling meets the standard of "continue to exist."[2] In addition, I would point to Multnomah County where this interpretation has been codified into the zoning ordinance.[3] Arguably, if either LUBA or the Oregon Court of

[2] Lane County Board of Commissioners Order No. 16–05–17–06, adopted May 17, 2016.
[3] *West v. Multnomah County*, 70 Or LUBA 235 (2014), 269 Or App 518 (2015)

Appeals would have taken exception to Multnomah County's explicit allowance of replacement dwellings they would have so stated.

Based upon adopted Lane County policy, I must conclude that a dwelling that lawfully replaced a dwelling that was lawfully established on January 1, 1993 meets the "*continues to exist*" standard of Lane Code 16.211(5)(c) and OAR 660–006–0027(3)(b).

This allegation of error is dismissed.

2. *The Director's decision is not consistent with the protections afforded Major Big Game ranges in accordance with the Lane County Rural Comprehensive Plan.*

The subject property lies within an area designated as Major Big Game Habitat. The Appellant contends that the proposed template dwelling does not comply with the 80–acre minimum density requirement for Major Big Game Habitat mandated by OAR 660–006–0027(1)(d) and (f), and Goal 4, Policy 11 of the Rural Comprehensive Plan.

Lane County's Rural Comprehensive Plan and Chapter 16 of the Lane Code were acknowledged by LCDC in 1984. Big Game Habitat was recognized as a 1C significant Goal 5 resource[4] and the County incorporated some of the protections recommended in two Flora and Fauna Working Papers into the Rural Comprehensive Plan. Thus, Flora and Fauna Policy 11, of Goal 5 of the Rural Comprehensive Plan states that Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game were to be used to determine the allowable number of residential units within regions of the County. This policy stated that any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660–16–000.

The Appellant relies upon LUBA's decision in *Cattoche v. Lane County*[5] for the proposition that density in the Impacted Forest Lands District is determined by the Rural Comprehensive Plan's March 1992 Flora & Fauna Working Paper as it applies to Flora & Fauna Policy #11 of the Rural Comprehensive Plan. The Big Game Range section of the 1982 Flora & Fauna Working Paper[6] notes that the County was to be divided into regions convenient for planning purposes; probably between 10 to 20 regions. Within the regions, excluding the Impacted Big Game Ranges, a residential carrying capacity was to be determined. The ODFW

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[4] *Save TV Butte v. Lane County*, LUBA No. 2017–031, Slip Op at 26 (1/18/2018)
[5] *Cattoche v. Lane County*, __LUBA __ (LUBA No. 2018–109, May 22, 2019).
[6] It should be noted that the working papers that support the Rural Comprehensive Plan were not "elements" of the plan and did not carry any authority in and by themselves. Not all of their recommendations were implemented by plan policies although they generally provided information and analysis that supported adopted policies.

recommended a density of one dwelling unit per 40 acres for peripheral big game range areas and one dwelling unit per 80 acres for major big game range areas. Lane County never divided the County into geographic Big Game Range regions and the Appellant has not alleged that its analysis encompasses one of those regions.

It is important to distinguish between the planning work Lane County did in preparation for acknowledgment of compliance and what was actually acknowledged by LCDC. As noted above, the Flora and Fauna Working Paper's strategy of dividing the County up into regions was never implemented.

The DLCD staff report of July 19, 1984 indicates a concern with the minimum lot sizes in the resource zones coupled with a lack of siting and clustering requirements. The minimum parcel size was the County's chosen method to comply with the ODFW recommended maximum densities. The recommended densities –one dwelling per 40 acres in the peripheral big game range –depended entirely on the size of the area being studied. When considering an 80–acre study area, the recommendation would only allow two dwellings. However, the recommendation was intended to apply at a much higher level; which is why the County originally anticipated dividing the County into regions. Ultimately, the County, with the blessing of DLCD and ODFW, decided to rely on minimum parcel sizes to implement the ODFW recommendations. This view is borne out in DLCD's staff report which stated: "*Without siting clustering requirements, the minimum lot sizes in the F–1, F–2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable.)*" At this time, Lane County's proposal was to have a minimum lot size of 40 acres for the F–1 Zone, minimum lot size of 20 acres in the F–2 Zone, minimum lot size of 40 acres in the EFU Zone, and no clustering or siting standards for dwellings.

DLCD staff issued a second acknowledge of compliance report regarding Lane County's Rural Comprehensive Plan and implementing ordinances on September 12, 1984. The recommendation in this report was:

"*Amend the F–2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum parcel sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.*"[7]

Kent Howe, former Lane County Planning Director, and Jim Mann, Former Principle Planner with Lane County, were working on the adoption of the Rural Comprehensive Plan in 1983 and 1984. Their recollection was that at the last hour, facing a negative DLCD staff review regarding compliance with Goal 5 issues dealing with wildlife and big game habitat, Lane County made significant

[7] Pages 24 and 25, September 12, 1984 DLCD supplemental staff report on the Acknowledgment of Compliance for Lane County and Rural Portion of Eugene/Springfield Metro Plan.

changes to how big game habitat was to be protected. Last minute changes included increasing the minimum lot size to 80 acres in the F-2 Zone and adopting siting and clustering requirements in that zone. Where Policy #11 states that "*any density above that limit shall be considered a conflict*" it was referring to when the density prescribed by the minimum parcel size was to be lessened through a land division or rezoning. At that point in time, an ESEE analysis, via a comprehensive plan amendment, would be required.

The template dwelling regulations were adopted by the Legislature in 1993 and subsequently incorporated into administrative rule. These regulations were adopted verbatim by Lane County through a post-acknowledgment plan amendment which was not challenged.

Ultimately, the acknowledged zoning ordinance did not apply the Big Game limitations except in certain circumstances, such as in the Exclusive Farm Use Zone.[8] And in that case only properties lying within a Major Big Game area were affected. No specific siting regulations for forest template dwellings located within a peripheral big game range were adopted by the acknowledged Chapter 16 zoning code. That is, the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations within the Impact Forest Lands Zone. The density recommendations were not applicable to existing parcels but were to be considered only in rezoning and land division applications. Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards.

This allegation of error is dismissed.

3. The Director's decision does not address Goal 7 policies of the Rural Comprehensive Plan addressing areas subject to natural hazards.

The Appellant asserts that the Planning Director has not made any findings regarding compliance with natural hazards policies of the Rural Comprehensive Plan. This is correct as there are no criteria in Lane Code 16.211(5) regarding compliance with these policies.

It is an open argument as to whether the natural hazards policies apply directly to land use applications. My assumption is that they do not but this decision will nevertheless address whether the present application is consistent with those policies. These policies are discussed below:

Goal 7, Policy #1: "*The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a*

[8] See, for instance, Lane Code 16.212(10)(a)(i).

guide for general land use decisions. Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate."

In regard to Policy #1, the 1982 Natural Hazards Working paper does not contain any maps but it does indicate that "*...steep slopes -- specifically those greater than 15 percent -- present severe limitations for development and therefore should normally be left in a natural state.*" Other information in the record includes topographic mapping of the subject property that identify some steep slopes and DOGAMI's landslide map that shows a very high landslide potential for the subject property.

Also included in the record is documentation of a site view of the subject property and R.R. Baker Road by Michael Remboldt, geotechnical engineer and principal with K & A Engineering, Inc. On November 13, 2019, Mr. Remboldt performed a Level I evaluation of slope study of the proposed development site and the road. A Level I evaluation includes a literature search about the geology and geologic hazards of a site, a visual inspection of the site for indicators of active slope movement, and a preliminary stability evaluation. A more detailed description of a level I evaluation was presented by Mr. Remboldt in a December 2, 2019 letter to Mr. Jim Belknap. Mr. Remboldt discussed the findings of his site view in a December 11, 2019 letter to Mr. Jim Belknap, Mr. Remboldt noted that the "*...proposed driveway location does not inherently present a significant landslide hazard.*" He also noted that there was no evidence the R.R. Baker road was the source or was impacted by large–scale deep–seated landslides or debris flow. Mr. Remboldt recommended that a Level II geotechnical investigation occur prior to development. This study would be used by the Lane County Building Inspector at the time a building permit was requested.

Goal 7, Policy #2: "*Development shall be commensurate with the type and degree of any natural hazards(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to the sole means of safeguard against natural hazards.*"

This policy is a little confusing since it states that the provisions of the building code were the sole means of safeguarding against natural hazards in the absence of any specific proposal. It is hard to imagine when the building code would be applied when there was no specific proposal against which to apply those standards. Further, it leaves open the door as to what other methods are required to safeguard against natural hazards when there is a specific proposal. Nevertheless, the policy makes it clear that development must be commensurate with the type of natural hazard present. Mr. Remboldt's recommendation that a Level II geotechnical evaluation occur prior to development is therefore significant and has been integrated into the conditions of approval.

Goal 7, Policy #3: "*When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact, (including financial and economic considerations) of such safeguards on the environment and the public shall be considered.*"

Consistent with Policy #3 is LC 16.005(2) which states:

"*Local governments shall require site–specific soil surveys and geologic studies where potential problems exist. When problems are identified, local governments shall require special design considerations and construction measures be taken to offset the soil and geologic constraints present, to protect life and property, public investments, and environmentally–sensitive areas.*"

In regard to Policy #3, the Level I geotechnical evaluation did not identify extensive or drastic safeguards that had to be employed in conjunction with the Applicants' development proposal. However, the location of the development within a very high landslide hazard area is an indication that potential development problems may exist. Thus, Mr. Remboldt wisely recommends that this evaluation be a prelude to a more comprehensive evaluation (Level II) when the actual development is proposed through the building permit process.

In a prior appeal of a template dwelling in the general area of the subject property[9], this Hearings Official addressed the implications of the *Rhyne* case[10] in regard to LC16.005(2). In its decision in the *Rhyne* case, LUBA noted that local government had the option of deferring its determination of compliance of a standard to a subsequent proceeding. Lane County has a process where an applicant may be compelled to apply for a Type III Modification of Decision[11] when a substantial change in an approved application is necessary. This review would be before the Hearings Official and would require notice to the Appellant.

Thus, the building inspector will review the Level II geotechnical report provided by the Applicants' engineer. Section 1803 of the Oregon Structural Specialty code gives the Building Official the authority to require and review geotechnical information. If the Building Official finds problems that would require a restriction on mechanical grading and/or clearing, that issue would be reviewed by the Hearings Official. Condition of Approval #13 has been modified to reflect this change.

This allegation of error is dismissed.

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[9] *Application of McDougal Bros. Investments*, Lane County Hearings Official decision in PA 19-05768 (11/12/2019)

[10] *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992).

[11] As authorized by LC 60.851(3).

4. The County cannot approve multiple forest template dwellings on a tract.

Lane Code 16.211(5)(a) states that a template dwelling may not be approved if it is part of a tract that already contains a dwelling. ORS 215.010(2) defines "tract" as one or more contiguous lots or parcels under the same ownership. The Appellant argues that tax lots 501, 506, 507, 508 and 509 are a tract.

The subject property is owned by Nimkish, LLC. It is bordered on the west by tax lot 506 and on the east by tax lot 501. Both properties are owned by Gray & Dorotea Goodman. On the north the subject property is bordered by tax lot 201, owned by Betz/Evans Associates. On the south it is bordered by tax lot 600, which is not owned by either Gray & Dorotea Goodman or the Applicant.

As explained in Finding of Fact #12 above, Gray and Dorotea Goodman, are the registered agents of Nimpkish, LLC. The Goodman's have a membership interest in the limited liability company which is personal property but do not have "ownership" of the property.

The term "ownership" must be distinguished from the term "control." The former has a very precise legal meaning. For example, two contiguous parcels, one owned by Mr. and Mrs. Smith, tenants in entirety, and one owned by Smith, LLC, whose members are Mr. and Mrs. Smith, would not be under the same legal ownership. In the former, legal liability would attach to the collective assets of Mr. and Mrs. Smith, while in the latter example liability will be limited to the assets "owned" by the LLC. Thus, in the present case, if Nimpkish, LLC is sued then tax lots 507 and 509 might be in jeopardy but normally tax lots 501, 506 and 508 would not.

This allegation of error is dismissed.

5. The application does is not consistent with the minimum fuel break standards of LC 16.211(8)(c).

The proposed development area is located in the southwest corner of the subject property. The secondary fuel break is contained within the subject property except on the west, where is encroaches into tax lot 506. This issue concerns whether the Applicant has control over tax lot 506 and therefore must receive an easement for the fuel break from the owners of that parcel; Gray & Dorotea Goodman. As addressed above under Allegation of Error #5, the term "control" is different from the term "ownership." In the present case, Gray & Dorotea Goodman are the only registered agents of Nimpkish, LLC and are the owners of tax lot 506. It is therefore evident that the Applicant, as it is constituted, has control over tax lot 506. Accordingly, Condition of Approval #6 has been modified to explicitly require that the secondary fuel break extend into tax lot 506.

This allegation of error is affirmed.

Summary

Based upon evidence in the record, and minor modifications to the Director's conditions of approval, I believe that this application for a template dwelling complies with LC 16.211(5)(c)(i)(aa) and LC 16.211(5)(c)(i)(bb) and otherwise complies with the applicable approval standards of LC 16.211(5)(c)(iii) and (8). I further believe that the application, as conditioned, is consistent with applicable policies of the Rural Comprehensive Plan. The Director's decision, with modifications, is therefore affirmed.

Respectfully Submitted,

Gary Darnielle
Lane County Hearings Official

RECEIVED APR 19 2021

BEFORE THE LANE COUNTY HEARINGS OFFICIAL

APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On February 5, 2020, the applicant, E.J.K Investments, filed an application seeking to establish a dwelling in the Impacted Forest Lands (F–2) zone on tax lot 2900, assessor's map 21–35–07–30. PA 20-05064. The application was deemed complete on March 6, 2020. On January 27, 2021, the Director approved the application, and on February 8, 2021, a timely appeal was submitted by LandWatch Lane County (LandWatch).

On January 21, 2021, six days before the Planning Director issued their decision approving the subject application, the Oregon Land Use Board of Appeals (LUBA) issued its decision in *LandWatch Lane County v. Lane County (Nimpkish)*, ___ Or LUBA ___ (LUBA No. 2020-030, January 21, 2021). As discussed further below, LandWatch based its appeal in this case on LUBA's holding in *Nimpkish*. In its staff report to the Hearings Official, staff concurred with LandWatch as to the significance of *Nimpkish* to the resolution of this appeal, and recommended denial.

Parties of Record

E.J.K. Investments (Kim O'Dea)
Michael Farthing
LandWatch Lane County (Lauri Segel; Sean Malone)

Jim McLaughlin

Application History

Hearing Date: March 4, 2021
(Record Held Open Until April 8, 2021)

Decision Date: April 19, 2021

Appeal Deadline

A party may request reconsideration of this decision by the Hearings Official, pursuant to Lane Code 14.080(1)(a)(iii) and (1)(b), by filing a notice of appeal within 12 business days after the date the notice of decision was mailed. If a party seeking further review chooses not to seek reconsideration, they must file an appeal directly with LUBA within the timelines set forth in state law. See LUBA's website for more information on appeal deadlines.

//////////////

Statement of Criteria

Lane Code 16.211(5) and (8)
House Bill 2225

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 2900, assessor's map 21–35–07–30, which is immediately north of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries.

   The property is approximately 12.05 acres and is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration easement that transects the property.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The entire property is designated Major Big Game by the Oregon Department of Fish and Wildlife (ODFW) Habitat Maps.

2. The subject application is one of two template dwelling applications approved by the Planning Director on the same date. The other application concerns a forest template dwelling proposal on a contiguous 13.28-acre parcel identified as tax lot 2800 of the same assessor's map, which is also designated Big Game Range.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 20–05064) BY E.J.K. INVESTMENTS FOR A FOREST TEMPLATE DWELLING ON TAX LOT 2900, ASSESSOR'S MAP 21–35–07–30 IS REVERSED.

Justification for the Decision

The applicant is requesting approval to construct a single–family forest template dwelling in the F-2 zone as provided by Lane Code 16.211(5)(c).

A. Goal 5

The subject property is designated Major Big Game Habitat. Big Game Habitat is a Statewide Planning Goal 5 resource and thus is entitled to certain protections. Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) sets forth a process for evaluating, inventorying, and protecting significant natural resources, including big game habitat. The evaluation includes consideration of uses that conflict with the protected significant resource. In order to implement Goal 5, local governments are required to

adopt programs that will protect natural resources, and includes consideration and weighing the values of conflicting uses and the natural resource. OAR 660-015-0000(5).

ODFW has determined that the main use that conflicts with, and poses a significant threat to, big game habitat is residential development. Lane County's Goal 5 program includes the following comprehensive plan policy that implements Goal 5 and is intended to address this main conflict:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."* Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.[1]

The *Nimpkish* appeal referenced above involved a request for a forest template dwelling on a 10-acre property. The appellant in that case argued that a dwelling on a 10-acre property would violate the recommended density limitation (80 dwellings per acre), and thus violated Policy 11. The applicant asserted that Policy 11 did not apply to discrete land use applications for forest template dwellings. LUBA held that Policy 11 does apply to an application for a forest template dwelling.

As LUBA explained, the first sentence of Policy 11 acknowledges that the County is using the ODFW density recommendations as the baseline. The first sentence, and the County's Working Paper, also acknowledges that the County intended to study different regions of the County (most likely the County would be divided into 10 to 20 different regions in that study) to come up with a "residential carrying capacity." That information would then be used to determine appropriate zoning in the area. The petitioners in *Nimpkish* focused on the second sentence of Policy 11, arguing that the County is prohibited from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis. LUBA agreed.

The applicant in this case does not challenge that holding *per se*. Rather, it argues that the addition of this one dwelling does not violate the ODFW-recommended limits, and therefore, an ESEE analysis is not required. That contention is based on the applicant's interpretation of the significance of the term "overall" in Policy 11.

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[1] The ODFW recommendation for overall residential density in the Major Big Game Range Habitat is no more than 80 dwellings per acre. For Peripheral Big Game Range Habitat, the recommended density is no more than 40 dwellings per acre.

Anybody who has studied residential densities, either in urban or rural settings, understand that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings / acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county. The applicant argues that the denominator here should be the entire County, or at least a very large portion of the County, because Policy 11 uses the term "overall residential density."[2]

LandWatch relies on one sentence in LUBA's decision in *Nimpkish* in support of its argument that the subject property, not the entire County, must serve as the density denominator: "There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres." Slip op. 15.[3]

The applicant contends that LandWatch cannot rely on that statement because it was technically *dicta*. The issue addressed in that statement (whether the addition of the proposed dwelling would constitute a conflict that triggered an ESEE analysis) was not before LUBA in the *Nimpkish* appeal. The issue in that appeal was whether Policy 11 applied to a discrete application for a forest template dwelling. The Hearings Official had held that it did not, and LUBA overturned that ruling. On that basis, the decision was remanded. LUBA was not called upon to address (and the parties presumably did not brief) the issue of what the appropriate density denominator would be once it was determined that Policy 11 applied.

It may well be that LUBA's statement in *Nimpkish* that "the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres" was *dicta*. That said, even if that statement was *dicta* and, thus, is not clear precedent in this case, it seems clear that LUBA believed that, if Policy 11 applied, the appropriate density denominator would be the subject property. In other words, if the issue had been before LUBA, we now know how LUBA would have ruled. However, because LUBA made that statement somewhat in passing, it did not conduct a full interpretation of Policy 11 to reach that conclusion. That analysis is now provided here.

Text

The applicant argues that the term "overall" in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County

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[2] Applicant submitted evidence supporting his conclusion that the "overall density" when viewed at the County level, is well below the ODFW recommended "overall density." He also submitted documentation regarding the residential density of smaller subsets of the County; *i.e.,* the area east of Interstate 5 and the area west of Interstate 5; regions divided by highway corridors; and watershed regions. All sets of numbers confirmed his theory that the residential densities are well below the ODFW recommended "overall" densities. Thus, the addition of one dwelling would not result in a Goal 5 conflict.

[3] LUBA then went on to make the following legal conclusion: "Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.'"

on the east or west side of Interstate 5. LandWatch points out that the use of the term "overall" in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of "overall residential density." The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to "determine the allowable number of residential dwelling units within regions of the county." The next sentence does not use the "overall" modifier: "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal.

Context/Caselaw

RCP Policy 11 implements Goal 5. Accordingly, Policy 11 must be interpreted in a manner that is consistent with the Goal that it implements. As stated above, Goal 5 is aimed at preserving and protecting significant natural resources, such as big game habitat. The evident purpose of applying a residential density limit is to minimize human impacts to wildlife habitat. LandWatch asserts that the applicant's proposed interpretation would effectively permit large areas protected as wildlife habitat to be developed at densities that destroy its value as wildlife habitat.

In a 2003 LUBA appeal, Douglas County made an interpretation of its code that is similar to the interpretation of Policy 11 that the applicant presents in this appeal. *See Wetherell v. Douglas County*, 44 Or LUBA 745 (2003). The application in that case was for approval of a site plan for a destination resort. The property fell within an area designated as Peripheral Big Game Habitat. The request was therefore subject to a code provision (LUDO 3.32.300) that limited residential density to one dwelling unit per 40 acres.[4] As is the case here, the code provision did not explicitly state the appropriate density denominator. The County determined that the appropriate density denominator under the applicable code provisions was an area of the county that included 1,121,378 acres.[5] On appeal to LUBA, the opponent argued that the proper denominator was a 500-acre portion of the subject 2,700-acre ranch. The Hearings Official sets forth LUBA's analysis in that case at length, because the analysis is the exact same analysis the Hearings Official adopts in this appeal:

> "LUDO 3.32.200 provides no express denominator for the density standard, so the county's view that the pertinent denominator is a 1,121,378-acre area of the county is not necessarily inconsistent with the text of LUDO 3.32.200. However, we agree with petitioners that that view is inconsistent with the purpose of the

[4] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[5] The area the county used was the Calapooya and Elk Creek geographic Planning Advisory Committee area.

density standard, to "preserve identified peripheral habitat areas." See n 4. Neither intervenors nor the county's decision provides any basis to question petitioners' view that the purpose of the density standard is to preserve big game wildlife habitat by minimizing human impacts on that habitat, specifically by limiting the density of residential uses. Under the county's view, large areas of Goal 5-protected wildlife habitat may be developed at residential densities that significantly exceed one dwelling per 40 acres, as long as the average density over a much larger area of the county does not exceed that standard. As the county interpreted LUDO 3.32.300, it will have no regulatory effect at all until over 28,000 dwellings are built in the 1,121,378-acre PBGHO. At that point, its regulatory effect would change from nonexistent to exceedingly harsh, because it would effectively impose a residential building moratorium throughout the PBGHO. * * * It seems exceedingly unlikely to us that anyone who thought about how LUDO 3.32.300 would be implemented could possibly have intended that it work in that way.

* * *

A construction of LUDO 3.32.300 that is far more consistent with its apparent purpose and the language of LUDO 3.32.300 is that the denominator for the one dwelling per 40-acre density limit is the subject property, in this case the 500 acres that make up the proposed destination resort.

* * *

We recognize that a density standard that permitted selection of some larger local area, i.e., a local area larger than the 500-acre subject property but smaller than the 1,121,378-acre applied here, might provide the county with desirable flexibility to permit clustered residential development in areas with lesser habitat value if some way could be found to further limit or bar residential development altogether in areas with high habitat value. However desirable that flexibility might be, as written, LUDO 3.32.300 does not permit application of the one dwelling unit per 40 acres standard over an area that is larger than the property that is the subject of the application. If the county wishes the density limit to apply in some other manner, it must amend LUDO 3.32.300 to achieve that result. In sum, the county's view that the denominator required by the LUDO 3.32.300 density standard is a 1,121,378-acre portion of the county is not reasonable and correct."[6]

The Hearings Official believes that the applicant's proposed interpretation in this case is similar to the position taken by Douglas County in *Wetherell.*[7] LUBA rejected that

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[6] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[7] The applicant attempts to distinguish *Wetherell—Wetherell* did not involve a forest template dwelling application; *Wetherell* interpreted a code provision, not a comp plan policy; and the Douglas County code provision at issue did not include the term "overall." While the posture of that case was a bit different, the policy considerations and analysis are the same. The term "overall" in Policy 11 refers to the ODFW

interpretation, and the Hearings Official feels certain that LUBA would, for the reasons set forth above, also reject the applicant's interpretation in this case. Until the County conducts its region-by-region analysis, which is called for in Policy 11, the density denominator must be the subject property.

The applicant may assert that this approach is overly restrictive because it essentially means that a forest template dwelling proposed on a property smaller than 80 acres in the Major Big Game Habitat area will always be deemed to conflict with the resource. The Hearings Official responds that the determination of a conflict does not result in the development being prohibited. It merely requires that an ESEE analysis be conducted to determine whether the additional dwelling would harm the protected resource.

Summary

The subject property in this case is only 13.28 acres in size. If the forest template dwelling were approved, the residential density would exceed the ODFW recommended density of one dwelling per 80 acres, and, absent an ESEE analysis, would violate Policy 11.

B. Goal 2

Even if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that the applicant could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan.

Statewide Planning Goal 2 (Land Use Planning) requires that land use decisions be based on an "adequate factual base." There are circumstances where that requirement demands that the "factual base" upon which the quasi-judicial decision is based be found in the comprehensive plan. For instance, both LUBA and the Oregon Court of Appeals have held that for purposes of Statewide Planning Goal 10, an inventory of buildable lands that is relied upon for a quasi-judicial decision must first be adopted as part of the comprehensive plan. *See D.S. Parklane Development Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005); *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005); *Lengkeek v. City of Tangent*, 52 Or LUBA 509, 515 (2006). This requirement reflects the emphasis in Goal 2 on consistency and predictability. "Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve

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density recommendation, which is apparently stated as an "overall residential density" standard. As LandWatch points out, the second sentence of Policy 11 does not use the "overall" modifier. Accordingly, this case is similar to *Wetherell*, where the text of the code did not spell out the density denominator. The context provided by the policies furthered by Goal 5 protections are the same in both cases--in *Wetherell*, those policies were set forth in the code's purpose section; in this case, the Goal 5 policies are relevant to the interpretation because Policy 11 implements Goal 5 and must be interpreted in a manner that is consistent with Goal 5. An interpretation that does nothing to protect big game habitat from conflicting residential uses is not consistent with Goal 5.

as the basis for land use decisions, rather than running the risk of being 'sandbagged' by government's reliance on new data." *1000 Friends of Oregon v. City of Dundee*, 203 Or App at 216.

The question here is whether the information provided by the applicant is regular, run of the mill evidence that can be relied upon, or whether it is more in the vein of a buildable lands inventory, which must be incorporated into the comprehensive plan, so that future applicants are using the same data.

As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study. Until that work is completed, Policy 11 makes clear, any density above the ODFW recommended density limits "shall be considered to conflict with Goal 5" and will be allowed only following an ESEE analysis.

The ideal solution is for the County to conduct the regional studies that Policy 11 and the Working Paper call for. Arguably, an applicant could perform all or some part of that work. However, if it were relied upon by an applicant to justify foregoing the ESEE analysis called for in Policy 11, then the documentation would have to first be adopted into the comprehensive plan.[8]

Conclusion

The applicant's argument for approval hinges on its proposed interpretation of Policy 11, which allows a density calculation that is based on using the entire County (or a very large swath of the County) as the density denominator. As discussed above, that interpretation would do little if anything to protect the County's designated Major Big Game Range from conflicting residential development. It is thus inconsistent with Goal 5 and is not reasonable or correct.

Because the County has not yet completed its regional study, the only appropriate density denominator is the subject property. In this case, the subject property is only 13.28 acres, and the ODFW-recommended overall residential density of one dwelling per 80 acres is exceeded. An ESEE analysis is required. Because no ESEE analysis has been provided, the Planning Director's approval must be reversed.

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

[8] This Goal 2 discussion is not necessary for the Hearings Official's conclusion in this appeal. The Policy 11 interpretation set forth above stands on its own. If, on appeal, LUBA disagrees with the Goal 2 discussion, it could still affirm the Hearings Official's decision.

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED FEB 05 2020

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97408 Planning: 682-3577

For Office Use Only: FILE # 509-PA20-05066 FEE: $3445.00

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: _____

Agent (print name): Kim O'Dea, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-0095 Email: kimodea@landuseoregon.com

Agent Signature: _____

Land Owner (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: Edward J. King

LOCATION

21-35-07-30 Taxlot 2800

Assessor's Map and Taxlot Number

Airport Road (no address assigned)

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED FEB 05 2020

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only. FILE # 509-PA20-05064 FEE $3445.00

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: see below

Agent (print name): Kim O'Dea, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-0095 Email: kimodea@landuseoregon.com

Agent Signature: _____

Land Owner (print name): E.J.K. Investments

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: _____ for EJK Invest. LLC

LOCATION

21-35-07-30 Taxlot 2900

Assessor's Map and Taxlot Number

Airport Road (no address assigned)

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

LAND MANAGEMENT DIVISION

Date Received:

RECONSIDERATION REQUEST OF HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT *3050 NORTH DELTA HIGHWAY, EUGENE OR 97408*
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only: FILE # *FEE:*

Appellant: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

LOCATION (subject property)

_____

Assessor's Map and Tax Lot

This form is required for request for reconsideration of a Type III Hearings Official decision or a Hearings Official decision on an appeal of a Type II Director decision. Please note that your appeal application requesting reconsideration will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). A notice of appeal must be filed with the Director prior to 4 p.m. Pacific Time 12 days after the date the notice of decision is mailed (see deadline specified on the decision).

1. A copy of the decision being appealed, with the Department file number: _____ and the date of the decision_____

2. The $1,216 appeal fee, payable to Lane County.

3. The appeal deadline, as stated in the Hearings Official's Decision: MAY 04 2021

4. Address each of the following:

   a. Check one of the items below demonstrating how the person filing the appeal is a party as that term is defined in LC 14.015(22) with the right to appeal the Hearings Official's decision:

      ☐ I am the applicant for the subject application;

      ☐ I am the owner or contract purchaser of the subject property;

☐ Prior to the decision, I provided testimony before the Hearings Official;

☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision and my appeal submittal identifies how I qualify as a party (provide written description).

b. Please provide a written statement explaining the reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

c. Please provide an explanation with detailed support specifying one or more of the following assignments of error, or request for reconsideration:

☐ The Hearings Official exceeded his or her authority;

☐ The Hearings Official failed to follow the procedure applicable to the matter;

☐ The Hearings Official rendered a decision that is unconstitutional;

☐ The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria; or

☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

d. Include any additional information in support of your appeal.

5. Per Lane Code 14.080(4)(a), if the applicant is requesting reconsideration, the applicant must first agree to extension of any statutory application timelines, and such extension must be in addition to any other extensions already given.

Notes:

- Lane County Ordinance No. 19-03, the adopting Ordinance for Lane Code Chapter 14 that regulates the Hearings Official decision and appeals process is under appeal to the Oregon Land Use Board of Appeals (LUBA). In the event that an appeal to LUBA results in a remand or reversal, the Ordinance will no longer be effective and the applicable version of Lane Code Chapter 14 will revert back to Lane County Ordinance No. 14-09 (December 2014).

- An appeal of a Hearings Official decision to the Lane County Board of County Commissioners is no longer allowed per the regulations of Lane Code Chapter 14 (Lane County Ordinance No. 19-03).

32 Full	DO NOT SEPARATE PACKET	5 Email
— Partial		✓ Emailed
32 Total		— Accela

CERTIFICATE OF MAILING

SCANNED
Date: 3/5/24
Initials: MSV

509-PA23-05321/05322/05323
KING/KLOOS
11/06/2023

This is to certify that I, David Ruiz-Maya, mailed

Notification of HO Decision

to the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Eugene, Oregon.

Date Mailed: NOV 0 6 2023

End of Comment Period:

Appeal Deadline: NOV 2 0 2023

Hearing Date:

David Ruiz-Maya

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses, then the tax records have not been updated; therefore, these property owners were not notified.

NOV 0 6 2023

BEFORE THE LANE COUNTY HEARINGS OFFICIAL

REVIEW OF AN APPLICATION FOR APPROVAL OF A FOREST TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On May 8 2023, the applicant, Edward J. King/E.J.K. Investments, filed an application seeking to establish a dwelling in the Impacted Forest Lands (F-2) zone on tax lot 843, assessors map 21-25-12. PA 23-05321. The application was deemed complete on June 7, 2023. County staff elected to hear this application through a Type III initial Hearings Official review, pursuant to Lane Code 14.030(1)(b)(ii)(cc). Accordingly, on August 16, 2023, Lane County staff sent notice of a public hearing to occur on September 7, 2023 before the Lane County Hearings Official. The initial public hearing was held on September 7, 2023.

Parties of Record

Edward J. King/E.J.K. Investments (Bill Kloos)
Michael Farthing — Jim McLaughlin
Nicholas Milosevich — Amy Pincus
LandWatch Lane County (LandWatch) (Lauri Segel; Sean Malone)
1000 Friends of Oregon (Andrew Mulkey)
Richard and Amy Shearer — Sharon Carroll — Jim Babson
Ellen and Herbert Jaeger — Carlette Larson — Tony Drago
Land Planning Consultants; Mike Evans — Deborah Noble
McKenzie Land and Timber, LLC; Casey Jones (Kim O'Dea)
Chris and Meagan Leturno — Lynda McCord (Kim O'Dea)
Jeremy and Celeste Keepers (Kim O'Dea) — Kay King
Greg Demers; ATR Services (Kim O'Dea)
Fern Hollow Farms (Kim O'Dea) — PM Land and Timber (Kim O'Dea)
Melvin McDougal; McDougal Bros. Inv., McDougal Bros. Inc., Leelynn Inc. (Kim O'Dea)
Mike Miller (Kim O'Dea) — Weston Hallstead (Kim O'Dea)
Robert Gill (Kim O'Dea)
Oregon Department of Fish and Wildlife (ODFW) (Joe Stack)

Application History

Hearing Date: September 7, 2023
(Record Held Open Until October 12, 2023)

Decision Date: November 2, 2023

Appeal Deadline

A party may request reconsideration of this decision by the Hearings Official, pursuant to Lane Code 14.080(1)(a)(iii) and (1)(b), by filing a notice of appeal within 12 days after the date the notice of decision was mailed. If a party seeking further review chooses not to seek reconsideration, they must file an appeal directly with LUBA within the timelines set forth in state law. See LUBA's website for more information on appeal deadlines.

Statement of Criteria

Lane Code (LC) 16.211(2)-2.4; LC 16.211(3)(c), (3)(p), (3)(q), (5), and (6)
House Bill 2225
Rural Comprehensive Plan (RCP) Goal 5 Flora and Fauna Policy 11

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 843, assessor's map 21–25–12, which is immediately west of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries. The property is approximately 13.34 acres and is vacant.

   The subject property is zoned Impacted Forest Land (F–2) except for a small portion of the property's eastern corner, which is zoned Rural Residential (RR-5). The property also falls within the Airport Safety Combining Zone (/AS). The F-2 portion of the property is located entirely within designated Major Big Game Habitat recognized as a significant Goal 5 resource under the RCP.

2. The subject application is one of three template dwelling applications submitted on the same date. The other two applications are PA 23-05322 and PA 23-05323. The other two applications are requests for forest template dwelling approvals that were previously denied by the Hearings Official (PA 20-05064 and PA 20-05066) and subsequently appealed to LUBA.

Decision

THE EDWARD J. KING/E.J.K. INVESTMENTS APPLICATION FOR APPROVAL OF A FOREST TEMPLATE DWELLING (PA- 05321) ON TAX LOT 843, ASSESSOR'S MAP 21–25–12 IS DENIED.

Motion to Strike

At the hearing in this matter, the Hearings Official announced the following open record period:

September 21, 2023: First open record period
October 5, 2023: Responses to materials submitted during first open record period

October 12, 2023: Final rebuttal by applicant

During the time period for submitting responses (*i.e.*, from September 21 through October 5), Carlette Larson submitted written materials. The submittal included tax lot maps with writing on them; a list of tax lots and tax payers and owners; Assessment and Taxation records; and individual property account information. Ms. Larson does not explain how the documents are in response to issues raised in the open record period.

LandWatch moves to strike the submittal of Ms. Larson because the documents are not relevant to the issues before the Hearings Official, and LandWatch does not believe the documents are responsive to issues raised in the initial open record period. The Hearings Official agrees that the materials do not appear to be responsive to materials that were submitted during the first open record period. Accordingly, the motion to strike is granted.

Justification for the Decision

I. Goal 5, Policy 11

The main dispute in this case involves an interpretation of RCP Goal 5 Flora and Fauna Policy 11 (referred to herein as Policy 11). Policy 11 is a policy that is intended to implement the requirements of Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) aimed at preserving habitat for Big Game.[1] Policy 11 provides:

> "*Oregon Department of Fish and Wildlife [ODFW] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program.*" Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.

The history of the adoption of RCP Goal 5 Flora and Fauna Policy 11 goes all the way back to the 1980s, when the RCP was acknowledged by the Land Conservation and Development Commission (LCDC). This history is important to the Hearings Official's and the Board's mission in this case, which is to discern what the County Board at that time intended regarding the meaning and applicability of Policy 11.

The County's recent decision making on the issue began in November, 2019 with the Hearings Official's decision in *Green.* PA 18-05913 (November 25, 2019). A different Lane County Hearings Official issued a decision in *Nimpkish* a few months later, in February, 2020. PA 19-

[1] The County mapped areas of big game as Major Big Game (the most highly protected), Peripheral Big Game (the next highest level of protection), and Impacted Big Game (least protected).

05298 (February 4, 2020). Prior to *Green* and *Nimpkish*, the County did not require an application for a forest template dwelling to assess the impacts of such dwelling on Big Game Habitat. Both *Green* and *Nimpkish* involved applications for forest template dwellings on property located in the F-2 zone and within the County's areas designated for Major Big Game Habitat. In both cases, LandWatch argued that it was not sufficient for an applicant seeking approval of a forest template dwelling on property located within mapped Big Game Habitat areas, to demonstrate compliance with the applicable approval criteria found in the Lane Code. LandWatch argued that Policy 11 provided an approval criterion that applied directly to an application for a forest template dwelling where the property fell within a protected Major Big Game area.

The parties in *Green* and *Nimpkish* provided research regarding the initial RCP acknowledgment process in an attempt to shed light on the County's intent in adopting Policy 11. Ultimately, the Hearings Officials in both *Green* and *Nimpkish* held that Policy 11 did not apply directly to applications for forest template dwellings in this circumstance. The Hearings Official's decision in *Nimpkish* was appealed to LUBA.

LUBA disagreed with the Hearings Official's determination in *Nimpkish* and determined, based on a rather extensive review of the acknowledgment materials from the early 1980s, that Policy 11 applied directly as an approval criterion to applications for forest template dwellings on lands shown as protected big game habitat on the County's Goal 5 maps for big game habitat. *LandWatch Lane County v. Lane County (Nimpkish)*, ___ Or LUBA ___ (LUBA No. 2020-030, January 23, 2021).

In two subsequent appeals, the Lane County Hearings Official denied requests for forest template dwellings, based on LUBA's ruling in *Nimpkish*. PA 20-05064 and PA 20-05066 (*King*). These decisions were also appealed to LUBA, which affirmed the Hearings Official decisions denying the applications based on the applicant's failure to demonstrate compliance with Policy 11. *King v. Lane County (King* or *King 2021)*, ___ Or LUBA ___ (LUBA Nos. 2021-047/052, October 15, 2021).[2] On appeal to the Oregon Court of Appeals, the Court affirmed without opinion. *King v. Lane County*, 317 Or App 136, 501 P3d 1058 (2022).

LUBA's determinations in both *Nimpkish* and *King* involved a review of final local decisions rendered by the Lane County Hearings Official. When LUBA reviews a decision of a local hearings official, it is not required to "defer" to that decision. When LUBA reviews a decision of a local governing body (in this case, the Board of Commissioners), however, LUBA is required to defer to that body's interpretation of its own local legislation. The applicant in this case asserts that the Lane County Board of Commissioners can provide its own interpretation of Policy 11, and it argues that LUBA will be required to defer to that interpretation. That added deference, according to the applicant, could result in a different decision by LUBA.

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[2] LUBA's decisions in the *King 2021* appeals went further than LUBA's decision in *Nimpkish* and examined how the "overall dwelling density" was to be determined—i.e., what unit of land was to be used for the denominator in the density calculation. That issue is not relevant to this appeal and will not be discussed further.

For the most part, the Hearings Official agrees with the applicant regarding this assertion. The Hearings Official does not agree with LandWatch that the County Board is bound by LUBA's previous rulings, because the scope of deference is different in this case.[3] The Hearings Official does note, however, that any interpretation that the Board adopts must also be consistent with state law, as Policy 11 is intended to implement the requirements of Statewide Planning Goal 5 as it relates to protection for Big Game Habitat. LUBA's discussions in both *Nimpkish* and *King* were based largely on the extent to which an interpretation of Policy 11 complied with state law, *i.e.*, the dictates of Statewide Planning Goal 5.[4] It seems likely that, on review of this decision, if appealed, LUBA will be concerned about an interpretation of Policy 11 that it feels lacks the necessary protections to fully implement the dictates of Goal 5.

The Hearings Official understands that the Board will likely review this Hearings Official decision so that it can provide a Board interpretation of Policy 11 that LUBA, on appeal, will be required to defer to. With that goal in mind, the Hearings Official provides the following interpretation as a guide to the Board's decision.

RCP Acknowledgment

At the time of acknowledgment of RCP Policy 11, it was well accepted that residential development was the main potential conflict with protection of Big Game Habitat. Accordingly, DLCD and ODFW staff's primary concern regarding Big Game Habitat was the allowed density of dwellings in areas mapped for Big Game Habitat protections. In that vein, DLCD aimed to help counties draft comprehensive plan policies and code language that would minimize the density of residences where such density could impact Big Game Habitat.

There is relevant analysis in both LUBA decisions in *Nimpkish* and *King* and in staff's memorandum to the Hearings Official in this case. However, this decision will attempt to narrow the discussion to the key issue in this case. That issue is to what extent the County and DLCD viewed the Lane Code provisions as adequate to protect the resource; *i.e.*, Big Game Habitat. That is, did the Code fully implement Policy 11, such that only the Code provisions applied? Or did Policy 11 contain protections that remained applicable to discrete land use applications such as requests for forest template dwellings on land protected for Big Game Habitat?

The first sentence of Policy 11 provides: *Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County.*

In the prior cases, it was assumed that the ODFW "recommendations for overall residential density for protection of big game" was no more than one dwelling per 80 acres in the Major Big Game Habitat areas and no more than one dwelling per 40 acres in the Peripheral Big Game

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[3] The applicant is correct that LUBA would be required to affirm an interpretation so long as it is "plausible."
[4] LUBA stated: "Moreover, the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d)." *Nimpkish*, slip op. 14.

Habitat. This assumption or assertion was not correct or complete. The record in this case makes clear that the ODFW overall residential density recommendations included an alternative for circumstances where clustering was required. In the Major Big Game Habitat, one dwelling per 40 acres (rather than one dwelling per 80 acres) is acceptable with cluster development. In Peripheral Big Game Habitat, one dwelling per 20 acres (rather than one dwelling per 40 acres) is acceptable with cluster development. *See* attachment to March 30, 1983 letter from Neal Coenen, ODFW Program Leader, to Aldie Howard, Benton County Planning Director.[5] The recommendation articulates clearly that it relates to "overall residential density" and not "minimum lot sizes." A minimum lot size only regulates how big or small a property must be when the property is being created. It does not address how big a property must be in order to site a dwelling on it. That said, the County relied, at least in part, on minimum lot sizes in the F-1 and F-2 zones to assist with compliance with Goal 5 Big Game Habitat protections.

Lane County's first attempt at acknowledgment of its Goal 5 program related to protection of Big Game Habitat was rejected by DLCD. It had proposed a minimum lot size in the F-2 zone of 20 acres and a minimum lot size in the F-1 zone of 40 acres. ODFW and 1000 Friends objected to that proposal, in part because it was not consistent with the ODFW density recommendations. As a result of the negative comments, Lane County ended up adopting much larger minimum lots sizes of 80 acres for the F-1 zone and 40 acres for the F-2 zone. It also adopted provisions that required clustering.

However, as DLCD and ODFW made clear, the recommended residential density related to overall residential density, not minimum lot size. That is, the County's choice to adopt a minimum lot size for the forest zone (and presumably for areas designated for protected Big Game Habitat), did not fully address ODFW's recommended residential densities. There was nothing in the adopted Code that addressed actual overall residential densities when a dwelling was proposed to be added. Specifically, the Code did not include a required minimum lot size for approval of a dwelling in the F-2 zone. Accordingly, the Code provisions did not fully address the overall residential density recommendations. For example, if there was a cluster of small, nonconforming (*i.e.*, smaller than the minimum lot size for the zone) properties zoned F-2, as long as the owners could satisfy the approval criteria in the Code, they could potentially build out the properties far in excess of ODFW's recommended residential density.

That all being said, the Hearings Official is aware that the question here is not whether Policy 11 and the Lane Code fully protect Big Game resources. Rather, the question is what the County and DLCD intended at the time the RCP was acknowledged in 1984. As discussed below, the Hearings Official believes that the intent of Policy 11 was to fill the hole with regard to Goal 5 protections that was left because the County Code did not have a minimum lot size requirement for placement of a dwelling.

The applicant's proposed interpretation of Policy 11 is found in the Home Builders Association of Lane County's letter of interpretation that was provided to the Board by Pete Barrell on May

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[5] The ODFW policy recommendation for overall residential densities found attached to the March 30, 1983 letter was in relation to Benton County's acknowledgment. But the one-page attachment is entitled "Big Game Ranges—Northwest Oregon" and appears to contain the recommendations for Lane County as well.

8, 2022. That letter asserts that Lane Code 16.211, the chapter of the Code applicable to the F-2 zone, is intended as an exhaustive list of applicable approval criteria and standards. It relies on the Purpose statement in LC 16.211(1) and the introduction to the Table of Permitted Uses (Table 16.211-1) found at LC 16.211(2). The Table includes "Template Dwellings" as an allowed use in the F-2 zone and makes no mention of Policy 11 as an applicable approval standard. In general, the applicant is correct that comprehensive plan policies do not usually apply directly to discrete land use applications where there are land use regulations that fully implement that particular policy. However, as explained below, Policy 11 was not fully implemented by the Lane Code in this case. The legislative history of Policy 11 (*i.e.,* the acknowledgment materials) make clear that in certain circumstances, a full Goal 5 analysis would be required when a forest template dwelling was sought on lands protected as Big Game Habitat.

The applicant also argues, through the Home Builders' proposed interpretation, that the Flora and Fauna Working Paper "moved away from setting minimum lot sizes for dwelling applications on F-2 land and toward applying siting and clustering standards." The Hearings Official does not believe this argument, even if true, provides a basis for concluding that Policy 11 does not apply directly to certain applications for forest template dwellings.

The applicant relies, at least in part, on Directive 2.d of DLCD staff's July 19, 1984 staff report, which provides: "Amend the F-2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones or contain clustering requirements in those areas." Taken out of context, this statement could be read as an either/or directive: increase minimum lot sizes OR adopt clustering requirements. Read in context, however, it is clear that the County chose to address this directive by increasing the minimum lot size proposed in the F-2 zone (from 20 acres to 40 acres), AND by adopting clustering requirements for dwellings in an attempt to comply with the ODFW recommended density standards, which were one dwelling per 40 acres in the Major Big Game Habitat where clustering is required.

The Hearings Official believes that language found in the August 17, 1984 DLCD acknowledgment staff report to LCDC is determinative as to the intended meaning of Policy 11. In response to objections made to the version of Policy 11 that was ultimately adopted, DLCD found:

> "[Response 2]. [The proposed, and ultimately adopted, language of Policy 11 is cited here].
>
> Objectors are not correct that this policy [Policy 11] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. *The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made.* This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, [Marginal Lands] and EFU zones which ensure ODFW's density standards will be achieved.

> The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement[s]. *ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However as discussed below, the county has not adopted such standards in its zoning ordinance."* August 17, 1984 DLCD acknowledgment staff report to LCDC at page 39 (emphasis added).
>
> [Response 3]. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 zone, since in general, dwellings are not permitted in that zone." August 17, 1984 DLCD acknowledgment staff report to LCDC at page 39 (emphasis added).

The County ultimately adopted a minimum lot size in the F-2 zone of 40 acres, with clustering standards. However, as was made clear in the comment quoted above, this action only demonstrated compliance with the ODFW overall residential density standards where a property on which a dwelling would be sited satisfied the 40-acre minimum lot size requirement and where the siting of the dwelling satisfied the clustering siting standards. Consistent with the language in Policy 11, as explained in the July, 1984 staff report, "Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. *The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made.*" The County could have adopted minimum lot sizes for siting of dwellings that satisfied the ODFW recommended density standards. However, it chose not to do so. It chose, rather, to leave the Goal 5 analysis of the conflict created between a proposed dwelling and big game habitat to the time at which "such proposals are made"—that is, at the time the County processes an application for a forest template dwelling that, if approved, would create an overall residential density greater than the ODFW recommended residential density standards.

The Hearings Official believes that LUBA has already succinctly answered the applicant's arguments as follows:

> "the County's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. * * * the County must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential

development through density standards, in a manner that is not inconsistent with Goal 5." *Nimpkish*, slip op. at 14.

The Hearings Official hereby incorporates the analysis in staff's August 31, 2023 Staff Report,[6] addressing the appeal issues, as well as staff's analysis addressing the remainder of the approval criteria. *See* Attachment 1 to Staff Report (Lane County Hearings Official Staff Analysis).

II. Needed Housing

The applicant raises another theory upon which he bases the assertion that Policy 11 does not apply directly to an application for a forest template dwelling. The applicant contends that Policy 11 is not clear and objective and therefore cannot be applied to needed housing, pursuant to ORS 197.307(4), the needed housing statute. The Hearings Official understands the applicant to have withdrawn this argument, based on the recent LUBA decision in *LandWatch Lane County v. Lane County (Helsel)*, ___ Or LUBA ___ (LUBA No. 2023-037, August 28, 2023). *Helsel* held that the clear and objective requirement found in ORS 197.307(4) does not apply to housing on EFU land outside the urban growth boundary. To the extent the applicant did not technically withdraw the "needed housing" argument, the Hearings Official determines that, based on the analysis in *Helsel*, the clear and objective requirement does not apply to applications for forest template dwellings on rural resource lands zoned F-2.

III. Access and Other Findings

During the open record period, the applicant submitted four revised site plans relevant to access to the subject property: one showing the proposed access for all three dwellings sought on tax lot 2800 (PA 23-05323), tax lot 2900 (PA 23-05422), and tax lot 843 (subject application); one showing access for tax lot 2800 only; one showing access for tax lot 2900 only; and one showing access for tax lot 843 only. *See* applicant's Open Record submittal letter dated September 21, 2023, with attached revised site plans (all dated September 20, 2023). The revised site plans are attached hereto as Exhibit A.

The Hearings Official understands the Planning Director to propose adopting the Planning Director analysis and proposed conditions of approval regarding the driveway (based on the revised site plans), as well as the rest of the findings addressing the remainder of the approval criteria.[7] That is, if the Board opts to adopt an interpretation of Policy 11 that would allow approval of the proposed dwelling, the remainder of the applicable approval criteria are satisfied, as set forth in the Lane County Hearings Official Staff Analysis (Staff Analysis), attached as Attachment 1 to the Lane County Hearings Official Staff Report, dated August 31, 2023, with the proposed conditions of approval, attached as Exhibit C to Staff Analysis.

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[6] Caveat: The Hearings Official agrees with the opponents that the language in reference to Cerro Gordo is not particularly applicable to determining compliance with the Big Game aspects of Goal 5 as a whole.

[7] The Hearings Official's reliance on the revised site plans dated September 20, 2023 is based on the understanding that the accessway shown on the revised site plans accurately depicts the location of the existing roadway. That is, the evidentiary foundation for the determination that the approval criteria are satisfied assumes that a new roadway will not be created.

Conclusion

The Hearings Official agrees with the applicant that, in a review by LUBA of the Board's decision in this case, LUBA will be required to defer to the Board's interpretation of its own policy (Policy 11). However, that statement is tempered by the fact that any interpretation must also be consistent with the requirements imposed by Statewide Planning Goal 5 as it relates to protection of Big Game Habitat. Given the language of LUBA's opinions, quoted above, in *Nimpkish* and *King*, the Hearings Official believes that the Board has an uphill battle if it wishes to adopt an interpretation that does not fully implement ODFW's recommended residential densities, which is required by Policy 11.

With regard to any hope on the part of the County to "remove barriers" for approvals for dwellings in the F-2 zone due to the current emergency for needed housing, the Hearings Official does not believe that the answer to the housing crisis should include ignoring the protections of Goal 5 for Big Game Habitat to facilitate housing in a rural resource zone. There are better places for such needed housing where the necessary facilities are available and where precious resources will not be impacted.

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

SITE PLAN SUBMITTAL FORM

OWNER NAME: E.J.K. Investments	**Map and Taxlot #:** 21-25-12 Tax Lot 843	**APPLICANT NAME:** Edward J. King
PHONE #		**PHONE #**
ADDRESS: 30414 Lebleu Road Eugene, OR 97405	**Scale:** 1 inch = 200 feet	**ADDRESS:** 30414 Lebleu Road Eugene, OR 97405

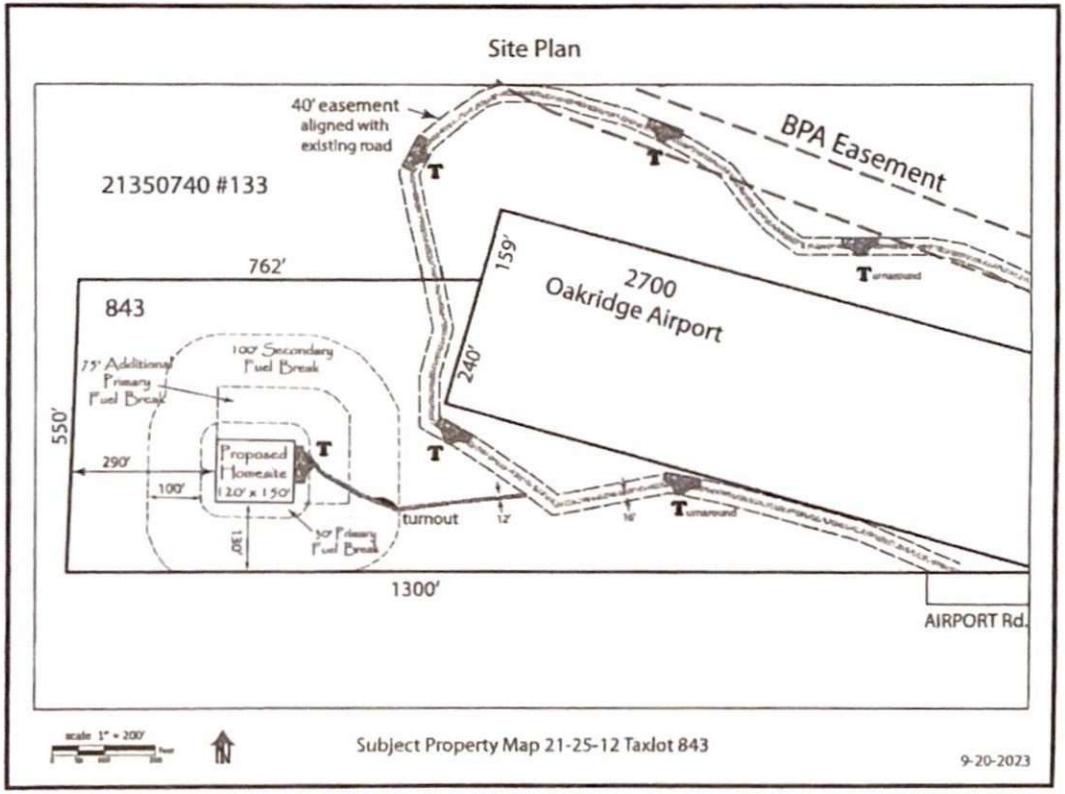
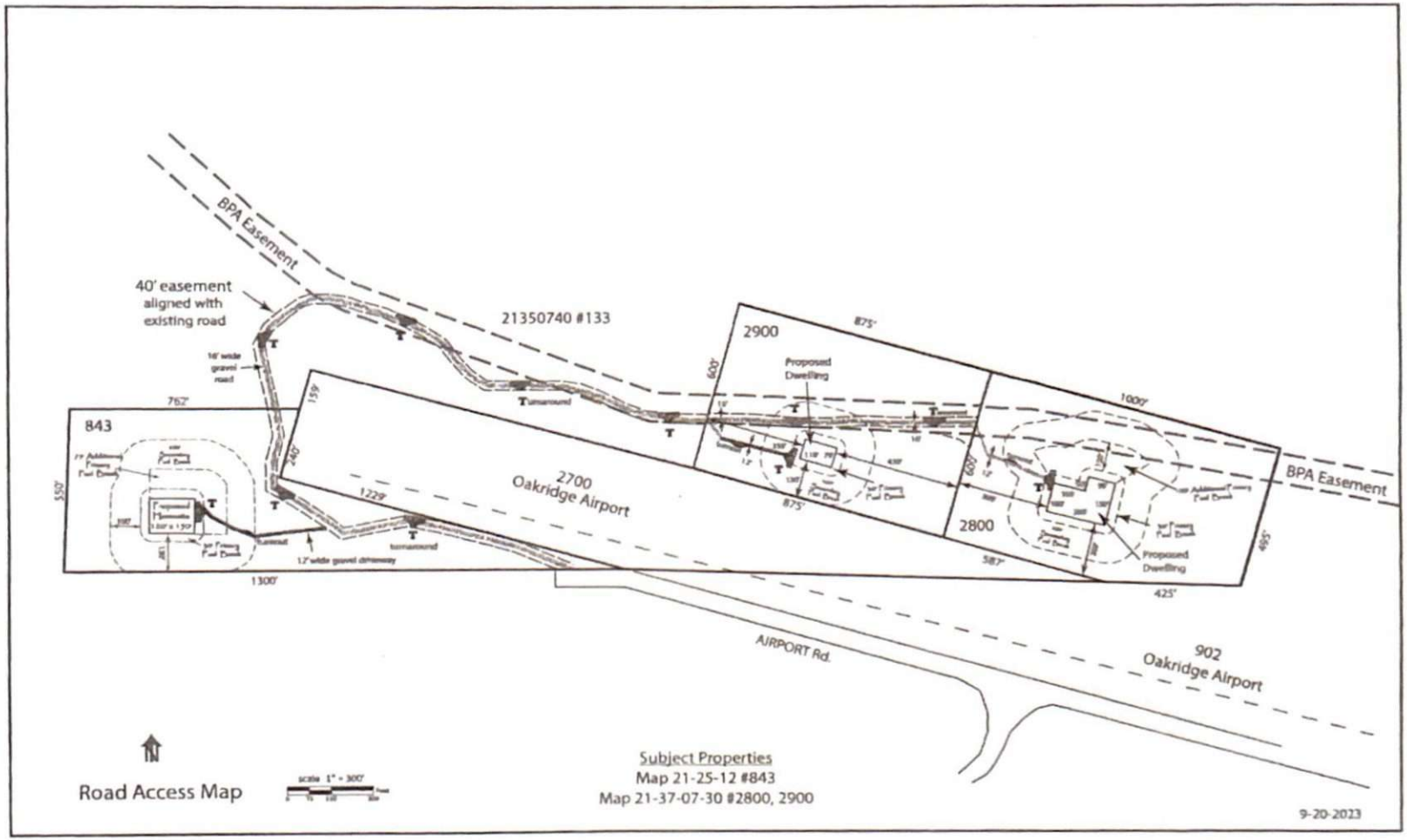


EXHIBIT A


BPA Easement
40' easement aligned with existing road
21350740 #133
16' wide gravel road
762'
843
550'
240'
159'
2700
Oakridge Airport
1229'
1300'
12' wide gravel driveway
turnaround
2900
875'
600'
Proposed Dwelling
1007'
2800
587'
425'
495'
BPA Easement
AIRPORT Rd.
902
Oakridge Airport
Road Access Map
scale 1" = 300'
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
9-20-2023

LAND MANAGEMENT DIVISION

Date Received:

RECONSIDERATION REQUEST OF HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT *3050 NORTH DELTA HIGHWAY, EUGENE OR 97408*
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only: *FILE #* *FEE:*

Appellant: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

If you wish to receive a courtesy digital copy of the Hearings Official Reconsideration, please provide a valid email in the above space.

LOCATION (subject property)

_____

Assessor's Map and Tax Lot

This form is required for request for reconsideration of a Type III Hearings Official decision or a Hearings Official decision on an appeal of a Type II Director decision. Please note that your appeal application requesting reconsideration will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). A notice of appeal must be filed with the Director prior to 4 p.m. Pacific Time 12 days after the date the notice of decision is mailed (see deadline specified on the decision).

1. A copy of the decision being appealed, with the Department file number: _____ and the date of the decision_____

2. The $1,327.36 appeal fee, payable to Lane County.

3. The appeal deadline, as stated in the Hearings Official's Decision: NOV 2 0 2023

4. Address each of the following:

   a. Check one of the items below demonstrating how the person filing the appeal is a party as that term is defined in LC 14.015(22) with the right to appeal the Hearings Official's decision:

      ☐ I am the applicant for the subject application;

- ☐ I am the owner or contract purchaser of the subject property;
- ☐ Prior to the decision, I provided testimony before the Hearings Official;
- ☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision and my appeal submittal identifies how I qualify as a party (provide written description).

b. Please provide a written statement explaining the reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

c. Please provide an explanation with detailed support specifying one or more of the following assignments of error, or request for reconsideration:

- ☐ The Hearings Official exceeded his or her authority;
- ☐ The Hearings Official failed to follow the procedure applicable to the matter;
- ☐ The Hearings Official rendered a decision that is unconstitutional;
- ☐ The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria; or
- ☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

d. Include any additional information in support of your appeal.

5. Per Lane Code 14.080(4)(a), if the applicant is requesting reconsideration, the applicant must first agree to extension of any statutory application timelines, and such extension must be in addition to any other extensions already given.

Notes:

- An appeal of a Hearings Official decision to the Lane County Board of County Commissioners is no longer allowed per the regulations of Lane Code Chapter 14 (Lane County Ordinance No. 20-05).

A23-05321 (King)

oc #	Document Description	*Date Rcvd	Name	Address	Email	Comments
	Hearings Official Prehearing/Hearing Written Submittals					
	Mailed Letter	**8/30/2023**	**Richard & Amy Shearer**	**47147 Westfir Oaktridge Rd, Westfir, OR 97492**	**None provided**	**Routed after 8/31/23 staff report**
	Applicant's Hearing Letter	9/2/2023	Bill Kloos	on record	billkloos@landuseoregon.com	9/2 email w/ attached letter dated 9/4/23
	Email requesting party status	**9/3/2023**	**Jim McLaughlin**	**2600 19th St, Springfield OR 97477**	cewmjtm@gmail.com	
	Applicant's hearing posting affidavit	9/5/2023				submitted by T. Lanfear on behalf of B. Kloos
	Email chain in support of applications/Board review	**9/5/2023**	**Ellen & Herbert Jaeger**	**35653 Shoreview Drive, Dorena OR**	ellenannej@gmail.com	
	Email asking for party status w/ staff response	9/5/2023	Nicholas Milosevich	86361 Baily Hill Rd, Eugene OR 97405	miloindustries2021@gmail.com	Address provided at hearing
	Email chain w/ comments and requesting party status	**9/6/2023**	**Sharon Carrol**	**4325 Commerce St. Ste 111, Eugene Or 97402**	sharon.carroll@att.net	
	Email chain requesting party status	9/6/2023	Jim Babson	4027 Reuben Leigh Rd, Lowell, OR 97452	jim@westerncascades.com	
	Email chain requesting party status	**9/6/2023**	**Carlette Larson**	**1437 Mesa Crest Dr, Haslet TX 76052**	carlettelarson@kw.com	
	Email chain providing comments	9/6/2023	Tony Drago	21984 Cook Rd, Not OR 97461	dragocontracting@yahoo.com	
	Email requesting party status	**9/6/2023**	**Mike Evans**	**475 Oakdale Ave, Springfield OR**	landplancon@comcast.net	
	Email chain requesting party status with comments	9/6/2023	Kay King	87657 Portage Way, Florence, OR 97439	kay@rrking.net	
	Email requesting party status with comments	**9/6/2023**	**Casey Jones, Mckenzie Land & Timber LL**	**37115 Immigrant Road, Pleasant Hill, OR 97455**	caseyjoneswelldrilling@yahoo.com	
	Email requesting party status w/ comments and staff response	9/6/2023	Chris & Meagan Leturno	85180 Boomer Rd Eugene OR 97402	chris@superiorec.net	No reference hearing item/mailing address
	Email requesting party status w/comments	**9/6/2023**	**Jeremy & Celeste Keepers**	**81711 Mahr Ln, Creswell OR, 97426**	jjk.timber@gmail.com	
	Email requesting party status	9/6/2023	Deborah Noble	4990 W. Hillside Dr, Eugene OR 97405	dnoble4990@aol.com	
	Email c/o Robert B Gill requesting party status w/comments	**9/6/2023**	**Lynda McCord**	**3780 Marshall Ave, Eugene OR 97402**	sassypeanut@comcast.net	
	Email w/letter from Kim O'Dea/counsel on behalf of multiple parties	9/6/2023	See comments	PO Box 1061, Marcola OR 97454	kim@rurallanduse.com	
	Email comments	**9/7/2023**	**Andrew Mulkey, 1000 Friends**	**on record**	andrew@friends.org	
	Email w/ letter	9/7/2023	Joe Stack, ODFW	7118 NE Vandenberg Ave, Corvallis OR 97330	joseph.p.stack@odfw.oregon.gov	
	Email w/letter from Kim O'Dea/ counsel on behalf of multiple parties	**9/7/2023**	**See comments**	**PO Box 1061, Marcola OR 97454**	see above	
	Open Record Submittals Ending September 21, 2023					
	Joseph Sack, Regional Habitat Biologist , ODFW	**9/21/2023**		**See above**	**see above**	Regional Habitat Biologist
	Sean Malone, LWLC	**9/21/2023**		on record	seanmalone8@hotmail.com	
	Andrew Mulkey, 1000 Friends of Oregon	**9/21/2023**		**on record**	**see above**	
	Staff- Shawna Adams/Julia Dobberstein	**9/21/2023**		NA		
	Bill Kloos	**9/21/2023**		**see above/onrecord**	see above	
	Open Record Response Submittals Ending October 5, 2023					
	Sean Malone, LWLC			**see above/on record**	**see above**	
	Carlette Larson			see above/on record	see above	
	Final Rebuttal SubmittalsEnding October 12, 2023					
	Bill Kloos			**see above/on record**		
	September 7, 2023 Hearing Oral Testimony & Sign-in					
	Bill Kloos			**see above/on record**	**see above**	
	Nicholas Milosevich			see above	see above	
	Amy Pincus-Merwin			**85882 McBeth Rd. Eugene, 97405**	amy@informproductions.com	
	Mike Farthing			on record	mefarthing@yahoo.com	
	Sean Malone, LWLC			**see above**	see above	
	Lauri Segel, LWLC			on record	**lsv1953@gmail.com**	
	Requests for Information/Notice (non party)					
	Juine Chada	**9/21/2023**		**None**	juine@icloud.com	
	John White	9/18/2023		81928 River Drive, Creswell, OR. 97426	joruwh@hotmail.com	

MAPPING & DECISION INSTRUCTIONS

509-PA23-05322

Agencies Only

MAP NO. ~~21-35-07-30-02900~~

ADDITIONAL OWNERSHIP: None

APPLICANT:
EDWARE J KING

30414 LE BLEU RD
EUGENE, OR 97405

OWNER:
E J K INVESTMENTS LLC

30414 LE BLEU RD
EUGENE, OR 97405

AGENT:
BILL KLOOS - LAW OFFICE OF BILL KLOOS

375 WEST 4TH ST, SUITE 204
EUGENE, OR 97401

BASE ZONE: F2

COMBINING ZONE: /AS/NONE

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral/Decision Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral	Decision		Referral	Decision	
☐	☐	Building	☒	☒	State Fish & Wildlife (ODFW):
☐	☐	Sanitation	☐	☐	State Highway (ODOT)
☐	☐	Final Legal Lot	☒	☒	State Forestry:
☐	☐	Rural Addressing	☐	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	☐	Lane County Animal Services	☐	☐	Dept. Land Conservation & Development (DLCD)
☐	☐	Flood Management	☐	☐	Lane Regional Air Protection Agency (LRAPA)
☐	☐	Easement Review	☐	☐	Dept. of Environmental Quality (DEQ)
☐	☐	Compliance	☐	☒	Dept. of Environmental Quality (DEQ) 1200-C
☐	☐	Surveyors	☐	☐	Oregon Health Division
☒	☒	Transportation Planning	☐	☐	Water Master
☒	☒	County Road Maintenance	☐	☐	Division of State Lands (DSL)
☐	☐	Water Quantity/Quality	☐	☐	State Parks (Certified mail)
☐	☐	Assessment &Taxation	☒	☒	Dept. of Aviation
☒	☒	State Fire Marshal	☐	☐	CenturyLink
☐	☐	Community Organization NONE	☐	☐	Northwest Natural Gas
☒	☐	Watershed Council Middle Fork Willamette Watershe	☐	☐	Port of Siuslaw
☒	☒	Land Watch	☐	☐	Power Company Lane Electric
☐	☐	School District OAKRIDGE	☐	☐	US Army Corps. of Engineers (ACOE)
☐	☐	Water District	☒	☐	US Fish & Wildlife (USF&W)
☒	☒	Fire District Hazeldell Rural Fire District	☐	☐	Confederated Tribes
☐	☒	City Area of Interest (20-day notice) Westfir / oakridge	☐	☐	State Historic Preservation Office (SHPO)
☐	☐	METRO Area of Interest NONE	☐	☐	EWEB
☐	☐	Environmental Health	☐	☐	Other
☒	☒	Law Office of Bill Kloos			

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:

- ☒ Vicinity Map
- ☒ Site Plan
- ☐ Flagged Applicant's Material

Copy and Attach Materials to Referral Notices as Instructed Above and Below: *Oakridge/Westfir Communities of Interest

PARTIES OF RECORD

11/5/23 See Excel Spreadsheet (Parties identical for PA23-05321; 05322; 05323)

509-PA23-05321/05322/05323
KING/KLOOS
11/06/2023

*2135073002800
KING EDWARD J
30414 LE BLEU RD
EUGENE, OR 97405

*LAW OFFICE OF BILL KLOOS
ATTN: BILL KLOOS
375 W 4TH ST, SUITE 204
EUGENE, OR 97401

MICHAEL FARTHING
PO BOX 10126
EUGENE, OR 97440

JIM MCLAUGHLIN
2600 19TH ST
SPRINGFIELD, OR 97477

LANDWATCH LANE COUNTY
LAURI SEGEL
PO BOX 5347
EUGENE, OR 97405

LANDWATCH LANE COUNTY
SEAN MALONE
259 E 5TH AVE SUITE 200-C
EUGENE, OR 97401

RICHARD & AMY SHEARER
47147 WESTFIR OAKRIDGE RD
WESTFIR, OR 97492

LAW OFFICE OF BILL KLOOS
ATTN: WILLIAM J. KLOOS JR
375 W 4TH ST SUITE 204
EUGENE, OR 97401

ELLEN & HERBERT JAEGER
35653 SHOREVIEW DRIVE
DORENA, OR 97434

NICHOLAS MILOSEVICH
86361 BAILY HILL RD
EUGENE OR 97405

SHARON CARROL
4325 COMMERCE ST. STE 111
EUGENE OR 97402

JIM BABSON
4027 REUBEN LEIGH RD
LOWELL, OR 97452

CARLETTE LARSON
1437 MESA CREST DR
HASLET TX 76052

TONY DRAGO
21984 COOK RD
NOTO OR 97461

MIKE EVANS
475 OAKDALE AVE
SPRINGFIELD OR 97477

KAY KING
87657 PORTAGE WAY
FLORENCE, OR 97439

MCKENZIE LAND & TIMBER LLC
ATTN: CASEY JONES
37115 IMMIGRANT ROAD
PLEASANT HILL, OR 97455

CHRIS & MEAGAN LETURNO
85180 BOOMER RD
EUGENE, OR 97402

JEREMY & CELESTE KEEPERS
81711 MAHR LN
CRESWELL OR, 97426

DEBORAH NOBLE
4990 W. HILLSIDE DR
EUGENE, OR 97405

LYNDA MCCORD
3780 MARSHALL AVE
EUGENE, OR 97402

KIM O'DEA
PO BOX 1061
MARCOLA, OR 97454

1000 FRIENDS
ATTN: ANDREW MULKEY
133 SW 2ND AVE SUITE 201
PORTLAND OR 97204

1000 FRIENDS OF OREGON
WILLAMETTE VALLEY REGIONAL OFFICE
220 E 11TH AVE STE 5
EUGENE OR 97401

OREGON DEPARTMENT OF FISH AND WILDLIFE
JOE STACK
7118 NE VANDENBERG AVE
ADAIR VILLAGE, OR 97330

AMY PINCUS-MERWIN
85882 MCBETH RD
EUGENE, OR 97405

JOHN WHITE
81928 RIVER DRIVE
CRESWELL, OR 97426

HAZELDELL RURAL FIRE DISTRICT
PO BOX 717
OAKRIDGE OR 97463

STATE DEPT OF FORESTRY
EASTERN LANE DISTRICT OFFICE
3150 MAIN ST.
SPRINGFIELD, OR 97478-5808

CITY RECORDER
CITY OF WESTFIR
PO BOX 296
WESTFIR OR 97492-9999

CITY ADMINISTRATOR
CITY OF OAKRIDGE
PO BOX 1410
OAKRIDGE OR 97463

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
700 NE MULTNOMAH ST. SUITE 600
PORTLAND, OR 97232

EMAIL
TRANSPORTATION PLANNING
COUNTY ROAD MAINTENANCE
STATE FIRE MARSHAL
DEPARTMENT OF AVIATION

JUINE CHADA - JUINE@ICLOUD.COM

ADAMS Shawna L

From: ADAMS Shawna L
Sent: Friday, September 1, 2023 11:22 AM
To: DAVIES Anne; Bill Kloos; Thom Lanfear (tlanfear@pacinfo.com); Lauri Segal
Cc: BELL Amber R; DOBBERSTEIN Julia C; EICHNER Lindsey A
Subject: HO staff reports for PA23-05321, 05322, 05323 (Oakridge King template dwelling applications)

Good Morning, I have just received word that the Hearings Official staff reports for next weeks' hearings have been uploaded to the LMD hearings website and can be accessed via the following link: https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19771794&contextId.94636=6285783&parentId.94636=19771787

You should find two staff reports with attachments for the three applications. Attachments 3-7 relate to Goal 5 Flora & Fauna Policy 11 context and are identical for both staff reports.

Thank you for your patience with the uploading process and please advise if you are unable to access the documents or you find anything amiss.

Happy Friday,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

LANE COUNTY HEARINGS OFFICIAL STAFF REPORT

Department Files:	509-PA23-05321
Hearing Date:	September 7, 2023
Report Date:	August 31, 2023
Owner/Applicant:	E.J.K. Investments ~~& Edward J. King~~
Agent:	Bill Kloos
Assessor's Map & Tax Lot:	21-25-12-00-00843
Acreage:	Approximately 13.34 acres (total)
Base Zone:	Impacted Forest Land Zone (F-2) Rural Residential, RR-5
Combining Zones:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff:	Julia Dobberstein, Planner Shawna Adams, Senior Planner

I. PROPOSAL DESCRIPTION

A request for a Type II Planning Director Approval of a forest template dwelling in the Impacted Forest Lands (F-2) Zone pursuant to Lane Code 16.211(2)-2.4, House Bill 2225, and RCP Goal 5 Flora and Fauna Policy 11. The Lane County Planning Director has elected to process the application through a Type III Hearings Official procedure in accordance with Lane Code 14.030(1)(b)(ii)(cc).

The proposals were submitted in conjunction with two other template dwelling requests, 509-PA23-05322 and 509-PA23-05323, which have been scheduled for the same hearing date and are addressed in a companion Hearings Official staff report.

II. PROPOSAL BACKGROUND

The subject property is located immediately west of the Oakridge Airport. The property is zoned F-2 Impacted Forest Land except for a small portion of the parcel's eastern corner, which is zoned Rural Residential (RR-5). The property takes access via Airport Road and a shared private access road that extends from Airport Road through the subject property, adjacent property to the north and the properties on which the other two template dwellings have been proposed. All three template dwelling requests are subject to the same criteria and standards, are comparable in size, with their F-2 portion entirely located within designated major big game habitat recognized as significant under Lane County Rural Comprehensive Plan (RCP). For the other two template dwelling proposals, the applicants have requested that the Director reissue the Director approvals for the 2020 *King* template dwelling applications that denied on appeal under 509-PA20-05066 for Tax Lot 2800 and 509-PA20-05064 for Tax Lot 2900 (*King v. Lane County*, Or LUBA (LUBA Nos. 2021-047/052, Oct. 15, 2021), *aff'd without opinion* 317 Or App 136, 501 P3d 1058 (2022).

In accordance with LUBA's ruling in *Nimpkish*, this Hearings Official denied the 2020 applications on the sole basis that they failed to comply with RCP Goal 5 Flora & Fauna Policy 11 (Policy 11) density standards (see

LandWatch Lane County v. Lane County (Nimpkish LLC), Or LUBA (No. 2020-030, Jan. 23, 2021). On appeal, LUBA recognized the text of Policy 11 to be ambiguous with respect to whether and how the Policy 11 density limitations apply to dwelling proposals in big game habitat (Slip op 13 and 22). LUBA concluded that that the Policy 11 text, context, and legislative history, together, make reasonably clear that the density limitations must be applied to forest template dwelling proposals and that it is reasonable to use parcel size as the denominator for calculating density.

The applicant argues that the 2017 'needed housing' statutes in effect when the subject application was submitted on May 8, 2023, preclude the County from applying Policy 11 density limitations, in keeping with the Hearings Official's decision for the *Helsel* relative farm help dwelling under 509-PA23-05928 (**Attachment 2**). The applicants rely on the Court of Appeals decision in *Warren v. Washington County*, Or LUBA (No. 2018-089, Nov 14, 2018), *aff'd* 296 Or App 595, 439 P3d 581 (March 20, 2019) and LUBA's decision in Community *Participation Organization 4M v Washington County*, OR LUBA (No. 2020-110, September 29, 2021). The applicant contends that Policy 11, like the criteria at issue in *Helsel*, is prohibited under ORS 197.307(4) because it cannot be applied in a "clear and objective" and objective manner. In support of this conclusion, the applicant notes that Policy 11 can be interpreted in multiple ways and cite LUBA's holding in *King* that the policy is ambiguous.

III. RECOMMENDATION

Inasmuch as the Hearings Official finds their needed housing determination in *Helsel* to remain valid and to apply to the circumstances of the subject proposal, the Director recommends approval based on the analysis provided in **Attachment 1.** Staff has provided an analysis and conditions of approval based on the current code format rather than the former Chapter 16 format addressed in the applicant's narrative.

The Director makes this recommendation with the understanding that the circumstance for the subject application differs from those considered by the Hearings Official in *Helsel* and may warrant a different conclusion. Chief among these circumstances would be LUBA's ruling for *Helsel*, regarding whether the needed housing statutes in question apply outside of UGBs or to dwellings on resource land, specifically forest template dwellings authorized under allowed under ORS 215.705(1)(f). Of note, LUBA's decision for Helsel was issued after this staff report was drafted and has not yet been fully reviewed by staff.

Regardless of whether the Hearings Official approves the application based on the applicant's 2017 needed housing statute argument, the Director respectfully requests that the Hearings Official make findings and conclusions for compliance with Policy 11. Specifically, the Director asks the Hearings Official consider text, context, and legislative history which indicates that, at the time of plan adoption and acknowledgment, DLCD, the county, and ODFW recognized the applicable density standard under Policy 11 to be much less restrictive than the one dwelling/80-acre standard that has been presumed to apply. In the Director's view, the legislative history and context makes clear that Policy 11 allows double the density that was presumed in *Nimpkish* and *King*, meaning that the subject properties would only need to be 40 acres in size, rather than 80 acres, to meet the applicable Policy 11 density standard for dwelling approval.

The subject proposal would fall short of meeting the Policy 11 density standard regardless of whether the 40-acre or 80-acre standard were determined to be the correct standard. Although the distinction would not be determinative for this proposal, certainty concerning the specific density standard that is applicable for F-2 dwellings in big game range habitat is a timely concern of Countywide significance - and one that merits a comprehensive analysis of the available information and matters of law by for the purposes of informing future land use decisions or legislative action by the Board of County Commissioners (Board).

The remainder of this staff report focuses on the circumstances that have given rise to the Director's request and the evidence that leads the Director to conclude that the density limitations of Policy 11 are significantly less restrictive than have been recognized for forest template dwelling proposals subject to F-2 siting standards.

IV. BACKGROUND AND BASIS FOR POLICY 11 REQUEST

Historically, Lane County has not applied Policy 11 as an approval criterion for forest template dwelling proposals. Beginning as early as 2018, the issue of noncompliance with Policy 11 density standards started being raised in testimony for template dwelling proposals in designated Goal 5 major and peripheral big game habitat range. Initially, the Director, Hearings Officials, and applicants were in agreement that Policy 11 did not apply directly to template dwelling proposals and was fully implemented in Lane Code Chapter 16. This position was comprehensively addressed by this Hearings Officials decision in Green (509-PA18-05913), which was relied on in support of the *Nimpkish* (509-PA19-05298) Hearings Official decision.

The Director approved the 2020 *King* template dwelling proposals in keeping with these Hearings Officials decisions. Thereafter, it was learned that LUBA had issued their decision for *Nimpkish* and held that Policy 11 density standards must be applied to forest template dwellings proposals. This Hearings Official applied Policy 11 density standards accordingly and concluded that the proposals failed to meet the density standards using parcel sizes of the subject property as the denominator.

In their appeal to LUBA for the 2020 *King* Hearings Official denials, the applicants asked LUBA to revisit their ruling in *Nimpkish* in consideration of additional policy text, context, and legislative history. They argued that the additional evidence clarifies that the F-2 siting standard were meant to fully implement Goal 5 big game habitat protections for dwelling proposals, in lieu of Policy 11 density standards applying directly to template dwelling proposals. In the alternative, the applicants asked that LUBA find the Hearings Official misconstrued Policy 11 by using lot size as the denominator to calculate density, rather than using the total County big game habitat acreage as the denominator.

LUBA denied both assignments of error and affirmed the County's denial of the 2020 King proposals on October 15, 2021. On May 3, 2022, Land Management Division staff provided the Board of County Commissioners an overview of the *Nimpkish* and *King* opinions. On May 10 of the following week, the Board requested that staff report back to the Board concerning a May 8, 2022 request from the Lane County Homebuilders Association (HBA) regarding Policy 11. The letter requests that the Board make a local interpretation of Policy 11. The specific interpretation proposed generally presents the same arguments rejected by LUBA in *King* concerning regarding whether Policy 11 applies directly to F-2 dwelling proposals, with the expectation that LUBA would be obligated to affirm the interpretation under the deferential standard afforded decisions by the Board. **See Attachment 7**.

On June 7, 2022, staff reported back to the Board with considerations and options for how the Board could proceed in responding to the letter. The Board directed staff to take the HBA request before the Lane County Planning Commission (LCPC) for a recommendation. The LCPC recommended that the Board take no action regarding the HBA proposal and further recommended that the Board direct staff to scope a post acknowledgement plan amendment to make amendments to Rural Comprehensive Plan Goal 5, Policy 11. Staff reported back to the Board on June 13, 2023. The Board directed staff to scope options for a Goal 5 Big Game update and to return to the Board with a formal project proposal. Most significant for this hearing matter, the Board directed staff to elevate the next relevant Hearings Official's decision involving Goal 5, Policy 11 to the Board for their consideration of whether to adopt a local interpretation of the policy, either by affirming the Hearing's Official interpretation or through an on-the-record review.

The Hearings Official decisions for the subject proposal and 509-PA23-05322 and 509-PA23-05323 would be the first relevant Hearings Official decisions involving Policy 11. Although the applicants argue that needed

housing statutes preclude the County from applying Policy 11, staff understands that such a conclusion could only be reached via a determination by the Hearings Official that Policy 11 cannot be imposed in a clear and objective manner. Staff also understands that such a determination would necessitate consideration of whether legislative history and context resolves any ambiguity in how the standard applies, with demonstration that no other plausible interpretations of the policy exist. See *Roberts v. City of Cannon Beach*, 316 Or. App. 305, 504 P.3d 1249 (Or. Ct. App. 2021).

With consideration of the *King* holding and related work assignments that have been assigned by Board, staff has undertaken a comprehensive examination of the text and context of the plan and code, and the events and documents in the 1980s plan acknowledgment process. These include the materials in the *King* LUBA record, and the additional material attached to this staff report. The most relevant context included in the *King* LUBA record have also been attached for ease of review.

V. LEGISLATIVE HISTORY AND CONTEXT SUPPORTING THE LESS RESTRICTIVE DENSITY STANDARD

As LUBA concluded in King, "the legislative history is reasonably clear that the LC 16.211(5) clustering standards were intended to supplement, rather than to replace, the other components of the county's Goal 5 program, including Policy 11". Equally clear to the Director, is that the F-2 siting standards were adopted to allow for the doubling of densities in big game habitat in keeping with Policy 11 density limitations.

Not considered by LUBA or any party in *Nimpkish* and *King* were any arguments as to how the F-2 siting standards *supplement* Policy 11. More particularly, not considered was whether the evidence the applicants relied on to support their argument that the F-2 siting standards codified or replaced the density standards, instead, served to clarify that the F-2 siting standards were adopted for the purpose of qualifying F-2 parcels for a less restrictive density standard under Policy 11. In the Director's view, the text, legislative history, and context makes reasonably clear that this was done for the purposes of aligning F-2 parcel size standards with the County's commitment to Policy 11 density limitations to the extent required for plan acknowledgment. Furthermore, this conclusion appears to be generally consistent with LUBA's reasoning in *King*, notwithstanding that LUBA upheld the denial based on an 80-acre standard rather than a 40-acre standard with clustering. As well, the legislative history demonstrates the F-2 siting standards that were adopted in keeping with the lesser 40-acre standard remain in place and are applicable to forest template dwelling proposals.

Policy text. RCP Goal 5 Flora & Fauna Policy 11 states:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of Big Game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."*

In *Nimpkish* and *King*, LUBA concluded that Policy 11 is part of and implements the County's acknowledged Goal 5 program and to give some effect to the second sentence of Policy 11, the County must apply Policy 11 to residential development where the proposal density exceeds ODFW recommendations. The recommendations on overall residential density referenced by Policy 11 are clarified in legislative history and context, most comprehensively in the DLCD staff reports at the time RCP adoption on September 12, 1984 and the DLCD staff reports referenced therein.

The Flora and Fauna Working Paper (March 1982) and its Addendum (November 1983): The Flora & Fauna Working Paper, as modified by the 1983 Addendum, identifies residential use above the overall residential densities recommended by ODFW as the primary conflict with big game. The documents further indicate that ODFW has recommended overall residential densities for Peripheral Big Game range at one dwelling/40 acres and for major big game at one dwelling/ 80 acres. The documents identify density above that limit as a conflict that would only be allowable if justified through the Goal 5 process.

The original Working Paper identified a process involving coordination with ODFW for implementing and codifying the density standards based on a regional approach. The Addendum entirely replaces the text related to that regional approach (beginning with the last paragraph of page 24 and all text on page 25) with new text that focuses on a combination of clustering and siting standards to avoid or resolve conflicts with big game. In *King*, the applicants argued that the revisions support the conclusion that the F-2 siting standards obviated the applicability of Policy 11 density limitations. LUBA disagreed, concluding that, "nothing in the Addendum supports the conclusion that the County proposed, and LCDC acknowledged, abandoning any reliance on density limitations as part of the Goal 5 program to protect big game habitat to rely solely on the siting standards fully implement Policy 11 and big game protections. As LUBA emphasizes, the Addendum left in place the original language that an overall residential density greater than one dwelling per 80 acres in major big game range conflicts with Goal 5. It also included language describing a process to ensure compliance with Goal 5 "in the event that other identified measures (the regional approach, minimum parcels sizes, and clustering) are insufficient- by applying the Goal 5 rule." (*King*, Slip op 19)

The Director understands the Addendum revisions to allow for the possibility of an alternative density standard for preventing -or resolving - big game conflicts via some combination of siting standards and less restrictive density standards that is acceptable to ODFW, as had been indicated in the ODFW correspondence attached to this staff report (**Attachment 4).** Accordingly, the Addendum identified the need for adding to Policy 11 the following statement: "The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

July 19, 1984 DLCD Staff Report to LCDC (See Attachment 3.a): The July 1984 DLCD staff report addresses the County's request for plan acknowledgment of compliance with Goals 2, 5, and 15. In *King*, LUBA concluded that the July 19 staff report "clearly illustrates DLCD's expectation that, while additional measures were necessary to ensure full compliance with Goal 5, the ODFW density standards embodied in Policy 11 would continue to play a role in evaluation of development proposals. Nothing in the acknowledgment process eliminated or vitiated the applicability of those density standards to proposed residential development in big game." The applicants had argued that the following DLCD response to objectors and associated "in order to comply" (IOTC) requirement supports the conclusion that Policy 11 Goal 5 protections were fully implemented and codified by the F-2 siting standards.

> *"[Response 3]. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 zone, since in general, dwellings are not permitted in that zone." (p. 39, emphasis added)*
>
> *"[IOTC 2.d.} Amend the F-2 and EFU zones to carry out the intent of [Policy 11}. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas." (p. 75, emphasis added)*

LUBA rejects the applicant's arguments and highlights DLCD's previous response to objectors concerning Policy 11 density standards and Goal 5 compliance:

> *"[Response 2]. Objectors are not correct that [Policy 11] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The county has, through [Policy 11], however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, [Marginal Lands] and EFU zones which ensure ODFW's density standards will be achieved.*
>
> *The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and or prevent conflicts between dwellings and big game habitat. However as discussed below, the county has not adopted such standards in its zoning ordinance." (p. 39, emphasis added).*

Additional context is provided in DLCD's summary of the objections raised by ODFW and 1000 Friends of Oregon on pages 24-36. These are followed by a summary of the County's Goal 5 analysis and implementation measures on pages 27-33. The most relevant statements include:

> *"Big Game Range: The primary conflict with big game range is identified as residential use at densities over one dwelling unit per 40 acres in Peripheral Range, and one unit per 80 acres in Major Range ....The County indicates that its 80-acre commercial timber zoning is very restrictive in terms of dwelling unit placement, and therefore, "it is unlikely that conflicts will occur" in Major Range areas (Addendum, p. 14). Similarly, the County believes its 40-acre zone will satisfy ODFW's recommended density in the Peripheral Range (p. 14)." (p. 27, emphasis added)*
>
> *"The [F-2 Zone] requires a minimum of 20 acres for creation of a woodlot or farm parcel...However, there is no requirement that, in the Big Game Range portions of that zone, densities will not exceed those recommended by ODFW (i.e. one unit per 40 acres in the Peripheral Range, or one unit per 20 acres with clustering and siting standards; one unit per 80 acres win the Major Range, or one unit per 40 acres with clustering and siting standards)." (p. 33, emphasis added)*
>
> *"In the [EFU Zone], a dwelling...may be approved if it meets certain criteria; similarly, a division of land may be allowed for a dwelling....if it meets those criteria...However, none of the criteria address ODFW's dwelling density recommendations...As noted in the Flora and Fauna Working Paper (p.24)...ODFW's recommended density in Peripheral Big Game Range (which , according to the County, is mostly zoned [EFU] is one unit per 40 acres or greater in the Peripheral Big Game Range. There are no standards in the zone which require lot sizes to be 40 acres or greater in the Peripheral Big Game Range portions of the zone, or alternatively, that require clustering of dwellings (to allow densities as greater as one unit per 20 acres." (p. 33, emphasis added)*
>
> *"[Objection 2]. ODFW and 1000 Friends have objected to [Policy 11] since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends state that Policy 11 allows residential densities to exceed ODFW recommendations 'if conflicts can be resolved in accordance with OAR 660-16-000.' Objectors believe this allows the County to justify density*

levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule. (p. 35, emphasis added)

"[Objection 3]. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendation in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for the Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting standards, but these are not carried out in the F-2 zone. The Addendum also references forest land minimum lot sizes which are no longer current." (pgs. 35-36, emphasis added)

"[Objection 4.] ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal land nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where marginal and nonresource lands are located, and therefore the extent to which they are in game range areas...1000 Friends points out the Goal 5 must be applied wherever Goal 5 resources occur, even in areas designated marginal or nonresource land." (p. 36, emphasis added)

The above passages recognize that the County's expectation was that the density limitations adopted under Policy 11 were not likely to be exceeded based on other restrictions in place for forest dwellings. They also support LUBA's conclusions in *King* that F-2 siting standard were intended to supplement those density limitations. Specifically, the passages clarify that that ODFW and DLCD understood the County to adopt and adhere to ODFW's density recommendation in big game habitat areas, and that apart from any need to codify the density standards, the general F-2 lot area requirements and dwelling clustering standards were inconsistent with the County's density commitment under Policy 11. Moreover, they clarify that the specific siting standards that were ultimately adopted to satisfy IOTC 2.d. were intended to carry out the purpose of Policy 11 by bringing F-2 lot size requirements into alignment with the County's Policy 11, and that this occurred by justifying the doubling of densities in big game habit in accordance with ODFW overall residential density recommendations in keeping with ODFW's "clustered" density standard. The passages also acknowledge certain differences between other objector's and ODFW's understanding of how ODFW 's density recommendations with clustering square with the Goal 5 rule and Policy 11, with regard to preventing or mitigating conflicts.

August 17, 1984 DLCD Report to LCDC (See Attachment 3.b): DLCD's August 17, 1984 report makes revisions to their July 19 report. The revised response for Objection 4 makes clear that the ODFW density recommendations referenced in Policy 11 include the 'clustered' density standard.

"[Response 4.] Objectors are not correct that the Goal 5 process was not addressed in the process of designating nonresource lands. However, the Goal 5 conflicting uses/ESEE consequences analysis for one of the nonresource areas- Cerro Gordo—does not justify the residential densities proposed....The applicant has proposed a wildlife management plan which calls for clustering buildings and maintaining wildlife corridors. Although the proposed clustering and wildlife corridor measures will help resolve some of the conflicts identified, the overall density of the development 'with clustering' is one unit per five acres. ODFW recommendations are one per 80 acres (or one per 40 acres with clustering) in major big

game habitat, and one per 40 acres (or one per 20 acres with clustering in peripheral habitat. According to the County's own plan (Policy 11), such densities cannot be exceeded without being justified through an ESEE consequences analysis..." (p. 8, mark-up removed, emphasis added).

Relatedly, the August 17 report revises the conclusions and options for Cerro Gordo, and further clarifies how Goal 5 compliance is achieved under Policy 11, in consideration of the clarifications made in ODFW's objections.

"However, one unresolved Goal 5 issue remains. The Oregon department of Fish and Wildlife (ODFW) indicates (within their objection regarding big game habitat—see Goal 5 section p.35) that provisions authorizing a doubling of densities in big game habitat area is a measure satisfying OAR 660-16-010(3) when clustering of dwellings occurs.

Because the density authorized by Lane County for Cerro Gordo exceeds ODFW's accepted densities mitigation strategy under the "3C" approach (OAR 660-16-010(3)), one of three options remains open to the County to resolve this issue. These options are as follows:

1) *Provide additional ESEE consequences analysis justifying the decision to 'allow the conflicting uses fully' (OAR 660-16-010(2)) at a density exceeding a threshold acceptable to ODFW; or*
2) *Limit the density in the Cerro Gordo development to ODFW's recommended density with clustering consistent with (OAR 660-16-010(3); or*
3) *Cooperate with ODFW to design a mitigation strategy which combines (a) the current wildlife management plan for Cerro Gordo; (b) additional ESEE consequence analysis supporting the decision to allow a density which exceeds ODFW's recommended density with clustering; and (c) other mitigation measures deemed necessary by ODFW..." (pgs. 12 and 13, emphasis added).*

The revised options provided for Cerro Gordo reinforce the view that ODFW's clustered density standard was understood to be a mitigation measure that did not require additional ESEE justification and ODFW acceptance under Policy 11.

September 12, 1984, DLCD Staff Report to LCDC (See Attachment 3.c): The September 12 DLCD staff report recommends acknowledgment of the County's RCP and implementation measures related to big game habitat protection. The report summarizes the steps taken by the County to resolve the deficiencies necessary for acknowledgment. Specific to the July 19, 1984 IOTC 2.d. requirement that the County adopt larger lot sizes or clustering standards to align the F-2 and EFU lot size requirements with ODFW residential density recommendations, the report concludes that Lane County opted to meet the requirement via clustering:

"Requirement [IOTC 2.d.} Amend the F-2 and EFU zones to carry out the intent of [Policy 11}. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.

Response. Lane County has added the following new language to both the F-2 and EFU Zones:

(a) The Approval Authority shall balance the setback standards of LC 16.211(a)(a) with the siting requirements and application of approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes of the F-2 [EFU] zone.
   (i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:
      (aa) Near residences on other tracts.
      (bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Specific to Cerro Gordo, the report concludes that compliance was achieved as follows:

"The County's policy is to abide by ODFW's density recommendation unless the entire Goal 5 process is applied and a decision to exceed these recommendations is justified. Lane County has adopted supplementary findings (Order No. 84-9-11-23) and has revised its ESEE consequences analysis and wildlife habitat management plan for Cerro Gordo to justify development in a recognized big game habitat area, in excess of ODFW's recommended density standards. A meeting was held on August 14, 1984 with ODFW, Cerro Gordo, and DLCD representatives to discuss this issue. It was determined that, in this case, ODFW density recommendations do not have as much bearing on the acceptability of the development as do other factors. These factors include the overall number and location of dwellings and roads, as well as mitigating measures incorporated into the development. The following factors in the revised Cerro Gordo proposal are particularly relevant (Order No. 84-9-11-23)...

Because of these and other factors addressed in the County's amended findings, the impacts on big game range are thought to be acceptable by ODFW. Allowing such conflicts to occur, but with restrictions outlined above, is a (3C) decision under the Goal 5 Administrative Rule. The County has justified this decision. (p. 11-12, original emphasis preserved)

Noteworthy is that DLCD's response includes no caveats with respect to the County's policy to abide by ODFW's density limitations. Also noteworthy is that the response suggests that the County's choice to justify exceeding ODFW overall density recommendations via the Goal 5 process, and ODFW acceptance of mitigation measures on a different basis than density, were emphasized to be isolated to Cerro Gordo proposal. DLCD's response underscores that as of the date of RCP adoption, Policy 11 was understood by the County, DLCD, and ODFW to require additional ESEE justification and ODFW's blessing to justify approval of dwellings that exceed the ODFW clustered density standard and such path had not been taken for implementation of Goal 5 protections in F-2 big game habitat areas.

Ordinance No 11-84, enacted September 12, 1984 (See Attachment 5): Under this ordinance, the Board adopted multiple changes to Lane Code Chapter 16 satisfy LCDC's IOTC requirements and gain RCP acknowledgment. These included changes to the F-2 and EFU siting standards for clustering in big game habitat areas to resolve IOTC 2.d. The adopted siting standards for the F-2 and EFU zones each included a two-track approach, depending on whether a property was located within or outside of big game habitat. Per the Board findings, "small groupings of residences will have less of an adverse impact on wildlife and resource uses in the big game range than would more scattered residences. However, if not within the big game range, mitigation of possible adverse effects on the resource uses of neighboring properties is a more important consideration."

Ordinance No. 11-91A, enacted July 31, 1991 (See Attachment 6): LCDC's acknowledgment of the RCP and Chapter 16 under Ordinance No. 11-84 was appealed and remanded by the Supreme Court in 1988. The County's Goal 5 big game habitat protection program was not an appeal issue. In response to Goal 4 and other related Goal 5 compliance issues remanded back to LCDC by the Supreme Court, LCDC required certain changes to the F-2 zone, included changes to the F-2 siting standards. In response, Lane County was directed to make several changes to bring the F-1 and F-2 zone siting standards into compliance with Goal 4. These included a requirement to bring the RCP into compliance with Goal 4 via the elimination of the siting standards track that had applied to tracts outside of big game habitat areas "with the result that [the big game habitat] standards have now become applicable to all areas."

Denominator for Calculating Density - ODFW Correspondence. In *King*, LUBA recognized that the Policy 11 text is ambiguous with respect *how* density standards apply, particularly with respect to the denominator to be used for applying the standard. LUBA agreed that the reference to "overall" in the first sentence suggests averaging more than one unit or number, such as averaging parcel sizes for two or more parcels, but saw no mathematical or logical reason why the appropriate denominator cannot be based on the number of acres in a single unit of land. As noted by LUBA, this was the approach that had been adopted by the Board and affirmed by LUBA for *Cattoche* v. *Lane County*, 79 Or LUBA 466 (2019).

On the whole, the legislative history and context generally indicates the expectation that the decision on how to apply ODFW density limitations would necessarily require further coordination with ODFW how to apply and codify ODFW's density recommendation and that alternative mitigation measures would require additional ESEE justification. This is made clear in the available ODFW correspondence regarding the department's density recommendations referenced in the Flora & Fauna Working Paper and Addendum and Policy 11. It should be noted that the correspondence predates ODFW's objection letters to DLCD and DLCD's responses provided in the 1984 DLCD staff reports and was not in the *King* LUBA record.

That RCP acknowledgement was predicated on the actions taken by the County to make F-2 lot size and clustering standards consistent with Policy 11 density limitations, lends support for the conclusion that ODFW's overall density recommendations were acknowledged to be reasonably applied based on parcel size in the absence of further coordination with ODFW.

In sum, the context makes clear that ODFW density recommendations referenced under Policy 11 consisted of a preferred density standard and an acceptable density standard with clustering. The context also indicates that the County adopted siting standards to qualify for the lesser density standard with clustering. Further, the context appears to indicate that the County and DLCD contemplated that these would be applied on a parcel size denominator absent further coordination with ODFW. Accordingly, the subject properties would each need to be 40 acres in size to satisfy Policy 11 standards rather than 80 acres, as had been understood for the 2020 *King* proposals.

VI. REFERRAL COMMENTS

As of the date of this report, no referral comments or written testimony has been submitted in response to the hearing notice.

VII. CONCLUSION

For the reasons explained above, the Director concludes that the proposal does not satisfy Policy 11, based on its failure to meet ODFW's recommended 40-acre 'clustered' density standard for major big game habitat with parcel size as the denominator.

Apart from Policy 11 density standards, the Director concludes that the applicable criteria and standards would be satisfied based on the staff evaluation and conditions of approval provided in **Attachment 1**.

VIII. ATTACHMENTS

Attachment 1: Staff Evaluation

Attachment 2: Application materials (partial)
- a. Site Plan
- b. Submittal Letter
- c. Application Form
- d. Supplemental Narrative

Attachment 3: DLCD Staff reports
- a. July 19, 1984
- b. August 17, 1984
- c. September 12, 1984

Attachment 4: ODFW Correspondence
- a. November 1, 1983
- b. October 7, 1983
- c. August 11, 1983
- d. May 6, 1983
- e. December 9, 1980
- f. June 16, 1980

Attachment 5: Ordinance 11-884

Attachment 6: Ordinance 11-91A

Attachment 7: May 8, 20232 Lane County Homebuilder's Association Policy 11 Interpretation request

*Additional information to be included in the digital file record: *King* LUBA Record

Lane County
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LANE COUNTY HEARINGS OFFICIAL

STAFF ANALYSIS

Department File:	**509-PA23-05321**
Owner:	E.J.K. Investments
Applicant:	Edward J. King
Agent:	Bill Kloos, Law Office of Bill Kloos
Map & Tax Lot:	21-25-12-00-00843
Address:	N/A
Size:	13.34 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)/Rural Residential (RR-5)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff:	Julia Dobberstein, Planner

I. PROPOSAL DESCRIPTION

A request for Director Approval of a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4, House Bill 2225, and RCP Goal 5 Flora and Fauna Policy 11. The Lane County Planning Director has elected to process this Type II application through a Type III Hearings Official procedure in accordance with Lane Code 14.030(1)(b)(ii)(cc).

II. BACKGROUND INFORMATION

On May 8, 2023, the Land Management Division received the applicant's Type II: Planning Director application to establish a dwelling in the Impacted Forest Lands (F-2) Zone. Staff reviewed the submitted materials and deemed the subject application complete on June 7, 2023.

On August 16, 2023, Lane County staff sent notice of public hearing to occur on September 7, 2023, to property owners, agencies, and community organizations.

This application was submitted in conjunction with two other template dwelling requests, File No. 509-PA23-05322 and 509-PA23-05323, which have been scheduled for the same hearing date.

Of note, the applicant's narrative addresses a prior version of Lane Code Chapter 16. The applicable standards and criteria under the current code are substantially the same as those addressed in the applicant's submittal but have been reorganized with different numerical references. The following staff analysis is based on the current code format.

III. PROPERTY DESCRIPTION

a. **LOCATION:** The subject property is identified as Assessor's Map and Taxlot 21-25-12-00-00843. The property is located immediately west of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries (UGBs).

b. **PHYSICAL DESCRIPTION:** The subject property is approximately 13.34 acres in size and vacant. The property slopes downward from the southwest to the northeast. According to Lane County GIS data layers, the property is mapped by DOGAMI as having "moderate" landslide susceptibility and does not contain floodplain, a Class I stream, or wetlands. Per the applicant, the property contains mainly open land, with scattered vegetation of fir, oak, and maple trees.

c. **ZONING & SURROUNDING USES:** The property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F-2), consistent with that plan designation. The property is bordered to the north and east by the Oakridge Airport within the Airport Operations (AO-RCP) zoning district, and abuts Nonimpacted Forest Lands (F-1) and Rural Residential (RR-5) zoned properties to the south and Impacted Forest Lands (F-2) to the north and west.

IV. APPROVAL CRITERIA AND ANALYSIS

This application is evaluated pursuant to the applicable criteria found in Lane Code 16.211(2)-2.4 and other standards as applicable. The code language is in **boldface** type, followed by the findings of fact.

A. Conformity with Lane Code 16.211(3)(c):

(c) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

Finding 1: The subject parcel was verified to be a legal lot through File No. 509-PA08-06330 and noticed as a final land use decision without appeal through File No. 509-PA08-06329 and remains in the same configuration. Accordingly, this criterion is met.

(i) If the lot or parcel is predominantly composed of soils that are:

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

(iv) Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and ¼ mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(v) The following applies where a tract 60 acres or larger abuts a road or perennial stream:

(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract;

(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

Finding 2: The applicant chose to document the presence of at least 12 other lots or parcels that existed on January 1, 1993, within a 160-acre rectangle centered on the subject property. This is the most rigorous of the three "tests" outlined in subsection (3)(c) above, and it appears to be the only option given that the Regional Land Information Database (RLID) soils data indicates that 75% of the property is comprised of 63D Jory Silty Clay Loam soils, having an estimated forestland capability of 178 cubic feet per acre per year.

Consistent with LC 16.211(3)(c)(ii), none of the qualifying parcels listed in **Figure 1** below are located in an urban growth boundary. Staff also finds that the applicant's 160-acre template square appears to be centered on the mathematical center of the tract in accordance with LC 16.211(3)(c)(i)(cc) and the requirements of House Bill 2225, effective January 1, 2020, as codified in OAR 660-006-027(3)(d) and ORS 215.750(1). Per House Bill 2225, the "center of the subject tract" means the mathematical centroid of the tract. Using County licensed ArcGIS software, staff verified the accuracy of the applicant's derived centroid appears to meet this requirement. Subsections (iv) and (v) of LC 16.211(3)(c)(i) do not apply to template squares for sites less than 60 acres.

Based on staff's review of the current property description cards, other documentation submitted by the applicant, and available County records included in the application file, staff finds that the 12 parcels identified by the applicant appear to have been lawfully created prior to January 1, 1993. These parcels that fall partially or wholly within the template satisfy LC 16.211(3)(c)(i)(cc)(A) and are described in **Figure 1**.

FIGURE 1: LOTS, PARCELS AND UNITS OF LAND WITHIN TEMPLATE AREA

Count (*dwelling)	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	21-35-07-30	2700	1972	R360D/96687
2	21-35-18-00	914	1980	P1 of M463-79
3*	21-35-18-00	913	1980	P2 of M463-79
4	21-35-18-00	911	1979	P2 of M316-78
5*	21-35-18-00	912	1979	P1 of M316-78
6*	21-35-18-00	906	1970	Reel 469-D/95859
7*	21-35-18-00	908	1970	LSC R1437/8652701; Deed R484/10186; LL PA87-02870 Part 2

Count (*dwelling)	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
8	21-35-18-00	901	1986	P2 of PA3201-86
9*	21-35-18-00	915	1986	P1 of PA3201-86
10	21-25-12-00	700	1848	USDA
11	21-25-13-00	900	1971	R517/34757
12	21-35-18-00	902	1968	R382/16860

*Note: Verification of the parcels above is preliminary and does **not** constitute a determination of legal lot status.*

The applicant provided documentation for five (5) dwellings located on the parcels identified in **Figure 1** above. These are denoted with an asterisk. As evidenced by the RLID reports and other records submitted by the applicant and 2023 aerial photography, staff verified at least five (5) of the five (5) dwellings existed on January 1, 1993, continue to exist on the qualifying lots partially or wholly located within the template square. The relative location of the dwellings is not relevant because the template measurement was not made according to LC 16.211(5)(c)(iii)(aa)(B). The dwellings found to satisfy LC 16.211(3)(c)(i)(cc)(B) are listed below in **Figure 2**.

For the reasons explained above, staff find the proposal satisfies LC 16.211(3)(c).

FIGURE 2: QUALIFYING DWELLINGS WITHIN TEMPLATE DWELLING

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
2	21-35-18-00	913	1980 MH; RLID; LC 2322-80
4	21-35-18-00	912	1965; RLID
5	21-35-18-00	906	1991 MH; RLID; 509-BP90-02787
6	21-35-18-00	908	1954; RLID
7	21-35-18-00	915	1986 MH; RLID; 509-BP87-01419

(vi) A proposed "template" dwelling under this section is not allowed:

(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(a)(iii) for the other lots or parcels that make up the tract are met; or

(bb) If the tract on which the dwelling will be sited includes a dwelling;

Finding 3: The subject tract consists of Assessor's Map and Tax Lot 21-25-12-00-00843. According to Lane County Assessment and Taxation information, the parcel is owned by EJK Investments LLC. According to Lane County Land Management and Assessment and Taxation records, the tax lot is not developed with a dwelling nor is the tax lot currently approved for a dwelling. Therefore, the criteria of Lane Code 16.211(3)(a)(vi) above do not apply.

(vii) Where other lots or parcels that make up a tract in Subsection (vi):

(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, an restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is allocated;

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

Finding 4: The subject tract consists only of Assessor's Map and Tax Lot 21-25-12-00-00843; therefore, this criterion is not applicable.

(p) For single-family dwellings, the landowner must sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Finding 5: The applicant must record a Farm and Forest Management Practices Agreement (**Exhibit G**) with Lane County Deeds and Records office and submit a copy of the recorded agreement to Land Management Division as part of the Verification of Conditions application. This requirement must be satisfied prior to the issuance of a building permit for a single family dwelling or a placement permit for a manufactured home and has been made a condition of approval.

(q) For single-family dwelling, the approval is valid for four years from the date of approval, unless otherwise specified in the approval or by other provisions of Lane Code. Notwithstanding the requirements of LC Chapter 14, an application for a two year extension of the timelines for the permit approval can be made and approved pursuant to LC Chapter 14.

Finding 6: This approval will be valid for four (4) years from the final date of approval indicated on the Notice of Decision. This has been made a condition of approval.

B. Conformance with Lane Code 16.211(5): Siting Standards for Uses, Activities, and Structures

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);

Finding 7: Near dwellings on other tracts: The applicant's site plan identifies a 120-foot by 150-foot homesite area, which is setback 130 feet from the southern property line and 290 feet from the western property line (**Exhibit B**). According to Lane County aerial imagery, the subject property is near multiple other dwellings, the closest being on Assessor's Map and Tax Lot 21-35-18-00-00914, approximately 1,000 feet southeast of the proposed home site. As indicated by the applicant, the proposed home site is as close to dwellings on other tracts as it can be given the configuration of the parcel and the proximity of the airport.

Near existing roads: The proposed homesite is located immediately adjacent to the existing private roadway that runs through the subject property from Airport Road.

Most level part of the tract/Ravines, ridges, or slopes greater than 40%: According to the applicant's contour data, the tract slopes down to the northeast. The proposed homesite is located on one of the most level parts of the tract, especially when balanced with other requirements such as setbacks, access, and minimal intrusion into forestland. Additionally, the applicant's LiDAR data and Lane County LiDAR data demonstrate that there are no ravines, ridges, or slopes greater than 40% within 30 feet of the site.

Soil suitability: **Figure 3** below shows the percentage of soil units present within the subject tract (derived from RLID information). Exhibit T of the applicant's materials shows the location of soil units on the subject property.

The proposed home site is located within soil unit 63D, which is classified as a high value soil for forestry (approximately 178 cu. ft. per acre per year of timber fiber). The area of the tract that is comprised of soil unit 52D, is located underneath the Approach Surface of the Oakridge Airport. Siting the dwelling in the northeast portion of the property would not balance the requirements of being close to existing dwellings and roads, and with minimal intrusion into forest areas. Therefore, when balanced with other criteria, the proposed homesite is located on one of the least suitable portions of the tract for forest use.

Figure 3—(NRCS) Identified Soils on Subject Tract

Soil Unit #	Soil Type Description	% of Tract	ODOF Cu. Ft. / Acre / Year of Timber Fiber	NRCS Cu. Ft. / Acre / Year of Timber Fiber
63D	Jory Silty Clay Loam, 12 – 20 percent slopes	75		178
52D	Hazelair Silty Clay Loam, 7 – 20 percent slopes	24		No Rating
63C	Jory Silty Clay Loam, 2 – 12 percent slopes	1		178

Note: Information derived from (NRCS) and (ODOF) estimates.

With further consideration of the remaining standards of LC 16.211(5) and (6) addressed below, staff find that the proposed dwelling site substantially conforms to the criteria described above, as conditioned.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses;

Finding 8: The applicant proposes a 120-foot by 150-foot homesite area in the southwest portion of the property. Considering the parcel's size, configuration, and the Oakridge Airport's Approach Surface located along the northern portion of the property, there are limited options for siting a moderately sized dwelling on the property. The proposed homesite is adjacent to an existing access roadway easement where the need for primary fuel-free breaks and a driveway extension will be minimized. Staff find the proposal sufficiently minimizes intrusion into forest areas undeveloped by non-forest uses to comply with this standard.

(iii) Where possible, when considering LC 16.211(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

Finding 9: The subject tract abuts lands zoned Nonimpacted Forest Lands (F-1) and Rural Residential (RR-5) to the south, Impacted Forest Lands (F-2) to the west and north, and the Oakridge Airport to the north and east.

Based on the applicant's site plan, the proposed homesite is setback 130 feet from the southern property boundary and well over 100 feet from all other property boundaries. As discussed in **Finding 7** and **8**, due to the constraints imposed by the parcel's size, configuration, and the presence of the Oakridge Airport's Approach Surface, there is a restricted number of feasible locations for siting a dwelling on the property. Furthermore, as

indicated by the applicant, the north-south dimension of the parcel is only 550 feet long, which severely limits the ability to maintain a setback of 500 feet from the southern property line while also ensuring a sufficient area for fuel breaks. Accordingly, staff finds that the proposed homesite complies with this standard to the extent the circumstances allow.

(iv) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

Finding 10: The proposed homesite area is adjacent to an existing private access road that runs through the subject property, where the need for a driveway extension is minimized. The amount of forest lands required for any access improvements is as much or less than what is typically needed to establish a forest template dwelling. Staff finds intrusion into forestlands is expected to be minimal. Compliance with this standard will be field verified by staff through the Verification of Conditions application process.

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).

(iii) The minimum distance necessary to comply Sections (5)(a) and (6).

(iv) Riparian Setback Area. A riparian setback area applies to the area between a line that is 100 feet from an parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with CL 15.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.

Finding 11: Based on the applicant's site plan, the proposed homesite area is setback at least 30 feet from all property lines and more than 20 feet from Airport Road, the nearest right-of-way of a County Road. No riparian setback requirements apply to the subject property since it is located well over 100 feet away from the Middle Fork of the Willamette, which is located south of Westfir-Oakridge Road. The above standards of (i), (ii), and (iv) are satisfied. LC 16.211(5)(a) is addressed above and found to be satisfied as conditioned. LC 16.211(6) is addressed below and is satisfied or met with conditions of approval. These standards are met as proposed.

(c) Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt

from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.

Finding 12: The applicant proposes to drill a new private well to provide domestic water supply. Exhibit M of the applicant's submittal includes several well reports for properties in the vicinity to demonstrate feasibility.

Per the Lane County Hearings Official findings in Planning Action No. 509-PA18-05804, compliance with Lane Manual Chapter 9.005.160 is required. Lane Manual requires that a well for use in conjunction with a single family dwelling must be verified to flow at five (5) gallons per minute for a duration of no less than five (5) hours. As a condition of approval to ensure compliance with this standard, the applicant will be required to provide a well log or well constructor's report that conforms with LC 16.211(5)(c)(i-iii) and Lane Manual 9.005.160.A.1. In the event that the Well Report does not verify compliance with this standard, the land owner will be required to satisfy the requirements of LM 9.005.160.A.2. These criteria are met as conditioned.

(d) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Finding 13: The applicant proposes to take access to the property from Airport Road, a Lane County owned and maintained Rural Local road. This standard does not apply.

(e) Approval of a dwelling is subject to the following requirements:

(i) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.

(ii) The Director must notify the County Assessor of the above condition at the time the dwelling is approved.

(iii) Stocking survey report:

(aa) If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(bb) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.

Finding 14: The subject property consists of more than 10 acres. Accordingly, the applicant must submit a stocking survey report to the County Assessor to determine compliance with minimum stocking requirements of the Forest Practices Act. The owner must plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. These requirements have been made conditions of approval and will be verified by staff as part of the Verification of Conditions application process.

C. Conformance with Lane Code 16.211(6) Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings, manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:

(i) The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;

(ii) If a water supply is required for fire protection, it must be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;

(iii) The applicant must provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use;

(iv) Road access must be provided to within 15 feet of the water's edge for firefighting pumping units. The road access must accommodate the turnaround of firefighting equipment during the fire season. Permanent signs must be posted along the access route to indicate the location of the emergency water source; and

(v) A 100-foot wide primary safety zone and a 100-foot wide secondary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures must be provided and maintained in perpetuity in compliance with the standards in (6)(c).

Finding 15: The subject tract is located within the Hazeldell Rural Fire District. Thus, this standard is satisfied without need for a Structural Fire Protection plan.

(b) Fire Safety Design Standards for Roads and Driveways.

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Finding 16: Access from Airport Road to the homesite area is proposed via an existing private access road and a proposed driveway. The existing private access road also serves Tax Lot 133, 2900 and 2800. The application materials detail the route of access from the fire station to the homesite. Exhibit AA of the applicant's

materials includes publicly available information indicating that the Hazeldell Rural Fire Protection District contracts with the Oakridge Fire Department to provide service and the equipment used by the District.

As such, from its beginning at Airport Road to the point at which the access stops serving multiple uses, it is considered a "road" per the definition of LC 16.211(6)(b)(i) above. From the point of which the access stops serving multiple uses and to the point at which it reaches the homesite area, it is considered a "driveway" because it will provide access to a single (1) use per the definition of LC 16.211(6)(b)(i) above.

Staff find that the evidence is sufficient to demonstrate it is feasible for the road access and driveway to meet the standards of LC 16.211(6)(b). Compliance with Lane Code 16.211(6)(b) and field verification by staff has been made a condition of approval. Also, written verification of compliance from an Oregon Registered Professional Engineer or the fire district providing residential fire protection service must be provided. All road and driveway improvements, including turnarounds, turnouts, and culverts, and all easement locations must be shown on the site plan.

(ii) Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and must have a vertical clearance of 13 feet 6 inches.

Finding 17: The applicant proposes to improve the existing shared access easement road and proposed driveway as necessary to comply with the above standards. As a condition of approval, compliance with the road and driveway standards of Lane Code 16.211(6)(b)(ii) will be field verified by staff through the Verification of Conditions process. Therefore, staff find the above criteria conditionally met.

(iii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of

the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Finding 18: The proposed homesite area is to be accessed from Airport Road via a private shared access easement road and driveway. The private road does not appear to exit onto any other roads and is therefore considered to be a dead-end road necessitating turnarounds. The applicant's site plan identifies two (2) turnarounds spaced at intervals of not more than 500 feet apart on the portion of the private access road located on the subject property. Additionally, the applicant identifies that a hammerhead turnaround is proposed where the driveway will terminate at the proposed homesite area. Staff find it feasible that the turnarounds can be constructed in compliance with the requirements of LC16.211(6)(b)(iii) above. Compliance with the above standards has been made a condition of approval and will be field verified by staff as part of the Verification of Condition application process.

(iv) Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Finding 19: The applicant does not propose any bridges or culverts as a part of the proposed development. In the event that a bridge or culvert becomes necessary during construction of the access, it must be constructed to meet the above standard. General compliance with the applicable standards of LC 16.211(6)(b) has been made a condition of approval and must be verified by staff as part of the verification of conditions application process. As conditioned, written verification of compliance from an Oregon Registered Professional Engineer or the fire district providing residential fire protection service must be provided for any bridges or culverts.

(v) Road and Driveway Grades. Road and driveway grades cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

Finding 20: County LiDAR data, contour data, and aerial imagery indicate that the road and driveway are existing and slopes do not exceed 16%. Additionally, clinometer readings from Brinks Land Improvement, included as an Exhibit in File No. 509-PA20-05064 and 509-PA20-05065, indicate there are no areas in excess of 10%, most grades measured 3-6 percent, and no presence of inclines that would exceed 15 percent along the shared access road, which is also used to access Tax Lot 133, 2900, and 2800. As such, compliance with the slopes standards provided by Lane Code 16.211(6)(b)(v) above is feasible, and, as a condition of approval will be field verified by staff through the Verification of Condition application process.

(vi) Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.

Finding 21: As an informational condition, any future naming if the proposed shared access easement road is subject to the provisions of LC 15.305 through 15.335. Naming of the road is not required at this time.

(vii) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be

authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

Finding 22: Based on the applicant's site plan, the portion of the access that is classified as a "driveway" is approximately 450 feet in length. Therefore, in accordance with the above standard, at least one (1) turnout is required. Compliance with LC 16.211(6)(b), including the above turnout standard, has been made a condition of approval and will be verified by staff as part of the Verification of Conditions application process.

(viii) Modifications and Alternatives. The standards in (6)(b)(i) through (6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

Finding 23: The applicant does not request any modifications to the standards in (6)(b)(i) through (6)(b)(viii).

(c) Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.

(i) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.

(aa) As slope increases, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:

(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.

Finding 24: In the application, the applicant indicates that the slopes within 30 feet of the dwelling are less than 10%. However, the applicant's written statement indicates that there are slopes greater than 20% within 30 feet of the dwelling. The applicant's site plan (**Exhibit C**) shows the standard 30-foot primary fuel break on the south and west sides of the proposed 120-foot by 150-foot homesite and the standard 30-foot primary fuel break with an additional 75-foot safety zone down slope on the north and east sides of the proposed homesite. The applicant's site plan also shows a secondary 100-foot fuel break on lands controlled by the owner.

Exhibit S and X of the applicant's submittal includes LiDAR and contour data of the site. The applicant's data appears to be generally consistent with County GIS contour and LiDAR data. The data suggests that downslopes to the northeast of the homesite between 20-25% exist. Therefore, it appears the applicant's site plan depicting fuel breaks around the proposed homesite is consistent with the available data.

Compliance with fuel break standards is required as a condition of approval and will be field verified as part of the Verification of Conditions application review. The required fuel breaks must be maintained in perpetuity. Any change to the homesite location may require a Type II Modification of Approval at the discretion of the Planning Director.

(d) The dwelling must have a fire retardant roof.

Finding 25: As condition of approval, the applicant must provide evidence that the building plans conform to this provision. Staff will field verify compliance with said provision as part of required building inspections.

(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.

Finding 26: See **Finding 7**. The proposal meets this requirement, and a condition of approval has been established to ensure compliance.

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

Finding 27: As a condition of approval, the applicant must provide evidence that the building plans conform to this provision. Staff will field verify compliance with said provision as part of required building inspections.

D. Conformance with Other Development Standards:

Lane Code Chapter 16.005(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of and application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

Finding 28: According to the Oregon Department of Geology and Mineral Industries (DOGAMI) landslide index, the subject property contains areas mapped as having "moderate" landslide susceptibility. Consistent with LC 16.005(2), excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The applicant is advised to contact the Lane County Building Program to determine building permit requirements and a geotechnical report or other information may be required for the proposed development due to landslide susceptibility rating(s) applicable to the property.

Lane Code 16.095: Compliance with LC Chapter 15, Roads

Finding 29: As of the date of this staff report, Lane County Transportation Planning (LCTP) has not provided comments on the proposal for this application. However, on April 2, 2020, LCTP provided comments on the proposals for previously denied template dwelling applications, File No. 509-PA20-05064 (Tax lot 2900) and 509-PA20-05066 (Tax lot 2800), which proposed to utilize the same existing private access road that runs through the subject property. In summary LCTP's April 2, 2020 referral comments, provided as **Exhibit F,** confirm Airport Road is a Rural Local Road under the jurisdiction and maintenance of Lane County and that Facility permit approval will be required to ensure the existing approach is adequate to support a shared approach to multiple properties and dwellings in accordance with applicable Chapter 15 requirements. LCTP staff further confirm that the private access easements serving the proposed dwelling must meet the minimum private access easement requirements of LC 15.055 (4), (5), and (7). Staff find that establishment and improvement of the shared access and utility easement compliance with LC 15.055 appears feasible and has been made a condition of approval along with field verification by staff as part of the Verifications of Conditions process.

Lane Code 16.246, Airport Safety Combining Zone (/AS):

(3) Use Limitations. In a/AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

Finding 30: According to Lane County GIS, the subject property is located within the Primary Surface, Transitional Surface, and Approach Surface of the Oakridge Airport. Per LC 16.246(5)(d), the Primary Surface is a plane longitudinally centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway surface and having a width of 250 feet. Per LC 16.246(5)(a), the Approach Surface is a surface longitudinally centered on the runway centerline, extending outward and upward from the ends of the Primary Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge. Per LC 16.246(4), no structure or object is allowed to be erected, placed, grown, or maintained above the surface of the ground of the Approach Surface. Compliance with LC 16.246(4) is a condition of approval.

The proposed homesite area is located within the Transitional Surface of the Oakridge Airport. Per LC 16.246(5)(e), the Transitional Surface extends upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the Primary Surface and Approach Surface to the point of intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway. Per LC 16.246(2)(d), the elevation of the Oakridge runway is 1419 feet above sea level. Based on Lane County GIS and the applicant's site plan, the center of the northern boundary of the proposed homesite is located approximately 60 feet south of the Approach Surface. Accordingly, the height of the proposed dwelling is not to penetrate 1427 above sea level, which is approximately equivalent to 8 feet ($60 \div 7 \approx 8$) above the elevation of the runway.

As of the date of this staff report, the Oregon Department of Aviation (ODA) has not submitted referral comments on the proposal for this application. However, Exhibit DD of the applicant's submittal includes referral comments from ODA in 2020 for previously withdrawn template dwelling application File No. 509-PA20-05065 (Tax lot 843) and previously denied template dwelling applications File No. 509-PA20-05064 (Tax lot 2900) and

509-PA20-05066 (Tax lot 2800) (See **Exhibit E**). The comments indicate that pursuant to OAR 738-070-0060, the applicant must submit FAA Form 7460-1 documents to the ODA and receive a Letters of Determination for the proposed construction prior to issuance of any building permits for the template dwelling and provide information about additional ODA and Federal Aviation Administration (FAA) requirements. As conditioned to ensure compliance with the above standards, the applicant must submit a copy of the FAA Form and Letter of Determination at the time of building permit. The applicant is advised that the ODA will also require post construction documentation.

Compliance with Oregon House Bill 2225 (2019); ORS 215.750:

Finding 31: Approval of this request is subject to compliance with the provisions House Bill (HB) 2225, as implemented in OAR 660-06-027(6)(a). Consistent with these provisions, the subject property has not been reconfigured/property line adjusted since January 1, 2019 in order to meet the template test or to qualify for dwelling. The remaining requirements of HB 2225 have been addressed in this report, as applicable.

Applicability of the *Nimpkish* Decision (LUBA 2020-030)

Finding 32: The applicant argues that RCP Goal 5 Flora & Fauna Policy 11 density standards cannot be applied to the subject application. These issues are further addressed in the Hearing Memo for this application.

V. CONCLUSION/RECOMMENDATION

Apart from Policy 11 density standards, the application for a forest template dwelling appears to meet the criteria of Lane Code 16.211(2)-2.4, House Bill 2225 (2019), and other applicable criteria. Should the Hearings Official approve the application, staff recommend making such approval contingent upon the recommended conditions of approval in **Exhibit C**.

VI. EXHIBITS

Exhibit A: Vicinity Map

Exhibit B: Site Plan

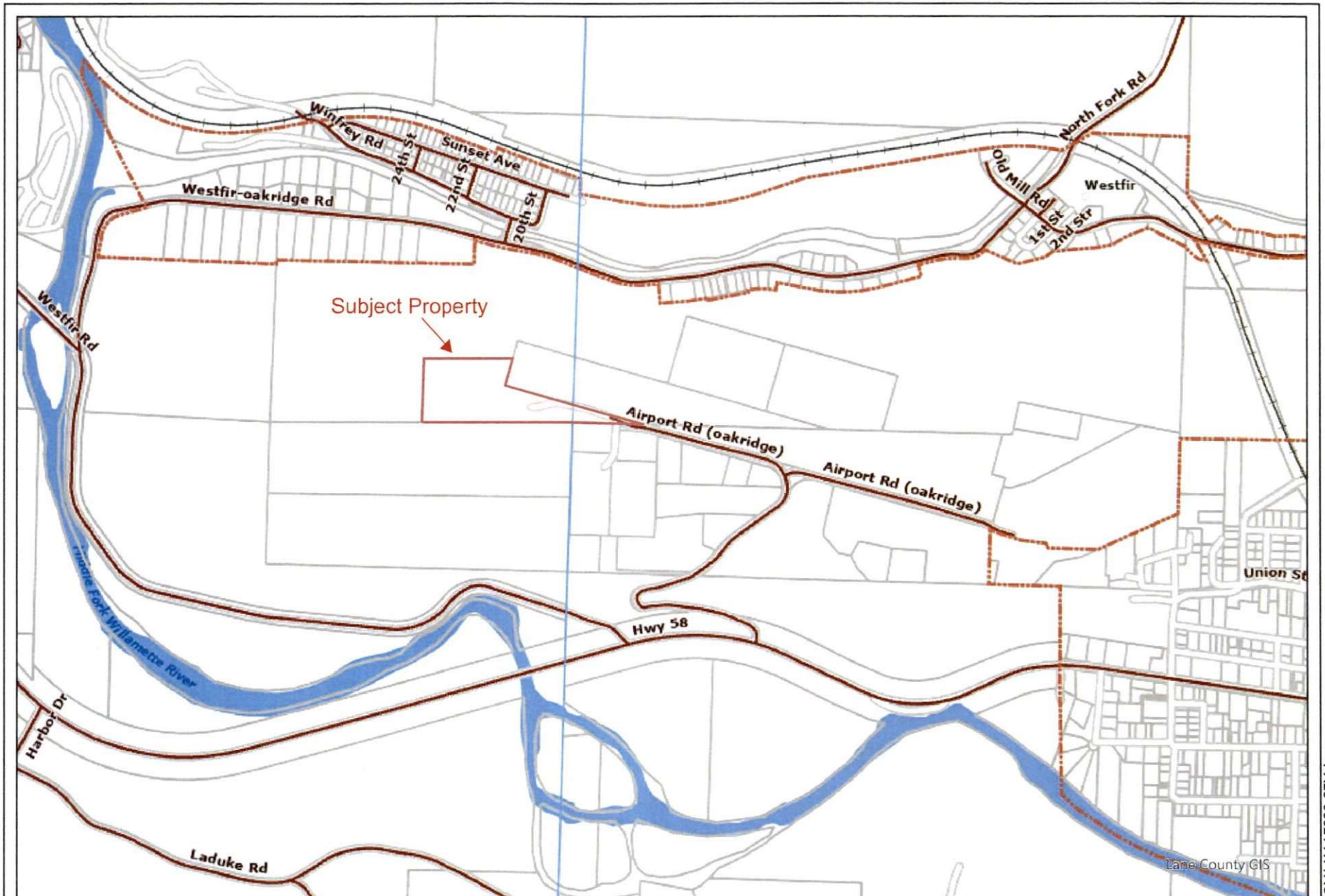
Exhibit C: Recommended Conditions of Approval (if approved)

Exhibit D: Clinometer readings from Brinks Land Improvement, dated 11/16/2023

Exhibit E: DOA comments and correspondence, dated 3/26/2020 & 11/9/2020

Exhibit F: LCTP Referral Comments for 509-PA20-05064 & 509-PA20-05066, dated 7/10/2023

Exhibit G: Farm Use and Forest Management Easement



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 500 1,000 2,000 Feet

Vicinity Map

Exhibit A

509-PA23-05321

Lane County, Oregon

HO STAFF REPORT 9-7-23
PA23-05321 ATTACHMENT 1.16

Site Plan

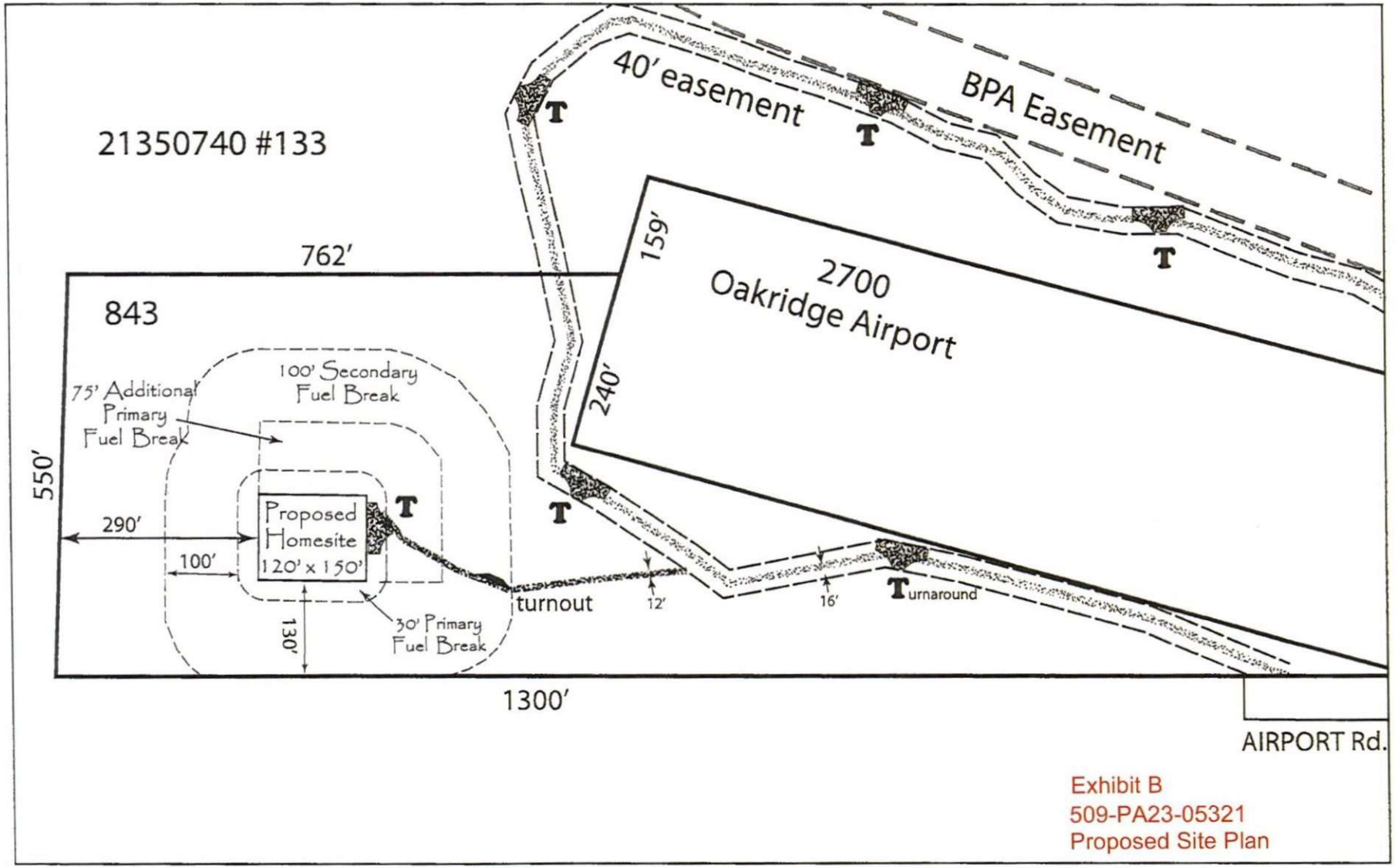


Exhibit B
509-PA23-05321
Proposed Site Plan

scale 1" = 200'
0 50 100 200 Feet
NTS

N

Subject Property Map 21-25-12 Taxlot 843

HO STAFF REPORT 9-7-23
~~PA23-05321 ATTACHMENT 1-17~~

EXHIBIT C

RECOMMENDED CONDITIONS OF APPROVAL IF APPROVED

509-PA23-05321

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of **509-PA23-05321** is valid for a **four-year** period from the final date of approval, except as extended otherwise in accordance with Lane Code Chapter 14 requirements in effect at the time such a request is made. Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision.

The following conditions must be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, will invalidate this approval, and the development rights conditionally allowed by this planning action will cease:

2. The dwelling must be located within the proposed 120-foot by 150-foot dwelling site area depicted on the site plan, and located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

3. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* (included as **Exhibit G** of this report) with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office).

4. Submit a stocking survey report prepared by a qualified forester to the Lane County Assessor per Lane Code 16.211(5)(e)(iii). The applicant must provide a copy of the stocking survey to the Land Management Division with evidence of receipt from the Assessor in accordance with Lane Code 16.211(5)(e)(iii).

5. Construct the driveway to the minimum standards of Lane Code 16.211(6) and the applicable standards of Lane Code Chapter 15.706. For roads greater than 8% slope, road and drainage plans shall be prepared by an engineer licensed by the State of Oregon or certified for compliance with the rural fire protection district providing fire protection to the subject property.

6. Submit written verification from Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, private roads, private access easements, and driveways comply with and meet the construction standards Lane Code 16.211(6) and Fire District standards.

7. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(6)(c). **These fuel breaks must be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling must be as depicted on the Applicant's site plan and as described in **Finding 24**. The minimum secondary fuel breaks surrounding the primary safety zone must be at least 100 feet or on lands controlled by the owner, whichever is applicable.

8. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter

629). This can be satisfied by providing a copy of the Well Log for the property that complies with the requirements outlined in Lane Manual Chapter 9.005.160, specifically a five-hour flow test.

9. Upon completion of **conditions #2 through #9**, the applicant must complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. **Attach to this form a copy of:**

- ☐ Signed, notarized, and recorded *Farm Use and Forest Management Agreement* and description of property, along with all required exhibits;
- ☐ Signed, notarized, and recorded access easement to the subject property;
- ☐ Copy of the forest stocking survey with evidence of receipt from the Assessor;
- ☐ Well log or well constructor's report and pump test that complies with the Requirements of Lane Manual 9.005.160;
- ☐ Verification letter from Hazeldell Rural Fire District, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route; and
- ☐ Approved Site Development Plan, or a plot plan that conforms with the approved plans, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These final plans must include the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(6)(c) and this approval.

10. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in **conditions #5 - 7** have been met. Failure to meet minimum siting and/or fuel break and/or driveway and/or grade standards as in LC 16.211(5), (6)(c) and (d) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the determination of the Planning Director.

11. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

12. In the building or placement permit application submittal, the applicant must submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the approved site development plan, unless modification is authorized by the Planning Director. Any modification to the approved site plan may require an application for Modification of Conditions with the required processing fee, at the determination of the Planning Director.

The following condition must be met prior to approval for legal occupancy of the proposed dwelling.

13. The proposed dwelling must meet the following requirements, to be verified by the Lane County Building Official:

a. All buildings or structures with chimneys must have a spark arrester on all chimneys.

b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

(Please contact a Lane County plans examiner at 541-682-4651 with questions about building code requirements).

The following conditions are provided for informational purposes and must be fulfilled as they apply to the proposed development:

14. The applicant is responsible for complying with any applicable local, state, and federal laws, including Oregon Department of State Lands (DSL) and/or Army Corps of Engineers (ACOE) wetland regulations and Oregon Department of Aviation (ODA) and Federal Aviation Administration (FAA) requirements.

15. Future development must comply with the limitations and standards of the Airport Safety Combining Zone, LC 16.246

16. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control, consistent with LC 16.005(2). A geotechnical report may be required due to landslide susceptibility. Please consult with Lane County Building staff at 541-682-4651.

17. Any future naming of the proposed shared access easement road is subject to the provisions of LC 15.305 through 15.335

18. The applicant is responsible for complying with any applicable local, state, and federal laws.

19. Storm water runoff from the subject property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate roadway storm water runoff.

20. The owner must plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(d). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County).

21. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

> "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.

ADAMS Shawna L

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Monday, November 23, 2020 8:41 AM
To: ADAMS Shawna L; BAUDER Jared W
Cc: tlanfear@pacinfo.com
Subject: King: Oakridge Access Road Grade Statement
Attachments: Brink Color Logo copy.pdf; Untitled attachment 00162.htm

[EXTERNAL ⚠]

See below from Mark Brink. He has measured grade on the existing road with a clinometer.
Please put this email into the record of PA 20-05066, PA 20-05064 and PA 20-05065.
TL 843 should go forward as supplemented, as the revision was slight;
TL 2800 and 2900 can go forward as originally filed (dwelling site and access) per conversations with Shawna.
No portion of the accessway fall within the runway.

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: Mark W. Brink [mailto:mark@brinkslandimprovement.com]
Sent: Monday, November 16, 2020 5:05 PM
To: Thom Lanfear <tlanfear@pacinfo.com>
Cc: Mark W. Brink <mark@brinkslandimprovement.com>
Subject: Oakridge Access Road Grade Statement

Thom,

To whom it may concern , We did an evaluation of the road to access lots 2800 and 2900 next to the Oakridge Airport that need to be used for access, By using a clinometer to measure the percentage of slope at any point in the road. We found no area that exceeded 10% and most areas were 3% - 6% there are no inclines that would exceed 15% on the road areas in question.

Any Questions please let me know.

Thanks,
Mark W. Brink

Exhibit D

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Monday, November 9, 2020 2:51 PM
To: BAUDER Jared W
Cc: ADAMS Shawna L; PECK Heather
Subject: RE: ODA Comment: 509-PA20-05065 & 509-PA20-05066

[EXTERNAL ⚠]

Hi Jared,

Great to hear from you and thanks for reaching out. I'm doing well, thank you. I hope you are as well.

Yes, the ODA requests submittal of the FAA Form 7460-1 still be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport.

The applicant must submit FAA Form 7460-1 documents to the ODA and receive Letters of Determination for the proposed construction as required by OAR 738-070-0060, prior to issuance of any building permits for the Template Dwellings.

The applicant should note that a separate FAA Form 7460-1 must be submitted for each Template Dwelling.

Notification to the FAA is also required for each Template Dwelling and is completed through the FAA's online portal:

https://oeaaa.faa.gov/oeaaa/external/portal.jsp

The ODA Letters of Determination will provide recommendations for the proposed construction in regards to aviation and public safety.

I am happy to reach out to the applicant directly if further clarification is needed.

Thanks again and please let me know if you have further questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: BAUDER Jared W <jared.bauder@lanecountyor.gov>
Sent: Monday, November 9, 2020 11:54 AM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Cc: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: FW: ODA Comment: 509-PA20-05065 & 509-PA20-05066

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Hi Seth –

Exhibit E

I hope all is well with you. I just want to confirm that the ODA would still like the attached form to be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport?

If so, is their submittal of the form to you all sufficient for the County to issue building permits, or do they need to see the processing of the form through with ODA first?

Thank you much,

Jared Bauder | Planner, CFM
Land Management Division | Lane County Public Works
Customer Service Center
3050 N Delta Hwy. | Eugene, OR 97408
Office: 541.682.6949 | **Fax**: 541.682.3947
Website : www.lanecounty.org/planning

From: THOMPSON Seth [mailto:Seth.THOMPSON@aviation.state.or.us]
Sent: Thursday, March 26, 2020 4:03 PM
To: BAUDER Jared W
Subject: ODA Comment: 509-PA20-05065

[EXTERNAL ⚠]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation (ODA) to comment on Department File: 509-PA20-05065.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Thursday, March 26, 2020 3:50 PM
To: ADAMS Shawna L
Subject: ODA Comment: 509-PA20-05064
Attachments: FAA_Form_7460-1.pdf

[EXTERNAL]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation(ODA) to comment on Department File: 509-PA20-05064.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§ 77.7 Form and time of notice.

(a) If you are required to file notice under §77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the Internet.

(b) You must submit this form at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure that exceeds 2,000 ft. in height above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 45-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) or (b) of this section.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177
Fax: (817) 222-5920

Website: https://oeaaa.faa.gov

INSTRUCTIONS FOR COMPLETING FAA FORM 7460-1

PLEASE TYPE or PRINT

ITEM #1. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #2. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #3. New Construction would be a structure that has not yet been built.

Alteration is a change to an existing structure such as the addition of a side mounted antenna, a change to the marking and lighting, a change to power and/or frequency, or a change to the height. The nature of the alteration shall be included in ITEM #21 "Complete Description of Proposal".

Existing would be a correction to the latitude and/or longitude, a correction to the height, or if filing on an existing structure which has never been studied by the FAA. The reason for the notice shall be included in ITEM #21 "Complete Description of Proposal".

ITEM #4. If Permanent, so indicate. If Temporary, such as a crane or drilling derrick, enters the estimated length of time the temporary structure will be up.

ITEM #5. Enter the date that construction is expected to start and the date that construction should be completed.

ITEM #6. Please indicate the type of structure. DO NOT LEAVE BLANK.

ITEM #7. In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference" DO NOT LEAVE BLANK. NOTE: High Intensity lighting shall be used only for structures over 500' AGL. In the absence of high intensity lighting for structures over 500' AGL, marking is also required.

ITEM #8. If this is an existing tower that has been registered with the FCC, enter the FCC Antenna Structure Registration number here.

ITEM #9 and #10. Latitude and longitude must be geographic coordinates, accurate to within the nearest second or to the nearest hundredth of a second if known. Latitude and longitude derived solely from a hand-held G P S instrument is NOT acceptable. A hand-held GPS is only accurate to within 100 meters (328 feet) 95 percent of the time. This data, when plotted, should match the site depiction submitted under ITEM #20.

ITEM #11. NAD 83 is preferred; however, latitude and longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datum may be used. It is important to know which datum is used. DO NOT LEAVE BLANK.
ITEM #12. Enter the name of the nearest city and state to the site. If the structure is or will be in a city, enter the name of that city and state.

ITEM #13. Enter the full name of the nearest public-use (not private-use) airport or heliport or military airport or heliport to the site.

ITEM #14. Enter the distance from the airport or heliport listed in #13 to the structure.

ITEM #15. Enter the direction from the airport or heliport listed in #13 to the structure.

ITEM #16. Enter the site elevation above mean sea level and expressed in whole feet rounded to the nearest foot (e.g. 17'3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under ITEM #20.
ITEM #17. Enter the total structure height above ground level in whole feet rounded to the next highest foot (e.g. 17'3" rounds to 18'). The total structure height shall include anything mounted on top of the structure, such as antennas, obstruction lights, lightning rods, etc.

ITEM #18. Enter the overall height above mean sea level and expressed in whole feet. This will be the total of ITEM #16 + ITEM #17.

ITEM #19. If an FAA aeronautical study was previously conducted, enter the previous study number.

ITEM #20. Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" x 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-888-275-8747 or via internet at "http://store.usgs.gov". If available, attach a copy of a documented site survey with the surveyor's certification stating the amount of vertical and horizontal accuracy in feet.

ITEM #21.

- For transmitting stations, include maximum effective radiated power (ERP) and all frequencies.
- For antennas, include the type of antenna and center of radiation (Attach the antenna pattern, if available).
- For microwave, include azimuth relative to true north.
- For overhead wires or transmission lines, include size and configuration of wires and their supporting structures (Attach depiction).
- For each pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For buildings, include site orientation, coordinates of each corner, dimensions, and construction materials.
- For alterations, explain the alteration thoroughly.
- For existing structures, thoroughly explain the reason for notifying the FAA (e.g. corrections, no record or previous study, etc.).

Filing this information with the FAA does not relieve the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation's and zoning authorities.

Paperwork Reduction Work Act Statement: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. The OMB control number for this information collection is 2120-0001. Public reporting for this collection of information is estimated to be approximately 19 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory for anyone proposing construction or alteration that meets the criteria contained in 14 CFR 77. This information is collected to evaluate the effect of proposed construction or alteration on air navigation and is not confidential. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

Federal Regulations (14 CFR), part 77 authorizes FAA to collect this information. PURPOSE(S): FAA will use the information provided to administer the Aeronautical Study Process. ROUTINE USE(S): In accordance with DOT's system of records notice, DOT/ALL 16 Mailing Management System and DOT/FAA 826 Petitions for Exemption, Other than Medical Exemption-Public Dockets, the information provided may be disclosed to officials within the Federal government and [illegible]

Please Type or Print on This Form

Form Approved OMB No.2120-0001
Expiration Date: 02/29/2020

U.S. Department of Transportation
Federal Aviation Administration

Failure To Provide All Requested Information May Delay Processing of Your Notice

Notice of Proposed Construction or Alteration

FOR FAA USE ONLY
Aeronautical Study Number

1. Sponsor *(person, company, etc. proposing this action):*
Attn. of
Name: _____
Address: _____
_____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____

2. Sponsor's Representative *(if other than #1):*
Attn. of
Name: _____
Address: _____
_____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____

3. Notice of: ☐ New Construction ☐ Alteration ☐ Existing

4. Duration: ☐ Permanent ☐ Temporary (___ months, ____days)

5. Work Schedule: Beginning _____ End _____

6. Type: ☐ Antenna Tower ☐ Crane ☐ Building ☐ Power Line
☐ Landfill ☐ Water Tank ☐ Other _____

7. Marking/Painting and/or Lighting Preferred:
☐ Red Lights and Paint ☐ Dual - Red and Medium Intensity
☐ White-Medium Intensity ☐ Dual - Red and high Intensity
☐ White -High Intensity ☐ Other

8. FCC Antenna Structure Registration Number *(if applicable)*:
_____

9. Latitude: ____ ° ____ ____ . ____ "

10. Longitude: ____ ° ____ ____ . ____ "

11. Datum: ☐ NAD 83 ☐ NAD 27 ☐ Other

12. Nearest: City: _____ State _____

13. Nearest *Public-use* *(not private-use)* or Military Airport or Heliport:
_____

14. Distance from #13. to Structure: _____

15. Direction from #13. to Structure: _____

16. Site Elevation *(AMSL)*: _____ ft.

17. Total Structure Height *(AGL)*: _____ ft.

18. Overall Height (#16 + #17) *(AMSL)*: _____ ft.

19. Previous FAA Aeronautical Study Number *(if applicable)*:
_____-OE

20. Description of Location: *(Attach a USGS 7.5 minute Quadrangle Map with the precise site marked and any certified survey)*

21. Complete Description of Proposal:

Frequency/Power (kW)	

Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44718. Persons who knowingly and willingly violate the notice requirements of part 77 are subject to a civil penalty of $1,000 per day until the notice is received, pursuant to 49 U.S.C., Section 46301(a)

I hereby certify that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to mark and/or light the structure in accordance with established marking & lighting standards as necessary.

Date	Typed or Printed Name and Title of Person Filing Notice	Signature

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING
3040 N DELTA HIGHWAY | EUGENE, OR 97408

April 2, 2020

LMD FILE:	509-PA20-05064
APPLICANT:	Edward King
OWNER:	E J K Investments LLC
AGENT:	Kim O'Dea – Law Office of Bill Kloos
MAP & TAX LOT(S):	21-35-07-30-02900
ZONING:	Impacted Forest Lands Zone (/F-2)
PROPOSAL:	**A REQUEST FOR DIRECTOR APPROVAL OF A DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2), IN ACCORDANCE WITH THE 'TEMPLATE TEST' PROVISIONS OF LANE CODE 16.211(5) AND (8).**

Thank you for the opportunity to review and comment on this proposal. Please accept the following comments from Lane County Transportation Planning:

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

CONDITIONS

- Any private access easements serving the subject property must meet the requirements of Lane Code 15.055(2), (4), (5), and (7).

- Facility Permit approval will be required to ensure the existing access is adequate to support a shared approach to multiple properties/dwellings as proposed in the written statement. For more information about Facility Permits, please call 541.682.6902 or visit: https://lanecounty.org/government/county_departments/public_works/right-of-way_permits/facility_permits/

- As an informational item, stormwater runoff from the subject property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

FINDINGS

Based on the site plan, the subject property "property" is proposed to take access via an existing driveway off Airport Road. The existing access will extend to the proposed dwelling as a private access easement. Airport Road is owned and maintained by Lane County and is functionally classified as a Rural Local road. For the purpose of establishing development setbacks, the minimum right-of-way (ROW) width of Rural Local roads is 50 feet (Lane Code [LC] 15.070(1)(c)(gg)). Proposed development as conceptually shown meets this requirement.

Lane Code 15.055: Minimum Requirements for Private Access Easements

(2) When a Private Access Easement is used to provide access to a vacant lot or parcel where development is proposed, prior to land use and zoning authorization for the proposed development the following shall apply:

Exhibit F

(c) **The requirements specified above in LC 15.055(2)(a) through (b) shall apply only to lands outside of a County-designated Forest zone. Lands within a Forest zone shall be governed by the siting and development standards of the applicable zoning district.**

Pursuant to Lane Code 15.055(2)(c), transportation Planning defers to Land Management Division to ensure the private access easement meets the applicable siting and development standards of the Impacted Forest Lands Zone (F-2).

(4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

(5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of the grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

Compliance with LC 15.055(4), (5), and (7) must be demonstrated.

Lane Code 15.205: Facility Permits

Facility Permits are required for the placement of facilities and development within Lane County right-of-way. Facilities and development include, but are not limited to: road improvements; sidewalks; new or reconstructed driveway or road approach intersections; utility placements; excavation; clearing; grading; culvert placement or replacement; stormwater facilities; or any other facility, thing, or appurtenance [Lane Code 15.205(1)].

A review of Lane County Facility Permit records indicates that there is no record of a Facility Permit for the existing access off Airport Road.

Lane Manual 15.515: Drainage

Stormwater runoff from new private development must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches (Lane Manual 15.515). Accordingly, levels of stormwater directed off-site post-construction of the improvements must match pre-development flows. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by the roadways themselves.

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING
3040 N DELTA HIGHWAY | EUGENE, OR 97408

July 21, 2020

LMD FILE:	509-PA20-05066
APPLICANT:	Edward King
OWNER:	King Edward Jr
AGENT:	Kim O'Dea – Law Office of Bill Kloos
MAP & TAX LOT(S):	21-35-07-30-02800
ZONING:	Impacted Forest Lands Zone (/F-2)
COMBINING ZONE:	Airport Safety (/AS)
PROPOSAL:	**A REQUEST FOR DIRECTOR APPROVAL OF A DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2), IN ACCORDANCE WITH THE 'TEMPLATE TEST' PROVISIONS OF LANE CODE 16.211(5) AND (8).**

Thank you for the opportunity to review and comment on this proposal. Please accept the following comments from Lane County Transportation Planning:

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

CONDITIONS

- Any private access easements serving the subject property must meet the requirements of Lane Code 15.055(2), (4), (5), and (7).

- Facility Permit approval will be required to ensure the existing access is adequate to support a shared approach to multiple properties/dwellings as propose. For more information about Facility Permits, please call 541.682.6902 or visit: https://lanecounty.org/government/county_departments/public_works/right-of-way_permits/facility_permits/

- As an informational item, stormwater runoff from the subject property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

FINDINGS

Based on the site plan, the subject property "property" is proposed to take access via an existing driveway off Airport Road. The existing access will extend to the proposed dwelling as a private access easement. Airport Road is owned and maintained by Lane County and is functionally classified as a Rural Local road. For the purpose of establishing development setbacks, the minimum right-of-way (ROW) width of Rural Local roads is 50 feet (Lane Code [LC] 15.070(1)(c)(gg)). Proposed development as conceptually shown meets this requirement.

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After Recording Return to:

_____
_____
_____
_____

Grantor's Full Name & Address:

_____
_____
_____
_____

FARM USE AND FOREST MANAGEMENT EASEMENT

Grantor(s)_____
print name(s)

is/are the owner(s) of real property as described on Exhibit "A", attached hereto. In accordance with the conditions set forth in the decision of the Lane County Land Management Division dated _____ approving Planning Action PA # _____, for Assessor's Map and Tax Lot _____ **Grantor(s)** hereby grant(s) to the owner(s), **(Grantees),** of all property zoned for farm or forest use, a perpetual non-exclusive farm use and forest practices management easement as follows:

1. The Grantor(s), the heirs, successors, and assignees acknowledge by the granting of this easement that the above described property is situated in a farm or forest zone in Lane County, Oregon, and may be subjected to conditions resulting from farm use or commercial forests operations on lands zoned for farm or forest use. Such operations may include farm use as defined in ORS 215.203 and management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and other accepted and customary forest management activities conducted in accordance with Federal and State Laws. Said farm use and forest management activities ordinarily and necessarily produce noise, dust, odors, smoke and other conditions, which may conflict with Grantor's use of Grantor's property for residential purposes, and Grantor(s) hereby give(s) an easement to the property owners of lands zoned for farm or forest use for the resultant impact on Grantors property caused by the farm use or forest management activities on such lands.

2. Grantor(s) shall comply with all restrictions and conditions for maintaining residences in farm and forest zones that may be required by State, Federal, and local land use laws and regulations. Grantor(s) will comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property zoned for farm or forest use, and shall bind the heirs, successors, and assignees of Grantor(s), and shall endure for the benefit of the owners of lands zoned for farm or forest use, their heirs, successors, and assignees. The grantees, their heirs, successors, and assignees are hereby expressly granted the right of third party enforcement of this easement.

_____ _____
Grantor Signature Grantor Signature

IN WITNESS WHEREOF, the Grantor(s) has/have executed this easement on _____
(date)

State of OREGON
County of _____

Signed or attested before me on _____, 20____

by_____
(Name of Grantor)

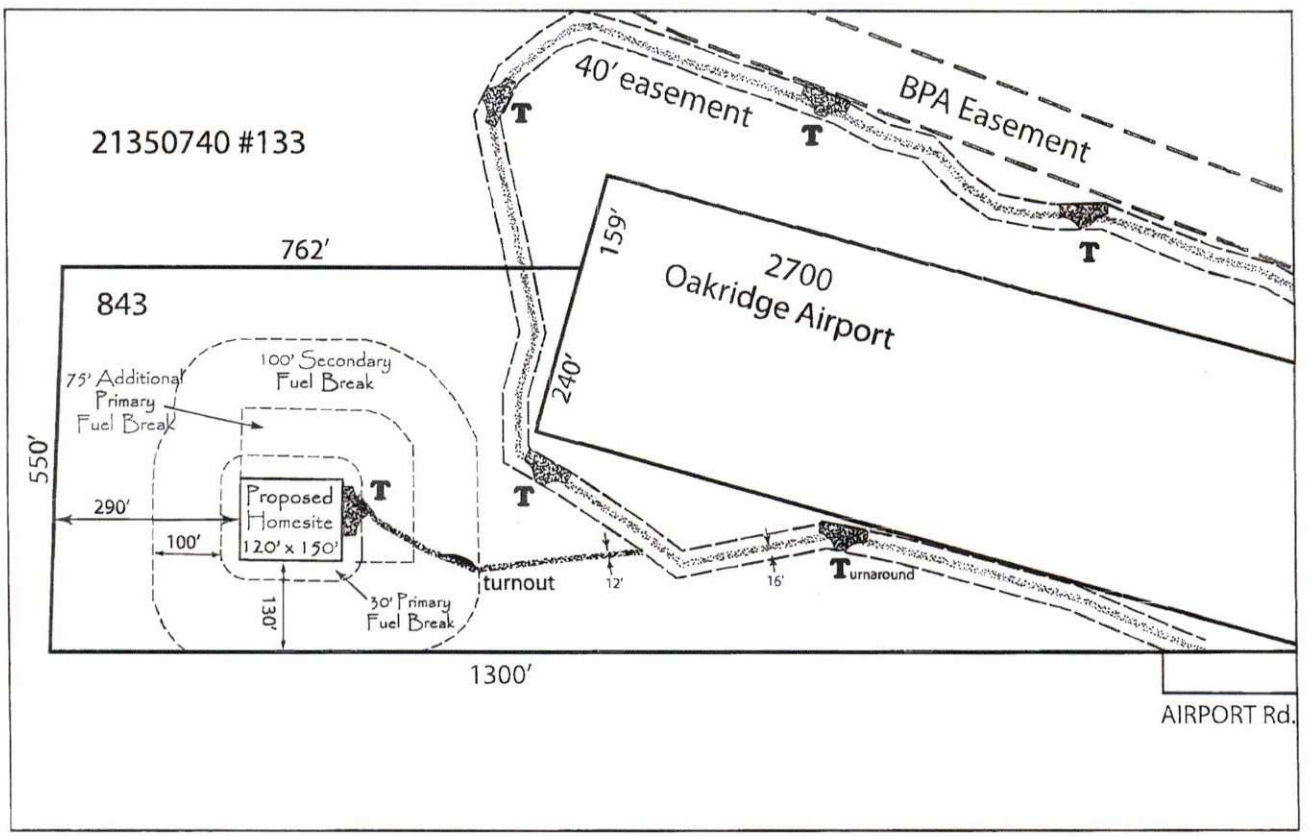
_____
Signature of Notary

Recording Label Here

My commission expires: _____

Exhibit G

Site Plan



Subject Property Map 21-25-12 Taxlot 843

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.1260
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

May 8, 2023

Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: Forest Template Dwelling Application
E.J. King Investments
Map 21-25-12, TL 00843

Dear Lane County:

This is an application for a forest template dwelling. This same application was filed several years ago. However, prior to a decision by the Planning Director, the Land Use Board of Appeals (LUBA) interpreted RCP Goal 5 Policy 11. Based on that LUBA decision, the application was withdrawn, along with many others.

LUBA was forced to interpret Policy 11 on its own in the absence of an interpretation of Policy 11 by the County Board. LUBA interpreted Policy 11 to mean that the ODFW recommended minimum acreages for Big Game Habitat must be applied directly to forest template dwelling applications. See *King v. Lane County*, __ Or LUBA __ (LUBA Nos. 2021-047/052, Oct. 15, 2021), *aff'd without opinion* 317 Or App 136, 501 P3d 1058 (2022). The interpretation by LUBA was required because Policy 11 is ambiguous – that is, it is subject to multiple, plausible interpretations. LUBA explained: "[T]he text of Policy 11 is ambiguous and requires interpretation to determine how to apply the ODFW density limitations* * * *" Slip op 22.

Recent decisions by LUBA and the Court of Appeals have determined that, based on a statute relating to housing, ambiguous standards in county plans and codes may not be applied at all in reviewing applications related to housing, such as this one. The relevant statute is ORS 197.307(4) which provides: "Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing."

There are several recent cases involving this statute. The decision that is most directly on point is *Community Participation Organization 4M v. Washington County*, __ Or LUBA __ (No.

> proposed development of housing be on buildable land" and that it be for "needed housing." By its terms, the clear and objective requirement applies to "the development of housing, including needed housing." ORS 197.307(4). The applicability of ORS 197.307(4) is not confined to areas within a UGB by the definition of needed housing in ORS 197.303(1)."

A more comprehensive treatment of how this statute now applies, including to this application, is found in *Warren v. Washington County*, __ Or LUBA __ (No. 2018-089, Nov, 14, 2018), *aff'd* 296 Or App 595, 439 P3d 581 (March 20, 2019), which involved county approval of a six-lot subdivision on rural land with a Goal 5 resource protection. Both LUBA and the Court of Appeals discussed the 2017 amendments to the statute in detail and concluded that the statute now applies to any housing proposal, whether or not the land is inventoried as "buildable land." As the Court of Appeals concluded, *id.* at 598:

> "Thus, ORS 197.307(4) no longer refers to "buildable land," and, by its terms, provides that local government can regulate the development of housing only through clear and objective standards, conditions, and procedures."

This is a proposal to develop housing on rural resource land. Based on ORS 197.307(4), the County is prohibited from applying any standard that is not clear and objective. That includes RCP Plan Goal 5 Policy 11, which LUBA has correctly determined is ambiguous. As a final note, opponents of this application may say that the Policy is no longer ambiguous because LUBA stated an interpretation. That view is fatally facile. LUBA interpreted the policy because it is ambiguous; picking one among multiple plausible interpretations does not make the policy clear and objective. It remains ambiguous on its face. It is the ambiguity that drives the need for an interpretation; the interpretation does not negate the ambiguous character of the policy.

As a final note, this application should be treated by the County the same way that the Hearings Official treated an application for a Relative Farm Help Dwelling on EFU land. See *Helsel*, PA 21-05928 (March 30, 2023). There the Hearing Official approved the dwelling use over the objections of LandWatch for the reason that none of the standards pressed by LandWatch for a denial is clear and objective and, thus, were not a basis for denial.

> "LandWatch contends that the application fails to satisfy the following approval criteria: that the farm operation qualifies as a 'commercial' farm operation; whether the operation is 'existing.' As opposed to planned; and that help on the farm from the relative is 'necessary' or 'needed.' As asserted by the applicants, all of the approval criteria that form the basis of these arguments are not clear and objective. Accordingly, pursuant to state law and the needed housing statute, they

cannot be applied to the subject application." *Helsel* at 6.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Client

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED MAY 08 2023

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only. FILE # 509-PA23-05321 FEE: 3,841.76 LES.

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: See Owner Authorization

Agent (print name): Bill Kloos, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-1260 Email: billkloos@landuseoregon.com

Agent Signature: Bill Kloos

Land Owner (print name): E.J.K. Investments

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: See Owner Authorization

LOCATION

21-25-12 Taxlot 843
Assessor's Map and Taxlot Number

Airport Road (no address assigned)
Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

Version 2/2019

REQUIRED SUBMITTALS (Also reference the Application Standards handout)

Lane Code 14.020 (3)(b) Electronic Materials.

(i) **When application or appeal materials submitted in hard copy format are over five pages in length, an applicant or appellant must provide an identical electronic version of the submitted materials in addition to a hard copy. Any other party submitting written materials into the record that are over five pages is also encouraged to submit an identical electronic copy. Any electronic materials must be in a format acceptable to the Director. This provision should not be interpreted to prohibit electronic submittals of materials less than five pages in length. The County will scan submitted materials upon request for fee. The County cannot be held responsible for electronic submittals that are not received by the Director or not confirmed by the Director to have been received.**

(ii) **When electronic materials over five pages in length are submitted by any party for inclusion in an application record, an identical hard copy of the materials must also be submitted unless this requirement is waived by the Director.**

Lane Code 14.040 Application Requirements

(1) **Minimum Submittal Requirements. Applications for a Type I through Type IV procedure must be submitted on a form provided by the Director, address all applicable standards and criteria, and include the following materials and information:**

- (a) **Applications must include at least one hard copy of all application materials, no larger than 11 inch x 17 inch in size;**
- (b) **All applicable information requested on the application form;**
- (c) **Required filing fee, except that the required filing fee may not be required when Lane County initiates an application;**
- (d) **Signature of each applicant;**
- (e) **Signature of a property owner or property owner's authorized representative;**
- (f) **Proof of property ownership by providing a certified or recorded copy of a deed, or land sale contract, or Lane County Tax Assessor's records;**
- (g) **Assessor's map and tax lot number of the subject property;**
- (h) **A site plan drawn to a standard engineer's scale, and conforming to the County's site plan submittal standards;**

  A site plan must be included. Refer to the handout entitled "How to prepare your plot plan." Identify nearby driveways. Driveways spacing standards are contained in Lane Code 15.138.

- (i) **Information demonstrating compliance with any applicable prior decisions and conditions of approval for the subject property;**
- (j) **A written narrative clearly indicating what action is requested and addressing all applicable standards and criteria;**
- (k) **Supporting information required to evaluate the application and address the applicable standards and criteria;**
- (l) **A written statement indicating whether a railroad-highway crossing provides or will provide the only access to land that is the subject of an application; and**

  Does a railroad-highway crossing provide the only access to the subject property?

  Yes ___ No X

(m) Additional information needed to evaluate applicable standards and criteria.

(2) Fees Required. In addition to any other applicable approval criteria, an approvable Type II or III application must be accompanied by the appropriate filing fee unless the Director authorizes a waiver or reduction to filing fees pursuant to Lane Manual Chapter 60.850.

(3) Determination of Application Requirements. The Director may waive any of the requirements of subsection (1) above if deemed to be inapplicable to the application.

(4) Applicant's Burden. It is the applicant's responsibility to provide evidence demonstrating that the application complies with all applicable standards and criteria.

ADDITIONAL INFORMATION REQUESTED FOR THIS APPLICATION:

ZONING F-2 **ACREAGE:** 13.34 acres

DESCRIBE THE ACCESS TO THE PROPERTY (circle the answer):

State Hwy (County Rd) Public Rd Private Easement

Road name: Airport Road

NUMBER OF EXISTING DWELLINGS ON PARCEL: None

EXISTING IMPROVEMENTS: What structures or improvements does the property contain (i.e., outbuildings, roads, driveways, wells, septic tanks, drainfields)? Will any structure or improvement be removed/demolished?

None

PHYSICAL FEATURES: Describe the site.

- The Vegetation on the property: The parcel is mostly open with scattered vegetation of fir, oak and maple trees.
- The Topography of the property: The parcel slopes downhill to the northeast.
- Any Significant Features of the property (steep slopes, water bodies, etc.): None.

APPROVAL CRITERIA

Lane Code 16.211(2) contains the Impacted Forest Lands (F-2) Zone Table of Permitted Uses. Use 2.4, the template dwelling, is subject to (3)(c), (3)(q), (3)(r), (5), and (6).

(3) Use Standards

(c) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

The subject property must be a lawfully established unit of land:

- Was the property created by a partition or subdivision? List plat number _____
- If not, a final legal lot verification is required prior to submittal of this application. What is the file number for the legal lot verification?

LLV PA08-6330 Notice PA08-6329

(i) If the lot or parcel is predominantly composed of soils that are:

The minimum number of parcels within the template depends on the productivity of the soil type. At least 51% of the acreage of the parcel is composed of soils capable of producing:

____ (1) Less than 50 cubic feet per acre per year: See subsection (aa)

____ (2) 50 to 85 cubic feet per acre per year: See subsection (bb)

X (3) More than 85 cubic feet per acre per year: See subsection (cc)

Soil Type	(Cubic ft/acre/yr)	% of Parcel
Total (must equal 100 %)		

(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>three</u> other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>seven</u> other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>11</u> other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

Include a scaled map and the template used to verify the requirements in (aa), (bb), or (cc) showing the 1993 configuration of the parcels.

How many lots or parcels existed on January 1, 1993? 12

How many dwellings existed on January 1, 1993 and continue to exist? 5

Complete the following table to support your answers on the previous page.

	map and tax lot	deed & date	dwelling date
1.			
2.			
3.			
4.			
5.	See Exhibit K		
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			

Include property description cards, which you can obtain from Lane County Assessment & Taxation.

If necessary, see the Planner on Duty for prior partitions/subdivision/legal lot status of surrounding properties. If a property was created via a partition or subdivision, please list that above in the deed/date column. If a legal lot verification was completed on a property, please include the PA# along with the year of creation.

If the dwelling is a manufactured dwelling, provide evidence it was placed on the property prior to January 1, 1993.

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

(iv) Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(v) The following applies where a tract 60 acres or larger abuts a road or perennial stream:

(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;

(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

Will you be using the 160 acre rectangle template aligned with the road? Yes X No ___

If yes, is least one of the dwellings used in the dwelling count located on the same side of the road as the proposed dwelling? NA Yes ___ No ___ (If no, you cannot use the rectangle template)

(vi) A proposed "template" dwelling under this section is not allowed:

(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(c)(vii) for the other lots or parcels that make up the tract are met; or

(bb) If the tract on which the dwelling will be sited includes a dwelling;

Does the tract contain any other dwellings? Yes ___ No X

(vii) Where other lots or parcels that make up a tract in Subsection (vi):

(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and

restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(q) For single-family dwellings, the landowner must sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

If this application is approved, this will be made a condition of approval.

(r) For single-family dwellings, the approval is valid for four years from the date of approval, unless otherwise specified in the approval or by other provisions of Lane Code. Notwithstanding the requirements of LC Chapter 14, an application for a two year extension of the timelines for the permit approval can be made and approved pursuant to LC Chapter 14.

Pursuant to ORS 215.417, this application, if approved, will be valid for four years from the date of approval and one two year extension of the timelines can be made. This will be made a condition of approval.

SITING CRITERIA

(5) Siting Standards for Uses, Activities, and Structures

The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The Director must consider the criteria in this section together with the requirements of Section (6) to identify the building site.

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);

Explain the reason for the proposed location. You must address the following issues:

- How is the new dwelling close to other dwellings on adjacent property? Explain.
  See attached Applicant's Statement
- How is the dwelling near existing roads?
  See attached Applicant's Statement
- Will a new driveway be constructed or will an existing driveway be extended?
  See attached Applicant's Statement
- What is the most level part of the property?
  See attached Applicant's Statement

- What is the area that is least suitable for forest use based on the soil productivity, forest management and forest harvesting practices?

  See attached Applicant's Statement

- Is there a ravine, ridge or slope greater than 40% within 30 feet of the new dwelling?

  See attached Applicant's Statement

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses;

Will the dwelling encroach into a forested area? Or will it be located in an existing developed or open area? Explain how the dwelling location will cause minimal intrusion to forested areas:

See attached Applicant's Statement

(iii) Where possible, when considering LC 16.210(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

Is the dwelling within 500 feet of adjoining property zoned F-1? Yes X No ___

If yes, explain:

See attached Applicant's Statement

Is the dwelling within 100 feet of adjoining property zoned F-2 or EFU? Yes ___ No X

If yes, explain:

See attached Applicant's Statement

(iv) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

Explain how the location of the dwelling and driveway minimize intrusion into the forest. Attach additional pages if necessary.

See attached Applicant's Statement

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).

(iii) The minimum distance necessary to comply Sections (5)(a) and (6).

Does the property front County Right-of-way? Yes X No ___

If yes, what is the distance from the proposed dwelling to the County Right-of-way? 1200 Feet

How far is the proposed dwelling from the northern property line? 300 Feet

How far is the proposed dwelling from the eastern property line? 400 Feet

How far is the proposed dwelling from the southern property line? 300 Feet

How far is the proposed dwelling from the western property line? 130 Feet

Are these setbacks at least the minimum distance to comply with (5)(a) and (6)?

Yes

(iv) Riparian Setback Area. A riparian setback area applies to the area (iv) between a line that is 100 feet from and parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with LC 16.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.

Is there a designated Class 1 stream on the property? Yes ___ No X

If yes, how far will the dwelling be from the Class 1 stream? _____ Feet

(c) Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.

What is your proposed water source (check the answer):

Private Well X Community System ___ Public system ___

Describe: Existing wells on nearby properties show adequate supply of water available for parcel. See attached Exhibit M

For a community or public system, do you have written verification the provider can serve your dwelling?

Yes ___ No ___ If yes, include a copy with this application.

Do you have a water use permit (well log) for an existing well, issued by the Water Resources Department? Yes ___ No X

If yes, include a copy with this application. Copies can be obtained by searching for groundwater data at the following website: https://www.oregon.gov/OWRD/pages/index.aspx

(d) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(e) Approval of a dwelling is subject to the following requirements:

(i) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.

(ii) The Director must notify the County Assessor of the above condition at the time the dwelling is approved.

(iii) Stocking survey report:

(aa) If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(bb) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.

If this proposal is approved, (d) and (e) above will be made conditions of approval.

(6) Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings, manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:

Is the property within a fire district? Yes X No ___ If yes, go to (b) below.

If the property is not within a fire district, you have two options (choose one):

____ (A) Submit evidence of a long term services contract with the nearest fire district and request annexation into the fire district, or

____ (B) Develop a Fire Protection Plan. It must comply with standards in (i) - (v) below. The Fire Protection Plan will be verified as a Condition of Approval, but it is recommended that you submit the plan with this application.

(i) The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;

(ii) If a water supply is required for fire protection, it must be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;

(iii) The applicant must provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use;

(iv) Road access must be provided to within 15 feet of the water's edge for firefighting pumping units. The road access must accommodate the turnaround of firefighting equipment during the fire season. Permanent signs must be posted along the access route to indicate the location of the emergency water source; and

(v) A 100-foot wide primary safety zone and a 100-foot wide secondary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures must be provided and maintained in perpetuity in compliance with the standards in (6)(c).

(b) Fire Safety Design Standards for Roads and Driveways.

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Attach to this application objective information demonstrating compliance or feasibility of compliance with Lane Code 16.211(6)(b)(i), including:

X Itemized list of firefighting equipment. Obtain from the fire district (if applicable).

X Description and evidence of physical nature of access or driveway route. Topography maps, photos, or other evidence may be included in the application.

See attached Applicant's Statement

X Description of proposed improvements to access or driveway route. Design drawings may be included in the application.

See attached Applicant's Statement

In addition to the above items, the application may also include:

____ A preliminary written verification of compliance from the agency providing fire protection, or a preliminary written certification of compliance from an Oregon Registered Professional Engineer. However, please note that such certification will also be made a condition of approval to verify final access and/or driveway construction.

The standards below will be a condition of approval and will be verified by staff.

(ii) Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and must have a vertical clearance of 13 feet 6 inches.

Will an existing driveway be extended to serve the new dwelling? Yes X No ___

Will there be a new driveway in a new location? Yes X No ___

(iii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Are you proposing a dead-end road? Yes ___ No X

Is it over 200 feet long? Yes ___ No ___

If yes, it must contain turnouts. Explain: _____

See attached Applicant's Statement

(iv) Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width

surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Will the new driveway or extension of the driveway contain any culverts or bridges? Yes ___ No X

If yes, explain: _____

_____

(v) Road and Driveway Grades. Road and driveway grades cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

Will the road or driveway contain any slopes in excess of 8%? Yes ___ No X

If yes, explain: _____

_____

(vi) Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.

Please be advised that staff will evaluate the route of the road serving your dwelling, from the homesite back to the public road to which it connects. Staff will determine if the road is to be named, per LC 15.312 and LM 15.015(3).

(vii) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

The driveway must be 12 feet wide. How wide is the driveway? 12'

Is it over 200 feet long? Yes X No ___

If yes, it must contain turnouts. Turnouts are not required if the driveway is 16 feet wide.

Will the driveway have turnouts? Yes X No ___

Will the driveway be 16 feet wide? Yes ___ No X

(viii) Modifications and Alternatives. The standards in (6)(b)(i) through (6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

Are you proposing any modifications or alternatives to the road or driveway standards? If yes, explain. Attach additional pages of necessary.

None.

(c) Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.

(i) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.

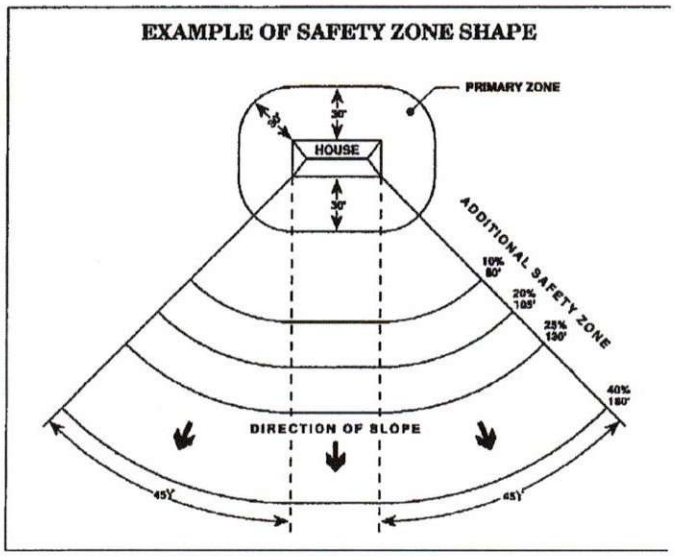
(aa) As slope increases, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:

The new dwelling must be surrounded by a 30 foot primary safety zone. If the dwelling is on a slope, the safety zone will increase, as shown in the table.

Table 16.211-2 Minimum Primary Safety Zone

Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Figure 16.211-1



(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.

The secondary fuel break must be established an additional 100 feet from the primary safety zone, but only on property you own.

* Show the fuel breaks on the site plan. If approved, the primary safety zone and the secondary fuel break will be verified as a condition of approval. Contact staff (541-682-3577) or visit the Planning website (www.lanecounty.org/planning) for details regarding fire break standards.

* The establishment and maintenance of fuel breaks within the Riparian Setback Area must comply with the applicable requirements of Lane Code 16.253.

(d) The dwelling must have a fire retardant roof.

(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.

Substantial evidence may need to be submitted with the application to determine slope. This could include photos, slope calculations, and/or evidence from a private engineer or surveyor such as a stamped site plan. What is the slope of the land within 30 feet of the dwelling? less than 10%

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

If the proposal is approved, (d) and (f) above will be made conditions of approval and will be verified by staff.

Applicant's Supplemental Narrative

LC 16.211(3)(c) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

(i) If the lot or parcel is predominantly composed of soils that are:
(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

RESPONSE: Not applicable.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

RESPONSE: Not applicable.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:
(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and
(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

RESPONSE: Not applicable. The subject property is predominately comprised of soils capable of producing more than 85 cubic feet per acre per year of wood fiber. 75% of the subject property is comprised of soil map unit 63D Jory capable of producing 178 cubic feet per acre per year of wood fiber as documented in the Lane County Soil Ratings for Forestry August 2011 Update. Exhibits G & T.

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

RESPONSE: No parcels used to satisfy the eligibility requirements are within the Urban Growth Boundary of Oakridge – Westfir. Exhibit B.

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

RESPONSE: The 5 dwellings relied upon for eligibility are on parcels that are at least partially in the boundaries of the 160-acre template.

(iv) Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

RESPONSE: The subject property abuts a County Road, Airport Road. The applicant has chosen to use a 160-acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road. An alternate road alignment template map is also provided to demonstrate conformance with the requirements. Exhibit J1 and J2.

(v) The following applies where a tract 60 acres or larger abuts a road or perennial stream:
(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:
(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or
(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;
(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

RESPONSE: Not applicable. The subject property is less than 60 acres in size.

(vi) A proposed "template" dwelling under this section is not allowed:
(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(a)(iii) for the other lots or parcels that make up the tract are met; or
(bb) If the tract on which the dwelling will be sited includes a dwelling;

RESPONSE: Not applicable. The subject property is vacant. The tract consists of only one parcel.

(vii) Where other lots or parcels that make up a tract in Subsection (vi):
(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

RESPONSE: Not applicable. The subject tract consists of only one parcel.

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

RESPONSE: Not applicable. The subject tract consists of only one parcel.

OAR 660-006-0027 (6)(h) If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.

RESPONSE: The subject property was not part of a tract on January 1, 2019. Exhibit H.

LC 16.211(5) Siting Standards for Uses, Activities, and Structures
The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The Director must consider the criteria in this section together with the requirements of Section (6) to identify the building site.

RESPONSE: The above provision requires that the standards of subsections (a) through (b) below be weighed together with the requirements of Section (6) below to determine the building site. As discussed below, placement of the dwelling at the site is the building site that best meets the above objectives.

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracks, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent (40%);

RESPONSE:
Near other dwellings: The dwelling site is located in the west portion of the parcel. The area is sparsely settled with dwellings. The proposed dwelling site is located approximately 1000 feet from the house to the east which is the nearest in any direction on Map 21-35-18 Tax lot 914. The site is as close to dwellings on other tracts as it can be while respecting the configuration of the parcel and the proximity of the airport.

Near existing roads: The homesite is located immediately adjacent to an existing timber road extending through the parcel from Airport Road. See Exhibits A & D – Site Plan and Aerial.

On the most level part of the tract. The tract slopes down to the northeast. See Exhibits S & X. Based on these materials, the dwelling site is on the most level portion of the tract, especially when this provision is balanced with other provisions, such as setbacks, access, slopes, and minimal intrusion into forested areas.

On the least suitable portion of the tract for forest use: The entire area of the parcel not underneath the approach surface of the Oakridge airport is comprised of Soil Map Unit Jory (63D) with a forest productivity ratings of at least 178 cu.ft./ac/yr. There is no ability to construct the home within an area of less forest productivity. Exhibit T. Soils are not determinative of forestry suitability, but are relevant. When balanced with other standards, the dwelling site is located on the least suitable portion of the tract for forest use.

At least 30 feet from any ravine, ridge or slope greater than 40%. There are no ravines, ridges or slopes greater than 40% within 30 feet of the site. See Exhibit S –LIDAR

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses;

RESPONSE: The size and configuration of the parcel, combined with the proximity of the Oakridge Airport with the accompanying Approach Surface, severely limit the available locations for the homesite. The placement has been determined by the necessity for adequate fuel breaks and access. The dwelling site accomplishes this.

(iii) Where possible when considering LC 16.211(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

RESPONSE: The subject property is bordered by property zoned F-1 to the west and south. Property to the north is zoned F-2 and AO. The dwelling site is setback 130 feet and 290 feet from the south and west property lines respectively (the directions of the F-1 properties). The north-south dimension of the parcel is only 550 feet which limits the ability to achieve a setback of 500 feet from the south property line and still achieve an adequate area for fuel breaks. The homesite is centered in the east-west direction below the area impacted by the Airport Approach Surface restrictions.

(iv) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

RESPONSE: The site will be accessed in part by an existing access road that serves the BPA power line easement and will be shared by easement by two parcels to the northeast, Map 21-35-07-30 Tax lots 2800 and 2900. The roadway will be constructed to county standards. Service corridors for utilities will run adjacent to the proposed roadway and driveway. Thus, the use of the existing roadway assures the amount of forestland used to site roads and services will be

minimized.

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

- ***(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.***
- ***(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).***
- ***(iii) The minimum distance necessary to comply Sections (5)(a) and (6).***

RESPONSE: The dwelling site is at least 30 feet from all property lines and more than 20 feet from Airport Road. See Site Plan. (5)(a) and (6). See Site Plan.

(iv) Riparian Setback Area. A riparian setback area applies to the area between a line that is 100 feet from and parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with LC 16.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.

RESPONSE: No Class I Stream is within 100 feet of the subject property. See Exhibit R.

(c) Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:

- ***(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;***
- ***(ii) A water use permit issued by the Water Resources Department for the use described in the application; or***
- ***(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.***

RESPONSE: The applicant will drill a new well. Based on well log data for nearby wells, particularly well LANE 4467 located on the adjacent property Map 21-35-18 Tax lot 914, Exhibit M – Water Resources Well Records, there is sufficient proof to make a conclusion that

there is a feasible domestic water supply available. The subject property is exempt under ORS 537.545, and agrees to submit the required report once the well is complete.

(d) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

RESPONSE: Road access to the subject property is provided by a Rural Local County Road – Airport Road.

(e) Approval of a dwelling is subject to the following requirements:

(i) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.

(ii) The Director must notify the County Assessor of the above condition at the time the dwelling is approved.

(iii) Stocking survey report:

(aa) If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(bb) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.

RESPONSE: It is feasible to demonstrate \conformance with this requirement as a condition of approval.

(f) Signs.

(i) Signs cannot extend over a public right-of-way or project beyond the property line;

(ii) Signs cannot be illuminated, flashing, blinking, contain scrolling images, or capable of movement; and

(iii) Signs are to be limited to 200 square feet in area.

RESPONSE: No signs are proposed.

(6) Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings,

manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:

(i) The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;

(ii) If a water supply is required for fire protection, it must be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;

(iii) The applicant must provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use;

(iv) Road access must be provided to within 15 feet of the water's edge for firefighting pumping units. The road access must accommodate the turnaround of firefighting equipment during the fire season. Permanent signs must be posted along the access route to indicate the location of the emergency water source; and

(v) A 100-foot wide primary safety zone and a 100-foot wide secondary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures must be provided and maintained in perpetuity in compliance with the standards in (6)(c).

RESPONSE: The parcel is located within the Hazeldell Rural Fire Protection District which has an intergovernmental agreement (IGA) with the Oakridge Fire Protection District to respond to all emergency calls. The proposed shared road and driveway will be improved to the applicable Lane Code 16.211 fire standards. See Exhibit A. The route of access from the Fire District located at 47592 Hwy 58 is by way of a State Highway (58) for a distance of 1 mile to Airport Road (County road). Airport Road is paved for the entire ¾ mile length to get to the subject property.

(b) Fire Safety Design Standards for Roads and Driveways.

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to

the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

RESPONSE: The subject property is within a fire district. The proposed shared road and driveway will be improved to the applicable Lane Code 16.211 fire standards. See Exhibit A. The route of access from the Fire District located at 47592 Hwy 58 is by way of a State Highway (58) for a distance of 1 mile to Airport Road (County road). Airport Road is paved for the entire ¾ mile length to get to the subject property.

(ii) Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and must have a vertical clearance of 13 feet 6 inches.

RESPONSE: Access to the site is from Airport Road via an existing shared easement road and a driveway that will be improved to Lane Code 16.211 standards. Exhibit A. It is feasible to construct the road and driveway to the above county standards.

(iii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:
(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or
(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and
(cc) No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the

chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

RESPONSE: Turn arounds within the road portion of the shared access are illustrated on Exhibit A at intervals of not more than 500 feet. A turn around will be provided at the dwelling,

(iv) Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

RESPONSE: No bridges are required or existing. No new culverts are proposed. However, if any are needed, the applicant agrees to install per the above.

(v) Road and Driveway Grades. Road and driveway grades cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

RESPONSE: The proposed shared roadway and driveway can be constructed on slopes not exceeding 16%.

(vi) Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.

RESPONSE: This is instructional.

(vii) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

RESPONSE: The driveway portion of the access is roughly 450 feet in length to the home site. See site plan, Exhibit A. Based on topography, it is possible to provide the necessary 1 turnout. A turn around will be provided at the dwelling, Exhibit A.

(viii) Modifications and Alternatives. The standards in (6)(b)(i) through

(6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

RESPONSE: Not applicable.

(c) Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.

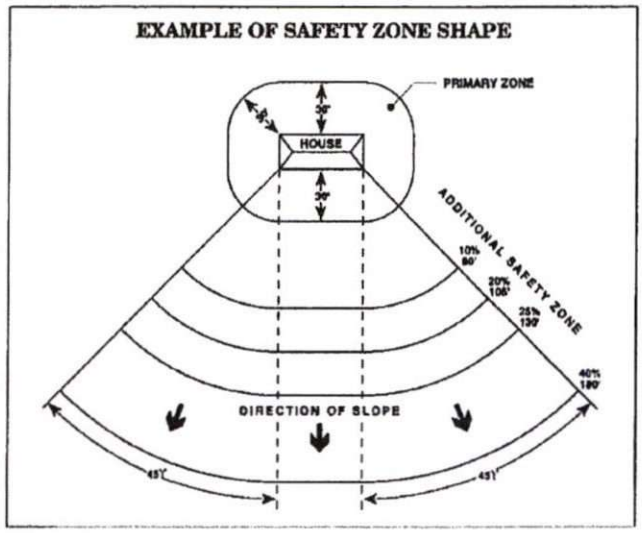
(i) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.

(aa) As slope increases, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:

Table 16.211-2 Minimum Primary Safety Zone

Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Figure 16.211-1



RESPONSE: The site slopes downward to the northeast. There are slopes greater than 20% within 30 feet of the dwelling site. The applicant has provided a 30-foot primary fuel break, plus an additional 75' primary fuel break in the northeast direction. See Exhibit A - Site Plan. There are no slopes in excess of 40% within 30 feet of the home site.

> ***(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.***

RESPONSE: The proposed dwelling site will have a full secondary fuel break in all directions around the primary safety zone.

> ***(d) The dwelling must have a fire retardant roof.***

RESPONSE: This is instructional.

> ***(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.***

RESPONSE: There are no slopes in excess of 40% within 30 feet of the home site. See Exhibit S.

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

RESPONSE: This is instructional.

EXHIBITS

A. Site Plan
B. Vicinity Map
C. Current Deed 2009-018700
D. Aerial Photos
E. Assessment & Taxation Maps
F. Owner Authorization
G. RLID Detailed Property Report
H. Contiguous Ownership Records
I. Legal Lot Verification
J. Template Maps
K. Template Parcels & Dwellings Data
L. Centroid Map
M. Water Resources Well Records
N. Big Game Range Map
O. Zoning Map
P. Airport Map
Q. Wetlands Map
R. Class I Streams Map
S. LIDAR Map
T. Soils Map
U. Flood Hazard Map
V. Landslide Susceptibility Map
W. Dwellings Map
X. Contour Map
Y. USGS Topo Map
Z. PA10-5485
AA. RFPD Information
BB. Airport Combining Zone Information
CC. BPA Information
DD. FAA Information

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

July 19, 1984

The Honorable Peter DeFazio
Chairman, Board of Commissioners
Lane County Courthouse
125 East Eighth
Eugene, OR 97401

Dear Chairman DeFazio:

Enclosed is the Department's report on the Lane County and the Eugene/Springfield Metro area request for Acknowledgment of Compliance with Statewide Planning Goals 5 and 15. The Department's recommendation to the Commission is that your request be continued to the August 16-17, 1984 meeting to complete necessary revisions to your plan and land use regulations for Goals 5 and 15.

The Commission will consider your acknowledgment request on August 16 or 17, 1984, at the State Capitol. You and other officials and citizens are welcome to attend this meeting and participate in the Commission's review of your acknowledgment request. You have 10 calendar days from the date the attached report was mailed to file written exceptions to the report with the Commission at the Salem office (OAR 660-03-025(2)). We would urge you to send copies of any exceptions to commentors or objectors affected by exceptions.

Please contact your Field Representatives, Bob Rindy at 378-4095 or Glen Hale at 265-8869, if you have any questions and for the time when your item will appear on the agenda.

Sincerely,

James F. Ross
Director

JFR:TMC:tm/9780B/3B

cc: County Planning Director
City of Springfield
City of Eugene
Bob Rindy, Field Representative
Glen Hale, Field Representative
Claire Puchy, Lead Reviewer File
Doug White, Reviewer
Mike Rupp, Reviewer
Jim Knight, Special Assistant for Agency Coordination
DLCD Library(2)
Portland Office
Coordinator
Objectors and Commentors

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan
Goal 2--Nonresource Lands, Goal 5, Goal 15

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:
August 17, 1984

REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow amendments to the plan to comply with Statewide Planning Goals 2, 5, and 15. The Commission should hear testimony on these issues July 19, 1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the Eugene/Springfield Metro Area General Plan under Goals 2, 5, and 15. The Commission should not take final action on this until the August Commission hearing.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Mike Rupp (Goals 2--Nonresource Lands
Claire Puchy (Goals 5 and 15)
Phone: 378-4926

COORDINATOR: Gary Darnielle
Phone: 687-4283

Date of Report: July 19, 1984

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

This Goal 5 report is divided into two major parts. The first part is the review for all areas of Lane County outside the Metro Plan Boundary. The second part is for those areas inside the Metro Plan Boundary, but outside the Metro Area UGB.

PART I--AREAS OUTSIDE THE METRO PLAN BOUNDARY

Introduction

All Goal 5 resource categories are applicable to Lane County, and are addressed in separate subsections of this report.

According to Section 660-16-025 of the Goal 5 Administrative Rule (OAR 660-6-000 through 660-16-025), the Goal 5 Rule requirements apply to jurisdictions under denial orders as of the date the adoption of the Rule (June 1981). Lane County was issued a denial order in March of 1981. Therefore, the Goal 5 Rule has been used during this review for purposes of judging compliance.

In the following discussion, the numbers and letters in parentheses refer to sections of the Goal 5 Administrative Rule (e.g., (1A), (1B), (1C), (2A), (3A), (3B), (3C)). It should be noted, however, that these are the citations used by the Commission in its June 1981 adoption of the Rule. Since that time, the Secretary of State's office has recodified the Rule and has assigned different numbers and letters to its various subsections. The references in this report are to the Commission's 1981 version, since it is the one with which most readers are familiar. A copy of this Rule is attached to this report for reference.

Goals 16 and 17 establish more specific inventory and protection requirements for some Goal 5 resources that are located in estuarine or coastal shorelands areas.

Lane County's plan and implementing measures were acknowledged as being in compliance with the Coastal Goals in July, 1983. Therefore, this Goal 5 review does not address the following Goal 5 resources in those areas:

	Addressed Under	
Goal 5 Resource	Goal 16	Goal 17
Open Space	X	
Mineral and Aggregate Resources		
Energy Sources		

Fish and Wildlife	X	X (only "riparian," "major marshes and significant wildlife habitats")
Ecologically Significant Natural Areas	X	X
Scientifically Significant Natural Areas	X	
Outstanding Scenic Views and Sites		X (where the quality is primarily derived from or related to the association with coastal water areas)
Watersheds		
Groundwater Resources		
Wetlands	X	X (only "major marshes," "significant wildlife habitat," and wetlands with "exceptional aesthetic quality")
Historic/Archaeological Sites		X
Wilderness	X	X
Oregon Recreation Trails		
Wild and Scenic Rivers and Waterways		

Land Needed or Desirable for Open Space

Inventory

Lane County's Recreational Resources Working Paper contains a section addressing open space (pp. 4-5). The County discusses the various kinds of open space, and the benefits of preserving open space. The County indicates that it considers "all lands designated for agricultural or forest use, or for other clearly similar resource-production use" to be open space (p. 5). Additionally, the County concedes that recreational

areas, including parks, and significant or scientific natural areas also contain open space qualities. Because of "its broad nature, open space is not mapped as a site-specific, separate resource item. Instead...other designations with open space qualities are mapped..." (p. 5). Please refer to the Goal 3, 4, 9, 15 and other Goal 5 portions of this report for more detailed information about Lane County's inventories of lands possessing open space values. See also the July 1983 staff report adopted by the Commission for a discussion of compliance with inventory requirements of Goals 16-18.

Policies

Lane County has adopted one policy which addresses open space resources, per se (Open Space and Scenic Areas Policy 1, Plan, p. 16):

> Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals are developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

In addition, the County has adopted numerous policies regarding agricultural and forest lands, a variety of Goal 5 resources which possess open space values, the Willamette Greenway recreation areas, and coastal resources. Please refer to the Goal 3, 4, 8, 15 and remaining Goal 5 sections of this report for details. See also the July, 1983 Commission action for a discussion of policies addressing Goals 16-18.

Implementing Measures

As noted in the Goal 3 and 4 sections of this report, Lane County has several resource zones which it has applied throughout the County. It has also adopted and applied a Greenway Permit ordinance to lands within the Willamette Greenway (see the Goal 15 section of this report for details). However, these Goals have not yet been fully satisfied, nor have some Goal 2 exceptions been justified. Several coastal zones have been developed and applied in coastal shorelands, estuarine, and beaches and dunes areas (see the July, 1983 staff report adopted by the Commission regarding compliance with Goals 16-18).

Finally, as noted in the remaining subsections of the Goal 5 section of this report, the County has adopted several implementing measures for the protection and/or resolution of conflicts with Goal 5 resource sites containing open space values.

In particular, the County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213), which is intended to protect areas having unique and irreplaceable natural resources which are vital elements for a safe, healthful and pleasant environment for human life. The Natural Resource Zone states that it may be applied to public and private lands where the Rural Comprehensive Plan requires natural resource site

protection, but that the zone is not intended to be applied to other types of resource land, such as agricultural land and forest land. This is not to say, however, that the Natural Resource Zone cannot be applied to agricultural and forest lands. If a Goal 5 resource site is located on agricultural or forest land, Natural Resource zoning will be applied after an analysis of the ESEE consequences of conflicting uses has been completed demonstrating the appropriateness of Natural Resource zoning (confirmed by Jim Mann, Senior Planner, personal communication, June 20, 1984).

Emphasis of the Natural Resource Zone will be placed on limiting and regulating human activity in areas where:

(a) The acceptable water quality of streams, lakes, estuaries of the ocean may be endangered;
(b) Watersheds and their streams or lakes are used for domestic water supplies;
(c) Vegetative cover is essential to maintain soil stability and prevent erosion;
(d) Natural conditions are vital for either unique vegetative ecosystems, aquatic or wildlife habitat; and
(e) Scenic quality or vistas or open space is unique and/or irreplaceable.

In the NR Zone, the following uses are allowed outright (Section 16.213(2):

(a) The following recreational facilities and uses owned by a governmental agency of a nonprofit community organization limited to day use.

(i) Exhibitions of the natural conditions of shorelands, dunelands, forested areas, streams and lakes, marshlands, or similar areas of unique and irreplaceable value, and the vegetation and wildlife supported by such lands and waters provided that in no event shall such activity destroy, or endanger the relationships between the natural conditions being exhibited.

(ii) Picnicking areas, day parks and playgrounds.

(iii) Accessory facilities for outdoor recreation activity such as fishing, clam digging and hunting (provided such activity is conducted only in those areas allowed pursuant to Federal, State and Local fish and game regulations) and hiking and horseback riding.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

Single family dwellings or mobile homes for residential purposes for a watchman, caretaker or operator in conjunction with a permitted use, in the NR Zone above, are considered "Special Uses" subject to approval by the Planning Director (Section 16.213(3)). The following "Special Uses" are subject to approval by a Hearings Officer (Section 16.213(4)):

(a) Piers and boat houses.
(b) Single-family dwelling or mobile home and accessory structures.
(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.
(d) Forest uses and any accessory uses.

Uses in Section 16.213(4) above are subject to compliance with the following conditional use criteria (Section 16.213(5)):

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.
(ii) That the proposed site is on land generally unsuitable for natural resource uses.
(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;
(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby resource lands;
(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;
(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and
(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

Property development standards for all uses allowed in the NR Zone are set forth in Section 16.213(6) and include setbacks from front, side and rear yards.

Specific application of the Natural Resource Zone is discussed in the other Goal 5 sections of this report. A review of the County's zoning maps indicates that the NR Zone has been applied to a number of Goal 5 areas in the County.

Section 16.215 of the Zone Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses outright and conditionally. However, as noted in the Goal 2 Section of this report, the PR Zone allows a number of uses which could conflict with the purpose of the zone. Some of these uses could also conflict with a number of

Goal 5 resources including open space. This issue is dealt with in the Goal 2 portion of this report.

Conclusion--Open Space

Lane County has not inventoried any specific open space areas, per se. However, it considers farm and forest lands, recreation areas as well as natural areas to possess open space values. These have been inventoried as part of other Goal requirements. The County has a policy recognizing all resource lands as open space lands and indicating that resource-related activities shall predominate in these areas. Open space loss will be minimized where development is proposed, according to the County's policy. Resource zoning has been applied to most of the County, along with special zoning districts which help protect open space (e.g., Willamette Greenway, Natural Resource Zones).

Mineral and Aggregate Resources

Inventory

Lane County's inventory of mineral and aggregate resources is contained in its Mineral and Aggregate Working Paper.

Mineral Resources: The Working Paper addresses the following minerals: clay, copper, lead, gold, zinc, silver, mercury, antimony, arsenic, tourmaline, molybdenum, and pumice (pp. 3-5). The general locations of these mineral deposits are shown on a map (Appendix A), and are concentrated in four main areas: Hobart Butte, Bohemia, Fall Creek, and Blue River. The locations of these four areas are shown on the map as well. Information about the general quality, and quantity of these resources is provided. The County has not provided information on the location, quality, and quantity of specific sites, however.

Aggregate Resources: Lane County inventoried its aggregate supplies by examining permit lists from the Department of Geology and Mineral Industries and the Division of State Lands, by conducting telephone searches, taking on-site tours of aggregate-producing areas; and by talking with industry representatives (p. 6). The locations of 30 identified sites appear on a map in Appendix C and are listed by legal descriptions and tax lot numbers in Appendix D. A more extensive list of all tax parcels having any record of previous aggregate extraction is included in Appendices E and F. Appendix D is considered the County's (1C) inventory for lands outside the Metro Planning Area. Appendix E is the (1B) inventory for lands inside the Metro Area. Appendix F is the (1B) inventory for lands outside the Metro Area (confirmed by Mike Copely, Lane County Planner, personal communication, July 16, 1984).

Information on quantity of (1C) sites is presented in cubic yards, but the County cautions that the accuracy of this information is limited. In many cases, individual suppliers had only a cursory knowledge of the extent of their resources (p. 7). Quality of the supplies was not evaluated, due to time and budget constraints as well as the variability of resource materials.

Supply estimates were compiled by region (there are four regions in the County) and then coupled with demand estimates for each region in order to assess localized needs and supply/demand situations (p. 7). Demand forecasts were based on population projections and a per capita consumption figure of 22 tons annually (p. 7). Based on these estimates, cumulative demands for each region were projected. This analysis shows that existing supplies will be sufficient to satisfy demand to the year 2000. This will be particularly true if actual population growth rates are on the low side of the estimates. The available supply for the non-metropolitan area of the County is about three times the figure for projected consumption even when assuming the high population projections (p. 8). However, in terms of the supply/demand situation for each region, the margin of supply over demand for the southern section is relatively small. This is true also (but less so) for the western region. Also, the Metro Area will use some of the County supplies. Similarly, 5 to 10 percent of the U.S. Forest Service and BLM needs are supplied by the private market (p. 9).

Conflicting Uses/ESEE Consequences Analyses

Mineral Resources: Lane County reports that most of the mineral areas are on public lands (either the BLM or U.S. Forest Service). As such, federal laws govern prospecting, claims, and mining activities. Current forest resource designation and zoning for these areas "do not appear to preclude their development potential. Forest management and mining activities are considered to be compatible activites by most authorities" (p. 5).

Aggregate Resources: Each of the 30 inventoried sites was evaluated in terms of the following potential conflicts:

1. Areas of significant natural value contained in the Oregon Natural Heritage Program inventory;
2. Historical resources contained in the Working Paper on Historical Resources;
3. Willamette Greenway;
4. Park and recreation sites contained in the Lane County Parks and Open Space Master Plan;
5. Sensitive fish and waterfowl habitat identified in the Working Paper on Flora and Fauna; and
6. Existing or planned residential development.

Appendix J summarizes the results of the County's analysis. No conflicts were noted for any of the sites. Sites were not evaluated in terms of conflicts with agricultural or forest lands, since all of the sites are existing sites and therefore no longer available for these uses (p. 10).

Policies

A number of mineral and aggregate resources policies have been adopted (Plan, pp. 13-14). These include:

1. Known mineral resource sites within the County, which include those identified in Appendix "D" of the "Mineral and Aggregate Resources Working Paper," shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. Such designation and regulation is to follow the requirements of the Goal 5 rule (OAR 660-16-000 through 660-16-025), which is addressed in Appendix "J" of the "Mineral and Aggregate Resources Working Paper."

2. Exploration for mineral resources (in contrast to actual mining) shall be a permitted activity in the rural portions of the County. Areas designated primarily for residential purposes are to be excluded from this policy as are areas that, having undergone analysis in accordance with OAR 660-16-000, are designated as having some unique natural, historical or cultural value. Exploratory drilling for gas, oil or other hydrocarbons is not within the scope of this policy.

3. Mining operations are regulated by state and federal government agencies. County regulations shall supplement these actions only as necessary to ensure compatibility in the area, or to protect other resources.

4. Conserve and manage land, soil and mineral resources by respecting their physical limitations and environmental assets.

5. Update, in cooperation with local aggregate operations, federal, state and local agencies, past sand and gravel inventories to ensure supply/demand information is current.

6. Protect aggregate deposits from encroachment of incompatible uses and ensure that aggregate material in close proximity to its point of use will be available when needed.

7. Present and future land use controls shall be implemented to allow for the discovery of new mineral and aggregate resources when it is demonstrated that the projected demand for those resources in a given area will exceed available supply and conflict with adjacent uses can be minimized. Conflict analysis and resolution shall follow the methodology set forth in Appendix "J" of the Working Paper: Mineral and Aggregate Resources; however possible impact on agricultural lands, forest lands and residential

development (existing or planned) must also be considered. For sites within the Willamette Greenway or near Goal 5 inventoried resources, notification of the potential conflict shall be sent to the appropriate body (e.g., Pioneer Museum, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, etc.).

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacts during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listed in Appendix "J" of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

10. Sites for which not enough information is presently available to determine quality, quantity and conflicts with other uses which include those sites listed in Appendix "F" of the "Mineral and Aggregate Working Paper," shall be considered "Significant" in terms of OAR 660-16-000 through 660-16-025, but requiring that the Goal 5 evaluation process be delayed (the "1B" option). At such a time as it is clear that these sites will be needed within the County's advance framework, they shall be evaluated per the Goal 5 rule including conflict analysis and implementation of protective measures. Such evaluation will take the form of Plan amendment or revision studies. Notwithstanding the above schedule, all "1B" sites will be evaluated within five years of the date of this Policy adoption. These sites are included herein as Goal #5 Mineral and Aggregate Exhibit A.

11. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Policy 11 above indicates that significant fish and wildlife habitat areas in the Greenway shall be protected in accordance with Section C.3.i. of Goal 15. Section C.3.i. requires that aggregate extraction be allowed only when "subject to compliance with local regulations designated to minimize adverse effects on water quality,

fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation" (emphasis added). The Goal standard for significant fish and wildlife habitat areas, however, is stronger. It is spelled out in Section C.3.d. of Goal 15, rather than simply Section C.3.i. (This is also addressed in the Goal 15 section of this report).

Implementing Measures

Lane County has adopted a Quarry and Mine Operations Combining (/QM-RCP) Zone to protect major deposits of minerals, rock, and related material resources, and to resolve conflicts with surrounding uses (Lane Code, Section 16.216).

The Quarry and Mine Operations Combining Zone shall be available for use by the County for new or existing operations when requests are received as part of an areawide or legislative rezoning, or a specific property or quasi-judicial rezoning. When property under consideration of /QM zoning is in close proximity to existing and planned uses potentially incompatible with /QM uses, the application of the zone may be limited to a specific portion of a property in order to encourage the compatibility and proper management of land uses.

The Quarry and Mine Operations Combining Zone is intended to be applied only to those operations which have been evaluated through the Goal 5 Administrative Rule process. Other quarry and mining operations of short-term or intermittent duration should be provided pursuant to the special use provisions of the various zones.

In the Quarry and Mine Operations Combining Zone, the following types of buildings and uses are permitted, subject to the provisions of the Quarry and Mining Operation Reclamation Permit and exceptions set forth in the code (Section 16.216(4)).

(a) Uses permitted in the parent zone with which the /QM zone is combined.
(b) Extracting and storing of minerals, including equipment and materials necessary to carry out these functions.
(c) Plants for the processing of minerals from quarry and mine extraction operations.
(d) Sale of products generated from the quarrying and mining operation.
(e) Activities pemitted as part of the reclamation process provided for in the Reclamation Plan.
(f) Structures an buildings used in conjunction with the extracting and storing of minerals.

The zone requires that a surface mining permit first be obtained from the Department of Geology and Mineral Industries (Section 16.216(5). Section 16.216(6) sets forth blasting notice and records requirements.

Section 16.217 of the Lane Code is the County's Sand, Gravel, and Rock Products (SG-RCP) Zone. The SG Zone "shall only be applied to those sites which have been evaluated consistently with the Statewide Planning Goal No. 5 Administrative Rule conflict resolution process (Sec. 16.217(4)). In the SG-RCP Zone, sand and gravel operations are permitted subsequent to the following restrictions: For any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal No. 5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

A number of uses are allowed in the SG-RCP Zone when conducted in conjunction with a sand and gravel operation (Sec. 16.217), including asphalt paving-mix plant and accessory buildings; cement concrete batching plant; aggregate products fabrication and sale; sand and gravel resource-related equipment storage yard, maintenance and storage buildings, offices and warehouses "appropriate to the uses permitted in this District"; retail or wholesale sales of products related to the use of sand, gravel and related products; agriculture, grazing or timber raising; dwellings for owners, operators or help required; and signs. The zone contains site improvement standards, as well as setback standards, cover, planting, drainage and topsoil standards, and operating standards.

The SG-RCP Zone establishes a Sand and Gravel Review Committee to determine if operating plans or revised plans comply with the requirements of the zone or with "a river plan which may be adopted by the Board." The committee is made up of the Planning Director, the Public Works Director, the Parks and Recreation Director, the Chief Sanitarian, the County Hydrologist, and the County Floodplain Specialist. The Review Committee is notified of all operating plans and revised plans, and has seven days to approve the plan or require modification of the plan.

It appears, from an examination of zoning maps, that the SG Zone has been applied to a number of sites that are not included on any plan inventory of (1C) sites. Yet, contrary to the zone's purpose statements, the County has not applied the Goal 5 process to these sites to justify SG zoning.

Section 16.218 of the Lane Code is the County's Sand, Gravel and Rock Products-Controlled Process (SG-CP-RCP) Zone. The zone is intended to provide more restrictive control of processing activities than the SG-RCP Zone (described above) for the protection of surrounding properties or for greater control over the location and operation of processing activities. The SG-CP-RCP Zone shall apply only to sites which have been evaluated via the Goal 5 Rule process (Sec. 16.216(3)).

The requirements of the SG-CP-RCP Zone are the same as in the SG-RCP Zone except that the Sand and Gravel Review Committee, in its evaluation of operational plans, must evaluate "the location for the erection or enlargement of all processing equipment and activities, including, but not limited to asphalt paving mix and cement concrete batching plants" according to the following "Operational Plan Approval Criteria":

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity; and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverge and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

Among the permitted uses in the F-1 Zone are (1) mining and quarrying and processing of rock permitted in accordance with the FPA for forest road construction or other forest related uses, or when used solely in conjunction with a farm use on which the mining or quarrying occurs, and (2) operations conducted for the exploration of aggregate or other mineral and subsurface resources (Lane Code, Section 16.210(2)(c) and (g)). Mining, quarry, and processing of mineral, geothermal and other subsurface resources; and rock mining, quarrying and processing which exceeds the standards in 16.210(2)(c), above, are allowed conditionally subject to a Hearings Official approval. Conditional use criteria in the F-1 Zone have been discussed in the Goal 4 section of this report.

In the F-2 Zone, mining, quarrying, and processing of rock for forest or farm road construction is permitted outright on the same tract as the mining or quarrying occurs (Sec. 16.211(2)(c)), as are operations for the exploration for aggregate or other mineral or subsurface resources (Sec. 16.211(2)(e)). The mining, quarrying, and processing of mineral and other subsurface resources; and rock mining and quarrying and processing that exceeds the standards in Section 16.211(2)(c), above are

considered Special Uses, subject to Hearings Official approval (Sec. 16.211(5)(d)). This is also the case for operations conducted for the exploration, mining and processing of aggregate or other mineral resources or other subsurface resources (Sec. 16.211(5)(k)). Criteria for permitting these uses are found in Section 16.211(6).

In the Exclusive Farm Use Zone, operations for the exploration, mining and processing of aggregate and other mineral resources or other subsurface resources are Special Uses, subject to Hearings Official Approval (Sec. 16.212(4)(b)).

Please refer to the Goal 15 section of this report for a discussion of the County's approach to mineral and aggregate sites located within the Willamette Greenway.

Objections

1. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

2. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in the Goal 15 section of this report.

3. James Spickerman (on behalf of Leon Funke and Michael Horton) has objected to the zoning of farm lands for sand and gravel extraction and processing uses.

   a. Objectors are specifically concerned about the following parcels:

      17-03-06 TL 400, 500, 300, 201
      17-03-05 TL 300, 1500, 1300, 1900
      16-03-31 TL 901, 500 and 101

      The 455 acres in these parcels are primarily agricultural land and have been zoned SG-RCP according to objectors. Allowed uses include sand and gravel extraction as well as asphalt paving mix plant, concrete batching plant, aggregate products fabrication and sale, and retail or wholesale sales of products. The land was previously designated EFU. Objectors point out that in Westerburg v. Linn County, LUBA held that a Goal 2 exception to Goal 3 was required when a zone change was made from EFU to aggregate extraction and processing where the new zone permitted

manufacturing processes and activities. Objectors believe, therefore, that Lane County should have taken an exception prior to rezoning these parcels.

b. Objectors claim that the County applied SG zoning to parcel 16-03-31 Tax Lot 601 and 602 without the necessary ESEE consequences analysis of conflicts with Goal 3 uses and other Goal 5 uses. Objectors point out that the site has a "long history of documented conflict between the sand and gravel extraction use and adjacent agricultural and residential uses. Objectors further point out that in Olsen et al. vs. Scappoose Sand and Gravel Co., LUBA indicated that the Goal 5 Rule requires that, where conflicting uses have been identified, the Goal 5 resource site (e.g., mining) may itself have an impact on other uses and these impacts must be considered in analyzing the ESEE consequences.

c. Objectors believe that plan policies do not address the Goals adequately because there is no method set forth in the plan for Goal 5 conflict resolution analysis. The plan states that such analysis and resolution of conflicts shall follow the methodology in Appendix J of the Mineral and Aggregate Working Paper. Objectors, however, state that Appendix J contains no such methodology, but only a statement of conclusions regarding particular sites.

d. Objectors point out that the plan policies set forth no method to reconcile Goal 5 and Goal 3 conflicts (specifically, where agricultural soils are underlaid with aggregate resources).

e. Objectors claim that plan policies make no provision for ESEE analysis of conflicting Goal 5 uses.

f. Objectors claim that the plan does not comply with Goal 5 Guideline B9 which states:

> Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization, as well as for the primary use.

g. Objectors claim that, although a number of sites are to be considered under the (1B) process at a later date, the sites are not included on the plan inventory as a "special category," as required by the Goal 5 Rule.

h. Objectors believe the plan is not internally consistent. Specifically, objectors point out that EFU lands are zoned SG-RCP, but there is no basis for this in policies or in working papers. A number of parcels are zoned for sand and gravel extraction, but not all have been designated for such uses.

Objectors also point out that SG-RCP zoning is contrary to agricultural lands policies (to provide maximum protection for agricultural activities by minimizing activities that could conflict with such uses.

i. Objectors point out that no consideration is given to the effects of SG-RCP zoning on the groundwater resources of agricultural lands adjacent to the land designated SG-RCP.

Response to Objections

1. The response to the objections regarding the Pudding Creek heronry is presented in the Goal 15 section of this report.

2. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

3. a. Objectors contend that sites 17-03-06, TL 400, 500, 300, 201; 17-03-05 TL 300, 1500, 1300, 1900; 16-03-31 TL 901, 500, and 1001 were all rezoned from EFU to S-G-RCP without an exception. Objectors cite Westerberg vs. Linn County as requiring this be done where the new zone permits processing activities. This was based on the fact that ORS 215.213 allows processing conditionally, but at the time of Westerberg vs. Linn County, "processing" did not include the batching and blending of aggregate. However, the 1983 Legislature changed the statutory definition of "processing" (ORS 517.750(9)) to include "crushing, washing, milling, screening as well as the batching and blending of mineral aggregate into asphaltic and portland cement concrete product . . .". Therefore, objectors are not correct in suggesting that a Goal 2 exception be taken for such sites. However, this is not to say that the Goal 5 Rule process does not apply. In the case of the parcels cited by objectors, this process has been completed for only 17-03-06 TL 400, 17-03-05 TL 300, 16-03-31 TL 901, and 16-03-31 TL 1001. The Mineral and Aggregate Working Paper (p. 10) indicates that, because these are existing operating sites, these sites are no longer available for agricultural use. No conflicts were found to exist for any of these four sites.

b. Objectors are correct that parcel 16-03-31 TL 601 has not been analyzed according to the Goal 5 process. Site 16-03-31 TL 602, however, is included as Site No. 21 in Appendix D of the County's Mineral and Aggregate Working Paper. No conflicts were found to exist with Site No. 21. Conflicts with agricultural uses for the site were not analyzed because the site is an operating site and it is assumed it is no longer available for agricultural use (Working Paper, p. 10). Objectors are correct, however, that the County did not address conflicts with adjacent agricultural and residential uses. This has not been required except when a new site or expansion of an existing site is

proposed. Policies 7 and 10 require Goal 5 analysis in such circumstances, including analyzing and resolving conflicts with surrounding uses.

c. Objectors are not correct that the County lacks a method for analyzing and resolving conflicts pertaining to (1C) mineral and aggregate resources in Appendix D. The County indicates that there are no conflicting uses for these sites, and therefore either the SG ,/QM or SG/CP zone will apply. It also indicates that sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts (Mineral and Aggregate Policy 9). All (1B) sites require a full Goal 5 evaluation, including conflict resolution and plan amendments or revision studies before extraction activities are allowed, according to Mineral and Aggregate Policy 10.

Objectors are correct that Appendix J is a statement of conclusions about the conflicts with the 30 (1C) sites, and not a methodology for analyzing and resolving conflicts per se. However, the policy should be interpreted as requiring that the same methodology used in producing Appendix J will be used in future conflict/resolution situations (i.e., determining whether there are conflicts with other Goal 5, 8, and 15 resources, or with planned or existing development). The policy would also require consideration of possible impact or agricultural and forest lands in approval of any new site or expansion of an existing site.

d. Objectors are not correct that there is no plan policy method to reconcile conflicts on agricultural lands that contain aggregate resources for those (1B) sites in Appendix F. Specifically, Mineral and Aggregate Policy 10 requires a full Goal 5 Rule evaluation of (1B) sites. This will require a site-by-site analysis of conflicts (including those with agricultural lands), an ESEE consequences determination of those conflicts, and application of measures to resolve conflicts.

e. There is no specific Goal 5 requirement to adopt plan policies which require analysis of ESEE consequences of identified conflicting uses. Rather, such conflicts are to be resolved during the planning process, based on such an analysis which is to be incorporated into the plan. (The exception to this is for (1B) sites. Jurisdictions must adopt policies to apply all applicable steps of the Goal 5 Rule to such sites. Lane County has such a policy for its (1B) mineral and aggregate resources--Mineral and Aggregate Policy 10).

f. Guidelines do not carry the same weight as the Goals, and therefore, this objector's concern is not a Goal requirement. However, objectors do raise an important concern, and the County is urged to plan such sites for interim, transitional and "second" use.

g. Contrary to objector's statements, the County has placed its (1B) sites on a special category inventory--Appendix E and F of the Mineral and Aggregate Resources Working Paper. It also has expressed this in Mineral and Aggregate Policy 10.

h. Objectors are correct that some lands are zoned SG that are not on the (1C) inventory, nor has the Goal 5 process been applied to them to justify SG zoning rather than EFU, or some other zoning.

SG zoning for a particular site may be counter to the County's policy of providing maximum protection for agricultural activities by minimizing activities that could conflict with such uses. However, Goal 5 requires protection of mineral and aggregate resources. These Goal requirements must be balanced. This is done through the Goal 5 process. When analyzing the ESEE consequences of conflicting uses for a particular site, the requirements of other Statewide Goals must be considered and balanced against Goal 5 requirements.

i. Objectors have not provided information demonstrating how SG zoning will have an effect on groundwater resources of adjacent agricultural lands. Other state statutes require that this concern be addressed.

Conclusion--Mineral and Aggregate Resources

Lane County has inventoried its mineral and aggregate resources and has identified 30 specific aggregate sites which are considered (1C) sites. The amount of aggregate contained in these 30 sites is sufficient to satisfy the demand to the year 2000. The County indicates there are no conflicting uses with any of these sites, and has applied QM-RCP, SG-RCP, or SG-CP-RCP zoning to those sites. These zones assure that extraction can occur, subject to appropriate conditions regarding such things as setbacks, drainage, traffic and operation.

The County has identified a number of (1B) sites which will be evaluated according to the Goal 5 process (including plan amendments, where necessary), within the next five years.

A number of sites not in any plan inventory have been zoned for sand and gravel extraction, but have not been justified as such, based on an analysis of ESEE consequences of conflicting uses.

Energy Sources

Inventory

Lane County has adopted an Energy Working Paper which describes energy consumption and both conventional and alternative energy sources. Conventional sources includes electrical energy from seven utility

companies and natural gas and petroleum from out-of-state sources (pp. 7-15). Alternative sources include solar, hydroelectric, biomass, cogeneration, wind, and geothermal energy (pp. 15-29). Of these, the County considers only hydro power and geothermal sites to be site-specific (p. 39).

The Working Paper identifies eight dams currently generating power or having the potential to do so (p. 18), as well as eight existing nonpower dams with hydroelectric generation potentials exceeding 200kW (p. 18). Maps showing the general locations of these sites are on page 19 of the Working Paper. Information about the dam height, hydraulic head and capacity for each site is presented on page 18. Proposed dams with generation potentials exceeding 25MW and those with potentials between 200kW and 25MW are identified on page 21 of the Working Paper and mapped on page 22. Information about dam height (where known), hydraulic head, system head, and capacity is presented (p. 21).

Wind potential in Lane County is through to be highest along the Coast and Coast Range. Eugene Water and Electric Board (EWEB) and 19 public utilities operate an experimental windmill in the Coast Range north of Lane County, and PP&L operates a wind turbine near Coos Bay. Average wind speeds in Lane County, however are too low to power such windmills (p. 26).

There are two known Geothermal Resource Areas (KGRA's), both of which are in the eastern portion of the County on federal land. Both are under study by the Oregon Department of Geology and Mineral Industries (p. 29). The locations of the two KGRA's--Belknap-Foley KGRA and McCredie KGRA--are shown on Map 7 (p. 30). Information regarding their reservoir temperatures, mean reservoir volume, wellhead thermal energy and thermal power, and resource to land distance is presented in Table 11 (p. 31). The Energy Working Paper also describes the stages of geothermal energy development and discusses the constraints upon geothermal power generation (pp. 28-29). Although the potential for geothermal energy development in Lane County is "significant," further information is needed regarding its potential in the two KGRA's and the environmental impacts associated with such development (p. 29).

A cogeneration facility capable of producing 28,000 kilowatts of power exists at the Weyerhaeuser plant in Springfield, and another facility capable of producing 800 kilowatts is being installed in the Lane Plywood Company of Eugene (pp. 25-26).

The Working Paper disucsses the potential for biomass as an energy source in Lane County (pp. 23-25). There are two major sources--forest lands and farm lands. The potential for energy generation from these sources is great, but economic feasibility and environmental impacts are primary constraints to development of these sources at this time (p. 25).

Conflicting Uses/ESEE Consequences Analyses

General, non-site-specific conflicts are discussed for each of the major energy source categories identified (i.e., hydroelectric, biomass, solar, cogeneration, wind).

Regarding hydro sites, the County states:

> Maps have been presented illustrating a number of alternative hydro sites on various rivers in the County. Since these sites are, at present, in the proposal stage, it is premature to evaluate conflicting uses for each one, but the sites need to be acknowledged by designation on Plan Diagrams, and some effort made to ensure their availability when needed. Conflicting uses will be examined and resolved at such a time as the sites are actually being proposed for development; this could probably be done most efficiently as part of the elaborate permitting process hydro power must undergo before approved. In most cases, conflict resolution is a major factor in hydro development even through many of the sites are located on public land, or lands presently set aside for resource uses--especially timber lands. Existing resource-based zoning can do much to prevent them from being subjected to development if energy considerations are incorporated into the zoning requirements. In Goal 5 language, the "1B" option should be taken at this time (p. 39).

Regarding geothermal sites, the County indicates that because they are located on federal lands, they will have to go through a series of state and federal permit approvals. Zoning "only reflects the County's desire that the sites be protected from conflicting uses." Therefore, the County has not conducted an analysis of conflicting uses (p. 39).

Solar access does not appear to be endangered at this time in the rural areas. However, this is not the case in newly developing residential and commercial areas (p. 39).

Policies

Five Energy Resource policies have been adopted by Lane County (Plan, p. 17):

1. Lane County shall identify energy resource areas within the County and protect such areas through the use of existing ordinances and regulations. Such regulations shall address hydroelectirc, geothermal, and wind power sites.

2. Lane County shall encourage the exploration and development by other agencies of renewable energy resources such as geothermal, wind, biomass, hydroelectric and solar, and shall monitor such development to ensure that the development does not cause adverse effects within the County.

3. Lane County will use the work of the L-COG Committee on Energy, and its report, "Lane County Electic Energy Planning Program, Final Report (1983)" as a source of resource identification and site protection measures. This will supplement the County's own measure expressed in Policy and Zoning Statements.

4. The County shall protect the sites of hydroelectric resources through conditional or special use provisions of its resource zones. Sites for which a license has been applied for with federal and state authorities, or for which water impoundments of more than 100 acre-feet are proposed, or which will generate power in excess of 75KW, shall be shown on the Plan as a special designation, an Exception to applicable LCDC Goals taken if necessary, and a special zoning district applied. At that time, the Goal 5 rule conflict analysis shall also be carried out.

5. For additional energy policies see Goal 3.

Implementing Measures

Hydroelecric generating facilities with water impoundments of less than 100 acre-feet are allowed conditionally subject to Hearing Official approval in the F-1 and F-2 Zones (Lane Code, Sections 16.210(4)(g), 16.211(5)(g)).

A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility is also permitted conditionally (subject to Hearings Official approval) in the F-1 and F-2 zones (Section 16.210(4)(h), 16.211(5)(h)).

The conditional use criteria for approving or denying these hydroelectric facilities are those for other nonforest uses (Sec. 16.210(5)(a) through (f); 16.211(5)(f)(i) through (vi)).

Hydroelectric facilities having impoundments over 100 acre-feet are not permitted outright or conditionally in the Lane Code. Instead, the County shall analyze the conflicts per the Goal 5 Rule, take an Exception to the applicable Goal if necessary, and apply a special zone to those sites, as specified in Energy Policy 4.

As noted in the Working Paper, resource zoning will help prevent possible sites from being developed for other uses.

Conclusion - Energy Sources

Lane County has identified a number of potential energy sources, many of which are on federal land, and all of which are (1B) sites at this time. There is potential for hydroelectric developments on nonfederal land, but the County contends that it is premature to evaluate conflicting uses.

Nevertheless, the County has decided to allow small sites in its F-1 and F-2 Zones conditionally. Larger sites will require plan amendments, along with application of the Goal 5 Rule, exceptions to appropriate goals and possible development and application of a special zone. The County has adopted a policy commitment to this effect. In the meantime, resource zoning will help prevent potential sites from being lost to other uses. (See, however, the Goal 4 section of this report for a discussion of problems with the F-2 Zone.)

Fish and Wildlife Areas and Habitats

Inventory

Information about Lane County's fish and wildlife resources is contained in its Flora and Fauna Working Paper and the addendum to that working paper. Pages 5-10 describe in general each of the 11 major habitat types in the County, along with a discussion of the value of the habitat type to wildlife, and general location of each habitat type. These include:

1. Estuary and Bay
2. Inland Marsh
3. Wet Meadows
4. Lakes and Reservoirs
5. Riparian Vegetation
6. Annual and Perennial Grasslands
7. Coastal Shore Pine/Spruce
8. Douglas Fir/Trailing Blackberry
9. True Fir/Alpine
10. Deciduous Hardwoods
11. Agricultural Lands.

The County prefaces this material by stating that this information "is not considered an inventory and is not accompanied by maps. It is intended merely as background information."

The Working Paper and its addendum contain special sections addressing endangered, threatened, and special concern species, riparian and wetland areas, sensitive fish and waterfowl areas, and big game range. These are discussed separately below.

Endangered, Threatened and Special Concern Species: The Working Paper lists plants and animals which are threatened, endangered, or of special interest (pp. 11-12). Further information is provided for six of these species--northern spotted owl, northern bald eagle, wolverine, silverspot

butterfly, western snowy plover, and American osprey (pp. 12-13). This information does not provide location, quality, or quantity information on any specific habitat areas or sites. However, the County indicates that:

1. No spotted owl or bald eagle nests are known to occur on private property;

2. Wolverine habitat is in high elevation, remote areas and therefore in federal ownership;

3. Snowy plover habitat is within state jurisdiction.

4. Osprey nests are found throughout the County, although not in great numbers. The County indicates the ODFW maps show their locations, but these maps have not been adopted or submitted for review.

5. Silverspot butterfly habitat is found only "along a small section of the Oregon Coast." It is recognized in the Coastal Resource Management Plan of Lane County.

Lane County has indicated that Silverspot butterfly habitat occurs on federal land adjacent to the Big Creek (Reneghan) Exception Area as well as on the Renaghan property itself (Exhibit E--Renaghan Amendment, pp. 27, 31). It should be noted that the Exception document contains one statement (Finding 37e) on page 27 which appears to contradict this. Specifically, finding 37e states there are no sensitive species on the property, and that the Silverspot butterfly habitat is located on adjacent federal land only. The Exception document contains several other statements indicating that such habitat occurs in the northwest corner of the property.

The County provides no information at all regarding great blue heron rookeries or pigeon mineral springs, which are considered sensitive bird habitat areas by the Department of Fish and Wildlife. (The exception to this is for two rookeries in the Willamette Greenway. They are addressed in the Goal 15 section of this report.) The inventory of sensitive bird sites developed by ODFW and provided to the Department of Forestry (DOF) as part of a recent management agreement between those agencies, identifies 15 great blue heron rookeries, 21 osprey nest sites, three pigeon mineral springs, and at least one bald eagle nest site in Lane County, most of which are on nonfederal land. According to Flora and Fauna Policy 15, "currently known pigeon springs, heron and raptor (hawk, osprey, and eagle) nest sites. . . shall be placed in a '1B' category."

Riparian and Wetland Areas: Riparian lands are defined by the County as all lands along both banks of Class I streams in Lane County, to a setback line of 100 feet from ordinary high water (Addendum, p. 7).

The County indicates in its Flora and Fauna Working Paper (p. 16) that all lakes, reservoirs, and Class I streams in Lane County have been mapped, but were not included because of budgetary limitations. They are

available in the Planning Department offices. The Addendum to the Working Paper (p. 6) states that ODFW has provided maps of all Class I streams, as well as major significant wetland areas. Detailed maps are available for review in County offices, and a generalized summary map is included in the Addendum (p. 20).

The Flora and Fauna Working Paper discusses the values associated with wetlands and riparian areas for both fish and other wildlife types (pp. 14-15). The County notes that the U.S. Fish and Wildlife Service has identified a number of wetland types in its National Wetland Inventory. Currently, about half of the County has been mapped, enabling identification of major wetlands. These include:

1. Fern Ridge periphery, exclusive of parkland;

2. Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel;

3. North Fork Siuslaw fresh-water marsh;

4. Maple Creek marsh;

5. Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

The County indicates that these areas are mapped in detail on the Plan Diagram maps. More specific location, quality, and quantity information for each of these five wetland areas is contained in the Working Paper Addendum (pp. 11-13).

The County has not inventoried a wetland south of Sutton Lake and east of Highway 101, or a Darlingtonia bog east of Florence. As noted in the 1983 Coastal Goals review of Lane County (p. 8), these wetland were to be addressed under Goal 5:

> The County notes there are only two Goal 18 resource areas east of Highway 101 which do not fall within the coastal shorelands boundary. They are two wetland habitat areas identified in the coastal resource inventory maps. The County should note that it will have to adequately address these two areas later under Goal 5 when it brings the remainder of the County plan into compliance.

The Darlingtonia bog is addressed in more detail in the Natural Areas section of this report.

Sensitive Fish and Waterfowl Areas: The County notes that this is a subcategory of the previous section, Riparian and Wetland Areas (p. 20). Maps have been provided the County by ODFW showing important waterfowl nesting habitat and streams that receive high use by anglers and/or game fish (p. 20), but were not submitted for review. A large-scale map is available in the County Planning offices (Addendum, p. 5). A

generalized, small-scale map is included on page 20 of the Addendum which shows the locations of important streams and stream reaches. A list of these specific reaches, by basin, is included in the Addendum (pp. 2-4). All identified areas are of high quality and are considered important (Working Paper, p. 21). The extent of riparian vegetation is described in the previous subsection of this report. The County notes that there are native anadramous fish runs in Big Creek within the Big Creek Exception Area (Exhibit E--Renaghan Amendment, p. 44). These include coho salmon, cutthroat trout and steelhead.

Big Game Range: The County notes that ODFW divides big game range in Lane County into three categories--Major, Peripherial, and Impacted. The Major Range supports the majority of big game and, in general, consists of sparcely developed commercial forest lands. Peripheral Range is generally located on foothill areas between commercial forest lands and valley floors. Peripheral Range supports substantial big game populations and serves as wintering areas for animals in severe winters. Impacted Range consists of those areas that have existing levels of development which preclude future wildlife management options for maintaining viable wildlife populations and recreational opportunity, although they frequently contain big game populations.

All three big game range areas are depicted on Lane County Wildlife Inventory Maps, according to the Flora and Fauna Working Paper (p. 23). However, these maps were not submitted for review because of budget constraints. They are available in the Planning Department Office (p. 23). The Working Paper notes that the highest quality big game range is in the Major Range because development is limited. Peripheral Range is important, but has enough development to limit big game use and managment options. Impacted Range is of the lowest quality because of existing development (p. 23). The County provides acreages for these three categories (p. 24).

The County recognizes major elk habitat on a portion of the Big Creek Exception site (Exhibit E-Renaghan Amendment, p. 52).

Conflicting Uses/ESEE Consequences Analyses

Endangered, Threatened and Special Concern Species: As indicated earlier, Lane County knows of no spotted owl or bald eagle nest sites on private land. Similarly, wolverine habitat is on federal land. The County notes that the State Parks Division of ODOT regulates vehicular uses in snowy plover habitat (Working Paper pp. 12-13). Specific conflicts with osprey nest areas are not identified, but the County notes that protective measures in riparian areas (e.g., Willamette Greenway permit requirements, coastal shorelands overlays, riparian and wetland area provisions) will resolve conflicts (Addendum, p. 15).

The Working Paper indicates that the Coastal Resources Management Plan of Lane County recognizes the Silverspot butterfly and applies a prime wildlife managment unit to its habitat (p. 13). Specific conflicts and ESEE consequences are not discussed in the Working Paper, however.

It should be noted that a portion of the critical habitat for the Silverspot butterfly is included in the Rock Creek Federal Wilderness Area, recently approved by Congress. Another portion of the habitat is located within the County's Big Creek Exception Area. That exception indicates that the applicant "will enter into contractual arrangements with the Siuslaw National Forest or Western Oregon State College to take whatever measures are necessary to mitigate any potential conflicts or adverse impacts associated with the development" (Exhibit E--Renaghan Amendment, p. 27). According to the Exception (p. 28), the U.S. Fish and Wildlife Service's Endangered Species Office indicates that this project will have not significant adverse impact on the Silverspot's habitat.

Conflicting uses and ESEE consequences analysis have not been conducted for sensitive bird habitat areas, since these resource sites have been placed in a (1B) category.

Inasmuch as the County failed to inventory a number of nonfederal sites as (1C) resource sites (e.g., great blue heron rookeries, pigeon mineral springs, bald eagle nest, osprey nests), the County has not identified conflicting uses or ESEE consequences of those conflicting uses with these sites. Information does exist for these sites, however, as indicated earlier, enabling the County to conduct such analyses.

Riparian and Wetland Areas: Two major activities conflict with riparian and wetland habitat areas, according to the County's Working Paper (p. 17)--destruction of vegetation for any purpose (e.g., forestry, agriculture, construction, recreation, aggregate extraction), and draining surface or subsurface water which then changes the vegetative structure and generally the habitat value. The County has developed separate ESEE consequence analyses for riparian lands and wetlands.

The riparian lands ESEE consequence analysis is further divided into three categories--(1) resource areas (forest and agricultural lands), (2) rural lands (partially or sparsely developed), and (3) developed and committed lands, including communities (Addendum, pp. 7-10). Based on these analyses, the County decided to develop a (3C) approach in order to limit conflicting uses. ODFW has recommended a 50 foot setback along all class I streams in rural development zones and a 100 foot setback in rural resource zones (Addendum, p. 10).

Separate conflicting uses/ESEE consequences analyses have been conducted for each of the five major wetlands identified (Addendum, pp. 11-13). Based on these analyses, the County has determined that areas owned by the Corps of Engineers (Fern Ridge Reservoir, part of Lower Long Tom, Amazon Canal) have sufficient protection, and furthermore, cannot be regulated by the County since they are in federal ownership. Areas under Coastal Resources Zoning (North Fork Siuslaw, Maple Creek Marsh) are also assumed to be adequately protected. A (3C) approach (e.g., Natural Resource Zoning) is appropriate for all other privately-owned areas (part of Lower Long Tom) (p. 13).

Sensitive Fish and Waterfowl Areas: Removal of riparian vegetation in identified sensitive areas is considered the major conflicting use with these resources (Working Paper, p. 21). The County notes that the ESEE consequences analysis is generally the same as that for riparian areas and wetlands, summarized in the previous section of this report (Working Paper, p. 21). However, the County indicates that since the sensitive fish and waterfowl areas are considered more valuable than others in the County, the effects of vegetation removal can be more significant (p. 21). Based on these analyses, Lane County has chosen a (3C) approach to protect riparian vegetation in such areas "whenever possible" (p. 22). The County notes that ODFW has recommended setbacks of 50 to 100 feet along waterways designated as sensitive fish habitat, plus natural resource zoning for wetlands not within that riparian strip (Addendum, p. 5).

Conflicting uses and ESEE consequences of conflicting uses with fish habitat in the Big Creek Exception Area are addressed on pages 54-56 of the Exception. Based on this analysis, the applicant will be required to protect the anadromous fish through development of a management plan and protection or riparian vegetation (pp. 27, 55).

Big Game Range: The primary conflict with big game range is identified as residential use at densities over one dwelling unit per 40 acres in Peripheral Range, and one unit per 80 acres in Major Range (Working Paper, p. 24). The County indicates that its 80-acre commercial timber zoning is very restrictive in terms of dwelling unit placement, and therefore, "it is unlikely that conflicts will occur" in Major Range areas (Addendum, p. 14). Similarly, the County believes its 40-acre zone will satisfy ODFW's recommended density in Peripheral Range (p. 14). Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas (p. 14).

The conflicts and ESEE consequences of conflicts with major elk habitat in the Big Creek Exception area are discussed on pages 53-54, and 56 of the Exception document. Based on this analysis, the applicant will be required to protect elk winter forage areas (p. 27) and to develop an elk managment plan (p. 32).

Policies

Lane County has adopted numerous policies regarding its fish and wildlife resources (Flora and Fauna Policies, Plan, pp. 14-16). These policies include the following:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "Significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or, that riparian vegetation does actually extend all the way into the 500 foot or 100 foot setback to the location of the proposed improvements.

   Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife.

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per

Goal 5 requirements if it is clearly demonstrated that an unprotected signficiant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process.)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

13. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met.

14. A group known as the "Lane County Flora and Fauna Committee" is to be established and given permanent status by the Board of County Commissioners. The committee shall represent a wide array of environmental interests and the interests of property owners. Its tasks shall include: evaluation of LCDC Goal 5 concerns and resources, development of information to help the County comply with OAT [sic] 660-16-000/025 ("Goal 5 Rule"), research and provision of resource site data to the County, and response to work in progress. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

15. Currently known pigeon springs, heron and raptor (hawk, osprey and eagle) nest sites shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluation per "1B" requirements within two years of the date of plan adoption. Lane County shall consider enlarging the list of significant nest sites whenever information about additional sites becomes available. The significant nest sites shall be those identified by Jim Greer and Jim Hutchison (Department of Fish and Wildlife biologists) in a 12/20/83 letter to Jim Mann (Senior Planner, Lane County Land Management Division), and these sites shall be incorporated into the Lane County General Plan Policies document as Flora and Fauna Exhibit A.

16. Rare and endangered vascular plants, identified in the 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

17. Lane County recognizes that Douglas fir old growth stands provide valuable and unique wildlife habitat and will encourage the Forest Service and Bureau of Land Management to maintain acreage in this age class sufficient to ensure viable populations of dependent wildlife species.

Policy 22 (Plan. p. 5) states:

> Sites considered 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement

process for the "significant" sites and after sufficient information is available regarding the location, quality and quantity of the "significant" sites.

Lane County's Forest Lands Policy 17 (Plan, p. 10) states:

> Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

Implementing Measures

Lane County has adopted the following riparian setback standards and riparian vegetation maintenance standards in its F-1, F-2, E-RCP, ML-RCP, PR-RCP, and DR-RCP Zones (Lane Code, Sections 16.210(7)(a) and (b), 16.211 (9)(b) and (c), 16.212 (8)(b) and (c), 16.214(7)(b) and (c), 16.215(6)(a) and (b), and 16.232(5)(b) and (c), respectively):

> (b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:
>
> (i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and
>
> (ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or
>
> (iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.
>
> (c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:
>
> (i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazard.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

In the PF/RCP C-R, RCP, RA-RCP, and RR-RCP Zones (Sections 16.219(4)(b) and (c); 16.223(5)(b) and (c); 16.229(7)(b) and (c); and 16.231(7)(b) and (c), respectively), the setback is 50 feet, rather than 100 feet.

The following zones indicate the Class I Stream and Riparian Vegetation requirements of LC 16.229-35(2) and (3) shall apply: C-1, RCP (Section 16.220); C-2, RCP (Section 16.221); C-3,RCP (Section 16.222); M-1, RCP (Section 16.224); M-2, RCP (Section 16.225); and M-3, RCP (Section 16.226). The RG-RCP Zone (Section 16.230) indicates that Section 16.299(2) and (3) shall apply. However, the Lane Code does not contain any section with the numbers 16.299-35(2) and (3) or 16.229 (2) and (3).

As discussed in the open space section of this report, Lane County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213) which is, in part, intended to protect aquatic and other wildlife habitat areas. Please refer to that section of this report for details. It should be pointed out that the NR zone does not contain riparian setback and vegetative maintenance standards. Although major development in the NR zone is not anticipated, the NR zone permits a variety of structures. These structures should be required to be set back in order to protect riparian vegetation, just as they are in other zoning districts. In fact, since the purpose of the NR zone is to protect wildlife and aquatic habitats, there is even more reason why such setbacks should be required.

A review of the County's zoning maps indicates that the NR Zone has been applied to a number of habitat areas in the County. One of the sites zoned NR is the Big Creek Exception Area, which contains fish and big game habitat, and habitat for the endangered Silverspot butterfly.

According to the Exception (p. 27), no alteration of the riparian vegetation will occur, and the owner has agreed to enter into contractual arrangements to protect elk winter forage areas. The applicant will also take measures that may be necessary to protect the habitat of the Silverspot butterfly.

Contrary to statements contained in the Flora and Fauna Working Paper, Lane County's F-1 (Nonimpacted Forest Lands) Zone establishes a 40-acre (rather than an 80-acre) minimum lot size (Lane Code, Section 16.210(6)), except that (a) a land division to create a parcel of less than 40 acres may be allowed conditionally if it is for separating an existing residence from adjoining forest land, and (b) a common property boundary may be adjusted so long as no additional parcels are created. As noted in the Flora and Fauna Working Paper (p. 24), and as discussed earlier in this report, ODFW's recommended density in Major Big Game Range (which, according to the County, is mostly zoned F-1) is one unit per 80 acres. Inasmuch as the F-1 zone does not allow dwellings, this density standard has less meaning in Lane County's F-1 Zone.

The F-2 (Impacted Forest Lands) Zone (Lane Code, Section 16.211) requires a minimum of 20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel. However, there is no requirement that, in the Big Game Range portions of that zone, densities will not exceed those recommended by ODFW (i.e., one unit per 40 acres in the Peripheral Range, or one unit per 20 acres with clustering and siting standards; one unit per 80 acres in the Major Range, or one unit per 40 acres with clustering and siting standards).

In the Exclusive Farm Use Zone (Lane Code, Section 16.212), a dwelling or mobile home not in conjunction with farm use may be approved if it meets certain criteria; similarly, a division of land may be allowed for a dwelling not in conjunction with farm use if it meets those criteria and does not conflict with the purpose of the zone. However, none of the criteria address ODFW's dwelling density recommendations, and the purpose statement of the zone does not refer to maintaining wildlife habitat values. As noted in the Goal 3 section of this report, minimum lot size is from 20 to 60 acres, depending upon location. As noted in the Flora and Fauna Working Paper (p. 24) and as discussed earlier in this report, ODFW's recommended density in Peripheral Big Game Range (which, according to the County, is mostly zoned Exclusive Farm Use) is one unit per 40 acres. There are no standards in the zone which require lot sizes to be 40 acres or greater in the Peripheral Big Game Range portions of the zone, or alternatively, that require clustering of dwellings (to allow densities as great as one unit per 20 acres.

Lane County has adopted a Marginal Lands (ML-RCP) Zone (Lane Code, Section 16.214) which appears to have been applied to wildlife habitat areas, and could be applied to other areas in the future. (The County did not submit maps showing the locations of its big game habitat areas, so it cannot be determined with certainty whether it has been applied in big game habitat areas). ORS 197.247(8) requires that application of

such a zone satisfy all requirements of other Goals, in this case, Goal 5. The County has not adopted findings demonstrating how the specific applications of the ML zone comply with the Goal 5 Rule. Criteria for approval of future ML zoning (Section 16.214(4)) do not include compliance with Goal 5.

Section 16.215 of the Lane Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses and activities outright, and a number of others if within a built and committed exception area that is designated as nonresource land. The zone also lists uses that are subject to hearings official approval. Section 16.215(5)(e) of the zone contains the following conditional use approval critera:

> When a use is proposed in an area designated as Major Peripheral Big Game Range or as Sensitive Fish and Waterfowl areas as shown on the Lane County Wildlife inventory, the Oregon Department of Fish and Wildlife shall be notified and their comments shall be considered in evaluating the proposed use.

The PR zone allows a number of uses that could conflict with wildlife habitat and other Goal 5 values, and with the purpose of the zone, as noted in the Goal 2 section of this report.

The County has not adopted any implementing measures to protect and/or resolve conflicts with sensitive bird habitat sites.

As noted in previous acknowledgment reviews (e.g., Tillamook County), the Commission has allowed counties to adopt plan policies and ordinance language which clearly expresses the intent to rely on the FPA, Rules, and the March 1984 agreement between the Board of Forestry (BOF) and the Fish and Wildlife Commission (F&WC) to resolve conflicts between timber management activities and sensitive bird sites. Lane County has no such policy commitment, and it has not inventoried all sites on the BOF/F&WC list of sites covered by this agreement. However, even if such a policy is adopted by counties, they are still required to adopt implementing measures to resolve conflicts between other uses (e.g., development) and sensitive bird sites. Lane County has not adopted such measures.

Lane County has not identified sites that are considered to be more important than commercial forest operations based on a Goal 5 ESEE consequences analysis, per Forest Lands Policy 17 (Plan, p. 10), nor has it adopted and applied any implementing mesures to such sites which regulate timber management activities.

Objections

1. The Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon and the Legue of Women Voters of Central Lane County (LWV) have objected to the County's approach to sensitive bird nesting and use sites. Specifically objectors point out that the Flora and Fauna Working Paper discusses only some of the species considered

sensitive. Missing are designations of heron rookeries and pigeon mineral springs. Policy 15 addresses all sensitive species (bald eagle nests, heron rookeries, snowy plover habitat, spotted owl nests, osprey nests and pigeon mineral springs). Further, objectors point out that Policy 15 places these species in a (1B) category. Both ODFW and 1000 Friends indicate that the County possesses inventory information (including recent ODFW updated information) which is sufficient to complete the Goal 5 process for this resource category. ODFW indicates that the location, quality, and quantity information provided the County is similar to that provided to other counties which have completed the Goal 5 process and which have been acknowledged. The League of Women Voters is concerned that two years is too long for these resource sites to be without protection. Most are not in the Greenway, and therefore do not even receive minimal protection.

1000 Friends also objects to the fact that neither Flora and Fauna Policy 2 or 3 provides adequate protection for these sensitive species. Policy 2 simply indicates the County will recognize existing programs that protect species; it does not bind the County to any particular course of action. 1000 Friends believes the County must make an affirmative commitment to protect threatened and endangered fish and wildlife species. Policy 3 also fails to guarantee protection of sensitive species since it requires the County to seek to minimize adverse impacts through County regulations (including zoning). 1000 Friends suggests that present zoning may be construed to "minimize adverse impacts" but this may not necessarily provide adequate protection for particular sites.

1000 Friends also objects to the use of the definition of "sensitive species" used in Policy 3. Objectors believe it is overly general and could be construed by decision-makers to exclude certain species. Objectors believe that County Policy 3 should reference the list of "species of special concern" that appears in the Working Paper, rather than use a vague term in the policy. Similar comments have been filed by Oregon Forest Industries Council.

2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations "if conflicts can be resolved in accordance with OAR 660-16-000." Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.

3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements

that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting of standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

4. ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal and nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where marginal and nonresource lands are located, and therefore the extent to which they are in game range areas, since the zone map format and resource inventory map formats are not easily comparable. 1000 Friends points out the Goal 5 must be applied whereever Goal 5 resources occur, even in areas designated marginal or nonresource land.

5. ODFW, 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's treatment of the Pudding Creek Heronry. Objectors point out that the County conducted a Goal 5 ESEE consequences analysis, but that inasmuch as the sand and gravel plan and zone designations have been retained on the site, conflicts have not been resolved. Please refer to the Goal 15 section of this report for further details concerning objections to the zoning of this site.

6. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Objectors indicate that the County has not adopted a program that is adequate to protect and/or resolve conflicts with the site under Section (3C) of the Goal 5 Rule. Objectors point out that the 1981 LCDC order for the Eugene/Springfield Metro area include a requirement that the ESEE consequences of designating the island for sand and gravel use must be evaluated in the context of regional aggregate supply and demand. The IOTC further required that if the island were to retain a partial sand and gravel designation, the Metro Area Plan and the Lane Code (Section 10.210) must be amended to require that limited aggregate extraction will minimize the impact on scenic and wildlife values.

The IOTC also referenced Goal 15 requirements and IOTCs. Objectors contend that neither the Goal 5 nor Goal 15 IOTCs have been adequately addressed. These objections are also contained in the Goal 15 section of this report.

7. 1000 Friends of Oregon has objected to the fact that Lane County has placed only five noncoastal wetlands in its (1C) inventory, and has placed all others in a (1B) category. 1000 Friends believes the County has sufficient information to be able to classify the others as either (1A) or (1C), since such information was given to the County by ODFW, interested citizens, and the Lane County Flora and Fauna Committee. Objectors indicate that Goal 2 Policy 22 is inadequate for these (1B) sites since it requires only that interim protection be applied at the beginning of the plan refinement process --no sooner. Objectors point out that Goal 15 requires protective measures be applied as soon as their significance has been determined.

   Finally, 1000 Friends indicates that the U.S. Fish and Wildlife Service's National Wetland Inventory is the basis for Lane County's wetland inventory. Flora and Fauna Policy 7 states that this inventory, although incomplete in Lane County, will be used to evaluate (1B) wetlands within two years of the date of plan adoption or when the national inventory is completed. 1000 Friends points out, however, that such an inventory is not scheduled for completion for another 5-10 years, and Lane County is not within a priority inventory area. Objectors believe the County should amend Policy 7 and the Addendum to the Flora and Fauna Working Paper (p. 6) to recognize alternative sources of data shall be used to assess the significance of wetlands and to identify their boundaries.

8. 1000 Friends has objected because the County definition of wetlands in its Working Paper is much narrower than that contained in the Statewide Planning Goals or the U.S. Fish and Wildlife Service, but the County has not justified how such a definition is consistent with Goal 5. The Working Paper states that a wetland is "an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre." Objectors indicate the County has no definition of wetlands in either its plan policy document or in its zoning ordinance.

9. 1000 Friends objects to the fact that Lane County is relying on the FPA to maintain riparian corridors along Class I streams and wetlands, and will take no actions to limit conflicting uses in areas subject to the FPA. Objectors state that there is no analysis in the submittal materials which demonstrates how the FPA and Rules provide protection for riparian resources consistent with Goal 5. Therefore, 1000 Friends objects to LC 16.210(7) and 16.211(9).

10. 1000 Friends objects to the County's failure to apply riparian protection measures around lakes and along Class II streams. Objectors point out that Class II streams regulate water temperature, quality, and quantity of downstream Class I streams.

11. Friends of the Oregon Coast has objected to the County's Renaghan Amendment (Big Creek Exception) for a number of reasons, some of which relate to fish and wildlife concerns. These are as follows:

    a. Objectors believe that many of the findings are "contractory and irrelevant." Objectors cite two examples. The first is that finding 37d (p. 27) conflicts within finding 37e (p. 27). One calls for establishing permanent elk forage areas; the other calls for maintaining the property in forest. Objectors also indicate that the County's claim that there are no sensitive species on the property contradicts findings 40a (5) and 44b(6) which state that the northwest corner of the property contains Silverspot butterfly habitat.

    b. Objectors claim that because the applicant retained a consulting wildlife biologist, his statements in the record should be expected to support the establishment of a destination resort. Objectors believe that his statements are treated by the County as findings of fact although they sometimes "are argumentative of the County's Coastal Sub-Area Plan and of the Oregon Department of Fish and Wildlife's Management plans."

    c. Objectors believe that, although the applicant and ODFW will be required to work together to mitigate adverse impacts on fish and wildlife, these efforts will be "experimental" and therefore cannot justify the resort complex in the the middle of prime and sensitive habitats.

    d. Objectors point out that the Exception recognizes ODFW's concerns about increased fishing pressure on Big Creek as a result of the development, and that potential harm can only be mitigated by regulating sport fishing (through reductions) on the creek. Objectors feel that long-time anglers will therefore be penalized by the development.

Response to Objections

1. Objectors are correct in pointing out deficiencies in the County's inventory of sensitive bird nesting and use sites. Information on location, quality, and quantity is available, yet the County has taken a (1B) approach to several of the species identified. Sufficient information exists for the County to be able to complete the Goal 5 process for this resource category.

   Objectors are also correct that Flora and Fauna Policies 2 an 3, themselves, do not guarantee protection for sensitive species, particularly in light of the absence of implementing measures to provide such protection. The adequacy of these policies can be judged only after the County completes the Goal 5 process for the habitat areas of these species. Lane County has erroneously placed such species in a (1B) category, and has not yet completed the Goal 5

process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

> Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.

4. Objectors are correct that Goal 5 has not been applied by the County in the process of designating marginal lands. ORS 197.247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5.

5. The response to the objections regarding Pudding Creek Heronry is presented in the Goal 15 section of this report.

6. The response to the objections regarding Big Island is presented in the Goal 15 section of this report.

7. The County has indicated it has sufficient inventory information on only five noncoastal wetlands at this time. 1000 Friends has not provided location, quality, or quantity information on specific wetlands it believes should be (1C) sites, rather than (1B) sites.

   ODFW has not objected to the County's determination that only five wetlands are (1C) and the remainder are (1B) sites. 1000 Friends is correct that Policy 22 calls for protection of (1B) sites only at the beginning of the plan refinement process. However, the Goal 5 Rule does not require any interim protection for (1B) sites.

   Although the incomplete National Wetlands Inventory is the basis for the County's wetlands inventory, 1000 Friends is not correct that the County must wait until the National Inventory is completed before it can apply the Goal 5 process to (1B) sites. Furthermore, Policy 7 does not prevent the County from considering information about other sites not on the national inventory during its plan update process. 1000 Friends, or other parties may supply the County with information about wetlands, and the County would be required to apply the Goal 5 process to those sites. Plan Policy 7 states:

   > Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal; state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the national Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process).

While the policy does not permit the use of alternative sources of information during the update process, 1000 Friends is correct in suggesting that the policy could be improved by actually stating that other sources of information (besides the National Inventory) will be used.

8. 1000 Friends is correct in pointing out that the County's Working Paper definition of "wetlands" is narrower than that contained in the Statewide Planning Goals. Wetlands very often do not have open, standing water present at least six months out of the year. Reliance on the County's definition could result in some wetlands possibly being excluded from the County's (1C) inventory.

9. 1000 Friends is correct that the County is relying on the FPA to resolve conflicts between timber management activities and riparian areas along Class I streams and wetlands, although the County has not made a statement to this effect. It is clear in Forest Lands Policy 17 and in various sections of the Zone Code that the County is not regulating harvest activites. Objectors are also correct that the County has not provided an analysis demonstrating how the FPA and Rules provide protection for the Goal 5 resource. However, it has been Commission practice not to require counties to adopt implementing measures to resolve conflicts between timber management activities and riparian corridors.

10. 1000 Friends is correct that the County has not applied riparian protection measures around lakes or along Class II streams, or otherwise justified not providing such protection, based on an ESEE consequences analysis of conflicting uses. Information in the Flora and Fauna Working Paper (pp. 6 and 15) suggests that these are important Goal 5 resources.

11. The objections of Friends of the Oregon Coast are not sustained with regard to fish and wildlife concerns for the following reasons:

    a. Objectors are correct that the Exceptions document contains some conflicting statements, particularly whether the property contains Silverspot butterfly habitat. Specifically, finding 37e (p. 27) is misleading, since the site does contain Silverspot habitat. In light of the fact that the County's intent is clearly to take whatever actions are necessary to protect the Silverspot butterfly, this inconsistency is not a Goal violation.

       With regard to the Exception documents' statements regarding elk forage, it can be assumed that, although the main intent is to keep the property in forest, portions of the property will be in other uses. These findings are broadly written, and, as such, are not contradictory.

    b. Objectors have not indicated how findings 47d(1) through (13) violate Goal 5, only that they are sometimes "argumentative" of other documents.

c. Objectors have not indicated why they believe ODFW's attempt to mitigate impacts on habitats will be experimental, or otherwise why they cannot suceed in providing adequate protection.

d. Objectors have not indicated how regulating sport fishing on Big Creek to protect the resource long-term violates Goal 5. While it is unfortunate that long-term anglers may be "penalized," this is not a Goal issue.

Comments

Oregon Forest Industries Council (OFIC) and the Lane County Landowners Association have commented that Policy 22's intent is unclear, since it calls for interim protection measures for "significant" Goal 5 resource sites. However, the policy addresses (1B) sites. The association indicates that (1B) applies where some information exists but is inadequate for purposes of identifying a site and determining its significance. Commentors also point out that interim protective measures are neither required nor appropriate for Goal 5 compliance.

Response to Comments

Policy 22 (Plan p. 5) states:

> Sites considerd 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the 'significant' sites and after sufficient information is available regarding the location, quality, and quantity of the 'significant sites.

While it is true that Policy 22 is somewhat ambiguous, the policy appears to recognize the fact that certain Goal 5 resource categories have significance (e.g., all eagle nests are significant), although their specific locations may not be known at this time. Therefore a (1B) classification is appropriate. The Goal 5 Rule does not require interim protection measures for (1B) sites. However, the Rule does not prohibit jurisdictions from adopting and applying interim measures to (1B) sites.

Conclusion -- Fish and Wildlife Habitats

Lane County has adopted inventory information for a number of fish and wildlife habitat areas, and has identified conflicting uses and ESEE consequences of those conflicting uses. Implementing measures including riparian setbacks and vegetation maintenance standards and a Natural Resource Zone have been adopted. However, a number of deficiencies still remain and must be corrected before acknowledgement can be granted. These are summarized below.

Lane County has placed all sensitive bird habitat sites in a (1B) category, even though information is currently available and is adequate for completing the Goal 5 Rule process. The County needs to adopt a (1C) inventory for known sites and complete the Goal 5 process.

Implementing measures which carry out ODFW's development density recommendations in Major and Peripheral Big Game Range areas have not been adopted, particularly in the F-2, ML and EFU zones. The County has not applied the Goal 5 process to "nonresource" lands.

The County's three commercial, three industrial, and its garden-apartment zones reference a nonexisting code section for their riparian setback and vegetation maintenance standards. It is obvious that the County intended to apply such standards in those zones but until the zones are amended to either (1) reference the correct section of the code containing those standards, or (2) incorporate such standards themselves, there are no riparian standards in effect in those seven zones. Riparian protection measures have not been applied around lakes, in the Natural Resources Zone, or along Class II streams, or justified as not being necessary, based on an analysis of ESEE consequences of conflicting uses.

The County uses a narrower definition of "wetlands" than in the Goals, and therefore, some wetlands may be left off any future (1C) inventory.

The Parks and Recreation zone allows a number of uses which could conflict with the purpose of that zone, and with Goal 5 resources present (including fish and wildlife habitat values).

A Natural Resources Zone has been developed and applied to lands in the County, but it is unclear which habitat sites have been given NR zoning or whether it has been appropriately applied.

Ecologically and Scientifically Significant Natural Areas

Inventory

The County's Flora and Fauna Working Paper contains the County's inventory information on natural areas (pp. 26-32). This working paper indicates that the County evaluated the 86 sites on the Natural Heritage Inventory and the nine sites identified by the Natural Areas Preserves Advisory Committee. (Note: The Committee is now known as the Natural Heritage Advisory Council). These sites were evaluated by Lane County, first of all, to determine whether there was adequate information on location, quality and quantity. If this was the case, and that information suggested that a site was "significant," it was placed in a (1C) category. If information existed, but the site was determined to be not significant, it was classified (1A). If there was inadequate information, sites were placed in a (1B) category (pp. 26-27).

The County placed six sites in the (1B) category:

1. Booth Island/Siltcoos Lake
2. McKenzie River Island (not be confused with the island at the confluence of the McKenzie and Willamette Rivers)
3. South Fork Gate Creek
4. Swamp Creek
5. Marshall Island Heronry
6. Willamette Valley Quaking Aspen Grove

The County has provided justification why it believes the (1B) classification is appropriate for each of the site sites (pp. 27-28). The Nature Conservancy has indicated it has no updated information for any of the six sites at this time and that a (1B) classification is appropriate (Curt Soper, personal communication, June 15, 1984).

Fifty-six other sites were determined to be in a (1C) category and therefore constitute the County's natural areas inventory (p. 28). The County has grouped these sites according to their ownership. There are 23 sites on U.S. Forest Service land, six on BLM land, four sites within state parks, and 25 that are either in the Willamette Greenway or covered by the Coastal Resources Management Plan (pp. 30-32). Two additional sites (Upper Yachats Elk Pasture and Fern Ridge) are also (1C) sites, but do not fall into the above categories (p. 32).

No information regarding location, quality or quantity of the federally-owned sites is provided in the Working Paper. Information regarding the natural features present in the State park sites and at the 25 Greenway or Coastal sites is summarized (pp. 30-32). All are significant in terms of quality. Locations of these sites have not been provided.

It should be noted that, during the review of the coastal portion of the Lane County plan, a privately-owned Darlingtonia bog, east of Highway 101 and east of the City of Florence, was identified. The bog did not quailify as an ecologically significant natural area under the Coastal Goal requirements. It does, however, possess natural values that could qualify it as a Goal 5 (1C) natural area. However, Lane County has not addressed this site in its Working Paper or other submittal materials.

Conflicting Uses/ESEE Consequences Analyses

Because of their ownership by the U.S. Forest Service or the BLM, the County believes no conflicts exist for the 29 federal sites (Flora and Fauna Working Paper, p. 28).

The County indicates that no conflicts exist for the four state park sites based on uses allowed in zoning districts applied to those sites (p. 29). The Flora and Fauna Working Paper Addendum (p. 15) states, "the State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen." However, as noted in the Goal 2 section of this report, the Parks and Recreation zone which has been applied to these state parks, allows a number of uses which could conflict with natural area values.

No conflicts have been identified for the Coastal or Greenway sites because of programs and zoning districts applied to them (p. 30).

With regard to the two remaining sites (the Elk Pasture and Fern Ridge), the County indicates there are no conflicts. The Siuslaw National Forest and ODFW own the site and have an agreement concerning use of the site as an elk wintering area. Fern Ridge is owned by the Corps of Engineers and, under a 1980 management plan for the reservoir, the natural values present will be protected (p. 32).

It should be pointed out that public ownership, in and of itself, does not necessarily mean there are no conflicting uses, nor does it guarantee site protection. Although several of the U.S. Forest Service and BLM sites are formally protected by those agencies (e.g., wilderness areas, designated research natural areas), others are not. Unless the federal agencies have formal protection programs in place for natural areas, it cannot be assumed that no conflicts exist, nor can they be considered "2A" (protected) Goal 5 resource sites. However, since the Commission has not required counties to complete steps (2) and (3) of the Goal 5 Rule for sites on federal land, it is recommended--but not required--that Lane County correct the statement on page 28 of the Flora and Fauna Working Paper regarding conflicts on federal land.

Policies

Lane County has adopted the following policies regarding natural areas (Flora and Fauna Policies, Plan, pp. 14-16):

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

12. If uses are identified (which were not previously identified in the Plan which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

16. Rare and endangered vascular plants, identified in a 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

Policy 22 (Plan, p. 5) states:

> Sites considerd "significant" in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the "significant" sites and after sufficient information is available regarding the location, quality, and quantity of the "significant sites".

See also the Goal 15 section of this report and the coastal review of the Lane County Plan for a discussion of other relevant plan policies which address natural area.

Implementing Measures

As indicated by the County, a number of natural area sites are located on federal land, over which the County lacks jurisdiction. A number of other sites are significant natural areas within the Coastal Planning Area and the implementing measures applied to them have been acknowledged as being in compliance with the Coastal Goals. The two Greenway sites are actually riparian areas along the Middle Fork and the Coast Fork of the Willamette River. The County's Greenway Permit ordinance and its riparian setback and maintenance standards provide a degree of protection for these areas. (See, however, the Goal 15 section of this report for a discussion of specific deficiencies in the Greenway ordinance).

The four state parks have been zoned Parks and Recreation. However, as noted in the Goal 2 section of this report, the PR zone allows a number of uses that could conflict with the natural area values of the sites. ODOT has indicated it does not forsee conflicts with the four sites, according to the County. However, there are no management plans for the sites, or letters from ODOT which confirm that this is the case.

Objections

1. The League of Women Voters of Central Lane County (LWV) has objected to the fact that the County has placed rare and endangered plant species in a (1B) category with a two year time delay for their evaluation through the Goal 5 process. The LWV is concerned because it believes two years it too long for these resources to be without protection. Objectors point out that since most of these resources are not within the Willamette Greenway, they will not receive even minimum interim protection.

2. Lane County Audubon Society and 1000 Friends of Oregon have objected because the County has not provided adequate protection to a natural area known as Russel Creek Basin. This objection is described in more detail in Part II of this Goal 5 Report.

Response to Objections

1. Flora and Fauna Policy 16, which requires Lane County to evaluate the (1B) rare and endangered plant species list in two years does not refer to any particular sites containing these species, nor have objectors provided a list of sites which they believe should have been placed in a (1C) rather that a (1B) category. If sites are not known at this time, then a (1B) classification is appropriate, including policy commitment to address them in the future.

2. Objectors are correct that protection and/or conflict resolution measures have not been applied to the Russel Creek Basin natural area, in spite of an ESEE consequences analysis and recommendations regarding protection of the site in the Metro Working Paper. This issue is addressed in greater detail in the Part II section of this Goal 5 report.

Comments

1. Lane County Landowners Association has pointed out that the County's list of rare and endangered plants is simply a list of species and does not address any specific or general sites. Commentors believe, therefore, the Goal 5 Rule does not apply to these species until sites are identified. (Flora and Fauna Policy 16 indicates that certain plants are considered significant and shall be placed in a (1B) category and evaluated with two years).

2. Lane County Landowners Association also comments that, contrary to Flora and Fauna Policy 7, wetland resources cannot be considered "significant" while placed in a (1B) category.

Response to Comments

1. Commentors are correct that Policy 16 refers only to a list of species, and does not address any sites. Therefore, the Goal 5 Rule will apply if and when sites containing these species are identified.

2. Contrary to the commentor's statements, wetlands--as a resource category--can be (and generally are) considered "significant," even through individual sites may be in a (1B) category because of lack of site-specific inventory information.

Conclusion -- Natural Areas

Lane County has identified 62 natural areas, 56 of which it has classified as (1C) sites. The County has provided sufficient justification for the (1B) classification of the other six sites. Most of the 56 (1C) sites are on federal land, within the Coastal Planning area, or the Willamette Greenway. Therefore, the County has found that the sites are either not within its jurisdiction to regulate, or implementing measures have been applied which provide adequate protection.

Four state parks contain natural area values. The County indicates that because of their zoning (Parks and Recreation), they are adequately protected. However, an examination of that zone reveals that a number of uses are allowed in that zone which could conflict with the natural values present. State ownership in and of itself does not guarantee protection of these values, unless the agency has an adopted park managment plan, which requires protection. As noted in Goal 2, state agencies are also subject to Goal compliance and acknowledged plans. This is an issue which should be further explored through State Agency Coordination agreements.

The County has not applied the Goal 5 Administrative Rule to a Goal 5 Darlingtonia bog located east of the City of Florence that is not covered by the Coastal Goals.

Outstanding Scenic Views and Sites

Inventory

The County's scenic views and sites inventory information is contained in the Recreational Resources Working Paper (pp. 5-13). This consists of a discussion of several inventories and rating systems used by other public entities (e.g., Bureau of Land Management, U.S. Forest Service, State Department of Transportation, former Coastal Conservation and Development Commission, several parks and open space plans of Lane County and the City of Eugene) (p. 6). However, the Working Paper contains no location, quality or quantity information for any specific sites, nor are any of the aforementioned inventories adopted by reference. Instead, the County has decided that, given the time and resources available as well as the difficulty, it cannot conduct site-specific inventory (p. 7). The County suggests that this be undertaken before the first plan review/revision

occurs (p. 7). The County describes in some detail how such an inventory could be conducted, including defining the objective, determining what areas or types of scenic types are "critical", establishing an evaluating or rating system, applying a rating system, and implementing decisions made regarding such areas (pp. 6-14).

The County's Exception for the Big Creek area recognizes scenic values on he property, and on surrounding federal lands (Exhibit E--Renaghan Amendment, p. 53).

Conflicting Uses/ESEE Consequences Analyses

Because the County has not conducted an inventory of outstanding scenic reviews and sites, it has not identified conflicting uses with specifies sites or ESEE consequences of those conflicting uses.

Policies

Lane County's policy regarding scenic resources is as follows (Open Space and Scenic Areas Policy 3, Plan, p. 17):

> Initiate a program to identify areas of outstanding scenic value, identify and resolve conflicts after consideration of social, economic, energy and environmental consequences and protect sites for which conflict resolution indicates protection is desirable. This program will be initiated prior to the next scheduled Plan update (five years from adoption of revised Plan). The County is encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this policy.

Implementing Measures

Because Lane County has decided to put off the application of the Goal 5 process for this resource category until a later date, no implementing measures regarding the protection and/or resolution of conflicts with scenic views sites have been adopted or applied.

The scenic values of the Big Creek Exception Area are to be maintained through a combination of measures, including keeping 87 percent of the property in open space; placing development away from Big Creek and east of Highway 101 (so it is not visible from the north and will not interfere with the most viewed coastal areas); designating the site Conservation/Recreation/Open Space; and by imposing site review requirements. The site will be zoned NR, as well (Exhibit E--Renaghan Amendment, p. 56).

Objection

Friends of the Oregon Coast object because they believe the proposed development in the Big Creek Exception Area will not enhance the outstanding scenic view associated with the site, and would, in fact, destroy the "picture-book" setting.

Response to Objection

Objectors have not provided specific information as to why the combination of plan and zone designations for the site, site review and the requirement for 87 percent open space is not sufficient to protect scenic resources associated with the site.

Determining what is sufficient to protect scenic views and sites is more difficult and more subjective than for other Goal 5 resource categories. However, in the absence of more specific information from objectors, the objection cannot be sustained.

Conclusion--Scenic Views and Sites

Lane County has not inventoried outstanding scenic views or sites, nor has it identified conflicting uses and ESEE consequences of conflicting uses. No implementing measures addressing this resource category have been adopted or applied on the ground. Instead, the County has a policy to initiate a program to address this resource category prior to the next plan update (five years from adoption of the revised plan).

Lane County should be commended for the serious thought and consideration it has given to this subject, and for its commitment to initiate a comprehensive program to identify and protect outstanding scenic resources. Understandably, such a program can be complex and time-consuming, particularly as it is outlined in the County's Working Paper. However, the Goal 5 Rule requires counties to develop programs prior to acknowledgment, based on information that is currently available. According to the County's own Working Paper, several inventories already exist. For example, the County recognizes that there are several state scenic highways, sites recognized in its own Parks and Open Space Master Plan, as well as sites within federal wilderness areas or on other federal lands. It should be noted that, in the 1981 denial order for Lane County, there were in-order-to-comply requirements directing the County to inventory scenic resources and to apply Goal 5 to those sites.

Neither the Goal nor the planning process itself requires that new information be generated or that information be perfect before planning decisions are made. If this were to case, nearly all planning decisions would be put off until the post-acknowledgment period. It is recommended that Lane County embark on a comprehensive scenic resources program during post-acknowledgment, as called for in its plan. However, prior to

acknowledgment, the County must, at a minimum, inventory known sites, and complete the Goal 5 process for those sites. This work may be refined during post-acknowledgment as part of the County's more detailed, comprehensive scenic resources program work.

Water Areas, Wetlands, Watersheds and Groundwater Resources

Inventory

Lane County has developed a separate document, Water Resources Working Paper, which contains inventory information, and conflicting uses/ESEE consequences analyses for this Goal 5 topic.

Watersheds: A map showing the locations of Lane County's water basins is contained in the Appendix to the Working Paper (Map 2). The County does not provide quality or quantity information for each individual basin, but rather indicates that quality and size vary (p. 5). The County does note, however, that the Upper Middle Fork Willamette, Mosby Creek, and the entire Siuslaw River have severe sedimentation problems. The remainder of the Willamette and the tributary streams to the Willamette and the Siuslaw have moderate sedimentation problems. According to DEQ, the Siuslaw River basin is a "regional hot spot," (i.e., a considerable portion has a severe problem but is not as important as compared to other hot spots, statewide). DEQ has indicated that 410 miles of streams in Lane County have streambank erosion problems, 67 of them having severe erosion. This is particularly true in the Siuslaw Basin, and in tributary streams to the Willamette and short reaches of the Willamette River itself (p. 4).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's wetlands inventory.

Surface Waters: Lane County streams are shown on Map 2 in the Appendix to the Water Resources Working Paper. More complete mapping of surface water is available in the Planning Department office, however (p. 7). Based on a 1974 Water Quality Report and its 1981 update, the County reports that the quality of water in Lane County is generally quite high (p. 7) However, the Mowhawk, Long Tom, and portions of the Coast Fork and Main Stem of the Willamette have slow, meandering reaches and are affected by extensive development (p. 7). Specific problems along these rivers are discussed briefly (pp. 7-8). The Water Resources Working Paper contains a brief discussion of minimum stream flows, particularly those on the Willamette which are regulated by reservoir releases determined by the Corps of Engineers (pp. 8-9).

The Flora and Fauna Working Paper (p. 16) indicates that all lakes and reservoirs have been mapped and are available in the County Planning Department offices. There are about 300 Alpine Cascade Lakes in the County, varying in size from Waldo Lake (6,420 acres) to Mouse Lake (.05 acres) (Water Resource Working Paper, p. 8).

Groundwater: The principal aquifiers which yield moderate to high volumes of water are located on the coast near Florence in dunal sands, along the lower McKenzie Valley, the lower Middle Fork Willamette Valley, the Lower Coast Fork Willamette Valley, and on the valley floor north of Eugene along the Willamette River (p. 10). Map 3 in the Working Paper shows the quantity of groundwater in Lane County; groundwater quality is depicted on Map 3.

Conflicting Uses/ESEE Consequences Analyses

Watersheds: The County states that the only conflict that is specifically a watershed conflict, and not a surface or groundwater conflict, is contamination or possible contamination of surface water supplies used for domestic purposes. Timber propagation and harvesting activities, particularly herbicide use and erosion caused by ground disturbance can affect municipal water sources (p. 5) Residential development and road construction also cause erosion problems (p. 5). The County notes that resolution of timber harvesting conflicts is beyond its regulatory scope. It also points out that several watersheds used for domestic water supplies are "substantially within federal owernship." The County notes that the watershed for the City of Cottage Grove is almost entirely within federal ownership. The Umpqua National Forest and the U.S. EPA have adopted a plan to address problems, yet these problems continue (p. 5). The County indicates that the potential for similar problems exist for domestic suppies from federally-owned watersheds such as Mapleton, Tide, London Springs, and Eugene's supply, the McKenzie River (p. 5).

The County has not conducted an ESEE consequences analysis because the problem is outside its jurisdiction to resolve. However, the County supports adoption of policies or amendments to state and federal laws (including the FPA) which provide greater levels of protection for watershed (p. 6).

Development -- which is regulated by the County -- could impact the Clear Lake watershed. This watershed serves the Heceta Water District and provides a portion of the water for the City of Florence (p. 6). The County discusses the possibility of designating a "protected watershed" but has decided to take no action until sufficient information is gathered on the sources of pollutants. (p. 6). An intensive study is presently underway in response to a temporary DEQ rule (p. 6).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's conflicting uses/ESEE consequences analysis for wetlands.

Surface Waters: A number of conflicts exist for surface waters of the County, but the County asserts they are not consequences of County actions. Rather, it believes they are the result of federal agency management programs (e.g., reservoirs have certain congressioally authorized uses, but these often do not include some uses that are of importance of the County, such as waste dilution, fish and wildlife and recreation). The Corps of Engineers is in the process of reviewing authorized uses on six reservoirs, and could propose reauthorization (p. 9).

Similarly, certain streams such as the Coast Fork Willamette, Coyote Creek, Long Tom River and Lost Creek, appear to have been overallocated. The County recognizes that the State Water Resources Department (WRD) has responsibility for establishing minimum streamflows. The County believes WRD should initiate adjudication, including establishing minimum streamflows for major waterways (p. 9).

Erosion from forest lands is also a conflict with water quality, but the County points out that it is regulated by the FPA or federal regulations. (p. 9). Agriculturally caused water quality problems are being addressed by DEQ and soil and water conservation districts, although three SWDs in the County have not yet adopted model Best Management Practices by DEQ (p. 9). Outside UGBs, urban runoff is primarily from industrial facilities, especially hazardous materials stored at this sites (p. 9-10). This is also regulated by DEQ.

Groundwater: Two conflicts have been identified for groundwater resources -- development in quantity-limited aquifers, and development in areas where groundwater quality may be polluted. Separate ESEE consequences analyses are presented for these two types of conflicts. The County has concluded that:

1. For a quality-limited aquifer, otherwise acceptable development should be allowed if there is an adequate showing that water will be available for a forseeable period in the future, and that the additional withdrawal will not negatively impact surrounding water users. A number of specific code revisions are recommended to carry out these requirements (p. 12).

2. For groundwater quality problem areas, the County has determined that resolution of conflicts should be different for different types of contaminants (p. 14). These include:

    a. For development in aquifers contaminated by natural means, there should be a system to inform people of potential problems, and to suggest that well drilling and testing take place prior to construcion. Areas of quality limitation could be placed on a computerized land file, and could be checked when a building permit application is reviewed. Similarly, notification would be a matter of public record and would be available to future parties interested in these properties as well.

b. Old and smaller solid waste sites in the County are mapped, but not enough is known about specific leachate problems or groundwater characteristics to designate hazard notification areas around them. The Working Paper recommends inventorying each site, including period of operation, type of wastes deposited, and groundwater characteristics. Based on the information, a hazard notification system should be established (p. 14).

c. Two sensitive aquifers are currently subject to DEQ rules for sewage system installation -- the River Road/Santa Clara area, and the North Florence area. For other developed areas located on sensitive aquifers and which have known or suspected contamination problems (Mapleton, Noti, Elmira, Crow, Coburg, Goshen, Creswell urbanizing area, Saginaw, Marcola, Dexter, Cedar Flats, Walterville, Leaburg, Vida, Blue River, and McKenzie Bridge), current County policy calls for a minimum parcel size of one acre if community water is available, or two acres if individual wells are used. The County points out that this policy does not correct the existing situation, but should prevent aggravation of the situation (p. 15). These quality-limited aquifier areas will be placed on the County computer file, and applicants for building permits involving new wells will be informed of possible sewage contamination in the groundwater.

Policies

The following policies address water resource issues in Lane County (Water Resources Policies, Plan, pp. 17-18):

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and establish priorities among the varous beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

4. The primary means of evaluating groundwater resources for land use planning purposes shall be through the land division review process. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

Additional policies regarding water resources, including wetlands, are discussed in the Fish and Wildlife section of this report, as well as in the Goal 6 and 11 sections.

Implementing Measures

As noted in the Fish and Wildlife section of this report, the County has adopted riparian setback and vegetation maintenance standards in a number of zoning districts.

A Natural Resources Zone has been applied to several wetlands (confirmed by Mike Copely, County Planner, personal communication, July 16, 1984).

Section 13.050(13) of the Lane Code addresses the provision of water in the County. This section requires lots and parcels to be served by an approved public, community, or individual water system. Aquifer and quality tests are required for public and community systems, and may be required for individual water sytems. These tests are as follows (Section 13.050(13)):

(c) Aquifer and quality tests or geological evaluation may be required by Lane County for any lot or parcel. These requirements may include, but need not be limited to, evaluation of existing well logs and preparation of a geological report on the area, and evaluation of the site by a professional geologist, or engineering geologist or full scale aquifer tests as required. In determining the detail of analysis required, the following apply:

(i) Areas designated by Board order as having problems in the quantity or quality of available water as adopted, documented in Lane Manual and filed in the office of the Department shall meet

the following requirements for all parcesl less than 20 acres in size. The applicant must affirmatively demonstrate, in a manner acceptable to Lane County, that the proposed subdivision/partition is capable of sustaining the devlopment anticipated with sufficient potable water. This demonstration must include, but need not be limited to, aquifer tests. More specifically, the aquifer test shall show coefficient of transmissivity, permeabiltiy, storage and the specific yield. The bacteriology/ chemical tests shall show compliance with standards set by the Oregon State Health Division and Lane County. The test procedure shall utilize standard acceptable practices for aquifer tests using pumped and observation wells and records of static water level, date, clock, elapsed time (in min.), depth of water, drawdown and recovery. Analysis using the non-equilibrium method (or other methods where appropriate) must be performed by a licensed geologist or engineer. A copy of all field notes and test results shall be submitted with the report, together with summary statements which indicate whether the proposed use of the aquifer could adversely impact the neighboring wells or properties or deplete the aquifer and the general impact of the proposed use.

(d) For all areas not designated as problem areas by the procedures documented in LC 13.050(13)(a) above, a pump test report or a well log report shall be supplied, unless determined by Lane County to be not necessary.

Pump test and well log reports shall be prepared according to criteria in the ordinance.

Conclusion -- Water Resources

The County has done a good job of inventorying its water resources and problems associated with those resources. The County has analyzed the ESEE consequences of conflicting uses, and has adopted some excellent implementing measures to help resolve conflicts, particularly riparian setback and vegetation maintenance standards and aquifer and quality requirements.

Wilderness Areas

Inventory

Lane County's inventory of designated wilderness areas is contained in its Recreational Resources Working Paper on a map entitled, Recreational Resources. The locations of three wilderness areas are depicted--Mt. Washington Wilderness, Three Sisters Wilderness, and Diamond Park Wilderness.

Page 4 of the Working Paper describes in general the County's role in managing such areas.

It should be noted that recently, new wilderness legislation was passed by the U.S. Congress, establishing a number of new wilderness areas in Oregon. Several of these are within Lane County. These include Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake.

Because of the fact that Congressional action occurred so recently (after Lane County submitted its plan), it is suggested--but not required until first plan update--that the plan be amended to inventory these new areas.

Conflicting Uses/ESEE Consequences Analyses

Because of their federal ownership, remote locations and federal protection for wilderness values, the County indicates that wilderness areas are "free from County-generated conflicts" (p. 4).

Policies

Lane County has one policy addressing wilderness areas (Open Space and Scenic Areas Policy 2; Plan, p. 17):

> Lane County will recommend that no new wilderness areas be designated in the County without a complete analysis of the revenue and employment impacts to Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvest on other public lands.

Implementing Measures

Forest resource zoning has been applied to wilderness areas. The County explains in its Recreational Resources Working Paper (p. 4) that this zoning "will pay homage to the concept of County 'protection' of them, but in practical fact they are simply out of the relm of County authority."

Conclusion--Wilderness Areas

Lane County has inventoried the three wilderness areas within its boundaries and has adopted a plan policy recommending that no new wilderness areas be designated without an analysis of revenue and employment impacts. The areas have been given forest resource zoning. It is recommended that, by first plan update, the County amend its plan to inventory the recently designated new wilderness areas.

Historic and Cultural Resources

Inventory

The Working Paper identifies each of the approximately 500 sites identified in Lane County on a preliminary inventory and survey of historic and archaeological resources. Each is identified by site number or name, by location (township, range, section) and by map symbol. Each appears on a quad map included in that document. A map symbol for each site indicates whether it is an archaeological site, a transportation site or route, a settlement feature, an agricultural site, a mining site, a logging site, a marine site, an historical site, or a natural feature.

Lane County has adopted an Historical Resources Working Paper which explains the process and criteria used in evaluating the "significance" of the 500 sites identified in the County (Addendum to the Working Paper, pp. 1-2). All sites on the National Register of Historic Places are considered significant and are in the (1C) category of the Goal 5 Rule. All sites or structures still in existence contained in the Statewide Inventory are also considered significant, and where sufficient information is available to carry out a conflicting uses analysis, a (1C) label has been given. Archaeological sites are considered (1B) sites, but the County indicates they should be given special interim protection until a data and a protective program for them are developed. All other sites identified are (1A) sites (pp. 1-2).

In all, the County determined there are 63 (1C) sites. These are listed on pages 3 and 4 of the Working Paper Addendum, along with their locations and map numbers. These sites are mapped on quadrangle maps that are included in the Working Paper. Each site has been given a map code which specifies the "theme" of the site (i.e., archaeological, transportation, settlement features, cemetery, century farm, grange hall, old barn, mining, logging, marine industry, historical site, natural landmark, and hot springs). Further information about each (1C) site that is also on the Statewide Inventory is appended to the addendum to the Working Paper. The Addendum to the Working Paper also summarizes the quality and quantity of these (1C) sites (pp. 5-9).

It should be noted that the County has indicated that several (1C) sites on the historic sites inventory in the Working Paper Addendum (pp. 3-4) were deleted by the Board of Commissioners during final plan adoption, including sites # 32, 34, 39, and 42 (Mike Copely, County Planner, personal communication, June 15, 1984). There is no indication of this in any of the resubmittal materials. Site 34 is within the Creswell UGB. However, there are no reasons presented supporting deletion of sites # 32, 39, or 42 (the Andrew Keeney House, the Paschelke House, and Fall Creek Christian Church, respectively).

Conflicting Uses/ESEE Consequences Analyses

Pages 5-9 of the Addendum to the Working Paper contain the County's conflicting uses identification and ESEE consequences analyses for the (1C) sites. These analyses are presented by category for the following categories: Transportation Sites (bridges), Settlement Features, Barns, Marine Sites, Historical Sites/Landmarks, and Archaeological Sites.

In its Working Paper, the County recognizes destruction of the structural sites as a conflict, but fails to recognize major exterior alteration as a conflicting activity. However, it is clear in the County's zoning ordinance that the County considers major exterior alteration as an activity which could conflict with historic resources. For archaeological sites, the County identifies any land use or activity which damages the integrity of the site as a conflict.

Policies

Lane County has adopted a number of plan policies which address historic and archaeological resources (Plan, pp. 12-13). These include the following:

1. A group known as the "Lane County Historic Resource Committee" is to be established and given permanent status by the Board of County Commissioners. The Committee shall represent a wide array of historical interests and the interest of property owners. Its tasks shall include: general concern with historical matters in the County; to monitor conditions affecting such resources; to devise criteria and methods for the selection of newly-designated historical resources; to advise the staff and officials of the County on proposed new historical sites and structures; to oversee the administration of the Historic Structures or Sites ordinance; and other related tasks and duties. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

2. The County shall administer the "Historic Structures or Sites" section of Lane Code Chapter 10 as a means of protecting historic resources. These regulations shall be applied to all sites contained in [the] list of "Historic Structures or Sites" referenced by the ordinance, which are sites deemed significant by the County, and therefore meriting protection from conflicting uses by a limitation of such conflicting uses.

3. The Goal 5 conflict resolution process (OAR 660-16-000 through 660-16-025) which has been applied in the selection of historical sites and structures contained in the General Plan and implemented through the "Historic Structures or

Sites" ordinance, shall continue to be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or change in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historic sites and resources. A long-term objective shall be in the inclusion of historical sites in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

9. The County shall work with concern local, state and federal agencies to coordinate efforts to identify and protect historical resources.

10. Archeological sites identified in the Historical Resources Working Paper and Addendum to the Historic Resources Working Paper shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. These significant sites shall be incorporated into the Lane County General Plan Policies document as Historical Resources Exhibit A.

Note: Policy 2, above, incorrectly refers to Lane Code Chapter 10, rather than Chapter 16 as its implementing measure for historic sites.

Implementing Measures

Section 16.233 of the Lane County Development Code is the Historic Structures of Sites Combining Zone (/H-RCP), the stated purpose of which is to allow the County to review building and demolition permits to

ensure historic resources are preserved. The Code specifies that "no person may alter or demolish any Historic Structure or Site" unless a permit to do so has been issued. Upon receipt of an application for such a permit, the Planning Director shall notify the Lane County Museum Director and the State Historic Preservation Officer.

A demolition permit shall be approved only if evidence is submitted demonstrating that "every reasonable effort shall be made to maintain the Historic Structure by acquisition, protection, stabilization, rehabilitation, restoration or reconstruction project (a demonstrated lack of private and public funding for maintenance of a structure is sufficient cause to allow demolition)." A permit to alter an historic site or structure shall be approved only upon submission of evidence that (a) any use or change "should be compatible with the historical nature of the property," and (2) only the minimum alteration of the structure or site and its environment necessary to achieve the intended use shall be allowed. Consideration shall be given to four alteration guidelines in satisfying the second criteria, above. These guidelines are as follows:

(1) Only the minimum alteration of the designated historic building, structure or site and its environment necessary to achieve the intended use shall be allowed.

(2) The distinguishing original qualities or character of a designated building, structure or site and its environment should not be destroyed. The removal or alteration of any historical material or distinctive architectural features should be avoided.

(3) All designated buildings, structures and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance should be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected.

It must be noted that the zoning maps do not show that the combining zone has been applied to all 63 inventoried (1C) sites as intended. Specifically, the maps do not show that the combining zone is applied to (1C) sites 1-20, 24, 35, 38, 44, 45, 46, 48, 55, 57, 59 or 61. The ordinance also does not indicate which sites fall within that zone designation. This is also contrary to Historic Policy 2, which states that the zone shall be applied to all sites on a list referenced in the ordinance.

Objections

1. The Oregon Department of Transportation (ODOT) has objected because of a conflict between the historic resources working papers and the ordinance. Specifically, ODOT finds that the historic ordinance applies only to sites and structures on the National Register of Historic Places, and does not cover other (1C) sites identified in the working papers.

2. Friends of the Oregon Coast object because of the failure of Lane County to address cultural and archaeological resources of the Big Creek Exception Area. Specifically, objectors indicate that Goal 5 requires such resources to be inventoried. Yet, according to objectors, the Exception does not address this topic "in any way." Objectors provide information indicating that such resources are common at the mouths of coastal rivers. Due to the probability of Indian graves and/or a significant archeological site at the mouth of Big Creek, and the fact that, based on the County's own definition of conflicting uses, road building, building construction and land clearing for a destination resort are considered conflicting uses, objectors believe that "the new zoning of the Renaghan property is in violation of Goal 5 until an intenstive cultural resources inventory has been conducted and this portion of Goal 5 addressed."

Response to Objections

1. ODOT has misread the Lane Code with regarding to the County's Historic Structures of Sites Combining Zone. ODOT has apparently reviewed the County ordinance which applies inside UGBs. That zone does limit the zone's application to National Register sites. However, ODOT has failed to note that the ordinance which applies outside UGB's (in rural Lane County) is somewhat different. Specifically, the rural zone does not contain language that limits application to National Register sites. Therefore, the objection is not sustained.

2. Objectors are correct that the exception for the Renaghan property does not address historic or cultural resources. However, as pointed out by the objectors themselves, the State Historic Preservation Office knows of no site on the property, nor do anthropoligists at Oregon State University. County's are required, under Goal 5, to rely on whatever information is available in producing comprehensive plans. They are not required to conduct extensive archaeological surveys. Therefore, the County's exception does not violate Goal 5 for cultural or archeological resources. If, in the event, such resources are discovered during site development, the Goal 5 Rule would have to be applied by the County, including possible plan amendments.

Conclusion--Historic Resources

Lane County has adopted an inventory of historic resources and has analyzed conflicts and ESEE consequences of conflicts with these resources. The County has a combining zone which is intended to be applied to historic sites.

The zone provides procedures and criteria for resolving conflicts with inventoried sites, particularly major exterior alterations and demolitions. However, the County has not applied the zone to all 63 (1C) sites identified in its plan, as intended.

Oregon Recreation Trails

Inventory

Lane County's inventory of Oregon Recreation Trails is included in its Recreational Resources Working Paper (p. 15, Recreational Resources Map).

The County describes these trails as follows:

1. Coast Range Trail--not developed. Funding limitations and the desire of the state not to condemn private land for trail development suggests that it will be some time before it is completed. Mapped route is general in nature.

2. TransAmerica Bike Trail--fully signed and marked, with route maps published by the state.

3. Eugene to Pacific Crest Trail--a few portions are developed with work now underway by a local chapter of the Sierra Club. Uses bikeways in Eugene Area.

4. High Divide Trail--proposal only, same as #1 above.

5. Coast Trail--Lane County developed portions occur in Cape Perpetua and Heceta Head recreational areas, with preparations being made for inclusion of Oregon Dunes National Recreation Area lands. No private lands involved at this point.

6. Coast Bicycle Trail--designated, signed and mapped.

7. Pacific Crest Trail--fully developed. No private lands involved in Lane County. Located in Willamette National Forest.

These descriptions are basically accurate. It should be noted that, according to Jack Remington, State Trails Coordinator, ODOT has proposed general routes for the unbuilt portions of the Eugene to Pacific Crest Trail and the Coast Trail. Portions of the High Divide Trail already exist since they follow several other developed trails. However, only general routes have been proposed for the unbuilt portions of the High Divide Trail (personal communication, June 20, 1984).

The general location of each of the seven trails is depicted on the County's Recreational Resources Map in the Working Paper. No specific locations have been provided in either the text or on the map, however, for existing trails. Specific routes for the Pacific Crest Trail, the TransAmerica Bike Trail, the Coast Bike Route, and portions of the High Divide Trail and the Eugene to Pacific Crest Trail are known, since these trails are developed.

Conflicting Uses/ESEE Consequences Analyses

The County has not identified specific conflicting uses with the seven proposed or existing Oregon Recreation Trails.

However, the Coast Bicycle Trail, TransAmerica Bike Trail and the Pacific Crest Trail are fully developed and are either on federal or other public lands or on public rights-of-way, as are portions of Eugene to Pacific Crest Trail and portions of the Coast Trail. Therefore, the County concludes that they are likely to experience few conflicts.

No specific routes for the Coast Range Trail or the unbuilt segments of the Coast Trail, the Eugene to Pacific Crest Trail, or the High Divide Trail have been determined by ODOT. Although most of these proposed trails would cross public lands, segments of these trails are proposed to cross private lands, and conflicts could occur. However, since their locations are only generally known at this time, specific conflicts cannot be determined.

Policies

Lane County's recreational trails policy (Open Space and Scenic Areas Policy 4, Plan, p. 17) is:

> The County shall acknowledge recreational trails which are developed by the Oregon Parks Outdoor Recreation Plan and shall display the routes on its Plan documents.

Lane County lacks a policy to cooperate with ODOT in the protection of existing trails. The County also lacks a policy to coordinate with the Oregon Department of Transportation in applying the steps of the Goal 5 Rule during any future identification or establishment of proposed trails or trail segments.

Implementing Measures

No specific implementing measures have been adopted by Lane County for the protection and/or resolution of conflicts with existing or proposed trails.

Conclusion--Recreation Trails

Lane County has identified the seven existing or potential state recreation trails in its Recreational Resources Working Paper, but has not provided a description or map of the specific locations of existing trails. It has, however, recognized the fact that ODOT has maps of these trails. The County lacks a plan policy to coordinate with ODOT in applying the Goal 5 Rule if and when any of the unbuilt trail segments are identified or proposed for construction or designation. The County also lacks a policy to cooperate with ODOT in the protection of existing trails.

No conflicts exist with developed trails and trail segments, and therefore, special implementing measures are not necessary in those areas. Implementing measures have not been adopted for the protection and/or resolution of conflicts with the proposed trails and trail segments, nor are any appropriate at this time since their specific locations are not yet known.

Potential and Approved Scenic Rivers and Waterways

Inventory

The County's Recreational Resources Working Paper briefly describes both the State Scenic Waterways Program and the Federal Wild and Scenic Rivers Program (p. 16). The County correctly notes that there are no designated federal rivers in Lane County at this time. However, the County fails to note that during the 1983 Legislative Session, a bill was passed (HB 2435) designating Waldo Lake and the North Fork of the Middle Fork of the Willamette River (from Waldo Lake to about one mile upstream from Westfir) as a State Scenic Waterway. The County's working paper incorrectly indicates there are no state designated waterways.

The Working Paper correctly recognizes that five river stretches are on the U.S. Interior Department's inventory of potential scenic rivers (p. 17):

1. Upper McKenzie (from Tamolitch Falls to McKenzie Bridge);

2. Steamboat Creek (from its source to its confluence with the Umpqua River);

3. Alsea (entire length; only a small upper portion in Lane County);

4. Siuslaw (from its source to Lake Creek confluence); and

5. Willamette (from Eugene to Corvallis).

All five of these river segments are shown in a general fashion on the Recreational Resources Map contained in the County's Recreational Resources Working Paper.

The County correctly notes that the Upper McKenzie (from Tamolitch Falls to McKenzie Bridge) is also on the state potential scenic waterways list. However, the County fails to mention that Steamboat Creek and Alsea River (the same stretches as on the federal potential list) are also on the state potential list.

The County recognizes that the area affected along each of the inventoried rivers is one-quarter mile on each side measured from ordinary high water (p. 16).

Policies

The following policy has been adopted regarding wild and scenic rivers (Open Space and Scenic Areas Policy 5, Plan, p. 17):

> The County shall cooperate with appropriate state and federal agencies in the selection of scenic and wild rivers.

This policy does not commit the County to coordinate with those agencies in applying the Goal 5 Rule process in studying rivers for possible state or federal designation and in making such selections.

Conflicting Uses/ESEE Consequences Analyses

Lane County suggests that conflicting uses and ESEE/consequences should be identified at the time a river is studied for designation (pp. 17-18). The County also suggests that resource zoning should provide protection for such rivers (p. 17).

Implementing Measures

Waldo Lake and the stretch of the North Fork of the Middle Fork of the Willamette River that is designated as a State Scenic Waterway are located entirely on federal land (confirmed by Jim Payne, State Rivers Program Coordinator, personal communication, June 14, 1984). The portion of the Alsea River that is on the state and federal potential lists is also in federal ownership. The Willamette River is within the Willamette River Greenway, to which the County has applied a Greenway Development ordinance (see the Goal 15 section of this report for details).

Portions of the McKenzie River, Steamboat Creek, and the Siuslaw River flow through federally-owned lands. However, some stretches are in non-federal, private ownership. Developed and committed exceptions have been taken along all of these stretches of the McKenzie and Siuslaw Rivers and Steamboat Creek, most of which have been found to be valid under the Goal 2 analysis in this report. However, as noted in that report section, exceptions in plats 23, 204, 230 (Siuslaw River), 627, 628, 629, 630 and 631 (McKenzie River) have not been justified. No needs exceptions have been taken along the McKenzie River, Steamboat Creek, or the Siuslaw River. It has been the practice of the Commission to require jurisdictions to analyze the ESEE consequences of taking needs exceptions along potential federal or state scenic rivers and waterways, but not to require such an analysis for built and committed exceptions.

Conclusion--Scenic Rivers and Waterways

Lane County has inventoried five federal potential scenic rivers and one state potential scenic waterway (the McKenzie River) but has failed to note that, besides the McKenzie River, two of the federal potential rivers are also potential state waterways (i.e., the Alsea River and Steamboat Creek). The County has also failed to mention that Waldo Lake and the North Fork of the Middle Fork of the Willamette River are designated State Scenic Waterways.

The County lacks a policy commitment to coordinate with appropriate state and federal agencies in applying the Goal 5 Rule process in studying rivers for possible designation as well as in the actual selection of rivers for designation.

Built and committed exceptions have been taken along all nonfederal lands along state and federal potential scenic rivers, some of which have not been found to be valid under Goal 2. The County needs to either not take these exceptions, or justify them as being built or committed.

PART II--EUGENE/SPRINGFIELD METROPOLITAN AREA OUTSIDE THE METRO UGB

In August, 1982, the Commission reviewed and acknowledged the Eugene/Springfield Metro Area Plan and implementing measures for lands within the Metro UGB. However, the cities of Eugene and Springfield as well as Lane County were granted a continuance for lands outside the UGB but within the Metro Planning Area Boundary in order to comply with Goal 5, (as well as several other Goals). The following section of this report analyzes Lane County's responses to the "in-order-to-comply" requirements contained in the August, 1982 staff report, adopted by the Commission.

Requirement

1. Amend the Metro Plan to include a separate evaluation of the "ESEE" consequences of allowing conflicting uses for those sites which are the subject of a Goal 5 objection filed pursuant to OAR 660-116-00 (i.e., Sites 4, 5, 7, 12, 19, 21 and 28 shown on Figure D-3). For specific direction on individual sites see underscored portions of Comments and Objections subsection, preceeding.

Response

The following sites were to be addressed under this requirement:

Site	Name
4	Bertelsen Slough
5	Willow Creek Wetlands
7	Confluence Heronry
12	Gillespie Butte
19	Spencer Butte Ridgetop
21	Russel Creek Basin
28	Pudding Creek Heronry

Sites 4, 5, 12 and 19 are located within the Metro UGB and have been acknowledged by the Commission (see the August 19, 1982 Commission action, pp. 10-11). Therefore, they are not addressed in this report.

The Confluence Heronry, Pudding Creek Heronry and Russel Creek Basin are outside the Metro UGB and inside the Metro Planning Area Boundary and were therefore addressed in this plan submittal. Specific Goal 5 analyses for each of the three sites are presented separately below.

Confluence (Big Island) Heronry: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Maps and Metro Area of Influence document (January 1984) contains a 1982 working paper entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas." Part V of that working paper addresses a site known as the Confluence Heronry, or the Big Island Heronry. This working paper supplements Lane Council of Governments' (L-COG's) inventory in the Natural Assets and Constraints working papers of April 1978.

As explained in the 1982 working papers, p. V-1, the 235-acre island is located in the Willamette River near the confluence with the McKenzie River. The County has specifically mapped the location of the island as well as a large Great Blue Heron rookery located on the island. The heronry has been determined to be of local and statewide significance, and is on the State Natural Heritage Inventory. The island's other resources (e.g., agricultural land, vegetation, wildlife and wildlife habitats, sand and gravel resources, scenery and water are described (pp. V-1 through V-5). The island is within the Willamette Greenway and is a potential Greenway acquisition site in the ODOT Greenway Plan (Working Paper, p. V-7).

L-COG has reassessed the significance of the resources on the island and has provided more detailed locational information about the heronry and its significances, statewide, based on information on other heronries (p. V-8). More refined information has also been adopted regarding vegetation, soils, agricultural values, and sand and gravel resources (pp. V-8, V-11 through V-17).

Conflicting uses are identified (pp. V-8 through V-10) as recreation, sand and gravel extraction, timber harvest, agricultural practices, wildlife and wildlife habitat, scenic assets and public improvements. Each of these uses is described, particularly as it could affect the heronry. Pages V-11 through V-17 contain L-COG's ESEE consequences analysis.

The analysis concludes that the heronry and vegetative fringe of the island are significant resources that should be protected. However, not allowing sand and gravel extraction on the island would result in negative impacts on property owners and the public. Extraction can be conducted in a manner that is compatible with the heronry (p. V-18). Recommendations regarding the island are made on page V-18. Among these are recommendations to:

1. Designate the heronry and buffer area as "natural resource" and designate the fringe of the island as "park and open space." The interior of the island should be designated "sand and gravel."

2. Exchange land (between property owners and the state) so that the heronry and buffer are in perpetual public ownership.

3. Protect the riparian habitat on the island periphery by maintaining an adequate Willamette River Greenway vegetative fringe.

4. Develop controls on sand and gravel extraction between the operator and ODFW in order to protect the heronry.

5. Rely on state and County permits for addressing the details of sand and gravel operations.

See also the Goal 15 section of this report.

Pudding Creek Heronry: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Maps and Metro Area of Influence document (January 1984) contains a 1982 working paper entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas." Part VI of that working paper as well as 1984 Addendum to Part VI addresses a site known as the Pudding Creek Heronry. These working appears supplement L-COG's inventory in the Natural Assets and Constraints working papers of April 1978.

The heronry is one of the largest in Western Oregon (about 54 nests) and continues to be productive (Addendum, p. 1). The heronry is currently designated and zoned "sand and gravel," and potential mining operations

could conflict with the heronry. The site is on the Middle Fork of the Willamette River (Working Paper, p. VI-5). The Addendum indicates that the site is also within the Willamette Greenway.

The 1982 Working Paper summarizes in greater detail the resource values of the site (pp. VI-1 through VI-5), as well as the nature of the potential conflicts (pp. VI-6 though VI-7). Inasmuch as the heronry is in the middle of the potential extraction operation, and the owner has an operating permit from the Oregon Department of Geology and Mineral Industries, this appears to be the greatest conflict. Timber harvest and vegetative clearing, which normally precede extraction, would also conflict with the heronry (pp. VI-5, V-6).

Pages VI-7 through VI-12 analyze the ESEE consequences of the various competing uses for the site, and conflict-resolution alternatives ranging from no protection for the heronry to full protection of the heronry through public acquisition or land trade are analyzed (pp. VI-13 and VI-14).

The Working Paper recommends interim protection for the heronry, plus possible land exchange or transfer of mining rights. It also recommends that ODFW cooperate with the landowner to develop a management plan for the site (should no land exchange take place).

The 1984 Addendum to the 1982 Working Paper reassesses the significance of the heronry, updates the inventory, and summarizes the results of negotiations which have taken place between Lane County, ODFW and the landowner (Wildish Land Company).

The 1984 Addendum to the Working Paper contains a discussion of the conflict-resolution process that took place in 1983 (pp. 1-2). ODFW drafted a trade agreement for an exchange of land and mineral rights of like value between State Parks Division, Lane County, and the Wildish Land Company (pp. 1-2). Such a trade would result in protection of the heronry and protection of the landowner's ability to extract aggregate (p. 3). Based on the analysis of conflicts, ESEE consequences, and the possibility of a land exchange, the Addendum contains the following updated recommendations (p. 4):

1. Change the plan designation for the heronry and surrounding buffer area from "sand and gravel" and "park and open space" to "natural resources."

2. Change the plan designation for an equal value land within Buford Park from "parks and open space" to "sand and gravel."

3. Lane County should rezone each area to correspond to these plan designations.

4. The potential land exchange area should be contiguous to existing Wildish holdings to avoid creating noncontiguous park boundaries.

See also the Goal 15 section of this report.

Russel Creek Basin: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Map and Metro Area of Influence document (January 1984) contains a working paper which is entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas--Russel Creek Basin Addendum." This working paper supplements Lane Council of Governments' inventory in the Natural Assets and Constraints working appers of 1978 and the 1982 Natural Assets: Conflict Resolution for Significant Areas.

The 1984 working paper provides a history of the treatment of Russel Creek in the Metro Plan update process (pp. 1-5), and notes that LCDC's 1981 review of the plan required an ESEE consequences analysis of the site (p. 4). The working paper describes the natural features of the five subbasins comprising Russel Creek Basin as well as the specific ownerships and conflicting uses present (pp. 5-10). Maps are also provides showing the specific location of the basin, its subbasins, and vaious natural features. Species lists--both plant and animal--are appended to the working paper as well. The site is a significant natural area and, among other things, contains at least one threatened plan species, and several other species of special significance. Major conflicting uses on the 410-acre site include timber harvesting, agriculture, and certain types of recreation (p. 10).

The ESEE consequences of these conflicting uses are presented on pages 11-12 of the working paper, and, based on this analysis, the following recommendations are made (p. 14):

1. Lane County should adopt interim protective measures that prohibit grazing, logging and any other activity that may adversely affect future protection of the proposed natural area.

2. Conflict resolution and resulting plan amendments required for preserving Russel Creek should occur in conjunction with the Metropolitan Plan mid-period review.

3. Russel Creek property owners should be contacted, and negotiations should commence regarding conflict resolution for the proposed natural area.

4. The options of acquisition, donation or long-term lease should be explored along with the possibility of a joint program of interest among identified groups and governments.

Conclusion: Requirement 1 has been satisfied.

The Metro Plan has been amended to include separate evaluations of ESEE consequences of allowing conflicting uses for sites within the Metro Planning Area Boundary but outside the Metro UGB, namely, Confluence Heronry, Pudding Creek Heronry, and Russel Creek Basin.

Requirement

2. Amend the Metro Plan to include mandatory policy language requiring local governments to adopt resource protection/conflict resolution measures consistent with the plan's adopted text and findings.

Response

The Metro Plan was amended to include mandatory policy language requiring local governments to adopt implementing measures consistent with the plan's text and findings. These amendments were made and acknowledged by the Commission in August 1982 as part of the review of Metro Area (see Commission action, p. 12). Since these policies also apply outside the Metro UGB and inside the Metro Planning Area Boundary, this requirement has been satisfied.

Conclusion: Requirement 2 has been satisfied.

The Metro Plan has been amended as required, and acknowledged in August 1982.

Requirement

3. Eugene, Springfield and Lane County must amend their implementing measures to clarify the meaning of Policy 12 in habitat/scenic areas, as applied in the "Forest" and "Parks and Open Space" plan designation outside the UGB.

Response

Policy 12 referred to in this IOTC is on page III-C-8 of the 1980 Metro Plan. It reads:

> When evaluating the desirability of harvesting commercial timber on forest lands within the jurisdictional boundary but outside the urban growth boundary, great emphasis shall be placed on preserving scenic and water quality, as well as protection of wildlife, open space, and recreational potential.

In its most recent submittal, Lane County has not amended its implementing measures to clarify how this policy will be carried out in habitat or scenic areas that are designated "Forest" or "Parks and Open Space."

The meaning of Policy 12 is further confused by the more recent adoption by Lane County of Forest Lands Policy 17 (Plan, p. 10) which states:

> Lane County recognizes the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest trees species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict

resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

As noted in Part I of the Goal 5 section of this report, the County has not indicated which sites are "more important" based on a Goal 5 ESEE consequences analysis, nor has it adopted implementing measures to protect such sites through the regulation of forest management activities, or to otherwise resolve such conflicts, per Policy 12.

The Cities of Eugene and Springfield have adopted "tree-cutting" ordinances in response to this IOTC and have been acknowledged by the Commission.

Conclusion: Requirement 3 has not been satisfied.

Lane County has not amended its implementing measures to clarify how Policy 12 is to be carried out in habitat and scenic areas designated "Forest" and "Parks and Open Space."

Requirement

4. Eugene, Springfield and Lane County must ensure that Metro Area Plan policies are implemented in all natural resource areas as mapped in accordance with compliance requirements outlined above.

Response

As noted earlier, the plans for lands within the cities of Springfield and Eugene and lands within the Metro UGB have been acknowledged as being in compliance with Goal 5. Implementing measures that are adequate for protection and/or conflict resolution for the resource sites outside the Metro UGB but inside the Metro Planning Area Boundary (i.e., Russel Creek Basin, Confluence Heronry, Pudding Heronry) have not been adopted. The Russel Creek site is designated and zoned for forestry and residential use. Recommendations contained in the Working Paper of the Metro Plan Update document have not been carried out. Implementing measures for Pudding Creek and Confluence Heronries are addressed in the Goal 15 section of this report, since they are located within the Willamette River Greenway, and Goal 15 implementation requirements are more stringent than--and therefore supercede--those for Goal 5. As explained in the Goal 15 section of this report, adequate implementing measures for these two Greenway sites have not yet been adopted.

Objections

1. 1000 Friends of Oregon and Lane County Audubon Society have objected to the fact that Russel Creek Basin has been designated "Forest" and has been zoned for forest and residential uses. Specifically, objectors point out that in its 1981 review of the Metro Plan, LCDC found that the County identified this 410-acre site as a significant Goal 5 resource (because of its diversity, wetland, riparian

vegetation, unique species, wildlife, and climax ecosystems, including old growth). LCDC also found, however, that the County needed to analyze the ESEE consequences of conflicting uses with the site, and to complete the Goal 5 process. Objectors contend that although the County's resubmittal indicates that continued logging and future grazing may destroy these values, and the site is designated "forest" in the Metro Plan, and zoned for forest and residential uses. This would allow timber harvest, grazing and development which could adversely affect the resource. Objectors indicate the County has not taken steps to resolve these conflicts in accordance with the Goal 5 Rule, or with recommendations in the plan itself. Objectors also indicate that the County's "conflict resolution" document simply postpones the resolution of conflicts by recommending a negotiation phase and because interim protection (which is also recommended) has not been implemented.

2. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

3. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willametter Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in th Goal 15 section of this report.

Response to Objections

1. Objectors are correct that Lane County has taken no action to resolve conflicting uses for Russel Creek Basin, based on its own ESEE consequences analysis.

2. The response to the objections regarding the Pudding Creek Heronry is presented in the Goal 15 section of this report.

3. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

Conclusion: Requirement 4 has not been satisfied.

Adequate implementing measures have not yet been adopted for the Confluence Heronry, Pudding Creek Heronry, or Russel Creek Basin.

Conclusion - Goal 5

Lane County does not comply with Goal 5.

Lane County has compiled inventory information for most Goal 5 resource categories and has made (1A), (1B) and (1C) decisions, based on this information. Conflicting uses for most categories have been analyzed. Based upon this work, the County has made protection/nonprotection decisions and has adopted plan policies and applied several implementing measures to many Goal 5 sites. Most noteworthy of these implementing measures are the County's riparian setback and vegetation maintenance standards, its groundwater protection provisions, and its Natural Resource zone. However, there are a number of deficiencies in the County's Goal 5 element which must be corrected before acknowledgement can be granted. These deficiencies have been summarized in the previous sections of this report.

In order to comply with Goal 5, Lane County and the Cities of Springfield and Eugene must:

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SG which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

2. Fish and Wildlife Habitats:

   a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

   b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation maintenance standards, or (2) incorporate by reference another section of the Lane Code which contains such standards.

   c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.

   e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.(*)

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

i. Carry out Forest Lands Policy 17 (Plan, p. 10) by identifying sites that are considered more important than commercial timber management activities, based on a Goal 5 ESEE consequences analysis, and adopt appropriate implementing measures to protect and/or resolve timber management conflicts with those sites, consistent with that policy.

4. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.(*)

5. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

6. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

7. Oregon Recreation Trails:

   a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

8. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.(*)

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.(*)

9. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflict-resolution recommendations contained in the Metro Plan Update Working Paper.

Note: Those IOTC's which pertain only to Lane County are followed by an asterisk (*).

Suggestions for Plan and Implementing Measures Improvement

It is suggested that on or before the first plan update, Lane County:

1. Amend the plan to inventory the recently designated wilderness areas (Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake).

2. Amend page 28 of the Flora and Fauna Working Paper to indicate that not all sites on federal land are necessarily protected (i.e., there may be conflicts with sites unless they are formally protected by the federal resource agency).

3. Amend Flora and Fauna Policy 7 to indicate that in evaluating (1B) wetland sites for possible inclusion on its (1C) inventory, information sources besides the National Wetlands Inventory will be used.

4. Adopt implementing measures to carry out Flora and Fauna Policy 9 (requiring residential building permits in Big Game Range areas to include a note indicating that the site is in Big Game Range and conflicts may occur).

GOAL 15: WILLAMETTE RIVER GREENWAY

This Goal 15 report is divided into two major parts. The first part is the review for all areas within the Willamette Greenway Boundary in Lane County outside the Metro Plan Boundary. The second part is for those Greenway areas inside the Metro Plan Boundary, but outside the Metro UGB.

PART I--GREENWAY AREAS
OUTSIDE THE METRO PLAN BOUNDARY

Inventory

Lane County has adopted a Willamette Greenway Working Paper which states (p. 7) that inventories of various Greenway resources are contained in the Greenway Plan. This Greenway Plan is incorporated into the Working Paper by reference (p. 7). As noted in the 1981 review of the Lane County plan and ordinances, the County's Greenway inventories are contained in its Greenway Technical Report, and are summarized in its Greenway Plan. This information was determined to adequately address the fifteen resource topics listed in Section B of Goal 15.

Greenway Boundary

Lane County has displayed the LCDC-approved Greenway Boundary on both its plan maps and its zoning maps, as required under sections E.1 and F.1 of the Goal. The boundary is clearly labeled and, for the most part, its location is accurately drawn. However, there are several minor inconsistencies on map Nos. 304, 304A, 305, 347, 437, and 528. The boundary is not shown on map Nos. 330, 332, 396, 411, 417, 418, 425, 440, 448, 471, 1005, 1006, 1008, 1010, 1011, 1012, and 1013.

The recently adopted Willamette Greenway Working Paper (p. 8) states that the Greenway Boundary is correctly displayed in the County's Greenway Plan and in the Eugene-Springfield Metro Area General Plan (which supercedes the 1990 Plan).

The County notes that the separate subarea plans and diagrams are being replaced by single documents for Coastal and Inland Regions. The Greenway is in the Inland Region (p. 8). The County indicates that in future documents, the LCDC-approved Greenway Boundary maps will be referenced and the Boundary will be shown on the Plan Diagram (p. 8).

Section 16.254(1)(j) of the Lane Code (the Greenway Development Ordinance) states that the boundaries for the Willamette River Greenway are those adopted by the Land Conservation and Development Commission in 1977, together with any changes when and as approved by LCDC.

Policies

Lane County has adopted 37 policies address the Willamette Greenway (Plan, pp. 33-35). These policies address all Use Management Considerations of Goal 15 (Section C.3.). Among these policies are the following:

1. Maintain and support continuation of existing uses within the Greenway Boundary.

2. Intensification and change of use of lands within the Greenway Boundary shall remain compatible with the protection, conservation and enhancement of the natural, scenic, historic, agricultural, economic and recreational qualities of the Willamette River Greenway Program.

3. Recognize that the Greenway consists of a multitude of resources and due to continued growth, 100 percent protection to all resources will never be realized.

4. Protect, conserve and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands and timber within the Greenway.

5. Maintain sufficient water flows to support water uses such as municipal, agricultural, industrial, natural resources (i.e., fish, aquatic life, wildlife) and recreation within the Greenway.

6. Prioritize water quality management controls along the Coast Fork and the Main Stem, especially in the Metropolitan area.

7. Acquisitions for Greenway purposes must be consistent with noninterference or interruption of farm uses.

8. Recognize that DOT cannot condemn for a scenic or use easements of lands devoted to farm use; however, easements may be given by owners of lands being used for farm purposes.

9. Protect water rights and access to the river for irrigation purposes.

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, is not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occuring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

19. The County shall require to the maximum feasible extent the protection of the vegetative fringe within the Greenway, and shall require the re-establishment of vegetative cover where it has been significantly removed during the land development process.

20. Conserve the rural character of the river bank as a primary objective within the Greenway.

21. Encourage a river-related mixture of industrial, commercial, residential and public land uses where appropriate in the Greenway.

22. In instances where a public agency has acquired productive farmlands or other resource lands as long-range reserve for recreational use, if possible, such property should be leased back for agricultural or other resource use until it is required for public purposes.

23. Provide and encourage use of public lands within the Greenway.

24. Accommodate public access to the river and to public lands within the Greenway by:
    a. Controlled, clearly designated, access points;
    b. Establishment of an integrated system of safe river lands, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
    c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

25. Provide appropriate levels of police protection in those areas subject to public use.

26. Encourage additional police security for private and publicly owned lands within the Greenway.

27. Protect, conserve or preserve the scenic and recreational qualities of the land within the Greenway Boundary.

28. Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.

29. The sensitivity of lands within the Greenway shall determine the level of human activity.

30. Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.

31. Consider and minimize the possibility that public recreation use might disturb adjacent private property owners.

32. Scenic easements shall not be acquired through the exercise of the power of eminent domain on lands in farm use.

33. Control vehicle access to the river.

34. Consider and adopt policies that would not hinder the physically handicapped from using public recreation facilities within the Greenway Boundary.

35. Emphasize public access to the river in the metropolitan area and other urban areas which discouraging upland access in rural areas.

36. Measures should be taken to minimize disturbance to private property, including the implementation of programs to eliminate trespass and vandalism on private lands and destruction of ecological fragile areas.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Mineral and Aggregate Policy 11 also addresses mineral and aggregate sites within the Greenway:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise, and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

As discussed in the Goal 5 section of this report, the policy fails to reference Section C.3.d. of Goal 15 regarding the protection of significant fish and wildlife habitats. Therefore, the policy is inconsistent with Goal 15 as well as with the County's Greenway Policy 37.

Plan Designations

In the 1981 review of Lane County's Greenway element, the Commission determined that plan designations in subarea plans, the 1990 Plan, and the County Greenway Plan were inconsistent in several locations. The new Greenway Working Paper explains that subarea plans in the Greenway are

being replaced by the Inland Region document, whose Plan Diagram will show land use designation "in a manner consistent with other County and metro area plan documents" (p. 8). See the Goal 2 section of this report for further discussion regarding the County's plan designations.

Implementing Measures

Included in the Lane Code are Greenway Development Permit procedures for the review of certain land use activities in the Willamette River Greenway (Lane Code, Section 16.254). A Greenway Development Permit is required for any new intensification, change of use or development, including public improvements and partitions and subdivisions. The County's ordinance defines the terms "intensification," "change of use," and "development" consistent with definitions contained in Goal 15.

Section 16.254(2) of the Lane Code lists those uses and activities that do not require a Greenway Development Permit. All are consistent with Goal 15 except subsections (a) and (k). Subsection (a) exempts uses "where the location is within areas designated as 'urban' on Greenway maps adopted by the Oregon Land Conservation and Development Commission and is beyond 150 feet of the ordinary low waterline." As noted in the 1981 denial order for Lane County, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15, and as designated in the ODOT Greenway Plan, is subject to local Greenway review. (Note: The term, "urban" as used in the context of Goal 15 is not the same as that used in Goal 14. In this case, "urban" refers to designations in the ODOT Greenway Plan). However, as noted in the 1981 review of the County's ordinance, there was only one area where this provision applies--just outside of the Cottage Grove UGB. The County has not requested that LCDC change the designation of this area from "urban" to "rural" nor has it deleted Section 16.254(2)(a).

Subsection 16.254(2)(k) exempts the propagation of timber or the cutting of timber for public safety or personal noncommercial use or where the harvest is consistent with an approved permit under the FPA "(i) for a farm woodlot of less than 20 acres, or (ii) consistent with recommendations made by" ODOT to the Department of Forestry, designed to address Goal 15, Sections c-h. It is acceptable to exempt timber propagation and harvest for public safety or personal noncommercial use, under Goal 15. However, subsection (i) in the second part of subsection (k) appears to be based on language in the Greenway Interim Order. Such language was eliminated in the adoption of Goal 15. Subsection (ii) of subsection (k) has no procedure for implementation, since, according to the Department of Forestry's directive for operations in the Greenway, it can make recommendations to operations regarding Greenway concerns, but cannot enforce them.

A decision to approve a Greenway Development Permit--where one is required by the Code--requires findings that the proposed intensification, change of use or development conforms to certain criteria, guidelines and setback requirements set forth in Sections 16.254(3)(a), (b), and (c), respectively. Specifically, the "criteria" in subsection (a) include the following:

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the re-establishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) A development which is mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway.

Affirmative findings of compatibility with the Willamette River Greenway "based on due consideration and the relative importance" of guidelines must also be made. These "Guidelines" under subsection (b) are as follows:

(i) Preservation and maintenance of land designated "agricultural" in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.
(iii) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resouces.
(iv) Preserve areas of annual flooding, floodplains and wetlands.
(v) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.
(vi) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.
(vii) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses such as: domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.
(viii) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terrances bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(ix) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.
(x) Minimize vandalism and trespass.
(xi) Location of nonwater dependent and nonwater related development away from the river.
(xii) Compatibility with the site and surrounding area.
(xiv) Protection of significant fish, wildlife habitat and natural areas.
(xv) Protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan.

It must be noted that compliance with these "Guidelines" is to be judged based on their "relative importance." However, there is no clear guidance as to how "relative importance" will be determined. This is particularly a problem where Goal 15 requires certain types of resources to be protected, regardless of other completing values (e.g., significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints) (Goal 15, Sections C.3.d., a., and e.). To the extent that the County's "Guidelines" do not require protection of such areas, the County's Greenway ordinance does not comply with Goal 15.

Section 16.254(c) requires new intensifications, developments and changes of use to be set back 100 feet from ordinary high waterline of the river "except for those in conjunction with a water related or water dependent use" (emphasis added). Exceptions to this requirement shall be allowed when affirmative findings are made to satisfy two criteria:

(i) The proposal would provide better protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway than would occur by observance of the setback requirment; or
(ii) The protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway are not applicable to the proposal.

It should be noted that, according to the Goal, only water-dependent and water-related intensifications, developments, or changes of use themselves are exempt from Greenway setback requirements. However, Lane County also exempts uses in conjunction with water-related and water-dependent uses. As noted in a number of other reviews, this is inconsistent with the Goal, since it would allow a number of uses to be exempt from the setback which are not envisioned by the Goal. The County's ordinances also identify two ways in which exceptions to the 100-foot setback are permitted. One of these is if a proposal would provide better protection of Greenway values, and the other is if such protection is not applicable to the proposal. The Goal does not permit exceptions to the setback, except for water-dependent and water-related uses, even if a proposal might enhance Greenway values. This is because the intent of the Goal is to keep structures separated from the river and

to protect areas immediately adjacent to the river for water-dependent and water-related uses. For example, a restaurant, including landscaping and other amenities may, in the opinion of a Hearings Officer, enhance Greenway values. However, it is not, by definition, a water-related or water-dependent use and therefore is not permitted within the established Greenway setback.

The Commission amended its administrative rule on exceptions to set forth standards for taking exceptions to the Greenway setback. These standards apply to urban areas only. The Commission did not adopt standards for taking exceptions to the setback requirement in rural areas. It should be pointed out that juridictions may structure their Greenway ordinances to permit establishment of a setback on a case-by-case basis, as long as it meets the requirements of Section C.3.k. of the Goal. Alternatively, jurisdictions may adjust established setback standards through the plan amendment process.

Conditions may be imposed in conjunction with a Greenway Development Permit, as necessary (Section 16.254(4).

Section 16.254(5) sets forth the application and review procedure by a Hearings Officer for Greenway Development Permits.

Section 16.254(6) requires the County to notify the Department of Transportation when an application is made. The ordinance does not require the County to also notify that agency of actions taken on an application. This is required by Goal 15 (Section G).

As noted in the Goal 7 section of this report, Lane County has adopted adequate flood hazard provisions.

Objections

1. The Oregon Department of Transportation (ODOT), Parks and Recreation Division, has objected to an inconsistency between the inventoried aggregate sites within the Greenway, and those which are shown on plan maps and designated Sand/Gravel. ODOT states there are a number of aggregate sites in the ODOT Greenway Plan which are not included in the County's inventory. Further, the County's plan maps show a Sand/Gravel designation for some areas which are not in the County's aggregate sites inventory, according to objectors.

2. ODOT objects because of the lack of an inventory of sites for potential acquisition within the Greenway. ODOT points out that this is required by Section E.3. of the Goal, and that the ODOT Greenway Plan identifies such areas.

3. ODOT objects because Plan Policy 7 conflicts with Goal 15. Policy 7 states that acquisitions for Greenway purposes must be consistent with non-interference or interruption of farm uses. ODOT points out that Goal 15 is intended to protect farm uses, but does not prohibit farmland acquisition for public Greenway purposes. Objectors believe Policy 7 also conflicts with Policy 24 (which encourages development of a system of river access points).

4. ODOT objects because Policy 8 and Policy 32 are inconsistent with ORS 390.334, which allows condemnation of scenic easements on farmland. Objectors recommend that the policies be deleted or amended to be consistent with that statute.

5. ODOT objects to the County's inadequate compatibility review provisions for commercial timber harvest. Objectors indicate adequate provisions are a requirement of Goal 15. Further, ODOT believes the zoning ordinance fails to carry out Policy 12.

6. ODOT objects because Policy 13 is inconsistent with Policies 2, 4, 18, 20, 21, 23, 24, 27, 29 and 37. ODOT indicates that Policy 13 appears to give the highest use protection to sites designated and zoned for sand and gravel. However, objectors state that Policy 13 does not consider Greenway river processes and values.

7. ODOT objects to Policies 28, 30 and 35 because they conflict with Policy 24. Specifically, Policies 28, 30, and 35 call for a Greenway public access program aimed at serving urban residents in urban areas, and discouraging access to the river in the more attractive rural settings with greater recreational amenities. Policy 24 calls for a system of access points and trails, which is inconsistent with Policies 28, 30 and 35, according to ODOT.

8. ODOT objects to the lack of an inventory of "significant natural and scenic areas and vegetative cover," as required in Section B, Subsection 6 of the Goal. Without such an inventory, ODOT believes Policies 2, 4, 11, 12, 18 an 27 an the zoning ordinance "cannot be carried out with consistency.

9. ODOT objects to Section 16.254(2) (Exemptions from Permits) of the County's zoning ordinance. Objectors believe it should be deleted. Specifically, subsection (k) exempts certain timber harvest operations from Greenway Development Permit requirements. ODOT believes all commercial timber harvest activities must obtain such a permit. Objectors point out that the Forest Practices Act (FPA) notification does not cover scenic, recreational or historical impacts of harvesting. The Comprehensive Plan requires ODOT to make recommendations to the Department of Forestry (DOF). However, objectors point out that DOF is not required to act on ODOT's recommendations. Objectors feel this establishes a complex and misleading enforcement process.

10. ODOT objects to the County's Greenway setback provisions because it does not believe exceptions to the 100-foot requirement should be allowed unless criteria in LCDC's Exception Rule for the Greenway are met.

Response to Objections

1. Goal 15 (Section B.2) requires Greenway jurisdictions to inventory "all current aggregate excavation and processing sites, and all known extractable aggregate sources." The Goal also requires local

plans to be consistent with the ODOT Greenway Plan, which shows the location of such sites. ODOT has not specified which aggregate sites have been omitted from the County's inventory which are included in the ODOT Greenway Plan. In the 1981 review of Lane County's plan, the Commission found the County's inventory of Greenway sites to be adequate. The County has adopted this inventory by reference as part of its new Working Paper for the Greenway. ODOT is correct that a number of sites which are not included on the County's inventory of aggregate sites have been given a sand and gravel plan and zone designation, however. As indicated in the Goal 5 section of this report, the County has not justified such designations. This is more of a Goal 5 than a Goal 15 concern, however.

2. Aquisition sites were inventoried by Lane County in its 1981 Greenway Plan. In its 1981 review of that plan, the Commission found that inventory to be in compliance with Goal 15. The County has adopted its Greenway Plan by reference as part of its new Greenway Working Paper. Therefore, the objection is not sustained.

3. ODOT is correct that the Goal does not prohibit acquisition of farmland for public Greenway purposes. However, Section C.4.b. of the Goal indicates that areas to be acquired must "to the maximum extent practicable, be consistent with non-interference or non-interruption of farm uses as defined in ORS Chapter 215.203(2)." Policy 7 indicates such acquisitions must be consistent with non-interference or non-interruption of farm uses. While Policy 7 certainly carries out the intent of Section C.4.b. of the Goal, ODOT is apparently concerned that neither the County nor ODOT would be able to acquire farmland for Greenway purposes in the future unless Policy 7 is modified to use the term "should," rather than "shall." ODOT is also concerned that because Policy 7 is so restrictive, Policy 24 cannot be carried out, since it calls for providing public access to the river and public lands through access points, establishment of river lands, hiking and cycle paths, and public roads. There is no Goal violation in County Policy 7 being more restrictive and protective of farmland than the Goal, unless this restrictiveness prevents the County from meeting other Goal requirements or carrying out other policies. While Policy 7 certainly limits the County's options (as well as ODOT's options) in implementing Greenway programs, there are other means available, short of acquiring land which results in interfering with, or interrupting farm uses. The County is therefore urged, but not directed, to modify Policy 7 to use the term, "should," rather than "shall."

4. ODOT is incorrect in its interpretation of ORS 390.334. That provision (particularly subsection (2)) expressly prohibits the use of condemnation for acquiring scenic easements on farmland in the Greenway. Therefore, County Greenway Policy 32 is consistent with ORS 390.334. The objection is not sustained.

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.(*)

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

i. Carry out Forest Lands Policy 17 (Plan, p. 10) by identifying sites that are considered more important than commercial timber management activities, based on a Goal 5 ESEE consequences analysis, and adopt appropriate implementing measures to protect and/or resolve timber management conflicts with those sites, consistent with that policy.

4. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.(*)

5. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

6. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

7. Oregon Recreation Trails:

   a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

8. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.(*)

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.(*)

9. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflict-resolution recommendations contained in the Metro Plan Update Working Paper.

Note: Those IOTC's which pertain only to Lane County are followed by an asterisk (*).

Suggestions for Plan and Implementing Measures Improvement

It is suggested that on or before the first plan update, Lane County:

1. Amend the plan to inventory the recently designated wilderness areas (Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake).

2. Amend page 28 of the Flora and Fauna Working Paper to indicate that not all sites on federal land are necessarily protected (i.e., there may be conflicts with sites unless they are formally protected by the federal resource agency).

3. Amend Flora and Fauna Policy 7 to indicate that in evaluating (1B) wetland sites for possible inclusion on its (1C) inventory, information sources besides the National Wetlands Inventory will be used.

4. Adopt implementing measures to carry out Flora and Fauna Policy 9 (requiring residential building permits in Big Game Range areas to include a note indicating that the site is in Big Game Range and conflicts may occur).

GOAL 15: WILLAMETTE RIVER GREENWAY

This Goal 15 report is divided into two major parts. The first part is the review for all areas within the Willamette Greenway Boundary in Lane County outside the Metro Plan Boundary. The second part is for those Greenway areas inside the Metro Plan Boundary, but outside the Metro UGB.

PART I--GREENWAY AREAS
OUTSIDE THE METRO PLAN BOUNDARY

Inventory

Lane County has adopted a Willamette Greenway Working Paper which states (p. 7) that inventories of various Greenway resources are contained in the Greenway Plan. This Greenway Plan is incorporated into the Working Paper by reference (p. 7). As noted in the 1981 review of the Lane County plan and ordinances, the County's Greenway inventories are contained in its Greenway Technical Report, and are summarized in its Greenway Plan. This information was determined to adequately address the fifteen resource topics listed in Section B of Goal 15.

Greenway Boundary

Lane County has displayed the LCDC-approved Greenway Boundary on both its plan maps and its zoning maps, as required under sections E.1 and F.1 of the Goal. The boundary is clearly labeled and, for the most part, its location is accurately drawn. However, there are several minor inconsistencies on map Nos. 304, 304A, 305, 347, 437, and 528. The boundary is not shown on map Nos. 330, 332, 396, 411, 417, 418, 425, 440, 448, 471, 1005, 1006, 1008, 1010, 1011, 1012, and 1013.

The recently adopted Willamette Greenway Working Paper (p. 8) states that the Greenway Boundary is correctly displayed in the County's Greenway Plan and in the Eugene-Springfield Metro Area General Plan (which supercedes the 1990 Plan).

The County notes that the separate subarea plans and diagrams are being replaced by single documents for Coastal and Inland Regions. The Greenway is in the Inland Region (p. 8). The County indicates that in future documents, the LCDC-approved Greenway Boundary maps will be referenced and the Boundary will be shown on the Plan Diagram (p. 8).

Section 16.254(1)(j) of the Lane Code (the Greenway Development Ordinance) states that the boundaries for the Willamette River Greenway are those adopted by the Land Conservation and Development Commission in 1977, together with any changes when and as approved by LCDC.

Policies

Lane County has adopted 37 policies address the Willamette Greenway (Plan, pp. 33-35). These policies address all Use Management Considerations of Goal 15 (Section C.3.). Among these policies are the following:

1. Maintain and support continuation of existing uses within the Greenway Boundary.

2. Intensification and change of use of lands within the Greenway Boundary shall remain compatible with the protection, conservation and enhancement of the natural, scenic, historic, agricultural, economic and recreational qualities of the Willamette River Greenway Program.

3. Recognize that the Greenway consists of a multitude of resources and due to continued growth, 100 percent protection to all resources will never be realized.

4. Protect, conserve and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands and timber within the Greenway.

5. Maintain sufficient water flows to support water uses such as municipal, agricultural, industrial, natural resources (i.e., fish, aquatic life, wildlife) and recreation within the Greenway.

6. Prioritize water quality management controls along the Coast Fork and the Main Stem, especially in the Metropolitan area.

7. Acquisitions for Greenway purposes must be consistent with noninterference or interruption of farm uses.

8. Recognize that DOT cannot condemn for a scenic or use easements of lands devoted to farm use; however, easements may be given by owners of lands being used for farm purposes.

9. Protect water rights and access to the river for irrigation purposes.

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, is not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occuring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

19. The County shall require to the maximum feasible extent the protection of the vegetative fringe within the Greenway, and shall require the re-establishment of vegetative cover where it has been significantly removed during the land development process.

20. Conserve the rural character of the river bank as a primary objective within the Greenway.

21. Encourage a river-related mixture of industrial, commercial, residential and public land uses where appropriate in the Greenway.

22. In instances where a public agency has acquired productive farmlands or other resource lands as long-range reserve for recreational use, if possible, such property should be leased back for agricultural or other resource use until it is required for public purposes.

23. Provide and encourage use of public lands within the Greenway.

24. Accommodate public access to the river and to public lands within the Greenway by:
    a. Controlled, clearly designated, access points;
    b. Establishment of an integrated system of safe river lands, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
    c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

25. Provide appropriate levels of police protection in those areas subject to public use.

26. Encourage additional police security for private and publicly owned lands within the Greenway.

27. Protect, conserve or preserve the scenic and recreational qualities of the land within the Greenway Boundary.

28. Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.

29. The sensitivity of lands within the Greenway shall determine the level of human activity.

30. Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.

31. Consider and minimize the possibility that public recreation use might disturb adjacent private property owners.

32. Scenic easements shall not be acquired through the exercise of the power of eminent domain on lands in farm use.

33. Control vehicle access to the river.

34. Consider and adopt policies that would not hinder the physically handicapped from using public recreation facilities within the Greenway Boundary.

35. Emphasize public access to the river in the metropolitan area and other urban areas which discouraging upland access in rural areas.

36. Measures should be taken to minimize disturbance to private property, including the implementation of programs to eliminate trespass and vandalism on private lands and destruction of ecological fragile areas.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Mineral and Aggregate Policy 11 also addresses mineral and aggregate sites within the Greenway:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise, and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

As discussed in the Goal 5 section of this report, the policy fails to reference Section C.3.d. of Goal 15 regarding the protection of significant fish and wildlife habitats. Therefore, the policy is inconsistent with Goal 15 as well as with the County's Greenway Policy 37.

Plan Designations

In the 1981 review of Lane County's Greenway element, the Commission determined that plan designations in subarea plans, the 1990 Plan, and the County Greenway Plan were inconsistent in several locations. The new Greenway Working Paper explains that subarea plans in the Greenway are

being replaced by the Inland Region document, whose Plan Diagram will show land use designation "in a manner consistent with other County and metro area plan documents" (p. 8). See the Goal 2 section of this report for further discussion regarding the County's plan designations.

Implementing Measures

Included in the Lane Code are Greenway Development Permit procedures for the review of certain land use activities in the Willamette River Greenway (Lane Code, Section 16.254). A Greenway Development Permit is required for any new intensification, change of use or development, including public improvements and partitions and subdivisions. The County's ordinance defines the terms "intensification," "change of use," and "development" consistent with definitions contained in Goal 15.

Section 16.254(2) of the Lane Code lists those uses and activities that do not require a Greenway Development Permit. All are consistent with Goal 15 except subsections (a) and (k). Subsection (a) exempts uses "where the location is within areas designated as 'urban' on Greenway maps adopted by the Oregon Land Conservation and Development Commission and is beyond 150 feet of the ordinary low waterline." As noted in the 1981 denial order for Lane County, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15, and as designated in the ODOT Greenway Plan, is subject to local Greenway review. (Note: The term, "urban" as used in the context of Goal 15 is not the same as that used in Goal 14. In this case, "urban" refers to designations in the ODOT Greenway Plan). However, as noted in the 1981 review of the County's ordinance, there was only one area where this provision applies--just outside of the Cottage Grove UGB. The County has not requested that LCDC change the designation of this area from "urban" to "rural" nor has it deleted Section 16.254(2)(a).

Subsection 16.254(2)(k) exempts the propagation of timber or the cutting of timber for public safety or personal noncommercial use or where the harvest is consistent with an approved permit under the FPA "(i) for a farm woodlot of less than 20 acres, or (ii) consistent with recommendations made by" ODOT to the Department of Forestry, designed to address Goal 15, Sections c-h. It is acceptable to exempt timber propagation and harvest for public safety or personal noncommercial use, under Goal 15. However, subsection (i) in the second part of subsection (k) appears to be based on language in the Greenway Interim Order. Such language was eliminated in the adoption of Goal 15. Subsection (ii) of subsection (k) has no procedure for implementation, since, according to the Department of Forestry's directive for operations in the Greenway, it can make recommendations to operations regarding Greenway concerns, but cannot enforce them.

A decision to approve a Greenway Development Permit--where one is required by the Code--requires findings that the proposed intensification, change of use or development conforms to certain criteria, guidelines and setback requirements set forth in Sections 16.254(3)(a), (b), and (c), respectively. Specifically, the "criteria" in subsection (a) include the following:

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the re-establishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) A development which is mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway.

Affirmative findings of compatibility with the Willamette River Greenway "based on due consideration and the relative importance" of guidelines must also be made. These "Guidelines" under subsection (b) are as follows:

(i) Preservation and maintenance of land designated "agricultural" in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.
(iii) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resouces.
(iv) Preserve areas of annual flooding, floodplains and wetlands.
(v) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.
(vi) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.
(vii) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses such as: domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.
(viii) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terrances bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(ix) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.
(x) Minimize vandalism and trespass.
(xi) Location of nonwater dependent and nonwater related development away from the river.
(xii) Compatibility with the site and surrounding area.
(xiv) Protection of significant fish, wildlife habitat and natural areas.
(xv) Protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan.

It must be noted that compliance with these "Guidelines" is to be judged based on their "relative importance." However, there is no clear guidance as to how "relative importance" will be determined. This is particularly a problem where Goal 15 requires certain types of resources to be protected, regardless of other completing values (e.g., significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints) (Goal 15, Sections C.3.d., a., and e.). To the extent that the County's "Guidelines" do not require protection of such areas, the County's Greenway ordinance does not comply with Goal 15.

Section 16.254(c) requires new intensifications, developments and changes of use to be set back 100 feet from ordinary high waterline of the river "except for those in conjunction with a water related or water dependent use" (emphasis added). Exceptions to this requirement shall be allowed when affirmative findings are made to satisfy two criteria:

(i) The proposal would provide better protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway than would occur by observance of the setback requirment; or
(ii) The protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway are not applicable to the proposal.

It should be noted that, according to the Goal, only water-dependent and water-related intensifications, developments, or changes of use themselves are exempt from Greenway setback requirements. However, Lane County also exempts uses in conjunction with water-related and water-dependent uses. As noted in a number of other reviews, this is inconsistent with the Goal, since it would allow a number of uses to be exempt from the setback which are not envisioned by the Goal. The County's ordinances also identify two ways in which exceptions to the 100-foot setback are permitted. One of these is if a proposal would provide better protection of Greenway values, and the other is if such protection is not applicable to the proposal. The Goal does not permit exceptions to the setback, except for water-dependent and water-related uses, even if a proposal might enhance Greenway values. This is because the intent of the Goal is to keep structures separated from the river and

to protect areas immediately adjacent to the river for water-dependent and water-related uses. For example, a restaurant, including landscaping and other amenities may, in the opinion of a Hearings Officer, enhance Greenway values. However, it is not, by definition, a water-related or water-dependent use and therefore is not permitted within the established Greenway setback.

The Commission amended its administrative rule on exceptions to set forth standards for taking exceptions to the Greenway setback. These standards apply to urban areas only. The Commission did not adopt standards for taking exceptions to the setback requirement in rural areas. It should be pointed out that juridictions may structure their Greenway ordinances to permit establishment of a setback on a case-by-case basis, as long as it meets the requirements of Section C.3.k. of the Goal. Alternatively, jurisdictions may adjust established setback standards through the plan amendment process.

Conditions may be imposed in conjunction with a Greenway Development Permit, as necessary (Section 16.254(4).

Section 16.254(5) sets forth the application and review procedure by a Hearings Officer for Greenway Development Permits.

Section 16.254(6) requires the County to notify the Department of Transportation when an application is made. The ordinance does not require the County to also notify that agency of actions taken on an application. This is required by Goal 15 (Section G).

As noted in the Goal 7 section of this report, Lane County has adopted adequate flood hazard provisions.

Objections

1. The Oregon Department of Transportation (ODOT), Parks and Recreation Division, has objected to an inconsistency between the inventoried aggregate sites within the Greenway, and those which are shown on plan maps and designated Sand/Gravel. ODOT states there are a number of aggregate sites in the ODOT Greenway Plan which are not included in the County's inventory. Further, the County's plan maps show a Sand/Gravel designation for some areas which are not in the County's aggregate sites inventory, according to objectors.

2. ODOT objects because of the lack of an inventory of sites for potential acquisition within the Greenway. ODOT points out that this is required by Section E.3. of the Goal, and that the ODOT Greenway Plan identifies such areas.

3. ODOT objects because Plan Policy 7 conflicts with Goal 15. Policy 7 states that acquisitions for Greenway purposes must be consistent with non-interference or interruption of farm uses. ODOT points out that Goal 15 is intended to protect farm uses, but does not prohibit farmland acquisition for public Greenway purposes. Objectors believe Policy 7 also conflicts with Policy 24 (which encourages development of a system of river access points).

4. ODOT objects because Policy 8 and Policy 32 are inconsistent with ORS 390.334, which allows condemnation of scenic easements on farmland. Objectors recommend that the policies be deleted or amended to be consistent with that statute.

5. ODOT objects to the County's inadequate compatibility review provisions for commercial timber harvest. Objectors indicate adequate provisions are a requirement of Goal 15. Further, ODOT believes the zoning ordinance fails to carry out Policy 12.

6. ODOT objects because Policy 13 is inconsistent with Policies 2, 4, 18, 20, 21, 23, 24, 27, 29 and 37. ODOT indicates that Policy 13 appears to give the highest use protection to sites designated and zoned for sand and gravel. However, objectors state that Policy 13 does not consider Greenway river processes and values.

7. ODOT objects to Policies 28, 30 and 35 because they conflict with Policy 24. Specifically, Policies 28, 30, and 35 call for a Greenway public access program aimed at serving urban residents in urban areas, and discouraging access to the river in the more attractive rural settings with greater recreational amenities. Policy 24 calls for a system of access points and trails, which is inconsistent with Policies 28, 30 and 35, according to ODOT.

8. ODOT objects to the lack of an inventory of "significant natural and scenic areas and vegetative cover," as required in Section B, Subsection 6 of the Goal. Without such an inventory, ODOT believes Policies 2, 4, 11, 12, 18 an 27 an the zoning ordinance "cannot be carried out with consistency.

9. ODOT objects to Section 16.254(2) (Exemptions from Permits) of the County's zoning ordinance. Objectors believe it should be deleted. Specifically, subsection (k) exempts certain timber harvest operations from Greenway Development Permit requirements. ODOT believes all commercial timber harvest activities must obtain such a permit. Objectors point out that the Forest Practices Act (FPA) notification does not cover scenic, recreational or historical impacts of harvesting. The Comprehensive Plan requires ODOT to make recommendations to the Department of Forestry (DOF). However, objectors point out that DOF is not required to act on ODOT's recommendations. Objectors feel this establishes a complex and misleading enforcement process.

10. ODOT objects to the County's Greenway setback provisions because it does not believe exceptions to the 100-foot requirement should be allowed unless criteria in LCDC's Exception Rule for the Greenway are met.

Response to Objections

1. Goal 15 (Section B.2) requires Greenway jurisdictions to inventory "all current aggregate excavation and processing sites, and all known extractable aggregate sources." The Goal also requires local

plans to be consistent with the ODOT Greenway Plan, which shows the location of such sites. ODOT has not specified which aggregate sites have been omitted from the County's inventory which are included in the ODOT Greenway Plan. In the 1981 review of Lane County's plan, the Commission found the County's inventory of Greenway sites to be adequate. The County has adopted this inventory by reference as part of its new Working Paper for the Greenway. ODOT is correct that a number of sites which are not included on the County's inventory of aggregate sites have been given a sand and gravel plan and zone designation, however. As indicated in the Goal 5 section of this report, the County has not justified such designations. This is more of a Goal 5 than a Goal 15 concern, however.

2. Aquisition sites were inventoried by Lane County in its 1981 Greenway Plan. In its 1981 review of that plan, the Commission found that inventory to be in compliance with Goal 15. The County has adopted its Greenway Plan by reference as part of its new Greenway Working Paper. Therefore, the objection is not sustained.

3. ODOT is correct that the Goal does not prohibit acquisition of farmland for public Greenway purposes. However, Section C.4.b. of the Goal indicates that areas to be acquired must "to the maximum extent practicable, be consistent with non-interference or non-interruption of farm uses as defined in ORS Chapter 215.203(2)." Policy 7 indicates such acquisitions must be consistent with non-interference or non-interruption of farm uses. While Policy 7 certainly carries out the intent of Section C.4.b. of the Goal, ODOT is apparently concerned that neither the County nor ODOT would be able to acquire farmland for Greenway purposes in the future unless Policy 7 is modified to use the term "should," rather than "shall." ODOT is also concerned that because Policy 7 is so restrictive, Policy 24 cannot be carried out, since it calls for providing public access to the river and public lands through access points, establishment of river lands, hiking and cycle paths, and public roads. There is no Goal violation in County Policy 7 being more restrictive and protective of farmland than the Goal, unless this restrictiveness prevents the County from meeting other Goal requirements or carrying out other policies. While Policy 7 certainly limits the County's options (as well as ODOT's options) in implementing Greenway programs, there are other means available, short of acquiring land which results in interfering with, or interrupting farm uses. The County is therefore urged, but not directed, to modify Policy 7 to use the term, "should," rather than "shall."

4. ODOT is incorrect in its interpretation of ORS 390.334. That provision (particularly subsection (2)) expressly prohibits the use of condemnation for acquiring scenic easements on farmland in the Greenway. Therefore, County Greenway Policy 32 is consistent with ORS 390.334. The objection is not sustained.

5. Lane County's Greenway Policy 12 states:

> The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or if not covered by the FPA, then with an approved plan under the Greenway compatibility review provisons. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

This above policy language repeats language in Goal 15, Section C.3.1. Section 16.254(3)(ix) of the Lane Code specifies that affirmative findings must be made, including "Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved, or restored and otherwise result in only the partial harvest of timber beyond the vegative fringe." This is consistent with Goal 15. However, Section 16.254(2)(k) of the ordinance specifically exempts certain harvest activities, not consistent with the Goal. These problems are addressed in the response to ODOT's objection 9.

6. Greenway Policy 13 states:

> Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resources.

Policies 2, 4, 18, 20, 21, 23, 24, 27, 29, and 37 are aimed at preserving other values in the Greenway (e.g., vegetation, fish and wildlife habitat, scenic qualities, recreational opportunities), and where appropriate, balancing such uses with the need for sand and gravel resources. Policy 13 in and of itself would not preclude protection of other Greenway values present. Presumably, the County's Greenway ordinance should ensure that extraction will not occur unless adequate safeguards for other resources are provided. Policy 13 simply indicates that uses that are incompatible with extraction activities will not be permitted on sites that are either active, zoned, or designated for aggregate extraction or processing. This policy presumes that the plan and zone designations for aggregate extraction and processing have been applied appropriately. However, even if the plan and zone designations are applied correctly, the policy does seem to ignore the fact that such operations can be allowed only if they are conducted in a manner consistent with the Goal's intent of protecting natural, scenic, historic, and recreational values. Other plan policies for the Greenway do express this, however (e.g., Policies 2, 3, 4, 15, 16, and 37). Therefore, the objection is not sustained. However, it is recommended that the policy be clarified to indicate that such operations are still subject to local Greenway Permit review or must be conducted in a manner consistent with the protection of other Greenway values.

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7. Policy 24 states:

> Accommodate public access to the river and to public lands within the Greenway by:
> a. Controlled, clearly designated, access points;
> b. Establishment of an integrated system of safe river landings, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
> c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

Policies 28, 30, and 35 are:

> Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.
>
> Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.
>
> Emphasize public access to the river in the metropolitan area and other urban areas while discouraging upland access in rural areas.

Section C.3.b. of Goal 15 indicates that recreational needs must be provided for, but must be consistent with the carrying capacity of the land, must not substantially interfere with the long-term capacity of the land for farm use, and must minimize disturbance to adjacent property. Section C.3.c. of Goal 15 indicates that adequate public access to the river shall be provided for, with emphasis on urban and urbanizable uses. County Policies 24, 28, 30, and 35 are consistent with these Goal directives. The objection is not sustained.

8. As indicated earlier, the County's inventory of Greenway values and resources is the same as the one submitted and reviewed in 1981. The Commission found the inventory to be adequate.

9. ODOT is in error in requesting that the entirety of Section 16.254(2) be deleted from the Greenway ordinance. The Goal 15 definitions of "intensification," "change of use" and "development" specify certain uses and activities that may be exempt from local Greenway permit review. Most of Lane County's exemptions are consistent with the Goal and are similar to those exempted by other Greenway jurisdictions whose plans and ordinances have been acknowledged by the Commission.

ODOT is correct, however, that subsection (k), which exempts certain kinds of timber harvest activities, is inappropriate. That subsection is consistent with the Greenway Interim Order, but the Goal itself does not exempt such activities from local Greenway review. It has been the Commission's practice to allow propagation of timber or cutting of timber for public safety or personal non-commercial use to be exempt from local Greenway permit review. To that extent, the first part of subsection (k) is acceptable. However, the second part (which exempts harvest activities if consistent with an approved permit under the FPA, for a farm woodlot less than 20 acres, or if consistent with recommendations of ODOT to DOF), is not. Therefore the objection is only partly sustained.

10. ODOT is correct that the County's Greenway setback exceptions are not consistent with the Goal. However, ODOT is not correct in suggesting that the LCDC Exception Rule be followed to allow such exceptions. This is because the Commission's Exception Rule contains criteria for taking exceptions to the Greenway setback requirement in urban areas only. Therefore, they do not apply to most of the Lane County planning area.

PART II--EUGENE/SPRINGFIELD METROPOLITAN AREA OUTSIDE THE METRO UGB

In August 1982, the Commission reviewed and acknowledged the Eugene/Springfield Metro Area Plan for lands within the Metro UGB. However, the cities of Eugene and Springfield as well as Lane County were granted a continuance for lands within the UGB but within the Metro Planning Area Boundary in order to comply with Goal 15 (as well as several other Goals).

The following section of this report analyzes Lane County's responses to the Goal 15 'in-order-to-comply" requirements contained in the August 1982 staff report, adopted by the Commission.

Requirement

1. Ensure that the LCDC-approved Greenway Boundary is shown or referenced in the appropriate subarea plans.

Response

As noted in Part I of this report, the County is replacing subarea plans with two documents--one for the Coastal region and one for the Inland Region. The Greenway is within the Inland Region. The County indicates in its Greenway Working Paper (p. 8) that the LCDC-approved Greenway boundary will be referenced in that document and the Boundary will be shown on the Plan Diagram. Please refer to Part I of this Goal 15 report for a discussion of the County's plan and zone maps and the extent to which they correctly display the Greenway Boundary.

Mining and processing activities in the Greenway must comply with provisions in the County's Greenway ordinance, including the following:

> A development which is mining or mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway (Section 16.254(3)(a)(iii)).

In addition, affirmative findings of compatibility must be made with regard to a number of "Guidelines," including those addressing the protection of scenic and historic resources, areas of flooding and wetlands, the protection and enhancement of water quality, maintenance of natural riparian vegetation, erosion, protection of significant fish and wildlife habitat and natural areas, and compatibility with the site and the surrounding area (Section 16.254(3)(b)).

At the same time, Guideline (xv) calls for protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan. However, Section 16.254(3)(b)(i) through (xv) are "Guidelines" and compliance with them is to be judged according to their "relative importance." To this intent, the County does not have a clear procedure for assuring protection of significant fish and wildlife habitat areas within the Greenway on sites that also have sand and gravel resources. This is most evident in two particular areas--the Confluence Heronry and the Pudding Creek Heronry. Both have unquestionably significant wildlife resources present, and both contain significant aggregate resources. Application of plan policies, the Greenway ordinance, and various other zones does not result in clear policy direction for these sites. In that respect, the conflicts between these various resource uses have not been resolved.

Conclusion

Requirement 8 has not been satisfied.

Lane County has not adopted satisfactory procedures for carrying out Requirements C.3.d. and C.3.i. of Goal 15.

Requirement

9. Amend the Metro Area General Plan or the Lane County Willamette Greenway Plan to assure that land use designations are consistent.

Response

A new Metro Area General Plan Map was submitted as part of the 1982 Metro Plan review. It corrects the inconsistencies identified in 1981.

Response

The County has adopted the following Greenway policies regarding sand and gravel extraction and significant fish and wildlife habitats (Plan, pp. 33-35):

4. Protect, conserve, and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands, and timber within the Greenway.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occurring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity to urban areas and other points of use. Such monitoring shall be conducted in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with sections C.3.d. and C.d.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Conclusion

Requirement 4 has been satisfied.

Lane County has adopted "shall" policies regarding sand and gravel extraction and significant fish and wildlife habitats in the Greenway. However, as noted in Part I of the Goal 15 section of this report, as well as in several of the following sections, not all of them have been implemented consistent with Goal 15.

Requirement

5. Adopt policies that address Sections C.3.h., j., and k. of Goal 15 (regarding timber resources, development away from the river, and Greenway setback).

Response

The following Greenway policies have been adopted by Lane County (Plan, pp. 33-35):

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, it not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

Conclusion

Requirement 5 has been satisfied.

Lane County has adopted Greenway policies that adequately address Sections C.3.h., j., and k. of the Goal.

Requirement

6. Amend Section 10.322 of the Lane Code to require either:

a. Greenway permits in areas designated "urban" beyond 150 feet of ordinary low water.

b. Some other mechanism which ensures protection of Greenway values in "urban" areas beyond 150 feet of ordinary low water.

This could also be accomplished by LCDC amendment of the DOT Greenway Plan to change the designation of the area south of the Cottage Grove UGB from "urban" to "rural."

Response

As indicated in the 1981 denial of the County's Greenway ordinance, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15 and designated in the ODOT Greenway Plan, must either be reviewed locally according to Greenway Permit review procedurs or must comply with other measures designed to ensure protection of Greenway values. (Note: The term "urban" as used in the context of Goal 15 is not equivalent to "urban" as used in Goal 14, or to areas within UGB's. In this case, "urban" refers to designations in the ODOT Greenway Plan. In Lane County, there is land outside the Cottage Grove UGB which has an "urban" designation in the ODOT Greenway Plan.)

The County's Greenway Working Paper recommends requesting that the "urban"/"rural" boundary line be relocated to coincide with the adopted UGB of Cottage Grove (p. 10). However, neither the County nor ODOT have reguested LCDC change this designation.

As noted in the Metro Area Acknowledgment Report, approved by LCDC in August 1982, Section 10.322-15(1)(b) of the Lane Code was amended so that it no longer distinguishes between "rural" and "urban" areas.

Conclusion

Requirement 6 has been satisfied.

The Greenway Ordinance has been amended to require Greenway permits or other measures in "urban" areas beyond 150 feet of ordinary low water.

Requirement

7. Apply EFU zoning to all agricultural lands in the Greenway (see also the Goal 3 section of this report).

Response

The County has not applied EFU zoning to 85 acres of agricultural lands on the "Confluence Island." Instead, the majority of this land is zoned "sand and gravel." All other agricultural lands in the Greenway have been zoned EFU.

Conclusion

Requirement 7 has not been satisfied.

Requirement

8. Adopt a procedure for minimizing the impacts of sand and gravel extraction on significant fish and wildlife so that the Goal's requirements (Section C.3.d. and C.3.i.) are met.

Response

Section C.3.d. of Goal 15 states: "Significant fish and wildlife habitats shall be protected."

Section C.3.i. states that aggregate extraction:

> . . . may be permitted when compatible with the purposes of the Willamette River Greenway, and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety, and to guarantee necessary reclamation.

Lane County has adopted several plan policies which address this issue. The first set of policies address Section C.3.d. They include the following:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose (Greenway Policy 37).

As noted earlier (in the Mineral and Aggregate portion of the Goal 5, and the previous section of the Goal 15 sections of this report), Mineral and Aggregate Policy 11 is similar, except that it refers only to Section C.3.i. of Goal 15 for the protection of significant fish and wildife habitat areas. Section C.3.d. is the appropriate section of this Goal regarding significant habitat areas, whereas Section C.3.i. covers other less significant habitat areas and is less protective than Section C.3.d. (i.e., it requires only that the impacts of mining are minimized). Section C.3.d., on the other hand, requires that all significant habitat areas to be protected. The County needs to amend Mineral and Aggregate Policy 11 to be consistent with Goal 15 as well as with Greenway Policy 37.

The second set of Greenway policies address Section C.3.i. of the Goal, since they are aimed at minimizing the impact of any intensification, change of use, or development on Greenway values (e.g., Policies 2, 5, 15, 16, 18, 19, 27, 29).

Mining and processing activities in the Greenway must comply with provisions in the County's Greenway ordinance, including the following:

> A development which is mining or mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway (Section 16.254(3)(a)(iii)).

In addition, affirmative findings of compatibility must be made with regard to a number of "Guidelines," including those addressing the protection of scenic and historic resources, areas of flooding and wetlands, the protection and enhancement of water quality, maintenance of natural riparian vegetation, erosion, protection of significant fish and wildlife habitat and natural areas, and compatibility with the site and the surrounding area (Section 16.254(3)(b)).

At the same time, Guideline (xv) calls for protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan. However, Section 16.254(3)(b)(i) through (xv) are "Guidelines" and compliance with them is to be judged according to their "relative importance." To this intent, the County does not have a clear procedure for assuring protection of significant fish and wildlife habitat areas within the Greenway on sites that also have sand and gravel resources. This is most evident in two particular areas--the Confluence Heronry and the Pudding Creek Heronry. Both have unquestionably significant wildlife resources present, and both contain significant aggregate resources. Application of plan policies, the Greenway ordinance, and various other zones does not result in clear policy direction for these sites. In that respect, the conflicts between these various resource uses have not been resolved.

Conclusion

Requirement 8 has not been satisfied.

Lane County has not adopted satisfactory procedures for carrying out Requirements C.3.d. and C.3.i. of Goal 15.

Requirement

9. Amend the Metro Area General Plan or the Lane County Willamette Greenway Plan to assure that land use designations are consistent.

Response

A new Metro Area General Plan Map was submitted as part of the 1982 Metro Plan review. It corrects the inconsistencies identified in 1981.

Conclusion

Requirement 9 has been satisfied.

Requirement

10. Amend the Lane County Greenway ordinance to ensure that the only erosion control activities that are exempt from Greenway review are those for emergency situations, safety, and protection of property.

Response

Lane County's Greenway ordinance has been amended so that the only erosion control activities that are exempt from Greenway Permit review are those "erosion control operations required in emergency situations for the safety and protection of property" (Lane Code, Section 16.254(2)(f)).

Conclusion

Requirement 10 has been satisfied.

Objections

1. A number of objections have been received regarding the County's treatment of the 300-acre area known as "Big Island" or "Confluence Island" at the confluence of the McKenzie and Willamette Rivers. Specifically, 1000 Friends of Oregon, League of Women Voters of Central Lane County (LWV), Harold Chapman, and Lane County Audubon Society have objected because the County has failed to provide adequate protection for the great blue heron rookery on the island. The heronry is one of the largest in the Willamette River Basin (about 55 nests) and is identified in the State Natural Heritage Inventory. Objectors point out that the County has zoned the site for sand and gravel use except for the heronry itself and an unspecified buffer area. Objectors feel this is not only inadequate, but also fails to carry out specific in-order-to-comply requirements adopted by the Commission. Specifically:

   a. Objectors note that Goal 15 (Section C.3.a.) requires that agricultural land in the Greenway be protected. Further, the denial order of Lane County's plan issued in 1981 as well as the 1982 continuance order for the Eugene/Springfield Metro Area specified that EFU zoning had to be applied to all agricultural lands in the Greenway. Several objectors have provided information demonstrating that a large portion of the island contains soils which are SCS Class II and IV. The area has been farmed historically, and about 85 acres are currently farmed. The County has not applied EFU zoning to all these areas. Some areas with these soils are zoned Natural Resource, but the majority are not. Instead, they have been zoned for sand and gravel.

b. Objectors believe that the County has not demonstrated that a minimum 300-foot buffer around the rookery will be adequate to protect the rookery. Objectors point out that Section C.3.d. of Goal 15 requires protection of all significant habitats in the Greenway. Objectors state that the compromise reached and which was adopted by the County was based on incorrect information about the location of the rookery, and therefore a larger area is needed for protection of the site itself. Objectors further point out that, on many occasions, the Commission has indicated that fish and wildlife areas and habitats include nest sites as well as other areas important to the species, including impact areas. Evidence submitted by objectors suggests that buffers of even 450 feet are inadequate and would result in abandonment of the site. Herons react to disturbances up to about 700 feet, according to research submitted by objectors.

c. Objectors also indicate that the County has failed to recognize the importance of providing adequate future habitat (available nest trees) in the event that existing nest trees (which are older and more susceptible to windthrow) are lost. Objectors point out that such habitat is being lost at a rapid rate along the Willamette River system. Objectors note that it is "absolutely necessary to preserve as many of the inland big trees as possible "because the island is eroding on the east side and water is undercutting nest existing trees, and because there are few places for the herons to relocate. The north end of the island (which is to be protected) is subject to windthrow.

d. Objectors indicate that the County has not adopted any implementing measures to minimize the impacts of sand and gravel extraction on this significant habitat area, so that Sections C.3.d. and C.3.i. of Goal 15 are met as specified in the 1981 denial order for Lane County and the 1982 continuance order for the Metro plan. Specifically, objectors point out that Section C.3.i. requires measures designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise safety, and to guarantee necessary reclamation. Policy 11 contains this language but the Greenway Development permit criteria requires only that extraction reduce or mitigate adverse impacts to the natural attributes of the Greenway. Objectors indicate that the County's Sand and Gravel Zone also does not contain criteria which address the specific concerns listed in Section C.3.i. of Goal 15.

e. In the 1982 continuance order for the Metro Plan, LCDC specified that the ESEE consequences of designating the island for sand and gravel had to be evaluated in the context of regional aggregate supply and demand. Objectors contend that this has not been done, and (based on data in the County's own plan), they provide information demonstrating that in the Metro Area, supply is 10 to 20 times the demand for aggregate to the

year 2000. In the island alone, there is about five to ten times the total Metro Area demand to the year 2000. Therefore, objectors contend that the County cannot demonstrate the need to zone Big Island for sand and gravel extraction.

f. Objectors indicate that the entire island is within the floodway as determined by FEMA. County adoption of the current zoning for the island was based on a misunderstanding that the island was in the floodway fringe. Objectors indicate that a sand and gravel operation on the island will require dikes and other protective construction projects. FEMA standards do not normally permit dikes or other above-grade type development to be constructed in a floodway. Objectors also point out that Goal 7, Guideline 2 indicates that uses that do not require protection through dams, dikes and levies should be given preference over uses requiring such protection.

g. Objectors contend that the noise from a sand and gravel operation on the island would not be compatible with the purpose of the Greenway relative to a County park on the opposite bank. This is the only site with public access to the river in a natural state in the River Road-Santa Clara area.

2. A number of objections have been received regarding the County's treatment of the Pudding Creek Heronry on the Middle Fork of the Willamette River, within the Willamette Greenway. Specifically, Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County (LWV), and Lane County Audubon Society have objected to the Sand and Gravel Zone designation applied to the site.

Objectors point out that this great blue heron rookery is one of the largest in the Greenway and in Western Oregon (54 nests in 31 trees), and is on the State Natural Heritage Inventory. The site is within the Metro Planning area but outside the UGB. Objectors note that the heronry is recognized by the Lane Council of Governments (LCOG) as a significant wildlife resource. Objectors state that, during 1983, extensive negotiations occurred between Lane County, ODFW and the Wildish Land Company regarding the site, and that a land trade agreement was drafted in order to protect the heronry. Objectors point out that the Metro Plan Update Addendum indicates that a "Natural Resource" plan designation is to be applied to the site and buffer area and that land exchange is to be the means to resolve sand and gravel use conflicts. However, objectors indicate that Lane County has not zoned the rookery for natural resource protection and instead has applied Sand and Gravel zoning.

Several objectors note the similarity between the Pudding Creek Heronry and the Big Island Heronry (i.e., both are in the Greenway, and both have sand and gravel operation conflicts). Objectors note Goal 15 requirements regarding protection of significant fish and wildlife habitats and conditions which must be satisfied in order to allow mining activities.

Several objectors note that the County's failure to evaluate the Pudding Creek Heronry site in terms of the Goal 5 Administrative Rule process also violates Goal 5 as well as LC 10.205-05 and Ordinance 16.217 (Sand, Gravel and Rock Products Zone, SG-RCP). The Code states that the SG-RCP Zone shall only apply to sites which have been evaluated consistently with the Statewide Planning Goal 5 Administrative Rule conflict resolution process.

Response to Objections

1. Many of the objections regarding the Big Island Confluence Heronry are valid. Specifically,

   a. Objectors are correct that EFU zoning has not been applied to the 85 acres of agricultural lands on Big Island. Goal 15 (Section C.3.a.) requires this to be done.

   b. There is no evidence in the County's policies or implementing measures that a 300 foot buffer around the heron rookery was adopted, although such a buffer was proposed in the Metro Plan update document. Objectors are correct, however, that there is not sufficient information in that document as to why a 300 foot buffer--as opposed to a 400 foot or 700 foot buffer (for example) is adequate to protect the heronry. This is particularly true if, as objectors point out, such a proposed buffer was based upon incorrect information about the location of the rookery.

      On the other hand, objectors have indicated what buffer distances would not be acceptable, but have not recommnded a specific buffer in this case. In light of these facts, the objection is sustained in part. If sand and gravel extraction is to be permitted on the island, the County needs to reexamine what would constitute an adequate buffer for protection of the rookery, based on accurate locational information, and based on advice from objectors as well as ODFW biologists. Based on this re-examination, the County needs to adopt justification for an appropriate buffer, and must adopt such a buffer in plan policies and implementing measures for the site (see, however, response (e) below).

   c. Objectors are correct that the County has not discussed the importance of providing future habitat, such as trees in the inland portion of the island, although the County does recognize that the entire island has habitat value. The County needs to address this when developing a program to protect the site.

   d. Objectors are correct that neither the SG Zone nor the County's Greenway ordinance clearly require protection for significant wildlife habitats, such as the Confluence Heronry. Objectors are correct in saying that the Greenway ordinance does not contain provisions for carrying out Section C.3.i. of Goal 15, inasmuch as it is unclear that extraction will be allowed to occur only if certain conditions are met (these are spelled out

in Section C.3.i. of the Goal). The ordinance refers to most of the topics in Section C.3.i. in its "Guidelines" but does not relate these guidelines to aggregate extraction activities per se. It only requires that findings of compatibility be made based on the "relative importance" of individual Guidelines in any given case. This is not sufficient to ensure that Sections C.3.d. and C.3.i. of Goal 15 will be achieved. Objectors are not correct that Mineral and Aggregate Policy 11 contains adequate assurance, since it fails to reference Section C.3.d. of Goal 15.

e. Objectors are correct that the ESEE consequences analysis for designation of the island did not take into account the regional aggregate supply and demand, although the County's analysis does indicate that "from 3-7 times the amount of land needed for urban aggregate consumption during the planning period has been allocated for this use" (p. V-7). Objectors are correct that the County has not demonstrated a need to zone the island for sand and gravel extraction.

f. Objectors are correct that the entire island is within the floodway. However, this is not a Goal 15 compliance issue, per se, since Goal 15 simply requires floodplain zoning of all areas subject to flooding. As noted in the Goal 7 section of this report, this has been accomplished. Such zoning, plus FEMA regulations will limit activities that can take place on the island.

g. The County has not assessed the impact of noise from a sand and gravel operation in the County park on the opposite bank. However, this would be required according to Sections 16.254(3)(a)(iii) and (3)(b)(xiii) of the Greenway ordinance.

2. Goal 15 (Section C.3.d.) states: "Significant fish and wildlife habitats shall be protected" (emphasis added). Section C.3.i. of the Goal addresses aggregate extraction, and indicates that it "may be permitted when compatible with the purposes of the Willamette River Greenway, and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation."

Although the heronry is a significant Goal 5 resource as well as a significant Goal 15 resource, the requirements of Goal 15 are stricter than those for Goal 5 and the Goal 5 Administrative Rule. Goal 15 requires protection of significant fish and wildlife habitats; it does not allow the "balancing" that is permitted under Goal 5, based on specific circumstances and ESEE consequences of conflicting uses. Extraction in the Greenway may occur only when certain criteria are satisfied. In no instance can it occur if it results in non-protection of a significant habitat area.

There is apparently some confusion as to the actual zoning of the Pudding Creek Heronry, based on the comments and objections received, the various plan and zoning maps submitted for review, and information from the Planning Department itself. This is probably due to the fact that the zoning of the site has changed several times. The plot maps submitted indicate that part of the Pudding Creek Heronry site has been zoned for sand and gravel extraction, and part has been zoned NR. However, the Planning Department indicates that the entire site is zoned SG (Jim Mann, personal communication, July 17, 1984). Criteria in the County's Sand and Gravel Zone and Greenway ordinance do not ensure that the requirement of Section C.3.i. of Goal 15 will be satisfied for reasons discussed earlier. The adopted background materials which analyze the conflicts and ESEE consequences for the site call for protection of the heronry. There is no basis for SG zoning of the entire site, not is there any basis for the current configuration of NR zoning and SR zoning shown on the plot maps. There is no assurance that this configuration would be adequate to protect the heronry. The objections are sustained.

It should be noted that in 1983, extensive negotiations took place between the landowner, Lane County, ODOT, and ODFW for resolution of these conflicts. A proposal for a land exchange (involving land in a nearby state park being rezoned for sand and gravel, and the rookery to be zoned for protection) was drafted, but never executed. The draft proposal was not submitted as part of this current review, but a review of the proposal submitted informally to DLCD by LCOG indicates that, if adopted, it would satisfy Goal 5 and 15 concerns. Other implementing strategies and measures may also be available which would satisfy these Goals as well.

Comment

Wildish Land Company supports the County's plan and zone designations for the Pudding Creek Heronry, as submitted. Wildish (the property owner) indicates that, although the LCOG Working Paper, "Natural Resource Areas: Conflict Resolution for Significant Areas," recommends a land exchange or transfer of mining rights in order to resolve conflicts, redsignation and rezoning proposals were part of a preliminary draft and unadopted addendum to the Working Paper. To date, there has been no land exchange or rezoning. Wildish indicates that Policy 32 of the Environmental Resources Element of the Metro Plan simply requires further study of this issue. Wildish indicates that such a study has been completed and a decision made. The Mineral and Aggregate Resources Element of the County Plan specifies that the Goal 5 Rule will be followed (Policy 1, p. 13). Wildish indicates that LC10.205-10 of the Sand, Gravel and Rock Products Zone implements this policy.

Response

As noted earlier, while the Pudding Creek Heronry is a significant Goal 5 resource, it is also a significant Goal 15 habitat area. As such, the more restrictive standards of Goal 15 must be applied (i.e., the rookery

must be protected). Mining can occur only if the rookery is protected and other Goal 15 criteria are met. Contrary to the Wildish Land Company's statement in its letter, the County must be directed to amend its plan and implementing measures to protect the site.

Conclusion - Goal 15

Lane County does not comply with Goal 15.

Lane County has made many improvements to its Greenway element, in terms of both policies and implementing measures. However, there remain several deficiencies which must be corrected in both the rural plan element and in the Metro Planning Area outside the Metro UGB, in order to fully satisfy Goal 15. Summaries of these deficiencies have been presented in the previous subsections of this report.

In order to comply with Goal 15, Lane County and the Cities of Eugene and Springfield must:

1. Amend zoning maps 304, 304A, 305, 330, 332, 347, 396, 411, 417, 418, 425, 437, 440, 448, 471, 528, 1005, 1006, 1008, 1010, 1011, 1012, and 1013 to display the correct LCDC-approved Greenway Boundary.

2. Amend the Greenway ordinance to clearly require protection of significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints, per Sections C.3.d., a., and e. of the Goal.

3. Amend Section 16.254(2)(k) of the Greenway Ordinance to eliminate all language following the phrase, "or personal noncommercial use."

4. Amend Section 16.254(c) of the Lane Code to ensure that only water-dependent and water-related uses themselves are exempt from the 100-foot Greenway setback requirement.

5. Amend Section 16.254(6) of the Lane Code to require notification of ODOT of actions taken on applications for intensification, change of use or development in the Willamette Greenway.

6. Amend Section 16.254(2)(a) of the Greenway Ordinance to require either:

   a. Greenway permits in areas designated "urban" beyond 150 feet of the ordinary low water line, or

   b. Some other mechanism which ensures protection of Greenway values in these areas.

   (Note: This could also be accomplished by LCDC amendment of the ODOT Greenway Plan by changing the designation of the area south of the Cottage Grove UGB from "urban" to "rural.")

7. Adopt implementing measures that protect the Pudding Creek Heronry.

8. Adopt implementing measures that protect the Confluence Heronry.

In order to comply with Goal 15, Lane County must:

Modify Mineral and Aggregate Resources Policy 11 to also reference Section C.3.d. of Goal 15 to ensure protection of significant fish and wildlife habitats in the Willamette Greenway.

Suggestions for Plan and Implementing Measures Improvement

It is suggested that, by the first plan update, Lane County:

Amend Greenway Policy 13 to indicate that such operations are subject to local Greenway Permit review, or (alternatively) they must be conducted in a manner consistent with protection of other Greenway values.

CP:MJR:11t
9472B:168A; 9279B/9168B:167A

Lane County's Nonresource Lands Process (Part II)

In the Lane County Acknowledgment Review of June 29, 1984, Lane County's Nonresource/Nonexception Lands designation process is reviewed. Information presented in the June 29 review includes (1) the County's plan policies for designating lands as nonresource/nonexception and applying residential densities to these lands (Policies 16(a) and 17, respectively, Plan, p. 4) and (2) the "general criteria" for determining nonresource lands contained in the County's marginal lands working paper (Marginal Lands Working Paper, pp. 7-9).

The County's process for determining that Goals 3 and 4 do not apply was found to be consistent with applicable Goal requirements. The information regarding Lane County's nonresource/nonexception lands contained on pages 47 through 50 of the June 29 review is considered Part I of a two part review of the issue. Part II of the review consists of an evaluation of six site specific areas for which information has been adopted indicating that these six areas qualify for the nonresource/nonexception designations.

The County's findings and record regarding these six areas were submitted for review in two parts. Part I was submitted with the rest of Lane County's plan on May 24, 1984. On June 25, 1984, Part II of the County's record regarding nonresource/nonexception lands was received by the Department. The information received on June 25, 1984, was adopted by the Lane County Commissioners without proper notification of objectors as required by OAR 660-03-032(1) (Expedited Review Requirements).

Therefore, Lane County must satisfy the requirements of OAR 660-03-032, before the Commission can formally accept relevant findings contained in materials submitted for review on June 25, 1984.

Evaluation of the Six Site Specific Areas Found to Qualify as Nonresource by the County

Lane County indicates that (1) Agate Creek Planned Unit Development (Wolf), (2) McKenzie Ridge (Thurmond), (3) Addition to Dillard and Highlands (Hemmenway), (4) Second Addition to Dillard Highlands (Hemmenway), (5) Meltebeke's on Van Duyn Road, and (6) Cerro Gordo (Canfield) qualify as nonresource lands. In assessing whether these six areas do qualify as lands for which Goals 3 and 4 do not apply, the Department found that in some cases, a determination could be made based on the information submitted in May of 1984. In other cases, the information submitted on June 25 was necessary to complete the record. The Department also found that adequate justification to support the County's "nonresource" claim for a couple of the areas in question was lacking despite the additional June 25 information. The following matrix will assist in clarifying this issue discussed above:

	Original Submittal (5-24-84)		Supplemental Findings (6-25-84)	
	Adequate	Deficient	Adequate	Deficient
1. Agate Creek PUD		X	X	
2. McKenzie Ridge	X			
3. Addition to Dillard Highlands		X	X	
4. Second addition to Dillard Highlands	No information submitted			X
5. Meltebeke's on Van Duyn Road	X			
6. Cerro Gordo	X			

Agate Creek Planned Unit Development (PUD)

This proposal is for 16 lots to be developed in two stages. Findings for this designated nonresource site consist of two pages of supplementary findings, the official public hearing notice and a memorandum to the Lane County Hearings Official from staff member George Currin regarding the PUD (5/5/83). Contained in the "original submittal" (5-24-84) is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. A statement that the "majority of soils on the subject property possess no woodland suitability." (NOTE: reference is made to an "Attachment A"--LCPC staff report PZC-82-190. This attachment was not furnished as part of the original submittal.)

2. Statements are provided indicating that 1) no site characteristics are present which make this site desirable for open space, 2) no mineral or energy resources are present, 3) no known ecological or scientifically significant natural areas are identified, 4) designation of this land for non-resource will not affect management of the land for wildlife habitat, 5) this site does not contain or impact scenic areas, 6) the site is not part of a water area, wilderness, wetland, groundwater resource area, or watershed, or 7) this site is not part of a known historical area or a potential or approved recreation trail or scenic waterway. (Supplementary Findings);

Contained in the "supplemental findings" of June 25, 1984, is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. Lane County Planning Commission Staff Report of November 9, 1982, which indicates the following:

   a. Lane County staff agrees that SCS Class I-IV Soils are not predominantly found on this property.

   b. This land is identified by the Lane County Wildlife Habitat Inventory as "sensitive" big game habitat.

   c. The applicant is in error that the suggested big game habitat density is one dwelling per 40 acres. It is one dwelling per 80 acres in sensitive big game areas.

2. LCDC Goal Requirement Report (Attachment A-November 9, 1982)

   a. The subject property is 53 percent nonagricultural soils. Attachment A to this LCDC Goal Compliance Report, which is referenced, indicates that of the 78 acres in question, 41 acres are SCS Class VI, 25 acres Class IV and 12 acres Class III (p. 1).

   b. A perched water table, poor soils, and steep slopes are given as reasons why this land is not "other land" suitable for farm use. SCS Soils OR-1 sheets are provided for each soil which generally support the County's position (p. 1).

   c. The County indicates that this land is not other lands necessary to permit farm practices to be undertaken on adjacent or nearby lands because none of the adjacent or nearby lands are engaged in farm use as defined by the ORS (p. 2).

   d. Regarding Goal 4, the County indicates that the land in question is composed of 59 percent (48 acres) of soils that have no woodland suitability for commercial forest uses. Only Dixonville Soil, which is cubic foot site Class 4, is capable of supporting commercial forest species.

   e. The County states that the parcel is not "other forested" lands needed for other resource uses listed in the Goal 4 definition. Specifically, the property has not been identified as needed for any of the other uses except big game habitat (p. 3). The issue of whether this land is forested land needed for big game habitat is addressed under a Goal 5 statement on page 4; the following statement is provided:

      > While the subject property is not shown on the Lane County Comprehensive Plan Inventory as significant fish or wildlife habitat or habitat for any endangered or threatened species, the Department of Fish and Wildlife has noted that this property is located in habitat for black-tail deer. The concerns of the Department of Fish and Wildlife can be addressed in

that a clustering of dwelling through a Planned Unit Development will significantly minimize the impact on black-tail deer habitat. Such a development will offer better protection to the habitat than scattering dwellings on the acreage which could occur under current land divisions. The dwelling density allowed under this proposal will not exceed the overall dwelling to acre ratio of 1-40 recommended by the State Fish and Wildlife Department for this type of black-tail deer habitat. The overall dwelling to acre ratio will not be exceeded in that the habitat in question is only a part of the total black-tail deer habitat in this area. Adjacent habitat areas will be maintained due to other prime forest land qualities. It is preferable to accommodate dwellings in this location given the poor resource soils and impact of surrounding development than on surrounding lands which are not impacted or of marginal capability.

With regard to the Fish and Wildlife Department's concern about deer damage to gardens and shrubs and the state's obligation to respond to complaints, the applicant will include deed provisions with all sales of property that black-tail deer inhabit the area and that the associated risks should be recognized.

Objection

1000 Friends of Oregon objects to the claim that Goals 3 and 4 do not apply to the Agate Creek PUD because the findings submitted on March 15, 1984, fail to address Goal 3. Regarding Goal 4, 1000 Friends objects to the conclusion that "the majority of soils on the subject property possess no woodland suitability" without specific soils and specific acreages as supportive evidence.

In addition, specific referenced attachments were not included in the County's original submittal of May 24, 1984.

Response to Objection

This objection is partially sustained. 1000 Friends' objection is generally correct with respect to the information contained in the original May 24, 1984, submittal. However, objectors will find that their specific objection is addressed by the Supplemental Findings submitted for review on June 25, 1984.

Conclusion for Agate Creek PUD

The claim that Goals 3 and 4 do not apply is not sustained.

Substantial evidence is provided in the record supporting the claim that Goals 3 and 4 do not apply to the property in question and that Goal 5 big game habitat value will be protected through clustering provisions.

McKenzie Ridge (also known as Camp Creek Ridge)

This PUD proposal would establish 79 dwellings on 385 acres of land north of Springfield.

Information in the record includes: (1) an affidavit by the applicant, Robert E. Thurmond, detailing the history of and expenses incurred for this development; and (2) a statement of findings, reasons and conditions. This latter statement includes findings addressing all applicable Statewide Planning Goals as well as applicable County requirement and conditions of approval.

This particular claim that Goals 3 and 4 do not apply to this property has been previously before LUBA and the Commission in Osborne v. Lane County [LUBA No. 81.107].

In their March 18, 1982 decision, LUBA found and the Commission affirmed, that the land in question is not subject to Goal 3 because it is not agricultural land be definition. Also, LUBA found that this land is not subject to Goal 4 primarily because the land is not predominantly forested nor suitable for commercial forest use.

Objection

1000 Friends objects to the McKenzie Ridge PUD because the assumptions regarding the interpretation of soils information are correct. The County has relied totally on SCS soils maps even though such maps can be incorrect.

Response to Objection

This objection is not sustained.

Objectors do not present any specific information regarding the property in question to justify invalidating the Commission's earlier decision in Osborne v. Lane County.

Conclusion for McKenzie Ridge

The County's decision indicating that Goals 3 and 4 do not apply to the 385 acres in question is sustained (see Osborne v. Lane County [LUBA No. 81.107]) and the County's finding contained in the May 24, 1984, submittal.

Dillard Highlands Addition

This subdivision is located approximately two miles south of the Eugene city limits. Phase 1 of Dillard Highlands consists of 14 parcels on 100 acres and is "committed" to non-resource use. The second phase of this development consists of 24 parcels.

Findings from the "original" May 24, 1984, submittal supporting this

nonresource/nonexception claim consist of a five-page statement (prepared by David Pedersen and Associates for applicant David Hemenway) titled "Application For Addition to Dillard Highlands Subdivision."

Information from the "original" submittal (5-24-84) relevant to the requirements for substantiating that Goals 3 and 4 do not apply are as follows:

1. A statement indicating "that the predominant soils on the property consist of:

   Dixonville-Philomath Hazelair complex (SCS Class VIe); Philomath SC (SCS Class VIs; Panther CL (SCS Class VIw) and Witzel CL (SCS Class VIs). These non-agricultural soils comprise approximately 92% of the subject property. A small patch (about 10 acres) of Hazelair soils is located on 20-30% slopes on the northern edge of the proposed division. These soils have SCS Classes IVe, subject to severe erosion (Pederson Statement, p. 3).

   Reference is made to an attached soils map which was not forwarded as part of the original submittal (May 24, 1984).

2. Regarding the "other land suitable for farm use" and "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands," the following statement is provided:

   > This land does not meet the second definition of agricultural land. That is, it cannot be used for farm use (the current employment of land for the primary purpose of obtaining a profit) nor is it related to the continuation of agricultural activities on adjacent or nearby lands. Other lands in this area are either developed as rural residential or have physical characteristics similar to the subject proprty: gently rolling to steep terrain, a predominance of SCS Class VI soils and little if any potential "farm use". In addition, there is very little physical connection between the subject property and surrounding lands because of the variation in topography. Thus, even if farm use were possible on nearby lands, this proposal would not impact on or adversely affect such activities.
   >
   > In summary, the subject property is not agricultural land either in terms of its soil classification or its relationship to other surrounding lands. The surrounding lands are also not agricultural lands as defined by Goal 3 (Pedersen Statement, p. 4).

3. In response to Goal 4 requirements, statements are made that (1) the subject property has no timber site class ratings; (2) that it is predominantly open land; (3) that adjacent lands are similar in character and not used for commercial forest purposes; (4) that other forest uses (i.e., watershed protection, wildlife and fisheries

habitat, recreation, extreme conditions of climate, forested lands in urban and agricultural areas) are not applicable or present on the subject property.

In support of the above statement, the following is provided:

The general area slopes south and east towards Dillard Road and Camas Swale. It contains no rivers or creeks and only a small water natural drainage channel flows southeast towards Dillard Road and into Camas Swale. This drainage basin has no watershed value, nor would the proposed subdivision at the low densities proposed impact on any watershed if one were present. The subject property lies in a low, open area surrounded by steep hillsides. The Significant Vegetation and Wildlife Areas working paper indicates that the vegetation on the property is not unique and contains no elements which contribute to making it a signicant Wildlife Area.

4. Additional statements are provided indicating that (1) the subject property has not been considered for nor does it have recreational value; (2) no extreme climatic conditions exist; (3) this land is not needed for open space, wind breaks; and (4) no scenic values are present on the property.

Contained in the "supplementary findings" submittal of June 25, 1984, are (1) a chart titled "Soil Types on Dillard Highlands, 1st Addition," (2) a SCS Soils map for the subject property, and (3) a soils investigation report apparently prepared by Lane County including soils maps. The chart is relevant to the review of this proposed nonresource site summarized as follows:

1. The chart indicates that of the approximately 107 acres of the Dillard Highlands, 1st Addition, (a) 31.5 acres consists of the Dixonville-Philomath-Hazelaire Complex which has no woodland suitability and has SCS Class IVe agricultural soils; (b) 27 acres consists of Panther Silty Clay Loam which has no woodland suitability and has SCS Class VIw agricultural soils; and (c) 22.4 acres consists of Hazelaire Silty Clay Loam which has not woodland suitability and has SCS Class IVe agricultural soils.

   Of the approximate 107 acres, only 2.6 acres have a woodland suitability while only 22.4 acres are SCS agricultural suitability Class IV.

Objections

1000 Friends of Oregon objects because the findings presented are actually conclusionary statements for which supporting factual information is lacking.

Response to Objection

This objection is not sustained. Additional soils information contained in the supplementary findings submitted for review on June 25, 1984 supports the statements presented by the County in their original submittal indicating that Goals 3 and 4 do not apply. (Also see conclusion)

Conclusion for Dillard Highlands Addition

The claim that Goals 3 and 4 do not apply is sustained. Findings contained in the original submittal of May 24, 1984, are supported by information contained in the "supplemental findings" submitted for review on June 25, 1984, of particular significance is the information indicating that only 22.4 acres of the soils present on this property are SCS Class IV with no SCS Class I-III soils and that only 2.6 acres of the 107 acres in question have any woodland suitability rating at all.

Dillard Highlands, 2nd Addition

This proposal involves approximately 154 acres consisting of 29 five acre lots. It is located approximately one third of a mile southeast of the Eugene city limits and the UGB (application for the Second Addition to the Dillard Highlands Subdivision, p. 3).

Findings addressing this proposal were submitted for review on June 25, 1984 (supplementary findings). Included within the County's record for Dillard Highlands 2nd Addition review as lands for which Goals 3 and 4 do not apply is (1) a document titled "Application for the Second Addition to the Dillard Highlands Subdivision," (2) a list of soils with marginal woodland potential, and (3) a soils investigation report (apparently prepared by Lane County) which includes "forest" and "Ag" soils mapping.

Findings indicating why Goal 3 does not apply to the subject property are as follows:

1. Based on SCS soils mapping, the subject property is composed of 53 percent "nonagricultural soils"--Classes V-VIII--Exhibits A, B, and D are referenced.

2. Table 1 on page 11 indicates that 64% of the property is Class I-IV soils.

3. The soils investigation and accompanying "Ag" soils maps appear to indicate that the majority of the property in question is in fact composed of SCS Class I-IV soils. Also, handwritten statements on the "soils investigation report" indicate that "the application is general concerning soils if there are several more than mentioned" (Request for Soils Investigation, pp. 1 and 2).

4. The subject property is not "other lands" suitable for grazing "because of a combination of problems affecting the growth of pasture and the adverse effects of erosion which would accompany the grazing cattle." The County continues its assesssment of agricultural capabilities by stating the following:

The various limitations on grazing described upon the applicable SCS soil sheets include low fertility, strong acidity, seasonal high water table, clayey topsoil susceptible to compaction when wet, summer droughtiness, slow permeability, and susceptibility to erosion. Climatic conditions of winter rainfall and summer drought lead to the aforementioned soils problems and do not lead to favorable grazing conditions. The soils can become very dry in the summer, and given the high cost of drilling wells and the restricted grazing time, the prospect of irrigation for this purpose is rendered infeasible now and in the future. Existing rural residential land use patterns within the area and the subject property's proximity to the Metropolitan area make it most valuable for rural residential development. The technological and energy inputs required to farm the subject property due to the combination of soils and slope render it not farmable by a reasonable and prudent farmer for the primary purpose of obtaining a profit in money. Even if there were accepted farming practices which made grazing profitable on this site, the erosion potential of this activity makes this property unsuitable for grazing (Application for Dillard Highlands 2nd Addition, pp. 10 and 12--hereby referenced on Application).

5. The subject property is not lands in other classes necessary to permit farm practices to be undertaken on adjacent or nearby lands "as none of the adjacent lands are engaged in farming practices" (Application, p. 12).

Findings indicating why Goal 4 does not apply to the subject property are as follows:

1. In assessing whether this land is lands composed of existing and potential forest lands which are suitable for commercial forest uses the County indicates that of the 154 acrs, 57 acres is composed of Site Class III (site index 140), 31 acres is composed of Site Class IV (site index 110), 43 acres is composed of noncommercial forest lands, 18 acres is used for utility easements, and 5 acres is "deemed" as necessary lands for management (Application, p. 14). The County indicates that for this discussion, Site Class 125 (borrowed from Douglas County) was used to assess commercial forest land suitability (Application, p. 16).

   The County concludes that "only 57 acres, or 37 percent of the subject property has any commercial forest potential" (Application, p. 16).

2. The soils investigation and accompanying "Forest" soils maps indicate that additional soils not discussed by the County exist on the subject property (Request for Soils Investigation, pp. 1 and 2).

3. The County's "Exhibit F" presents from Forester Bob Hohenhaus an evaluation economic returns from commercial forest production. The County concludes that at the land's purchase price of $2,395,302, the net return from commercial forest production of the Site III and IV land is $217 per acre (Exhibit F, p. 2).

4. The County indicates that subject property is not "other lands" used for watershed protection, wildlife and fisheries habitat, and recreation because (a) no inventories identify it as needed for watershed protection; (b) the area is identified as the "impacted" and thus, not needed for big game habitat as well as not identified as significant habitat for fish or other wildlife species; (c) the subject property has not been identified as needed for recreation (Application, pp. 24-26).

5. In addressing the other aspects of the "Forest Lands" definition, the County indicates (a) that any soil conditions requiring maintenance of vegetative cover will be protected through conditions attached to development approvals, and (b) because the property is not within a UGB or in agricultural land, the "other forested "lands" definition does not apply (Application, pp. 26-27).

Conclusion for Dillard Highlands 2nd Addition

The claim that Goals 3 and 4 do not apply to the subject property is not sustained.

First, evidence is provided indicating that the subject property is predominantly SCS Class I-IV soils and thus subject to Goal 3. (Table 1-p.11, and soils investigation reports). Second, substantial evidence is not provided indicating that Goal 4 does not apply. The County's claim that forest site index 125 can be used to assess the commercial viability of this property is in consistent with its own definition for commercial forest lands. Also, the County's standards for determining income (under the F-2 Zone's woodland suitability test) seems to indicate that the land is potential commercial forest land. The basis for the County's position that this land is not capable of economic forest management (net return of $217 per acre) appears to be based entirely on the land cost (at residential values rather than at forest land value.)

Meltebeke's on Van Duyn Road

This proposal involves the rezoning of 258 acres from a forest zone to GR-10 based on the claim that Goals 3 and 4 do not apply. Buidling sites for 24 dwellings are proposed. This land is part of a larger 598-acre parcel owned by the applicant. Also, a portion of this 258-acre parcel is platted as County View Estates, lots 1 through 5.

Information contained in the original May 24, 1984, submittal includes:

1. A statement titled "Findings Supporting nonresource Designation for Certain Lands of Bob Meltebeke on Van Duyn Road" (with a map Exhibit A, attached).

2. Exhibit B is a copy of the Lane county Planning Commission's findings in support of this zone change.

3. Exhibit C is a map of the subject property depicting its soil types.

4. Exhibit D is a list of the soil types along with each soil's SCS classification and percentage of occurance on the subject property.

5. Lane County Planning Commission--Addendum to Staff Report (8/23/83).

6. Area map depicting the property to be rezoned.

7. Applicant's supplemental statement to the Lane County Planning Commission.

Contained in this "original" submittal is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. That the land is not SCS Class I-IV agricultural lands. Lane County Exhibit B--Lane County Planning Commission (LCPC), Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

   A detailed soils investigation of the subject property was undertaken for the applicant by Consulting Environmental Sanitarians, Ltd. (See June 21, 1983, transmittal letter from Terry M. Rahe of CES, Ltd. to Bob Meltebeke.) The results of the soils analysis are summarized in the Applicants' Statement at 5-7.)

   Only 5.9% of the 258 acres proposed for rezoning are SCS Class I-IV soils.

   When the entire Meltebeke ownership of 598 acres is considered together, ony 27.1% has an SCS Class of IV or better (LCPC, p. 2).

2. That the land is not other lands suitable for farm uses . . . suitable for grazing . . . some finding addressing this issue are as follows:

   Almost all of the Bashaw Clay and Conser Silty Clay Loam (Class III and IV soils) occupy the flat field in the northwest portion of the property that is not to be rezoned. These soils have drainage and overflow problems, based upon SCS data. They are subject to winter flooding and are very droughty in summer. (SCS soils tables.)

   The Dixonville/Philomath/Hazelaire complex and Panther Silty Clays (Class VI soils) are the predominate soil types. They occupy 33.7 percent of the entire ownership

and 42 percent of the area propoed to be rezoned. These soils have low permeability, low available water capacity, moderate erosion potential, high plasticity, thin and rocky soils, and droughty conditions. They are poorly suited for production of conifers, which tend to suffer from root rot and windthrow. (SCS soils tables.)

The present lessee of the Meltebeke property raises cattle on this and several other tracts in the vicinity. The property is suitable for grazing less than six months a year due to wetness in winter (which causes cattle to destroy the pasture) and dryness in summer (which inhibits growth of grass). (Letter from DuWayne Penfold, July 10, 1983).

The entire Meltebeke property is not a viable economic unit as a farm. It is incapable of producing a cash crop, including grazing of animals, that would be sufficient to cover operating expenses and retire indebtedness on the land. (See letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.) (LCPC, p. 3).

On page 9 of "Attachment 2," Meletebeke supplemental zoning App. Statement, the County provides the following assessment of this property's agricultural suitability:

In addition, Floyd Holbrook, Agricultural Management Specialist, has submitted a report stating that, while the property can be grazed, it would be necessary to do intensive clearing and planting, with a resulting production level that would not support an income adequate to retire the debt on the property, based on current farmland values in the area:

"The major problem with improving the property for grazing is that the acreage can not support enough animals in either beef or sheep in order to pay operating expenses and retire the land debt. The main reason for not being able t (sic) support adequate livestock is due to the moisture availability and the shallow soil depth. The soil types are such that fertilizers are restrictedby (sic) chemical bonds and do not allow for maximum pasture production."

"These figures [see letter] clearly show that the subject property will not support an economic unit." August 4 Holbrook letter.

3. That the land is not "lands in other classes . . . necessary to permit farm practices to be undertaken on adjacent or nearby lands. Some findings regarding this issue are as follows:

No adjacent or nearby farmer has voiced opposition to this rezoning proposal.

Dr. Penfold leases Meltebeke land to the northwest of the area to be rezoned. It is a hayfield on which he raises cattle. Dr. Penfold also raises cattle on several other tracts near the Coburg/I-5 interchange.

The Meltebeke property leased by Penfold has little value for grazing, and the proposed rezoning will have little impact on the productivity of the Penfold farm. (Letter of DuWayne Penfold, July 10, 1983.)

The area to the north of the subject property is scrub hillside and part of the Coglietti ranch. The immediately abutting area is not cultivated and receives limited grazing use.

All other agricultural lands are isolated from the subject property by the ridge to the east and south, and the residential land to the west.

A Wildlife Management Plan has been submitted by the Applicant and is a condition on zoning approval. Under this management plan there will be protective corridors running the length of the property which will buffer residential and farm uses. Under the plan animals will be restrained through fencing and deed restrictions.

Purchase of the subject property by adjacent farmers might increase their total income but reduce their return per acre. (Letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.)

4. That the land is not inventoried as forest land, not predominantly forested, and is not suitable for commercial forest production. County Exhibit B--Lane County Planning Commission (LCPC)--Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

   Neither the 258 acres to be rezoned nor the entire 598 acres is inventoried as forest land.

   Neither the 258 acres nor the 598 acres is presently "forested" in the meaning of the goal. A majority of neither acreage is covered with a commercial stand of conifers. Neither is a greater portion of either acreage covered with oak or similar noncommercial species.

   The vast majority of both the 258 acres and the 598 acres has no forest site class at all.

Only 54 acres or 21 percent of the 258 acres to be rezoned has soil with commercial forest potential, and this acreage is in four scattered locations. (Letter from Robert Hoenhaus, Consulting Forester, June 28, 1983.)

5. That the land is not forested land based on the following findings:

The upland areas between the subject property and the crest of the Coburg Hills, which contains the most densely wooded area, will be left in forest use, and will be managed under a management plan submitted by the applicnt's consulting forester.

Wildlife corridors provided in the wildlife management plan will provide protection for wildlife resources. (See Goal 3 findings above.)

The proposed 24 units will be clustered. Clustering will minimize impacts on wildlife and will permit protection of vegetative cover.

Development density will be more than 10 acres per unit on the property to be rezoned, about 30 acres per unit for all the Meltebeke property, and far more than 40 acres per unit in the surrounding area.

Grazing on the dry slopes of the subject property is a use that presently conflicts with goals of protecting vegetative cover and preventing soil erosion.

Conversion of the property to low density, clustered residential use with extensive wildlife corridors under the wildlife management plan will displace grazing, a use that conflicts with vegetation, soil, watershed and wildlife protection, with a use that will improve forest land, open space, wildlife values that the site does possess.

County General Plan Policy 5C13 requires application of Goal 5 conflict-resolution procedures and administrative (OAR 660-16-000) when, as here, the proposed development density is below that recommended by the Oregon Department of Fish and Wildlife for big game (LCPC, Exhibit B, pp. 5-6).

Some information contained in the record, contlicts with the findings adopted by the County. No specific discussion is contained in the "original submittal" clarifying the relationship of this information to that used by the County in making its decision is provided. (However, information contained in the supplemental findings--letter from Rober A. Holenhaus--indicates that the revised proposal of 258 acres excludes the majority forest soils discussed on page two of the "LCPC Addendum."

Relevant information regarding the "Nonresource" claim included in the "supplementary findings" submitted on June 25, 1984, are:

1. An area map showing the proposed 258 acres;

2. An aerial photo and a series of overlays which consists of a soils map, a colored overlay showing "Ag and forest soils" and the development area;

3. A sheet listing specific soils and acreages;

4. A large scale soils map prepared by Terrance Rahe;

5. Another aerial map containing soil lines;

6. A letter from R. Holenhaus, professional forester;

7. A letter from T. Rahe, soil scientist, describing the soils found on the property; and

8. A letter from J. Lockard, SCS District Conservationist, discussing the soil known as the Dixonville-Philomath-Hazelaire complex.

With the exception of a statement indicating that only 54 scattered acres are suitable for commercial forest use (Hoenhaus) specific findings or conclusions were contained in the supplemental findings. This information apparently was supplied to corroborate the statements contained in the "original submittal."

Objection:

1000 Friends of Oregon objects because information in the record contradicts findings that Goal 4 does not apply. Also, the County relies on soils mapping for this determination.

Response to Objection

This objection is partially sustained.

The objectors are correct that information in the record (page 2 of the "Lane County Planning Commission Addendum to Staff Report") indicates that Goal 4 does apply to this land or a portion of the property in question. However, information contained in the supplementary findings of June 25, 1984, addresses this issue (letter from R. Hohenhaus and also personal communication from J. Mann, Lane County Planning Department, 7/16/84).

Regarding the County's reliance on soils mapping, this objection is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable

on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Meltebecke's on Van Duyn Road

When considering both the original submittal of "May 24, 1984" and the "supplementary findings" of June 25, 1984, substantial evidence is provided to sustain the claim that Goals 3 and 4 do not apply to the 258 acres in question.

Cerro Gordo

This proposal is for 60 residential lots and one common area lot on 604 acres on Dorena Reservoir in southern Lane County. Findings for this designated nonresource site were submitted with the County's original submittal of March 15, 1984, as well as with the supplemental findings submitted on June 25, 1984.

The "original" submittal for Cerro Gordo consists of a number of exhibits which are as follows:

1. A map of the property displaying (a) the nonforest soils, forest soils, and committed lands; (b) ridge lines, Row River Road, and Dorena Lake; and (c) adjacent ownerships and the area zoned RR-10 for which the nonresource claim is made.

2. Findings and conclusions in support of nonresource designation for Cerro Gordo Ranch--CPR Application No. 1102.

This statement consists of 173 pages including a 44 page wildlife management plan, a forest lands assessment by Woodland Management, Inc., an appraisal by Terrance Rahe (registered sanitarian) of the area's suitability for subsurface sewage disposal, and a detailed discussion addressing each Statewide Planning Goal as well as numerous letters generally in support of the proposed development.

The "supplemental findings" (June 25, 1984) for Cerro Gordo consists of (1) a five page document labeled "Incorporation of Applicant's Findings and Conclusions," (2) the "Cerro Gordo Preliminary Cluster Subdivision Plan," as well as (3) a number of letters addressing a range of issues, some of which not directly associated with the Goal 3 and 4 applicability question while others are duplicate information contained in the original submittal.

Contained in the "original" submittal (3-15-84) is the following information addressing the Commission's requirement for substantiating that Goals 3 and 4 do not apply:

1. In addressing Goal 3, the County indicates that 76 acres of the 604 acres consists of soils with SCS agricultural suitability Classes III-IV (12 percent). The dominant soil type (302.6 acres) is the Dixonville-Philomath-Hazelaire Complex (Findings and Conclusions . . ., p. 12).

2. Regarding the other aspects of the Goal 3 defintion, the County indicates:

   a. That there is no evidence of recent agricultural activity;

   b. Due to the lack of rainfall in the summer, the southern exposure of this site and no source for water for irrigation agricultural productivity is limited;

   c. The Dixonville-Philomath-Hazelaire Complex is rated three to six AUMs per acre for grazing and no suitability for crop production while the soils;

   d. Ninety percent of the property products less than ten AUMs of pasture per acre;

   e. Two hundred ten acres (35 percent) of the property is situated on Cerro Gordo Mountain which rises 1,200 feet above the lowest elevation point.

   Based on the preceding findings, the County concluded that the property as a whole would not be an economic farming unit (nor would be purchased for agricultural use) under Goal 3's "other lands suitable for agricultural use . . .definition (Findings and Conclusions . . ., pp. 12-14).

3. Regarding whether this site qualifies as "lands in other classes necessary to permit farm practice to be undertaken on adjacent or nearby lands," Lane County indicates that (a) there are no agricultural lands or agricultural uses in the imediate vicinity of the subject property, (b) Dorena Lake and the ridges of the mountain combine to surround the property, and (c) the nearest agricultural uses are approximately one mile from the property in question. Given the preceding facts, the County concludes that this site does not qualify as "lands in other classes necessary to permit farm practice on adjacent or nearby lands" (Findings and Conclusions . . ., p. 14).

4. Regarding whether the site is composed of existing and potential forest land suitable for commercial forest use, the County indicates that 507 acres of the 604 acres is composed of soils with no woodland suitability indicated by the U.S. Soil Conservation Service (Findings and Conclusions . . ., p. 16).

5. In addressing the other aspects of the Forest Lands definition, the County responds as follows:

   a. From aerial photographs, the forested and nonforested acreages were calculated. Douglas Fir is growing on 198 or 32.8 percent of this site. Oak is growing on 119 acres or 19.7 percent of this site while 287 acres or 47.5 percent remains nonforested. Fifty-two point five percent of the site is covered by trees. The County recites from LUBA's Osborne v. Lane County decision

(5 Or LUBA 172) that LUBA does "not view the fact that trees may be growing on the property in various places, as the record seems to indicate, to mean the land is forested within the meaning of Goal 4." The County indicates that the opinion implies that when considering species such as oak, not a simple majority, but rather " the far greater area" must be covered by trees to conclude that a property is forested (Findings and Conclusions . . ., p. 17). Thus, the County indicates that 52 percent forest cover alone does automatically qualify this land under the forest land definition. The County concludes by stating, "Considering the total extent of tree cover, the subject property is not forested within the meaning of Goal 4.

b. With regard to "lands where extreme conditions of climate, soil, and topography require vegetative cover irrespective of use," and "other forested lands in urban and agricultural areas which provide buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use, the County indicates the following:

(1) The property is not (a) identified as an important watershed, (b) an agricultural or urban area, (c) needed for recreation, (d) necessary to be maintained in its present condition to provide buffers, scenic corridors, livestock habitat, or windbreaks (Findings and Conclusions . . ., pp. 18-21).

(2) The conditions imposed during this development's approval will resolve any potential problems presented by extreme soil and slope conditions as well as conflicts with big game (Findings and Conclusions . . ., pp. 18-20).

Also, findings addressing other relevant Statewide Planning Goals were included. Of particular significance to the "nonresource" designation issue are findings addressing wildlife habitat and the "Goal 5 process." The following are findings contained within the "Findings and Conclusions" document presented in the County's original submittal (5-24-84):

1. On pages 123 and 123, a detailed statement of potential consequences on big game habitat from residential development is presented.

2. A series of recommendations for mitigating asdverse impacts from residential development on big game habitat are presented on pages 125-127.

3. A discussion of residential densities and deer habitat is presented on page 217. As stated, the recommended density for big game is one unit per 80 acres preferred; one unit per 40 acres is acceptable with clustering. The County states that, "The Cerro Gordo property is requesting a subdivision of 100 lots with clustering, thus maintaining an average lot size of 10 acres" (p. 217).

4. The County indicates that "residential development in rural areas rarely acts to exclude or reduce deer populations," "the contrary usually occurs (Jim Greer, 1983)." The main impact of development is the loss of hunting lands. Cerro Gordo prohibits hunting (p. 128).

5. On page 125, the County concludes its discussion of density as follows:

> The Cerro Gordo project, which calls for a density of one lot for every 10 acres, can be thought of in the larger ecological context of the drainage basin (approximately 2000 acres) as resulting in a density approaching one lot for 20 acres. Again considering the clustered design of the development this leaves considerable land for natural processes to occur.

6. On pages 129-131, the County discusses the wildlive habitat and the Goal 5 Rule requirements. These are excerpts from this discussion:

   a. In identifying conflictihg uses there has previously been discussion as to whether residential development actually negatively impacts wildlife. Experts tend to feel that deer populations usually are minimally affected by rural residential development and tend to adapt to people's presence quite rapidly (Jim Greer, ODF&W; Lane County Extension Service, 1983) (p. 130).

   b. The ESEE consequences on both wildlfe and rural residents have been fully detailed in the previous section--"Potential Impacts of Development in Wildlife." The primary consequence on wildife is loss of habitat (environmental) while the primary consequence on rural residents is damage to landscaping and gardens (economic) and ultimately not being allowed to live in a rural setting (social). The section on "Mitigation of Impacts" gives recommendations for resolving these issues.

      Therefore, in section 660-16-010 of LCDC's interpretive rules the way to resolve the conflict of uses is seen as (3) limiting conflicting uses (pp. 130-131).

7. On pages 133 through 147, present a detailed "wildlife and development plan" which was designed to satisfy OAR 660-16-010(3), "Limit Conflicting Uses."

   As indicated, Lane County also submitted information regarding this developmental in their "supplemental findings" received by the Department on June 25, 1984. The information regarding Cerro Gordo contained within the supplemental findings was a reiteration of the conclusions and findings already present in the original submittal of May 24, 1984.

Objection

1000 Friends objects to the designation of Cerro Gordo as "nonresource" because of the County's reliance on SCS soils mapping information. Objectors claim that this information is inappropriate to judge the capability of this land for commercial forest use.

Response to Objection

This objectin is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Cerro Gordo

The claim that Goals 3 and 4 do no apply is sustained; however, one unresolved Goal 3 issue as well as a Goal 14 issue (see Goal 2) remains substantial evidence is contained within the "original submittal" to indicate that this land is not agricultural land under the Goal 3 definition. The approximately 604 acres in question is not predominantly SCS Class I-IV soils nor do findings indicate that it is reasonable to conclude that this property is "other lands" suitable for farm use or "lands in other classes" necessary to permit farm practices to be undertaken or adjacent or nearby lands.

Substantial evidence is provided also indicating that the property in question is not (1) "lands composed of existing and potential forest lands which are suitable for commercial forest uses and (2) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock, scenic corridors, and recreational use.

Also, the County has adequately addressed through open space requirements and developmental conditions the issue raised regarding extreme conditions of soil and topography where maintenance of vegetative cover qualifies as forest lands.

The question of whether this property qualifies as "other forested lands needed for wildlife habitat" has also been addressed. Substantial evidence has been provided showing that this two part definition, ((1) other forested land and needed for wildlife habitat) does not apply as the County's findings adequately address OAR 660-16-000 requirements; thus, indicating tht this land is not needed for wildlife habitat.

However, one unresolved Goal 5 issue remains. The County needs to address the issue of how the "acceptable" density of one unit per 40 acres with clustering is satisfied by authorizing one dwelling per ten acres as zoned or 60 lots under a cluster provision allowing duplexes (or 120 units per 600 acres or one unit per five acre overall density.

In order to comply, Lane County must:

1. Amend the plan (a) to include additional fundings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the county chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

2. Amend the plan to justify the potential one dwelling unit per 5 acre density authorized for Cerro Gordo's 600 acres in view of ODFW's accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (see also Goal 2's cluster development issue)

MJR:prs
9472B/168A

VICTOR ATIYEH
GOVERNOR

Land Conservation and Development Commission

1175 COURT STREET N.E., SALEM, OREGON 97310

M E E T I N G N O T I C E

Land Conservation and Development Commission

August 16, 1984
Hearing Room 'E'

August 17, 1984
Hearing Room 'F'

State Capitol
Salem, Oregon

A G E N D A

COMMISSION MEETING AND WORKSESSION

For Further Information
Contact: Eldon Hout
Phone: 378-4933

DEPARTMENT/COMMISSION
WORKSESSION--August 16, 1984--8:30 a.m.

*1.0 BUDGET REVIEW

*2.0 PERIODIC REVIEW DISCUSSION - Invited testimony will be heard first. (See Note below)

MEETING--August 17, 1984--8:30 a.m.

*3.0 ORAL COMMUNICATIONS

*4.0 CITIZENS INVOLVEMENT ADVISORY COMMITTEE APPOINTMENTS

*5.0 JURISDICTION STATUS SUMMARY

6.0 COASTAL GOAL/DESTINATION RESORT AMENDMENTS: STATUS REPORT

*7.0 ACKNOWLEDGMENT OF COMPLIANCE REQUESTS

7.1 Lane County: Goal 2 (Nonresource Lands), Goal 5, and Goal 15 (Public Hearing on other Lane County Goals has been closed)

8.0 REVIEW OF REVISED CLACKAMAS COUNTY REPORT (Carmel Estates)

9.0 OTHER

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*Agenda items where opportunity is given for public comment.
NOTE 1: Items 4.0, 5.0, and 6.0 may be taken (as time permits) on August 16.
NOTE 2: Public Hearing on the Proposed Rule will be tentatively scheduled for October 11-12.

AD:ad/9534B-2

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

M E M O R A N D U M

August 17, 1984

TO: Land Conservation and Development Commission

FROM: James F. Ross, Director

SUBJECT: ITEM 7.1: LANE COUNTY ACKNOWLEDGMENT REVIEW

TOPICS: Response to Exceptions to the Lane County Acknowledgment Review and Proposed Amendments to the Lane County Acknowledgment Review for Goals 5, 15, and Goal 2 Nonresource Areas.

This memorandum is divided into two parts. Part I includes by Goal topic responses to exceptions filed by objectors to the Lane County Acknowledgment Review. Part II contains by Goal Topic the Department's recommended changes to the Lane County Continuance Report along with the reasons to support those changes.

I. Response to Exceptions

A. Goal 2--"Nonresource" Lands

1. David Hemenway and Paul Mehnert regarding Dillard Highlands Second Addition

Mr. Hemenway indicates that some errors are contained within the Department's Report discussing Dillard Highlands' Second Addition. We concur with Mr. Hemenway regarding objections 1 (page 112 of the Department's report), 2 (page 113), and 4 (page 115). Corrections to the Department's report for the objections discussed above are contained in Part II of this memorandum. We disagree with Mr. Hemenway regarding objections 3 and 5.

Objection 3 claims that the Department's report is incorrect because the "County's" soils investigation report, quoted by the Department, is inaccurate. The Department is unable to reconcile the factual inconsistencies contained within the County's findings for Dillard Highlands' Second Addition.

The two sets of soils data, provided as findings, present different conclusions about the characteristics of the site. The County must review this material to determine which soils data are accurate. We recommend that Mr. Hemenway be afforded the opportunity to be involved in this determination.

Objection 5 claims that the Department's recommendation for Dillard Highlands' Second Addition is in error. The record lacks substantial evidence indicating that Goals 3 and 4 do not apply to this land. Until the County clearly indicates from revised soils information, that Goal 3 is not applicable to this site, the County lacks substantial evidence supporting its claim regarding Goal 3. Additionally, reliance on a forester's economic analysis to support the conclusion that Goal 4 does not apply to this site, when the record indicates it is composed predominantly of soils with commercial forest capabilities (Site Class III and IV, County's Findings, p. 14) is inconsistent with Goal 4's requirements (see amended conclusion for Dillard Highlands' Second Addition).

2. Canfield and Associates on behalf of Cerro Gordo

Mr. Canfield's exceptions to the Department's report are only partially sustained. The issues regarding the proposed density of this development as discussed in the report remain. However, the Department concurs with Mr. Canfield that amendments to clarify the Department's position are necessary (see amendments to the report).

B. Goal 5

1. Lane County

Lane County filed an exception to in-order-to-comply requirements 2c, d, e, f, and i. All pertain to fish and wildlife habitat issues.

Response: On August 8, DLCD staff met with Lane County planners to discuss these issues. All were resolved. IOTC 2c, d, e, and f remain, but 2i should be eliminated (see amendments to staff report in the Part II of this memo).

2. Wildish Sand and Gravel Company

Wildish believes that several statements in the July 19, 1984, report are inaccurate. Specifically:

a. Wildish is concerned that DLCD is recommending that sites in Appendix D of the Mineral and Aggregate Working Paper (which is the County's (1C) inventory for rural lands) need to be reevaluated and SG Zoning be rejustified per Steps 2 and 3 of the Goal 5 Rule. Wildish indicates that Appendix J represents Steps 2 and 3 of the Goal 5 Rule.

Response: The July 19, 1984, report recognizes Appendix J (p. 8) and does not recommend these sites be reevaluated per the Goal 5 Rule. However, SG Zoning was applied to other sites that were not on the (1C) list (Appendix D) nor the County's (1B) list (Appendix F). These are the sites which need to be reevaluated. No changes to the report are necessary.

b. Wildish is concerned that Appendix E of the Mineral and Aggregate Working Paper was identified by the County as the (1B) list for the Metro Area. Wildish points out that this list is essentially the (1C) inventory in the Metro Plan which has been acknowledged, with some inconsistencies.

Response: DLCD staff discussed this with Lane County planners on August 8. The County indicated it recognizes the Metro Plan (1C) inventory, and that Appendix E should be deleted from the Working Paper, since it is out-of-date and is inconsistent with the Metro Plan inventory. Page 7 of the July 19, 1984, report should be modified as indicated in Part II of this memo.

3. Richard Gold

Mr. Gold has filed an exception with regard to the Big Creek Exception (Renaghan Amendment), specifically with regard to Goals 2 and 17.

Response: Inasmuch as the record is closed for Goals 2 and 17, no response to this exception is warranted. No changes to the Goal 5 section of the July 19, 1984, report are necessary as a result of the exception.

4. James W. Spickerman

Mr. Spickerman disagrees with the July 19, 1984, report's statement that County's Appendix D is a valid (1C) inventory of mineral and aggregate sites. Mr. Spickerman indicates that the inventory is inaccurate and that only one of the 30 sites contains existing extraction, contrary to statements in the County's Working Paper and the July 19, 1984, report. Mr. Spickerman asserts that all but one are

in agriculatural use. Mr. Spickerman points out that, because of the belief that all are active sites, DLCD staff has incorrectly concluded that the sites are no longer available for agricultural use and that no conflicts exist.

Response: The County has indicated (Mike Copely, County Planner, personal communication, August 8, 1984) that there are some minor inaccuracies in Appendix D and that they will be corrected in responding to Goal 5 IOTC No. 1 (see July 19, 1984, report, p. 75).

According to the County, Mr. Spickerman is not correct in stating that only one of the 30 sites has extraction activities. The County has re-checked the sites in Appendix D and indicates that all 30 sites have active permits or have been actively mined in the past. Therefore, no changes to the July 19, 1984, report are necessary.

C. Goal 15

1. Lane County

Lane County filed exceptions to Goal 15 in-order-to-comply requirements 7-9.

Response: On August 8, 1984, DLCD staff met with Lane County and representatives of Lane Council of Governments and the City of Eugene to discuss these IOTC requirements. It was agreed that IOTC 7 and 9 should remain, but that IOTC 8 (regarding the Big Island Confluence Heronry) should be amended to provide the jurisdiction with the option of justifying (through an amended ESEE consequences analysis and Working Paper) the current NR Zone designation as providing adequate protection for the heronry. The specific IOTC amendments are contained in Part II of this memo.

2. Robert E. Moulton

Robert Moulton has filed an exception relating to the Big Island Confluence Heronry. Specifically:

a. Mr. Moulton contends that the County should not have to designate all agricultural land in the Greenway as EFU. Mr. Moulton reasons that, since aggregate resources are also Goal 5 resources, the Goal 5 process gives the County the option of not applying EFU zoning. Mr. Moulton also provides information suggesting that the County's figure of 85 acres of agricultural land on the island is incorrect, and that there are only about 30 acres of SCS class II and IV land.

Response: The Greenway Goal clearly requires EFU zoning be applied to all agricultural lands in and adjacent to the Greenway. Sections C.3.a. and F.2.a. of Goal 15 state:

> "The agricultural lands identified in the inventory shall be preserved and maintained as provided in Goal 3 as an effective means to carry out the purposes of the Greenway including those agricultural lands near the Greenway."
>
> "Measures for managing uses within the Greenway shall include at least ... exclusive farm use zoning of all agricultural land withing and adjacent to the Greenway..."

Because Goal 15 contains more prescriptive requirements than does Goal 5, the requirements of Goal 15 supercede.

There appear to be conflicting data regarding the amount of agricultural land on Big Island. The County should look into this matter during the continuance and zone all agricultural land EFU, as appropriate, whether 30 or 85 acres. However, where Goal 15 resources that are required to be protected by Goal 15 are located on agricultural land (e.g., significant wildlife habitats such as heron rookeries), measures that are more protective than EFU zoning must be adopted. It was the intent of Goal 15 IOTC 2 and 8 (pages 104 and 105 of the July 19, 1984 report) to include EFU zoning of all agricultural land on Big Island, except where Goal 15 requires stronger protection measures for resources such as the heronry. However, if the Commission believes it will assist in the resolution of this issue, the following additional IOTC could be adopted (page 105 of the July 19, 1984 report):

> 9. Apply EFU zoning to all SCS Class I-IV soils on Big Island, except where Goal 15 requires stronger protection measures for Greenway resources (e.g., significant wildlife habitats)."

However, no changes to the July 19, 1984, report are recommended.

b. Mr. Moulton disagrees with the July 19, 1984, report's IOTC for the Big Island, indicating that current NR Zoning is adequate.

Response: The current NR Zone designation may be adequate for the protection of the rookery, as Mr. Moulton contends. However, the County's Working

Paper contained contradictory information which did not support the NR Zone designation as adopted. The July 19, 1984, report should be amended to provide the County the opportunity to better justify its NR Zone of the rookery. These report amendments are presented in Part II of this memo.

c. Mr. Moulton challenges the County's contention that aggregate supplies are three to seven times the amount needed to the year 2000. He maintains that there is only 25 percent more than the amount needed, and has submitted an analysis which supports this new figure.

Response: In re-evaluating the zoning for Big Island, the County should consider Mr. Moulton's figures. However, Goal 15 requires protection of the heron rookery and EFU zoning of all agricultural land on the island. Aggregate extraction may be allowed under a Greenway conditional use permit if certain conditions are met. Neither Goal 5 nor Goal 15 requires SG Zoning of all aggregate sites, nor do these Goals prevent SG Zoning from being applied to sites that contain aggregate supplies not necessarily needed within the planning period. However, this is one of many factors that needs to be considered when determining appropriate zone designations. The July 19, 1984, report should be amended to make this clear. Specific proposed amendments are presented in Part II of this memo.

II. Amendments to the Report

A. Goal 5

1. Page 7--The fourth line from the bottom of the page should be amended as follows:

"Appendix E is [the (1B)] an inventory for lands inside the Metro Area. However, it is inconsistent with the (1C) inventory contained in the Metro Plan. The County has indicated it recognizes the Metro Plan inventory and will be deleting Appendix E (confirmed by Mike Copely, Lane County Planner, personal communication, August 8, 1984)."

Reason: This amendment is needed to clarify an error in the July 19, 1984, report.

2. Page 34--Add the following at the end of the paragraph immediately preceding the heading, "Objections:"

"However, this is because the County knows of no such sites at this time. The County has indicated that this is a policy which will be applied in the future, as appropriate" (Roy Burns, Planning Director, personal communication, August 8, 1984).

Reason: This statement is needed to clarify why the County has not carried out Policy 17.

3. Page 76--Eliminate "in-order-to-comply" requirement 2i.

Reason: In light of the explanation provided in the previous amendment, this in-order-to-comply is no longer valid.

4. Page 40--Amend the first paragraph as follows:

"4. Objectors are correct that Goal 5 has not been applied by the County in the process of designating marginal lands. ORS 197.247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5. The ML Zone itself also does not include language which assures compliance with Policy 11."

"Objectors are not correct that the Goal 5 process was not addressed in the process of designating nonresource lands. However, the Goal 5 conflicting uses/ESEE consequences analysis for one of the nonresource areas--Cerro Gordo--does not justify the residential densities proposed. Specifically, the site is located within major as well as peripheral big game habitat. Conflicts with big game habitat are recognized, but the applicant asserts that the RR-5 designation 'clearly and precisely limits the densities and uses allowed on the property to a level which will assure good deer habitat . . .' However, the ESEE consequences analysis does not support this statement. The applicant summarizes the negative environmental consequences of development in deer habitat as loss of habitat, disturbance of wildlife, interference with wildlife movement,

increased deer populations due to decreased hunting pressure, wildlife damage, imbalance of species diversity, pollution of water sources, wildlife injuries, and ODFW complaints. The only positive impact identified is improvement to the habitat due to possible native plantings and water impoundments and education of residents about the needs of wildlife. The economic consequences are identified as damage to landscaping and gardens. The social impacts are described as 'ultimately not being allowed to live in a rural setting.'

The applicant has proposed a wildlife management plan which calls for clustering buildings and maintaining wildlife corridors. Although the proposed clustering and wildlife corridor measures will help resolve some of the conflicts identified, the overall density of development (with clustering) is one unit per five acres. ODFW recommendations are one per 80 acres (or one per 40 acres with clustering) in major big game habitat, and one per 40 acres (or one per 20 acres with clustering in peripheral habitat. According to the County's own plan (Policy 11), such densities cannot be exceeded without being justified through an ESEE consequences analysis. As indicated above, the applicant's ESEE consequences analysis does not support development at densities which exceed ODFW's recommendations, nor does the analysis provide justification for that level of development, in light of the negative impacts such development would have on habitat values. The County's findings in support of nonresource designation for Cerro Gordo indicate that approval is conditioned upon the fact that residential development will be clustered, and that provisions of the wildlife management plan 'in substantially its present form subject to modifications' will be followed. However, it is unclear what the word "substantially" means, and

what modifications would be made. Also, the degree of clustering is unclear in the wildlife management plan. The plan proposes 10 to 20 clusters of 1 to 30 lots each. The ultimate number and configuration of these clusters is not specific. There is a significant difference between 10 clusters of 2 lots and 20 clusters of 30 lots each. It should be pointed out that the wildlife management plan was prepared for a 1,000 acre proposal. According to the applicants, this proposal has been reduced to 600 acres (Chris Canfield, personal communication, August 14, 1984). This adjustment has not been reflected in the submittal materials, however.

The mitigation measures proposed will help lessen the conflicts between deer and the development. However, even with the implementation of such measures, negative impacts will occur. The County has decided to allow such impacts to occur, but has not justified such a decision through an ESEE consequences analysis. This is not to say that no development would be possible at the Cerro Gordo site. However, the County must clearly specify what level of development and density and clustering provisions are anticipated, and must either justify (through an ESEE consequences analysis) allowing such impacts to occur, or modify the density and/or configuration of units so that the impacts are acceptable. Whatever decision is made must be supported by adequate reasons, according to the Goal 5 Rule." See the Goal 2 section of this report for further information.

Reason: These amendments are necessary since this issue was not addressed in the July 19, 1984, report, in response to objections received. It is also needed in response to exceptions to the July 19 report which were filed by Canfield and Associates on behalf of Cerro Gordo.

B. Goal 15

1. Page 102--Add the following at the end of paragraph "e:"

> "This is not to say, however, that lands that are not needed for sand and gravel cannot be designated and zoned SG. However, supply and demand data should be factored into any ESEE consequences analysis for Big Island, and be considered when deciding what implementing measures are appropriate. In this case, there is a greater burden placed on the County to protect the heronry and agricultural land because of Goal 15 requirements and no shortage of aggregate supplies."

Reason: This statement should be added to the report to address concerns expressed in several letters of exception. Specifically, parties were concerned that the staff report implied that only sites demonstrated to be needed in the future (based on a supply/demand study) could be zoned SG.

2. Page 105--Amend "in-order-to-comply" Requirement 8 as follows:

> "8. Either adopt findings which explain how the current zone designations for Big Island protect the Confluence Heronry, or adopt other implementing measures that protect the Confluence Heronry."

Reason: The in-order-comply statement needs to be broadened to provide the County with more flexibility in addressing issues for Big Island.

C. Goal 2

1. Page 109--Under "Conclusion for Agate Creek PUD," delete the word "not" from the first sentence. It should read as follows:

> "The claim that Goals 3 and 4 do not apply is [not] sustained."

2. Page 112--Under the "Supplemental Findings" discussion (located in the middle of the page) within the fourth sentence of quoted item No. "1," replace SCS Class "IVe" with Class "VIe."

3. Page 113--Under Dillard Highlands, 2nd Addition finding No. "2," replace "64 percent" with "47 percent."

4. Page 115--Amend the last line of the County's finding No. 3 (at the top of the page) to indicate that $217 figure for the net return is actually "-" (minus) 217 dollars.

5. Page 115--Replace the conclusion for Dillard Highlands 2nd Addition with the following:

> "First, evidence is provided indicating that the subject property is predominantly SCS Class I-IV soils and thus subject to Goal 3 (soils investigation reports). Second, substantial evidence is not provided indicating that Goal 4 does not apply. The County's claim that forest site index 125 can be used to assess the commercial viability of this property is inconsistent with the County's definition of commercial forest lands. Also, the County's standards for determining income (under the F-2 Zone's woodland suitability test) seems to indicate that the land is potential commercial forest land."
>
> "The County's conclusion that Goal 4's forest lands definition ('lands composed of existing and potential forest lands which are suitable for commercial forest uses') does not apply to Dillard Highlands' Second Addition, because the current rate of return is negative for managing this land as commercial forest land is invalid. As is the case under Goal 3 (Goal 3 must be applied to lands with SCS Classes I-IV soils), the Commission requires counties to apply Goal 4 to lands with cubic foot site classes suitable for commercial forest managment as reasonably defined and inventoried by the County or the County maust take an exception to Goal 4. The requirement to apply Goal 4 in the manner stated above is consistent with the 1983 Legislature's marginal lands requirements which indicate that lands capable of producing 50 cubic feet of merchantable timber per acre per year can not be considered as marginal lands unless extensive parcelization exists within the area (see ORS 197.247(1)(b))."

6. Page 125--Under the Conclusion for Cerro Gordo, amend the following:

   a. In the second line replace Goal ["3"] with Goal "5."

   b. Place a period after "remains" in the second sentence. Begin a new sentence with "Substantial" on line three.

   c. Replace paragraphs 4 and 5, beginning with the second sentence in paragraph 4 with the following:

> [Substantial evidence has been provided ... indicating that the land is not needed for wildlife habitat.]
>
> "With appropriate density limitations, Goal 5's requirements for big game habitat under OAR 660-16-010(3) (limit conflicting uses) could be met. Thus, the County has satisfactorily addressed the 'other forested lands needed for wildlife habitat' issue and justified their claim that Goal 4 does not apply."
>
> "However, one unresolved Goal 5 issue remains. [The County needs to ... or one unit per five acre overall density.] The Oregon Department of Fish and Wildlife (ODFW) indicates (within their objection regarding big game habitat--see Goal 5 section, p. 35) that provisions authorizing a doubling of densities in big game habitat areas is a measure satisfying OAR 660-16-010(3) when a clustering of dwellings occurs."
>
> "Because the density authorized by Lane County for Cerro Gordo exceeds ODFW's accepted densities mitigation strategy under the "3C" approach (OAR 660-16-010(3)), one of three options remains open to the County to resolve this issue. These options are as follows:
>
> 1. Provide additional ESEE consequences analysis justifying the decision to 'allow the conflicting uses fully' (OAR 660-16-010(2)) at a density exceeding a threshold acceptable to ODFW; or

2. Limit the density in the Cerro Gordo development to ODFW's recommended density with clustering consistent with (OAR 660-16-010(3)); or

3. Cooperate with ODFW to design a mitigation strategy which combines (a) the current wildlife management plan for Cerro Gordo; (b) additional ESEE consequence analysis supporting the decision to allow a density which exceeds ODFW's recommended density with clustering; and (c) other mitigation measures deemed necessary by ODFW. Also, the Department suggests that the Goal 2 density issue be considered and resolved in conjunction with the Goal 5 density question."

CP:MJR:nkf
0341D

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE
Lane County
(Rural Portion, Excluding Eugene Metro Area)
Supplement to Staff Reports of June 29, 1984 and July 19, 1984 as Amended

DATE RECEIVED:
August 16, 1984 through September 13, 1984

DATE OF COMMISSION ACTION:
September 13, 1984

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission acknowledge the rural portion of Lane County's plan and land use regulations to be in compliance with Statewide Planning Goals 1-14, 16.

FIELD REPRESENTATIVES: Bob Rindy, Glen Hale
Phone: 378-4095

LEAD REVIEWER: Doug White, Mike Rupp, Claire Puchy
Phone: 378-4926

PLANNING DIRECTOR: Roy Burns
Phone: 687-3958

Date of Supplemental Report: September 12, 1984

III. BACKGROUND INFORMATION

On June 29, 1984, the Department issued a staff recommendation for Goals 1-4, 6-14, in response to Lane County's request for acknowledgment. The Commission took testimony but did not take final action on the request at the July 19, 1984 meeting. Also, on July 19, 1984, the Department issued a staff recommendation regarding Goals 5 and 15, and Goal 2 nonresource lands. At their August 17, 1984 meeting, the Commission again postponed final action on the June 29, 1984 report, and on the July 19, 1984 report, except for the portions pertaining to the rural areas in the Eugene/Springfield Metro Plan. These areas were granted a continuance to October 11, 1984.

In the period following the issuance of the Department recommendations, Lane County has made numerous revisions to their comprehensive plan and implementing ordinances in response to the Department's recommended in-order-to-comply requirements. These amendments were made under the provisions of the Expedited Notice Procedure for Acknowledgment (OAR 660-03-033). According to County Notices (July 19, 1984 and August 23, 1984), commentors and objectors were notified and provided opportunities for review and comment on these amendments prior to County adoption.

Section IV below summarizes the DLCD proposed requirements from the June 29 and July 19 reports and summarizes the County's response to each requirement. These are intended as supplemental findings, rather than as amendments to the previous DLCD recommendations.

Submitted Documents

Document	Ordinance	Adoption
Revisions to Development Code (Chapter 16)	9-84; 11-84	8-9-84; 9-12-84
Amendments to Plan Policies and Comprehensive Plan	889; 892	8-9-84; 9-12-84
Revisions to Development Code (Chapters 13 and 14)	10-84	8-9-84
Amendments to Comprehensive Plan	888	9-12-84
Supplemental Findings for Exceptions, Maringal Lands and Non-Resource Areas	84-9-11-22 (Order) 84-9-11-23 (Order)	9-12-84 9-12-84
Revised Comprehensive Plan Map and Zoning Map	891; PA 884	9-12-84

IV. FINDINGS

GOAL 2: LAND USE PLANNING

Requirement

1. Provide legible maps for all rural lands showing adopted plan categories.

Response

Lane County adopted a set of revised plan maps (ORD. No. 884). These plan maps replace previously submitted plan maps. The plan designations are site specific following legally identifed boundaries. Each plan designation is identified by a specific code symbol and defined in the County's plan.

Conclusion

The requirement has been met.

Requirement

2. Clearly define which zones are intended to implement each plan category.

Response

The County's plan was amended (ORD. 889) to include the following plan policy (Goal 2, Policy 26):

"Each of the land use designations applied to the Plan Diagram shall be implemented by one or more zoning districts as follows:

Plan Designation(s)*	Zone Classification
Forest land	Nonimpacted Forest Lands
Forest Land	Impacted Forest Lands
Agriculture Land	Exclusive Farm Use
Natural Resource	Natural Resource
Marginal Land	Marginal Lands
Park and Recreation	Park and Recreation
Natural Resource	Quarry and Mining Operations Combining
Natural Resource	Sand, Gravel and Rock Products
Natural Resource	Sand, Gravel and Rock Products Processing
Public Facility, Community	Public Facility
Commercial, Community	Limited Commercial
Comercial, Community	Neighborhood Commercial
Commercial, Community	Commercial
Rural Commercial	Rural Commercial
Industrial, Community	Limited Industrial

Industrial, Community	Light Industrial
Industrial, Community	Heavy Industrial
Rural, Community	Suburban Residential
Rural, Community	Garden Apartment Residential
Rural, Community	Rural Residential
Destination Resort	Destination Resort
Historical Structure/Site	Historic Structures or Sites Combining
Natural Estuary	Natural Estuary
Conservation Estuary	Conservation Estuary
Development Estuary	Development Estuary
Sign. Natural Shorelands	Significant Natural Shorelands Combining
Prime Wildlife	Prime Wildlife Shorelands Combining
Natural Resources Consv.	Natural Resources Conservation Combining
Residential Development	Residential Development Shorelands Combining
Shorelands Mixed Develop.	Shorelands Mixed Development Combining
Dredge Material/Mitigation	Dredge Material/Mitigation Site Combining
Beaches & Dunes	Beaches and Dunes Combining
	Floodplain Combining
Airport	Commercial Airport Safety District
Airport	Airport Safety District
Airport	Airport Operation
Nonresource	Rural Residential

* Note: The 'Community' Plan Designation is implemented by various zoning districts as indicated, zones which also implement specific Plan designations other than 'Community'."

Conclusion

The requirement has been met.

Requirement

3. Delete the provision in Sections 16.015 and 16.252 which permit legislative zone amendments to be adopted by order rather than by ordinance.

Response

Lane County's Development Code (Section 16.015) was amended (Ord. 9-84) to require that only quasi-judicial zone amendments be adopted by order. The section in the County Code which permits adoption by order applies to the County Board, Planning Commission and Hearings Official. An adoption by Ordinance is required for all legislative amendments.

Conclusion

The requirement has been met.

Requirement

4. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone these lands identified in the Goal 2 Exception with the appropriate resource zone.

Response

Early in the review of the County's built and committed exceptions areas, Department staff identified certain areas that were not justified. In response to these noted deficiencies, the County adopted the first set of supplemental findings prior to issuance of the DLCD June 29, 1984 report (Order No. 84-6-19-16). These findings were reviewed in that report and found to address most of the deficiencies identified by Department staff. However, the Commission did not accept and approve these findings at their July 19, 1984 meeting because the County had not complied with the Expedited Notice Procedures for Acknowledgment (OAR 660-04-033) (See Lane County Acknowledgment Report, June 29, 1984, p. 26). To correct the oversight, the County followed the Expedited Notice Procedures leading up to the adoption of the second set of supplemental findings and provided oportunities for commentors and objectors to review the first set of supplemental findings. As a result of compliance with OAR 660-03-033, the first set of supplemental findings (Order No. 84-6-19-16) along with the other revisions can be affirmed.

In response to IOTC (4), Lane County redesignated 870 acres to an appropriate resource desigation (ORD. No. 891). For the remaining areas, the County adopted the second set of supplemental findings (Order No. 84-9-11-23) to justify the areas as committed. These findings provide additional information on recent partitions and subdivision activities along with information on more recent development. This information was not provided in the earlier submittal because of outdated maps and ownership listings. Address maps showing location of dwellings, mobile homes and recent road development provide most of the information addressing the deficiencies noted earlier. In addition, specific findings provide reasons why it is impracticable to apply a resource goal to areas that are not built upon but are irrevocably committed to nonresource uses.

Conclusion

The requirement has been met.

Based on the information contained in the County's original exception document and supplemental findings (Order No. 84-6-19-16 and Order No. 84-9-11-23), the County has provided substantial evidence consistent with OAR 660-04-025 and OAR 660-04-028 to support the conclusion that all areas, for which the County has taken a Goal 2 exception are no longer available for resource use and are irrevocably committed in their entirety.

Requirement

5. Amend the plan to clearly identify areas zoned PR which are within built and committed exception areas. For those areas within an exception area, provide for information addressing OAR 660-04-025 requirements or exclude those lands from areas designated as a built and committed exception area.

Response

The plan was amended (Ord. No.889) to include a list of tax lots zoned PR that are within built and committed exception areas. This action satisfies the first part of the above requirement. Information addressing the exception criteria can be found in the County's original exception document (Ord. No. 884) and the two sets of supplemental findings (Order No. 84-6-19-16 and Order No. 84-8-11-23). The adequacy of these findings is discussed under Goal 2 requirement 4 of this report.

Conclusion

The requirement has been met.

Requirement

6. Amend the PR-RCP Zone to include standards for uses permitted outright (consistent with ORS 215.213(2)). Note: These should not include review of minor betterment activities as described in ODOT's State Agency Coordination Program.

Response

The PR-RCP Zone was amended (ORD. 9-84) to require that uses authorized under ORS 215.213(2)(G) be subject to Director approval consistent with ORS 215.213(2)(LC 16.215(3)). Minor betterments and general improvement of existing parks or recreational facilities are permitted outright (LC 16.215(2)(d)).

Conclusion

The requirement has been met.

Requirement

7. Amend the zoning code to exempt maintenance and improvments in Jennie B. Harris State Park and Squaw Creek State Wayside from conditional use procedures. This is most easily accomplished by zoning all of these parks to PR.

Response

The County plan and zoning maps were amended (Ord. No. 898) redesignating Jennie B. Harris State Park and Squaw Creek State Wayside as Park and Recreation (PR).

Conclusion

The requirement has been met.

Requirement

8. In conjunction with compliance requirements under Goal 11 of this report, the County must (1) clearly define uses, densities, unit quantity, and levels of service appropriate to rural "cluster" subdivisions, and (2) adopt appropriate ordinance amendments implementing these standards. Densities exceeding those appropriate for rural areas shall additionally require a Goal 14 exception.

Response

The County has amended the plan to contain a policy which insures that urban levels of development will not occur in rural areas under the Cluster Subdivision Standards. The policy contains language parallel to the Commission's administrative rule on establishing new urban uses in rural areas (OAR 660-14-040). Prior to approving a cluster subdivision, with more than 20 units and which includes any lots less than 5 acres, the County must make findings similar to those required for an exception under Goal 14. These amended requirements are as follows (Ordinance PA 889):

> "Cluster subdivisions shall be deemed appropriate to a rural area when the following criteria are satisfied:
> 1. Consistent with the intent and requirements of OAR 660-14-040(2) and (3), a showing must be made that the development will not represent an urban population or demand an urban level of facilities and services. For purposes of meeting this standard, affirmative findings must be made addressing the following:
> a. The level of development represented by the development cannot be reasonably accommodated through the expansion of an existing urban growth boundary or by intensification oif development at an existing rural center.
> b. The long-term environmental, economic, social and energy consequences resulting from the development, considering measures designed to mitigate negative impacts, are appropriate to the rural area. Factors to be considered include whether the size of the development is appropriate to the proposed rural area and whether the air, water, energy and land resources of the surrounding area are adequate to serve and not adversely affected by the development.
> c. The proposed development is compatible with or can be made compatible with adjacent uses considering:

(1) Whether the development detracts from the ability of existing cities and service districts to provide services, and
(2) Whether the potential for continued resource management of the land at present levels surrounding and nearby the development is assured.

d. An appropriate level of rural facilities and services are available or can be provided in a timely and efficient manner.
e. The approval of the development is coordinated with affected jurisdictions and is consistent with the comprehensive plans of the affected jurisdictions and the Lane County Rural Comprehensive Plan.

2. The development will not:
   a. Generate traffic which will exceed the carrying capacity, as defined by Lane Code Chapter 15, of adjacent public and private roads.
   b. necessitate a higher level of police service than presently provided to the surrounding area.
   c. Occur within one mile of an existing urban growth boundary and/or share any urban service provided within a neighboring urban growth boundary.
   d. On the whole require an urban level of service.
3. Reasonable assurances must be provided that the cluster shall not generate students in excess of the capacity of affected facilities within the appropriate school district.
4. The development represents a concentration of people who generally reside and work in the area.
5. Deed restrictions which ensure that commucnity water and sewer systems shall remain viable and under private ownership shall be required. Cluster subdivisions which propose to form or use a public water or sewer system shall not be allowed.
6. Cluster subdivsions shall be limited to residential use. No commercial or industrial uses will be allowed within existing or proposed cluster subdivisions.
7. All cluster subdiviions must be within an existing Rural Fire Protection District.
8. No other identifiablke substantial increase of a public service shall be necessitated by the approval of a cluster subdivision."

The cluster development standards also contain provisions to assure their application to a series of small cluster developments (i.e., less than 20 units and therefore, exempt from standards 1 through 8 above).

Conclusion

The requirement has been met.

The Lane County cluster development standards contain the same standards as OAR 660-014-040. These standards assure that urban development will not occur in rural areas except where OAR 660-14-040 criterion are met.

Requirement

9. Amend Lane Code Chapter 16 to correct inconsistencies in the cross-referencing system, where subsections are referred to within the same section of the ordinance.

Response

The County Rural Zoning Ordinance (Chapter 16) has been codified eliminating cross referencing from the older Zoning Ordinance (Chapter 10). As a result, all inconsistencies previously identified have been corrected.

Conclusion

The requirement has been met.

Requirement

10. Amend the plan (a) to include additional findings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the County chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

Response

Lane County amended its nonresource findings for Dillard Highland's Second Addition to include additional findings supporting the claim that Goals 3 and 4 do not apply as well as information indicating that the Goal 5 wildlife habitat issue has been resolved. The contents of the County's supplementary findings includes the following information: (1) amended soils information, introduced by soil scientist Joel A Norgren, PHD, which concludes that (a) 99.5 acres (65 percent) of the 154-acre parcel consists of SCS agricultural capability classes VI, and (b) 85.5 acres (56 percent of the 154-acre parcel consist of soils with no woodland site class; and (2) findings indicating why it is impractical to apply Goals 3 and 4 to this property. Reasons supporting these findings include the following:

"a) The Dillard Highlands is located on the east side of Dillard Road and the south hills ridgeline approximately one-third of a mile southeast of the Eugene city limits and the urban growth boundary.

It is within an area of very poor soils as indicated by the Soil Conservation Service maps. It is surrounded by a sloping terrain and a 'Developed and committed' area to the west, a 'developed and committed' area and a major BPA powerline to the north, a 'developed and committed' 260 feet power line and natural gas easement to the east, and an approved 'Non-Resource' area to the south. Although man-created boiundaries, they make it impracticable to apply the resource goals to he subject property (Dillard Highland's 2nd Addition; Supplemental Findings, August 24, 1984, pp. 15, 16).

b) Dillard Highland's status as a significant wildlife habitat has already experienced significant impacts because of existing urban and rural residential development in the area. Areas with 'built and committed' exceptions and this level of existing conflict are defined as 'Impacted Big Game Range' by Lane County's Flora & Fauna working paper (March 1982). These are areas 'that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity...the subject property is already impacted as big game habtat..." (Dillard Highlands, 2nd Addition, Supplemental Findings, August 24, 1984, pp. 18-19).

Conclusion for Dillard Highland's Second Addition

The claim that Goals 3 and 4 do not apply to Dillard Highland's Second Addition is sustained.

Substantial evidence has been provided by the County indicating that the 154 acres of Dillard Highland's Second Addition is not composed of predominantly SCS Class I-IV agricultural soils or soils with a cubic foot site index capable of producing commercial forest species.

In addition, the County indicates that the property is considered "impacted" big game habitat because of surrounding development activities and that, issues regarding Goals 4 and 5's habitat requirements are therefore resolved.

The supplemental findings of August 24, 1984, when combined with the findings previously discussed in the Departments' July 19, 1984 (addressing the "other lands" tests contained in Goal 3's definition and the remaining aspects of Goal 4's definition) are adequate to support the position that Goals 3 and 4 do not apply.

Requirement

11. Amend the plan to justify the potential one dwelling unit per 5-acre density authorized for Cerro Gordo's 600 acres in view of ODFW's

accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (See also Goal 2's cluster development issue.)

Response

The County's policy is to abide by ODFW's density recommendations unless the entire Goal 5 process is applied and a decision to exceed these recommendations is justified. Lane County has adopted supplementary findings (Order No. 84-9-11-23) and has revised its ESEE consequences analysis and wildlife habitat management plan for Cerro Gordo to justify development in a recognized big game habitat area, in excess of ODFW's recommended density standards. A meeting was held on August 14, 1984, with ODFW, Cerro Gordo and DLCD representatives to discuss this issue. It was determined that, in this case, ODFW density recommendations do not have as much bearing on the acceptability of the development as do other factors. These factors include the overall number and location of dwellings and roads, as well as mitigating measures incorporated into the development. The following factors in the revised Cerro Gordo proposal are particularly relevant (Order No. 84-9-11-23):

1. There is an overall "cap" on the number of lots which could be developed (i.e., 60 lots).

2. No more than one-third of the residences will be located north of the BLM road (the habitat area considered more sensitive to human disturbances).

3. Wildlife corridors from 600 to 1800 feet in width shall be provided along streams.

4. Residential development will be confined to a band 2,400 feet in width along an existing BLM road.

5. Residences must be clustered.

6. Goal 2 cluster subdivision requirements shall apply (see the Goal 2 section of this report for details).

7. Cerro Gordo is either adjacent to or near large tracts of federal and private forest land.

8. Lane County will provide ODFW with the opportunity to review and comment on the preliminary subdivision application to assure mitigation measures are achieved through proper clustering.

9. Road development will be minimized and private roads within forested areas will be closed to vehicular use except for emergencies, maintenance, and forest management activities.

10. A Cerro Gordo Design Committee as well as the Cerro Gordo Cooperative itself shall review and monitor actions and changes in wildlife conditions on an ongoing basis.

11. Pets shall be limited.

Because of these and other factors addressed in the County's amended findings, the impacts on big game range are thought to be acceptable by ODFW. Allowing such conflicts to occur, but with restrictions outlined above, is a (3C) decision under the Goal 5 Administrative Rule. The County has justified this decision.

Conclusion

The requirement has been met.

Requirement

12. Remove the AO zoning from all privately owned parcels within the Mahlon Sweet Airport Exception Area consistent with Transportation Policy 11 and apply an appropriate resource zone to these lands.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

13. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone TL 1600 in the Royal Avenue Exception area with the appropriate resource zone.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

14. Amend the zoning code to exempt maintenance and improvements in Armitage State Park from conditional use procedures. This is most easily accomplished by zoning all of this park to PR.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 2

Lane County complies with Goal 2 for the rural portions of the County, excluding the Metro Plan area.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 2.

GOAL 3: AGRICULTURAL LANDS

Requirement

1. Amend the EFU Zone to require disqualification from farm tax deferral of parcels prior to final building permit approval for nonfarm dwellings pursuant to ORS 197.236.

Response

Lane County's Development Code was amended (ORD. 9-84) to include a provisions requiring compliance with ORS 215.236 regarding the establishment of nonfarm dwellings in the EFU Zone (LC 16.215(4)(j)(IV)).

Conclusion

The requirement has been met.

Requirement

2. Adopt a plan policy requiring a plan amendment to the County Plan when designating land as Marginal Lands.

Response

The County plan was amended (ORD 889) to include the following plan policy (Goal 2, Policy 25):

> "Outside of designated 'Community' areas, all changes to Plan Diagram designations shall be evaluated through the County's Plan Amendment procedure (LC 16.400) and approval based upon fulfillment of criteria therein."

Conclusion

The requirement has been met.

Although this policy might imply that plan amendments are not necessary to change designations in community aras, in fact there is only one category--"community"--that can be applied to community areas. The policy should be clarified in the future to indicate that it is zoning within community areas that maybe changed without a plan amendment.

Requirement

3. Amend the plan to include adequate findings and reasons for applying the marginal lands zone to the Merz/603, Harrison, Peters, Hledik, G.E. Credit Corp., and KVAL properties and provide the required information to determine compliance with ORS 197.247. If the information provided shows that the land does not qualify as marginal land under ORS 197.247, plan and rezone the properties with appropriate resource designations and implementing zones.

Response

The County's plan was amended (Order No. 84-9-11-23) to include additional findings and reasons for applying marginal lands to the Merz/602, Harrison, Mathers and G.E. Credit Corp. properties. The County has also amended the plan and adopted an additional marginal land area known as the Moshofsky property (Order No. 84-19-11-22). The Peters, Hledix, and KVAL properties have been redesignated an appropriate resource designation (Ord. No. 898).

Information regarding the five marginal land areas is described below (Source: Order No. 84-9-11-22 and 84-9-11-23 (Moshofsky)):

Merz/603 - 70 acres

57.3 acres - SCS Class VIII (Dune Land)
12.7 acres - SCS Class III/Forest Site Class 3

Harrison - 45 acres

13.5 acres - SCS Class III
7. acres - SCS Class IV
49.5 acres - SCS Class VI
No woodland suitability

Mathers - 111 acres

4.7 acres - SCS Class III/Forest Site Class 3
13.7 acres - SCS Class IV/Forest Site Class 3
92.6 acres - SCS Class VI

G.E. CREdit - 20 acres

20 acres - SCS Class VI
No woodland suitability

Moshofsky - 68 acres

14.5 acres - SCS Class III
8.7 acres - SCS Class IV
42.6 acres - SCS Class VI
2.1 acres - SCS Class VII

MOSHOFSKY SOIL CALCULATIONS
AS PER F-2 WOODLAND SITE CLASS STANDARDS

Woodland Site Class	Acreage Needed Disqualification	Acreage Found Moshofsky	Percentage Of Standard
2	17	8.7	51.1%
3	24	0	0%
4	34	14.5	42.6%
5	43	2.1	4.8%
None		42.65	

Percentage Total = 98.5%

Conclusion

The requirement has been met.

The previous findings found lacking for these properties have now been corrected as is required under ORS 197.247.

Based on the evidence submitted, and along with the findings in the previous staff recommendations, the following areas qualify as marginal lands under ORS 197.247:

Mertz/603
Harrison
Mathers
G.E. Credit Corp
Moshofsky

Requirement

4. Amend the Plan Map and Zoning Map for the Cuddeback and Rodman properties to an appropriate resource designation and implementing zone.

Response

The Cuddeback and the Rodman properties have been redesignated Impacted Forest Lands (Ord. No. 898).

Conclusion

The requirement has been met.

Conclusion - Goal 3

Lane County complies with Goal 3.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 3.

GOAL 4: FOREST LANDS

Requirement

1. Amend the Forest Working Paper and addendum to:

   a. Provide justification for the F-1 Zone's 40 acre minimum.

   b. (1) include information on the pattern of contiguous ownerships (either map or statistical) in support of a decision to retain current F-2 zoning. Such information must show that the minimum lot size is representative of the ownership pattern of the area

and that the zone actually limits further opportunity for development; or (2) include information justifying an alternative approach consistent with Goal 4 taken to resolve issues raised regarding the F-2 Zone.

c. Amend the Forest Working Paper Appendix 1--Lane County Forest Soils--to include "all commercial forest soils" in a manner consistent with an appropriate definition of commercial forest lands.

Response

1. a. Lane County has adopted additional information supporting its decision for assigning a 40-acre minimum lot size in the F-1 Zone. Specifically, the County has included as findings, two letters from Carl Ehlen (Lane County Landowners Assoc. and Rex Timber Co.) regarding the viability of a 40-acre parcel to be commercially managed as a forest parcel and Exhibit "D" from Ordinance No. PA 889 which cites the following findings:

"1) In support of the proposed Comprehensive Plan developed in 1982 the Lane County Landowners Association provided written testimony that the minimum land division size of 40 acres in the F-1 Zone represented an acreage that could be an operationally and economically manageable unit within the industry. At that time, the F-1 Zone proposal allowed dwellings on parcels down to the minimum size. (See attached letter dated November 23, 1982)

2) The Addendum to the Forest Lands Working Paper dated November 1983, justifies the 40 acre minimum land division from the data which show a significant number of parcels and amount of acreage that represent that size class within the industrial forest land ownership.

The following excerpt is from Suggestion Policy XI. 1) of the Addendum to the Forest Lands Working Paper:

'92% of the Industrial forest land acreage that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to 80 acres, with approximately 25% of that area occuring at the 40 acre parcel size category.'

'75% of the number of parcels in the Industrial owned forest land that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to

80 acres, with approximately 28% of the number of parcels occuring within that range at the 40 acre parcel size category.'

3) The letter received June 21, 1984, from the Lane County Landowners Association reiterates their former position in support of the 40 acre minimum land division standard noting that under the current proposal the F-1 Zone excludes residences. (See copy attached.)

4) In addition, preliminary data from the computerized zoning file of the current F-1 proposal indicates that of the parcels zoned F-1 that are between 40 and 80 acres in size, 27% of the acreage occurs on parcels of the 40 acre size class which represents 39% of the number of parcels between 40 and 80 acres in size."

The County has indicated further that the County's decision establishing the 40-acre minimum lot size in the F-1 Zone is supported because:

"Commercial forest representatives in Lane County requested 40 acres as a minimum lot size in the F-1 Zone based upon 40 acres being a commonly acquired, managed and exchanged unit of commercial forest land in Lane County."

Because Lane County's F-1 Zone does not allow dwellings, the price of forest land will reflect forest land values instead of rural residential values and conflicts with forest management activities will be minimal. Thus, a small minimum lot size conducive to commercial forest management, such as the F-1's 40-acre minimum is appropriate.

b. Lane County has rezoned approximately 56,080 acres of land from F-2 to F-1 and EFU in accordance with requirement "1.b(1)." Lands for which the F-2 zone was retained generally exhibit one or more of the characteristics for impacted forest lands presented in the response to requirement "2a." In addition, the County's revised Goal 4 Policy 12 provision (discussed under Goal 4 Response 3 of this report) presents additional limitations on divisions of resource land by establishing a 80-acre minimum lot size for all forest parcels which are (1) 160 acres in size, (2) zoned F-2, and (3) adjacent to F-1 zoned lands.

c. Lane County has amended, through Ordinance No. PA 889 (p. 6), their definition of commercial forest land to be 50 cubic feet per acre per year. By adopting a single commercial forest lands definition in its forest lands working paper rather than relying

on inconsistent references to 20 cubic feet, 50 cubic feet or the list of forest soils contained in Appendix 1, a consistent standard for inventorying forest lands and evaluating nonresource lands is established.

Conclusion

Lane County satisfies this requirement.

Requirement

2. Amend the comprehensive plan to:

   a. Include a Forest Policy which establishes precise criteria for applying the F-1 and F-2 Zones. (At a minimum, criteria for applying the F-1 Zone must include ownerships of a size capable of being managed as commercial forest lands.)

   b. Amend the four characteristics discussed under the Goal 4 conclusion for policies to establish criteria which apply only to lands appropriately zoned F-2 as per the examples discussed under "application;" or

   c. Include a policy which requires a plan amendment to rezone lands from F-1 to F-2.

   d. Delete the following from Forest Policy 11(a) "if adjacent to other nonimpacted forest lands.

Response

2a. In response to the above requirement, Lane County revised the criteria for applying the Non-Inpacted (F-1) and Impacted (F-2) Zone designations to eliminate the specific "vague" criteria discussed in the June 29, 1984 review. The revised criteria can be used to more specifically determine the proper zone designation. Ordinance No. P. 899 (p. 5, Item 10) adds Goal 4, Policy 19 which reads as follows:

"Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

'a. A conclusion that characteristics of the land correspond more closely to the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

'b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantely ownerships not developed by residences or nonforest uses.
'ii. Predominantely contiguous ownerships of 80 acres or larger in size.
'iii. Predominantely ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.
'iv. Accessed by arterial roads or roads intended primarily under commercial forest management.

'c Impacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantly ownerships developed by residences or nonforest uses.
'ii. Predominantely ownerships 80 acres or less in size.
'iii. Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.
'iv. Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences."

In addition, nonforest uses authorized under the F-1 Zone (LC 16.2104) can not be used as the basis for supporting a zone change from F-1 to F-2; the criteria established in LC 16.210(5) require as a condition of approval that findsigs be provided indicating such uses do not significantly impact forest uses. Thus, establishment of such nonforest uses in an F-1 Zone can not be the basis for a zone change to F-2 under the "impacted" criteria adopted by Lane County.

2b. or c.

Lane County revised its plan to delete the four vague characteristics used in applying the F-1 and F-2 zones. As indicated in the conclusion to "2a," the revised criteria successfully address the issue.

2d. On page 4 of Lane County Ordinance "No. PA 889, #8," the County states: "Goal No. 4, Policy No. 11a--delete if adjacent to other nonimpacted forest lands."

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend the County zoning map by rezoning private non-industrial ownerships capable of commercial forest management (including forested portions of commercial farm-forest operations) currently zoned F-2 with an appropriate resource zone. An acceptable forest zone is the F-1 Zone or forest zone containing a minimum lot size of

at least 80 acres as justified by the County's "Forest Working Paper Addendum."

Also, where the County can justify such a decision, the County may apply the marginal lands zone or rural residential zones to "committed" or nonresource lands.

Response

Lane County has rezoned 24,075 acres of land from F-2 to F-1 and rezoned 32,005 acres from F-2 to EFU. Generally, ownerships greater than 120 acres in size capable of being managed as a farm unit were rezoned to EFU. Ownerships of 160 acres or greater capable of being managed as commercial forest lands were rezoned to F-1. Some large ownerships were zoned with more than one zone depending on adjacent land uses and impacts. Also, the F-2 zone was retained on a few large ownerships, where soils information indicated that non-commercial forest soils predominate.

In order to reduce potential conflicts between authorized land uses in the F-2 Zone and commercial forest management activities occuring on F-1 lands, Lane County adopted a new version of Goal 4 Policy 12 (Ordinance No. PA 889, p. 4, Item 9) which contains the following provision:

> "(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:
> '(i) zoned F-2
> '(ii) containing at least 160 acres
> '(iii) for the creation of lots or parcels adjacent to F-1, RCP zoned lands."

Conclusion

Lane County has satisfied this requirement.

The County has amended its zoning map, through the rezoning of some lands previously zoned F-2, in a manner consistent with this requirement. With the elimination of 56,080 acres from the F-2 Zone, the County's current application of the F-2 Zone is more representative of the ownership patterns within areas where non-commercial forest management and other non-resource activities occur.

Requirement

4. Amend LC 16.210(4)(i) of the F-1 Zone and LC 16.211(5)(ii) to require that "lodges" be evaluated against the "generally unsuitable test" in addition to the other review standards already applied to this specific use.

Response

Lane County through the adoption of Ordinance No. 9-84 amended LC 16.210(4)(i) and LC 16.211(5)(ii) to require under LC 16.210(4)(i) and LC 16.211(5)(r) that in addition to other review criteria, lodges will be required to locate on land generally unsuitable for forest uses in the F-1 and F-2 Zones or an exception to Goal 4 would be necessary.

The County also adopted Plan Policy No. 27 which requires an exception to resource Goals for transmission lines with right-of-way widths in excess of 50 feet (Ord. No. PA 889, p. 4). In addition, the County has limited farm equipment maintenance to that "incidental to a forest repair" (Ord. No. 9-84, p. 16-29).

Conclusion

Lane County satisfies this requirement.

Requirement

5. Amend the F-2 zoning provisions as follows:

   a. In 16.211(3)(b), adopt informational requirements for the "detailed forest management plan." At a minimum, such provisions must require sufficient information to establish adequate findings that a proposed "forest" dwelling is "necessary" and "incidental and subordinate to" the primary forest management activities described in the forest management plan.

   b. Include in LC 16.211(3)(b) a "floor" or minimum parcel size requiring parcels below 10 acres to be assessed against the nonforest dwelling or lot of record provisions.

   c. Amend 16.211(7)(b) to apply to all commercial forest grazing operations zoned F-2 the larger size (120 acres) for extensive animal grazing as required by LC 16.212(6)(d).

Response

5a. Lane County has amended LC 16.211(3)(b), through the adoption of Ordinance NO.9-84, to include specific requirements for preparing an acceptable forest management plan. Included within the revised LC 16.211(3)(b) is the following additional requirement:

"(iii) The forest management plan shall specify how the following practices, when applicable, are to be addressed: road and fire trail construction and maintenance, site preparation, reforestation, stand conversion, planting of nonstocked openings, competition reduction/release, precommercial thinning, harvest scheduling/rotation and special site treatments for topography and other concerns."

Because active forest management is required to retain forest land taxation rates and failure to implement the forest management plan is a violation of LC 15.211(3)(b). The combination of the above requirements for forest related dwellings in the F-2 Zone assures that active forest management must occur on forest lands in order to establish a forest related dwelling; thus, satisfying the accessory and necessary test. These requirements for approving a forest related dwellings in Lane County's F-2 Zone are similar to the provisions contained in Benton County's acknowledged secondary forest zone.

5b. Through the adoption of Ordinance No. 9-84, Lane County amended LC 16.211(3)(b) of the F-2 Zone to include a "10 acre" floor which will be used for assessing "forest" dwelling applications. Applications for dwellings on parcels zoned F-2 which are less than 10 acres will be reviewed as nonforest dwellings.

5c. Upon further review of LC 16.211(7)(c) regarding the F-2 zone's minimum lot size requirements for farm unit size requirements for commercial grazing operations, it was determined that this provision's 40-acre minimum "farm unit size" requirement is identical to the County's EFU Zone minimum farm unit size requirement. For specific uses, such as dwellings, LC 16.212(2)(f) of the EFU Zone must be satisfied before approval can be granted.

Conclusion

The County satisfies this requirement.

Conclusion - Goal 4

Lane County complies with Goal 4.

Lane County's approach to conserving forest lands contains some plan policy and ordinance provisions unique to Lane County. The strength of their forest lands conservation program is the F-1 Zone which prohibits the siting of all dwellings (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.

The County's F-2 Zone is applied to 145,356 acres of privately owned lands which consist generally of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands. Lands zoned F-2 are generally located adjacent to or near developed urban or rural areas and well travelled transportation routes; all of which have an impact on the commercial management of forest lands.

In the F-2 Zone, the County requires that before a permanent dwelling is sited on forest land, assurances are obtained that forest production on the lot will be enhanced by active forest management. The requirements associated with the siting of dwellings in the F-2 Zone are similar to those provisions approved by the Commission in Benton County's acknowledgment with recent changes to the County's forest policies and

ordinance provisions. The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 4.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

Requirement

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SC which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

Response

In responding to this IOTC, Lane County discovered that not only were there sites zoned SG which were not on its (1C) inventory, but that there were other errors on its inventory. Therefore, the County revised its (1C) inventory as well as its (1B) inventory. Supplemental findings to Ord. No. PA 892 state:

> "The IOTC to correct the zoning citations was the stimulus for a complete review of sites listed in Appendix D vs. zoned sites. Several of those in the original Appendix D have been deleted--none of which carried SG or QM zoning. No "unzoning" will be necessary. Most of those deleted are also reflected in Appendix F of the Working Paper, which is the "pool" for later evaluation under the Goal 5 Rule "1B" option. Thus, any sites deleted in this effort are not lost from consideration, merely set aside for more detailed examination later on. All but one of the sites of Appendix D correspond with on-the-ground zoning of SG or QM."

The one site referred to in the last sentence of the previous quote (site #21) is an active site. The County completed all steps of the Goal 5 Administrative Rule for the site, and subsequently zoned it QM (Ord. No. PA 891). These findings are now part of the County's Mineral and Aggregate Resources Working Paper.

The County's three Mineral and Aggregate Resources inventories--Appendices D, E, and J--have been revised as follows: Appendix D has been reorganized to read more clearly, the Conflict Analysis (Appendix J) expanded to deal with new sites per the IOTC, and a third map (Appendix E) created to display the sites on new Appendix D. The original Appendix E--a listing of sites in the Metro Area--has been deleted since it was inconsistent with the list contained in the Metro Plan.

Conclusion

Requirement 1 has been met.

Requirement

2. Fish and Wildlife:

   a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

Response

Lane County has amended its Natural Resource Zone to include riparian setback and vegetation maintenance standards similar to those in other resource zones (Ord. No. 11-84).

Conclusion

Requirement 2a has been met.

Requirement

2. Fish and Wildlife Habitats:

   b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation and maintenance standards, or (2) incorporate by reference anothr section of the Lane Code which contains such standards.

Response

Lane County has amended the above zoning districts to include appropriate riparian setback and vegetation maintenance standards as required (Ord. No. 9-84).

Conclusion

Requirement 2b has been met.

Requirement

2. Fish and Wildlife Habitats:

   c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(1)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

Department which sufficiently identify the location, nature and scope of the proposed use or activity.

(c) Referral. Upon receipt of the plan identified in LC 16.005(4)(b) above, the Department shall refer a copy of the plans to the Oregon Department of Fish and Wildlife (ODFW).

(d) ODFW Review. Upon receipt of the plans identified in LC 16.005(4)(b) above, the ODFW shall review the proposed use or activity and make a determination of whether or not the use or activity would affect a sensitive bird habitat. In making this review and determination, the ODFW shall consult with the affected landowner(s) and appropriate state agencies, and shall address the standards in LC 16.005(4)(d)(i) and (ii) below. The basis for the determination shall be stated in writing, completed within seven working days of receipt, and then submitted to the Department (Lane County).

(i) A sensitive bird habitat will be considered affected by a use or activity if the use or activity is located within 660 feet of an eagle or osprey site or within 300 feet of a heron rookery or pigeon mineral spring.

(ii) A sensitive bird habitat may also be considered affected by a use or activity if the use or activity is located a greater distance than specified in LC 16.005(4)(d)(i) above, considering unique conditions of topography to the individual habitats of the bird(s).

(e) No Affects Determined. If the ODFW determines that the senstive habitat area will not be affected, then the ODFW will give the Department written notice of its determination, and Lane County may proceed with authorization o the use or activity, or with the processing of any other required applications.

(f) Affects Determined and Protection Plan. If the ODFW determines that the sensitive habitat area will be affected, the ODFW shall work with the affected landowner(s) in the development of a site specific habitat protection plan. The plan shall consider the proposed use or activity and its interrelationship to and affects upon nesting trees, perch trees, critical nesting period roosting sites and/or buffers for wind, vision and noise. The plan must contain a statement of reasons, supported by facts, explaining why the sensitive bird habitat would not be adversely affected by the proposed use or activity. The plan shall then be submitted to the Department.

(g) Director Approval. The proposed uses or activities identified in the habitat protection plan shall be reviewed by the Director pursuant to LC 14.100 and shall be allowed if in conformance with the following approval criteria:

(i) The proposed use or activity would not adversely impact a sensitive wildlife habitat.

(ii) Conditions placed upon the approval of the habitat protection plan would avoid or eliminate any adverse impacts upon a sensitive wildlife habitat. Conditions may include setbacks, limitations upon the time period for the operation of the use or activity and/or prohibition of conflicting uses.

(h) LC 16.005(4)(a)-(g) do not apply to the protection of sensitive bird habitat from forest practices as regulated by the Forest Practices Act and as regulated by the COOPERATIVE AGREEMENT BETWEEN OREGON STATE BOARD OF FORESTRY AND OREGON STATE FISH AND WILDLIFE COMMISSION as adopted by Lane County in Rural Comprehensive Plan Goal 5 Flora and Fauna Policy 17."

The following new Policy 17 has been adopted to replace old Flora and Fauna Policy 15 (Ord. No. PA 892):

"The Cooperative Agreement between Oregon State Board of Forestry and Oregon State Fish and Wildlife Commission shall constitute Lane County's means of protecting sensitive bird habitat sites from conflicts which may result from forest practices as regulated by the Forest Pracices Act. Within two years of the date of acknowledgment of the Rural Comprehensive Plan, Lane County shall evaluate the effectiveness of the use of this agreement in providing actual protection to sensitive bird habitat sites, and if necessary, shall consider the adoption of more effective means of protecting sensitive bird habitat sites. This agreement is incorporated into the Lane County General Plan Policies as Flora and Fauna, Exhibit 'A'."

The following new Flora and Fauna policy has also been adopted (Ord. No. PA 892):

"18. Owners of property designated as a sensitive bird habitat and as identified in Lane Manual 11.400 shall be encouraged to develop a management plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any development which may adversely affect the habitat. Such management plans shall consider nesting trees, perch trees, critical nesting period, roosting sites and buffer zones, and shall demonstrate how the proposed development will not adversely affect the sensitive bird habitat site. The policy shall not apply to forest practices covered by the above Flora and Fauna Policy 17."

Conclusion

Requirement 2e has been met.

Requirement

2. Fish and Wildlife Habitats:

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

Response

Lane County has replaced its definition of "wetland" with the following definition (Ord. No. PA 892):

> "For purposes of County management, wetlands should be defined as land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands."

This new definition is consistent with that contained in the Statewide Planning Goals.

The Working Paper has also been amended to contain the following explanation:

> "For purposes of County management, principal concern shall be given to wetlands of an acre or greater in size, to exclude small 'backyard' areas, unless the future County evaluation of the National Wetlands Inventory and/or information from ODFW indicate that specified wetlands smaller than one acre in size require the same level of protection as their larger counterparts."

Conclusion

Requirement 2f has been met.

Requirement

2. Fish and Wildlife Habitats:

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.

Response

The County examined this site ("Blueberry Acres") and documented its location, quality and quantity. Conflicting uses were identified, and an ESEE consequences analysis was performed by the County. Based on this analysis, the County determined that the wetland required additional protection. It, therefore, has applied its Natural Resource Zone to the site. The Addendum to the Flora and Fauna Working Paper has been amended to contain background information and findings regarding application of the Goal 5 process to "Blueberry Acres" (Ord. No. PA 892).

Conclusion

Requirement 2g has been met.

Requirement

2. Fish and Wildlife Habitats:

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

Response

Section 13.050(1) of the Lane Code requires conformity with the Comprehensive Plan (including all plan policies) when considering partition or subdivision plans.

Also, Policy 14 (Goal 3) has been amended so as to require compliance with Goal 5 policies 11 and 12 in the future application of the ML Zone. Policy 11 requires conformance to ODFW density recommendations, unless justified through a separate Goal 5 analysis. Policy 12 requires a Goal 5 analysis if conflicting uses are identified that were not contemplated in the Plan.

Findings have been added to the Flora and Fauna Working Paper Addendum (p. 14) which discuss application of current ML zoning in Goal 5 resource areas. Goal 5 conflicts with many of these sites are primarily with big game habitat. The County has analyzed the ESEE consequences of conflicting uses for these areas and has decided to apply the ML Zone in spite of the conflicts.

Conclusion

Requirement 2h has been met.

Requirement

3. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.

Response

Supplementary Findings to Ordinance No. PA 892 adopted by Lane County provide the following explanation:

> "This site is shown on the Coastal Resources Inventory maps as being located east of North Fork Road, near the Chief Drew historical site. It was field-checked by County and ODFW staff. Neigher effort could locate Darlingtonia, although a small bog existed in the approximate area of the site. A larger bog to the north (within the Florence UGB) may be the one referred to in the Inventory, but has been partially filled by structures and is not within the concern of the Rural Comprehensive Plan--the Florence plan having been acknowledged in 1983. It too was found to contain no Darlingtonia.
>
> Thus, it appears that no rezoning action will be necessary to preserve the reported bog."

Page 27 of the Flora and Fauna Working Paper has been amended to include the following new paragraph:

> "1A Category
>
> One site--identified on the Coastal Resources Inventory as a significant natural area--has been placed in the '1A' category because it was either erroneously identified in the Inventory or because conditions have changed since the Inventory was done which have destroyed the feature that first caused its inclusion. This area is noted as "unique Darlingtonia habitat" east of North Fork Road in 18-12-24. Because DLCD raised the issue of preservation of this resource under Goal 5 Rule requirements, field checks were conducted by both County staff and staff of the Oregon Fish & Wildlife Department. Neither effort could locate any Darlingtonia. A bog north of the one shown on the inventory map (excerpt attached) may have been the one referred to, but that particular bog has been partially filled and is also located within the UGB of Florence

which has an acknowledged Plan. Even assuming the Plan should be changed, that northern bog (at the intersection of Munsel Lake and North Fork Roads) is not significant enough Darlingtonia area to merit further action by the City/County. In sum, the area should be deleted from the Plan inventory as a '1A' site, with no further action required on it."

Conclusion

Requirement 3 has been met.

Requirement

4. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

Response

Lane County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892) which contains an inventory of scenic resources in the County, including the coastal strip, the Willamette River Greenway, Coburg Ridge, McKenzie River Valley, Willamette Highway/Salt Creek Valley Corridor, and ODOT-identified scenic areas. Each is described and location, quality and quantity documented. Each is evaluated in terms of conflicting uses and ESEE consequences. Based on these analyses, the County has determined that existing coastal zoning is sufficient protection for the coastal zone, and that the County Greenway Plan and Permit process should be the implementing measure in the Willamette Greenway. No conflicts were identified with ODOT scenic areas. Coburg Ridge is essentially undeveloped and partly in BLM ownership or in ranchland. Slopes exceed 100 percent in many places. Therefore, conflicts appear to be limited primarily to forestry activities, which are regulated by the FPA. Most of the McKenzie Valley and the Willamette Highway/Salt Creek Corridor is within the Willamette National Forest.

Conclusion

Requirement 4 has been met.

Requirement

5. Historic Sites:

a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

Response

The County has ensured that all (1C) sites appear on zoning maps with the "/H" symbol, except for 20 covered bridge sites (Supplementary Findings to Ord. No. PA 892). The County indicates that these are not on maps because they are bridges and are not keyed to tax lot citations. This prevents the digitized Plan Diagram maps from properly displaying them. However, all are publicly-owned, and are covered by the /H Combining Zone (Ord. No. 892).

Lane County has added a definition of "Historic Structure or Site" to the definition section of its ordinance. This definition specifically includes property which had been identified by Lane County in its adopted Rural Comprehensive Plan findings as historically significant. (This list includes the 20 covered bridges as well as all other (1C) sites.)

Conclusion

Requirement 5a has been met.

Requirement

5. Historic Sites:

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

Response

Lane County has deleted sites 34 and 57 as well as sites 32, 39 and 42 from its historic sites inventory, and has amended the Addendum to its Historical Resources Working Paper as follows:

> "From the above list, five sites have been deleted by County action: sites 32, 34, 49, 42 & 57. Sites 34 and 57 are not within the purview of the Rural Comprehensive Plan and thus are the responsibility of other planning efforts. Site 32 (Keeney House) is no longer considered historically significant because the structure has been relocated on its site and has been remodeled both inside and outside. Site 39 (Paschelke House) is incorrectly represented in the State Inventory and has been extensively remodeled. Site 42 (Fall Creek Christian Church) has been remodeled several times from its original use as a school building, and is being expanded. These sites should be exempted from the Historical Combining District which is being applied to the other sites on the above list."

Conclusion

Requirement 5b has been met.

Requirement

6. Oregon Recreation Trails:

a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

Response

Lane County has amended the Recreational Resources Working Paper (p. 15) by inserting a new paragraph indicating that ODOT has supplied the County with detailed maps of trail segments. Such information is included as Appendix A to the Working Paper (Ord. No. PA 892).

Conclusion

Requirement 6a has been met.

Requirement

6. Oregon Recreation Trails:

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

Response

Goal 5 (Policy 4) has been replaced with the following new policy (Ord. No. PA 892):

"The County shall recognize and acknowledge existing and potential recreational trails designated by the Oregon Parks Outdoor Recreation Plan, shall cooperate with the Oregon Department of Transportation in the identification of specific routes for potential trails, and in the completion of applicable steps of OAR 660-160-000/025. Existing developed trails shall be displayed on the County's planning documents."

Conclusion

Requirement 6b has been met.

Requirement

7. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.

Response

The County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892). This addendum recognizes Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir as within the State Scenic Waterway system (p. 8). It also recognizes portions of the Alsea River and Steamboat Creek that are on the federal and state potential lists (p. 9).

Conclusion

Requirement 7a has been met.

Requirement

7. Scenic Rivers and Waterways:

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.

Response

Policy 5 has been replaced with the following policy language:

"The County shall cooperate with appropriate state and federal agencies in the selection of wild and scenic rivers, and will cooperate with these agencies in the completion of applicable steps of OAR 660-16-00/025 in making such selections" (Ord. No. PA 892).

Conclusion

Requirement 7b has been met.

Requirement

8. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflicting-resolution recommendations contained in the Metro Plan Update Working Paper.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 5

Lane County complies with Goal 5.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

Requirement

1. Amend the Development Code to require review of any proposed development within known geologic hazard areas.

Response

Lane County Development Code was amended (ORD. 9-84) to include the following provision (LC 16.005):

> "(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of an application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose."

Conclusion

The requirement has been met.

The County Development Code has been amended to require a review of any proposed development that is found to present a threat to life and property.

Requirement

2. Adopt standards which will be applied to development in known geologic hazardous areas.

Response

Lane County Development Code was amended (Ord. 9-84) to include the following standards pursuant to LC 16.005(2) cited previously under Goal 7, Requirement 1 (LC 16.005):

> "(3) Conditions. The following conditions may be imposed at the time of approval of a development for which a permit or application is required and for which a finding has been made as required in LC 16.005(2) above in order to ensure site and area stability:
>
> (a) Maintain vegetation and eliminate widespread destruction of vegetation.
>
> (b) Carefully design new roads and buildings with respect to:
>
> (i) Placement of roads and structures on the surface topography.
>
> (ii) Surface drainage on and around the site.
>
> (iii) Drainage from buildings and road surfaces.
>
> (iv) Placement of septic tank disposal fields.
>
> (c) Careful construction of roads and buildings:
>
> (i) Avoid cutting toeslopes of slump blocks.
>
> (ii) Careful grading around the site, especially avoiding oversteepened cut banks.

(iii) Revegetating distubed areas as soon as possible.

(d) Certification by a geologist or engineer that the above conditions have been complied with and/or that a hazard does not exist."

Conclusion

The requirement has been met.

Lane County has adopted appropriate standards which will be applied to development in geologic hazard areas.

Conclusion - Goal 7

Lane County complies with Goal 7.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 7.

GOAL 11: PUBLIC FACILITIES AND SERVICES

Requirement

1. Adopt a plan policy which specifies the appropriate levels of service for rural areas, including unincorporated minor development centers and rural service centers. Note: This IOTC can be satisfied by adopting a policy identifying land classifications and service levels similar to those contained in the Public Facilities and Service Working Paper--Appendix B. If Appendix B is used, the classification titles must be amended to correspond with "current" classification titles (Example: Forest Lands I is now called Non-Impacted).

Response

Through the adoption of Ordinance No. PA 889 (Item 13), Lane County deleted Goal 11 Policies 1 and 2 and replaced them with the following:

"Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category, either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category."

The County also adopted Policy No. 6 which references descriptions of their plan designations and service levels which are as follows:

Forest Land

Nonimpacted (F-1):

"Service Level: No minimum level of services is established for this category as it is intended primarily for resource management and not for habitation."

Impacted (F-2):

"Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur space population patterns are expected."

Agricultural Land

Exclusive Farm Use:

"Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur, sparce population patterns are expected."

Natural Resource

Mineral:

"Service Level: No minimum level of services is established. Category is intended for resource management and not habitation."

Rural Residential:

"Service Level: Schools, on-site sewage disposal, individual water supply systems, electrical service, telephone service, rural level fire and police protection, reasonable access to solid waste disposal facility."

Community:

"Service Level: Schools, on-site or community sewage disposal, individual or community water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility."

Rural Commercial:

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Industrial (outside community designation):

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Park or Recreation:

"Service Level: No minimum level of services is established for Park or Recreation areas outside committed areas. Service level for Park or Recreation areas inside committed areas shall be consistent with that level required for the Community or committed area outside of a Community."

Marginal Lands:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation."

Nonresource:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation. The service level for cluster subdivisions of nonresource shall be consistent with Goal 2 policy 24."

Conclusion

Lane County satisfies this requirement.

Requirement

2. a. By policy or zoning provisions, limit development (in a manner consistent with Goal 11 (and the County's decisions regarding rural sewage systems) within unincorporated rural communities with known or suspected sewerage problem (Chesire, Elmira, Heceta, Goshen, Mapleton, Marcola and Vaughn); or

   b. Provide additional information which justifies in a manner consistent with the discussion under Goal 11, the county's decisions regarding development in rural communities with known or suspected sewerage problems.

Response

With the adoption of Ordinance 9-84, Lane County amended Chapter 16.004(5) of their Development Code to address IOTC 2a by including the following:

> "Prior to the zoning or rezoning of land under this Chapter, for lands situated within the designated community areas listed below, an affirmative conclusion stating the reasoning and facts relied upon, must be made that densities allowed by the proposed rezoning are low enough to provide reasonable assurance that any existing sewage problems will not be further aggrevated by development of the subject property:
>
> (a) Cheshire
> (b) Elmira
> (c) Goshen
> (d) Heceta
> (e) Mapleton
> (f) Marcola
> (g) Vaughn"

In addition, LC 13.050(12)(b), which established the County's requirements for obtaining individual sewage disposal systems, requires "reasonable proof that each prosposed parcel or lot can accommodate an individual sewage disposal system and at least one acceptable replacement area which meets the criteria established by OAR Chs.340-71-005 to 45." The above requirement provides adequate assurance that additional development in the seven referenced communities with existing or potential sewage problems will not aggrevate the sewerage situation.

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend Sections 13.050(12) and 13.050(13) to indicate that the establishment of rural sewage or water systems must be consistent with the appropriate of levels of service policies required by Goal 11, IOTC 1.

Response

Ordinance 10-84 amends Chapter 13.010(12) and (13) of Lane County's Development Code to require that the establishment of rural sewerage facilities and water systems shall be consistent with RCP Goal 2 Policy 24 and RCP Goal 11 Policies, including level of service definitions. Lane County also indicates the following:

> "With this ordinance, Land County has amended Sections 13.050(12) and (13) to provide that the

establishment of rural sewerage and water facilities must be consistent with RCP Goal 2 Policy #24, provision of services to cluster subdivisions in the rural area, and RCP Goal 11 policies. By requiring consistency between the proviion of services in the rural areas and the above-mentioned policies, Lane County is ensuring the 'timely, orderly and efficient provision of services' to new development approved within the rural areas. Sections 13.050(12) and 13.050(13) now require community sewer or community water systems be established only in a manner consistent with public facility and service policies (including appropriate levels of service for rural areas)" (Ordinance 10-84, Exhibit A, p. 2).

Conclusion

Lane County satisfies this requirement.

Conclusion - Goal 11

Lane County complies with Goal 11. Lane County's Public Facilities Working Paper, Goal 11 Plan Policies and Development Code requirements as well as specific amendments which include: (1) level of service definitions for each plan designation, (2) a requirement to examine proposed zone changes in suspected rural "sewerage" problem areas to insure that any existing problems will not be aggrevated through an intensification of density, and (3) policy and ordinance requirments that rural development consistent with the specified rural level of service definitions, all contribute to the orderly provision of public facilities and services in rural Lane County.

GOAL 15: WILLAMETTE RIVER GREENWAY

Requirement

1. Amend zoning maps 304, 304A, 305, 330, 332, 347, 396, 411, 417, 418, 425, 437, 440, 448, 471, 528, 1005, 1006, 1008, 1010, 1011, 1012, and 1013 to display the correct LCDC-approved Greenway Boundary.

Response

The County has amended the zoning maps listed above that apply to areas outside the Eugene/Springfield Metro Area so as to display the correct LCDC-approved Greenway Boundary. Changes to maps 347, 396, 411, 437, 528, 1005, 1006, 1008 and 1012 will be corrected in conjunction with the Eugene/Springfield Metro Area continuance.

Conclusion

The requirement has been met.

Requirement

2. Amend the Greenway ordinance to clearly require protection of significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints, per Sections C.3.d., a., and c. of the Goal.

Response

Lane County has eliminated the term "guidelines" from the Greenway Development Permit Approval section of its Greenway Ordinance (Section 16.254(4)) and has added the following as criteria for permit approval:

> "(i) Preservation and maintenance of land inventoried as 'agriculture' in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
>
> (ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas...
>
> (xiv) Protection of significant fish, wildlife habitat and natural areas."

A decision to approve a Greenway Development Permit must require findings that the proposed intensification, change of use or development conforms to these (as well as other) criteria, according to Section 16.254(4) of the Greenway Ordinance.

Conclusion

The requirement has been met.

Requirement

3. Amend Section 16.254(2)(k) of the Greenway Ordinance to eliminate all language following the phrase, "or personal noncommercial use."

Response

Section 16.254(2)(k) of the Greenway Ordinance has been amended to eliminate all language following the phrase, "or personal noncommercial use." This was done so that only the propagation or cutting of timber for public safety or personal noncommercial use is exempt from local Greenway Permit review, consistent with Goal 15.

Conclusion

The requirement has been met.

Requirement

4. Amend Section 16.254(c) of the Lane Code to ensure that only water-dependent and water-related uses themselves are exempt from the 100-foot Greenway setback requirement.

Response

Section 16.254(b) has been amended (Ord. No. 11-84) so as to eliminate the phrase "those in conjunction with." Therefore, the Code exempts only water-dependent and water-related uses themselves from the Greenway setback requirement.

Conclusion

The requirement has been met.

Requirement

5. Amend Section 16.254(6) of the Lane Code to require notification of ODOT of actions taken on applications for intensification, change of use or development in the Willamette Greenway.

Response

Section 16.254(6) of the Code has been amended to require notification of ODOT of actions taken on applications for a Greenway Permit, as required.

Conclusion

The requirement has been met.

Requirement

6. Amend Section 16.254(2)(a) of the Greenway Ordinance to require either:

   a. Greenway permits in areas designated "urban" beyond 150 feet of the ordinary low water line, or

   b. Some other mechanism which ensures protection of Greenway values in these areas.

(Note: This could also be accomplished by LCDC amendment of the ODOT Greenway Plan by changing the designation of the area south of the Cottage Grove UGB from "urban" to "rural.")

Response

Section 16.254(2)(a) has been deleted from the Greenway Ordinance. This has the effect of requiring Greenway permits in areas designated "urban" beyond the 150-foot line.

Conclusion

The requirement has been met.

Requirement

7. Adopt implementing measures that protect the Pudding Creek Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan, which has been segmented and continued until October 11, 1984.

Requirement

8. Either adopt findings which explain how the current zone designations for Big Island protect the Confluence Heronry, or adopt other implementing measures that protect the Confluence Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Requirement

9. Modify Mineral and Aggregate Resources Policy 11 to also reference Section C.3.d. of Goal 15 to ensure protection and significant fish and wildlife habitats in the Willamette Greenway.

Response

Lane County has amended Mineral and Aggregate Policy 11 to also reference Section C.3.d. of Goal 15 (Ord. No. PA 892).

Conclusion

This requirement has been met.

Conclusion - Goal 15

Lane County complies with Goal 15.

The findings contained in this supplemental report and those contained in the Department's July 19, 1984 review support the decision that Lane County complies with Goal 15.

DW/MJR/CP:mg
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229.5678

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

NOV 3 1983
SANITATION DIVISION
LANE COUNTY

November 1, 1983

Mr. Mike Copely
Lane County Planning Department
Public Service Building
125 East 8th Street
Eugene, OR 97410

Dear Mike:

I have completed my review of forest land materials, discussions with Claire Puchy and review of the NR zone. My comments follow.

Forest Land Designation Criteria/Report on Land Size Question

Overall, these reports are very good. Indirectly, they consider fish and wildlife values by recognizing such are included in Goal 4's definition of forest uses. On this point however, we request that maintenance and protection of fish and wildlife resources be stated explicitly as a purpose of any forest zone.

The basic distinction being made by the County, at this time, between non-impacted and impacted forest lands divided at 80 acres. The County's purpose for this seems clear. We are, however, concerned about possible confusion. We also refer to impacted game range (e.g., where management opportunities are already lost).

Forest lands above 80 acres, if planned and zoned for 80-acre minimums, would be consistent with our game range policies. An appropriate minimum for your impacted forest lands, as you state, still is to be determined. This is the area where we see potential problems developing. First, it is not clear now whether such lands are in major or peripheral range or both. The amount of conflict would vary depending on the range type based on our policies for overall densities. It is not known what, if any, further analysis you are considering for private non-industrial lands to find a parcel size. From the table and graphs on pages 8 and 9 of the land size report, it appears that breaks exist around 20 acres. Possibly, doing a frequency distribution just for private non-industrial lands might reveal a logical cutoff point; particularly, if you do so in conjunction with separating or modifying some of the impacted lands designation criteria. In any event, when we begin reviewing game range maps with your parcel plots we will be employing our overall density standards and looking at lot sizes and geographic distribution. It would be desirable to have reviewed your proposed ordinances by this time so we can discuss density standards more directly.

Application of Goal 5 to Inventory - Levels of Specificality

As we discussed over the phone on October 25, 1983, I had met with Claire Puchy of DLCD on October 13, 1983. Claire indicated that in May and August of this year she had met with Jim Mann and Gary Darnielle to review the February memo to Greg Winterowd. Apparently, the clarifications offered at those meetings may have not all been communicated. In any event, I believe some of the specific issues we discussed are now more clear. Here is what I found out.

1. For streams and wetlands the level of detail in the example of sensitive fish and waterfowl habitat would be acceptable. What is needed is a map of the streams and wetlands and a brief text description (note: the example is attached - although I am not sure where it comes from).

   I also understand from reviewing my May 6, 1983 letter to Jim Mann that the streams may already be mapped. We may have to develop a map on wetlands if the National Wetlands Inventory is not completed for Lane County. A map is needed because of difficulties in textually describing them. Such a map would plot significant known wetlands. Others could be described generically. In any event, the bottom line is use of existing information. Therefore, an update requirement may be needed when the national inventory is completed.

2. On riparian areas a justification is needed specifically addressing the impact area of development alterations. For instance, the description of the resource, its values, conflicts, etc., may be generic, but the impact area must be specific 50 feet, 100 feet, etc. The reason for this is a relationship must exist between the impact and the area regulated.

3. Resource Inventory Generic Identification/Level of Detail

   Goal 5 recognizes some resources are site specific and others are not. Fish and wildlife resources may be in both categories or different aspects of the ESEE analysis may need to be addressed site specifically or generically. Generally, Claire indicated that LCDC has ruled that the more similar the sites, conficts and consequences the more a generic approach can be used. The attached was provided to me by Claire. It comes from LCDC review of Hood River County and provides added guidance.

4. I neglected to discuss with Claire your question on mapping of the twelve general habitat types. After reading this section of the Flora and Fauna Report I do not believe it would be useful to map them. Rather, I think the focus should be on identifiable resources - some of which are included in the twelve and which are addressed as Habitats of Particular Concern. The list I would focus on in terms of ESEE analysis is riparian

vegetation, non-coastal wetlands (since coastal wetlands are done) and streams, sensitive fish and waterfowl, big game range and significant bird sites (e.g., herons, eagles, etc.). I believe all of these are discrete enough to discuss generically or specifically.

Natural Resource Zone

Attached are copies of our initial comments on this zone. In addition, we also commented on it in our May 6, 1983 letter to Jim Mann. You might want to consider these comments and we can discuss it further. I believe the County faces a basic issue in dealing with resources in general. That is, you can have a special code applied as an overlay addressing all fish and wildlife resources or address them specifically in other zones. I guess you could employ a combination as well.

Mike, after looking all this over and reviewing the Flora/Fauna Report, I think it would be a good idea if we met again soon and invited Claire Puchy to assist. In this way, if any confusion remains or questions need to be answered, we can do so before your work proceeds too far. Please contact me to set up a meeting if this is desirable.

Sincerely,

Neal Coenen
Staff Biologist

NC:mc

Enclosures (4)

cc: Hutchison/Greer
Lantz - NW Region
Puchy - DLCD

through tax exemption. Lane County should promote protection of these lands by encouraging land owners to take part in the program.

IB Sites

Besides the identified significant riparian and wetlands areas, many sites exist which cannot presently be identified with adequate information. The attached list of sensitive fish and waterfowl habitat identified by ODFW ~~and those wetlands located on the National Wetland Inventory are recognized as~~ significant resources. The Goal 5 process will be applied to these resource sites when the adequate data becomes available. Until this time, they shall be reviewed and recognized for their significance.

following Maps

Is this sufficient for F&F input?

SENSITIVE FISH AND WATER FOWL HABITAT

MIDDLE FORK WILLAMETTE BASIN

Middle Fork Willamette	Dexter Reservoir to Confluence of Coast and Middle Forks Hills Creek Reservoir to Lookout Point Reservoir Staley Creek to Hills Creek
North Fork of Middle Fork Willamette	East Boundary of 19-65-26 to Middle Fork Willamette
Salmon Creek	Black Creek to Middle Fork Willamette
Salt Creek	East Boundary of 22-55-21 to Middle Fork Willamette
Hills Creek	Warfield Creek to Hills Creek Reservoir
Fall Creek	Fall Creek to Middle Fork Willamette Gold Creek to Fall Creek Reservoir
Little Fall Creek	West Boundary of 18-25-07 to Fall Creek
Winberry Creek	South Fork Winberry Creek to Fall Creek Reservoir

COAST FORK WILLAMETTE BASIN

Coast Fork Willamette	Cottage Grove Reservoir to Confluence of Coast and Middle Fork Willamette
Big River	East Boundary of 23-25-17 to Cottage Grove Reservoir

Row River	Dorena Reservoir to Coast Fork Willamette Layng Creek to Dorena Reservoir
Layng Creek	South Boundary of 21-15-24 to Row River
Brice Creek	South Boundary of 22-25-29 to Row River
Sharps Creek	Clark Creek to Row River
Mosby Creek	Tom Creek to Row River
MAIN STEM WILLAMETTE BASIN	
Springfield Mill Race	Middle Fork Willamette to Main Stem Willamette
Main Stem Willamette	Confluence of Coast and Middle Forks Willamette to County Line
MC KENZIE RIVER BASIN	
McKenzie River	County Line to Main Stem Willamette
Mohawk River	Drury Creek to McKenzie River
Gate Creek	Minney Creek to McKenzie River
Blue River	Blue River Reservoir to McKenzie River County Line to Blue River Reservoir
South Fork McKenzie River	Cougar Reservoir to McKenzie River Roaring River to Cougar Reservoir
West Fork Horse Creek	Horse Creek to McKenzie River
Horse Creek	Separation Creek to McKenzie River
Lost Creek	South Boundary of 16-65-13 to McKenzie River
UMPQUA BASIN	
Steamboat Creek	Horse Heaven Creek to County Line

SIUSLAW RIVER BASIN	
Siuslaw River	Confluence of North and South Forks Siuslaw to Coastal Resource Management Plan (CRMP) Management Units (MU's)
North Fork Siuslaw River	Hawley Creek to Siuslaw River
South Fork Siuslaw River	Tucker Creek to Siuslaw River
Esmond Creek	County Line to Siuslaw River
Wolf Creek	Panther Creek to Siuslaw River
Whitaker Creek	County Line to Siuslaw River
Wildcat Creek	South Line of 18-07-13 to Siuslaw River
Lake Creek	East Boundary of 15-07-15 to Triangle Lake Triangle Lake to Siuslaw River
Deadwood Creek	Panther Creek to Lake Creek
Indian Creek	North Fork Indian Creek to Lake Creek
Sweet Creek	South Boundary of 18-10-33 to CRMP MU's
North Fork Siuslaw	West Boundary of 16-10-30 to CRMP MU's
SILTCOOS BASIN	
Maple Creek	East Boundary of 19-11-12 to CRMP MU's
Fiddle Creek	East Line of 19-11-36 to County Line
Woahink Creek	Woahink Lake to Siltcoos Lake Exclusive of CRMP MU's
COASTAL DRAINAGES	
Tenmile Creek	Wildcat Creek to CRMP MU's
Big Creek	East Boundary of 16-11-21 to CRMP MU's
Cape Creek	East Boundary of 16-11-31 to Pacific Ocean
Sutton Creek	Sutton Lake to Pacific Ocean Exclusive of CRMP MU's Mercer Lake to Sutton Lake Exclusive of CRMP MU's

4. OBPC: "Contrary to the staff response on page 24, there is no discussion in the Columbia Gorge Planning Unit text of the conflict between Bohemia's timber management improvement plans and the selective cutting requirements of the SP Zone."

   Department: The staff report on Hood River County does not say that the County's CG Plan addressed conflicts "between Bohemia's timber mangement improvement plans and the selective cutting requirements of the SP Zone." Rather, it states (on page 24), "The County has identified conflicting uses in the CG Unit, including 'intensive forest harvesting.'"

   The Department does not find that OAR 660-16-000 on Goal 5 requires the County to address conflicts on a parcel-by-parcel basis, unless, of course, the resource site comprises only one or a few parcels. The resource site in this case has an area of 18,900 acres and is divided into many parcels. The County has identified "the uses allowed in broad zoning districts," to use the language of Section 2, OAR 660-16-000. Section 2 of that rule does not require the County to reiterate the conflicts that would occur on each and every parcel in the CG Unit if such conflicts are generally similar. The County identified clearcutting and "intensive forest harvesting" as conflicting uses in the entire CG Unit, including the Bohemia parcels.

5. OBPC: "Contrary to the staff response on page 24, there is no analysis of ESEE consequences of prohibiting clear-cuts on the Bohemia property. The economic consequences of prohibiting forest management operations to Bohemia, Inc., as well as to the County, for sites not visible from Interstate 80 are not documented in the Plan."

   Department: The staff report does not say that there is an "analysis of ESEE consequences of prohibiting clear-cuts on the Bohemia property." Rather, it states that the County "...has evaluated the ESEE consequences of the conflict between protection of the scenic resource and farming, forestry, and development." That evaluation is shown on Attachment "B" to this memorandum. As is discussed above, the County is not obligated to conduct a separate evaluation for each parcel in the CG Unit.

6. OBPC: "The County has not detailed the specifics of how the SP Zone program provisions will be administered and enforced. The Staff Report does not direct Hood River County to comply with this Administrative Rule requirement."

   Department: The administration of Hood River County's Zoning Ordinance is set forth in Articles 1, 4, 60, and 61 of that ordinance. Enforcement is discussed in Article 70. It is unclear to the Department what administrative-rule requirement OBPC refers to.

7. OBPC: The City Westside Plan "allows 'small clear-cuts of 20-25 acres or less.'" The Central Valley Background Report concludes that intensive, sustained yield management will be especially important during the next few years.

OAR 660-16-000(2B) provides one general standard for evaluating ESEE consequences: "A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites." The Department does not understand this to mean that a detailed report such as an environmental impact statement is required. It also does not understand this to mean that a parcel-by-parcel analysis must be undertaken in all cases. The phrase "specific sites" does not mean each parcel within a resource site; rather, it means areas--comprising one, several, or many parcels--that have been identified as Goal 5 resources. If the resources, conflicting uses, and consequences of the conflicts are largely the same for all of the parcels within an identified resource site, a local government need not conduct a separate analysis of each of those parcels.

The Department believes that the level of detail provided in Hood River County's evaluation of ESEE consequences is consistent with the requirements of OAR 660-16-000(2).

MR:gv
7708A/10B

slowly, over time, this has also been broadened in interpretation to apply to "groups" of but separate/individual similar sites as well.

lane county

CPR PROJECT

CHANGE REQUEST

GENERAL

Office Use Only
Control No. _____
Received by: _____
Date: _____

SUBMITTED BY:

Or.Dept.of Fish & Wildlife	3150 E. Main Street	Springfield	97477
(Name-Please Print)	(Mailing Address)	(City)	(Zip Code)

REQUEST: Apply Natural Resource District (NR) zoning to all important wetlands.

Reasons: Protection of wetlands is required by Statewide Goal 5. Wetlands provide vital habitat for wildlife. A county-wide inventory of important wetlands was made by Lane County with our assistance. County maps currently propose NR zoning of coastal wetlands; inland wetlands are proposed mainly as Forest Land or Farm Use. Therefore, a confusing mix of zones exists for a single habitat type. The county's NR District description (11-19-82 draft) states that this district "is not intended to be applied to other types of resource land, such as agricultural land and forest land."

DEPARTMENT COMMENTS:

PLANNING COMMISSION ACTION: ☐ APPROVED ☐ DENIED DATE _____

REMARKS:

BOARD OF COMMISSIONERS ACTION: ☐ APPROVED ☐ DENIED DATE _____

REMARKS:

Lane County will not be able to notify you of the outcome of your request. Accordingly it will be your responsibility to follow the proceedings to learn what action was taken thereon. If you have any questions about this request please phone 687-4186 and ask to speak to someone on the CPR PROJECT TEAM.

Return completed forms to: CPR PROJECT, Department of Planning and Community Development
125 East 8th Avenue
Eugene, OR 97401

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

RECEIVED
OCT 11 1983

October 7, 1983

Mr. Mike Copely
Lane County Planning Department
Public Service Building
125 E. 8th Street
Eugene, OR 97410

Dear Mike:

This letter follows our meeting of September 28, 1983 to discuss the County's Goal 5 planning for fish, wildlife and related resources. My purpose is to outline the different work tasks ODFW agreed to undertake to assist you in completing the plans Goal 5 element. ODFW personnel will do the following:

- Neal Coenen
  (1) Review county forest land designation criteria
  (2) Work with Jim Greer in adjusting game range
  (3) Check with Claire Puchy on ESEE consequences, and level of specificity needed on streams and wetlands
  (4) Examine NR zone overlay

- Jim Huchison
  (1) To determine if USFWS has completed its wetland inventory in Lane County and provide appropriate information
  (2) Provide indication of preferred stream setbacks by zone
  (3) Provide performance standards and suggest review procedures to meet riparian protection needs
  (4) Review the floodplain ordinance to identify concerns and possible improvements

- Jim Greer
  (1) To work in county offices to revise game range boundaries as appropriate when county makes maps available
  (2) Update Heron and Eagle inventory

Northwest

BIG GAME RANGES - COASTAL AREAS

Definitions

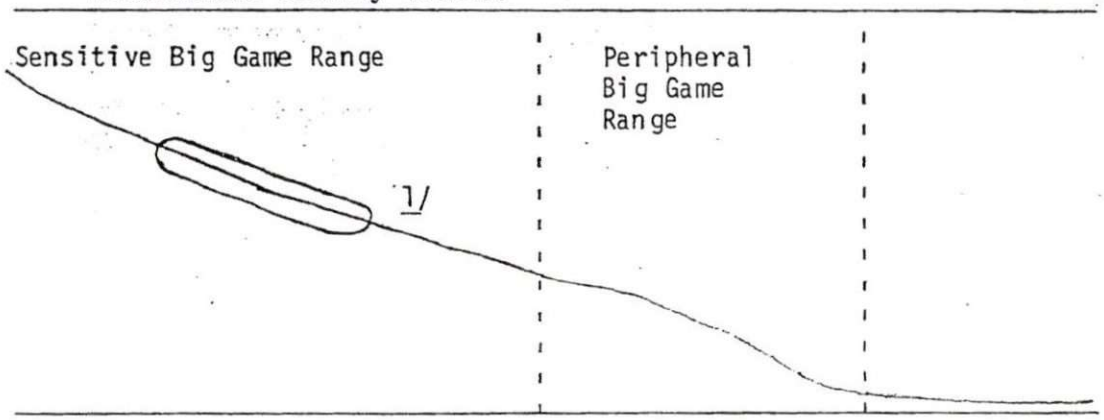
Sensitive Big Game Range - That portion of the county which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.

Peripheral Big Game Range - Foothill areas of the county generally located between commercial forest lands and productive agricultural lands. These lands support substantial big game populations and serve as a wintering area for animals from sensitive range in severe winters. However, conflicts exist between big game and other uses. These conflicts limit management options and recreational opportunities.

Note: The Peripheral Big Game Ranges were of equally high value as Sensitive Big Game Range before development.

Development Within Big Game Ranges

1. Sensitive Elk Range: 1:80 acres
2. Peripheral Elk Range: 1:40 acres
3. Sensitive Deer Range: Prefer 1:80 acres, acceptable 1:40 acres with cluster development.
4. Peripheral Deer Range: Prefer 1:40 acres, acceptable 1:20 acres with cluster development.
   *The plans should not allow for subdivisions or partitioning below the recommended density levels.



1/ Lands Already developed to a density which precludes big game usage should not be included within big game range maps.

Mike, I believe this is fairly complete based on my notes. I would like you to let me know if anything is missing. Finally, I will stay in touch with Hutch and Greer as things move along. For a start, I hope to have items 1, 3 and 4 that I am responsible for completed by October 21, 1983.

Sincerely,

Neal Coenen

Neal Coenen
Program Leader
Land and Waterway Use
Environmental Management Section

NLC:kes

cc: Lantz
Hutchison/Greer
Winterowd/Puchy

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife

506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

229-5551

RECEIVED
AUG 15 1983
BUILDING AND
SANITATION DIVISION
LANE COUNTY

August 11, 1983

Mr. Mike Copely
Lane County Planning Department
Public Service Building
125 E. 8th Street
Eugene, OR 97410

Dear Mike:

This letter follows our discussion on August 8, 1983 on the Big Game Range policies of the Department. For your information I've attached material on this subject. Similar material was provided to Roy Burns and Jim Mann several months ago. The density and lot size components of the policy should be clear. The clustering concept can be worked around in a number of ways. Basically, our view is that as the lot size decreases (and density increases) the impact increases and needs to be mitigated. This can be done through ordinance provisions requiring residences: to be as close as possible to each other; located adjacent to existing roads and minimizing residential serving roads. There are other ways of mitigating as well and could depend on specific conditions and resource characteristics. When densities exceed a certain level we regard management opportunities as lost.

10 +20

Regarding the approach you have considered (e.g., calculating future densities to identify and allocate capacities) I believe a more simple and less time consuming approach could be effective for the County in protection of Big Game range. Specifically, existing residences and unbuilt lots of various sizes could be plotted. These data could then be compared to the distribution of range types we have identified. If agreement can be reached on both areas and type of zone to be applied to range types conflicts could be minimized and implementation simplified. As we disscussed, a meeting after you have generated your data would be advisable to review these results.

I will discuss the above with Jim Greer, our District Wildlife Biologist, and alert him to the need for future meetings on this subject. It probably would be desirable as well to consider the need for discussion and review of the status of your work on other Goal 5 fish and wildlife resources.

Finally, if you have questions, contact Jim Hutchison or Jim Greer in our Springfield office.

Sincerely,

Neal L. Coenen

Neal L. Coenen
Program Leader
Land and Waterway Use
Environmental Management Section

NLC:tle
attachment

cc: Hutchison/Greer

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

MAY 09 1983
LANE COUNTY

May 6, 1983

Mr. Jim Mann
Department of Planning
and Community Development
125 East 8th Avenue
Eugene, OR 97401

Dear Jim:

First, let me apologize for taking so long to respond to the information requests that came out of our meeting in mid-February. I hope that the delay has not created any difficult problems for you.

In this letter, I do two things. First, as I recall, we were each to do a summary of our respective notes and distribute them. Second, I was to pull together information on riparian vegetation and game range policies, standards, etc. that we have seen in other plans.

Summary

1. ODFW would be opposed to the zone change east of the City of Florence and South of the highway.

2. ODFW understood need for and would assist in added environmental assessment for several sites around Eugene.

3. ODFW indicated the NR zone should be applied to inland areas as well as, or, preferably, developed as an overlay to other zones, such as EFU, F-1, 2 and 3. These zones also should expressly mention that one of their purposes is to protect, maintain or provide for fish and wildlife habitats.

4. ODFW recognized the County's intention of introducing the 100-foot setback on Class I streams into the EFU zone as it exists in the F zones. However, ODFW was concerned that the setback did not clearly set the level of protection afforded riparian vegetation and that fish and wildlife values were reasons for its application in addition to geologic hazards.

5. The County asked if ODFW had mapped Class I streams. ODFW indicated it had done so in the past and if those maps were not available, it would not be difficult to do it again.

6. ODFW was interested in having the plan current and include wetlands now rather than wait for the national wetland inventory. With regard to wetlands, concern was expressed about how effective the NR zone could be in these areas.

7. ODFW had several concerns about dwelling densities in major and peripheral big game range areas and how both dwellings and densities were addressed by the various F zones. The County indicated willingness to re-examine the zone provisions and placement of the zones compared to distribution of the range types. The County's computer capabilities would assist this. A policy issue was discussed involving factoring the publicly-owned forest land base into calculation of overall dwelling densities. ODFW indicated it did not support this as it was inconsistent with the Department's purpose for identifying overall densities. This is to say that the density policy is only seen as applicable where it is possible to develop housing. Accordingly, since public forest land is not available for this use, it should not be included in the base. ODFW agreed to provide a copy of its game range policy on dwelling densities.

8. ODFW indicated a need for having a complete Goal 5 element for wildlife, including ESEE consequences, ect.

Materials

The following are attached:

1. Tualatin River Riparian Setback - Sections 30.060 - 30.100 may provide good ideas for specific standards.

2. DLCD Interoffice Memo, RE: Clatsop County Watershed Overlay Zone - This overlay is specific in some ways and may be useful in developing zone approach and standards.

3. Goal 5 element from Douglas County Plan - This material addresses Riparian Habitat, Special Bird Habitat and Game Range. It also includes ESEE consequences analysis. It is acknowledged although we did not agree to the 50-foot riparian buffer as it was regarded as too small. The County's approach on wetlands was similar to that on riparian vegetation. I want to note, due to industry pressure and misinformation, the special bird overlay was unadopted by the County the day before LCDC acknowledgement. In part, this was because of the belief that the LCDC Goal 5/FPA analysis would provide a way to protect bird sites. We disagreed then and continue to do so now. The FPA may yet be found adequate where it regulates forest operations. However, many uses not considered forest operations could conflict with bird sites. Accordingly, counties, in our view, must still regulate such uses to meet Goal 5. The approach outlined by the County had our support and could have been acknowledged.

4. Letter from ODFW to Aldie Howard - Benton County. This letter discusses a number of issues and ODFW positions related to game range zoning. A copy of the Department's policy is also included.

5. Letter from ODFW to Rainman Bartt regarding Tillamook County Goal 5 element and forest zoning. The important point here is how we view clustering. That is, clustering is a siting standard to minimize loss of resource. It is applied after approval standards are met (eg., residences are in conjunction with a forest use).

If you have questions or if a meeting is needed, please contact Jim Hutchison and myself.

Sincerely,

Neal Coenen

Neal Coenen
Land Use Planner

Enclosures

CC: Hutchison w/attachments
McLeod w/o attachments
Lantz w/o "

INTEROFFICE MEMO

January 20, 1983

TO: Bob Cortright

FROM: Claire Puchy

SUBJECT: CLATSOP COUNTY WATERSHED OVERLAY ZONE

Per our phone conversation the other day, I have reviewed Clatsop County's Watershed Protection Overlay Zone, and in my opinion, it not only complies with Goal 5, but also does not violate the 3008 amendment to the Forest Practices Rules. More specifically:

Goal 5

1. The overlay is essentially a (3C) approach under OAR 660-16-000. Conflicting uses are limited to a desired degree to achieve a certain level of resource protection. There may be other (3C) approaches which would work equally well.

2. Per Section (3C) of OAR 660-16-000, the ordinance clearly specifies what uses are permitted outright and what uses are allowed conditionally and under what conditions. The standards for conditional uses are clear and objective.

3008

1. Based on existing AG opinions (Nos. 7910 and 7894), the County is within its rights to "regulate" harvest activities, inasmuch as the County clearly states that the purpose and primary use of the overlay zone is watershed protection, and not timber harvest activities. (There is, however, a question that is currently being addressed by the AG regarding the use of overlay zones and 3008. We haven't seen a response as yet.)

2. There is a question of whether counties may regulate chemical applications, as this overlay does, and there is an AG opinion (No. 7924) which says a county cannot. However, the basis for that conclusion was not so much 3008 as it was other state and federal statutes.

In short, I believe this overlay zone is well-constructed, well-thought-out and clearly satisfies Section (3C) of the Goal 5 Administrative Rule. The County should, however, be reminded that it will be expected to submit its findings (including an identification of conflicting uses and ESEE consequences analysis) which justify this overlay. The County should consult its own legal counsel as to the 3008 issue, and as to whether it violates other state and federal statutes. Clatsop County should be complimented for its work.

CP:af
2636B/6B

cc: Jim Ross
Craig Greenleaf
Jim Knight

Clatsop Co.

WATERSHED PROTECTION OVERLAY ZONE

.010 Intent. The purpose of the Watershed Overlay Zone is to provide for implementation of a working relationship among federal and state agencies, land owners, local governments and special districts which have programs, land or responsibilities within domestic watershed areas. It is intended that watershed area zoning be applied only to land areas from which the quality of surface runoff affects downstream use by a state-licensed water system. Furthermore, it is intended that such zoning shall be applied by the county only at the request of special districts or cities which demonstrate a need, desire and willingness to cooperate in planning for land use activities within their own community watersheds. The overall purpose of the community watershed zoning classification is two-fold: first, to provide a means for notification of affected local jurisdictions concerning significant activities within watershed areas; and, second, to assure that only those commercial management activities are permitted which are consistent with the adequate protection of water quality necessary for individual licensed water systems. Full commercial use of all watershed overlay zones is anticipated; on the other hand, land uses should not endanger the health of community residents, nor should watershed land uses inadvertantly necessitate redevelopment of community water systems.

.020 Permitted Principal Uses. In a watershed overlay zone area the following uses and their accessory uses are permitted outright, where consistent with state and federal requirements:

1. Stream bank and stream quality enhancement;

2. Road maintenance of existing road surfaces which does not contribute to hydrologic problems in watershed tributaries;

3. Tree planting,

4. Pruning of trees;

5. Pre-commercial thinning outside a buffer area of one chain (66 feet) in width on each side of streams. Such pre-commercial thinning shall not deplete standing timber below normal stocking levels and not exceed the removal of greater than one-half (½) of standing conifer per acre.

6. Selective logging by lateral skyline yarding or helicopter outside buffer area of one chain (66 feet) in width on each side of streams; such selective logging on at least a seven year cycle, each cycle designed to remove not more than one-third of the year's eligible standing timber supply per acre.

7. Low intensity recreational activity, not including developed picnic or camping facilities.

.030 Conditional Uses. The following uses are permitted in the watershed overlay zone area as conditional uses if the county Planning Commission determines, after a public hearing, that the use complies with applicable standards in Section .040:

1. Use of Environmental Protection Agency approved herbicides, pesticides and other man-made chemicals, which have been approved by independent scientific research to be non-carcinogenic, non-mutagenic and non-tetragenic used in the control of brush for forest management;

2. Development and replacement of roads, bridges, culverts and utility rights of way;

3. Use of natural-source fertilizers which are free of active pathogenic bacteria;

4. Logging of forest not specifically permitted outright in section .020;

5. Construction of such water impoundments, treatment facilities and distribution lines as can be arranged for with the land owner;

6. Mining, quarrying or other extractive activity requiring State Department of Geology and Mineral Industry permit;

7. Livestock use under noncontinuous grazing patterns.

.040 Use Standards. The following standards when applicable shall apply within the watershed overlay zone area:

1. Chemical applications. Herbicides, pesticides, fertilizers and other artificial chemical applications shall be applied by hand application. No chemical applications shall be permitted within three chains (198 feet) of each side of streams with perennial flow, and no chemical applications shall be permitted within one chain width (66 feet) of streams with intermittent flows.

2. Use of Stream Buffers. Logs shall not be skidded across the stream, and shall not be skidded across the ground within 50 feet on each side of streams. Man-caused woody debris must not be allowed to enter the stream channel. Removal of stream debris and streambank vegetation, such as vegetation providing shade, shall be done only in cases where excessive erosion is occurring as a result of woody material. Use of equimpent in streams shall be allowed only for the installation of crossing structures. Logging equipment shall be kept out of streams; roads shall be located, constructed and maintained so that sedimentation and accumulation of woody debris will not take place in stream channels. Specific plans for vegetation removal within 50 feet on each side of streams shall be prepared at developer's expense for public review, showing: stream grade; contour at a scale of 20 foot intervals; or more detailed. Such plans shall also indicate which trees are to be removed and which are to be retained, as well as any changes in existing grade greater than 10 percent.

3. Clearcut and Other Intensive Logging. All logging activities not permitted outright, including clearcut operations and selective cutting to remove in excess of one-third harvestable timber, shall be designed to prevent erosion. No conditionally permitted activities will be allowed between November 1 and March 31. Special installations (e.g. sediment traps, settlement ponds, etc.) will be utilized to keep sediment from reaching streams.

Monitoring of stream turbidity levels by the DEQ prior to, during and following logging activities may be required by the county when appropriate to determine stream changes. Results shall be reported to the county, to the affected city or special district, and to the State Health Department. The county may require that monitoring shall be conducted at developer's expense at regular intervals for up to one year or more.

4. Mineral, Quarrying and Aggregate Extraction. Mining shall be conducted in such a manner as to eliminate, as far as practical, any water quality impacts. Leaching of substances into ground and surface waters shall be prevented, and public health and safety shall be protected. All mining and other extractive activities shall demonstrate a major burden of proof in showing why other areas not involving domestic watershed areas are not available for meeting public need for mining material.

5. Notification and Local Public Involvement. All conditional uses outlined in Section .030 shall allow for public review. Applicants for conditional uses will make themselves available for other forms of local communications and cooperation, including: a) site investigations or field trips for the benefit of interested parties such as the County Planning Commission, the City Planning Commission, County Board of Commissioners, City Council members, or special district board members; b) public information meetings and/or public hearings; c) other public meetings as appropriate. Conditional uses provide for local approval, denial or approval with conditions.

6. State and Federal Conditions. The Oregon Forest Practices Act, Department of Environmental Quality and other state and federal rules shall apply to domestic watershed areas, and provisions of such rules which are more stringent than the preceding local ordinance provision shall take precedance in determining land management.

LCDC Goal 5 mandates the conservation and protection of a variety of natural resources including specifically "Water areas, wetlands, watersheds and groundwater resources." It is incumbent upon the County of Clatsop to provide policies to protect this resource. The Southwest Community Plan, rural policy #3, provides that "all watershed areas need to be defined, and development in the surrounding vicinity shall avoid degradation of water quality."

The intent of this zone is set out in .010 of Exhibit A. Identification and inventory of watershed areas shall be on a case by case basis after adoption of the zone.

Care has been taken in the text of the zone to allow for other uses in the watershed area recognizing that watershed protection is the primary use. We do not believe that the Forest Practices Act provides adequate standards for protection of watersheds in forested areas. The proposed ordinance provided standards in excess of the minimum standards of the Forest Practices Act, but in all other respects the ordinance is consistent with LCDC Goal 4 and the purposes of the Forest Practices Act.

30.000 TUALATIN RIVER SETBACK

30.010 PURPOSE

The purpose of this overlay zone is to maintain the integrity of the Tualatin River by establishing standards which will minimize erosion, promote bank stability, maintain and enhance water quality, and fish and wildlife habitats, and preserve the scenic quality and recreation potential, assure that streams and drainways are protected for their drainage and implement the comprehensive plan.

30.020 APPLICABILITY & DEFINITIONS

A. This zone is an overlay zone.

B. All uses permitted under the provisions of the underlying base zone are allowed in the manner prescribed by the base zone subject to an approved Tualatin Setback Permit under the provisions of this chapter.

C. Development as used in this chapter includes any change of use or intensification of the use of land or water or any changes to the existing topography or vegetation except the activities listed in section 30.030 are exempt from the requirements of this chapter.

D. This overlay zone applies to all development within one hundred fifty feet of the mean low water line of the Tualatin River.

30.030 EXEMPTIONS

The following development activities do not require approval under the provisions of this chapter:

A. Customary dredging and channel maintenance conducted under permit from the State of Oregon.

B. Seasonal increases in gravel operations under permit from the State of Oregon.

C. Scenic easements acquired under ORS 390.332 and their maintenance as authorized by that statute and ORS 390.368.

D. Addition or modification by public utilities for existing utility lines, wires, fixtures, equipment, circuits, appliances and conductors.

E. Flood emergency procedures and the maintenance and repair of existing flood control facilities.

F. Signs, markers, ads, etc., placed by a public agency to serve the public.

G. Residential accessory development (excluding structures) such as lawns, gardens, and play areas.

H. Storage of equipment or material associated with uses permitted, providing that the storage complies with applicable provisions of this chapter.

I. Minor repairs or alterations to an existing structure for which no building permit is required.

J. A change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated.

K. The completion of a structure for which a valid permit has been issued as of the effective date of this chapter.

L. Landscaping.

M. Construction of driveways.

N. Maintenance and repair, usual and necessary for the continuance of an existing use.

O. Reasonable emergency procedures necessary for the safety or protection of property.

30.040 ADMINISTRATION & APPROVAL PROCESS

A. An application for a Tualatin River Setback for a use permitted outright in the underlying base zone and not subject to Development Review approval shall be issued by the Planning Director without notice based on the standards in section 30.0[illegible]. The decision of the director may be appealed as provided by section 02.240B.

B. An application for a use permitted outright, but subject to Development Review approval under chapter 55 shall be decided by the Development Review Board in accordance with the provisions of 02.060C and the standards in section 30.0[illegible]. The board shall also decide the application subject to the Development Review provisions of this code in the manner set forth in 02.060C. The Development Review application and Tu[illegible]

River Setback Permit application shall be a separate decision, but may be heard concurrently as provided by 02.070. A petition for review by the council may be filed as provided by 02.240B.

C. An application for a Tualatin River Setback permit for a conditional use allowed in the underlying base zone shall be decided by the Planning Commission in accordance with the standards in section 30.060 as a part of the conditional use approval under chapter 60.060 and as set forth in 02.060B. Notwithstanding the provisions of chapter 2 and chapter 55, the Planning Commission shall also decide a Development Review application under the provisions of Chapter 55 in conjunction with a Tualatin River Setback Permit application. The application for the conditional use, the Tualatin River Setback Permit, and Development Review may be heard concurrently as provided by 02.070, however separate actions shall be taken on each application. A petition for review by the council may be filed as provided by 02.240.B.

30.050 TIME LIMIT ON APPROVAL

Approval of a Tualatin River Setback Permit shall be void if:

A. The Conditional Use Permit becomes void under 60.040; or

B. The site plan on which the approval is based is modified. Any change in the plan or conditions of approval shall required a new application and hearing pursuant to the provisions setforth in this chapter and 02.120B.

30.060 APPROVAL STANDARDS

A permit shall be issued for a Tualatin River Setback Permit upon written findings that:

A. The setback provisions of section 30.070 are met;

B. The design standards of section 30.070 are met;

C. A buffer or filter strip of existing vegetation will be preserved in accordance with the standards of section 30.090A; or the buffer will be adequate based on the standards in 30.090B or the existing vegetation will be replaced by comparable vegetation as provided by 30.090 (c) and

D. There will be no grading or tree cutting in the buffer or filter strip except as may be permitted by 30.100.

30.070 SETBACK REQUIREMENT & EXCEPTIONS

A. All structures and nonwater oriented accessory structures shall be setback ___ feet from mean low water line of the Tualatin River.

B. The following exceptions shall apply:

1. Residential lots of record which have a lot depth which precludes compliance with the setback standards of this section, shall be exempt from the strict application of these standards. Such structures shall be setback the maximum practicable distance.

2. Water dependent commercial and industrial uses and such uses as private boat docks, marinas, or boat ramps shall be exempt from the setback requirements.

3. Additions to existing structures which are located closer than the setback requirements of this section shall be permitted.

4. Public uses, such as bridges for public roads, shall be allowed within the setbacks stated in this section provided that adverse impacts are mitigated.

30.080 DESIGN STANDARDS FOR THE TUALATIN RIVER

The following design standards apply to the area within 150 feet from the mean low water line of the Tualatin River:

A. All structures which are painted or will be painted shall be painted muted earth tones or white.

B. Parking and storage areas shall be screened from view by appropriate vegetative buffers.

30.090 VEGETATIVE PRESERVATION REQUIREMENTS AND EXCEPTIONS

A. A buffer or filter strip of existing vegetation shall be preserved along the Tualatin River for a width of ___ feet along the bank

B. Exceptions to the width of the buffer or filter area may be granted as part of the approval process based on the following standards:

1. The character and size of the proposed development and its potential for adverse impacts on the river is minimal and therefore the buffer area may be reduced;

2. The topography of the area will act as a buffer; or

3. The type and density of the existing vegetation is such that the width of the buffer may be reduced; and

4. The type and stability of the soils will preclude erosion.

C. The existing vegetation may be removed provided it is replaced by comparable vegetation.

30.100 TREE CUTTING & GRADING IN BUFFER PROHIBITED

A. Three cutting and grading shall be prohibited within the buffer or filter strip, with the following exceptions:

1. Diseased trees or trees in danger of falling may be removed.

2. Tree cutting or grading may be permitted in conjunction with those uses listed in 30.070 (S) to the extent necessary to accomodate those uses.

B. Commercial forest activities and harvesting practices shall provide for vegetative buffers and the intended shading, soil stabilizing and water filtering effects as required by the Oregon Forest Practices Act and administered by the State Department of Forestry, but need not otherwise comply with the provisions of this section.

30.110 THE APPLICATION

A. An application for a Tualatin River Setback Permit shall be initiated by the property owner or the owner's authorized agent.

B. A prerequisite to the filing of an application is a preapplication conference at which time the director shall explain the requirements and provide the appropriate forms as provided in 02.030B.

C. An application for a Tualatin River Setback Permit shall include fifteen copies of each of the following except for each drawing submitted, there shall be eight copies at the original scale and seven copies reduced to a paper size not greater than eleven inches by seventeen inches (11 x 17):

1. The completed application forms.

2. A site plan (30.130)

3. A grading plan (30.140).

4. Architectural drawings (30.150)

5. A landscape plan. (30.160)

D. The applicant shall pay the requisite fees.

30.120 ADDITIONAL INFORMATION REQUIRED & WAIVER OF REQUIREMENTS

A. The Planning Director may require additional information as part of the application subject to the provisions of section 02.035A.

B. The Planning Director may waive any requirement for the application subject to the provisions of section 02.035 (B) & (C).

30.130 SITE PLAN.

A. All plot plans and maps shall include the name, address and telephone number of the applicant, the scale of the plot plan, a north arrow, and a vicinity map.

B. The applicant shall submit a plot plan or an aerial photograph to an appropriate scale (in order of preference; 1" = 10' to 1" = 30') which contain the following information:

1. The subdivision name, block and lot number or the section, township, range and tax lot number.
2. The parcel boundaries, dimensions and gross area.
3. The location of the required vegetative buffer area (30.090), building setback line (30.070) and line showing the boundary of this overlay zone (30.020).
4. The location, dimensions and setback distances, within the boundary of this overlay zone of the following:
   a. Existing structures, improvements, utility facilities and drainage ways on adjoining properties.
   b. Existing structures, improvements, utility facilities and drainageways to remain on the site.
   c. Proposed structures or changes to existing structures, improvements, utility facilities and drainage ways on the site.

5. The proposed and existing location and dimensions within the boundary of this overlay zone applies to the following:
   a. The entrances and exists to the site.
   b. The parking and circulation areas.
   c. Loading and service areas for waste disposal, loading and delivery.
   d. Pedestrian and bicycle circulation areas.
   e. On site outdoor recreation spaces and common areas.
   f. Above ground utilities.
6. The type, location, size, height, typical design, material, color and method of illumination of outdoor lighting.

30.140 A GRADING PLAN

The grading plan shall be at the same scale as the site plan (30.130) and show the following:

A. The location and extent to which grading will take place indicating general contour lines, slope ratios and slope stabilization proposals.

B. The location of the proposed drainage ways.

30.150 ARCHITECTURAL SKETCHES

The architectural sketches to be submitted shall show the exterior building materials including type, color and texture for development abutting the Tualatin River.

30.160 A LANDSCAPE PLAN

The landscape plan for properties abutting the Tualatin River shall be prepared on the site plan (30.130) and show the following:

A. The location of existing trees and vegetation to be removed and to be retained.

B. The location and design of landscaped areas.

C. The varities and sizes of trees and materials to be planted.

D. The location and height of fences and other buffering or screening materials.

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

April 28, 1983

Mr. Mark Barnes
Clatsop County Planning Dept.
County Courthouse
Astoria, OR 97103

Dear Mark:

We are concerned about the potential for too many reviews in the AF-20 zone. This could take a lot of time. If amounts of peripheral range zoned AF-20 are small, the district biologist may want to avoid reviews entirely. We do however, want to see application of siting standards. Similarly, but at the other end of the scale, we may want to review all of the F-80 requests because these would most likely be in major range and few in number. On F-38, the proposed procedure is probably acceptable as this zone most likely contains major and peripheral range dominated by major.

We are concerned over the deletion of clustering standards for siting dwellings in all zones proposed. While it may not be as critical in the F-80 because low densities would be maintained,the concern in the AF-20 and F-38 remains. Your letter stating that "clustered dwellings do not appear to be valid in forest uses" applies a different meaning to "clustering" than we have used in the context of game range. By clustering we mean minimizing the impact of a forest dwelling on the resource. We do not mean to imply that a non-forest dwelling, a PUD, etc., should be allowed if clustered. Clustering to our Department in the context of game range means keeping as much habitat alteration on a parcel to a minimum and among parcels keeping development as close together as possible. This retains the highest percentage of an individual parcel or number of parcels in resource use as effective habitat.

To resolve the above concerns I have revised the proposal. By copy of this letter to Doug Taylor I am asking for his comment and concurrence. I have also marked up other parts of the text of these zones on minor points.

Mark, I will contact Doug shortly to discuss the above and then contact you. I apologize for taking so long to review this.

Sincerely,

Neal L Coenen

Neal L. Coenen
Program Leader
Land and Waterway Use
Environmental Management Section

NLC:kes

cc: Lantz - w/o attachments
Taylor - with attachments

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife

506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

May 6, 1983

Mr. Rainmar Bartl
Clatsop - Tillamook Intergovernmental Council
Box 488
Cannon Beach, OR 97110

Dear Rainmar:

This letter comments on your Goal 5 report. On the whole I think it's very good and reflects a lot of our concerns expressed previously in the Clatsop County report. Below, I've numbered my comments corresponding to the attached pages. At the end of the Goal 5 review I also make comments on the SFW-20 and F zones based on recent proposals I've received from Doug Taylor.

1. See later comments on SFW-20.

2. Based on the SFW-20 siting criteria you could drop "clustered and" in this sentence. My concern still is with clustering but, per my comments on Clatsop County, we have not viewed this in the traditional way. Your presentation [at 3.006 (4) (g)] of the concept is actually better because it relates clustering of a number of structures. This still allows the siting of structures on different parcels close together to maintain the largest area of habitat.

3. I'm not sure what you were getting at here but suggested a few zones where there might be conflict.

4. Hunted and Nongame seem contradictory.

5. What is the source of these restrictions - the FPA? Are these the only restrictions?

6. Assuming LCDC eventually finishes the Goal 5/FPA analysis and counties may rely on the FPA, I believe a similar process will also be required to control those actions that could conflict with bird sites but which are not controlled by the FPA (e.g. road building, land clearing for structures, recreational development and dwellings.)

7. A question in my mind here is do merchantable trees also qualify as agricultural crops? If so, you are leaving "merchantable" out of riparian. Under existing the FPA merchantable trees have been recognized as being needed in the buffer to provide shading where sufficient non-merchantable trees do not exist.

8. Your riparian material is very good. I suggest, however, that you add wildlife values as being included. As it stands now the focus is on erosion and water quality.

9. I like your wetland work. Similar to Clatsop County, it is among the most forthright work I've seen in a county. One question, however, is what sites were not included in the 1,044 acres and why per LCDC's Goal 5 rule. Unless Doug has specific concerns, my concern would be for you to have a ready answer for LCDC.

10. My basic concern is that all dwellings be sited using the same criteria for siting because the impacts are not different. See my earlier comments on clustering.

11. A little confusion could result from this language. The real distinction is or should be jurisdictional, not geographical. If actions are not controlled by the FPA the county should control them. You may have a point, however, in that some geographical limits exist on the FPA (Class II stream definition).

SFW-20 and F Zones

Doug Taylor sent me a draft of the SFW-20 and F zone towards the end of March. The conditional use siting language v/v big game is the same as your Goal 5 material. This draft, however, did not include the review provision for the Director to control positioning to minimize impacts on big game. As indicated above, both resource-related and non-related dwellings should, in our view, be subject to the same siting standards. Approvability as an overall issue is difficult to discuss here because of unclear LCDC policy. Also, the purposes and permitted uses sections do not recognize fish and wildlife values or management. Language similar to the Clatsop code or the Tillamook County F zone could do this. Furthermore, we would like to identify how boat ramps would be allowed. Perhaps, as in the F zone, these should be a conditional use falling under (3) (d) other recreational uses that require...structures.

The F zone seems very satisfactory given the minimum lot size which would, for the most part, be consistent with our overall density policies for deer. Larger areas are required for elk, however, and this zone may or may not achieve it.

One problem exists overall in both zones and that is the siting language applied to the conditional use dwellings addresses both peripheral and major range. Our policies anticipated that zoning would be applied, in part, on the basis of the type of range present since range type was determined on existing levels of buildout parcelization, etc. The wording in the code implies the SFW-20 is applied to major range and F is applied to peripheral. The Goal 5 write-up says peripheral is predominantly SFW-20. I believe Doug can assure the Department of this as I have no feel for it without a detailed comparison of game and zone maps. However, a significant size difference exists between the F (80) and SFW-20 (20) minimum lot sizes. This range does not address the 40-acre overall dwelling density aspects of our policy. I'm not arguing that it should necessarily...but I am looking for assurance that SFW-20 is not being applied to lands that might otherwise be appropriately zoned for a larger size.

Rainmar, after you've looked this over perhaps you, Doug, and I should get together briefly to discuss any questions.

Sincerely,

Neal Coenen

Neal Coenen
Program Leader
Land and Waterway Use
Environmental Management Section

NC:kb

enc.

cc Hantz w/o att.
Taylor w att.

BO STAFF REPORT 9-7-23
ATTACHMENT 4.34

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife

506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

March 30, 1983

Mr. Aldie Howard, Director
Benton County Planning Department
180 N.W. Fifth Street
Corvallis, Oregon 97330

Dear Mr. Howard:

This letter follows-up our discussions of 3/21/83 on the County's FC zone. At that meeting we discussed a variety of problems with the code in the context of managing big game resources and conflicts. You requested that we respond to the problems we perceive with specific proposals for their resolution. This letter is designed to meet your request. In doing so we first cite a problem and then provide a proposal for its resolution.

Problem No. 1. Two aspects are involved in dealing with residences in the FC zone. First are standards relating to approval of a dwelling. Second are standards for siting or locating the dwelling on a parcel. The most fundamental conflict with the FC code is its internal inconsistency. This is to say that the purpose statement is to retain forest land for forest uses. Under Permitted Uses (III.03) the code contradicts itself by failing: (1) to restrict single-family residences to those needed for a forest use; and, (2) under Conditional Uses (III.04), by failing to appropriately limit non-resource related dwellings.

Solution No. 1. Addition of the following language to III.03(5) and (6) would move in the right direction to resolve the problem. Add, after the phrase "single-family residence," needed for and in conjunction with or accessory to a commercial forest use. This added language, in our view, would substantially resolve the codes existing internal inconsistency by allowing single-family dwellings only for the purposes of commercial forest use. Commercial forest use is generally consistent with management of big game resources.

This solution only resolves in part the issue of approval standards. We deal with dwelling densities appropriate to big game resources and conditional uses below.

Problem No. 2. Conditional Use provisions III.04(8) allows non-forest use single-family residences, if conditions are met, without restriction on lot size or overall density.

Solution No. 2. We suggest adding the following to conditions 8 a-e...f. that the parcel size be the minimum necessary to support the proposed use; and, g. it be shown that the parcel is of a size not capable of supporting a single family residence in conjunction with a commercial forest use as we suggest be required by III.03.

Problem No. 3. Regarding covenants running with the land we have consistently recommended such covenants recognize the existence of potential big game use.

Solution No. 3. Wherever covenants are referred to, in plan policy and the FC zone, we recommend inserting the phrase "big game use". This would disclose to all owners the existence of possible big game use in resource zones.

Problem No. 4. The issue of dwelling densities appropriate to big game resources is inadequately addressed by the code, primarily in parts III.05 and III.06. The Department's policy on big game range dwelling densities is attached for your use and addresses both approval and siting standards. The basic approval standard involves our preferred overall dwelling densities (e.g., major or sensitive range - one dwelling per 80 acres; and, peripheral range - one dwelling per 40 acres). Siting standards come into play at higher densities than those preferred (e.g., major or sensitive range - one dwelling per 40 acres with clustering).

The general concept of "clustering" means all of the following as applicable to the situation:

1. Locating dwellings and structures near each other and existing roads;

2. Locating dwellings and structures to avoid habitat conflicts and utilize least valuable habitat areas; and

3. Minimize residence-serving road development to that necessary to support the residential use.

The above standards are intended to mitigate the conflicts of dwellings with habitat by reducing to the lowest possible level the extent of habitat area affected. The benefits are two-fold; the maximum amount of habitat base and forest resource are retained and both have economic value.

The basic problem with the code in general and sections III.05 and .06 in particular is that the concept of overall dwelling densities does not expressly respond to the Department's policy which addressed two types of game range. Also, the provision for the 40 acre minimum size lot to be created is diluted by the provision for allowing creation of smaller lots if conditional use standards are met and by not having mandatory and clear siting standards. The conditional use standards also fail to respond to our dwelling density recommendations of type of range present.

Solution No. 4. We recognize that III.06 refers to maintaining overall densities compatible with habitat management. However, as noted the code does not carry out the concept. In order to do so several options exist that involve different approaches.

One could be to rework the permitted use and lot area requirements sections to allow single-family dwellings in conjunction with (etc.) forest uses on minimum lot sizes of 80 acres, or 40 acres with clustering standards in major range areas; and, 40 acre, or 20 acres with clustering in peripheral range areas. If this approach were used the clustering standards outlined earlier could be placed in the siting and construction standards section; although III.06.4. would need revision to provide lot line setbacks capable of allowing setbacks needed to achieve clustering.

A second approach could involve the same concepts above, but be placed in a floating zone applicable only to FC planned and zoned lands mapped as major or peripheral range.

Whatever approach is desirable the County and the Department yet need to devise a procedure for determining overall dwelling density. We suggest an approach which considers the number of parcels and dwellings in a section area (one square mile) centered around a parcel in question. We seek, as we are sure the County does, a process which is administratively efficient and effective.

We hope the above clarifies our position for you and is useful. If you have further questions, please let us know. We will continue to assist you in every possible way. We want to also note in conclusion however, that we believe some clarification is needed from LCDC regarding non-resource related residences in the FC zone because such a determination will control how and in what way the Departments' policies are accomodated in response to Goal 5.

Sincerely,

Neal Coenen

Neal Coenen
Program Leader
Land and Waterway Use
Environmental Management Section

Attachment
sw

cc: Benton County Board of Commissioners
Greg Winterowd, DLCD
Dick Lantz/Harold Sturgis, NW Region

BIG GAME RANGES - NORTHWEST OREGON

Definitions

Major Big Game Range - That portion of the county which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.

Peripheral Big Game Range - Foothill areas of the county generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals from major range in severe winters. However, conflicts exist between big game and other uses. These existing conflicts limit management options and recreational opportunities.

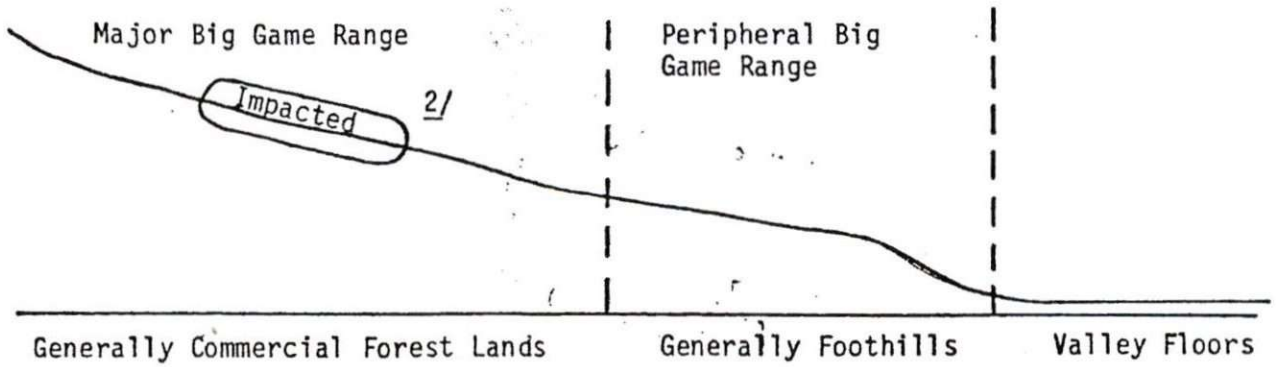
Impacted Big Game Range - Those areas of the county that have existing levels of land-use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

Development Within Big Game Ranges 1/

1. Major Big Game Range: Prefer - 1:80 acres, acceptable - 1:40 acres with cluster development.

2. Peripheral Big Game Range: Prefer - 1:40 acres, acceptable - 1:20 acres with cluster development.

   * The plans should not allow for subdivisions or partitioning below the recommended density levels.



1/ The Department's recommendations relate to overall residential density and not minimum lot sizes.

2/ Lands already developed to a density which precludes big game usage should not be included within big game range maps.

PLAN ELEMENTS

RIPARIAN HABITAT

NATURAL FEATURES

1. Add Finding 24b - Riparian Vegetation Corridors Along Rivers and Streams:

Riparian Vegetation Corridors Along Rivers and Streams

A. Application of the Goal 5 Process for Riparian Vegetation Along Rivers and Streams: The following information addresses the location, quality and quantity of the resource:

1. Location: At the present time a map of specific riparian vegetation corridors in Douglas County is not available. Upon consulting with the Oregon Department of Fish and Wildlife, all riparian vegetation located within 50' of the streambank adjacent to identified perennial and intermittent streams has been classified as important. The location of important perennial and intermittent streams in Douglas County is shown in the State Water Resource Maps for the Umpqua, South Coast, Rogue, Klamath, Willamette and Mid Coast drainage basins.

2. Quality: The quality of riparian vegetation is generally good. Such areas enhance shoreline stability and water quality and provide an excellent habitat for fish and wildlife.

3. Quantity: The quantity of riparian vegetation in Douglas County has been determined to include all lands within 50 feet of the bankline of perennial water courses. Although the riparian vegetation varies in width, depending on location, it has been determined that 50 feet adequately represents the average width of riparian vegetation found in Douglas County.

B. Potentially Conflicting Uses in Riparian Vegetation Corridors: For those areas classified as important riparian vegetation corridors, Douglas County employs most if not all of its present land use classifications. Within these land use classifications certain activities, if allowed, could permanently alter riparian vegetation. Such activities include structural development such as single-family dwellings, commercial and industrial buildings, churches, public and private schools, community centers, kennels, roadside stands and accessory buildings, etc.

C. Economic, Social, Environmental and Energy Consequences of Conserving Riparian Vegetation Corridors

1. Economic Consequences: Although dollar figures are not available, it is estimated that a substantial amount of money is spent each year attempting to resolve conflicts from locating structural development in riparian vegetation corridors. The major conflict centers on the removal of riparian vegetation which reduces fish and wildlife

habitat and endangers adjacent development through streambank erosion and flooding. In many areas loss of riparian vegetation has caused excessive erosion depleting agricultural land and damaging residential structures. This loss is incurred by the property owner as well as local jurisdictions involved.

Given the importance of the riparian vegetation, it would appear that regulating structural development in such areas would be economically beneficial.

2. Social Consequences: Although the benefits of conserving riparian vegetation appear to be great, as shown in the economic consequences, a conflict arises when attempting to regulate riparian vegetation in nonresource areas. In many designated residential, industrial and commercial areas, existing development is located well within the riparian vegetation corridor. Land in such areas is at a high demand and is usually purchased at a good price due to river frontage and view. Although regulating development would conserve riparian vegetation, a hardship may be incurred by a property owner desiring to build in the riparian corridor. If construction is prohibited on prime river frontage, the property owner could experience a substantial decrease in property value, not to mention a significant change in personal desires. This hardship would be magnified if adjacent development had already occurred within the riparian corridor. In many cases, regulating the development in such areas would not conform to existing land use patterns.

   A positive social consequence of conserving riparian vegetation would include the protection of property from flood hazards. Given that most riparian vegetation corridors are located well within designated floodplain areas, regulating development would help reduce hazards associated with flooding.

3. Environmental Consequences: The environmental consequences of limiting structural development in riparian vegetation corridors is positive. By limiting development, erosion is reduced which increases habitat protection and helps to maintain water quality.

4. Energy Consequences: The energy consequences of limiting structural development in riparian vegetation corridors is also positive. By protecting riparian vegetation, less energy will be spent trying to rectify erosion problems.

5. Conclusion: Excluding some areas presently designated for future development in the County's Comprehensive Plan, it appears that regulating structural development in riparian vegetation corridors would have a positive

effect on conserving fish and wildlife habitat and maintaining streambank stability.

D. A Program to Conserve Riparian Vegetation Corridors: Riparian vegetation corridors in Douglas County were identified with the assistance of the Oregon Department of Fish and Wildlife (ODFW). The ODFW has specified that a building setback of fifty (50) feet from the bank of all identified perennial and intermittent water courses shall be adequate to protect riparian vegetation corridors. For those areas presently developed and designated for future growth, the ODFW has recommended that a reduction in setback requirements be allowed if the development is shown to be consistent with the area's natural resources.

The following policies from the County's Comprehensive Plan provide the basis for conserving riparian vegetation corridors.

a) Page 112 of Comprehensive Plan, Objective C, Policy 3:

3. Encourage the retention of riparian vegetation whenever possible.

b) Page 114 of Comprehensive Plan, Objective E, Policies 1 and 2:

1. Existing riparian vegetation along streams and river banks shall be maintained whenever feasible to provide fishlife and wildlife habitat, minimize erosion and scouring, retard water velocities and suppress water temperatures. Regarding forest management activities on forest land, the riparian vegetation shall be protected as required by the Oregon Forest Practices Act.

2. Encourage the use of nonstructural methods of bank stabi ation in agriculture or forest areas exper ncing accelerated soil loss.

c. Page 139 of Comprehensive Plan, Objective E, Policy 4:

4. Lands not suited for development shall be used for open space, agriculture, forestry, recreation or other suitable uses.

d. Page 140 of Comprehensive Plan, Objective H, Policies 3, 5 and

3. An new development within the floodplain shall be designed to avoid damage from flooding and to minimize the damage potential to other developments or properties.

5. Encourage the retention and restoration of natural or other suitable vegetation adjacent to waterways.

6. Promote increased public awareness of flood hazards and how to deal with them.

e. Page 194 of Comprehensive Plan, Objective A, Policy 3:

3. Land usage should maintain the vegetation along the stream banks, in fence rows and woodlots; where possible, developers are encouraged to provide deer-proof fencing in areas where such conflicts exist.

f. Page 194 of Comprehensive Plan, Policy 5 of General Policies:

5. A building setback of 50 feet from all identified perennial and intermittent watercourses shall be maintained in areas outside of adopted urban growth boundaries, unless the County finds, after consultation with the Oregon Department of Fish and Wildlife, that such setback is unnecessary as a mitigation measure for the protection of wildlife, and reduction of the setback will not jeopardize streambank stability, water quality, etc.

g. Page 195 of Comprehensive Plan, Objective B, Policy 1:

1. Encourage the retention and protection of existing ponds, wetlands, and riparian vegetation especially inside urban growth boundaries.

h. Pages 303-304 of Comprehensive Plan, Policies 4, 5 and 7.

4. In all shoreland areas, riparian vegetation shall be maintained to the maximum extent possible.

5. Riparian vegetation moved or damaged as a result of permissible development shall be restored and enhanced when appropriate and consistent with the water-dependent use.

7. Nonstructural solutions to problems of shoreline erosion and flooding shall be preferred over structural methods.

Policy Implementation

To help implement policies addressing riparian vegetation, the County has adopted a Riparian Vegetation Corridor Overlay Zone which applies to lands located 50 feet from the bank of all identified perennial and intermittent water courses. This Overlay Zone requires all structural development to be set back 50 feet from the streambank unless after consultation with the Oregon Department of Fish and Wildlife it is found that such a setback is unnecessary, and that reduction of the setback will not jeopardize streambank stability, water quality, etc. See Section 3.32.___ of Douglas County's Land Use and Development Ordinance for additional implementation requirements.

6. The map entitled

UMPQUA DRAINAGE BASIN OREGON
STATE WATER RESOURCES BOARD
Salem, Oregon
1974

is hereby adopted as the official map showing the stream and rivers to which the overlay zone shall be applied. (NOTE: Due to map scale, the map cannot be included with this packet. A map is on file at the Planning Department Office.

BIG GAME HABITAT

NATURAL FEATURES ISSUES

1. Amend the second sentence on page 184 as follows:

   These species include 66 mammals, 254 resident and migratory birds and 38 amphibian and reptile species as listed and discussed in the general wildlife overview found in the wildlife element of the Natural Features Element.

2. Delete the paragraph on page 184 under "General Land Use Conflicts" and replace with the following paragraph:

   Wildlife habitat competes with several other land uses. Uses or activities, such as rural residential developments, some industrial uses, etc., could impact a habitat to a degree that it precludes its use as habitat. Other uses such as logging and water impoundments may eliminate or alter specific habitat for some species while providing new habitat for other animals. An understanding of animal habitats is important for decision makers in order to satisfy both the needs of man and animals.

3. Delete 13(a) and (b) under General Land Use Conflicts on p. 188.

4. Add the following sentence to Finding 19 on p. 189:

   Although currently listed as an endangered species, the U.S. Fish and Wildlife Service is currently preparing a recommendation to reclassify the Columbian white-tailed deer from "endangered" to "threatened".

5. Remove #23 from under the title "Threatened and Protected Species" and place it under its own title, "Sensitive, Peripheral and Impacted Big Game Habitats", as follows: (Although new, the following material has not been underlined for reasons of clarity.)

   Sensitive, Peripheral and Impacted Big Game Habitats:

   Lands identified by the big game habitat map describe those habitat areas deemed "sensitive" or that area which supports the majority of big game; deemed "peripheral" or those which support large quantities of big game but where existing land uses do not allow management options favorable to big game; and deemed "impacted" or developed areas no longer considered to be viable big game habitat.

   A. Application of the Goal 5 Process for Big Game Habitats: The following information addresses the location, quality and quantity of the resource:

      1) Location - See map on page 189a

2) Quality - Generally good as forest practices allow for vegetation diversity and cover and the climate is mild, thus leaving an abundance of year-round food sources.

3)

Acres of Sensitive:	2,049,818
Acres of Peripheral:	694,170
Acres of Impacted:	428,953
Acres of Columbian white-tailed deer:	67,379

B. Potentially Conflicting Uses in Big Game Habitat Areas: For a majority of those lands in Douglas County delineated as big game habitat by the Oregon Department of Fish and Wildlife, Douglas County employs 3 resource zones: TR (Timberland Resource), FF (Farm Forest) and EFU-G (Exclusive Farm Use - Grazing). The major issue regarding big game habitat is the loss of habitat due to increased residential densities beyond the preferred density of 1 dwelling per 40 acres in peripheral areas and 1 dwelling per 80 acres in sensitive big game habitats.

Many nonresource uses, if approved, could permanently alter big game habitat areas. Some generally common characteristics among these uses include: 1) the introduction of people to habitat areas on a year-round basis; 2) the permanent introduction of groups of people on a seasonal or weekly basis; or 3) the use of land in a manner which necessitates the removal of large amounts of vegetative cover. Specific potentially conflicting uses contained within the TR, FF, EFU and AW zones are as follows:

Zone	Permitted Uses	Conditional Uses
TR		Single family dwelling Lodges
FF	Single family dwelling in conjunction with farm use Second DU in conjunction with farm use Churches Public and private schools	Accessory DUs Commercial activities in conjunction with EFU Community center 215.213(3) nonfarm DU Kennels
EFU-G	Same as FF	Same as FF

C. Economic, Social, Environmental and Energy Consequences of Conserving Big Game Habitats

1) Economic consequences: Each year the Department of Fish and Wildlife spends a substantial amount of money and staff time attempting to resolve perennial conflicts between big game and rural residents. Attempting to minimize future conflicts between big game and residential development and other nonresource uses certainly will prove to be a cost-saving measure for ODFW.

The hunting of big game species is a major form of recreation in this state. Annually hunters become significant contributors to numerous local economies as well as substantial financiers of the Oregon Department of Fish and Wildlife. Because hunting and hunters are dependent on the survival of the species, the economic consequences of not insuring adequate quantities of habitat would be very costly both locally and statewide. The general economic benefits associated with land use planning also can be considered as an economic consequence of limiting development in rural areas. Other resources besides wildlife benefit from a minimization of development. Also, facility and other potential development costs to taxpayers are reduced.

The negative economic consequences of applying regulations are generally borne by individuals prevented from doing an activity such as building a home on a specific site. In some instances, this can become an extreme financial hardship to an individual. However, for most individuals, the economic consequences of not receiving an approval become a short term inconvenience, eventually resolved by building elsewhere.

2) Social Consequences: Only a small portion of the actual conflicts associated with rural living and big game are documented by the Oregon Department of Fish and Wildlife. Browsing by deer and elk on ornamental vegetation is a most common nuisance. This potential conflict can be minimized by limiting uses in designated habitat areas. The negative social consequences of limiting residential densities in habitat areas means the desire to live in rural areas for many people will remain unsatisfied. Also, as mentioned under economic consequences, personal financial hardship may be a social as well as economic by-product of strict adherence to a prescribed regulation.

3) Environmental Consequences: Opportunities for big game to flourish in a habitat without repeated interference or disturbances from man should be a positive environmental consequence. Also, other animal species who require a large open space environment shall benefit from low density requirements.

4) Energy Consequences: The energy consequences of limiting development should be entirely positive. Trip generation associated with development located in remote parts of the County will be minimized by density and development restrictions. As a result, development will occur closer to cities and services for which specific trips are often made and thus energy is often used.

5) Conclusion: The consequences of establishing requirements which limit development and residential density in specified big game habitat areas should prove generally to be an overall benefit not only to big game and the ODFW but also to the environment, the economy, and to the goal of conserving energy. Provided a provision for extenuating circumstances in conjunction with review by ODFW is included, the benefits of limiting development and residential density in specified habitat areas is warranted.

D. A Program to Conserve Big Game Habitat

1) Sensitive Big Game Habitat: All lands deemed sensitive big game habitat have been designated as timberlands in the Comprehensive Plan. The TR zone is applied to timberland areas which are almost entirely managed by Federal agencies or private timber companies. The Timberlands plan designation and the TR zone are guided by the plan policies in the Forest Element of the Douglas County Plan. The following policies from the forest element provide the basis for not only managing the forest resource but also managing sensitive big game habitat areas:

> Douglas County shall regard residential subdivisions and parcelizations in designated timberlands as incompatible with the protection and efficient management of the County's timber resources.
>
> Douglas County encourages the conservation and protection of watersheds, fish and wildlife habitats, and areas of historical, cultural or scenic importance.
>
> Multiple utilization of existing utility rights-of-way shall be encouraged.
>
> Communication facilities to be located in forest areas should be designed to minimize impacts on forest values and uses.
>
> Road widths in forest areas should be limited to the minimum necessary for forest management and safety.

Highways through forest areas should be designated to minimize impacts on forest values and uses.

Before forest land in forest use is allowed to change to nonfarm or nonforest use, the act of justifying an amendment to the applicable comprehensive plan must occur in the manner provided for justifying an exception to State Planning Goal 4, except for those uses found necessary for the public convenience and welfare which may be permitted conditionally.

The following excerpts and policies from the plan provide specific guidance for the designation and implementation of Timberlands (Excerpts from the Timberlands Criteria):

Forest lands designated as Timberlands shall consist primarily of the following:

1. Public and private industry forest lands located contiguously in large blocks;

2. Forested lands geographically or topographically separated from those lands predominantly used for agriculture and nonforest uses;

3. Critical wildlife and fishery habitat areas;

TIMBERLANDS OBJECTIVES, POLICIES AND IMPLEMENTATION STATEMENTS

OBJECTIVE: To protect for resource uses prime forest lands from encroachment by conflicting land uses.

POLICIES:

1. Prohibit the creation of lots or parcels for non-forest uses in designated timberland areas.

2. Prohibit incompatible development such as the construction of nonaccessory dwellings within designated timberlands.

3. Access to public facilities, such as sewer, water, electricity and telephone, unrelated to forest uses, shall be considered incompatible in designated timberland areas.

POLICY IMPLEMENTATION:

1. The Timberland Resource classification is in-

tended to preserve and protect lands for continued timber production, harvesting and related uses, conserve and protect watersheds, wildlife habitats and other such uses associated with forests; provide for the orderly development of both public and private recreational uses as appropriate and not in conflict with the primary intent of the Timberland Resource zone, which is the sustained production of forest products. Use of land not associated with the management and development of forests shall be discouraged to minimize the potential hazards of damage from fire, pollution and conflict caused by nonforest-related residential, commercial, and industrial activities.

Homesite development shall be discouraged within areas designated as timberlands in the plan. When allowed, homesite development shall be clearly accessory and necessary for a permitted use. Homesite development shall be subject to review and in the review process the burden shall be upon the applicant to show that the homesite is compatible with the purpose and policies of the timberlands classification.

2. Further regulations for development occurring in the designated timberlands areas shall include the following:

   a. Where possible, residences shall maintain a setback of 500 feet from adjoining property boundary lines; and

   b. Domestic water supplies for all development within the designated timberlands shall emanate from surface or sub-surface water sources contained within the boundary of the property in question; or

   c. The domestic water supply is obtained from another source with the documented approval of all other affected parties, with the condition that such a use will not affect the owner's (of that water source) right to utilize forest management practices.

The Timberland Resource or TR zone (§3.2.000 of the Land Use and Development Ordinance) was designed to implement the requirements of the Forest Element. Douglas County holds the position that the TR zone in conjunction with the policies of the Comprehensive Plan does conserve the County's forest resources and therefore all "sensitive big game habitat areas". Uses identified as possibly conflicting found within the TR zone are single-family dwellings and recreational lodges. Some of the signif-

icant TR zone requirements which will conserve sensitive habitats are as follows:

> Single-family dwellings may be established, subject to the approval of the Approving Authority, upon a finding that each proposed dwelling:
>
> > Is compatible with the forest use policies of the Douglas County Comprehensive Plan, thereby retaining forest lands for forest uses;
> >
> > Does not materially alter the stability of the overall land use pattern of the area;
> >
> > Is accessory and necessary for a use permitted by §3.2.050;
>
> Privately owned parks, campgrounds, boating facilities, lodges, camps and other such recreational facilities where overnight lodging is provided, upon satisfying the following conditions:
>
> > The use is compatible with the forest use policies of the Douglas County Comprehensive Plan and wildlife habitat.
> >
> > The use does not interfere seriously with forest practices as regulated by ORS 527.610 - 527.730 on adjacent lands devoted to forest uses or with wildlife habitat.
> >
> > The use does not remove an amount of land from forest production that materially alters the stability of the overall land use pattern of the area.
> >
> > The use is found to be:
> >
> > i. situated on land generally unsuitable for the production of forest or farm crops; or
> >
> > ii. There be a general public need for the use outweighing the benefits of the potential forest use, no feasible alternative location exists for the use, and no adverse long-term effects will be created by allowing the use.

With the preceeding Forest Element Plan policies and ordinance provisions and those provided for wildlife, Douglas County will easily satisfy the Oregon Department of Fish and Wildlife's suggested density guideline for sensitive big game habitat areas of 1 dwelling unit per 80 acres. In order to coordinate planning activities and assure compliance with the sensitive big game habitat guideline, Douglas County has amended a policy (Policy 4, p. 95) to provide notice to ODFW of any land use application for a potential conflicting use.

2) Peripheral Big Game Habitat

Peripheral big game habitat areas consist of lands primarily zoned EFU-G and FF. The exception to this rule are those few committed lands sites located in peripheral habitat areas which are zoned primarily RR-5 and the exception area identified in the Columbian White-Tailed Deer habitat discussion. The adverse impact of these committed lands have already been introduced due to their existence. The County cannot go back and retroactively apply density standards to such sites. There are very few sites and their cumulative impact is very minimal. Therefore, the density standards applicable to identified peripheral areas should not be applied to those committed lands identified in the Plan.

The exception area adjacent to Roseburg and discussed in the white-tailed deer habitat area is in a fringe habitat area and adjacent to the Roseburg UGB. The impact on big game habitat is minimal and habitat requirements will be met by the application of the Columbian White-Tailed Deer Overlay.

The prescribed densities in the EFU-G and FF zones are 200 acres without review (§3.3.200(1) and §3.5.200(g)), 199 to 75 acres upon satisfying administrative procedures (§3.3.200(b) and §3.5.200(b)) and below 75 acres subject to special review criteria (Article 42) and Planning Commission review (§2.600). Nonfarm dwellings and second single-family dwellings may be conditionally permitted.

To conserve peripheral big game habitat, Douglas County provides (in Article 32 of the Land Use and Development Ordinance entitled Special Provisions for Natural Resource Areas) specific density provisions to assure general conformance with the peripheral big game management guideline of 1 dwelling per 40 acres. Also, policy 4 on page 195 was adopted to provide ODFW with the opportunity to participate in quasi-judicial reviews for the establishment of a conflicting use.

No special provisions for conserving big game habitat are necessary for the EFU-C, AW and RR zones as they are almost entirely located within designated "impacted" areas of Douglas County.

6. Delete all of Finding 24 on pages 189 and 190.

7. Add in place of Finding 24 the following:

Habitats of Special Concern

a. The Columbian white-tailed deer habitat (as mapped)

b. Riparian vegetation corridors along rivers and streams

c. Significant wetlands as identified in the section on wetlands.

d. Special bird habitat

(INSERT GOAL 5 ANALYSIS FOR 24 a, b, c and d ABOVE UNDER EACH LETTER)

8. Delete Finding 25 on page 191.

9. Amend Policy 4 at the top of page 195 and add Policy 5 under Objective A to read as follows:

4. ~~As a means of avoiding conflict,~~ Douglas County shall ~~involve~~ notify the Oregon Department of Fish and Wildlife of ~~land use changes within identified sensitive and peripheral big game winter range areas and require a resolution of any identified conflicts~~ any quasi-judicial request for permission to engage in activities which may conflict with sensitive or peripheral big game habitats.

5. The County shall prepare a Big Game Habitat Map after consulting with Oregon Department of Fish and Wildlife. The map shall designate sensitive, peripheral and impacted habitat areas. Areas which are identified as committed or exception area within the Plan shall not have the peripheral density requirements applied as such areas already exceed specified densities.

10. Delete Policy Implementation Statements 1 and 2 on page 195.

11. Amend Policy 2 under Objective D on page 196 to read as follows:

Within designated ~~special wildlife habitat areas~~ habitats of special concern, measures that reduce ~~the~~ impacts ~~of~~ from development such as visual or noise buffers, setbacks, and retention of natural vegetation, ~~will~~ may be ~~required~~ employed as a condition to nonresource development approval.

12. Add a Policy 4 under objective D on page 196; it shall read as follows:

Douglas County shall notify the Oregon Department of Fish and Wildlife of any quasi-judicial request for permission to engage in activities which may conflict with habitats of special concern.

13. Delete Policy 4 under Objective E on page 197.

14. Amend Policy 7 under Objective E on page 197 to read as follows:

All roads ~~shall~~ should be located to avoid unstable headwater areas.

A MAP SHOWING BIG GAME HABITAT AREAS IS ON FILE
AT THE PLANNING DEPARTMENT

(The scale of the map precludes its inclusion in this document)

SPECIAL BIRD HABITAT

1. Amend the Plan to include the following section:

D. Special Bird Habitat

Douglas County provides a wide range of bird habitats, and much of the habitat is preserved through existing land use practices. Four types of special bird habitat have been identified which require special consideration if they are to coexist with other desirable uses. These special bird habitat types include eagle nesting sites, osprey nesting sites, great blue heron rookeries and pigeon mineral springs.

Federal law protects the nest and bird; however, consideration must also be given to the ecological balance within the nesting area, if established nesting areas are to be protected. The federal laws applicable to these birds include the act for the "protection of bald and golden eagles" and the Migratory Bird Treaty Act and Endangered Species Act.

Human activity which conflicts with special habitat areas vary with special habitat needs of each species. Therefore, it is difficult to establish a single set of standards which would provide ample security for each nesting site. In most cases, the best method for providing adequate consideration of special habitat needs in conjunction with human activities is through the development of management plans for nest sites.

Eagles

Bald eagles and golden eagles have recently received the greatest amount of attention. Various publications have established recommendations for eagle nest protection. Although these habitat needs are based on available ecological information, it is not always possible to predict the effects of a given amount of disturbance on a particular pair of eagles. Specific land use decisions will need to consider variations in topography and behavior of individual eagles, so that these general management guidelines can be tailored to suit local conditions. Guidelines published by U.S. Fish and Wildlife Service suggest that nesting territories be considered as two areas: a primary zone which is the most critical area immediately around the nest, and a secondary buffer zone to minimize the disturbance and protect the primary zone. The recommended primary zone should include an area 330 feet from the nest. The size and shape should be adjusted to include frequently used perch trees, alternate nests, flight paths and protection from the wind. The recommended size and shape of the secondary zone is also dependent on topography and visibility from the nest. A minimum boundary of 660 feet from the nest is suggested. The publication suggests that there should be no timber harvest in the primary zone unless designed to enhance stand characteristics for the benefit of nesting eagles. There should be no cutting in the primary zone without a site management plan.

Certain activities have time-limited effects but are likely to disturb eagles during the "critical period", i.e., during the time between the arrival of the adults at the nest site and approximately three weeks after the fledging of any young. The critical period will usually fall between January 1 and August 15. During the first twelve weeks of the

critical period, eagles are most vulnerable to disturbance. Human activities such as blasting, use of firearms, road construction, camping, timber harvest, etc., should be avoided during this critical period. It is recommended that an individual management plan be prepared for each nesting site. The plan should consider the role of physical features and human use patterns that are unique to that site, e.g., topography, past land use in the vicinity, remaining habitat, vulnerability to disturbance, and the behavior of particular eagles, flight paths, perching trees, vegetation screens, snags, visibility of feeding areas.

Great Blue Heron

Great blue herons stand 4 feet tall with a wing span of 70 inches. The species can be distinguished as a heron by its long, unfeathered legs and long, dagger-like bill. They are found throughout the United States and parts of southern Canada.

Great blue herons are a colonial nesting species. They are among the earliest birds to breed in the Pacific Northwest, with nest occupancy occurring about the middle of February. Great blue herons are wariest of intruders at the nest site during pair formation and early stages of incubation. Repeated disturbances may result in nest abandonment. The average departure from the nest for the young is 81 days. The entire nesting cycle roughly ends during the first part of July.

Great blue heron rookeries are found in a variety of vegetative types ranging from hard-stem bullrush to Douglas fir. The shared characteristic of all rookeries is their isolation from human disturbance. The need for isolation of nesting areas and, to a lesser extent, foraging areas sheltered from human disturbance, makes recreational opportunities, timber management and other human activities conflicting uses during nesting periods. Timber harvest and associated activities within 300 feet of the outer nests of a heronry during breeding season would probably result in its abandonment, according to various studies.

Historically, great blue herons have been thought to take significant numbers of game fish and have been considered economically important because of this predation. However, recent finding studies indicate their impact on game fish to be exaggerated (Palmer, 1962). Other than their impact on commercially or recreationally exploitable fish populations, great blue herons have little if any economic importance.

Recommendations for protection of heron rookeries include: establishment of a 300 foot buffer zone - 100 yards circling a colony from which all conflicting uses are excluded; timber harvest to take into consideration windfall of nesting trees and wind damage to young or nests; timing timber harvest activity within 1/2 mile of rookeries not to be conducted during breeding season from February to mid-July.

Bald

Osprey

Of all the nesting habitat areas, the osprey is the most visible. These nesting areas are usually out in the open to begin with, in the tops of snags approximately 100 to 150 feet high. There has been success

in providing platforms for nesting areas. The osprey can be conditioned to minor disturbances, if they already exist when nesting begins. However, osprey nesting sites can be disturbed by intensive recreational activity such as campsites, boating and water skiing. The intrusion of such recreational activities should be limited to an area outside a 300 foot radius of the nest. Other conflicting activities such as timber management (i.e., thinning, harvesting, snag elimination in nesting areas during the breeding season) can cause the abandonment of a nest. Conflicting uses should be avoided during the breeding season of April to September. Various studies also suggest a secondary buffer zone of 600 feet around the nest be established to protect the nesting habitat.

Pigeon Mineral Springs

These springs provide nutrients needed to sustain the life cycle of pigeons. Large numbers of pigeons congregate at such springs and can become easy prey if hunting occurs in these areas. Although pigeons are more tolerant of human activity, springs would be rendered unusable if all vegetation were removed. Birds require perch trees around springs and some vegetative protection.

Since the preliminary inventory of nesting sites and habitat areas was compiled on page II-52 through II-54 of the Natural Features Element, a screening process has been completed by ODFW to determine existing significant sites. Many sites included in the original inventory were found to have lost the habitat quality or they no longer exist. Federal sites included on the original map were not analyzed further. These sites are 1C sites and are under federal jurisdiction. Such bird habitats are given consideration through the management and planning process of federal lands. It is the responsibility of the federal government to resolve any conflicts and establish a conflict resolution process. The County in conjunction with Oregon Department of Fish and Wildlife identified nesting sites which exist on nonfederal land. Although a site specific location is desirable, the level of detail provided by ODFW was to the nearest quarter section. There is a reluctance to refine the location due to the problems of possible intrusion or vandalism of the sites if they are made common knowledge. The ODFW is able to specifically locate each site, and will do so when requested to comment on proposed activities.

A. Application of the Goal 5 process for Special Bird Habitat: The following information addresses the location, quality and quantity of the resource:

1) Location: The following is a listing of sites as closely as ODFW would identify them:

Location	Township	Range	Section	1/4 Section	Source
Bald Eagle Nest Sites	20S	10W	36	NE	ODFW
	20S	11W	31	SE	ODFW
	20S	11W	31	SE	ODFW
	20S	12W	11	SE	ODFW
	22S	9W	16	SW	ODFW

Golden Eagle Nest Sites	24S	6W	34	SE	ODFW
	24S	5W	30	SE	ODFW
	27S	5W	33	23	ODVW
Blue Heron Rookery Sites	26S	7W	24	NE	ODFW
	27S	6W	5	NW	ODFW
Osprey Nest Sites	22S	8W	20	SW	ODFW
	22S	8W	35	S1/2,NE1/4, N1/2,SE1/4	ODFW
	22S	9W	16	SE	ODFW
	22S	9W	17	NW	ODFW
	22S	9W	18	SE1/4,SE1/4 18 SW1/4,SW1/4 17 NW1/4,NW1/4 20 NE1/4,NE1/4 19	ODFW
	23S	7W	4	SW	ODFW
	23S	7W	8	NE	ODFW
	23S	7W	18	S1/2,SW1/4 7 N1/2,NW1/4 18	ODFW
	24S	7W	21	NW	ODFW
	25S	7W	8	SW	ODFW
	26S	6W	30	NE	ODFW
	27S	6W	5	NW	ODFW
	30S	2W	33	NW	ODFW
	30S	3W	34	NE	ODFW
	30S	4W	26	NE	ODFW
	30S	4W	8	SE	ODFW
	30S	5W	24	NW	ODFW
	30S	5W	29	NW	ODFW
	31S	7W	8	SW	ODFW
	31S	7W	34	SE	ODFW
	31S	8W	35	SW	ODFW
Pigeon Springs	22S	4W	8	SW	ODFW
	25S	1W	36	NE	ODFW
	26S	4W	14	SE	ODFW

2) Quality: The quality of these sites is good as they are currently used nesting sites indicating the acceptable quality of the habitat area.

3) Quantity: Each inventoried area contains one nesting site and each designation encompasses one quarter section. However, these nesting sites in most cases will not require the entire quarter section to be protected. The actual impact area will vary with type of bird and characteristics of the site, requiring individual management plans. Therefore, an exact determination of acres needed to protect nesting habitat areas cannot be made.

B. Potentially conflicting Uses in Special Bird Habitat Areas: In reviewing the zoning designations of the identified habitat areas, three resource zones were found to be applied. These

were Exclusive Farm Use - Grazing (EFU-G), Timber Resource (TR) and Farm Forest Transitional (FF).

Some resource uses, as well as nonresource uses, were identified as having potential conflicts with these habitat areas. In many cases, mitigation could be provided to allow the use and still preserve the habitat. The three major areas of conflict centered on timber management (especially harvesting and road construction), recreation and residential development. Specific potentially conflicting uses contained within the TR, EFU-G, and FF zones are as follows:

Zone	Permitted Uses	Conditional Uses
TR	Timber harvest & road construction	Single-family dwellings
	Mining & quarrying rock	Private recreation facilities
	Recreational facilities	Solid waste disposal sites
		Wood processing facility
FF	Same as TR	Single-family dwellings
	Single-family dwelling	Commercial in conjunction with farm use
	Schools, churches	Mining
	Utility facilities	Recreation
		Airports
		Energy generation facilities & transmission lines
EFU-G	Same as FF	Same as FF

C. Economic, Social, Environmental and Energy Consequences of Conserving Big Game Habitats.

1) Economic consequences: The major economic impact is associated with timber harvesting or management. If no timber harvest were permitted within the identified 4,000 acres, a significant amount of merchantable timber would be removed from the timber supply base. There is a current depressed level of employment in the wood products sector, related to demand conditions in the national economy. However, beneath toady's concerns are projections for a dip in wood products production in the 1980's and 1990's due to the availability. A further reduction of timber supply as a result of curtailment of forest practices for

nonforest production purposes would intensify the projected downturn and increase the rate of unemployment.

By not allowing timber harvesting, road construction would not be necessary. If road construction were not permitted, it would affect the levels of timber harvest and require alternate logging systems increasing logging cost, and perhaps making harvesting of the trees uneconomical.

Good quality rock and other minerals are often difficult to locate. Road construction costs would be greatly increased if rock were to be transported from other areas, as a major factor in rock cost is transportation. Could cause a decline in employment within this particular sector.

Recreational facilities are abundant throughout the County. There may be a small loss in facilities but generally there would be no loss to the tourist industry due to lack of facilities. There would be economic loss to the particular owner of a parcel if his intentions were for commercial recreational use.

By permitting these uses, minimal economic impact would result by not preserving the nesting sites.

There is a negative economic consequence of applying regulation to single-family residences or similar development which are generally borne by individuals. In some instances, this can become an extreme financial hardship to an individual.

2) Social consequences: The negative social consequences of limiting residential development in habitat areas means the desire to live in rural areas for owners of affected parcels may remain unsatisfied. If the areas could not be harvested, the decline in production would contribute to shortages of building materials. The increased unemployment may add to the unstable community structure requiring workers to seek employment out of county, disrupting social structures as well.

Recreational opportunities as far as camping, hunting, off-road vehicles, etc., would be channeled to other areas. However, by limiting such conflicting uses, naturalists and bird watchers would have enhanced opportunities. Actions to limit uses or to allow uses will act as a catalyst for conflict over management practices of causing community polarization.

2.

3) Environmental consequences: The environmental consequences of limiting development in nesting habitat areas are positive. Opportunities for birds to nest in a habitat without repeated interference or disturbances from man

should be a positive consequence. Timber harvesting, if permitted, would remove cover and change the major vegetation. Could destroy nesting sites, roosting trees and generally cause disturbance which would cause birds to leave an area. These impacts can be mitigated by regulating when harvesting occurs and individual management plans. Other techniques, such as selective logging and leaving snags or building platforms can often mitigate some negative impacts of logging. Road construction causes major disturbance to birds and creates access to nesting sites which would increase conflicts associated with human associations such as vandalism, fires, loud noises and gunfire.

The limitation on nonresource development such as single-family dwellings would limit disturbances and not introduce a use which may have a negative effect on a nesting site.

The limiting of recreation would not encourage human intrusion, again minimizing those types of conflicts. Vehicular noise would be limited by no road building but would hamper firefighting access.

4) Energy consequences: The energy consequences of not allowing conflicting uses are minimal. There would be a savings in fuel consumption by not logging, building roads or maintaining roads.

5) Conclusion: Based on the results of the ESEE analysis, it would be detrimental to not allow the conflicting uses, particularly when considering the economic impacts. However, the economic impact can be diminished by allowing conflicting uses within the quarter section and protecting the nesting sites by a variety of methods, such as establishing an overlay zone and conflict resolution process.

D. Douglas County's Program to Achieve the Goal. The County's program to achieve the goal consists of the Comprehensive Plan objectives, policies and implementing ordinances of Land Use and Development Ordinance Section 3.32.00.

Add the following policies to Habitats of Special Concern on p. 196 of the Plan:

The Department of Forestry, prior to issuing a permit for timber harvest shall consult the Plan map of Habitats of Special Concern and determine if such activity will be conducted within a designated habitat area. If it is found that the activity is within such a designation, the Department of Forestry shall coordinate with Oregon Department of Fish and Wildlife

to determine the exact location of the nesting site or special habitat area.

Property owners of lands containing Habitats of Special Concern shall be encouraged to develop a management plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any activity which may adversely affect the habitat. Such management plans shall consider nesting trees, perch trees, critical nesting period, roosting sites and buffer zones.

The County shall establish an overlay zone which includes the nest site and adjacent lands necessary to protect the nest site. The exact location of the nest site will be determined by ODFW and they will consult with the property owner and Department of Forestry. The overlay zone shall require a management plan be developed in conjunction with ODFW prior to commencement of any conflicting use. The following habitat protection overlay zone areas shall be established around identified nest sites and mineral springs:

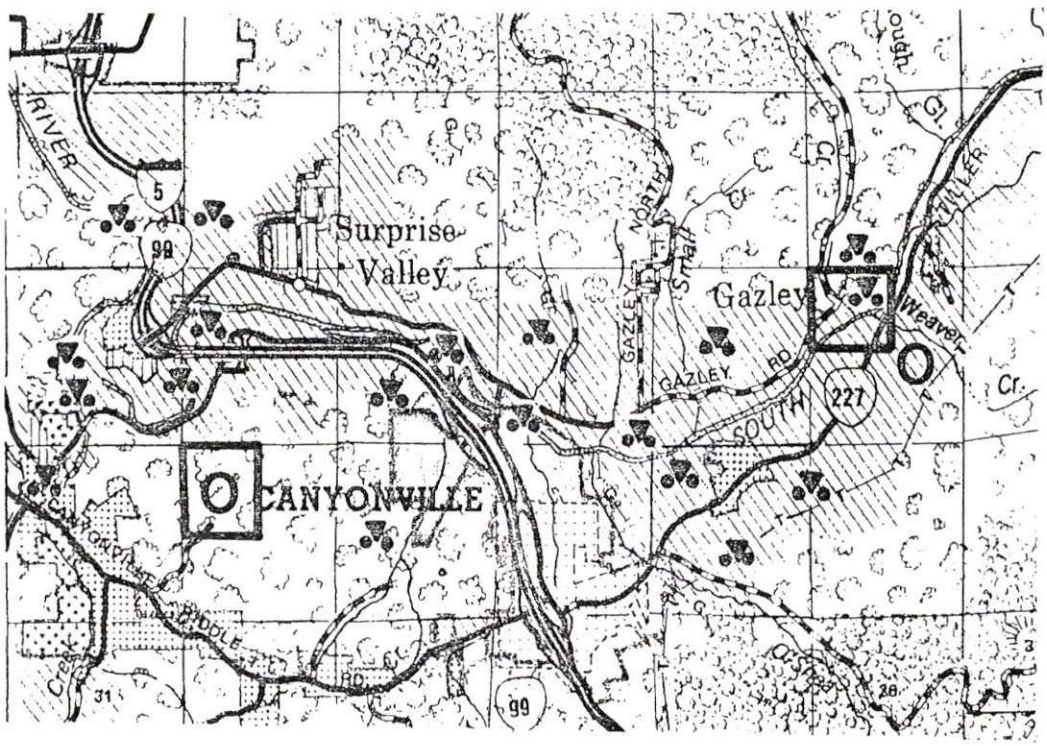
a. Eagle and Osprey Nests - an overlay zone with a radius of at least 660 feet from the nest shall be established around the nest tree. The actual shape of the zone should be determined on a site-by-site basis to include perching trees and trees that will provide protection from the wind and serve as alternative nest sites.

b. Heron Rookeries and Pigeon Mineral Springs - an overlay zone with a radius of at least 300 feet from the rookery or mineral springs.

SPECIAL BIRD HABITAT

R5W

T 30 S



LEGEND

E BALD EAGLE NEST SITES

E GOLDEN EAGLE NEST SITES

H BLUE HERON ROOKERY SITES

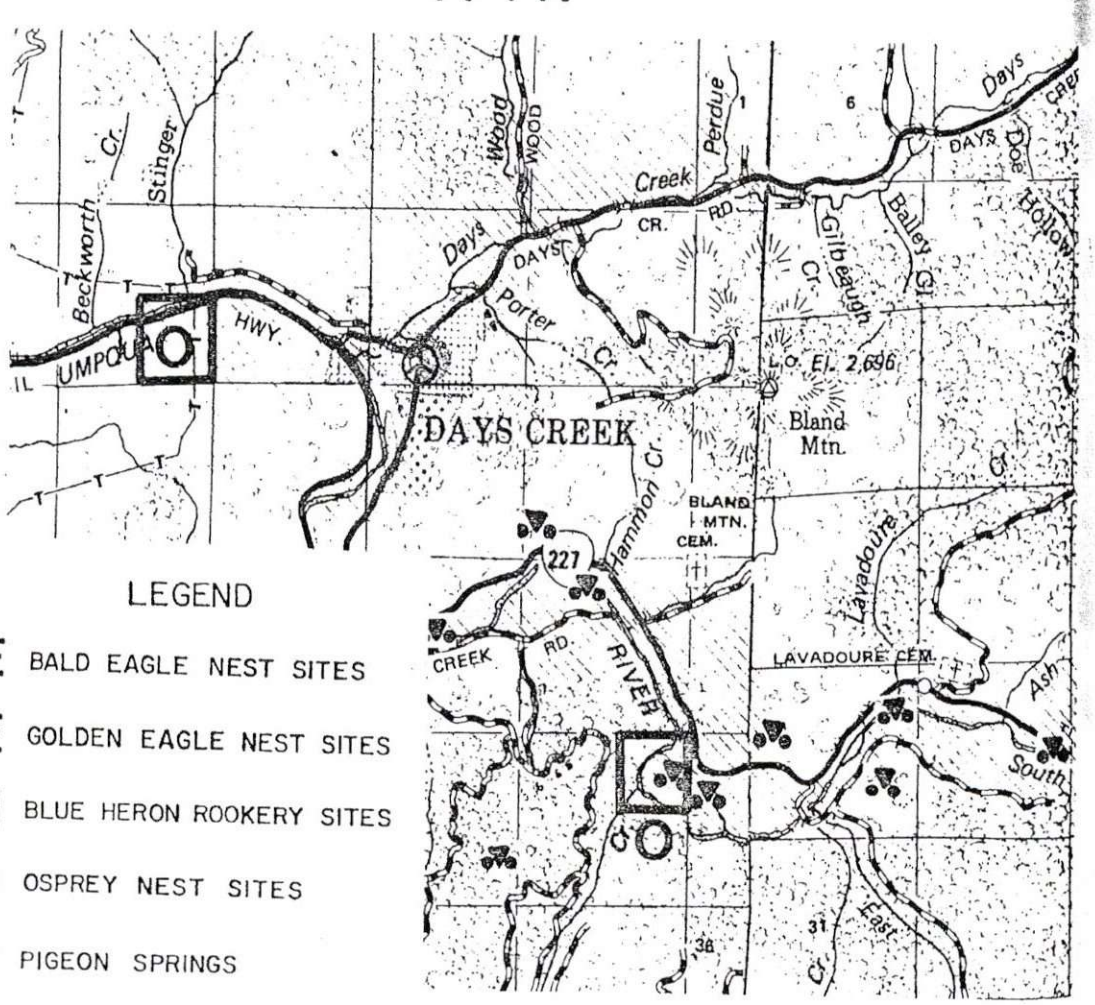
O OSPREY NEST SITES

P PIGEON SPRINGS

SPECIAL BIRD HABITAT

R4W

T 30 S



LEGEND

E BALD EAGLE NEST SITES

E GOLDEN EAGLE NEST SITES

H BLUE HERON ROOKERY SITES

O OSPREY NEST SITES

P PIGEON SPRINGS

DOUGLAS
COUNTY

PLANNING DEPARTMENT

COURTHOUSE ANNEX NO. 2 · 205 S.E. JACKSON ST. · ROSEBURG, OREGON 97470 · (503) 673-1111

October 4, 1982

MEMORANDUM

TO: DOUGLAS COUNTY BOARD OF COMMISSIONERS

FROM: DOUGLAS COUNTY PLANNING DEPARTMENT

RE: PROPOSED AMENDMENTS TO DOUGLAS COUNTY COMPREHENSIVE PLAN AMENDMENTS (Additions to BLUE document dated Planning Commission September 23, 1982; Board of Commissioners October 6, 1982)

The following items are recommended for addition or change to the proposed amendments to the Douglas County Comprehensive Plan. These changes are based on the Planning Commission action on September 23, 1982, and written and oral comments received during the review period.

LAND USE ELEMENT

1. Amend the proposed amendment to number 4 under "Density", "Committed Residential" on page 418 to read as follows:

> Committed - Lot of Record - Indicates a committed area where, according to County information, a combination of constraints (as listed on the following page - "density criteria") limit development potential. In areas designated Lot of Record, only existing (and vacant) lots of record shall receive additional development.

2. Amend the proposed amendment to the first sentence of paragraph 3 on page 418 to read as follows:

> Residential areas designated as "Lot of Record" on the plan map are intended to receive either the lowest density rural residential zone designation (RR-5) or for parcels 10 acres or greater in size the AW (Agriculture and Woodlot) zone (thus precluding further parcelization).

SPECIAL BIRD HABITAT

3. Amend Section D on page 94 of the amendment proposal to read as follows:

D. Douglas County's Program to Achieve the Goal: The County's program to achieve the goal consists of the Forest Practices Act as administered by the Department of Forestry, the Comprehensive Plan objectives, policies and implementing ordinances (Land Use and Development Ordinance §3.32.00).

4. Amend the proposed policies on page 94 under No. 2 to read as follows:

1. The Department of Forestry, upon the receipt of Notification of Operation, shall consult the Plan map of Special Bird Habitats and determine if such activity will be conducted within a designated habitat area. If it is found that the activity is within such a designation, the Department of Forestry shall coordinate with Oregon Department of Fish and Wildlife to determine the exact location of the nesting site or special habitat area.

2. Property owners of lands containing Special Bird Habitats shall be encouraged to develop a management plan or pre-operation plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any activity which may adversely affect the habitat. Such management plans or pre-operation plans shall consider nesting trees, perch trees, critical nesting period, roosting sites and buffer zones.

3. The County shall establish an overlay zone which includes the nest site and adjacent lands necessary to protect the nest site. The exact location of the nest site will be determined by ODFW and they will consult with the property owner and Department of Forestry. The overlay zone shall require a management plan or pre-operation plan prior to the commencement of any conflicting use. The following habitat protection overlay zone areas shall be established around identified nest sites and mineral springs:

a. Eagle and Osprey Nests - an overlay zone with a radius of at least 650 feet from the nest shall be established around the nest tree. The actual shape of the zone should be determined on a site-by site basis to include perching trees and trees that will provide protection from the wind and serve as alternative nest sites.

b. Heron Rookeries and Pigeon Mineral Springs - an overlay zone with a radius of at least 300 feet from the rookery or mineral springs.

NATURAL AREAS

5. Amend the proposed Natural Areas Findings Nos. 9 and 11 on page 114 of the proposed plan amendments to read as follows:

9. The Roseburg District of the Bureau of Land Management has designated Myrtle Island as a timber preservation area and Research Natural Area.

11. Several additional Research Natural Areas and areas of critical environmental concern have been proposed by the Roseburg District of the BLM.

6. Amend the chart on page 117 of the proposed amendments to delete the word "proposed" from No. 80. The name reads as:

80 Myrtle Island RNA

7. Amend the proposed amendments to Natural Areas on page 121 so that item 7c reads as follows:

c. Quantity: 240 acres.

OUTSTANDING SCENIC VIEWS AND SITES

8. Amend the proposed amendment to Outstanding Scenic Views and Sites on page 130. The paragraph under the heading BLM INVENTORY should read as follows:

The BLM visual resource management inventory was reviewed to identify outstanding scenic areas outside of the Umpqua National Forest and coastal area. The BLM scenic class applies only to BLM lands; however, it can be used as a general indicator of scenic quality. Additional studies may be needed to determine the scenic quality of surrounding private lands. The BLM system categorizes areas under several classes of Visual Resource Management Objectives based upon a combination of three factors: scenic quality, visual sensitivity and distance zone. Several areas were rated as Class A (high) Scenic Quality, with the majority of areas rated Class B (moderate) and Class C (minimal). Each inventoried viewshed was analyzed and it was determined that Class B and C areas were common throughout the County and did not possess outstanding visual resources. The Class B scenery reflected visual quality that was appealing but not outstanding. These areas did nto have unique features which could not be found frequently within the County. The Class C scenery was of a minimal visual quality and lacked variation of soils, water, rocks or vegetation. Often the Class C scenery were landscapes on which man's activities have degraded the scenic values. These Class B and C areas are not included within the plan inventory due to the fact that the information available on location, quality and quantity did not indicate any outstanding scenic views or sites, therefore not a primary visual resource requiring special protection.

ESTUARINE PLAN AMENDMENTS

14. Add to page 17 of Coastal Resources Support Document:

Estuarine Subarea No. XIII: Winchester Creek
Description: Winchester Creek from Winchester Bay to 1000 feet above head of tide.

SHORELAND PLAN AMENDMENTS

15. Add to page 61 of the Coastal Resources Support Document:

Shorelands Subarea No. 5: Winchester Creek
Subarea Description: Shorelands in Subarea No. 5 extend from Winchester Bay to 1000 feet above designated head of tide. West of Highway 101 the Shorelands are limited to lands one foot above MHHW. For areas east of Highway 101, the upland extent of shorelands management varies. On the north bank of Winchester Creek, the shorelands extend from MHHW to the dike which protects the southern end of Broadway, Clearlake and Diamond Streets. Elsewhere, with the exception of lands located south of Winchester Creek and developed as timberlands, shorelands management extends to those lands within 100 feet of the middle of the creek at MLLW to 1000 feet above the head of tide.

DOUGLAS
COUNTY

PLANNING DEPARTMENT

COURTHOUSE ANNEX NO. 2 · 205 S.E. JACKSON ST. · ROSEBURG, OREGON 97470 · (503) 673-1111

October 4, 1982

MEMORANDUM

TO: Douglas County Board of Commissioners

FROM: Douglas County Planning Department

RE: Proposed Amendments to Douglas County Land Use and Development Ordinance (Additions to GREEN document dated Board of Commissioners October 6, 1982.)

The following four items are recommended for addition or change to the proposed amendments to the Land Use and Development Ordinance.

1. By Planning Commission action on September 23, add to the definition of "campground" after facilities in line 2, except commercial activities such as grocery stores and laundromats.
2. By Planning Commission action on September 23, amend the provision contained §3.35.800(E)(4) to allow a 60 day period of time rather than the 30 currently stated.
3. To correct the proposed amendment in §3.32.300 Peripheral Big Game Habitat Overlay, change "less" in line 4 of §3.32.300(C)(1) to "greater".
4. To clarify the coordinative role of affected State agencies and Douglas County in the protection of habitat sites and processing of requests for development approval or Notification of Operation, amend the following portions of §3.32.500:

   (a) Amend §3.32.500(C)(1) Initiation to read:

   (1) The conflict resolution process shall be initiated by Douglas County or the Oregon State Department of Forestry when a request for development or Notification of Operation, respectively, is received for an identified area. The affected agency shall notify the Oregon Department of Fish and Wildlife immediately.

(b) Amend §3.32.500(C)(4) Management Plan to read:

(4) Management Plan and Pre-operation Plan

If the site would be affected, Oregon Department of Fish and Wildlife will encourage the property owner to develop a management plan or pre-operation plan to preserve the habitat site. Such plans shall consider nesting trees, perch trees, critical nesting periods, roosting sites and buffer areas.

(c) Amend §3.32.500(C)(5) Approval of Activity to read:

(5) Approval of Activity

a. The Oregon Department of Forestry shall conduct a pre-operation inspection prior to commencement of any activities subject to the Forest Practices Act within areas identified as special bird habitat on the Comprehensive Plan. Such pre-operation inspections shall be coordinated between the Oregon Department of Fish and Wildlife, the operator and the Forest Practices Forester and will result in a pre-operation plan being developed.

b. For activities other than those subject to the Forest Practices Act, Douglas County shall not approve requests made for potentially conflicting activities until a management plan prepared in conjunction with the Oregon Department of Fish and Wildlife is submitted as part of the application.

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will be protected from significant conflicting uses by this classification. This overlay classification will promote: nonpre-emptive underlying uses, a process for consideration for acquisition, and allow other uses subject to administrative review.

10. Amend §3.2.100(2) to read:

Solid waste disposal sites of ten (10) acres or less for disposal of industrial wastes or development of a County solid waste transfer station; the placement of hydroelectric, solar, wind or geothermal generation facilities transmission lines, pipes or substations and communication facilities; water resources, aggregate minerals or other subsurface resources upon findings that the use:

11. Amend §3.5.100(15) to read:

Solid waste disposal sites ~~as provided by ORS 215.213(2)(k)~~ of ten (10) acres or less for disposal of industrial wastes or development of a County solid waste transfer station;

12. Amend §3.6.100 to add a new use (11):

Winery.

13. Amend §3.30.220, paragraph 2, and §3.30.270(7) to include references to the recently completed floodplain studies for Calapooya and Elk creeks.

14. Add a new Section:

ARTICLE 32

SUPPLEMENTARY PROVISIONS FOR NATURAL RESOURCE AREAS

SECTION 3.32.000

This Article, Supplementary Provisions for Natural Resource Areas, is designed to provide protection for a number of natural resource areas throughout Douglas County. The Article consists of several overlay districts that provide additional development standards or special processes for development in protected areas. The overlay districts are designed to minimize uses which conflict with the resource values being protected and manage the resource areas so as to preserve their original character.

SECTION 32.100 Mineral Resources Overlay

A. Purposes

The Mineral Resources Overlay is designed to conserve prime mineral resource sites from conflicting uses and promote nonpre-emptive uses of these needed sites. The overlay is designed to ensure that structural development on mineral sites does not preclude the future availability and use of the mineral resource. Sites are identified on the 1C Mineral Resource Sites Table under the Mineral and Energy Resources section of the Natural Features Element of the Comprehensive Plan.

B. Permitted Uses

Within this overlay classification, dwellings, churches, schools and accessory structures to these uses shall not be permitted. Farm uses and forest uses shall be permitted outright. All other allowed uses in the underlying zone are permitted conditionally and shall be subject to the conditional use process and supplemental criteria of subsection (c) of this section.

C. Supplemental Criteria for Approval

In the approval of a use or conditional use permitted in the underlying zone, the County shall find:

1) That the use cannot be placed on an alternative site; and

2) That there are extenuating circumstances that make the proposed use more valuable than the resource. If there is no alternative site for the proposed use, and the extenuating circumstances are valid, then the proposed use shall be allowed if it conforms to all other requirements of the Land Use and Development Ordinance.

SECTION 3.32.200 Riparian Vegetation Corridor Overlay (RCVO)

A. Purpose

The Riparian Vegetation Corridor Overlay shall apply to all properties and land use designations located within 50 feet of the bankline of all perennial and intermittent water courses in Douglas County as identified on the Plan map.

B. Permitted Uses

All uses allowed in the underlying zone may be permitted or conditionally permitted in an area regulated by the Riparian Vegetation Corridor Overlay. However, structural development shall be subject to the provisions of subsection (C) of this Section.

C. Setback Requirements for Structural Development

A building setback of fifty (50) feet horizontally from the bank of all identified perennial and intermittent water courses shall be maintained unless the County ministerially finds, after consultation with the Oregon Department of Fish and Wildlife, that such setback is unnecessary as a mitigation measure for the protection of wildlife. If agreement cannot be reached, a Variance, pursuant to Article 40, shall be required to reduce the setback, and reduction of the setback will not jeopardize streambank stability, water quality, etc.

SECTION 3.32.300 Peripheral Big Game Habitat Overlay

A. Purpose

The Peripheral Big Game Habitat Overlay is designed to preserve identified peripheral habitat areas by ~~providing supplementary~~ development standards which promote an area-wide dwelling density consistent with such habitat management. A density of 1 dwelling unit per 40 acres shall be maintained in areas so designated on the Peripheral Big Game Habitat Map of the Comprehensive Plan.

B. Permitted Uses

All uses allowed in the underlying zone may be permitted or conditionally permitted. However, dwellings shall be subject to the density considerations contained in subsection (C) of this Section.

C. Density Provision

1. All quasi-judicial requests for dwellings or land divisions that will result in eventual placement of a dwelling, or administrative review of nonresource dwellings (ORS 215.203(3)) which could result in an average density of less than 1 dwelling per 40 acres, shall be referred to the Oregon Department of Fish and Wildlife (ODFW) for review and recommendation. If the ODFW cannot recommend approval or suggest acceptable mitigation measures, a variance, pursuant to Article 40, shall be required.

SECTION 3.32.400 Columbian White-Tailed Deer Habitat Overlay

A. Purpose

The Columbian White-Tailed Deer Habitat Overlay is designed to protect and conserve areas of prime CWTD habitat by limiting uses that conflict with maintenance of the habitat area. It will be applied to areas identified on the Columbian White-Tailed Deer Habitat map of the Comprehensive Plan and will require special standards for approval of structural developments.

B. Permitted Uses

All uses allowed in the underlying zone may be permitted or conditionally permitted in an area regulated by the Columbian White-Tailed Deer Habitat Overlay. However, structural development shall be subject to the provisions of subsection (C) of this Section.

C. Setback Requirements for Structural Development

A building setback of one hundred (100) feet horizontally from the bank of all identified perennial and intermittent water courses shall be maintained unless the County ministerially finds, after consultation with the Oregon Department of Fish and Wildlife, that such setback is unnecessary as a mitigation measure for the protection of wildlife. If agreement cannot be reached, a Variance, pursuant to Article 40, shall be required to reduce the setback.

SECTION 3.32.500 Special Bird Habitat Overlay

A. Purpose

The Special Bird Habitat Overlay is designed to provide a coordinative mechanism for resolving potentially conflicting uses with established Special Bird Habitats. The goal of the Overlay is to preserve such habitat areas, especially established nesting sites and adjacent lands necessary to protect those sites. The process will allow review of development proposals in the quarter section of land surrounding sites identified on the Special Bird Habitat Map of the Comprehensive Plan.

B. Permitted Uses

Uses allowed in the underlying zone(s) are permitted or conditionally permitted in the Special Bird Habitat Overlay, subject to the conflict resolution process outlined in subsection (C) of this Section.

C. Conflict Resolution Process

1. Initiation

The conflict resolution process shall be initiated by Douglas County or the Oregon State Forestry Department when a request for development approval or Forest Harvest Permit, respectively, is received for an identified area. The affected agency shall notify the ODFW immediately.

2. Location of Site

The ODFW will precisely locate the identified site and determine if the proposed activity will affect the actual habitat site. ODFW will consider the site affected if the activity is:

a. within 660 feet of an eagle or osprey nest;

b. within 300 feet of a heron rookery or pigeon mineral spring.

3. If ODFW determines that the site will not be affected, the provisions of the Overlay district shall not apply.

4. Management plan
If the site would be affected, ODFW will encourage the property owner to develop a management plan to preserve the habitat site. Such management plan shall consider nesting trees, perch trees, critical nesting periods, roosting sites and buffer areas.

5. Approval of activity.

a. Oregon State Forestry Department will suspend approval of a request for Forest Harvest Permit for 15 days from receipt in order to allow sufficient time for the conflict resolution process to be conducted.

b. Douglas County shall not approve requests made for potentially conflicting activities until a management plan prepared in conjunction with ODFW is submitted as part of the application.

SECTION 3.32.600 Natural Area Overlay

A. Purpose

This overlay classifiction is intended to pre-emt conflicting uses in areas identified by the Comprehensive Plan as containing significant natural value. The overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value.

B. Permitted Uses

Uses allowed in the underlying zone shall be subject to the conditional use review pursuant to §2.060(a) of this Ordinance.

C. Approval Standard

In the evaluation of any use subject to the Natural Area Overlay, findings will be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.

SECTION 3.32.700 Significant Wetlands Overlay (SW)

A. Purpose

The Significant Wetlands Overlay shall apply to major swamps, bogs, marshes and transitional lands identified by the Oregon Department of Fish and Wildlife as having good to excellent wetland qualities and designated on the Significant Wetlands maps of the Comprehensive Plan. The SW Overlay zone shall require an additional development standard in designated resource areas. Development in the areas zoned for nonresource use shall not be subject to the provisions of this Overlay.

B. Permitted Uses

All uses in the underlying zone may be permitted or conditionally permitted in an area regulated by the SW Overlay. However, structural development shall be subject to the provisions of subsection (C) of this Section.

C. Setback Requirements

With the exception of wetland areas presently designated for nonresource use in the County's Comprehensive Plan, a building setback of fifty (50) feet horizontally from the bank of all significant wetlands shall be maintained unless the County ministerially finds, after consultation with the Oregon Department of Fish and Wildlife, that such a setback is unnecessary as a mitigation measure for the protection of the wetland. If agreement cannot be reached, a variance, pursuant to Article 40, shall be required to reduce the setback.

15. Amend §3.35.400 to read:

SECTION 3.35.400 ~~Historic, Archaeological and Cultural Overlay~~ Cultural, Historic and Archaeological Resources Overlay

The purpose of this overlay district is to reasonably assure that ~~such~~ resources classified as "significant" in Douglas County's Historic Resource Register are conserved and protected, while providing an expedient process for reviewing land uses actions that may affect identified sites.

Prior to approval of a ~~development~~ building permit or other land use action, the following measures shall be utilized:

1. Administratively determine ~~whether a new or expanding land use is~~ the following:

   a. Whether the application for a building permit pertains to a registered significant cultural or historic resource;

DOUGLAS
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PLANNING DEPARTMENT

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October 4, 1982

MEMORANDUM

TO: Douglas County Board of Commissioners

FROM: Douglas County Planning Department

RE: Proposed Amendments to Douglas County Land Use and Development Ordinance (Additions to GREEN document dated Board of Commissioners October 6, 1982.)

The following four items are recommended for addition or change to the proposed amendments to the Land Use and Development Ordinance.

1. By Planning Commission action on September 23, add to the definition of "campground" after facilities in line 2, except commercial activities such as grocery stores and laundromats.
2. By Planning Commission action on September 23, amend the provision contained §3.35.800(E)(4) to allow a 60 day period of time rather than the 30 currently stated.
3. To correct the proposed amendment in §3.32.300 Peripheral Big Game Habitat Overlay, change "less" in line 4 of §3.32.300(C)(1) to "greater".
4. To clarify the coordinative role of affected State agencies and Douglas County in the protection of habitat sites and processing of requests for development approval or Notification of Operation, amend the following portions of §3.32.500:

   (a) Amend §3.32.500(C)(1) Initiation to read:

   (1) The conflict resolution process shall be initiated by Douglas County or the Oregon State Department of Forestry when a request for development or Notification of Operation, respectively, is received for an identified area. The affected agency shall notify the Oregon Department of Fish and Wildlife immediately.

(b) Amend §3.32.500(C)(4) Management Plan to read:

(4) Management Plan and Pre-operation Plan

If the site would be affected, Oregon Department of Fish and Wildlife will encourage the property owner to develop a management plan or pre-operation plan to preserve the habitat site. Such plans shall consider nesting trees, perch trees, critical nesting periods, roosting sites and buffer areas.

(c) Amend §3.32.500(C)(5) Approval of Activity to read:

(5) Approval of Activity

a. The Oregon Department of Forestry shall conduct a pre-operation inspection prior to commencement of any activities subject to the Forest Practices Act within areas identified as special bird habitat on the Comprehensive Plan. Such pre-operation inspections shall be coordinated between the Oregon Department of Fish and Wildlife, the operator and the Forest Practices Forester and will result in a pre-operation plan being developed.

b. For activities other than those subject to the Forest Practices Act, Douglas County shall not approve requests made for potentially conflicting activities until a management plan prepared in conjunction with the Oregon Department of Fish and Wildlife is submitted as part of the application.

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will be protected from significant conflicting uses by this classification. This overlay classification will promote: nonpre-emptive underlying uses, a process for consideration for acquisition, and allow other uses subject to administrative review.

10. Amend §3.2.100(2) to read:

Solid waste disposal sites of ten (10) acres or less for disposal of industrial wastes or development of a County solid waste transfer station; the placement of hydroelectric, solar, wind or geothermal generation facilities transmission lines, pipes or substations and communication facilities; water resources, aggregate minerals or other subsurface resources upon findings that the use:

11. Amend §3.5.100(15) to read:

Solid waste disposal sites ~~as provided by ORS 215.213(2)(k)~~ of ten (10) acres or less for disposal of industrial wastes or development of a County solid waste transfer station;

12. Amend §3.6.100 to add a new use (11):

Winery.

13. Amend §3.30.220, paragraph 2, and §3.30.270(7) to include references to the recently completed floodplain studies for Calapooya and Elk creeks.

14. Add a new Section:

ARTICLE 32

SUPPLEMENTARY PROVISIONS FOR NATURAL RESOURCE AREAS

SECTION 3.32.000

This Article, Supplementary Provisions for Natural Resource Areas, is designed to provide protection for a number of natural resource areas throughout Douglas County. The Article consists of several overlay districts that provide additional development standards or special processes for development in protected areas. The overlay districts are designed to minimize uses which conflict with the resource values being protected and manage the resource areas so as to preserve their original character.

SECTION 32.100 Mineral Resources Overlay

A. Purposes

The Mineral Resources Overlay is designed to conserve prime mineral resource sites from conflicting uses and promote nonpre-emptive uses of these needed sites. The overlay is designed to ensure that structural development on mineral sites does not preclude the future availability and use of the mineral resource. Sites are identified on the 1C Mineral Resource Sites Table under the Mineral and Energy Resources section of the Natural Features Element of the Comprehensive Plan.

B. Permitted Uses

Within this overlay classification, dwellings, churches, schools and accessory structures to these uses shall not be permitted. Farm uses and forest uses shall be permitted outright. All other allowed uses in the underlying zone are permitted conditionally and shall be subject to the conditional use process and supplemental criteria of subsection (c) of this section.

C. Supplemental Criteria for Approval

In the approval of a use or conditional use permitted in the underlying zone, the County shall find:

1) That the use cannot be placed on an alternative site; and

2) That there are extenuating circumstances that make the proposed use more valuable than the resource. If there is no alternative site for the proposed use, and the extenuating circumstances are valid, then the proposed use shall be allowed if it conforms to all other requirements of the Land Use and Development Ordinance.

SECTION 3.32.200 Riparian Vegetation Corridor Overlay (RCVO)

A. Purpose

The Riparian Vegetation Corridor Overlay shall apply to all properties and land use designations located within 50 feet of the bankline of all perennial and intermittent water courses in Douglas County as identified on the Plan map.

B. Permitted Uses

All uses allowed in the underlying zone may be permitted or conditionally permitted in an area regulated by the Riparian Vegetation Corridor Overlay. However, structural development shall be subject to the provisions of subsection (C) of this Section.

C. Setback Requirements for Structural Development

A building setback of fifty (50) feet horizontally from the bank of all identified perennial and intermittent water courses shall be maintained unless the County ministerially finds, after consultation with the Oregon Department of Fish and Wildlife, that such setback is unnecessary as a mitigation measure for the protection of wildlife. If agreement cannot be reached, a Variance, pursuant to Article 40, shall be required to reduce the setback, and reduction of the setback will not jeopardize streambank stability, water quality, etc.

SECTION 3.32.300 Peripheral Big Game Habitat Overlay

A. Purpose

The Peripheral Big Game Habitat Overlay is designed to preserve identified peripheral habitat areas by ~~providing supplementary~~ development standards which promote an area-wide dwelling density consistent with such habitat management. A density of 1 dwelling unit per 40 acres shall be maintained in areas so designated on the Peripheral Big Game Habitat Map of the Comprehensive Plan.

B. Permitted Uses

All uses allowed in the underlying zone may be permitted or conditionally permitted. However, dwellings shall be subject to the density considerations contained in subsection (C) of this Section.

C. Density Provision

1. All quasi-judicial requests for dwellings or land divisions that will result in eventual placement of a dwelling, or administrative review of nonresource dwellings (ORS 215.203(3)) which could result in an average density of less than 1 dwelling per 40 acres, shall be referred to the Oregon Department of Fish and Wildlife (ODFW) for review and recommendation. If the ODFW cannot recommend approval or suggest acceptable mitigation measures, a variance, pursuant to Article 40, shall be required.

SECTION 3.32.400 Columbian White-Tailed Deer Habitat Overlay

A. Purpose

The Columbian White-Tailed Deer Habitat Overlay is designed to protect and conserve areas of prime CWTD habitat by limiting uses that conflict with maintenance of the habitat area. It will be applied to areas identified on the Columbian White-Tailed Deer Habitat map of the Comprehensive Plan and will require special standards for approval of structural developments.

B. Permitted Uses

All uses allowed in the underlying zone may be permitted or conditionally permitted in an area regulated by the Columbian White-Tailed Deer Habitat Overlay. However, structural development shall be subject to the provisions of subsection (C) of this Section.

C. Setback Requirements for Structural Development

A building setback of one hundred (100) feet horizontally from the bank of all identified perennial and intermittent water courses shall be maintained unless the County ministerially finds, after consultation with the Oregon Department of Fish and Wildlife, that such setback is unnecessary as a mitigation measure for the protection of wildlife. If agreement cannot be reached, a Variance, pursuant to Article 40, shall be required to reduce the setback.

SECTION 3.32.500 Special Bird Habitat Overlay

A. Purpose

The Special Bird Habitat Overlay is designed to provide a coordinative mechanism for resolving potentially conflicting uses with established Special Bird Habitats. The goal of the Overlay is to preserve such habitat areas, especially established nesting sites and adjacent lands necessary to protect those sites. The process will allow review of development proposals in the quarter section of land surrounding sites identified on the Special Bird Habitat Map of the Comprehensive Plan.

B. Permitted Uses

Uses allowed in the underlying zone(s) are permitted or conditionally permitted in the Special Bird Habitat Overlay, subject to the conflict resolution process outlined in subsection (C) of this Section.

C. Conflict Resolution Process

1. Initiation

The conflict resolution process shall be initiated by Douglas County or the Oregon State Forestry Department when a request for development approval or Forest Harvest Permit, respectively, is received for an identified area. The affected agency shall notify the ODFW immediately.

2. Location of Site

The ODFW will precisely locate the identified site and determine if the proposed activity will affect the actual habitat site. ODFW will consider the site affected if the activity is:

a. within 660 feet of an eagle or osprey nest;

b. within 300 feet of a heron rookery or pigeon mineral spring.

3. If ODFW determines that the site will not be affected, the provisions of the Overlay district shall not apply.

4. Management plan
If the site would be affected, ODFW will encourage the property owner to develop a management plan to preserve the habitat site. Such management plan shall consider nesting trees, perch trees, critical nesting periods, roosting sites and buffer areas.

5. Approval of activity.

a. Oregon State Forestry Department will suspend approval of a request for Forest Harvest Permit for 15 days from receipt in order to allow sufficient time for the conflict resolution process to be conducted.

b. Douglas County shall not approve requests made for potentially conflicting activities until a management plan prepared in conjunction with ODFW is submitted as part of the application.

SECTION 3.32.600 Natural Area Overlay

A. Purpose

This overlay classifiction is intended to pre-emt conflicting uses in areas identified by the Comprehensive Plan as containing significant natural value. The overlay is designed to protect the identified natural value by allowing only uses which will not permanently destroy the natural value.

B. Permitted Uses

Uses allowed in the underlying zone shall be subject to the conditional use review pursuant to §2.060(a) of this Ordinance.

C. Approval Standard

In the evaluation of any use subject to the Natural Area Overlay, findings will be required demonstrating that the designated natural value will not be damaged by the use or activity. If a proposed use or activity would result in the permanent destruction of natural value, then the request shall be denied.

SECTION 3.32.700 Significant Wetlands Overlay (SW)

A. Purpose

The Significant Wetlands Overlay shall apply to major swamps, bogs, marshes and transitional lands identified by the Oregon Department of Fish and Wildlife as having good to excellent wetland qualities and designated on the Significant Wetlands maps of the Comprehensive Plan. The SW Overlay zone shall require an additional development standard in designated resource areas. Development in the areas zoned for nonresource use shall not be subject to the provisions of this Overlay.

B. Permitted Uses

All uses in the underlying zone may be permitted or conditionally permitted in an area regulated by the SW Overlay. However, structural development shall be subject to the provisions of subsection (C) of this Section.

C. Setback Requirements

With the exception of wetland areas presently designated for nonresource use in the County's Comprehensive Plan, a building setback of fifty (50) feet horizontally from the bank of all significant wetlands shall be maintained unless the County ministerially finds, after consultation with the Oregon Department of Fish and Wildlife, that such a setback is unnecessary as a mitigation measure for the protection of the wetland. If agreement cannot be reached, a variance, pursuant to Article 40, shall be required to reduce the setback.

15. Amend §3.35.400 to read:

SECTION 3.35.400 ~~Historic, Archaeological and Cultural Overlay~~ Cultural, Historic and Archaeological Resources Overlay

The purpose of this overlay district is to reasonably assure that ~~such~~ resources classified as "significant" in Douglas County's Historic Resource Register are conserved and protected, while providing an expedient process for reviewing land uses actions that may affect identified sites.

Prior to approval of a ~~development~~ building permit or other land use action, the following measures shall be utilized:

1. Administratively determine ~~whether a new or expanding land use is~~ the following:

   a. Whether the application for a building permit pertains to a registered significant cultural or historic resource;

b. Whether the application for a new or expanded land use is within or on a registered archaeological site.

2. Upon determination that an application pertains to a registered significant resource, as described in subsection 1(a) or 1(b) above, the Director shall notify and forward the application to the chairman of the Historic Resource Review Committee.

3. Upon notification from the Director of an application referenced in subsection 1(a) or 1(b) above, the chairman of the Historic Resource Review Committee shall call for a hearing pursuant to the provisions of Chapter 2 of the Douglas County Land Use and Development Ordinance.

4. The Historic Resource Review Committee shall conduct the public hearing, review the application, construct findings and render a decision in accordance with §9.070 for alterations, exterior remodeling, or new construction; §9.080 for demolitions; [and §9.0 for archaeological sites (to be completed later].

16. Amend §3.35.300 changing the word "throughfares" to "thoroughfares".

17. Add a new section, 3.35.800, to read as follows:

SECTION 3.35.800 Potential Park or Public Recreational Area Overlay (PO)

The potential park or recreation area overlay classification is intended to protect and conserve areas identified as containing public value for: park or recreational use, aesthetic or visual value, camping, picnicking, activities and passive outdoor games and activities. These areas, as identified in the Comprehensive Plan, will be protected from significant conflicting uses by this classification. This overlay classification will promote: nonpre-emptive underlying uses, a process for consideration for acquisition, and allow other uses subject to administrative review.

A. Except as provided below, uses allowed in areas subject to the potential park or recreational area overlay shall be set forth in the underlying zoning district.

B. Property development standards of the underlying zone shall apply to development within the PO designation. In addition, development shall be subject to architectural control under §3.35.300 except that the phrase in that section "to achieve attractive communities and safe thoroughfares" is changed to, "to protect and conserve the park and recreation values of the area."

C. Where permitted by the underlying zone(s), uses, activities and structures shall be designed to protect and conserve the park and recreation values of the area. Only those uses which are or may be made compatible with the park and recreational values set forth in the Comprehensive Plan shall be permitted. The primary use of the

b. Whether the application for a new or expanded land use is within or on a registered archaeological site.

2. Upon determination that an application pertains to a registered significant resource, as described in subsection 1(a) or 1(b) above, the Director shall notify and forward the application to the chairman of the Historic Resource Review Committee.

3. Upon notification from the Director of an application referenced in subsection 1(a) or 1(b) above, the chairman of the Historic Resource Review Committee shall call for a hearing pursuant to the provisions of Chapter 2 of the Douglas County Land Use and Development Ordinance.

4. The Historic Resource Review Committee shall conduct the public hearing, review the application, construct findings and render a decision in accordance with §9.070 for alterations, exterior remodeling, or new construction; §9.080 for demolitions; [and §9.0 for archaeological sites (to be completed later].

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A. Except as provided below, uses allowed in areas subject to the potential park or recreational area overlay shall be set forth in the underlying zoning district.

B. Property development standards of the underlying zone shall apply to development within the PO designation. In addition, development shall be subject to architectural control under §3.35.300 except that the phrase in that section "to achieve attractive communities and safe thoroughfares" is changed to, "to protect and conserve the park and recreation values of the area."

C. Where permitted by the underlying zone(s), uses, activities and structures shall be designed to protect and conserve the park and recreation values of the area. Only those uses which are or may be made compatible with the park and recreational values set forth in the Comprehensive Plan shall be permitted. The primary use of the

PO classification shall be the protection and conservation of the potential park and recreational site. Uses which cannot be made compatible shall not be permitted, except as provided in subsection E(4) for forest crops.

D. Uses and activities which are permitted conditionally in the underlying zone(s) are permitted conditionally in the PO designation upon a finding that the use or activity does not interfere with the future park or recreational use of the site. Uses that cannot be made compatible or interfere shall not be permitted, except as provided in subsection E(4) for forest crops.

E. Forest crops shall be harvested in such a manner as to maintain as nearly as reasonably is practicable the potential park and recreational values of the site.

(1) The State Forester shall forward a copy of the notification required of operators, timber owners and landowners under the Oregon Forest Practices Act (ORS 527.670(2)) to the Planning Director and shall not waive the 15 day period provided in OAR 629-24-107.

(2) Prior to any operator, timber owner of land owner commencing an operation (the terms operator, timber owner, land owner and operation have the same meaning as defined in ORS 527.620) such person shall develop a management plan in conjunction with the Board of Commissioners or its designee.

(3) Management plans shall consider a general schematic landscape plan indicating the technique and materials to be used for timber regeneration, screening, soil stabilization and other revegetation or buffering practices, curvilinear and selectively thinned timber harvest boundaries, the selective retention of timber stands to avoid "ridge lined and notching" or "tufts" and the type and stability of soils on and adjacent to the site of the proposed harvest.

(4) The County shall have 30 days from the date management plans are submitted to initiate acquisition of the property. If acquisition has not been initiated within 30 days, the forest crop may be harvested as provided in the management plan even if such harvest is incompatible.

F. If, after consideration of management plans or of the architectural controls required for development for permitted or conditional use it is determined that the operation or development cannot be compatible with park and recreation values, then the County may consider acquisition of the property involved through ORS [illegible] other appropriate steps and measures.

18. Add a new section to Article 39 as follows:

SECTION 3.39.050 Criteria for Review

The Approving Authority may grant a request for conditional use approval if the following criteria are met:

1. the proposed use is or may be made compatible with existing adjacent uses and other uses permitted in the underlying zone.

2. the proposed use is consistent with the general and specific purposes of this Ordinance and the Comprehensive Plan.

3. the proposed use is compatible with any other criteria contained in specific zoning district regulations of the Ordinance.

19. Amend Article 45 by adding to §3.45.100 the following:

C. Applications approved pursuant to A1 or A2 of this Article shall be consistent with commercial agricultural uses, the agricultural objectives of the Plan, and the agricultural and land use policies of the Plan.

Chapter 4 Land Divisions

20. Amend 4.150(3)(b) to allow time limits for phased subdivision development of 24, 36 and 48 months for Phase 1, Phase 2 and Phase 3, respectively.

21. Amend 4.150(5)(a) to read:

Approval of a preliminary subdivision plan shall be valid for ~~twelve (12)~~ twenty-four (24) months. . . .

22. Amend 4.250(1)(e)(1) to read:

Approval of a preliminary partition plan shall be valid for ~~twelve (12)~~ twenty-four (24) months. . . .

Chapter 6 Quasi-Judicial Plan Amendment

23. Amend §6.300 to read:

Applications for Quasi-Judicial Plan Amendment may be submitted at any time, and shall include a completed application on forms provided by the Planning Department and the appropriate fee. Quasi-Judicial Plan Amendment hearings shall normally be scheduled and conducted on the second Thursday of April and October of each year.

Exceptions to the April and October dates may be allowed for hearings at other times of the year to accommodate:

amendments initiated by the Board of Commissioners to provide for public projects,

amendments initiated by an applicant for development which would promote economic diversification for the County and for which the Board directs the Planning Director to establish an alternate hearing date in the interest of reducing processing time.

In any case, all applications shall be filed with the Director at least 60 days prior to a hearing date and other provisions of this Chapter shall be met.

Chapter 9 Cultural and Historic Resource Conservation

24. Amend §9.040, Subsection 1 (p. 9-3) to read as follows:

The Committee shall develop and adopt concise criteria for evaluating structures, sites, objects and districts. This criteria shall be the standard for deciding whether a potential resource possesses qualities of cultural or historic significance and should therefore be listed in the Douglas County Historic Resource Register, and afforded protection through the provisions of §9.070 through §9.090 of this Ordinance; possesses qualities of special historic interest and would therefore be eligible for signing or monumenting and listed as such in the Register; or is of general historic interest and listed as such in the register.

25. Amend §9.040, Subsection 6 (p. 9-4) to read as follows:

The Committee shall review all demolition and alteration permit requests received by the Building and Planning Departments for "significant" resources listed in Douglas County's Historic Resource Register.

26. Amend §9.070, Subsection 1 (p. 9-6) to read as follows:

Upon notification from the Director's of receipt of a building permit application to change the exterior of a significant historic structure listed in the Register or to construct a new structure on a ~~public or private designated historical~~ "significant" cultural or historic resource site or in a Historic District listed in the Register, the Chairman shall call a meeting of the Committee for the purpose of determining, in hearing, whether the proposed change will alter the resource's historical significance. The Committee shall consider criteria for historic significance, information about the resource contained in the Register, and any new information by County

staff and parties. The Director shall give notice of the hearing pursuant to §2.065(f).

27. Amend §9.070, Subsection 4 (p. 9-6) to read as follows:

The Committee shall approve the change if the treatment proposed is determined to be harmonious and compatible with the character of the resource of Historic District. The Historic Resource Review Committee shall find the alteration harmonious and compatible with the resource or historic district with respect to style, scale, texture and construction materials and/or find that the alteration will enhance the historical value of the resource. Conditions may be attached to approval if the Committee so deems it necessary. The Committee shall disapprove the request if the proposal will prove to be unsightly, grotesque or otherwise reduce the resource's historic value or significance.

28. Amend §9.080, Subsection 2 (p. 9-7) to read as follows:

The Committee shall ~~hear~~ review the application, ~~taking into consideration~~ and construct findings addressing the structure's state of repair, the reasonableness of repair, ~~or~~ restoration costs, the uniqueness of the resource and ~~appropriate criteria~~ the economic, social, environmental and energy consequences of approving or denying the application. Based on the findings, the HRRC may approve, deny or attach conditions to an approval to conserve the value of the resource. A decision and recommendation shall be rendered within 45 days of the Director's receipt of the application. The applicant may waive the 45 day limit in writing at the time of application.

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
OFFICE OF THE DIRECTOR
506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

December 9, 1980

RECEIVED
DEC 10 1980
LANE COUNTY PLANNING

Mr. Wes Kvarsten, Director
Department of Land Conservation
and Development
1175 Court Street, N.E.
Salem, OR 97310

Dear Mr. Kvarsten:

The Oregon Department of Fish and Wildlife has reviewed those elements of the Lane County Plan that were available to us. We had great difficulty in reviewing the County's Plan prior to your November 21 memorandum, as we were unable to locate a list identifying the complete County submittal. Furthermore, some of the submitted materials were not available in your Portland office, nor could we obtain copies of them from the County. The Plan's format also made review a difficult task. Based on a review of available materials, we oppose acknowledgement for failure to comply with Goals 2, 5, 15, 16, 17 and 18.

The Department has coordinated with Lane County throughout the planning process. We have provided fish and wildlife inventory documents (including identification of sensitive habitats), a Fish and Wildlife Habitat Plan, estuarine habitat classification materials, comments on draft plan elements, served on planning committees and considerable personal communications.

Goal 2

The information available for us to review did not include a complete identification of issues and problems or inventories and other factual information for all applicable statewide planning goals. We feel this fails to fulfill the requirements of Goal 2. Our concern is principally related to inventory data, and the identification of and programs to resolve conflicts between fish and wildlife and other uses. These concerns will be discussed in greater detail under discussions specific to Goals 5, 15, 16, 17 and 18.

Goal 5

To be consistent with Goal 5 the plan must address the following topics relating to fish and wildlife;

1. Description of fish and wildlife resources, including an inventory,
2. identification of sensitive habits,
3. policies commensurate to the abundance and quality of habitats and anticipated land-use activities,

4. ordinances as needed to implement policies, and

5. plan provision to resolve conflicts between natural resources and other land-uses.

The Lane County Plan does not satisfy all of Goal 5's requirements related to fish and wildlife resources.

The Oregon Department of Fish and Wildlife has provided planning background materials to Lane County for nearly ten years. However, it appears that the County has not utilized this inventory information since fish and wildlife inventories and distribution and abundance information provided in subarea technical reports are very general and/or incomplete.

The Plan includes a series of detailed habitat maps that list many important wildlife areas; however, the maps do not specifically identify sensitive fish and waterfowl habitats. Important riparian vegetation is denoted around bodies of water and along Class I streams. This would include much sensitive waterfowl and fish habitats. The County's definition of a Class I stream states, "Waters which are valuable for domestic use, are important for angling or other recreation and/or used by significant numbers of fish for spawning, rearing or migration routes". However, in our opinion the inference that could be drawn from this information, that all Class I streams are sensitive fish habitat, is too all inclusive and does not meet Goal requirements for information on resource location, quality and quantity. The problem with lack of specific identification of sensitive waterfowl habitat is analagous to the problem concerning the lack of specific identification of sensitive fish habitat.

The Plan's fish and wildlife Goal statement (page 25, General Plan Goals and Policies) is inconsistent with Statewide Planning Goal 5. The County Plan Goal states, "Land-use decisions and land management practices shall consider conservation of fish and wildlife resources". Goal 5 states that natural resources will be protected. The County's Goal statement does not appear to be harmonious with the intent of Goal 5. We suggest that the statement would be acceptable if it were modified to read: "Land-use decisions and land management practices shall be undertaken in a manner that will conserve and protect fish and wildlife resources".

The Plan's fish and wildlife policy statements (page 25) express the intent of the County to protect fish and wildlife resources. However, the selection of words used in several of these statements (i.e., encourage, evaluation, consideration) and the "shall consider" wording in the Goal statement combine in a manner that appears discretionary and in conflict with the intent of Goal 5. These concerns could be resolved if the County modifies its fish and wildlife Goal statement as previously mentioned.

Policy statement 4 (page 25) states, "Coordinate development in important deer and elk winter range in order to maintain deer and elk populations compatible with applicable goals, considering the use of the land by private owners". The term "applicable goals", according to County planning staff, refers to Department of Fish and Wildlife management goals or objectives for

big game numbers, as well as goals of other agencies or entities. We asked the County to identify the objective for this Policy and were told by staff that the statement was purposely vague. In our opinion the County should modify or further clarify this statement in accordance with statewide planning goals for correct interpretation.

The Plan's zoning ordinances do not satisfy Department recommendations, developed several years ago, for residential development densities within big game range. Our original recommendations indicated that the desirable level of density within deer winter range was the equivalent of one dwelling per 80 acres or the equivalent of one dwelling per 40 acres with cluster development. In elk winter range the desirable density level was the equivalent of one dwelling per 160 acres or one per 80 acres with cluster development.

During LCDC review of the Yamhill County Comprehensive Plan, the Department modified its procedures for identifying important big game habitat and recommendations on the density of residential development within big game range. A copy of these recommendatons is attached. These revised recommendations were provided to Lane County approximately two months ago. After reviewing the County zoning district maps, the Department has determined that there are significant areas within the County where permitted residential development levels exceed the Department recommendations for sensitive and/or peripheral big game range. It appears that approximately 90% of the Mohawk-Camp Creek and the Spencer Creek subareas would permit development densities in excess of recommendations for sensitive and peripheral habitats. The most restricted development density on this big game range appears to be one dwelling per 20 acres; however, present zoning allows considerable development at greater levels.

In the remainder of the County most of the sensitive big game range is within the Forest Management (FM 40) Zoning District, which would be acceptable if the County required clustering. There does, however, appear to be other significant areas of conflict between permitted residential density levels and peripheral big game range throughout the County. Most of the conflict appears along the foothill fringe of the Willamette Valley and the smaller side valleys.

The ordinance section "Special Exceptions to Minimum Area Requirements" (10.350-05) further complicates the Plan's handling of residential dwellings in areas of important habitat. The criterion for allowing an exception is compatibility with farm and forest uses [10.350-15(2)(a)(ii)]. However, the Plan does not define "forest use" or identify the conflict between residential density and fish and wildlife resources.

Furthermore, the compatibility provision cited above [10.350-15(2)(a)(ii)], does not effect the development of additional residences for relatives who may share in the operation of the applicant's land [10.250-10(1)]. This provision would potentially add to the conflict between residential density and fish and wildlife resources.

The Department recommends that one potential solution to the major Goal 5 fish and wildlife resource deficiency (i.e., residential development densities

within big game range) would be the creation of a sensitive environmental concern overlay zoning district. This type of approach, similar to that developed by Multnomah County, could satisfy our concern without the necessity of modifying all of the ordinances affecting zoning districts within big game range. It appears that many of the agriculture and forestry zoning districts, through their purpose statements, exclude consideration for forest uses other than timber production (i.e., FF-20, A-1, A-2, GR-10, AGT, AG-I and AG-II). These districts include important fish and wildlife habitats, thus our concern centers on the ability of the County to implement planning actions for the protection of fish and wildlife habitats.

We recommend changing the purpose statement on these zoning districts to reflect that the intent of the district is to provide for all "forest uses" consistent with the Goal 4 definition. This would clarify that watershed protection, fish and wildlife habitat and recreation are included within the intent of the district. The purpose statements for the FM, F-1 and F-2 Forest Districts indicates the intent of the districts is "to conserve forest lands for forest uses in accordance with LCDC Goal 4". Our concern is that since the County does not define "forest uses" within the Plan, we can only assume that the terms usage is consistent with the Goal 4 definition.

A number of the zoning districts not only allow principle residential density at levels greater than Department recommendations for big game range, but also allow the construction of single family dwellings for persons employed on the premises [example 10.105-42(2)], down to a minimum average of five acres. This provision in the F-F20, GR-10, AGT, GR-1 and GR-II zoning districts poses added potential conflict between wildlife and development.

The Important Agricultural Land District (A-1) does not include a minimum lot size requirement within the ordinance. The Lane County Planning Commission will determine the appropriate lot size for each division considered within the district. Our concern is that this decision may be made without consideration of impacts on important fish and wildlife resources.

The County has indicated an interest in maintaining riparian vegetation. However, there are no provisions in the ordinances for protecting this sensitive vegetative community. We have made concerted efforts with the County to incorporate this need in the comprehensive plan.

Goal 15

The County's Greenway element appears to be well done, however, we are concerned with various aspects. The Plan appears to lack location or identification of the vegetative fringe, and the identification of and programs to resolve conflicts between uses.

Policies in the Greenway Plan appear adequate, yet without additional plan guidance we are uncertain as to the County's means for resolving conflicting issues. For example, the Plan's goal and policy statement for Sand and Gravel and Fish and Wildlife individually appear satisfactory. Yet, maps in the Plan show optimum gravel resource area designations in areas with significant

fish and wildlife habitat values. Furthermore, ordinance provision 10.322-15 lists both protection of significant habitats and protection of aggregate resources as guidelines for issuance of a Greenway Permit. We do not suggest that these two values are mutually exclusive, but desire that the County's procedures and emphasis for dealing with such conflicts be made clear.

Ordinance provision 10.322-15 places as a criterion for issuance of a Greenway Permit the protection or enhancement of the "vegetative fringe". We were unable to find this term identified by definition or located on a map. We appreciate the difficulty of locating this area on a map or of defining the term by text. However, we suggest that they at least need a set of criteria to use in a case by case evaluation.

Goals 16 and 17

The Department has provided the County with considerable technical assistance in regards to estuarine and shoreland planning. We assisted the County's consultant in development of the coastal inventory and dredge material disposal reports. We also provided the County with estuarine habitat classification material, written comments on draft coastal reports and considerable input via personal communications. The Coastal Goals Compliance Report and supporting ordinances are well done. However, they do not satisfy Goals 16 and 17. This Department's comments on the draft compliance report are attached.

Goal 16

The plan does not, in our opinion, contain appropriate policies to allow development of necessary implementation provisions to insure compliance with the goal. We understand that general estuary wide policies may not be required if policies relating to estuary wide goal requirements are repeated for each management unit class. We feel this has not been accomplished. In addition, we could not find policy statements addressing several estuarine issues, such as restoration and mitigation and in-water disposal of dredged materials.

Log storage policies as presented in the County's Plan, key the continuance of all existing sites to Division of State Land leases. We do not believe that this will insure that future decisions on these sites are consistent with the Environmental Quality Commission's log storage policy for Oregon (October 24, 1975). DSL leases are normally issued for 10 year and 20 year periods, whereas any log storage site which is not used for 5 years is no longer considered active by the EQC. Future use of such a location would require EQC approval which would be based upon evaluation of the site.

Specific comments on the Goal 16 portion of the Compliance Report are as follows:

1. Conservation Unit policy No. 3 implies that major alterations (dredging and filling) are allowed for aquaculture, water-dependent recreation or navigation improvements. It has been

our understanding that such actions within conservation units would require an exception.

2. The Plan identifies two restoration sites, both of which are located within a natural estuarine unit. We believe that there is considerable question as to the appropriateness of utilizing the sites for restoration. Furthermore, we have identified several other potential restoration sites to the County.

3. Estuarine Management Unit "B" has been identified as a conservation unit. We can support that designation but the Plan's discussion of the unit needs revision. It is true that this cove area's productivity is small in context to the entire estuary. However, it is an important element of the estuarine system, as it provides a significant portion of productive tide flat within the estuary's marine subsection. The discussion also needs revision to clarify that an exception would be needed to conduct the major alteration of this cove area to create a boat basin. We were unable to locate conservation policy No. 5, referenced in this section.

4. Estuarine Management Unit "C" has appropriately been designated as a natural estuarine unit. The boundaries need to be expanded to include all of this area; it has some of the highest diversity and quantity of organisms within the estuary. Maps submitted with our June 16, 1980 comments identify the boundaries of this highly productive area.

5. The major intertidal areas located across the channel from MU "C" should be designated natural. The location of this area was identified in our June 16, 1980 comments.

6. The small area contained in MU "D.1" is only a portion of the major tideflat marsh complex contained in MU "D". Thus, it should be included within MU "D" as a natural unit.

7. Two small marsh areas in shoreland MU's 25 and 8 should receive an aquatic conservation designation. These areas are indicated as marsh on estuarine habitat classification material completed by this Department for LCDC.

8. Ordinance 10.230-20(1) needs another criterion which would state that logs should not ground a low water.

9. Ordinance 10.230-20(2) needs to identify surface water area as a resource which is not to be severely impacted by structures. Additional criteria could also establish a test for water dependency and establish guidelines for float size and extension into waterway.

10. Ordinance 10.230-20(3) and (4) needs additional criteria which specify no significant alteration.

11. Ordinance 10.235-20(4) Aquaculture is normally a water-dependent commercial use. Thus, criterion (ii) appears inappropriate.

Goal 17

The Coastal Compliance Report deals with shorelands in a similar manner to estuarine areas. Thus, we have a concern for the lack of overall shoreline policies similar to that expressed for Goal 16. We are also concerned with the apparent omission of an adequate identification of mitigation sites including a process for protecting these areas. We were also unable to locate any areas identified as especially suited for water-dependent development. If this is true we must question maintaining the shallow draft classification, at least above Florence.

Specific comments on the Goal 17 portion of the Compliance Report are as follows:

1. The Department is soundly opposed to the deletion of the Prime Wildlife Area designation in shoreland unit 21. Deletion of this designation is inconsistent with inventory material provided by this Department and the Wilsey and Ham inventory report.

2. The residential designation of MU 27 is inconsistent with inventory materials and Goal 17. The unit would in our opinion require an exception to Goals 4 and 17. The timbered shorelands between Gleneda and Lawson Creek contain some of the highest shoreland wildlife habitat values on Siuslaw Bay.

3. The designation of shoreland unit 2.1 as a mixed development shoreland is based largely upon designation of adjoining estuarine area as conservation. We have opposed the conservation designation of this estuarine area both in our comments on the City of Florence Plan and in this letter. Thus, we must object to this shoreland designation until the appropriate language is added to assure that upland uses will be consistent with the "natural" designation of the adjacent aquatic area.

4. Ordinance 10.240 (Significant Natural Shorelands) appears to apply to about 10 (3 estuarine and 7 lake) of the nearly 80 shoreland units. The stated purpose (10.240.05) seems to apply to shoreland areas similar to those discussed in Goal 17, Coastal Shoreland Uses (1). Yet some of the permitted and special uses are of much greater intensity than is consistent with the Goal. Furthermore, the arbitrary footage standard contained in 10.240-45 should be replaced with a procedure for a site by site evaluation to identify accurately the extent of riparian vegetation.

5. Ordinance 10.240 (Prime Wildlife Shorelands) appears to apply to about 15 (1 estuarine and 14 lake) of the nearly 80 shoreland units. The stated purpose, as in the Significant Natural Shoreland, appears to describe land which would be subject to Goal 17's Coastal Shoreland Uses (1). Yet some of the permitted and special uses are of much greater intensity than is consistent with the Goal. Furthermore, the arbitrary footage standard contained in 10.240-45 should be replaced with a procedure for a site by site evaluation to identify accurately the extent of riparian vegetation.

6. Ordinance 10.250 (National Resource Conservation) appears to apply to about 35 (12 estuarine and 23 lake) of the nearly 80 shoreland management units. This designation is the shoreland category most appropriate for resource lands without special significant natural features. We believe that provision for fill contained in 10.250-20(2) should be changed to that contained in 10.260-20(2) (Mixed Development) or the use should be prohibited similar to other shoreland categories. The identification of riparian resources as expressed in 10.250-45(3) should be modified by deleting the arbitrary footage standard for site by site evaluation.

7. Ordinance 10.255 (Residential Development) appears to apply to about 11 (6 estuarine and 5 lake) of the nearly 80 shoreland management units. This designation is intended to identify residential areas within urbanizable areas and committed lands outside urbanizable areas. We oppose the assignment of this designation to estuarine shoreland unit 27, as we feel the platting of subdivision lots is not a sufficient action on its own to commit timberlands with high wildlife values for nonforest uses. Comments previously made in discussion on other shoreland units (identification of riparian resources and significant shoreland habitats) apply to this unit (10.255-45(3).

8. Ordiniance 10.260 (Mixed Development) appears to apply to 7 of the 29 estuarine shoreland units. The purpose of the unit as expressed in 10.260-10 is to protect sites for water-dependent and water-related uses. Yet, the special uses identified in 10.260-15 and -20 do not meet goal requirements for protecting sites that are especially suited for water-dependent development. We believe the County needs to either state that it has no ESWD shorelands, revise this ordinance to address ESWD shorelands, or draft an additional one which addresses ESWD shorelands. Comments previously offered regarding riparian vegetation identification and significant shoreland habitats are appropriate for 10.260-45(3).

9. Ordinance 10.265-05 is to be utilized by the County to satisfy Goals 16 and 17 requirements for protection of dredge material

disposal and mitigation sites. We do not believe the allowance for a 90 day notice to the Port is acceptable as the only means to protect these sites for dredge material disposal or mitigation. The district should have broader geographic application than that expressed in 10.265-05.

10. Policy No. 3 for Prime Wildlife Shorelands put this Department in the position of responding to issues outside our expertise (identification of hazardous vegetation). We are, however, available to comment on impacts to fish and wildlife resources.

11. The Department has not taken a position on the restriction of gas motor propelled boats on small coastal lakes in Lane County as is indicated on page 61 of the Coastal Compliance Report. Our field biologist did advise the County that such a restriction would not impair angling opportunities at several coastal lakes.

Goal 18

The Plan, as we mentioned for Goals 16 and 17, does not contain overall policy statements for Goal 18. The beaches and dune areas contain considerable fish and wildlife resources, but there is no specific policy in any of the landform categories addressing the need to protect areas of biological importance and significant wildlife habitat except for two snowy plover nesting sites. We also did not find necessary ordinance provisions to satisfy Goal 18's statement:

> "Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat".

In conclusion, the Department applauds the substantial efforts of Lane County and its citizens in formulating the multi-volume County Plan. Our opposition to compliance with Goals 2, 5, 15-18 is not intended to belittle this effort. We offer our full assistance to work with the County during the development of plan revisions needed for obtaining acknowledgement.

If we may clarify any of our comments please call.

Sincerely,

Jim Lauman
Staff Biologist
Environmental Management Section

Attachments

cc: Lane County Board of Commissioners
✓Lane County Planning Department
Ed Sullivan
Fish & Wildlife Service
NMFS
EPA

bc: N.W. Region
Jubber/Hutchison
MacLeod
1000 Friends of Oregon

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
NORTHWEST REGION
ROUTE 5, BOX 325, CORVALLIS, OREGON 97330 PHONE 757-4186

June 16, 1980

Lane County Board of Commissioners
Otto t'Hooft, Chairman
Courthouse, Public Service Building
125 East Eighth Avenue
Eugene, Oregon 97401

Dear Sir:

The Department of Fish and Wildlife has completed review of the draft "Coastal Goals Compliance Report" and proposed amendments. We compliment the county for drafting a document which follows the requirements of Goals 16, 17 and 18 and considers the needs of the citizens of the county.

As I stated during the June 12th hearing, the Department supports adoption of the Coastal Goals Compliance Report. However, we do have several suggestions we wish to offer for your consideration.

These are:

1. Page 17. Policy 1 (Natural)
   Replace existing language with:

   "Authorized log storage sites in existence as of July 1, 1980, are considered a grandfathered use which may be continued. Additional sites or expansion of existing sites must be authorized by appropriate state and federal agencies. However, due to the impacts of log storage in intertidal areas, Lane County recommends against expansion of existing sites or creation of new storage sites in Natural management units".

   We recommend this new language to alleviate wording in the June 12th draft which "tells" the DSL how it will operate its lease laws. We also attempt to omit controversial language in the proposed amendments which suggests that all existing log storage is water dependent.

2. Page 18. Policy 3 (Natural)

   The policy should be retained as originally drafted in the June 12 draft. The Department of Fish and Wildlife is solely responsible by ORS for commercial fishing and clamming. This department would oppose the proposed amendment. However, a statement in the plan which clarifies the county's feelings would be welcomed.

3. Page 18. Policy 1 (Conservation)

   Change the policy wording similiar to No. 1 above.

4. Page 19. Policy 6 (Conservation)

   Proposed new policy:

   Filling, dredging and other activities which degrade natural estuarine values will only be allowed if they constitute a minor alteration of the estuary or are part of an active restoration project and:

   a. are required for navigation or other water-dependent uses which require an estuarine location,

   b. if a public need is demonstrated,

   c. no upland location exists, and

   d. adverse impacts are minimized.

5. Page 19, 2nd paragraph (Development)

   The amendment offered in May 15 appendix should be incorporated into report.

6. Page 20-21. Mitigation and Restoration

   The Department encourages the county to identify potential sites even if they are currently private-diked lands in agricultural use. We have identified some of these sites (blue color) in the attached maps. The Department does not favor removal of the two islands as suggested in ORD803. The islands have developed substantial fish and wildlife values which would be impacted by such a project.

7. Page 22. Conditional uses (Natural)

   Change aquaculture to aquaculture facilities. Delete commercial clamming and fishing.

   The reason for these changes is that these activities are regulated under statute by the Department of Fish and Wildlife.

8. Page 22. Permitted uses (Conservation)

   Change aquaculture to aquaculture facilities. See reason expressed in number 7 above.

9. Page 24. Proposed Management Unit B (Conservation)

We offer the following modifications to the language proposed in the amendments:

Discussion: The Port of Siuslaw has expressed a desire to develop a boat basin and harbor of refuge in the upriver cove, (DOMSEA Bay) when the jetties are extended. The cove area does contain clams, shrimp and other benthic organisms, but biological productivity is minor in the content of the estuary as a whole. The site is, however, biologically productive and valuable for fish and wildlife, especially birds, of the lower bay. The site would provide good shelter with reconstruction of the jetty and has the additional advantage of proximity to the river mouth. The State Marine Board cites a 12% increase in larger boats in Lane County in 1979 and supports development of the harbor to help provide moorage for existing boats and anticipated future increases in moorage need. Lane County supports development of the harbor of refuge contingent on the Port meeting the requirements of state and federal agencies, including providing the county with sufficient data to develop an exception to Goal 16. Special care should be exercised to protect the upriver Piddock Bay area from adverse development impacts.

The small cove immediately west of DOMSEA Bay and north of the north jetty at approximately River Mile .5 was formed by water washing through gaps in the existing jetty. The cove supports ~~xxxxxxx~~ shorebirds. The cove may require some filling to allow for jetty maintenance or reconstruction. Any filling of the cove shall be the minimum necessary with total filling of the cove avoided. The cove shall be used only as needed for expansion and reconstruction of jetties, subject to state and federal agency requirements.

I must point out that the Department has agreed with the Fish and Wildlife Service's position on the proposed boat basin. However, we are willing to re-evaluate the proposal when sufficient data is available to address the criteria required for an exception.

10. Page 25. Management Unit E

We support the language in the June 12th draft for this management unit as we do not favor removal of the two islands.

11. Page 33. Policy 8 (Prime Wildlife Area)

We offer the following revised policy statement:

Timber harvesting shall be in accord with the Oregon Forest Practices Act. Lane County recognizes that the current Forest Practices Rules do not contain adequate provisions to implement requirements of Goal 17. Thus, the county encourages the State Forester to evaluate the Rules as required by Goal 17, ~~implementation requirements~~ Until such an evaluation is completed, timber harvesting activities in the Prime Wildlife Area should be in accord with the Forest Practices Act after consultation within the Department of Fish and Wildlife to determine a harvest plan which will result in the least impact on wildlife inhabiting the designated area.

12. Page 34. Policy 6 (Significant Natural Area)

Revise language similiar to that proposed in number 11 above.

13. Page 48. Prime Wildlife MU20

Shoreland management 20 is an upriver extension of the prime wildlife shorelands referred to in points 14 and 15 below. We concur with removing from this unit pasturelands and aquatic marshes previously identified in these comments. However, this Department strongly opposes the proposed amendment to delete this unit.

14. Page 49. Prime Wildlife MU21

The Department is soundly opposed to the proposed amendment's attempt to remove the Prime Wildlife Area designations from the south side of the estuary from Glenada to the upper end of Duncan Slough (shoreland units 20 and 21).

We also oppose the draft language in the June 12th draft. We do, however, support the description of management units 20 and 21 in the Feb. 1 draft with provisions for modifying the 1,000 foot allowance in 18-11-29 to allow an approximately 5-acre buffer to protect the heron rookery.

Modifications of the Feb. 1 draft as represented in the June 12th draft and in the May 15 list of amendments are not supportable by biological data from this agency or the Wilsey and Ham report.

15. Page 48. Residential Development MU 28

This forested shoreland habitat should be classified "Natural Resource Preservation" with Prime Wildlife Area adjacent to the estuary.

We are opposed to the Residential Development designation. To place these shorelands in the Residential Development designation the county must develop data to take an exception to Goals 4 and 17. The timbered shorelands between Glenada and Lawson Creek possess some of the highest shoreland wildlife habitat values on Siuslaw Bay.

The maps submitted with the draft report contain some errors. These relate to placement of shoreland designations on aquatic areas and omission of some valuable habitats from natural management units. We do not fault the county for these mapping errors as they are relatively minor. We have recently provided county staff with an estuary habitat classification map completed by our department in 1979. Our habitat maps were completed under contract with LCDC and are being used by that agency in acknowledgement reviews.

Please relate the numbered comment below to corresponding numbers on the attached county maps.

1) The natural aquatic management unit should be expanded to include the area delineated. This area has been identified as containing some of the highest diversity and quantity of organisms within the estuary. It includes the only known habitat in Siuslaw Bay for certain clam species.

2) This area should be re-designated natural. Its expanse of intertidal area and natural resources place it, according to goal language, with the natural designation. The unit description should allow repair of the rock groins.

3) This marsh area should be natural and placed in aquatic unit "D".

4) This marsh area should be natural and placed in aquatic unit "D".

5) The marsh area east of the North Fork should be natural and placed in unit "E".

6) These areas are potential restoration sites.

7) Management unit "E" should be enlarged to include this natural marsh area.

8) These marsh areas should be included in the natural aquatic management unit "F".

9) This marsh area should be included in natural aquatic management unit "F:.

10) These parcels are potential restoration sites.

11) This is a potential restoration site.

~~12) This is a potential restoration site.~~

13) This marsh area should receive a conservation aquatic designation.

~~14) These parcels are potential restoration sites.~~

15) This marsh habitat should be placed in natural management unit "H".

16) These marsh habitats should be placed in natural management unit "H".

17) This is a potential restoration site.

18) This marsh should be placed in natural aquatic unit "H" or "I".

~~19) These parcels are potential restoration sites.~~

20) These marsh areas should be placed in natural aquatic unit "I".

I again take this opportunity to compliment the county on the excellent job of drafting a coastal goal compliance report. The coastal goals are very specific and demanding and we believe the county's report follows the intent of these goals. Our comments are not offered to criticize but to assist the county in meeting goal requirements.

We have enjoyed the opportunity to work with the county in this portion of the planning process. If we can be of assistance in reviewing additional portions of the county's comprehensive plan or clarify any comments in this letter, please call.

Sincerely,

Jim Lauman for

Jim Lauman, Asst. Chief
Environmental Management Section

JL:pb

BIG GAME RANGES - COAST RANGE

Definitions

Sensitive Big Game Range - That portion of the county which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.

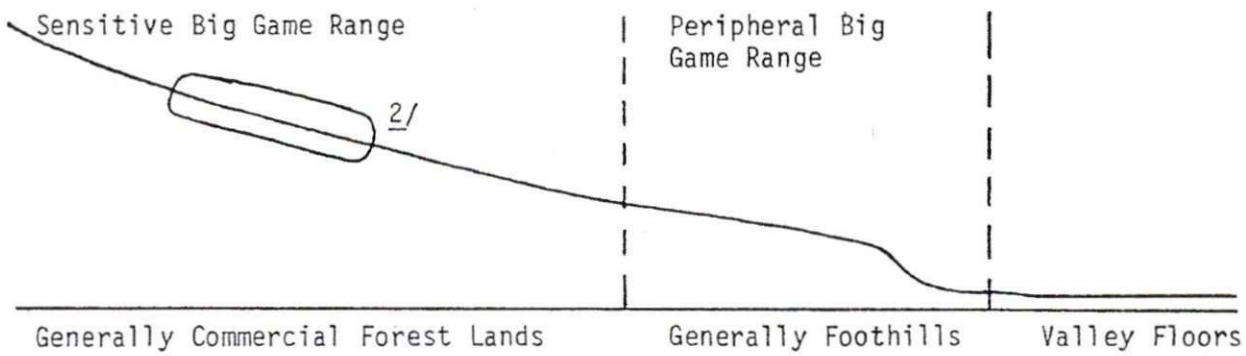
Peripheral Big Game Range - Foothill areas of the county generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals from sensitive range in severe winters. However, conflicts exist between big game and other uses. These existing conflicts limit management options and recreational opportunities.

Impacted Big Game Range - Those areas of the county that have existing levels of land-use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

Development Within Big Game Ranges 1/

1. Sensitive Big Game Range: 1:80 acres
2. Peripheral Big Game Range: 1:40 acres

* The plans should not allow for subdivisions or partitioning below the recommended density levels.



1/ The Department's recommendations relate to overall residential density and not minimum lot sizes.

2/ Lands already developed to a density which precludes big game usage should not be included within big game range maps.

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
NORTHWEST REGION
ROUTE 5, BOX 325, CORVALLIS, OREGON 97330 PHONE 757-4186

June 16, 1980

Lane County Board of Commissioners
Otto t'Hooft, Chairman
Courthouse, Public Service Building
125 East Eighth Avenue
Eugene, Oregon 97401

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cc: Lane Co. Planning Dept.
West Lane Planning Commission
LCDC - Salem and Eugene
Port of Siuslaw
Ed Sullivan

RECEIVED
JUN 18 1980
OREGON FISH & WILDLIFE
HEADQUARTERS

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 11-84

IN THE MATTER OF REVISING CHAPTER 16 THE RURAL DEVELOPMENT CODE OF LANE COUNTY TO:

1. MAKE CERTAIN HOUSEKEEPING REVISIONS TO THE HEARINGS OFFICIAL SPECIAL USE APPROVAL CRITERIA OF THE EXCLUSIVE FARM USE (E) ZONE TO ADOPT THE GREENWAY DEVELOPMENT PERMIT APPROVAL CRITERIA FOR AGGREGATE EXTRACTION, AND NOT TO APPLY ANY OTHER CRITERIA FOR AGGREGATE EXTRACTION, FOR LANDS ZONED E AND IN THE GREENWAY.
2. MAKE NUMEROUS REVISIONS TO THE DEVELOPMENT CODE TO BRING IT INTO COMPLIANCE WITH THE REQUIREMENTS OF THE DLCD STAFF REPORT DATED JULY 26, 1984. THESE REVISIONS INCLUDE:
   - A. ADDING A SUBSECTION TO LC 16.005 TO PROVIDE STANDARDS, PROCEDURES AND CRITERIA FOR THE PROTECTION OF AREAS DESIGNATED BY THE RURAL COMPREHENSIVE PLAN AS SENSITIVE BIRD HABITAT.
   - B. ADDING THE DEFINITION OF "HISTORIC STRUCTURE OR SITE."
   - C. REVISING THE DEFINITION OF "WETLAND" IN ORDER TO BE CONSISTENT WITH THE STATEWIDE PLANNING GOAL DEFINITION OF THAT TERM.
   - D. REVISING THE SITING REQUIREMENTS IN THE IMPACTED FOREST, F-2 ZONE TO PROVIDE FOR CLUSTERING OF RESIDENCES ON EXISTING TRACTS.
   - E. REVISING THE PROPERTY DEVELOPMENT STANDARDS OF THE EXCLUSIVE FARM USE, E, ZONE TO ADD REQUIREMENTS FOR CLUSTERING OF RESIDENCES ON EXISTING TRACTS.
   - F. ADDING RIPARIAN SETBACK AND MAINTENANCE STANDARDS TO THE NATURAL RESOURCE, NR, ZONE.
   - G. REVISING THE GREENWAY DELOPMENT PERMITS TO:

i. ELIMINATE ALL THE LANGUAGE FOLLOWING THE PHRASE "OR PERSONAL NONCOMMERCIAL USE" IN LC 16.254(3) (k).
ii. ENSURE THAT ONLY WATER-DEPENDENT AND WATER-RELATED USES ARE EXEMPT FROM THE 100-FOOT GREENWAY SETBACK REQUIREMENT.
iii. PROVIDE NOTICE OF DEPARTMENT ACTIONS FOR A GREENWAY DEVELOPMENT PERMIT TO ODOT.
iv. REQUIRE A GREENWAY DEVELOPMENT PERMIT FOR DEVELOPMENT IN DESIGNATED "URBAN" AREAS.

OR IN THE ALTERNATIVE OF "G" ABOVE

H. ADOPT A NEW GREENWAY PERMIT SECTION

3. ADOPT A SAVINGS AND SEVERABILITY CLAUSE.

WHEREAS, on March 1, 1983, Lane County submitted its Rural Comprehensive Plan to the Land Conservation and Development Commission for acknowledgment, and

WHEREAS, since submitted, objections to the plan have been received, and the Department of Land Conservation and Development Commission staff have reviewed the plan, and

WHEREAS. Lane County has now received DLCD's staff reports and is now in a position to revise the Development Code to bring it to an acknowledgeable standard, now, therefore

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

Chapter 16 of Lane Code is hereby amended by removing and substituting the following pages:

REMOVE THESE PAGES	INSERT THESE PAGES
16-3 to 16-4 (a total of two pages)	16-3 to 16-4b (a total of four pages)
-------	16-16a (a total of one new page)
16-24	16-24 to 16-24a

(3) Conditions. The following conditions may be imposed at the time of approval of a development for which a permit or application is required and for which a finding has been made as required in LC 16.005(2) above in order to ensure site and area stability:

(a) Maintain vegetation and eliminate widespread destruction of vegetation.

(b) Carefully design new roads and buildings with respect to:

(i) Placement of roads and structures on the surface topography.

(ii) Surface drainage on and aroung the site.

(iii) Drainage from buildings and road surfaces.

(iv) Placement of septic tank disposal fields.

(c) Careful construction of roads and buildings:

(i) Avoid cutting toeslopes of slump blocks.

(ii) Careful grading around the site, especially avoiding oversteepened cut banks.

(iii) Revegetating disturbed areas as soon as possible.

(d) Certification by a geologist or engineer that the above conditions have been complied with and/or that a hazard does not exist.

(4) Sensitive Bird Habitat Protection Standards and Criteria. All uses or activities permitted or conditionally permitted within the zones identified in LC 16.005(4)(a) below shall be subject to the additional procedures and requirements in LC 16.005(4)(b)-(g) below, provided such uses are located on property identified as a sensitive bird habitat area via Rural Comprehensive Plan Flora and Fauna Policy 18 and LM 11.400.

(a) Applicable Zones.

Zone Classification	Abbreviation	Section No.
Nonimpacted Forest Lands	F-1, RCP	16.210
Impacted Forest Lands	F-2, RCP	16.211
Exclusive Farm Use	E-RCP	16.212
Natural Resource	NR-RCP	16.213
Marginal Lands	ML-RCP	16.214
Park and Recreation	PR-RCP	16.215
Sand, Gravel and Rock Products	SG-RCP	16.217
Sand, Gravel and Rock Products Combining Processing	SG-CP-RCP	16.218
Public Facility	PF-RCP	16.219
Limited Commercial	C-1, RCP	16.220
Neighborhood Commercial	C-2, RCP	16.221
Commercial	C-3, RCP	16.222
Rural Commercial	C-R, RCP	16.223
Limited Industrial	M-1, RCP	16.224

F. Adding riparian setback and maintenance standards to the Natural Resource, NR, Zone.

G. Revising the Greenway Development Permit requirements to:

i. Eliminate all the language following the phrase "or personal noncommercial use" in LC 16.254(2)(k).

ii. Ensure that only water-dependent and water-related uses are exempt from the 100-foot Greenway setback requirement.

iii. Provide notice of Department actions for a Greenway Development Permit to ODOT.

iv. Require a Greenway Development Permit for development in designated "urban" areas.

OR IN THE ALTERNATIVE

H. Adopt a new Greenway Permit section.

If any section, subsection, sentence, clause, phrase of portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

The application of Chapter 16 to rural Lane County repealed by this Ordinance shall remain in force to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

While not part of this Ordinance, we adopt the attached Exhibit "A" as findings in support of this decision.

Enacted this 12th day of Sept., 1984.

Chair, Lane County Board of Commissioners

Debbie E. Mohr
Recording Secretary for this Meeting of the Board

(a total of one page)	(a total of two pages)
16-44 (a total of one page)	16-44 to 16-44a (a total of two pages)
16-56 (a total of one page)	16-56 to 16-56a (a total of two pages)
16-58 to 16-60 (a total of three pages)	16-58 to 16-60 (a total of three pages)
16-62 (a total of one page)	16-62 to 16-62b (a total of three pages)
16-241 to 16-245 (a total of five pages) or in the alternative 16-239 to 16-245 (a total of seven pages)	16-241 to 16-244 (a total of four pages) 16.239 to 16.245 (a total of seven pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these substitutions is to:

1. Make certain housekeeping revisions to the Hearings Official Special Use Approval Criteria of the Exclusive Farm Use (E) Zone to adopt the Greenway Development Permit Approval Criteria for aggregate extraction, and to not apply any other criteria for aggregate extraction, for lands zoned E and in the Greenway.

2. Make numerous revisions to the Development Code to bring it into compliance with the requirements of the DLCD staff reportdated July 26, 1984. These revisions include:

   A. Adding a subsection to LC 16.005 to provide standards, procedures and criteria for the protection of areas designated by the Rural Comprehensive Plan as sensitive bird habitat.

   B. Adding the definition of "Historic Structure or Site".

   C. Revising the definition of "wetland" in order to be consistent with the Statewide Planning Goal definition of that term.

   D. Revising the siting requirements in the Impacted Forest, F-2, Zone to provide for clustering of residences on existing tracts.

   E. Revising the property development standards of the Exclusive Farm Use, E, Zone to add requirements for clustering of residences on existing tracts.

Light Industrial	M-2, RCP	16.225
Heavy Industrial	M-3, RCP	16.226
Suburban Residential	RA-RCP	16.229
Garden Apartment Residential	RG-RCP	16.230
Rural Residential	RR-RCP	16.231
Destination Resort	DR-RCP	16.232

(b) Development Plan Submittal. The person proposing the development shall submit plans to the Department which sufficiently identify the location, nature and scope of the proposed use or activity.

(c) Referral. Upon receipt of the plans identified in LC 16.005(4)(b) above, the Department shall refer a copy of the plans to the Oregon Department of Fish and Wildlife (ODFW).

(d) ODFW Review. Upon receipt of the plans identified in LC 16.005(4)(b) above, the ODFW shall review the proposed use of activity and make a determination of whether or not the use or activity would affect a sensitive bird habitat. In making this review and determination, the ODFW shall consult with the affected landowner(s) and appropriate state agencies, and shall address the standards in LC 16.005(4)(d)(i) and (ii) below. The basis for the determination shall be stated in writing, completed within seven working days of receipt, and then submitted to the Department (Lane County).

(i) A sensitive bird habitat will be considered affected by a use or activity if the use or activity is located within 660 feet of an eagle or osprey site or within 300 feet of a heron rookery or pigeon mineral spring.

(ii) A sensitive bird habitat may also be considered affected by a use or activity if the use or activity is located a greater distance than specified in LC 16.005(4)(d)(i) above, considering unique conditions of topograph or the individual habits of the bird(s).

(e) No Affects Determined. If the ODFW determines that the sensitive habitat area will not be affected, then the ODFW will give the Department written notice of its determination, and Lane County may proceed with authorization of the use or activity, or with the processing of any other required applications.

(f) Affects Determined and Protection Plan. If the ODFW determines that the sensitive habitat area will be affected, the ODFW shall work with the affected landowner(s) in the development of a site specific habitat protection plan. The plan shall consider the proposed use or activity and its interrelationship to and

affects upon nesting trees, perch trees, critical nesting period roosting sites and/or buffers for wind, vision and noise. The plan must contain a statement of reasons, supported by facts, explaining why the sensitive bird habitat would not be adversely affected by the proposed use or activity. The plan shall then be submitted to the Department.

(g) Director Approval. The proposed uses or activities identified in the habitat protection plan shall be reviewed by the Director pursuant to LC 14.100 and shall be allowed if in conformance with the following approval criteria:

(i) The proposed use or activity would not adversely impact a sensitive wildlife habitat.

(ii) Conditions placed upon the approval of the habitat protection plan would avoid or eliminate any adverse impacts upon a sensitive wildlife habitat. Conditions may include setbacks, limitations upon the time period for the operation of the use or activity and/or prohibition of conflicting uses.

(h) LC 16.005(4)(a)-(g) do not apply to the protection of sensitive bird habitat from forest practices as regulated by the Forest Practices Act and as regulated by the COOPERATIVE AGREEMENT BETWEEN OREGON STATE BOARD OF FORESTRY AND OREGON STATE FISH AND WILDLIFE COMMISSION as adopted by Lane County in Rural Comprehensive Plan Goal 5 Flora and Fauna Policy 17.

16.006 Compliance Required.

(1) No person shall engage in, or cause to occur, a development which does not comply with the Lane County Land Use and Development Chapter.

(2) A development shall be approved by the Director, or other Approving Authority, according to the provisions of this Chapter.

(3) Unless appealed, a decision on any application shall be final upon expiration of the period provided for filing an appeal or, if appealed, upon rendering of the decision by the reviewing body.

16.007 Compliance With Rural Comprehensive Plan. In the event of any conflict between any provision of this Chapter and provisions of the Rural Comprehensive Plan of Lane County, or duly adopted portions, elements or amendments of such Plan, the more restrictive provisions shall prevail.

16.008 Interpretation. When in the administration of this Chapter there is doubt regarding the intent of the Chap-

Yard, Front. A yard between the front line of the building (exclusive of steps) and the front property line.

Yard, Rear. An open, unoccupied space on the same lot with a building, between the rear line of the building (exclusive of steps, porches and accessory buildings) and the rear line of the lot.

Yard, Side. An open, unoccupied space on the same lot with a building, between the sidewall line of the building and the side line of the lot.

(j) A dwelling or mobile home not provided in conjunction with farm use provided:

(i) The dwelling or mobile home is situated upon a legal lot with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on Oct. 12, 1983.

(ii) The dwelling or mobile home, or the activities associated with the dwelling or mobile home, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use

(iii) The dwelling or mobile home is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(iv) The approval of a dwelling or mobile home shall comply with the provisions of ORS 215.236, 1983 Replacement Part, regarding establishment of the nonfarm residence; procedures; disqualification for farm use valuation; and additional tax or penalty.

(k) A transmission tower over 200 feet in height.

(5) Hearings Official Special Use Approval Criteria.

(a) Compatibility of the use or activities associated with the use with the Agricultural Lands Policies of the Rural Comprehensive Plan Policies, ORS 215.243 and the purpose of this zone.

(b) The use, or activities associated with the use, will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(c) The use, or activities associated with the use, complies with other conditions considered necessary by the Approval Authority in order to meet the applicable approval criteria.

(d) The above criteria shall not be applicable to uses identified under LC 16.212(4)(b) above if such uses are also subject to review under Willamette Greenway requirement LC 16.254(3).

(6) Farm Operations.

(a) A farm operation is all agricultural activities occurring under a single management. For purposes of this section, it is immaterial whether the activities occur on a single parcel of land, on contiguous parcels of

(ii) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(iii) The water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period of fire danger.

(d) Shall have a spark arrestor on any chimneys and a fire retardant roof.

(8) Siting and Fire/Safety Standards for Dwellings.

All dwellings and mobile homes conditionally permitted above:

(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes of the F-2 zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.

(ii) Residences to be sited upon all other tracts shall be sited as follows:

(aa) Where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from adjoining lines of property zoned F-1 and 100 feet from adjoining lines of property zoned F-2 or EFU.

(bb) On the least valuable farm or forest areas of the tract or located near residences on other tracts.

(b) Shall maintain a fuel break of 50 feet around the residence. Fuel breaks shall be free of hazardous fuels in the form of native vegetation. Irrigation or fire resistent vegetation shall be planted within the fuel break to prevent undue soil erosion. Fuel breaks shall be continually maintained and may contain individual tree specimens, however plant material shall not provide a means of readily spreading fire. Fuel breaks shall comply with the riparian vegetation protection standards of LC 16.211(9)(b) and (c) below.

(c) Shall provide an adequate fire suppression system. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:

(i) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capable of sustaining a volume of 20 gallons per minute for not less than 20 minutes.

a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Tract. A lot, parcel or unsubdivided or unpartitioned land under the same ownership. Contiguous units of unsubdivided or partitioned land under the same ownership shall be considered a single tract.

Urban. Those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also: (a) have concentrations of persons who generally reside and work in the area, and (b) have supporting public facilities and services.

Urbanizable. Those lands within an urban growth boundary and which are identified and (a) determined to be necessary and suitable for future urban use areas, and (b) can be served by urban services and facilities, and (c) are needed for the expansion of an urban area.

Use. The purpose for which land, submerged or submersible lands, the water surface or a building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

Veterinary Clinic. Synonymous with the definition of "animal hospital".

Water Dependent Use. A use or activity which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production or source of water.

Water Related Use. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water dependent land or waterway use, and which, if not located adjacent to water, would result in public loss of quality in the goods or services offered. Except as necessary for water dependent or water related uses or facilities, residences, parking lots, spoil or dump sites, roads and highways, restaurants, businesses, factories and trailer parks are not generally considered dependent on or related to water location needs.

Wetlands. Land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semiaquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands.

Width. The horizontal distance between the side boundary lines measured in the mean direction of the front and rear boundary lines.

Yard. An open space on the same lot with a building unoccupied and obstructed from the ground upward, except as otherwise provided herein.

Historic Structure or Site. Property which had been identified by Lane County in its adopted Rural Comprehensive Plan findings as:

(1) Historically significant.

(2) In need of protection in order to preserve its historical significance, and for which the means of protection shall be the application of the Historic Structures or Sites Combining (/H-RCP) Zone.

The above sites are also identified separately in LM 11.300.

ter or the suitability of uses not specified, the Director shall request an interpretation of the provision by the Board of County Commissioners. The Board shall issue an interpretation to resolve the doubt, but such interpretation shall not have the effect of amending the provisions of this Chapter. Any interpretation of the Chapter shall be deemed an administrative action and shall be based on the following considerations:

(1) The Lane County Comprehensive Plan.

(2) The purpose and intent of the Chapter as applied to the particular section in question.

(3) The opinion of the County Counsel.

Copies of such interpretations shall be indexed and kept on file in the Department and may be reviewed by the public upon request.

16.009 Restrictiveness. Where the conditions imposed by a provision of this Chapter overlap, the provisions which are more restrictive shall govern.

16.010 Severability. If any section, paragraph, subsection, clause, sentence or provision of this Chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this Chapter, and the effect thereof shall be confined to the section, paragraph, subsection, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered, it being the intent of the governing body to enact the remainder of this Chapter notwithstanding the parts so declared unconstitutional or invalid. Further, should any section, paragraph, subsection, clause, sentence or provision of this Chapter be judicially declared unreasonable or inapplicable to a particular premises or to a particular use at any particular location, such declaration or judgment shall not affect, impair, invalidate or nullify such section, paragraph, subsection, clause, sentence or provision as to any other premises or use.

16.011 Introductory Provisions. In order to achieve the purposes outlined in LC 16.003, and to assure that the development and use of land in Lane County conforms to the Rural Comprehensive Plan, zone classifications have been established for all unincorporated areas outside of adopted urban growth boundaries and within Lane County. These zones specify regulations for the use of land and property development standards, and use applied by boundaries indicated on the Lane County Rural Comprehensive Plan Zoning Maps.

land or on separate parcels of land. It is also immaterial if the operator has less than fee interest in the land on which the agricultural activity occurs.

dwelling has been approved pursuant to the above LC 16.212(4)(j) above and if the division would not conflict with the purpose of this zone.

(e) Divisions pursuant to LC 16.212(7)(a),(b),(c) or (d) above are subject to the applicable application procedures of LC Chapter 13 and the applicable review procedures of LC Chapter 14. Divisions under LC 16.212(7)(a) and (b) above shall also require that a statement be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for obtaining a dwelling or mobile home are met.

(f) A person who sells or otherwise transfers real property zoned Exclusive Farm Use (E) may retain a life estate in a dwelling or mobile home on that property and the tract of land under and around the dwelling or mobile home. Partition approval is not required for the creation of such a life estate.

(8) Property Development Standards. All uses or activities permitted or conditionally permitted above, except farm use, shall be subject to the following development standards:

(a) The Approval Authority shall balance the setback standards of LC 16.212(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.212 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes of the E zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.212(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.

(ii) Residences to be sited upon all other tracts shall be sited as follows:

(aa) Where possible, in consideration of the dimensions and topography of the tract, at least 500 feet from adjoining lines of property zoned F-1 and 100 feet from adjoining lines of property zoned F-2 or EFU.

(bb) On the least valuable farm or forest areas of the tract or located near residences on other tracts.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercial forest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazards.

(dd) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(e) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(9) Residence Maintenance, Repair and Replacement Standards.

(a) Maintenance and repair of lawfully existing residences shall be permitted in the Exclusive Farm Use (E) zone.

(b) Replacement of any residence lawfully existing, occupied, suitable for occupancy or in the process of being constructed shall be permitted. The replacement need not be in kind (i.e., a mobile home may replace a dwelling or vice versa). Any replacement authorized under this subsection shall be for a residence to be located on the same site as the previous residence and such replacement shall commence within one year of the date of removal of the previous residence.

(b) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines except as provided below.

(c) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(d) Maintenance Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from a wetland or from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Rural Comprehensive Plan policies for the protection of wetlands, Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation within wetlands or along Class I streams designated for riparian vegetation protection by the Rural Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.213(6)(b)(i) above. Where vegetation removal beyond that allowed in LC 16.213(6)(b)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Vegetation removal necessary to provide water access for a water dependent use.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

(3) Special Uses - Director Approval. The following uses are subject to approval by the Director pursuant to LC 14.100:

(a) Single-family dwelling(s) or mobile home(s) for residential purpose for watchman, caretaker or operator in conjunction with use permitted in the district.

(4) Special Uses - Director Official Approval. The following uses are subject to approval by the Hearings Official pursuant to LC 14.300:

(a) Piers and boat houses.

(b) Single-family dwelling or mobile home and accessory structures.

(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.

(d) Forest uses and any accessory uses.

(5) Conditional Use Criteria. Uses conditionally permitted under LC 16.213(4) above are subject to compliance with the following criteria:

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.

(ii) That the proposed site is on land generally unsuitable for natural resource uses.

(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;

(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby natural resource lands.

(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;

(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and

(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

(6) Property Development Standards. All uses or activities permitted or conditionally permitted above, shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than 20 feet from the right-of-way of a County or local access-public road and 10 feet from all other property lines, except as provided below.

(bb) Removal of dead or diseased vegetation that poses a safety or health hazard.

(cc) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

proposed for lands within the boundaries of the Willamette River Greenway adopted and as revised from time to time by the Oregon Land Conservation and Development Commission, except as provided below:

(a) Customary dredging and channel maintenance conducted under permit from the State of Oregon.

(b) Seasonal increases in gravel operations as provided under permit from the State of Oregon.

(c)tThe placing by a public agency of signs, markers, aids, etc. to serve the public.

(d) Activities to protect, conserve, enhance and maintain public lands, except that a substantial increase in the level of development of existing public recreational, scenic, historical or natural uses on public lands shall require review as provided by this section.

(e) Erosion control operations required in emergency situations for the safety and protection of property.

(f) Construction or use of a building other than a dwelling whether or not within 150 feet of the ordinary low waterline when the building is customarily provided in conjunction with a farm use; provided the structure does not exceed 12 feet in height nor exists for longer than six months.

(g) Farm use.

(h) Reasonable emergency procedures necessary for the safety or protection of property.

(i) Maintenance and repair usual and necessary for the continuance of an existing use. Landscaping, construction of driveways, modification of existing structures or facilities adjacent to a residence as are usual and necessary to such use and enjoyment.

(j) The propagation of timber or the cutting of timber which is done for public safety or personal noncommercial use.

(k) Irrigation pumps and water intakes and other utility lines in conjunction with an agricultural use.

(l) Uses which are pursuant to one of the following Lane County Land Development actions when such action has been approved or adopted consistent with the Greenway Development Permit approval requirements of 16.254(4) below and notification requirements of LC 16.254(7) below.

(i) Planned Unit Developments, as provided in 10.700.

(ii) Unzoned Area Development Permits, as provided in LC 9.700.

(4) Greenway Development Permit Approval. A decision to approve a Greenway Development Permit shall require findings that the proposed intensification, change of use or development conforms to the following criteria, and setback requirements:

(dd) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.

(ee) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.

(ff) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses, such as domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.

(gg) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terraces bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(hh) Protection from erosion.

(ii) Protection and conservation of lands designated as aggregate resources within the adopted Willamette Greenway Plan.

(b) Setback Requirement; Exceptions. New intensifications, developments and changes of use shall be set back 100 feet from ordinary high waterline of the river, except for a water related or water dependent use.

(5) Conditions. Reasonable conditions may be imposed in connection with a Greenway Development Permit as necessary to meet the purposes of this section. Guarantees and evidence may be required that such conditions will be or are being complied with. Such conditions may include, but are not limited to, requiring:

(a) Special yards and spaces.

(b) Fences and walls.

(c) Special off street parking and loading requirements.

(d) Street and road dedications and improvements (or bonds).

(e) Control of points of vehicular ingress and egress.

(f) Special provisions on signs.

(a) Criteria.

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the reestablishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) Preservation and maintenance of land inventoried as "agriculture" in the adopted Willamette River Greenway Plan for farm use as provided for in Goal 3 and minimize interference with the long-term capacity of lands for farm use.

(iv) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.

(v) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.

(vi) Minimize vandalism and trespass.

(vii) Location of development away from the river to the greatest possible degree.

(viii) Protection of significant fish, wildlife habitat and natural areas.

(ix) Is compatible with the Willamette River Greenway based upon the following considerations:

(aa) A development which is a mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which are designed to minimize adverse effects upon water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise, safety and to guarantee necessary reclamation.

(bb) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resources.

(cc) Preserve areas of annual flooding, floodplains and wetlands.

(g) Landscaping and maintenance thereof.

(h) Maintenance of grounds.

(i) Control of noise vibration, odors or other similar nuisances.

(j) A time period within which the proposed use shall be developed.

(k) A limit on total duration of use.

(l) Control of scale, bulk and coverage of proposal.

(6) Application and Review Procedure. Application for a Greenway Development Permit shall be made as provided by LC 14.040 and reviewed by the Hearings Official as provided by LC 14.300.

(7) Additional Notice. Immediate notice of an application shall be given the State Department of Transportation by certified mail, return receipt requested, and provision shall be made to provide notice to any individual or group requesting notice in writing. Notice of the action taken by Lane County on an application shall be furnished by regular mail to the State Department of Transportation.

(8) Conflicting Provisions. In the case of any conflict between the provisions of this section and other provisions in Lane Code, the more restrictive provisions shall apply.

(9) Nonauthority for Public Use of Private Property. Nothing in this section is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in accordance with law to authorize such use.

(10) Nonconforming Uses. Except as modified in this section, LC 16.251(1) to (8) shall apply to properties within the Willamette Greenway Boundaries. Any change or intensification as those terms discussed in LC 16.254(2)(f) and (g) above of a nonconforming use shall be prohibited unless a Greenway Development Permit is issued for it.

Legislative Findings in Support of Ordinance No. 11-84
Exhibit A

The Board of County Commissioners of Lane County finds that it is necessary to make the following changes in Lane Code Ch 16 to bring it to an acknowledgeable standard:

1. Make certain housekeeping revisions to the hearings official special use approval criteria of the Exclusive Farm Use (E) zone to adopt the greenway development permit approval criteria for aggregate extraction, and not to apply any other criteria for aggregate extraction, for lands zoned E and in the greenway.

This change insures that, for all areas within the Willamette River Greenway and zoned Exclusive Farm Use (E), the more stringent requirements of Goal 15 sections C.3.d. will be applied to aggregate extraction. Unlike Exclusive Farm Use lands not within the Willamette River Greenway, those within the greenway require protection of water quality, fish and wildlife habitats, vegetation, bank stabilizaiton, streamflow, visual quality, noise, safety and required reclamation. Section C.3.d. requirements are necessary to insure protection of those areas within the greenway.

2A. Adding a subsection to LC 16.005 to provide standards, procedures and criteria for the protection of areas designated by the rural comprehensive plan is sensitive bird habitat.

These changes to Lane Code require the County to submit development plans for uses located on property identified as a sensitive bird habitat area to the Oregon Department of Fish and Wildlife (ODFW) for evaluation as to the impact the development will have on the habitat. It also deems habitats to be affected if development occurs in close proximity thereto. If the ODFW determines that the habitat will be affected, the changes call for cooperation between the landowner and ODFW to avoid or eliminate those adverse impacts. Only then is the plan taken under advisement by the Director. These changes, providing a two step process and coordination among the landowner, ODFW and the County, insure that sensitive bird habitats will be protected. It bears noting that, for activities regulated by the Forest Practices Act, the requirements of the Cooperative Agreement Between the Oregon State Board of Forestry and the Oregon State Fish and Wildlife Commission as adopted by Lane County in its Goal 5, Flora and Fauna policy 17, prevail.

E. Revising the property development standards of the Exclusive Farm Use, E, zone to add requirements for clustering of residences on existing tracts.

This change to LC 16.212(8) mimics the change reviewed, supra, for LC 16.211(8) and is inserted into the Code for the same reasons. Small groupings of residences will have less of an adverse impact on wildlife and resource uses in the big game range than would more scattered residences. However, if not within the big game range, mitigation of possible adverse effects on the resource uses of neighboring properties is a more important consideration. In any given case, either clustering the residences or scattering them somewhat may be preferable, given the characteristics both of the property upon which the development is proposed and the characteristics and uses of the surrounding properties. This balancing test will ensure a mitigation of adverse impacts to wildlife as well as resource uses.

F. Adding riparian setback and maintenance standards to the Natural Resource, NR, zone.

The Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213) which is, in part, intended to protect aquatic and other wildlife habitat areas. Although major developemnt in the NR zone is not anticipated, the NR zone permits a variety of structures which should be required to be set back in order to protect riparian vegetation just as they are in other zoning districts. For this reason, riparian setback and vegetation maintenance standards have been added to the NR zone. These provisions require cooperation between the County and the Department of Fish and Wildlife for Class I stream setbacks, and closely parallel the riparian requirements to be applied in other zones.

G. Revising the Greenway Development Permits to:

i. Eliminate all the language following the phrase "or personal noncommercial use" in LC 16.254(3)(k)

ii. Ensure that only water-dependent and water-related uses are exempt from the 100-foot greenway setback requirement.

iii. Provide notice of department actions for a greenway development permit to ODOT, and

iv. Requiring a greenway development permit for development in designated "urban" areas.

B. Adding the definition of "Historic Structure or Site".

This change is basically a housekeeping measure as historic structures and sites were referred to in the Code, Working Papers and Policies, but that term was not defined. In addition, (2) makes it clear that the application of the Historic Structures or Sites Combining zone shall be the means of protection of these sites.

C. Revising the definition of "wetland" in order to be consistent with the state-wide planning goal definition of that term.

This is also a housekeeping measure, designed to clearly establish in the implementing measures a definition of "wetlands" which is consistent with the Statewide Planning Goal definition of that term.

D. Revising the siting requirement in the impacted forest, F-2 Zone to provide for clustering of residences on existing tracts.

Under Lane Code Ch. 16 as amended here, residences in the Impacted Forest zones (F-2) which are also located within a designated big game range will be required to be sited near existing residences and with minimal intrusions into forest areas undeveloped by non-forest uses. Setback dimension guidelines (balanced with lot dimensions, proximity to other residences and intrusions into forests area) are also set forth. Notwithstanding the fact that the property is zoned F-2, a concerted effort should be made to locate new residences so as to avoid adversely impacting resource uses and big game habitats. This change in LC 16.211(8) will, on the whole, provide for siting criteria which will protect those interests.

For properties zoned F-2 which are not within a designated big game range, the first criteria to be addressed is that of the suggested setback requirements, taking into account the particular dimensional characteristics of the property. Once a range of possible locations for the dwelling is established, a particular spot should be chosen based on location of the areas in the tract of areas of least natural resource value or in closest proximity to existing residences. Proximity to existing residences is less important for parcels not within designated big game ranges for the reason that wildlife will not be adversely affected by a scattering of residences in these areas.

These changes in the Code are direct results of the requirements of the DLCD staff as outlined in their July 19, 1984, staff report. Excerpts from that report which explain why these changes are made follow:

> "...(S)ubsection (k), which exempts certain kinds of timber harvest activities, is inappropriate. That subsection is consistent with the Greenway Interim Order, but the Goal itself does not exempt such activities from local Greenway review. It has been the Commission's practice to allow propagation of timber or cutting of timber for public safety or personal non-commercial use to be exempt from local Greenway permit review. To that extent, the first part of subsection (k) is acceptable. However, the second part (which exempts harvest activities if consistnet with an approved permit under the FPA, for a farm woodlot less than 20 acres, or if consistent with recommendations of ODOT to DOF), is not." page 91

> "...(A)ccording to the Goal, only water-dependent and water-related intensifications, developments, or changes of use themselves are exempt from Greenway setback requirements. However, Lane County also exempts uses <u>in conjuction with</u> water-related and water-dependent uses. As noted in a number of other reviews, this is inconsistent with the Goal, since it would allow a number of uses to be exempt from the setback which are not envisioned by the Goal. The County's ordinances also identify two ways in which exceptions to the 100-foot setback are permitted. One of these is if a proposal would provide better protection of Greenway values, and the other is if such protection is not applicable to the proposal. The Goal does not permit exceptions to the setback, except for water-dependent and water-related uses, even if a proposal might enhance Greenway values. This is because the intent of the Goal is to keep structures separated from the river and to protect areas immediately adjacent to the river for water-dependent and water-related uses. For example, a restaurant, including landscaping and other amenities may, in the opinion of a Hearings Officer, enhance Greenway values. However, it is not, by definition, a water-related or water-dependent use and therefore, is not permitted within the established Greenway setback." pages 85 and 86

"Section 16.254(6) requires the County to notify the Department of Transportation when an application is made. The ordinance does not require the County to also notify that agency of actions taken on an application. This is required by Goal 15 (Section G)." page 86

"Section 16.254(2) of the Lane Code lists those uses and activities that do not require a Greenway Development Permit. All are consistent with Goal 15 except subsections (a) and (k). Subsection (a) exempts uses "where the location is within areas designated as 'urban' on Greenway maps adopted by the Oregon Land Conservation and Development Commission and is beyond 150 feet of the ordinary low waterline." As noted in the 1981 denial order for Lane County, and intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15, and as designated in the ODOT Greenway Plan, is subject to local Greenway review. (Note: The term, 'urban' as used in the context of Goal 15 is not the same as that used in Goal 14. In this case, 'urban' refers to designations in the ODOT Greenway Plan)." page 83

The changes listed in 2G of this ordinance are designed to alleviate the concerns of DLCD staff, noted above, and to bring the Lane Code into compliance with Goal 15.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER 84-9-12-3) IN THE MATTER OF ADOPTING
) A SUPPLEMENTAL FINDING IN
) SUPPORT OF PA 883

WHEREAS, in PA 883, the Rural Comprehensive Plan Ordinance that adopted the plan policies, 28 working papers, while not part of the Ordinance itself, were adopted in support thereof, and

WHEREAS, since PA 883's adoption, it has come to our attention that certain soils information in Appendix I to the Forest Lands Working Paper is not entirely accurate, now, therefore, be it

ORDERED, that the following supplemental finding is hereby adopted in order to identify the correct soils information to use when determining commercial forest soils.

"Appendix I of the Forest Lands Working Paper was intended as an example of commercial forest soils and their corresponding CFSC ratings. However, these soils and ratings are not complete and are not entirely accurate. Therefore, Appendix I should not be utilized when determining commercial forest soils. Instead, the most current soils Data and Soils Interpretations as utilized by the U.S. Dept. of Agriculture soil Conservation Service should be relied upon in conjunction with the definition of "commercial forest land" (50 CFSC) as adopted by the Board of Commissioners in Ordinance No. PA 889, Exhibit "C".

Dated this 12th day of Sept., 1984.

Chair, Lane County Office of Legal Counsel

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER 84-9-12-4

) IN THE MATTER OF ADOPTING
) A SUPPLEMENTAL FINDING IN
) SUPPORT OF PA 889

WHEREAS in PA 889, we amended the Rural Comprehensive Plan policies established in PA 883, and

WHEREAS, in PA 889 we adopted four findings supporting the 40 acre minimum lot size in the F-1 Non-Impacted Forest Land Zone, and

WHEREAS, based upon evidence already in the record, DLCD staff have asked that an additional finding be made in support of that lot size, now, therefore, be it

ORDERED, that supplemental finding No. 5, set forth below, is adopted, and added to Exhibit D to PA 889.

"5.) Commercial Forest representatives in Lane County ~~requested~~ indicated 40 acres as a ~~minimum~~ typical lot size in the F-1 zone based upon 40 acres being a commonly acquired, managed and exchanged unit of commercial forest land in Lane County."

Dated this 12th day of Sept., 1984.

Chair, Lane County Board of Commissioners

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 11-91A

FILED
AUG 05 1991
COUNTY CLERK
FOR LANE COUNTY OR
BY Jessi K. DuBois

) IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE NONIMPACTED FOREST LANDS (F-1, RCP), IMPACTED FOREST LANDS (F-2, RCP) AND PARK AND RECREATION (PR-RCP) ZONES TO MAKE CERTAIN PERMITTED USES SUBJECT TO DIRECTOR APPROVAL, REVISE THE SITING STANDARDS FOR NEW STRUCTURES, AND ADD NOTICE REQUIREMENTS FOR DWELLING OR LAND DIVISION APPEALS; REMOVE THE AGRICULTURE/FOREST (AF, RCP) ZONE; MAKE HOUSEKEEPING CHANGES; AND ADOPTING A SEVERABILITY CLAUSE AND FINDINGS

The Board of County Commissioners of Lane County ordains as follows:

Chapter 16 of Lane Code is hereby amended by removing and substituting the following pages:

REMOVE THESE PAGES	INSERT THESE PAGES
16.005(2) - 16.005(4), i.e. 16-3 (a total of one page)	16.005(2) - 16.005(4), i.e. 16-3 (a total of one page)
16.011 - 16.012, i.e. 16-7 (a total of one page)	16.011 - 16.012, i.e. 16-7 (a total of one page)
16.100(1) - 16.100(4) to 16.211(10) - 16.211(10), i.e. 16-28 to 16-50 (a total of 36 pages)	16.100(1) - 16.100(3) to 16.211(10) - 16.211(10), i.e. 16-28 to 16-50 (a total of 34 pages)
16.215(1) - 16.215(3) to 16.215(10) - 16.215(10), i.e. 16-77 to 16-81f (a total of 14 pages)	16.215(1) - 16.215(2) to 16.215(10) - 16.215(10), i.e. 16-77 to 16-81e (a total of 13 pages)

Said pages are attached hereto and incorporated herein by reference. The purpose of these substitutions is to amend the Nonimpacted Forest Lands (F-1, RCP), Impacted Forest Lands (F-2, RCP) and Park and Recreation (PR-RCP) zones to make certain permitted uses subject to Di-

rector approval, revise the siting standards for new structures, and add notice requirements for dwelling or land division appeals; remove the Agriculture/Forest (AF, RCP) zone; make housekeeping changes; and adopting a severability clause and findings.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such section or portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

While not part of this Ordinance, findings in attached Exhibit "A" are adopted in support of this decision.

Enacted this 31st day of July, 1991.

Chair, Lane County Board of Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
DATE 7/11/91 County
OFFICE OF LEGAL COUNSEL

2 - IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO REVISE THE NONIMPACTED FOREST LANDS (F-1, RCP), IMPACTED FOREST LANDS (F-2, RCP) AND PARK AND RECREATION (PR-RCP) ZONES TO MAKE CERTAIN PERMITTED USES SUBJECT TO DIRECTOR APPROVAL, REVISE THE SITING STANDARDS FOR NEW STRUCTURES, AND ADD NOTICE REQUIREMENTS FOR DWELLING OR LAND DIVISION APPEALS; REMOVE THE AGRICULTURE/FOREST (AF, RCP) ZONE; MAKE HOUSEKEEPING CHANGES; AND ADOPTING A SEVERABILITY CLAUSE AND FINDINGS

ORDINANCE NO. 11-91A EXHIBIT "A"

1. On January 24, 1991 the Land Conservation and Development Commission ("LCDC") acknowledged Lane County's Rural Comprehensive Plan ("RCP") and land use regulations, with respect to compliance with Statewide Planning Goal 4, with signing of the acknowledgment order delayed until certain amendments identified by LCDC were adopted by Lane County. These amendments were identified in the January 10, 1991 DLCD staff report for Lane County's acknowledgment of compliance request.

2. At its regular meeting on July 9, 1991, the Lane County Board of Commissioners ("Board") conducted the first reading of this ordinance, and at its regular meeting on July 31, 1991, the Board conducted the second reading of this ordinance, held a duly noticed public hearing, accepted testimony and reviewed the proposed amendments.

3. Order to comply #1 of the January 10, 1991 DLCD staff report required Lane County to delete destination resorts from LC 16.210(2)(q) (F-1 zone) and 16.211(2)(q) (F-2 zone). LCDC's reason for this request was based upon their interpretation that the destination resort requirements in ORS 197.435 to ORS 197.465 and Goal 8 require counties to complete a county wide inventory of developable areas for destination resorts before destination resorts can be authorized as permitted uses in forest zones. This ordinance deletes destination resorts from the F-1 and F-2 zones and therefore complies with LCDC's request and Goal 4.

4. Order to comply #2 of the January 10, 1991 DLCD staff report required Lane County to incorporate certain "weighing" of the siting standards into the F-1, F-2 and PR zones and to make these standards applicable to all residences and structures. In response to this in order to comply, Lane County has:

   a. Incorporated the following "weighing" language from OAR 660-06-029, "A governing body shall weigh the standards in OAR 660-06-029 together with the requirements in OAR 660-06-035 to identify the building site.", into the preambles of the siting standards of the F-1, F-2 and PR zones which state, "The standards in LC 16.___ below shall be weighed together with the requirements in LC 16.___ to identify the building site." Since the LC 16 code language for the weighing of the siting standards in the F-1, F-2 and PR zones incorporates the OAR 660-06-029 language, the weighing standard in Lane Code complies with Goal 4 as implemented by OAR 660-06-029.

   b. Revised sections LC 16.210(6)(a)&(b) (F-1 zone), LC 16.211(8)(a)&(b) (F-2 zone) and LC 16.215(10)(a)&(b)to delete all references limiting these standards to big game habit areas, with the result that these standards have now become applicable to all areas. This therefore complies with the LCDC in order to comply with Goal 4 and OAR 660-06-029.

5. Order to comply #3 of the January 10, 1991 DLCD staff report required Lane County to amend LC 16.210(6)(a)(i) (F-1 zone), LC 16.211(8)(a)(i) (F-2 zone) and LC 16.215(10)(a)(i) (PR zone) to require consideration of three additional wildfire siting standards and to read as follows, "Near residences on other tracts, near existing roads, on the most level part of the tract, at least 30 feet from any ravine, ridge or slope and on the least suitable portion of the tract for forest use."

   In response to this order to comply, Lane County has adopted the following siting standards, as required by LCDC, into LC 16.210(6)(a)(i) (F-1 zone), LC 16.211(8)(a)(i) (F-2 zone) and LC 16.215(10)(a)(i) (PR zone): "Near residences on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use, and at least 30 feet from any ravine, ridge or slope." Since these specific requirements are the ones Lane County was required by LCDC to adopt, these requirements comply with Goal 4 and OAR 660-06-029.

   OAR 660-06-029 provides that the siting standards in -029(1), or their equivalent , shall apply to new dwellings and structures. The rule suggests that equivalent standards satisfying these requirements may include; (1) clustering the dwelling near or among existing dwellings, (2) siting the dwelling close to existing roads, (3) setbacks from adjoining properties, and (4) siting the dwelling on that portion of the parcel least suited for growing trees. Based upon the following findings, Lane County has adopted specific standards into into LC 16.210(6) (F-1 zone), LC 16.211(8) (F-2 zone) and LC 16.215(10) (PR zone) which are the equivalent of the siting standards in OAR 660-06-029(1):

   Finding 1: OAR 660-06-029(1)(a) requires, "The dwelling and structures be sited on the parcel so that they shall have the least impact on nearby or adjoining forest operations; The Oregon Forest Practices Act (FPA) regulates forest operations and establishes minimum standards that protect forest resources, including soil, water and air. In the case of herbicide applications, the FPA requires that when applying herbicides by aircraft, the operator shall leave an unsprayed strip of at least 60 feet adjacent to such dwellings. The requirement of leaving an unsprayed strip of 60 feet may mean that the operator must stop spraying a considerable distance away from any dwelling to avoid any drift within the 60 foot unsprayed strip. The actual distance which is left unsprayed will depend upon site specific conditions at the time of the spraying, but 200 feet is a general guideline. LC 16.210(6)(b) (F-1 zone), LC 16.211(8)(b) (F-2 zone) and LC 16.215(10)(b) require a 500 foot setback from adjoining property zoned F-1 which more than adequately addresses the concerns for spraying and felling operations occurring on properties zones F-1. More than one million acres of forest land in Lane county are zoned F-1, and property in this zone is primarily used for commercial forest management. These section of Lane Code also requires a setback of 100 feet from property zoned F-2 and EFU. The 100 foot setback also addresses the concerns for a 60 foot setback for spraying and a setback for tree felling. Most tree felling operations will not occur in a manner that trespasses on adjacent property, so a greater setback from F-2 and EFU zoned property does not appear necessary.

Finding 2. OAR 660-06-029(1)(c) requires, "The amount of forest land used to site access roads, service corridors, the dwelling and structures is minimized". LC 16.210(6)(a)(i) (F-1 zone), LC 16.211(8)(a)(i) (F-2 zone) and LC 16.215(10)(a)(i) (PR zone) contain the following standards which accomplish the purpose of the above referenced OAR: "Near residences on other tracts" - this discourages the introduction of residences into undeveloped forest areas and therefore "minimizes the use of forest land"; "near existing roads' - by encouraging dwellings to locate near existing roads, this requirement minimizes the construction of new roads and the use of forest land for such roadways; "on the least suitable portion of the tract for forest use" - this minimizes use of forest land by requiring that the least suitable forest land be considered for the homesite or structure.

Finding 3. OAR 660-06-029(1)(b) requires, "The siting ensures that forest operations and accepted farming practices will not be curtailed or impeded;". The requirements discussed in Findings 2 and 3 above ensure that farming and forest practices will not be curtailed or impeded for the reasons mentioned therein.

Finding 4. OAR 660-06-029(1)(d) requires, "The risks associated with wildfire are minimized." LC 16.210(6) (F-1 zone), LC 16.211(8) (F-2 zone) and LC 16.215(10) (PR zone) require that dwellings be sited, "near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use, and at least 30 feet from any ravine, ridge or slope." In addition, these zones establish fire break standards and road design construction standards for residences which are designed to minimize fire hazard. The primary factors in locating a dwelling to minimize the risks associated with wildfire are slope, length of access and fuels. Fire spreads faster and burns hotter as slope steepens. Steepness of slope also complicates fire equipment access, control efforts and fuel modification. Therefore, dwellings should be located on a level portion of the parcel. Homes should not be located on steep slopes or near steep slopes. Natural features which should be avoided when locating homes and access roads include narrow canyons and draws. These features serve as natural chimneys and intensify fire behavior. If the level portion of the parcel is the top of a ridge, the dwelling should be located at least 30 feet back from the slope. The dwelling should be sited to make the access road as short and flat as possible. Short and flat roads will minimize the difficulty in gaining access to the dwelling in case of fire and will also reduce the amount of maintenance needed to keep the road in a condition which is usable by fire fighting equipment. Powerlines are much like access roads. They should be kept as short and on terrain which is as flat as possible. Therefor dwellings should be sited to minimize the length of the powerline serving the homesite. Minimizing the length of the powerline will reduce right-of-way maintenance and minimize the risk of trees and limbs touching the line and causing a fire. Consistent with the guidance above, dwellings, where possible should be located in areas of light fuel that can be maintained as light fuel. The above cited sections of Lane Code also require the owners of the dwelling and structures to maintain a primary fuel-free break area surrounding all structures; clear and maintain a secondary fuel-free break area; and maintain adequate access to the dwelling for fire fighting equipment vehicles in accordance with the provision in "Protecting Your Home from Wildfire," (NFPA). Lane County's proposed standard for fuel breaks includes a secondary fuel break. Additionally, the fuel break, is in

accordance with "Protecting Your Home from Wildfire." "Protecting Your Home from Wildfires" (page 17) states that: "As the slope of the lot increases, additional clearance as far out as 100 feet may be necessary. Beyond the primary break, a secondary fuel break should be required that is free of dead wood and ladder fuels. Older trees should be thinned. While "Protecting Your Home from Wildfire" establishes minimum standards for adoption by the County, the Department of Forestry, in a October 3, 1990 letter offered the recommendations for fuel breaks which Lane County incorporated into the forest zones.

6. Order to comply #4 of the January 10, 1991 DLCD report required Lane County to delete the Agriculture Forest AF zone. LCDC believed that an unjustified component of the zone was the inclusion of the F-2 minimum parcel size which Lane County had not yet justified as complying with the requirements of OAR 660-06-026(a). Since this ordinance deletes the AF zone and all references thereto, it complies with the LCDC directive. This ordinance also complies with Goal 4, because it postpones adoption of the AF zone until such time as a minimum area requirement is developed in compliance with OAR 660-06-026.

7. Order to comply #5 of the January 10, 1991 DLCD report required Lane County to, "Amend the F-1 and F-2 zones to require notice for certain uses consistent with Doughton v. Douglas County, 88 Or App 198 (1987) and ORS 197.015(10(b)(A) and (C) as follows: Delete those uses under subsections (g), (k) and (o) from LC 16.210(2) (F-1 Zone) and from LC 16.211(2) (F-2 Zone) and add them to LC 16.210(3) and to LC 16.211(3)." This requirement was to respond to objections raised by 1000 Friends. Local government actions excluded from that definition are listed in ORS 197.015(10)(b)(A) and (C) as a decision "Which is made under land use standards which do not require interpretation or the exercise of factual, policy or legal judgment." The uses moved to a Director review have been identified by LCDC or 1000 Friends as having one or more elements of a "land use decision". The Code amendments before the Board delete certain uses from the permitted category and move them to Director review limited to determining that the use fits the classification of the zoning. Notice of the Director's decision will be provided as required by LC chapter 14. Since these amendments change the status of certain uses from outright permitted uses to subject to Director review and notice, the amendments comply with ORS 197.015(10) and satisfy the order to comply.

8. A number of housekeeping changes have been made including the following two changes to address comments and objections from 1000 Friends:

   a. LC 16.100(3) has been amended to provide DLCD and the State Department of Forestry with notice of appeals to the Hearings Official. This section of Lane Code already provides as DLCD and the State Department of Forestry with notice of a Director's decision for a forest or nonforest dwelling or a land division. Since OAR 660-06-004(1) requires notice to DLCD and the State Department of Forestry for land use decisions for dwellings and land divisions, and since this notice will be provided for both the original decision and for appeals to the Hearings Official, this amendment complies with OAR 660-06-004(1).

b. The fire safety provisions of the F-1, F-2 and and PR zones have been amended to substitute "shall for "should" where indicated to more clearly require compliance rather than suggested compliance as one might interpret the meaning of "should". This amendment is consistent with OAR 660-06-035 which requires the application of the fire safety standards to new dwellings and structures.

9. Lane Code 16.252 (2) requires that amendments to Lane Code Chapter 16 be consistent with applicable Rural Comprehensive Plan elements and with the Statewide Planning Goals. Based on the record of these proceedings and the findings included above, the Board concludes the proposed amendments to Lane Code Chapter 16 contained in this ordinance comply with Statewide Planning Goal 4, OAR 660, Division 6, and applicable RCP or Lane Code requirements.

(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of an application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

(3) Conditions. The following conditions may be imposed at the time of approval of a development for which a permit or application is required and for which a finding has been made as required in LC 16.005(2) above in order to ensure site and area stability:

(a) Maintain vegetation and eliminate widespread destruction of vegetation.

(b) Carefully design new roads and buildings with respect to:

(i) Placement of roads and structures on the surface topography.

(ii) Surface drainage on and around the site.

(iii) Drainage from buildings and road surfaces.

(iv) Placement of septic tank disposal fields.

(c) Careful construction of roads and buildings:

(i) Avoid cutting toeslopes of slump blocks.

(ii) Careful grading around the site, especially avoiding oversteepened cut banks.

(iii) Revegetating disturbed areas as soon as possible.

(d) Certification by a geologist or engineer that the above conditions have been complied with and/or that a hazard does not exist.

(4) Sensitive Bird Habitat Protection Standards and Criteria. All uses or activities permitted or conditionally permitted within the zones identified in LC 16.005(4)(a) below shall be subject to the additional procedures and requirements in LC 16.005(4)(b)-(g) below, provided such uses are located on property identified as a sensitive bird habitat area via Rural Comprehensive Plan Flora and Fauna Policy 18 and LM 11.400.

(a) Applicable Zones.

Zone Classification	Abbreviation	Section No.
Nonimpacted Forest Lands	F-1, RCP	16.210
Impacted Forest Lands	F-2, RCP	16.211
Exclusive Farm Use	E-RCP	16.212

16.011 Introductory Provisions. In order to achieve the purposes outlined in LC 16.003, and to assure that the development and use of land in Lane County conforms to the Rural Comprehensive Plan, zone classifications have been established for all unincorporated areas outside of adopted urban growth boundaries and within Lane County. These zones specify regulations for the use of land and property development standards, and use applied by boundaries indicated on the Lane County Rural Comprehensive Plan Zoning Maps.

16.012 Zone Classifications. For the purpose of this Chapter of Lane Code, the following zones are hereby established:

Zone Classification	Abbreviation	Section No.
Nonimpacted Forest Lands	F-1, RCP	16.210
Impacted Forest Lands	F-2, RCP	16.211
Exclusive Farm Use	E-RCP	16.212
Natural Resource	NR-RCP	16.213
Marginal Lands	ML RCP	16.214
Park and Recreation	PR-RCP	16.215
Quarry and Mining Operations	QM-RCP	16.216
Sand, Gravel and Rock Products	SG-RCP	16.217
Sand, Gravel and Rock Products Combining Processing	SG-CP-RCP	16.218
Public Facility	PF-RCP	16.219
Limited Commercial	C-1, RCP	16.220
Neighborhood Commercial	C-2, RCP	16.221
Commercial	C-3, RCP	16.222
Rural Commercial	C-R, RCP	16.223
Limited Industrial	M-1, RCP	16.224
Light Industrial	M-2, RCP	16.225
Heavy Industrial	M-3, RCP	16.226
Inmate Work Camp	IWC, RCP	16.227
Suburban Residential	RA-RCP	16.229
Garden Apartment Residential	RG-RCP	16.230
Rural Residential	RR-RCP	16.231
Destination Resort	DR-RCP	16.232
Historic Structures or Sites Combining	/H-RCP	16.233
Natural Estuary	/NE-RCP	16.234
Conservation Estuary	/CE-RCP	16.235
Development Estuary	DE-RCP	16.236
Significant Natural Shorelands Combining	/SN-RCP	16.237
Prime Wildlife Shorelands Combining	/PW-RCP	16.238
Natural Resources Conservation Combining	/NRC-RCP	16.239
Residential Development Shorelands Combining	/RD-RCP	16.240
Shorelands Mixed Development Combining	/MD-RCP	16.241
Dredge Material/Mitigation Site		

DEVELOPMENTAL APPROVAL PROCEDURES

RURAL COMPREHENSIVE PLAN

16.100 Development Approval Procedures - Relationship of Lane Code Chapter 14 into Lane Code Chapter 16. Lane Code Chapter 14 is the procedure for submittal, acceptance, investigation and review of applications for development of lands under the jurisdiction of the Lane County Rural Comprehensive Plan with these additions:

(1) Definitions. Abbreviations, terms, phrases, words and their derivatives shall be construed as specified in LC 16.090 above instead of as specified in LC 14.015.

(2) Special Notice and Review Requirements for a dwelling or Mobile Home Subject to Director Approval in the Exclusive Farm Use (E) Zone, LC 16.212(3)(c). When reviewing an application for a dwelling or mobile home conditionally permitted by LC 16.212(3)(c) below, the Director shall:

(a) In addition to the requirements of LC 14.070 (1) for a decision to approve an application in LC 16.100(2) above, specify in the notice that, "persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or mobile home, or activities associated with either residence, would force a significant change in or significantly increase the costs of accepted farming practices on nearby lands devoted to farm use."

(b) In addition to the requirements of LC 14.100(4), notice of a decision to approve an application in LC 16.100(2) above shall be mailed to persons who have requested notice of such applications and who have paid a reasonable fee imposed by the County to cover the cost of such notice.

(c) In addition to the requirements of LC 14.515(3)(d), an objection received within 15 days of the notice which factually alleges a significant change in or significant increase in the costs of accepted farming practices in nearby lands devoted to farm uses shall constitute sufficient assignment of error by the Approval Authority.

(d) A decision to approve or deny an application identified in LC 16.100(2) above shall become final unless appealed in the manner provided in LC 16.100(2)(a)-(c) above and LC Chapter 14, and unless the appeal is submitted to the Department within 15 days of the date of postmark for the notice of the decision by the Approval Authority.

(3) Special Notice Requirements for Certain Pending Land Use Decisions in Forest Zones. In addition to the requirements of LC 14.100(4), notice of decisions approving or denying applications for dwellings or land divisions in the Nonimpacted Forest Zone (F-1, RCP) pursuant to LC 16.210(8) and the Impacted Forest Zone pursuant to LC 16.211(6), (7) and (10) shall be mailed to the Department of Land Conservation and Development and the Department of Forestry at their Salem and applicable field office at least 10 calendar days prior to the

decision being made. If an appeal is accepted from a decision by the Director approving or denying an application mentioned above, the Department of Land Conservation and Development and the Department of Forestry shall be mailed notice of the hearing to consider the appeal 20 days in advance of the hearing.

(4) Ex Parte Contacts. A communication between County staff and the Planning Commission or Board shall not be considered an ex parte contact for the purposes of LC 14.200(5)(a).

NONIMPACTED FOREST LANDS ZONE (F-1, RCP)

RURAL COMPREHENSIVE PLAN

16.210 Nonimpacted Forest Lands Zone (F-1, RCP).

(1) Purpose. The purpose of the Nonimpacted Forest Lands District (F-1, RCP) is:

(a) To implement the forest land policies of the Lane County Rural Comprehensive Plan, and the forest land policies of the Eugene/Springfield Metro Area General Plan.

(b) To conserve forest land for uses consistent with Statewide Planning Goal #4.

(2) Permitted Uses. The following uses and activities are permitted subject to the general provisions and exceptions set forth by this Chapter of Lane Code.

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of any forest tree species, application of chemicals, and disposal of slash.

(b) Temporary onsite structures which are auxiliary to and used during the term of a particular forest operations.

(c) Physical alteration to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities. "Auxiliary" means a use or alteration of the land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(d) Farm use.

(e) Private hunting and fishing operations without any lodging accommodations.

(f) Towers and fire stations for forest fire protection.

(g) Water intake facilities, canals and distribution lines for farm irrigation and ponds.

(h) Caretaker residences for public parks and fish hatcheries.

(i) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.

(j) Maintenance, repair or replacement of existing dwellings.

(3) Uses Subject to Director Approval. The following uses may be allowed provided a land use application is submitted pursuant to LC 14.050 and approved pursuant to LC 14.100. The uses in LC 16.210(3)(a)-(u) may be allowed provided requirements in LC 16.210(5) below are met. The uses in LC 16.210(3)(v)-(bb) may be allowed provided the application contains adequate evidence demonstrating the proposed use fits within the listed classification.

(a) Permanent logging equipment repair and storage.

(b) Log scaling and weigh stations.

(c) Parks.

(d) Campgrounds for areas devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and not including intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. A camping site may be occupied by a tent, travel trailer or recreational vehicle.

(e) Television, microwave, and radio communication facilities and transmission towers.

(f) Fire stations for rural fire protection.

(g) Utility facilities for the purpose of generating five (5) megawatts or less of power.

(h) Aids to navigation and aviation.

(i) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.

(j) Reservoirs and water impoundment.

(k) Cemeteries.

(l) New distribution lines (e.g., electrical, gas, oil, geothermal) with rights-of-way 50 feet or less in width.

(m) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.

(n) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in an existing dwelling or mobile home, or other existing buildings normally associated with uses permitted under LC 16.210(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.210(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the property owner or applicant who received initial approval, or a renewal pursuant to this section, shall provide the Director with written request for renewal of the Home Occupation and written information sufficient to allow the Director to determine if the Conditions of Approval and other approval criteria have been satisfied. The Director shall review this information for each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval, or for which a request for renewal is not received pursuant to this section, shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(o) One temporary mobile home in conjunction with an existing dwelling or mobile home provided the following requirements are met:

(i) A resident of the existing dwelling or mobile home and a resident of the temporary mobile home are relatives. "Relative" means grandparent, parent, child, brother, or sister.

(ii) A relative of one of the residences suffers a hardship and needs care from the relative in the other residence.

(iii) Satisfactory evidence of the relative's hardship is furnished which shall include:

(aa) A written statement, on a form provided by the Department, from the relative's physician, therapist or other professional counselor, disclosing the existence and general nature of the hardship.

(bb) A written statement, on the form provided by the Department, disclosing person with the hardship qualifies as a relative of the person who will provide care.

(iv) The temporary mobile home will be located on the same lot or parcel as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home. If the temporary mobile home will use a public sanitary sewer system, use of an on-site sewage disposal system will not be required.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(p) Expansion of lawfully existing airports.

(q) Public road and highway projects described as follows:

(i) Construction of additional passage and travel lanes requiring the acquisition of additional right-of-way but not resulting in the creation of new parcels.

(ii) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new parcels.

(iii) Improvement of public roads and highway-related public facilities such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new parcels.

(r) Private accommodations for fishing occupied on a temporary basis may be allowed subject to compliance with LC 16.210(6)(a) or (b) below, LC 16.210(6)(c)-(f) below, and the following requirements:

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.

(ii) Only minor incidental and accessory retail sales are permitted.

(iii) Accommodations are occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission.

(iv) Accommodations are located within 1/4 mile of fish bearing Class I waters.

(s) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.

(t) Permanent facility for the primary processing of forest products.

(u) Disposal site for solid waste approved by Lane County for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.

(v) Uses to conserve soil, air, and water quality and to provide for wildlife and fisheries resources.

(w) Additional local distribution lines within existing rights-of-way (e.g., electric distribution transformers, meter cabinets, terminal boxes, pedestals), or which provide service hookups, including water service hookups.

(x) Temporary portable facility for the primary processing of forest products.

(y) Exploration for mineral and aggregate resources as defined in ORS Chapter 517.

(z) Widening of roads within existing rights-of-way in conformance with the transportation element of the applicable comprehensive plan including the following public road and highway projects:

(i) Climbing and passing lanes within the right-of-way existing as of July 1, 1987.

(ii) Reconstruction or modification of public roads and highways, not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels would result.

(iii) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(iv) Minor betterment of existing public roads and highway-related facilities, such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(aa) Uninhabitable structures accessory to fish and wildlife enhancement.

(bb) Temporary forest labor camps.

(4) Uses Subject to Hearings Official Approval. The following uses may be allowed provided a land use application is submitted pursuant to LC 14.050 and approved by the Hearings Official pursuant to LC 14.300, and provided the requirements in LC 16.210(5) below are met:

(a) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520, and not otherwise permitted under LC 16.210(2)(i) above (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517.

(b) Firearms training facility.

(c) Private seasonal accommodations for fee hunting operations may be allowed subject to LC 16.210(6)(a) or (b), LC 16.210(6)(c)-(f), and the following requirements:

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code, and

(ii) Only minor incidental and accessory retail sales are permitted.

(iii) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission.

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(5) Criteria for Uses Subject to Approval by the Director or Hearings Official. Uses authorized by LC 16.210(3)(a)-(u) and (4) above may be allowed provided the following requirements are met:

(a) The proposed use will not force a significant change in or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

(c) For uses authorized above in LC 16.210(3)(c), (d), (j), (n), (o) and (r), a written statement recorded with the deed or written contract with the County or its equivalent is obtained from the landowner which recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules.

(d) For uses authorized above in LC 16.210(4), the proposed uses will not significantly conflict with the liveability and appropriate uses on adjacent and nearby lands.

(6) Siting Standards for Structures and Other Uses. The following siting standards shall apply to all structures and other uses as specified above in LC 16.210(3) and (4). These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.210(6)(a)-(b) below shall be weighed together with the requirements in LC 16.210(6)(c) and (e) below to identify the building site.

(a) Setbacks. Residences and accessory structures shall be sited as follows:

(i) Near residences on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope; and

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses; and

(iii) Where possible, when considering LC 16.210(6)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

(iv) Not closer than 100 feet from ordinary high water of a Class I stream; and

(v) Not closer than:

(aa) 20 feet from the planned right-of-way of a state road, County road or a local access public road specified in Lane Code Chapter 15; and

(bb) 20 feet from an existing right-of-way of a state road, County road or a local access public road; and

(cc) 10 feet from all other property lines.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

(c) Fire Safety Measures. Residences, structures and roads shall comply with the following fire safety measures:

(i) Fuel Breaks. Fuel breaks around residences shall be maintained as follows:

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house.

As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

Building shall be restricted to slopes of less than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

(ii) Fire Suppression Water Supplies. An adequate fire suppression system shall be provided. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:

(aa) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capable of sustaining a volume of 20 gallons per minute for not less than 20 minutes. If a water supply is available and suitable for fire protection, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(bb) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(cc) The water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period of fire danger.

(iii) Chimneys and Roofs. Residences or structures with any chimneys shall have a spark arrestor on the chimneys, and residences shall have a fire retardant roof.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. An applicant shall provide evidence and a clear explanation which demonstrates why the route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways will comply with the standards specified below in LC 16.210(6)(e). Evidence of compliance with the standards specified in LC 16.210(6)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses. As used herein "driveway" means a way of access used for one use and accessory uses.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing at least six inches in depth of gravel or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, survey radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

(ii) Cul-de-sacs. Any dead-end road over 200 feet in length and not maintained by Lane County shall be considered a cul-de-sac and shall meet these standards for cul-de-sacs. Cul-de-sacs shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet. Dead-end roads shall have cul-de-sacs spaced at intervals of not less than 500 feet. Cul-de-sacs on private roads shall be marked and signed by applicants as "NO PARKING," and such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches. No cul-de-sacs shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. An applicant must submit objective evidence demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305-15.335.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot passage space (turn out) at a maximum spacing of 400 feet, or wherever visibility is limited these distances shall be reduced to allow for safe visual conduct.

(vii) Modifications and Alternatives. The standards in LC 16.210(6)(e)(i)-(vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination. Examples of some possible alternatives to the standards in the above LC 16.210(6)(e)(i)-(vi) are provided below in LC 16.210(6)(vii).

Vehicle passage turnouts constructed at appropriate intervals and constructed to at least eight feet in width with six inches of gravel may be acceptable alternatives to the road and driveway width standards mentioned above in LC 16.210(6)(e)(i). Hammer-head turn-a-rounds may be an acceptable alternative to the standards for cul-de-sacs mentioned above in LC 16.210(6)(e)(ii). Railway flat bed cars of sufficient strength to maintain a minimum gross weight of 50,000 lbs. may be an acceptable alternative for short bridges or private roads and driveways. Road or driveway paving having a crushed base equivalent to six inches of base gravel may be an acceptable alternative for allowing grades in excess of those required above in LC 16.210(6)(e)(iv).

(7) Other Development Standards.

(a) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.210(7)(a)(i) above. Where vegetation removal beyond that allowed in LC 16.210(7)(a)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercial forest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazard.

(dd) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(b) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(8) Area. The minimum area requirement for the division of land shall be as follows:

(a) 80 acres.

(b) The minimum land division standard in LC 16.210(8)(a) above may be waived to allow a division of forest land involving a dwelling lawfully existing prior to the date of adoption of this rule provided:

(i) The new parcel containing the dwelling is no larger than five acres; and

(ii) The remaining forest parcel, not containing the dwelling, contains 80 acres; or

(iii) The remaining forest parcel, not containing the dwelling, is consolidated with another parcel which together meet the minimum land division standards of LC 16.210(8)(a) above.

(c) The minimum land division standard in LC 16.210(8)(a) above may be waived to allow uses identified above in: LC 16.210(2)(i); LC 16.210(3)(a) through (k), (t) and (u); and LC 16.210(4)(a) and (b); provided that such uses have been approved in compliance with LC 16.210(5) above.

(d) Notice of a decision for an application pursuant to LC 16.210(8) above shall occur in compliance with LC 16.100(3).

IMPACTED FOREST LANDS ZONE (F-2, RCP)

RURAL COMPREHENSIVE PLAN

16.211 Impacted Forest Lands Zone (F-2, RCP).

(1) Purpose. The purpose of the Impacted Forest Lands Zone (F-2, RCP) is:

(a) To implement the forest land policies of the Lane County Rural Comprehensive Plan, and the forest land policies of the Eugene/Springfield Metro Area General Plan.

(b) To conserve forest land for uses consistent with Statewide Planning Goal #4.

(2) Permitted Uses. The following uses and activities are permitted subject to the general provisions and exceptions prescribed by this Chapter of Lane Code.

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of any forest tree species, application of chemicals, and disposal of slash.

(b) Temporary onsite structures which are auxiliary to and used during the term of a particular forest operation.

(c) Physical alteration of the land auxiliary to forest practices including, but not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities. "Auxiliary" means a use or alteration of the land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(d) Farm use.

(e) Private hunting and fishing operations without any lodging accommodations.

(f) Towers and fire stations for forest fire protection.

(g) Water intake facilities, canals and distribution lines for farm irrigation and ponds.

(h) Caretaker residences for public parks and fish hatcheries.

(i) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.

(j) Maintenance, repair or replacement of existing dwellings.

(3) Uses Subject to Director Approval. The following uses may be allowed provided a land use application is submitted pursuant to LC 14.050 and approved pursuant to LC 14.100. The uses in LC 16.211(3)(a)-(s) may be allowed provided the requirements in LC 16.211(5) below are met. The uses in LC 16.211(3)(t)-(z) may be allowed provided the application contains adequate evidence demonstrating the proposed use fits within the listed classification.

(a) Permanent logging equipment repair and storage.

(b) Log scaling and weigh stations.

(c) Parks.

(d) Campgrounds for areas devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and not including intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. A camping site may be occupied by a tent, travel trailer or recreational vehicle.

(e) Television, microwave, and radio communication facilities and transmission towers.

(f) Fire stations for rural fire protection.

(g) Utility facilities for the purpose of generating five megawatts or less of power.

(h) Aids to navigation and aviation.

(i) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.

(j) Reservoirs and water impoundment.

(k) Cemeteries.

(l) New distribution lines (e.g., electrical, gas, oil, geothermal) with rights-of-way 50 feet or less in width.

(m) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects.

(n) Home occupations, subject to the following conditions and annual review:

(i) Will be operated by a resident of the property on which the business is located.

(ii) Will employ no more than five full or part-time persons.

(iii) Will be operated in an existing dwelling or mobile home, or other existing buildings normally associated with uses permitted under LC 16.211(2) above.

(iv) Any structure that would not otherwise be allowed in this zone shall not be allowed for use as a home occupation.

(v) Will not interfere with existing uses on nearby land or with other uses permitted under LC 16.211(2) above.

(vi) Will comply with sanitation and building code requirements.

(vii) Will not be used as a justification for a zone change.

(viii) Will comply with any additional conditions of approval.

(ix) Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the property owner or applicant who received initial approval, or a renewal pursuant to this section, shall provide the Director with written request for renewal of the Home Occupation and written information sufficient to allow the Director to determine if the Conditions of Approval and other approval criteria have been satisfied. The Director shall review this information for each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval, or for which a request for renewal is not received pursuant to this section, shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(o) One temporary mobile home in conjunction with an existing dwelling or mobile home provided the following requirements are met:

(i) A resident of the existing dwelling or mobile home and a resident of the temporary mobile home are relatives. "Relative" means grandparent, parent, child, brother, or sister.

(ii) A relative of one of the residences suffers a hardship and needs care from the relative in the other residence.

(iii) Satisfactory evidence of the relative's hardship is furnished which shall include:

(aa) A written statement, on a form provided by the Department, from the relative's physician, therapist or other professional counselor, disclosing the existence and general nature of the hardship.

(bb) A written statement, on the form provided by the Department, disclosing person with the hardship qualifies as a relative of the person who will provide care.

(iv) The temporary mobile home will be located on the same lot or parcel as the existing dwelling or mobile home.

(v) The temporary mobile home will be connected to the same on-site sewage disposal system serving the existing dwelling or mobile home. If the temporary mobile home will use a public sanitary sewer system, use of an on-site sewage disposal system will not be required.

(vi) The temporary mobile home will comply with sanitation and building code requirements.

(vii) Approval of temporary mobile home permits shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situations cease.

(p) Expansion of lawfully existing airports.

(q) Public road and highway projects described as follows:

(i) Construction of additional passage and travel lanes requiring the acquisition of additional right-of-way but not resulting in the creation of new parcels.

(ii) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new parcels.

(iii) Improvement of public roads and highway-related public facilities such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new parcels.

(r) Private accommodations for fishing occupied on a temporary basis may be allowed subject to compliance with LC 16.211(8)(a) or (b) below, LC 16.211(8)(c)-(f) below, and the following requirements:

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.

(ii) Only minor incidental and accessory retail sales are permitted.

(iii) Accommodations are occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission.

(iv) Accommodations are located within 1/4 mile of fish bearing Class I waters.

(s) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.

(t) Uses to conserve soil, air, and water quality and to provide for wildlife and fisheries resources.

(u) Additional local distribution lines within existing rights-of-way (e.g., electric distribution transformers, meter cabinets, terminal boxes, pedestals), or which provide service hookups, including water service hookups.

(v) Temporary portable facility for the primary processing of forest products.

(w) Exploration for mineral and aggregate resources as defined in ORS Chapter 517.

(x) Widening of roads within existing rights-of-way in conformance with the transportation element of the applicable comprehensive plan including the following public road and highway projects:

(i) Climbing and passing lanes within the right-of-way existing as of July 1, 1987.

(ii) Reconstruction or modification of public roads and highways, not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels would result.

(iii) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(iv) Minor betterment of existing public roads and highway-related facilities, such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(y) Uninhabitable structures accessory to fish and wildlife enhancement.

(z) Temporary forest labor camps.

(4) Uses Subject to Hearings Official Approval. The following uses may be allowed provided a land use application is submitted pursuant to LC 14.050 and approved by the Hearings Official pursuant to LC 14.300 and provided the requirements in LC 16.211(5) below are met:

(a) Permanent facility for the primary processing of forest products.

(b) Disposal site for solid waste approved by Lane County for which the Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation.

(c) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520, and not otherwise permitted under LC 16.211(2)(i) above (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517.

(d) Firearms training facility.

(e) Private seasonal accommodations for fee hunting operations may be allowed subject to LC 16.211(8)(a) or (b), LC 16.211(8)(c)-(f), and the following requirements:

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code, and

(ii) Only minor incidental and accessory retail sales are permitted.

(iii) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission.

(5) Criteria for Uses Subject to Approval by the Director or Hearings Official. Uses authorized by LC 16.211(3)(a)-(s) and (4) above may be allowed provided the following requirements are met:

(a) The proposed use will not force a significant change in or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

(c) For uses authorized above in LC 16.211(3)(c), (d), (j), (n), (o) and (r), a written statement recorded with the deed or written contract with the County or its equivalent is obtained from the landowner which recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules.

(d) For uses authorized above in LC 16.211(4), the proposed uses will not significantly conflict with the liveability and appropriate uses on adjacent and nearby lands.

(6) Forest Management Dwellings. A forest management dwelling may be allowed provided an application for the forest management dwelling is submitted for Director approval pursuant to LC 14.050 and the application contains substantial evidence that the requirements specified in this subsection, below, have been met, and provided the application is approved pursuant to LC 14.100.

(a) The dwelling shall be necessary for and accessory to forest operations. Part of the forest operations may include cultured Christmas trees. "Necessary for" means the dwelling will contribute substantially to effective and efficient management of the forest land to be managed by the resident(s) of the dwelling. "Accessory to" means that the dwelling is incidental and subordinate to the main forest use.

(b) The applicant shall provide information necessary to complete the Forest Management Plan form, or its equivalent, provided by Lane County regarding the condition and productivity of the lands to be managed, the plan for management of these lands including a chronological description of commercial forest management activities to be undertaken by the resident(s) or under contract and estimates of yield, labor and expenses. Also, information is required showing the site for the proposed dwelling and a description of related fire safety measures. The information must be sufficient to enable the Oregon Department of Forestry within 45 days to determine that:

(i) The information describing the productivity and current condition of the forest land to be managed is complete and accurate; and

(ii) Fulfillment of the forest management plan will result in use of the parcel for the required management purpose in terms of stocking, stand density, and harvest; and

(iii) The siting standards in LC 16.211(8) below have been adequately addressed.

An application for a forest management dwelling is not complete for the purpose of requiring Lane County to take final action on the application within 120 days, as required by ORS 215.428 and LC 14.050, until all the required information including the review and evaluation by the Oregon Department of Forestry required by LC 16.211(6)(b)(i)-(iii) above is submitted to and accepted by the Director.

(c) There are no other dwellings on the property which are vacant or currently occupied by persons not engaged in forestry, which could be used as the principal forest dwelling for the forest operation.

(d) The property qualifies for and is enrolled in one of Oregon's forest tax programs.

(e) The dwelling will not significantly interfere with, significantly increase the costs of, or impede forest or farm management on adjacent forest and agricultural lands.

(f) If road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(g) The forest lands to be managed by the resident of the proposed dwelling or mobile home meet the stocking and survival requirements of the Forest Practices Rules (OAR 629-24-502) at the time authorization for a permanent dwelling is requested. If the lands to be managed do not meet these stocking and survival requirements, a temporary dwelling may be approved subject to the following requirements:

(i) The prospective resident(s) shall agree in writing to remove the temporary dwelling and any accessory structures within 60 days of a determination by the Director pursuant to LC 16.211(6)(g) above that the property has not met the stocking and survival requirements within five years of the date the temporary dwelling was approved.

(ii) The prospective resident(s) shall agree in writing to pay all costs associated with the removal of the dwelling and any accessory structures by Lane County if the prospective resident(s) fails to comply with LC 16.211(6)(g)(i) above. This written agreement with Lane County shall include either a performance bond, cash deposit, irrevocable letter of credit, promissory note, written contract or other similar form of security equal to costs determined by Lane County as needed to remove totally the temporary dwelling and accessory structures from the parcel and any additional costs for legal proceedings.

(iii) Lane County shall determine whether the prospective resident(s) has complied with LC 16.211(6)(g)(i) above within 60 days of the end of the time period prescribed in LC 16.211(6)(g)(i) above. If the prospective resident(s) has not complied with such requirements, Lane County shall secure the removal of the temporary dwelling unless an extension is granted. Lane County may grant an extension of not more than two years if, prior to the expiration of the five-year period referred to in LC 16.211(6)(g)(i) above, the Director has received a written extension request from the applicant together with substantial evidence on which the finding can be made that, due to natural disaster or illness, completion of the requirements in LC 16.211(6)(g)(i) above was not possible.

(iv) Lane County shall enforce the terms of this agreement if the prospective resident(s) fails to meet the stocking and survival requirements of LC 16.211(6)(g) above for the lands to be managed within five years unless the temporary dwelling and accessory structures already have been removed or unless an extension has been granted under LC 16.211(6)(g)(iii) above.

(v) When Lane County has determined that the prospective resident(s) has complied with the requirements of LC 16.211(6)(g)(i), the temporary dwelling may be replaced by a permanently constructed dwelling.

(h) A written statement recorded with the deed or written contract with Lane County is obtained from the landowner which recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the forest Practices Act and Rules.

(i) Notice of a decision for an application under LC 16.211(6) above shall occur in compliance with LC 16.100(3).

(7) Dwellings not Related to Forest Management. A dwelling not related to forest management may be allowed provided an application for the dwelling is submitted for Director approval pursuant to LC 14.050 and the application contains substantial evidence that the requirements specified in this subsection, below, have been met, and provided the application is approved pursuant to LC 14.100.

(a) The dwelling would not force a significant change in, significantly increase the costs of, or impede accepted farming or forest practices on agriculture or forest lands; and

(b) The parcel of the proposed dwelling is located within a rural fire protection district or the proposed resident has contracted for residential fire protection; and

(c) A written statement recorded with the deed or written contract with the County or its equivalent is obtained from the landowner which recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules; and

(d) The dwelling meets the siting and safety standards in LC 16.211(8) below; and

(e) The parcel on which the dwelling would be located was lawfully created prior to January 25, 1990; and

(f) The parcel on which the dwelling would be located has been disqualified from receiving a farm or forest tax deferral; and

(g) The parcel is composed primarily of soils which are:

(i) Capable of 0 to 49 cubic feet per acre per year (cf/ac/yr) and where this parcel and at least all or part of three other parcels exist within a 160-acre square when centered on the center of the subject parcel; or

(ii) Capable of 50 to 85 cf/ac/yr and where this parcel and at least all or part of seven other parcels exist within a 160-acre square when centered on the center of the subject parcel; or

(iii) Capable of above 85 cf/ac/yr and where this parcel and at least all or part of 11 other parcels exist within a 160-acre square when centered on the center of the subject parcel.

(h) Parcels within urban growth boundaries shall not be counted to satisfy the eligibility requirements under LC 16.211(7)(g) above.

(i) If road access to the dwelling is by a road owned and maintained boy a private party or by the Oregon Department of Forestry, the Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

(j) Dwellings not related to forest management shall not be allowed pursuant to LC 16.211(7) 30 days after the Land Conservation and Development Commission adopts goal and rule amendments establishing secondary lands.

(k) Notice of a decision for an application pursuant to LC 16.211(7) above shall occur in compliance with LC 16.100(3).

(8) Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings and structures, and other uses as specified above in LC 16.211(3) and (4). These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-(b) below shall be weighed together with the requirements in LC 16.211(8) (c) and (e) below to identify the building site.

(a) Setbacks. Residences and accessory structures shall be sited as follows:

(i) Near residences on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope; and

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses; and

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

(iv) Not closer than 100 feet from ordinary high water of a Class I stream.

(v) Not closer than:

(aa) 20 feet from the planned right of way of a state road, County road or a local access public road specified in Lane Code Chapter 15; and

(bb) 20 feet from an existing right-of-way of a state road, County road or a local access public road; and

(cc) 10 feet from all other property lines.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

(c) Fire Safety Measures. Residences, structures and roads shall comply with the following fire safety measures:

(i) Fuel Breaks. Fuel breaks around residences shall be maintained as follows:

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house.

As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

Building shall be restricted to slopes of less than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuelbreak is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of

trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

(ii) Fire Suppression Water Supplies. An adequate fire suppression system shall be provided. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:

(aa) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capable of sustaining a volume of 20 gallons per minute for not less than 20 minutes. If a water supply is available and suitable for fire protection, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(bb) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(cc) The water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period of fire danger.

(iii) Chimneys and Roofs. Residences or structures with any chimneys shall have a spark arrestor on the chimneys, and residences shall have a fire retardant roof.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(e) Fire Safety Design Standards for Roads and Driveways. Except for private driveways, roads or bridges accessing only commercial forest uses, an applicant shall provide evidence and a clear explanation which demonstrates why the route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways will comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses. As used herein, "driveway" means a way of access used for one use and accessory uses.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

(ii) Cul-de-sacs. Any dead-end road over 200 feet in length and not maintained by Lane County shall be considered a cul-de-sac and shall meet these standards for cul-de-sacs. Cul-de-sacs shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet. Dead-end roads shall have cul-de-sacs spaced at intervals of not less than 500 feet. Cul-de-sacs on private roads shall be marked and signed by applicants as "NO PARKING," and such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches. No cul-de-sac shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. An applicant must submit objective evidence demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305-15.335.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot passage space (turn out) at a maximum spacing of 400 feet, or wherever visibility is limited these distances shall be reduced to allow for safe visual conduct.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i)-(vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination. Examples of some possible alternatives to the standards in the above LC 16.211(8)(e)(i)-(vi) are provided below in LC 16.211(8)(vii). Vehicle passage turnouts constructed at appropriate intervals and constructed to at least eight feed in width with six inches of gravel may be acceptable alternatives to the road and driveway width standards mentioned above in LC 16.211(8)(e)(i). Hammer-head turn-a-rounds may be an acceptable alternative to the standards for cul-de-sacs mentioned above in LC 16.211(8)(e)(ii). Railway flat bed cars of sufficient strength to maintain a minimum gross weight of 50,000 lbs. may be an acceptable alternative for short bridges or private roads and driveways. Road or driveway paving having a crushed base equivalent to six inches of base gravel may be an acceptable alternative for allowing grades in excess of those required above in LC 16.211(8)(e)(iv).

(9) Other Development Standards.

(a) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.211(9)(a)(i) above. Where vegetation removal beyond that allowed in LC 16.211(9)(a)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercial forest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazards.

(dd) Removal of vegetation necessary for the maintenance of placement or structural shoreline stabilization.

(b) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(10) Area. The minimum area requirement for the division of land shall be as follows:

(a) Except as provided in LC 16.211(10)(b) below, for the creation of a woodlot for the purpose of the propagation or harvesting of a forest product, the minimum area shall be at least 20 acres and that which is necessary to meet the acreage minimum requirements specified in LC 16.211(10)(b) below, and additional area to accommodate a homesite, access and fire breaks required by LC 16.211(8) above and a logical parcel layout or use of the parcel. The applicant shall submit sufficient factual documentation to verify that each proposed tract meets the above requirements. Area computations shall be measured consistent with the LC 16.211(10)(b) below.

(b) Except as provided in (c) below, the minimum area requirement for the creation of parcels or lots shall comply with the Douglas fir cubic foot site index and acreage requirements below, provided sufficient factual documentation concerning the forest management, the soils, cubic foot site indices and acreage of the proposed parcel or lots comply with the minimum cubic foot site index/acreage requirements specified below. Whenever a legal lot has cubic foot site indices which fall into more than one of the below categories, compliance with the minimum acreage requirements may be determined by:

(i) Identifying the number of acres in each cubic foot site index category.

(ii) Identifying the percentage of the acreage requirement met for each category. This percentage shall be determined by dividing the number of acres in each category by the acreage minimum number for the same category.

(iii) Adding the percentages identified in LC 16.211(10)(b)(ii) above. The minimum acreage requirement shall have been met if the percentage total is 100 or greater.

Potential Yield cu.ft./acre/yr	Acreage Minimum
(20-49 cf/ac)	64
(50 84 cf/ac)	43
(85 119 cf/ac)	34
(120-164 cf/ac)	24
(165-224 cf/ac)	17

(c) The minimum area for the creation of a lot or parcel, for the purpose of the propagation or harvesting of a forest product shall be 80 acres in the following situation:

(i) The tract to be divided contains at least 160 acres, and

(ii) The proposed lot or parcel is adjacent to land zoned F-1, RCP.

The 80 acres shall be of sufficient dimensions to accommodate a logical lot or parcel layout and forest use of each tract. The applicant shall submit sufficient factual documentation to verify that the proposed lots or parcels comply with the criteria of LC 16.211(10)(c) herein. The provisions of LC 16.211(10)(a) above shall not apply to the division of an 80-acre lot or parcel created pursuant to the criteria of LC 16.211(10)(c) herein unless the property adjacent to the 80-acre lot or parcel is no longer zoned F-1, RCP.

(d) For the creation of a farm parcel, the minimum area shall be 40 acres. A farm management plan including the information required by the Exclusive Farm Use (E) Zone, LC 16.212(2)(g)(v)(ee) below shall be presented by the applicant and shall factually demonstrate the suitability of the land for the intended use. A statement shall be placed on the face of the map for the partition disclosing that a dwelling or mobile home is not guaranteed unless the provisions of this zone for a residence in a mixed farm/forest area are met. The provisions of LC 16.211(10)(a) above shall not apply to the division of a lot or parcel created pursuant to LC 16.211(10)(d) herein.

(e) For the creation of a farm parcel for the purpose of growing grapes, berries or horticultural specialties, the minimum area shall be 20 acres. The management plan and map statement requirements of LC 16.211(10)(c) above shall also apply.

(f) The remaining portion of the parent parcel being divided must also comply with either LC 16.211(10)(a),(b), (c), (d), or (e) above.

(g) The minimum land division standard in LC 16.211(10) above may be waived to allow a division of forestland involving a dwelling lawfully existing prior to January 25, 1990 provided:

(i) The new parcel containinig the dwelling is no larger than five acres; and

(ii) The remaining forest parcel, not containing the dwelling, contains 80 acres; or

(iii) The remaining forest parcel, not containing the dwelling, is consolidated with another parcel which together meet the minimum land division standards of LC 16.211(10)(a) above.

(h) The minimum land division standard in LC 16.211(10) above may be waived to allow uses identified above in: LC 16.211(2)(i); LC 16.211(3)(a) through (k); and LC 16.211(4)(a) through (d); provided that such uses have been approved in compliance with LC 16.211(5) above.

(i) Notice of a decision for an application pursuant to LC 16.211(10) above shall occur in compliance with LC 16.100(3).

PARK AND RECREATION ZONE (PR-RCP)

RURAL COMPREHENSIVE PLAN

16.215 Park and Recreation Zone (PR-RCP).

(1) Purpose. The purpose of the Park and Recreation Zone (PR-RCP) is:

(a) To establish zones within which a variety of recreational activities may be conducted as outright permitted uses without interference from other nonrecreational uses.

(b) To establish standards and criteria to permit and conditionally permit recreational activities within areas for which a built upon or committed exception to a Statewide Planning Goal has been taken, or within a designated nonresource area, or within resource areas for which an exception to a Statewide Planning Goal has not been taken.

(c) To provide protective measures for riparian vegetation along Class I streams designated as significant in the Rural Area Comprehensive Plan.

(d) To implement the policies of the Lane County Rural Area Comprehensive Plan.

(2) Permitted Uses. The following uses and activities are permitted in any area zoned PR-RCP subject to the general provisions and exceptions specified by this Chapter of Lane Code. Uses listed below may be subject to Site Review procedures as specified in LC 16.257, and verification of whether or not this is required must be made prior to development of a permitted use:

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash.

(b) Temporary onsite structures which are auxiliary to and used during the term of a particular forest operation.

(c) Physical alteration to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities.

(d) Farm use.

(e) Towers and fire stations for forest fire protection.

(f) Water intake facilities, canals and distributions lines for farm irrigation and ponds.

(g) Exploration for and production of geothermal, gas, oil and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.

(3) Uses Subject to Director Approval. The following uses are allowed subject to prior submittal of an application pursuant to LC 14.050 and approval by the Director pursuant to LC 14.100. The uses in LC 16.215(2)(a)-(i) may be allowed subject to conformance with the applicable approval criteria of LC 16.215(5) below. The uses in LC 16.215(3)(j)-(o) may be allowed provided the application contains adequate evidence demonstrating the proposed use fits within the listed classification.

(a) Private hunting and fishing operations without any lodging accommodations.

(b) Caretaker residences for public parks and fish hatcheries.

(c) Parks.

(d) Campgrounds for areas devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and not including intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. A camping site may be occupied by a tent, travel trailer or recreational vehicle.

(e) Aids to navigation and aviation.

(f) Water intake facilities, related treatment facilities, pumping stations and distribution lines.

(g) Public road and highway projects described as follows:

(i) Construction of additional passage and travel lanes requiring the acquisition of additional right-of-way but not resulting in the creation of new parcels.

(ii) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new parcels.

(iii) Improvement of public roads and highway-related public facilities such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new parcels.

(h) Private accommodations for fishing occupied on a temporary basis may be allowed subject to compliance with LC 16.215(10)(a) or (b) below, LC 16.215(10)(c)-(h) below, and the following requirements.

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code.

(ii) Only minor incidental and accessory retail sales are permitted.

(iii) Accommodations are occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission.

(iv) Accommodations are located within 1/4 mile of fish-bearing Class I waters.

(i) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.

(j) Uses to conserve soil, air, and water quality and to provide for wildlife and fisheries resources.

(k) Additional local distribution lines within existing rights-of-way (e.g., electric distribution transformers, meter cabinets, terminal boxes, pedestals), or which provide service hookups, including water service hookups.

(l) Temporary portable facility for the primary processing of forest products.

(m) Exploration for mineral and aggregate resources as defined in ORS Chapter 517.

(n) Widening of roads within existing rights-of-way in conformance with the transportation element of the applicable comprehensive plan including the following public road and highway projects:

(i) Climbing and passing lanes within the right-of-way existing as of July 1, 1987.

(ii) Reconstruction or modification of public roads and highways, not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels would result.

(iii) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(iv) Minor betterment of existing public roads and highway-related facilities, such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(o) Uninhabitable structures accessory to fish and wildlife enhancement.

(4) Uses Subject to Hearings Official Approval. The following uses may be allowed provided a land use application is submitted pursuant to LC 14.050 and approved by the Hearings Official pursuant to LC 14.300, and provided the requirements in LC 16.215(5) below are met:

(a) Firearms training facility.

(b) Private seasonal accommodations for fee hunting operations may be allowed subject to LC 16.215(10)(a) or (b) below, LC 16.215(10)(c)-(h) below, and the following requirements:

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code; and

(ii) Only minor incidental and accessory retail sales are permitted.

(iii) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission.

(5) Criteria for Uses Subject to Approval by the Director or Hearings Official Uses authorized by LC 16.215(3)(a)-(i) and (4) above may be allowed provided the following requirements are met:

(a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

(b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

(c) For uses authorized above in LC 16.215(3)(c) and (d), a written statement recorded with the deed or written contract with the County or its equivalent is obtained from the landowner which recognizes the rights of adjacent and nearby landowners to conduct forest operations consistent with the Forest Practices Act and Rules.

(d) For uses authorized above in LC 16.215(4), the proposed uses will not significantly conflict with the liveability and appropriate uses on adjacent and nearby lands.

(6) Permitted Uses Within An Exception Area. The following uses and activities are permitted whenever the subject property is included within an area for which a built upon or committed exception has been taken to a Statewide Planning Goal and incorporated into the Lane County Rural Area Comprehensive Plan and subject to Site Review procedures as may be required in LC 16.257:

(a) Any of the uses permitted within the above LC 16.215(2) or LC 16.215(3).

(b) Retail trade of food or new general merchandise conducted within a building not exceeding 750 square feet in total floor area.

(c) Golf courses with or without a country club.

(d) Riding stables.

(e) Bowling.

(f) Gymnasium or athletic club.

(g) Yachting clubs.

(h) Motel, hotel, lodges and other forms of recreational lodging. Any of the above lodging uses may include a restaurant, retail trade of food or new general merchandise exceeding the standard set in LC 16.215(4)(b) above.

(i) Game rooms, miniature golf, go cart tracks.

(j) Boat rentals or boat storage and incidental minor repairs and sale of gas.

(k) Country clubhouse for a golf course which may include a restaurant, retail trade of food or new general merchandise exceeding the standard set in LC 16.215(4)(b) above.

(7) Uses Subject to Hearings Official Approval. The following uses and activities are conditionally permitted subject to submittal of an application pursuant to LC 14.050, approval of the application by the Hearings Official pursuant to LC 14.300, and subject to the compliance with the conditional use criteria specified in LC 16.215(8) below:

(a) Race track.

(b) Amusement park, carnival, circus.

(c) Stadium.

(d) Fairgrounds and amusement park.

(e) Recreational shooting.

(f) Airport and flying field.

(8) Exception Area Conditional Use Permit Criteria. Uses conditionally permitted above in LC 16.215(7) shall be subject to compliance with the following criteria:

(a) The subject property is included within an area for which an exception has been taken to a Statewide Planning Goal and incorporated into the Lane County Rural Area Comprehensive Plan.

(b) The proposed use will not adversely affect the livability, appropriate use, natural resources or scenic character of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and capacity of surrounding streets; and to any other relevant impact to the use.)

(c) The proposed use will not be adversely affected by natural hazards, such as floods, slides, erosion.

(d) The proposed use will not alter the stability of the overall land use pattern in the area nor interfere with farm and forest practices and will be compatible with the retention of existing and potential forest uses on the surrounding forest lands. The proposed use will have a water supply of sufficient quantity and quality to meet reasonably foreseeable needs.

(e) The proposed use will have a water supply of sufficient quantity and quality to meet reasonably foreseeable needs.

(9) Exception Area Property Development Standards. All uses or activities permitted or conditionally permitted by LC 16.215(6) and (7) above, except commercial forest practices regulated by the Oregon Forest Practices Act, shall be subject to the following development standards:

(a) Property Line Setbacks. No structure other than a fence or sign shall be located closer than:

(i) 20 feet from the planned right-of-way of a State road, County road or a local access public road specified in Lane Code Chapter 15; and

(ii) 20 feet from an existing right-of-way of a State road, County road or a local access public road; and

(iii) 10 feet from all other property lines except as provided below.

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.215(9)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.215(9)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Vegetation removal necessary to provide water access for a water dependent use.

(bb) Removal of dead or diseased vegetation that poses a safety or health hazards.

(cc) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(d) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(10) Forest and Farm Area Siting Standards. The following siting standards shall apply to all new structures and dwellings and other uses as specified above in LC 16.215(3) and (4), except for uses regulated under the Oregon Forest Practices Act. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest or farm lands. The standards in LC 16.215(10)(a)-(b) below shall be weighed together with the requirements in LC 16.215(10)(c) and (e) below to identify any sites for a residence.

(a) Setbacks. Residences and accessory structures shall be sited as follows:

(i) Near residences on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope; and

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses; and

(iii) Where possible, when considering LC 16.215(10)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

(iv) Not closer than 100 feet from ordinary high water of a Class I stream.

(v) Not closer than:

(aa) 20 feet from the planned right-of-way of a state road, County road or a local access public road specified in Lane Code Chapter 15; and

(bb) 20 feet from an existing right-of-way of a state road, County road or a local access public road; and

(cc) 10 feet from all other property lines.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

(c) Fire Safety Measures. Residences, structures and roads shall comply with the following fire safety measures:

(i) Fuel Breaks. Fuel breaks around residences shall be maintained as follows:

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house.

As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

Building shall be restricted to slopes of less than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

(ii) Fire Suppression Water Supplies. An adequate fire suppression system shall be provided. Unless otherwise authorized by the local fire official, the minimum acceptable system shall include the following:

(aa) A water supply such as a pond, stream, tank, well, sump or any combination thereof, together with a delivery system capable of sustaining a volume of 20 gallons per minute for not less than 20 minutes. If a water supply is available and suitable for fire protection, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(bb) Sufficient water outlets, together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(cc) The water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during period of fire danger.

(iii) Chimneys and Roofs. Residences or structures with any chimneys shall have a spark arrestor on the chimneys, and residences shall have a fire retardant roof.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class II stream as defined in the Forest Practices Rule (OAR 629-24-101(3)). If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(e) Fire Safety Design Standards for Roads and Driveways. Except for private driveways, roads or bridges accessing only commercial forest uses, an applicant shall provide evidence and a clear explanation which demonstrates why the route of access for fire fighting equipment, from the fire station to the destination point, across public road, bridges, private roads or private access easements and driveways will comply with the standards specified below in LC 16.215(10)(e). Evidence of compliance with the standards specified in LC 16.215(10)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses. As used herein "driveway" means a way of access used for one use and accessory uses.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting equipment and containing rock to a depth of at least six inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

(ii) Cul-de-sacs. Any dead-end road over 200 feet in length and not maintained by Lane County shall be considered a cul-de-sac and shall meet these standards for cul-de-sacs. Cul-de-sacs shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet. Dead-end roads shall have cul-de-sacs spaced at intervals of not less than 500 feet. Cul-de-sacs on private roads shall be marked and signed by applicants as "NO PARKING," and such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches. No cul-de-sac shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. An applicant must submit objective evidence demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305-15.335.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot passage space (turn out) at a maximum spacing of 400 feet, or wherever visibility is limited these distances shall be reduced to allow for safe visual conduct.

(vii) Modifications and Alternatives. The standards in LC 16.215(10)(e)(i)-(vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination. Examples of some possible alternatives to the standards in the above LC 16.215(10)(e)(i)-(vi) are provided below in LC 16.215(10)(vii). Vehicle passage turnouts constructed at appropriate intervals and constructed to at least eight feet in width with six inches of gravel may be acceptable alternatives to the road and driveway width standards mentioned above in LC 16.215(10)(e)(i).

Hammer-head turn-a-rounds may be an acceptable alternative to the standards for cul-de-sacs mentioned above in LC 16.215(10)(e)(ii). Railway flat bed cars of sufficient strength to maintain a minimum gross weight of 50,000 lbs. may be an acceptable alternative for short bridges or private roads and driveways. Road or driveway paving having a crushed base equivalent to six inches of base gravel may be an acceptable alternative for allowing grades in excess of those required above in LC 16.215(10)(e)(iv).

(f) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.215(10)(g)(i) above. Where vegetation removal beyond that allowed in LC 16.215(10)(g)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(aa) Commercial forest practices regulated by the Oregon Forest Practices Act.

(bb) Vegetation removal necessary to provide water access for a water dependent use.

(cc) Removal of dead or diseased vegetation that poses a safety or health hazards.

(dd) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

(g) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

From: Pete Barrell
To: JONES Diana L (CAO)
Cc: *LC Board of County Commissioners
Subject: F2 County Property
Date: Sunday, May 8, 2022 11:35:08 AM
Attachments: Lane County F2 Property Issues.docx

[EXTERNAL]

Diana,

The Home Builders Association of Lane County has been following the discussion at the county and in the community about the 2021 LUBA decisions that have negated small F-2 landowners' rights to a dwelling, thus ending several decades of county practice. This has been devastating for hundreds of owners.

LUBA accomplished this by interpreting an ambiguous county plan policy that has never been interpreted by the County Board. The Board can, however, do its own interpretation of the policy now. As the County attorney will likely advise you, a County Board interpretation that is different from LUBA's will be deferred to if it is plausible, even it conflicts with LUBA's interpretation.

The HBA has prepared a possible interpretation of the ambiguous Policy 11 that should do the job. This interpretation considers all the variables that must be considered. It would restore the F-2 land owners' rights to their status prior to the LUBA decisions in 2021. By definition, an ambiguous plan policy can have multiple interpretations. The HBA believes this interpretation offered here is the best one; however, it only needs to be "plausible" for LUBA to be bound to defer to it.

Please see attached document for additional information.
Please let me know if you have any questions, thoughts or concerns regarding the provided information.

Thank You,
Pete Barrell
Executive Vice President
Home Builders Association of Lane County
pete@hbalanecounty.org
541-484-5352

Outline of Lane County Board findings to restore F-2 property owners' rights to Forest Template Dwelling approvals on legal lots smaller than 80 acres in Major Big Game Habitat

This states the Board's interpretation of Rural Comprehensive Plan, Goal 5, Policy 11, as it relates to minimum parcel size for a Forest Template Dwelling on land zoned F-2, Impacted Forest, in areas that are mapped as Major or Peripheral Big Game Habitat in the county's Goal 5 program.

The language of Policy 11 is:

> "**Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County.** Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

I. Introduction and Summary

In recent decisions, the Land Use Board of Appeals found that the first sentence of the Policy, shown in **bold**, is ambiguous. See *LandWatch Lane County v. Lane County (Nimpkish LLC)*, __ Or LUBA __ (No. 2020-030, Jan. 23, 2021)(remanding county approval of dwelling approval on 10- acre parcel); *King v. Lane County*, __ Or LUBA __ (LUBA Nos. 2021-047/052, Oct. 15, 2021), *aff'd without opinion* 317 Or App 136, 501 P3d 1058 (2022)(affirming county denial of dwellings on two 12-acre parcels).

Absent any previous interpretation of Policy 11 by this Board, LUBA interpreted Policy 11on its own, without any deference to how the County Planning Director and Hearing Officials have applied the Policy for several decades.

When the County Board, as the governing body that enacts the code, interprets ambiguous code provisions, LUBA is bound to defer to any "plausible" interpretation by the Board. However, absent an interpretation by the County Board, LUBA interprets the language on its own, without any deference to the county Hearings Official or Planning Director, and without deference to previous county practice. See, generally, *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010)("[W]hen a local government plausibly interprets its own land use regulations by considering and then choosing between or harmonizing conflicting provisions, that interpretation must be affirmed, * * * unless the interpretation is inconsistent with *all* of the 'express language' that is relevant to the interpretation, or inconsistent with the purposes or policies underpinning the regulations." Emphasis original)

The County Board did not have an opportunity to conduct its own interpretation of Policy 11 in the *Nimpkish* and *King* decisions. Recent amendments to Lane Code Chapter14 removed the Board from review of site-specific land use applications. Thus, in *Nimpkish* the Hearing Official followed county practice and approved the dwelling; the appeal was directly to LUBA, which interpreted Policy 11 without deference to the County and remanded the approval as being on a parcel smaller than 80 acres, contrary to Policy 11. In *King* the Hearing Official was obligated to follow LUBA's interpretation in the *Nimpkish* and, therefore, denied the dwellings for being on parcels smaller than 80 acres. LUBA affirmed that decision as consistent with *Nimpkish.*

In this proceeding the County Board intends to conduct its own interpretation of Policy 11. This interpretation is not taking place in the context of a specific application; therefore, the Board is not bound by any decisions in a specific case. As explained in *Siporen*, because the Board, as the governing body, is responsible for the language of its code, the Board interpretation, if plausible, will be afforded great deference when this interpretation is relied upon in county decisions that are later appealed to LUBA and the Courts. The Board believes this interpretation is correct; the Board expects it will be deferred to because it will meet the "plausible" test when it is reviewed by LUBA.

This is an important and timely interpretation for the Board to make. There are many owners of vacant, small tracts of F-2 Impacted Forest land in the County. F-2 tracts, by definition, are intended to be smaller than 80 acres, and the vast majority are much smaller than 40 acres in size. F-2 parcels tend to be located in areas that are close to existing rural development and other small parcels. These small-tract owners have expected, based on decades of county practice, that they would eventually be able to get approval to place a single dwelling on their F-2 land, regardless of the small parcel size, if they can meet the other criteria for a dwelling. That expectation was secure until LUBA issued its own interpretation of Policy 11 in the *Nimpkish* and *King* decisions. Because this interpretation will be upheld on appeal if it is found to be plausible, it should restore owners' rights to dwellings that were negated by the LUBA decisions.

Section II below summarizes LUBA's rationale in its recent decisions that negated F-2 owners' dwelling rights. In section III the Board identifies the text and context of the county plan and code, and its legislative history from acknowledgment in the 1980's, that is relevant to this interpretation. Section IV states and explains this Board's interpretation.

> **Summary:** After its review of the text and context of the plan and code, and the events and documents in the 1980s plan acknowledgment process that is legislative history, the Board determines that Policy 11 is not an independent standard for review of dwelling applications on existing parcels land. More specifically, the ODFW recommended parcel sizes (80 acres in Major Big Game Habitat, and 40 acres in Peripheral Big Game Habitat) are not minimum standards for individual dwelling applications on F-2 units of land. LC 16.211 states the exhaustive list of standards for template dwellings on F-2 land.

It is the Board's expectation that this interpretation will restore the property rights of F-2 land owners to the *status quo ante* – that is, to the situation prior to the *Nimpkish* and *King* decisions.

This is an interpretation of Policy 11 to determine its meaning as it is presently stated, and in the context of the balance of the plan and code. Policy 11 has not changed since it was acknowledged as complying with Goal 5 in 1984. The purpose here is not to make any new policy decisions about whether the Policy 11 or other plan and code provisions do a good enough job to protect big game, or whether regulations should be amended to do a better job. Those points are policy discussions for another day.

II. LUBA's Interpretations in *Nimpkish* and *King*

In *Nimpkish,* LUBA remanded a county approval of a forest template dwelling on a 10-acre F-2 parcel. It held that Policy 11 applies to a forest template dwelling application in Major or Peripheral Big Game Range. Slip op 9. Based on the legislative history materials that were available and examined in *Nimpkish*, LUBA believed that the county's Goal 5 program for Big Game was premised on the county's commitment to honor the 80 and 40-acre density minimums in all applications. LUBA said:

> "We understand DLCD to have concluded that the county's Goal 5 program protects habitat because it adopts residential densities in accordance with ODFW's recommendations and requires that, if 'proposals are made' that exceed those densities, the county will conduct an ESEE analysis for that individual proposal." Slip op 14.

LUBA reasoned that because acknowledgment was premised on a commitment to residential density minimums, Policy 11 must apply directly in the F-2 zone because there is no other basis in the plan or code for ensuring minimum residential densities. Slip op 15. Thus, 80 acre and 40 acre minimums are threshold criteria for any dwelling application on F-2 land in mapped Major and Peripheral Big Game Habitat areas, respectively.

In *King* LUBA reviewed a fuller record of documents relevant to its interpretation. Slip op 13. LUBA agreed Policy 11 is ambiguous. "Policy 11 is ambiguous and requires interpretation to determine whether and how its density limitations function as approval criteria for dwelling permit applications." Slip op 12. Based on the legislative history, LUBA read the addition of clustering and siting standards for forest dwellings as supplementing rather than replacing the ODFW minimum lot size recommendations referenced in Policy 11. Slip op 20. LUBA reached the same conclusion as to the applicability of Policy 11 as in *Nimpkish*.

III. Text, context and legislative history relevant to this interpretation.

The record of the *King* decision identifies the key documents relevant to interpreting Policy 11. In addition to relevant statutes and state rules, these include:

County Plan materials:

- Rural Comprehensive Plan, Goal 5, Policy 11, quoted above, which is the subject of this interpretation.
- The balance of the county's acknowledged Goal 5 program for Big Game habitat, as a significant Goal 5 resource.

County Code materials:

- LC 16.211(5), which is the approval criteria for dwelling on F-2 land.
- The balance of Lane Code Chapter 16.211, regulations for the F-2, Impacted Forest Land.

Working Papers supporting the plan:

- Rural Comprehensive Plan, Flora and Fauna Working Paper (March 1982)
- Addendum to the Flora and Fauna Working Paper (November 1983)

DLCD Plan acknowledgment Staff Reports:

- July 19, 1984 DLCD Staff Report
- August 17, 1984 DLCD Staff Report
- September 12, 1984, DLCD Staff Report

IV. Discussion

LC 16.211 is intended to be an exhaustive listing of the standards that apply to review of Forest Template Dwelling applications. This is evident from the Purpose statement for the zone and the introduction to the Table of Permitted Uses.

The Purpose Statement in LC 16.211(1) says:

> "16.211 Impacted Forest Lands (F-2, RCP) (1) Purpose. The purpose of the Impacted Forest Land (F-2) Zone is to protect and maintain forest lands for grazing, and rangeland use and forest use, consistent with existing and future needs for agricultural and forest products. The F-2 zone is also intended to allow other uses that are compatible with agricultural and forest activities, to protect scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the county.
>
> "The F-2 zone has been applied to lands designated as Forest in the Comprehensive Plan. The provisions of the F-2 zone reflect the forest land policies of the Comprehensive Plan as well as the requirements of ORS Chapter 215 and OAR 660-006. The minimum parcel size and other standards established by this zone are intended to promote commercial forest operations."

The Use Table in LC 16.211(2) says:

> "Table 16.211-1 sets forth the uses allowed in the F-2 zone subject to Type I, II, or III approval processes. This table applies to all new uses, expansions of existing uses, and changes of use when the expanded or changed use would require a Type I, II, or, III process, unless otherwise specified on Table 16.211-1. All uses and their accessory buildings are subject to the general provisions, special conditions, additional restrictions, siting standards, fire siting standards, and exceptions set forth in LC 16.211."

The Table of Permitted Uses includes, as Residential Use 2.4, "Template Dwelling." The code explicitly lists the Template Dwelling use as "permitted subject to standards" and then lists the standards that apply. The listing of standards does not include Policy 11 or any other plan policies. There is no language in the list of standards that invites incorporating any plan policies. The listing of standards in the Table is intended to be exhaustive.

Had the Board intended to include compliance with plan policies as a standard for review of a template dwelling application, it would have referenced those policies in the Table of Permitted Uses in LC 16.211-1.

The context of the zoning code reinforces the standards in LC 16.211 for template dwellings as being exhaustive. Had the plan policies been intended to be included as standards for a template dwelling decision, the code would be explicit about that. For example, the standards for zone changes are explicit that relevant plan policies are standards for the decision. See LC16.252(2). Similarly, the code is explicit that relevant plan policies are standards for a land partition. See LC 13.080(1)(b)(ii).

Policy 11 neither states nor incorporates a minimum lot size for individual template dwellings applications in the F-2 zone.

Policy 11 consists of three sentences. No part of the policy commits the County to applying a minimum lot size to review of individual template dwellings applications on F-2 forest land. The County does not intend that such limits should be read into Policy 11.

Policy 11 primarily anticipates further planning work related to Big Game in the future. It anticipates regulating "overall density," and it anticipates possibly regulating density differently in different regions of the County.

> "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County."

This work is necessarily planning work to be done in the future, because, as LUBA noted in both decisions, the number and location of regions has not been established, even after 36 years. *King,* Slip op 6 fn 4. Furthermore, some meaning needs to be given to the phrase "overall density." Overall density is not defined in the plan or code. It is not the same thing as a minimum acreage for each dwelling unit. It is something that needs to be figured out in the future.

However, as LUBA confirmed, the county's Goal 5 program for Big Game Habitat was acknowledged, even without the anticipated regional planning work being done. *King*, Slip op 4. LUBA was correct in saying that the establishment of planning regions and setting of "overall residential density" is a statement of work to be done in a post-acknowledgement planning process. *King*, Slip op 28. That planning work has not been started.

The second sentence of Policy 11 is linked to the first sentence.

> "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000."

The first sentence of Policy 11 is context for the second sentence. The phrase "density above that limit" in the second sentence refers back to the "overall residential density" phrase in the first sentence. The entirety of the second sentence will become operative when the future planning work is done. Once overall residential densities are established for regions, and those changes are acknowledged as Post Acknowledgment Plan Amendments, then any densities exceeding the new limits based on regions would trigger a new plan amendment in accordance with state law in OAR 660-16. Therefore, the second sentence is a statement that decision making following future planning work will comply with state law in division 16.

The third sentence in Policy 11 is also related to the first two sentences; it is a commitment to continue working with the ODFW in further planning work for Big Game.

> "The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

This sentence is a directive from the County to itself, committing to coordinate with the ODFW when it undertakes anticipated new work related to planning for Big Game Habitat. This, on its face, is not a standard that applies to a specific land use application. It is not language that applies to a present-day forest template application.

The Flora and Fauna Working Papers document a planning effort for Big Game Habitat that moved away from setting minimum lot sizes for dwelling applications on F-2 land and toward applying siting and clustering standards..

Working Papers are background documents for the comprehensive plan. They reflect the planning process on various topics as that planning process evolved in the several years prior to the plan being submitted for acknowledgment. Working Papers do not state the county's ultimate policy choices for any subject area. Policy choices are found in the plan and implemented in the code. They are, however, useful legislative history.

The Flora and Fauna Working Paper (March 1982) and its Addendum (November 1983) were both completed prior to the County submitting its plan to the state for acknowledgment in 1984. Therefore, the Working Papers are legislative history relating to intent at the time of plan submission.

The Working Paper Addendum reflects a shift in planning for Big Game Habitat that is consistent with this interpretation. The Addendum removed language from the initial Working Paper that emphasized applying density minimums to dwelling decisions. It rejected managing dwelling density as a "mere numbers game." It replaced density language with language that focused on using clustering and siting standards to limit conflicts with big game. As the

Addendum stated: "While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists." Working Paper Addendum at 14.

The county plan and code entered and exited acknowledgment review without minimum lot sizes for dwellings on F-2 land; only clustering and siting standards were strengthened during the state review.

When the County submitted its plan and code for acknowledgment in 1984, Policy 11 was in its current form, the Flora and Fauna Work Paper and its Addendum were complete, and neither the plan nor the code contained minimum lot size standards for dwellings on F-2 land in Big Game Range.

In its initial review of the plan and code, the DLCD explained that regulations in the F-1 zone were adequate for Big Game Habitat protection because dwellings are not permitted in the F-1 zone. July 19, 1984 DLCD Staff Report at 75. With respect to the F-2 zone, the DLCD required changes. DLCD Directive 2.d. to the County was:

> "Amend the F-2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones or contain clustering requirements in those areas." July 19, 1984 DLCD Staff Report at 75 (emphasis added).

That directive posed a policy choice to the County for F-2 land – set minimum lot sizes for dwellings in the F-2 zone or bolster clustering and siting standards. The County opted to change the clustering and siting standards. The September 17, 1984 DLCD Staff Report quoted these changes and found them adequate for acknowledgment. The Report said, at 25:

> "Response
>
> "Lane County has added the following new language to both the F-2 and EFU zones:
>
> > "(a) The approval authority shall balance the setback standards of LC 211(8)(a) with the siting requirements and application approval criteria specified elsewhere in CL 16.211 in order to minimize adverse impact upon forest uses and to assure optimal siting of proposed residences consistent with the purpose of the F-2 [EFU] zone.
> >
> > (i) Residence to be siting upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be siting as follows:
> >
> > (aa) Near residences on other tracts.
> >
> > (bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

"Conclusion

Requirement 2.d. has been met."

In summary, the County entered and exited acknowledgment review without minimum lot sizes for Forest Template Dwelling approvals on F-2 land in mapped Big Game Habitat. The acknowledgment process gave the County the option of protecting Big Game Habitat on F-2 land by establishing minimum lot sizes or bolstering clustering and siting standards. The County chose the latter, and that choice was acknowledged.

Policy 11 is not independently a basis for imposing minimum lot sizes on current F-2 dwelling applications in Big Game Habitat. If it were, the County would not have been given the policy choice during acknowledgment to either adopt minimum lot sizes or clustering and siting standards. The availability of this choice during acknowledgment supports the interpretation made here.

ADAMS Shawna L

From:	ADAMS Shawna L
Sent:	Friday, September 8, 2023 7:18 PM
To:	billkloos@landuseoregon.com; Thom Lanfear (tlanfear@pacinfo.com); Hope S; Jim McLaughlin; Mike Farthing; Sean Malone; ellenannej@gmail.com; miloindustries2021@gmail.com; jim@westerncascades.com; carlettelarson@kw.com; dragocontracting@yahoo.com; landplancon@comcast.net; kay@rrking.net; caseyjoneswelldrilling@yahoo.com; chris@superiorec.net; jjk.timber@gmail.com; dnoble4990@aol.com; sassypeanut@comcast.net; kim@rurallanduse.com; andrew@friends.org; joseph.p.stack@odfw.oregon.gov; MERWIN Amy KWVA (SMTP); Sharon Carroll
Cc:	BELL Amber R; EICHNER Lindsey A; GILBRIDE Kevin E; DOBBERSTEIN Julia C
Subject:	Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)
Attachments:	PA2305321 (King hrg 2) hearing testimony.pdf

Concerned Parties, Attached is the hearing/pre-hearing written testimony received for Planning Action files 509-PA23-05321, which was the subject of yesterday's second hearing concerning King template dwelling applications. The testimony has been combined into a single document along with an index for your reference. The same testimony is included in the record for yesterday's first hearing, which was addressed in the previous email you should have received. The index is specific to the second hearing. Please contact me directly if you have any questions or require assistance prior to September 20, as Julia Dobberstein, the assigned staff planner for this hearing item is scheduled out of the office until then.

Sometime soon the attached document will be available on our website along with the other hearing related items for the September 7 hearings, which can be found at the following link: https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19715258&contextId.94636=6285783&parentId.94636=19699820. The Hearing recordings have already been posted.

The Hearings Official has allowed for an extended hearing record period subject to the following deadlines:

- Open Record for all parties of record until September 21, 2023 at 4:00 PM;
- Comment/Response to Open Record submittals until October 5, 2023 at 4:00 PM; and
- Final Rebuttal by the Applicant until October 12, 2023 at 4:00 PM.

If you plan to submit information please provide digital copies to me by email prior to the deadline (if your submittal is over 20 pages please also submit a paper copy). Please direct any written communication to Julia and copy me on any emails so we can better assist you and facilitate a smooth process.

Kind regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

PA23-05321 (King)						
Doc #	Document Description	*Date Rcvd	Name	Address	Email	Comments
	Hearings Official Prehearing/Hearing Written Submittals					
1	Mailed Letter	8/30/2023	Richard & Amy Shearer	47147 Westfir Oaktridge Rd, Westfir, OR 97492	None provided	Routed after 8/31/23 staff report
2	Applicant's Hearing Letter	9/2/2023	Bill Kloos		billkloos@landuseoregon.com	9/2 email w/ attached letter dated 9/4/23
3	Email requesting party status	9/3/2023	Jim McLaughlin	2600 19th St, Springfield OR 97477	cewmjtm@gmail.com	
4	Applicant's hearing posting affidavit	9/5/2023				submitted by T. Lanfear on behalf of B. Kloos
5	Email chain in support of applications/Board review	9/5/2023	Ellen & Herbert Jaeger	35653 Shoreview Drive, Dorena OR	ellenannej@gmail.com	
6	Email asking for party status w/ staff response	9/5/2023	Nicholas Milosevich	86361 Baily Hill Rd, Eugene OR 97405	miloindustries2021@gmail.com	Address provided at hearing
7	Email chain w/ comments and requesting party status	9/6/2023	Sharon Carrol	4325 Commerce St. Ste 111, Eugene Or 97402	sharon.carrol@att.net	
8	Email chain requesting party status	9/6/2023	Jim Babson	4027 Reuben Leigh Rd, Lowell, OR 97452	jim@westerncascades.com	
9	Email chain requesting party status	9/6/2023	Carlette Larson	1437 Mesa Crest Dr, Haslet TX 76052	carlettelarson@kw.com	
10	Email chain providing comments	9/6/2023	Tony Drago	21984 Cook Rd, Not OR 97461	dragocontracting@yahoo.com	
11	Email requesting party status	9/6/2023	Mike Evans	475 Oakdale Ave, Springfield OR	landplancon@comcast.net	
12	Email chain requesting party status with comments	9/6/2023	Kay King	87657 Portage Way, Florence, OR 97439	kay@rrking.net	
13	Email requesting party status with comments	9/6/2023	Casey Jones, Mckenzie Land & Timber LL	37115 Immigrant Road, Pleasant Hill, OR 97455	caseyjoneswelldrilling@yahoo.com	
14	Email requesting party status w/ comments and staff response	9/6/2023	Chris & Meagan Leturno	None given	chris@superiorec.net	No reference hearing item/mailing address
15	Email requesting party status w/comments	9/6/2023	Jeremy & Celeste Keepers	81711 Mahr Ln, Creswell OR, 97426	jjk.timber@gmail.com	
16	Email requesting party status	9/6/2023	Deborah Noble	4990 W. Hillside Dr, Eugene OR 97405	dnoble4990@aol.com	
17	Email c/o Robert B Gill requesting party status w/comments	9/6/2023	Lynda McCord	3780 Marshall Ave, Eugene OR 97402	sassypeanut@comcast.net	
18	Email w/letter from Kim O'Dea/counsel on behalf of multiple parties	9/6/2023	See comments	PO Box 1061, Marcola OR 97454	kim@rurallanduse.com	
19	Email comments	9/7/2023	Andrew Mulkey, 1000 Friends	None Provided	andrew@friends.org	
20	Email w/ letter	9/7/2023	Joe Stack, ODFW	7118 NE Vandenberg Ave, Corvallis OR 97330	joseph.p.stack@odfw.oregon.gov	
21	Email w/letter from Kim O'Dea/ counsel on behalf of multiple parties	9/7/2023	See comments	PO Box 1061, Marcola OR 97454		

RECEIVED AUG 30 2023

8-26-2023

Dear Lane County,

I'm writing this letter in regards to 3 land parcels zoned Forest F1 to be changed to residential and Industrial for the purpose of developing 2 homesites and 1 Industrial building of 30,000 sq. ft.

If we follow the use of the word "interface" for the land where nature and business people have been allowed to mingle, shall we say, this sort of behavior excludes thoughts that the clearing of these forests to make safe for business folks leaves no forest. Please imagine a value for those trees while still standing and cleansing the air for your next breath. Mr. Kings money should not trump the value of intact mature forests. Animals live and migrate through the airport forested shoulders. Gee, who would have thought? Aren't we loosing enough forests to this disaster policy of clear cutting for 150 years? It has left nothing but a tree farm patchwork just made for conflagration during our dry season fires. Will anyone have the nerve and integrity to say enough on any level of government?

The last comment, if I may, there are dozens of Westfir homes and residents tucked just below the North facing slope below the 3 parcels of Forest zone land. When they drill for water, and excavate for footings and drain fields, it would be helpful and should be required that the applicant provide a topographic map indicating slopes and grades that could effect those below in landslide or runoff extremes!

Please don't enable this obvious fishing for exception to your Code.

Richard Shaker

Amy Shearer

cc. City of Westfir

Just obey your own guidelines, folks

RECEIVED AUG 30 2023

LAND MANAGEMENT DIVISION

DWELLINGS in the F1 (NONIMPACTED FOREST) ZONE

PUBLIC WORKS DEPARTMENT *3050 NORTH DELTA HIGHWAY, EUGENE OR 97408*
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

This guide outlines zoning and land use laws concerning new and existing dwellings in the F1 (Non-Impacted) forest zone. This guide is for informational purposes only and is not to be considered a substitute for the language of state or local regulations. Specific language is found in Lane Code (LC) 16.210, Oregon Revised Statutes (ORS) 215, and Oregon Administrative Rules (OAR) 660-06

The purpose of the F1 zone is, in part, to promote growing and harvesting of forest tree species as the leading use on forest land, and to provide for recreational opportunities and agriculture. This zone is predominantly undeveloped and used for commercial farm or forest uses.

This brochure summarizes the regulations applicable to dwellings in this zone. Refer to the specific language of the code for exceptions and more details.

REPLACEMENT RIGHTS: ORS 215.755

This statute has provisions for the repair or replacement of an existing dwelling. It does not have any provisions for building a new dwelling on vacant land.

In order to replace a dwelling, the existing structure must meet the definition of a dwelling and be lawfully established. If a building permit is used to show the existing dwelling was lawfully established, notice of the Director's decision is not required. If other evidence is submitted, notice is required.

"Lawfully established" means the dwelling was built and placed on the land consistent with the laws and regulations applicable at the time the structure was first used as a dwelling.

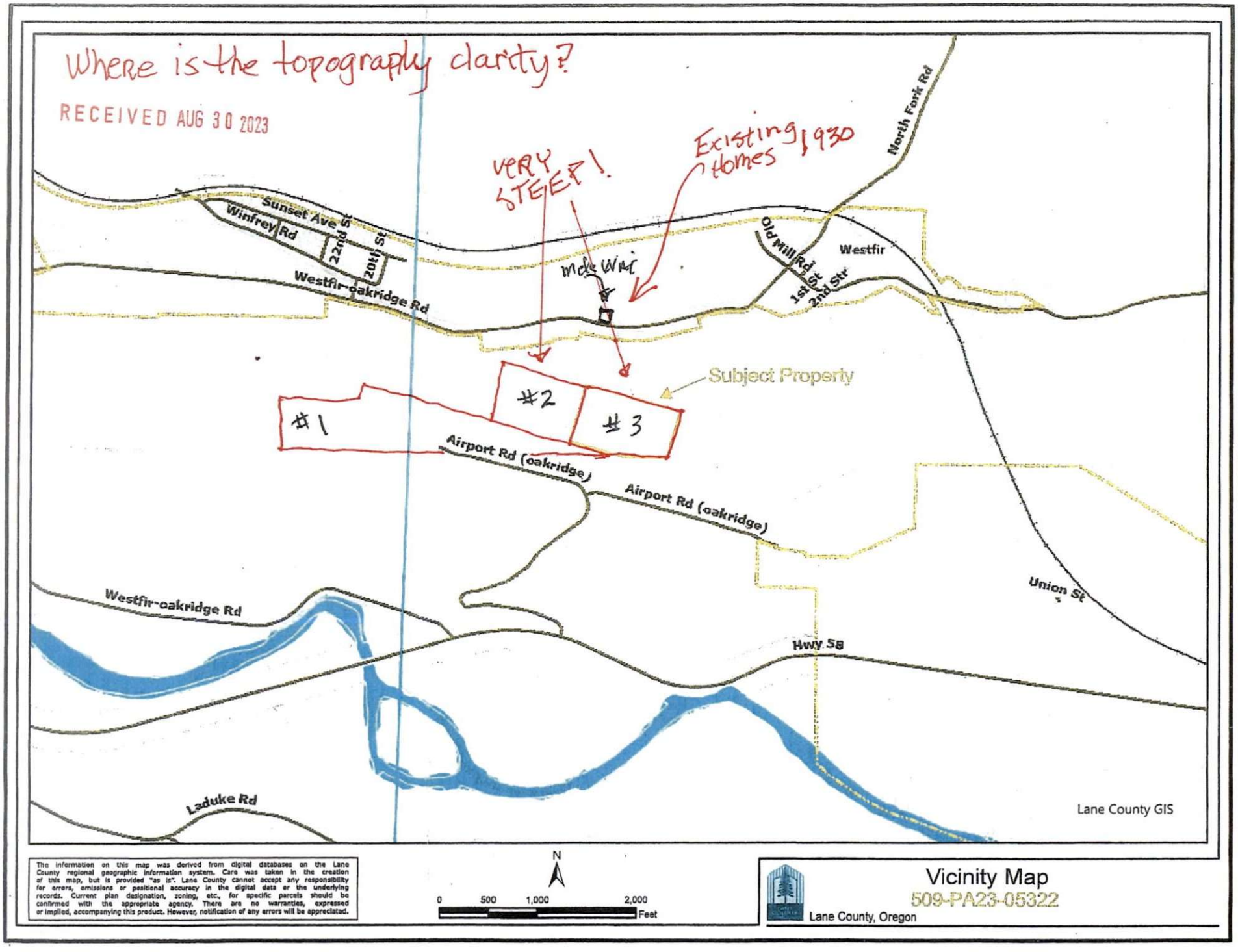
To be considered a dwelling, the structure must be occupied as a residence or sleeping place. It must have intact exterior walls and roof structure, indoor plumbing, interior wiring for lights and a heating system. Manufactured homes are considered dwellings, but not hotels, motels, or recreational or camping vehicles.

The new dwelling must be located on the same site as the previous dwelling. The term "same site" is defined as a square with dimensions of 200 feet that is centered on the footprint of the previous dwelling. Within three months after the new dwelling is ready for occupancy, the previous dwelling must be removed from the property or converted to an allowed use.

TEMPORARY MEDICAL HARDSHIP DWELLING: LC 16.210(3)(o)

The F1 zone has a provision for the temporary placement of a manufactured home or park model for a family member. Director approval is required. The temporary dwelling must hook to the existing septic system. Approval is valid until December 31 of the following year. It can be renewed for two years at a time. The temporary dwelling must be removed within 90 days once the hardship is over.

Version 1/05


Where is the topography clarity?
RECEIVED AUG 30 2023
VERY STEEP!
Existing homes 1930
North Fork Rd
Sunset Ave
Winfrey Rd
22nd St
20th St
Westfir-oakridge Rd
Old Mill Rd
1st St
2nd Str
Westfir
Subject Property
#1
#2
#3
Airport Rd (oakridge)
Airport Rd (oakridge)
Union St
Westfir-oakridge Rd
Hwy 58
Laduke Rd
Lane County GIS
The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.
N
0 500 1,000 2,000
Feet
Vicinity Map
509-PA23-05322
Lane County, Oregon

Mr. Richard A. Shearer
47147 Westfir Oakridge Rd
Westfir, OR 97492

EUGENE OR 974
28 AUG 2023



LANE COUNTY LAND Mgt. "Division"
3050 N. Delta Hwy
Eugene, Oregon 97408

RECEIVED AUG 30 2023

97408 162650

Attn: Shawna Adams, Julia Dobberstein, Planning DIRECTOR

ADAMS Shawna L

From: Bill Kloos <billkloos@landuseoregon.com>
Sent: Saturday, September 2, 2023 7:37 AM
To: ADAMS Shawna L; Anne Davies (ADAVIES@Lcog.org)
Cc: Bill Kloos; Thom Lanfear (tlanfear@pacinfo.com); Ed King (edk@kingestate.com); DOHRMAN Rebekah L
Subject: PA23-05321, PA23-05322, PA23-05323; Applicants' Hearing Letter
Attachments: Applicants Hearing Lttr 9.4.2023.pdf

[EXTERNAL ⚠]

Shawna –

Attached is a short hearing letter that deals primarily with procedural issues.

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Ave., Suite 204
Eugene, OR 97401
Phone: 541-954-1260
Email: Bill Kloos@LandUseOregon.com
Web: www.LandUseOregon.com

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LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

September 4, 2023

Lane County Hearing Official
c/o Shawna Adams, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: PA23-05321, PA23-05322, PA23-05323; Applicants' Hearing Letter

Dear Hearing Official:

This letter addresses primarily procedural issues.

This is a refiling of three Forest Template Dwellings applications that have been at the County before. Two were denied by the HO following the LUBA decision in *Nimpkish. LandWatch Lane County v. Lane County (Nimpkish LLC)*, __ Or LUBA __ (No. 2020-030, Jan. 23, 2021). LUBA then affirmed the denial. *King v. Lane County,* __ Or LUBA __ (LUBA Nos. 2021-047/052, Oct. 15, 2021), *aff'd without opinion* 317 Or App 136, 501 P3d 1058 (2022). The third application did not make it through a Director decision.

These three applications were refiled with two theories supporting approval:

The **first** theory was the 2017 amendments to ORS 197.307(4)(2017), which said, without limitation, that the requirement for clear and objective standards applies to housing. Because LUBA has said the Big Game Policy 11 is ambiguous, the applicant here expected that the HO in this matter would not apply Policy 11. However, on August 29 LUBA added a further gloss on the ORS 197.307(4) caselaw and held that the requirement for clear and objective standards does not apply to housing on EFU land outside UGBs. See *LandWatch Lane County v. Lane County*, LUBA No. 2023-037 (Aug. 28, 2023)(*Helsel*). That opinion remanded the HO's approval of a Relative Farm Help Dwelling for Helsel. That decision may be appealed; however, that is a five-month process. Therefore, the first theory is of no utility in this proceeding.

The **second** theory is that the County Board is ready to do its own interpretation of the Goal 5 Policy 11 in the RCP, and that interpretation will apply to these pending applications. The Board has had before it (since Summer 2022) a proposed interpretation by the Home Builders Association (now the Western Oregon Builders Assn.) that the HBA expects would be upheld at LUBA under the deferential standard that LUBA must apply to Board interpretations. On June 13, 2023 the staff recommended that the Board <u>not</u> take on the interpretation of the Big Game Policy 11, which means the LUBA interpretation would stand, and the Forest Template Dwelling avenue for landowners would remain effectively closed to landowners after being available for several decades. This is the staff's "leave well enough alone" recommendation. However, the Board on June 13 instead committed to interpreting Policy 11 when the next relevant FTD

application comes along. The exact alternative motion proposed by staff in the June 13 AIS, which was approved by the Board, was:

> "Direct staff to elevate the next relevant Hearings Official's decision involving Goal 5, Policy 11 to the Board for their review pursuant to LC 14.080(5). At that time, the Board could adopt a local interpretation of the policy, either by affirming the Hearing's Official interpretation or through an on-the-record review."

These pending applications will be "the next relevant Hearings Official's decision" on the Big Game issue. Thus, as the Staff Report confirms, we can expect the County Board to hear your decision on appeal by the Director, as directed by the County Board on June 13.

In this proceeding the applicants want to be sure that these three applications otherwise can be approved (two were previously approved by the Director) such that the County Board can focus its efforts on interpreting RCP Goal 5, Policy 11.

This raises several procedural questions for discussion in the initial hearing:

1. Will you decide the non-Big Game issues in these applications so that the County Board can focus on the Policy 11 interpretation? The applicants think that would be efficient.

2. Should you provide time for the parties to make the record here that is needed for the Board to do a thorough review of materials relevant to its upcoming interpretation? That seems like the cautious approach to take as the Staff Report suggests that the appeal to the Board will be "on the record."

3. Should your decision venture into the issue of what the Board interpretation should be? That is really your call, of course. However, there may not be much utility in getting into that issue again if it ultimately is up to the Board. There is already a gaggle of interpretations on the doorstep – the HO's original in *Nimpkish*; the LandWatch and King interpretations in the LUBA *King* decisions; LUBA's interpretation in *Nimpkish* as elaborated on in *King*; the HBA's proposal to the County Board (attached to the Staff Report); and now a new suggestion in the Staff Report here – one that says the 80 acre/40 acre standard in the plan materials is really an acknowledged 40/20 standard. The simple thing to do would be to promote the interpretation issue to the Board with the record the parties believe is needed to do the interpretation.

All of the above is offered as a suggestion for organizing the initial hearing.

Sincerely,

Bill Kloos

Bill Kloos

ADAMS Shawna L

From: Jim McLaughlin <cewmjtm@gmail.com>
Sent: Sunday, September 3, 2023 10:18 AM
To: ADAMS Shawna L
Subject: Request to be an Interested Party PA23-05321, PA23-05322, PA23-05323

[EXTERNAL ⚠]

Shawna -
Please include me on the interested party list for the following applications -
PA23-05321, PA23-05322, PA23-05323
Feel free to contact me if you have any questions or concerns.

Thank you.



Contact Info:
Jim McLaughlin PLS
2600 19th Street
Springfield, OR 97477

email: cewmjtm@gmail
cell: (541) 658-0123
text: (541) 729-4886

ADAMS Shawna L

From: tlanfear@pacinfo.com
Sent: Tuesday, September 5, 2023 4:32 PM
To: ADAMS Shawna L; DOBBERSTEIN Julia C
Cc: Bill Kloos
Subject: Posting Notice Affidavit for Sept 7 Hearings
Attachments: posted notice affidavit.pdf

[EXTERNAL ⚠]

LAND MANAGEMENT DIVISION

Date Received:

AFFIDAVIT OF POSTED NOTICE

PUBLIC WORKS DEPARTMENT *3050 N. DELTA HWY. EUGENE, OR. 97408 Planning: 682-3577*

Department File No.: 509-PA23-05323; 05322; 05321

Subject Property: Assessor's Map and Tax Lot 21-35-07-30-02800; 02900

Address or General Location 21-25-12-00-00843

This document is to certify that I, THOM LANFEAR (**Applicant**), posted notice of public hearing at least 14 days before the first public hearing and in accordance with **Lane Code 14.060(2)(d)** on 8-29-23 (**Date Posted**), and that I will remove and lawfully dispose of the sign within **14 days** of the close of the public hearing.

**Please attach a map showing the approximate location of the sign on the property and/or photos of the posted sign*

Applicant Signature: Th

State of OREGON **County of** Lane

Signed or attested before me on the 5th **Day of** Sept., 2023

by Thomas E. Lanfear

Notary Public – State of Oregon: Roberto Tort Nava

My commission expires: 03/07/2025

OFFICIAL STAMP
ROBERTO TORT NAVA
NOTARY PUBLIC - OREGON
COMMISSION NO. 1008352
MY COMMISSION EXPIRES MARCH 07, 2025

Version 1/2019


WELCOME TO
AVIATION HEIGHTS
ESTATE HOME-SITES FOR SALE
Adrienne St. Clair
(541) 953-6206

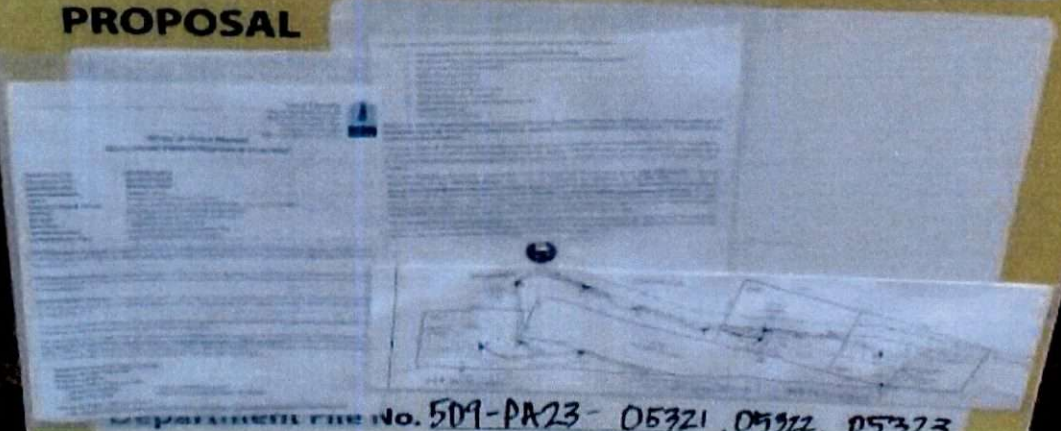
NOTICE OF PUBLIC HEARING

A PROPOSED CHANGE IN THE USE OF THIS PROPERTY WILL BE CONSIDERED BY THE:

LANE COUNTY HEARINGS OFFICIAL

DATE SEPTEMBER 7, 2023 **TIME** 9:30 AM

PROPOSAL



Department File No. 509-PA23- 05321, 05322, 05323

FOR MORE INFORMATION CONTACT:

Lane County Land Management Division
3050 North Delta Highway, Eugene, 97408
Phone: (541) 682-3577

Fir Ridge Ln
SIGN

ADAMS Shawna L

From: Ellen Jaeger <ellenannej@gmail.com>
Sent: Tuesday, September 5, 2023 11:51 AM
To: ADAMS Shawna L
Subject: Re: Plan Policy 11

[EXTERNAL ⚠]

We live at 35653 Shoreview Drive, Dorena OR. That address belongs to my mother Ruth Veltin with whom we live and care for, she is 94 years young.

We do intend our comments for all three applications.

I don't have our tax lot numbers handy, but the plot is at about milepost 7 and borders the Row River Road, before Rat Creek Rd. Our neighbors to the west are Jim and Christine Bixel and to the east is Brian Green.

Thank you for your extremely prompt response.

Ellen Jaeger

Sent from my iPhone

> On Sep 5, 2023, at 10:32 AM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:
>
> Hello Ellen, Thanks you for your comments. Can you provide me your address for the record in this matter and confirm they are intended for all three King Application files (i.e. PA23-05321, PA23-05322, PA23-05323)?
>
> Best regards,
>
> Shawna Adams | Senior Planner
> Lane County | Land Management Division
> 3050 North Delta Hwy | Eugene, OR 97408
> Office: 541-682-8904 | Fax: 541-682-3947 shawna.adams@lanecountyor.gov
> |
> https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.l
> anecounty.org%2Fplanning&data=05%7C01%7Cshawna.adams%40lanecountyor.go
> v%7Cb3259ea304e84df3bc0808dbae4116d9%7C74df5a22826e49429a741d199974ded
> f%7C0%7C0%7C638295366801897107%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjA
> wMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sd
> ata=EOPeiaF0dbG5%2F7kxtPZUUgWFj%2F2o5oXL1xOh7GN%2BQtk%3D&reserved=0
> Messages to and from this e-mail address may be available to the
> public under Oregon Public Records Law
>
>
>
> -----Original Message-----
> From: Ellen Jaeger <ellenannej@gmail.com>
> Sent: Tuesday, September 5, 2023 9:56 AM

> To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
> Subject: Plan Policy 11
>
> [EXTERNAL ⚠]
>
> Dear Planning Staff, Hearing Officer and Shawna Adams.
>
> We would like to go on the record in support of the King FTD applications and plan policy 11 being reviewed by the commissioners. We would like the big game habitat density issue to be interpreted the way it had been for years.
> We own a 40 acre parcel on Dorena lake that we cannot build on under the new/ current interpretation. We have had the land in our family since 1987, and have for the last 25 years been planning to build our retirement home there.
> In 2018/2019 we started the preliminary work which showed that all conditions could be met for a FTD permit. We were ready to start the application process and then the Nimpkish decision dropped. Our parcel qualifies under the forest template dwelling rules with one exception, we cannot make the parcel into 80 acres.
> We are absolutely in support of the King application, and we would like to be formally recorded as such.
>
> Additionally if there is anything we need to do to have standing in this matter, please advise asap. We understand that this is going to be considered in two days time on September 7th. We do not want to miss any procedural steps that we can follow to support a return to a clear and precise and historically accurate interpretation of the land use rules, especially those effecting Forest Template Dwelling applications.
>
>
> Shawna, I look forward to hearing back from you. Thank you for your time.
>
> Ellen and Herbert Jaeger.
> Sent from my iPhone

ADAMS Shawna L

From: ADAMS Shawna L
Sent: Tuesday, September 5, 2023 2:06 PM
To: Dan Milosevich
Cc: DOBBERSTEIN Julia C
Subject: RE: Party Status - PA23-05321,PA23-05322,PA23-05323

Hello Nicholas, The hearings for these three applications are scheduled for this Thursday at 9:30 am and you can participate online or in person as you prefer.

The agenda with the call-in and meeting room details can be found on the agenda at the following link along with any other information that is posted for the hearing.
https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19771794&contextId.94636=6285783&parentId.94636=19771787

If you choose to participate at the hearings in person, you will be asked to provide your name and mailing address with an indication of whether you are a party in favor, opposed, or neutral concerning the application proposals. A sign-up sheet will be provided in the hearing room for people who wish to testify in person as a part or who wish to request notification of the Hearings Official decision. You can also submit written comments/testimony directly to me in advance for to forward to the Hearings Official at the proceeding. Please include your name, address, and Planning Action file numbers with any testimony to be entered into the Hearings Official proceeding. Feel free to give me a call if you have any questions concerning specifics.

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Dan Milosevich <miloindustries2021@gmail.com>
Sent: Tuesday, September 5, 2023 1:01 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Party Status

[EXTERNAL ⚠]

Good morning Shawna I name is a Nicholas Milosevich
I am seeking Party Status to appear at an HO proceeding
File No.
PA23-05321,PA23-05322,PA23-05323
Let me know if there's anything more you need or what I need to do moving forward.

Thank you so much have a great day

From: Sharon Carroll <sharon.carroll@att.net>
Sent: Tuesday, September 5, 2023 12:55 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject:

[EXTERNAL ⚠]

September 5, 2023

Lane County Land Management & Board of Commissioners

Please confirm receipt of this transmittal and add it to the record for PA23-05321, PA23-05322, PA23-05323. I also request to be made a party with standing.

I have owned a 43 acre property at 20-02-23-00-00600 for many years. I have always had the intention of placing a dwelling on the property. My knowledge of the laws affecting this property and other similar properties I own indicated that I could eventually place a dwelling on it. The property has a large number of homes to the west, south and east. It is a prime candidate for an F2 zoned dwelling.

About a year and a half ago I hired a private land use consultant to work on an application to obtain a dwelling. It did not take long for the consultant to determine that a recent Nimpkish ruling that prevented the placement of a dwelling since the property was less than 80 acres in size. The property was predominantly zoned "Big Game Habitat" with only a small peripheral area which was too steep to place a dwelling on.

The loss of my ability to place a dwelling on the property significantly reduced the value of the property. When legacy family properties were divided up amongst my siblings and I, the property was valued as buildable. Now finding it is not buildable, due to an obscure reading in the Lane County Code - that has never been a part of any historical land use applications/decisions, has created a significant financial loss for me personally.

Thank you for taking the initiative to resolve this very poor ruling and restore my property rights. I really appreciate it.

ADAMS Shawna L

From: Sharon Carroll <sharon.carroll@att.net>
Sent: Wednesday, September 6, 2023 11:48 AM
To: ADAMS Shawna L
Cc: Jeremy Keepers
Subject: Re: PA23-05321, PA23-05322, PA23-05323)?

[EXTERNAL ⚠]

Mailing address is:
Sharon Simpson Carroll
4325 commerce st. STE 111
Eugene, or 97402

Shawna, thank you for your quick reply.

I am out of town or I would like to attend the hearing . The private planner that is helping me may attend and can also speak on my behalf.

Thank you,
Sharon

On Sep 6, 2023, at 4:23 AM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Hello Sharon, Thank you for your comments. I will enter your comments in the records for these applications, which are scheduled for public hearings before the Hearings Official this Thursday at 9:30 am. In the meantime, can you provide me your address so I can include you as an interested party with standing/ entitled to the notice of decision?

If you would like to provide additional written or oral testimony at the hearings, the agenda with the call-in and meeting room details can be found at the following link along with any other information that is posted for the hearing.
https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19771794&contextId.94636=6285783&parentId.94636=19771787.

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

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ADAMS Shawna L

From: Jim Babson <jim@westerncascades.com>
Sent: Wednesday, September 6, 2023 12:47 PM
To: ADAMS Shawna L
Subject: 509-PA23-05321,05322,05323 (King), Sept. 7, 2023 HO hearing

[EXTERNAL ⚠]

Re: 509-PA23-05321,05322,05323 (King)

Hello Shawna,

I will not be able to attend the Hearings Official hearing on 9/7/23 at 9:30 am. Please add my name to the "interested parties" list.

Thank you,

James Babson
40237 Reuben Leigh Rd.
Lowell, OR 97452
email (preferred): jim@westerncascades.com

ADAMS Shawna L

From: Carlette Larson <carlettelarson@kw.com>
Sent: Wednesday, September 6, 2023 2:35 PM
To: ADAMS Shawna L
Subject: Re: King Applications PA23-05321, PA23-05322, PA23-05323

[EXTERNAL ⚠]

My address is:

1437 Mesa Crest Dr Haslet TX 76052

Carlette Larson

On Sep 6, 2023, at 3:34 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Hello Carlette, I have received your email and would be happy to add you to the party list, but need your mailing address to do so.

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

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From: Carlette Larson <carlettelarson@kw.com>
Sent: Wednesday, September 6, 2023 10:04 AM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: King Applications PA23-05321, PA23-05322, PA23-05323

[EXTERNAL ⚠]

Dear Ms. Adams,

I am an owner of acreage being affected with the Dwellings in Big Game Habitat restrictions and I am asking for party status with the **King applications**.

The File Nos. on these applications are: PA23-05321, PA23-05322, PA23-05323

Would you please respond by email today that you are in receipt of this request because it is my understanding that there is a cutoff tomorrow.

Best regards,

Carlette Larson

(541) 953-3008
carlettelarson@kw.com

ADAMS Shawna L

From: Tony <dragocontracting@yahoo.com>
Sent: Wednesday, September 6, 2023 2:59 PM
To: ADAMS Shawna L
Subject: Re: Property on Hale rd

[EXTERNAL ⚠]

No worries.
Our physical and mailing address are

21984 Cook Rd
Noti, Or.97461

Thanks.

On Wed, Sep 6, 2023 at 10:57 AM ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Hi again Tony. It is your personal mailing address/contact information that I need, not the location of the property on which you wish to pursue a template dwelling. Apologies for being unclear.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Tony Drago <dragocontracting@yahoo.com>
Sent: Wednesday, September 6, 2023 10:51 AM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Re: Property on Hale rd

[EXTERNAL ⚠]

Thank you for your response! Our tax lot ID is 17-06-20-00-01600 (property adjacent to 89143 Hale Rd). Property is also intended for all three King Application files. I have added property address to letter as well as additional contact information.

Thanks again,

Sarah

On Tuesday, September 5, 2023 at 10:57:40 AM PDT, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Hi Tony, Thanks you for your comments. Can you provide me your address for the record in this matter and confirm they are intended for all three King Application files (i.e. PA23-05321, PA23-05322, PA23-05323)?

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Tony <dragocontracting@yahoo.com>
Sent: Tuesday, September 5, 2023 7:52 AM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Property on Hale rd

[EXTERNAL ⚠]

Shawna,

Please read attached letter, we would like to be included in party. If you valued also verify that you received this email and attached letter it would be wonderful.

Tony Drago

September 5, 2023

To whom it may concern

A few years ago, I purchased a piece of property in the Noti area with expectations that my son and his wife would be able to build a home there. I have put a lot of time and money into this piece of property to meet the lane county requirements (application fees, surveying, land consultant, County permits, Driveway rock, Well and cost of the property). After meeting all of Lane County requirements I had to withdraw my application for reasons that were never disclosed in the application process less than a month before approval.

This piece of property is less than 5 acres and is surrounded by homes on three sides. With lane county new rules, the property value has dropped significantly and is undesirable to anyone. After much time lost waiting for property approval, we had to purchase a different home site for our son and his wife.

Tony Drago
541-520-1623

ADAMS Shawna L

From: Geri Betz <landplancon@comcast.net>
Sent: Wednesday, September 6, 2023 3:31 PM
To: ADAMS Shawna L
Cc: Julia Dobberstein
Subject: Re: 509-PA23-05321, 05322 & 05323

[EXTERNAL ⚠]

475 Oakdale Avenue Springfield Oregon

Sent from my iPhone

On Sep 6, 2023, at 2:34 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Will do Mike and Geri. Please remind me and Julia Dobberstein of your address if you would.

Best,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Geri A. Betz <landplancon@comcast.net>
Sent: Wednesday, September 6, 2023 2:25 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: 509-PA23-05321, 05322 & 05323

[EXTERNAL ⚠]

Hi Shawna,

Mike Evans, Land Planning Consultants, would like party status in the King special use permits hearing with the Hearings Official on September 7, 2023.

Thank you.

Mike Evans

ADAMS Shawna L

From: Kay King <kay@rrking.net>
Sent: Wednesday, September 6, 2023 6:26 PM
To: ADAMS Shawna L
Subject: Re: Big Game/ Land Use Policy

[EXTERNAL ⚠]

Yes Shawna
you are correct with the intent that if it moves forward I would like to sign up to testify if the board decides to hear this case down the road.
thanks
Kay
My apologies for not making this clean.

Kay King
(541)999-0067 (c)
(541)997-2248(h)
Kay@rrking.net

Sent from my iPhone

On Sep 6, 2023, at 5:09 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Hello Kay, Can you confirm whether your email is intended for the Hearings Official in consideration of template dwelling applications PA23-05321, PA23-05322, PA23-05323 scheduled for public hearings tomorrow morning at 9:30 am? I gather this is the case, but would like to confirm that for the record. If so,

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Kay King <kay@rrking.net>
Sent: Wednesday, September 6, 2023 4:28 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Big Game/ Land Use Policy

[EXTERNAL ⚠]

September 6, 2023

Shawna:
My name is Kay King, no relation to Ed King or the LLC applicant in this case. I would like to be a party to this case because I understand that the Board of Commissioners may consider this case to review how the county's big game policy is impacting landowners. Below are is a short summary of my experience – this is all I am able to provide today because of the short notice and timing of this hearing. But I would like to testify to the Board about this issue and I request that the Hearings Official recommend that the Board hear this case.

My family owns forestland near Florence. We have a property that used to have a house and we have family members who would like to build a new house on this land. I understand that we cannot get a replacement permit for a new house under the state rules because of the time that has passed since the old house was demolished. So we would need to qualify for a "template" dwelling permit – the same permit at issue in this case.

We worked hard to put together a template permit application and we even had ODFW visit our property and confirm that a house would not impact big game populations. But after seeing how expensive and time consuming the land use process is and how badly landowners are treated in that process we decided not to move forward with our application. Based on our experience living in the Coast Range and working with ODFW, we know that they county's current big game policy is not based in science and does not promote good stewardship of land. I urge the county to reconsider this policy.

Kay King
87657 Portage Way
Florence, OR 97439
541-997-2248
kay@rrking.net

Get Outlook for iOS

ADAMS Shawna L

From: ADAMS Shawna L
Sent: Wednesday, September 6, 2023 5:07 PM
To: Chris Leturno
Cc: DOBBERSTEIN Julia C
Subject: RE: Request for party status

Hello Chris, Can you confirm whether your email is intended for the Hearings Official in consideration of template dwelling applications PA23-05321, PA23-05322, PA23-05323 scheduled for public hearings tomorrow morning at 9:30 am? If so, please also confirm your mailing address so I and Julia Dobberstein (County staff planners assigned to those applications) can add you to the party list for future notices concerning the applications?

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Chris Leturno <chris@superiorec.net>
Sent: Wednesday, September 6, 2023 4:47 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Fwd: Request for party status

[EXTERNAL ⚠]

To whom it may concern we purchased our F2 land in 2014 with the understanding we would be able to get a template lot approval. We used our savings to buy the land and hope to build a house on it one day. We finally got to the point of being ready to build and applied to the county for a template lot approval and just before we were approved the decision was made by Luba regarding big game overlay on F2 land. We have been stuck in limbo with a property we cannot sell or build on and would greatly appreciate anything the County Board could help our family with on this matter.

Sincerely

Chris and Meagan Leturno

ADAMS Shawna L

From: Casey Jones <caseyjoneswelldrilling@yahoo.com>
Sent: Wednesday, September 6, 2023 4:46 PM
To: ADAMS Shawna L
Subject: Party of Standing PA23-05321, PA23-05322, PA23-05323.

[EXTERNAL ⚠]

Please confirm receipt of this transmittal and add it to the record for PA23-05321, PA23-05322, PA23-05323. I also request to be made a party with standing.

My company purchased a 25 acre property (20-03-26-00-02600) and was within a month of having a template dwelling conditonal use permit approved when Nimkish occurred. Out of the blue, a standard that had never been considered, was not part of the code and not part of any forest dwelling applications in the past suddenly appeared.

We were instructed by Lane County planning staff to withdraw our application or it would be denied. After researching our options the application was pulled.

This property is surrounded by dwellings to the west, east and south. It should have been allowed to receive dwelling approval that we had been working on completing for over two years.

After spending roughly $30,000 to meet road criteria, prepare a conditional use permit, and install a well we were told that we were out of luck because we could not meet a wildlife density standard that did not exist in county code. We had to read through hundreds of pages of material of appeal documents to see how and why this standard was being applied and even after that, it was still very unclear. Anything that takes hundreds of pages to explain should be in the trash can, not public policy.

In the end we had to reduce the price by $100,000 to sell the property as a recreation property. The cash flow was required to pay for other business expenses, including the land that was just devalued. Overall, our loss, including development installed to meet the county standards was in excess of $130,000. This is a hard loss as the property is no longer in my company's ownership.

Thank you for taking the initiative to resolve this very poor ruling.

Casey Jones, Jr.

McKenzie Land & Timber, LLC
37115 Immigrant Road,
Pleasant Hill, OR 97455

ADAMS Shawna L

From: Jeremy Keepers <jjk.timber@gmail.com>
Sent: Wednesday, September 6, 2023 4:48 PM
To: ADAMS Shawna L
Subject: New Party of Standing: PA23-05321, PA23-05322, PA23-05323)?

[EXTERNAL ⚠]

September 6, 2023

To: Lane County Land Management & Board of Commissioners

Subject: Party of Standing PA23-05321, PA23-05322, PA23-05323.

Please confirm receipt of this transmittal and add it to the record for PA23-05321, PA23-05322, PA23-05323. I also request to be made a party with standing.

My wife and I own ten legal lots in Saginaw, Lane County, being Tax Lots: 20-03-03-00-01100, 1105, 1106, 1107 and 20-03-10-00-03900, 04000. They are all zoned F2 and within the peripheral big game habitat -wildlife area. From my work on other people's conditional use permit at the time Nimkish was enacted I was able to determine how this newly established policy affected my ownership.

We are also co-owners of a verified F2 zoned legal lot up the McKenzie River, Lane County: being tax lot 16-65-15-00-00805 that was also made not buildable under this new rule due to the fact that it is in the Big Game Habitat area. This long term investment was also made not buildable for a forestland dwelling under Nimkish.

Based on the density standards applied under nimkish the Saginaw lots would support three dwellings of 40 acres each on three of the legal lots. The remaining seven legal lots are rendered useless under this new habitat plan. This property is surrounded on the north, south, east and west by many dwellings and is suitable for ten dwellings.

We were evaluating how to obtain reduced property tax rates from this new taking law. Since the F2 zoned properties are valued higher than F1 zoned forestland due to their development potential making them "not buildable" significantly devalues them. Other than a tax break we are not sure what other recourse we have to utilize these properties for other than recreation.

Seeing the file on this appeal is very concerning. It seems that parties can throw hundreds of pages of materials into an appeal on a private parties conditional use permit and out pops a new ruling/law and reason to deny a dwelling. At some point the leaders of our County have to take a stand and stop these frivolous appeals.

When we purchased these eleven properties in 2007 and 2017 there were no wildlife density standard in the conditional use application process. On the ten lot purchase we had a pre-application meeting to discuss the requirements and this Nimkish criteria was never discussed as being a requirement.

What is most perplexing to me is that by the very nature of the F2 zone the properties are almost universally less than the habitat acreage standards. The F2 zoned properties tend to be smaller in size and near other similar smaller in size properties with dwellings.

If this habitat density of 1 dwelling per 40 acres in the Peripheral zone and 1 dwelling per 80 acres in the Major Big Game Zone was considered at the time of Zoning: 1) the habitat density would have frustrated the ability to site dwellings on nearly all F2 zoned properties and 2) you might have well just zoned the entire county F1 (not buildable). I have looked at a lot of properties for clients over the past few years and have told all of them to NOT apply due to Nimpkish.

Thank you for working to resolve these very poor ad hoc land use laws that are being generated through the County's never ending appeal process.

Jeremy & Celeste Keepers

81711 Mahr Lane

Creswell, OR 97426

541-729-9072

ADAMS Shawna L

From: Robert B Gill <robert@doublevisioninvestments.com>
Sent: Wednesday, September 6, 2023 9:52 PM
To: ADAMS Shawna L
Subject: Standing Submittal: PA23-05321, PA23-05322, PA23-05323

[EXTERNAL ⚠]

September 6, 2023

Hello,

Please recognize this email as authorization for Attorney Kim O'Dea or Attorney Mike Reeder to represent me in tomorrow's Hearings Official appeal hearing.

Thank you

September 6, 2023

To: Lane County Land Management & Board of Commissioners

Subject: Standing Submittal For PA23-05321, PA23-05322, PA23-05323

Please confirm receipt of this transmittal and add it to the record for PA23-05321, PA23-05322, PA23-05323. I also request to be made a party with standing.

We have owned the 3.3 acre property at 16-02-10--20-00903 for almost 30 years. My husband (now deceased) worked for about 10 years to prove the legal lot on this property. Late 2019 we heard about the new law HB2225 that would eliminate our chance to have a dwelling on this F2 forest zoned property.

We immediately submitted an F2 template dwelling to secure our building rights on the property. The application was denied by the county for 1) not having a legal lot and 2) Nimkish wildlife issue. We received our legal lot approval at the Hearings Official level on appeal. However, the Hearings

Official sided with the county and denied our F2 template dwelling because our property could not satisfy the newly uncovered Nimkish criteria.

We were surprised at the denial due to Nimkish since this was not even a criteria or part of the initial application. It came out of the blue and blindsided us.

So with that said, we've spent around $28,000 on county applications, consulting fees and legal costs in the appeal all to have the single factor for denying our template dwelling be this new Nimkish rule. To add insult to injury, after our denial, HB 2225 went into full force and it seems unlikely that we would *never* be able to have a dwelling on this property.

We have hope that you have a solution to the situation we find ourselves in, to allow Nimkish requirements to be removed, and our dwelling to be approved.

Thank you for your time and consideration

Lynda S McCord
3780 Marshall Avenue
Eugene, Oregon 97402
Cell (541)228-2156 (preferred)
Landline (541)461-4694
SassyPeanut@Comcast.net
(Emailed at Lynda S McCord's request by Robert Gill)

ADAMS Shawna L

From: DEBORAH NOBLE <dnoble4990@aol.com>
Sent: Wednesday, September 6, 2023 6:08 PM
To: ADAMS Shawna L
Subject: Re: 509-PA23-05321,05322,05323 (King)

[EXTERNAL ⚠]

Hi Shawna,

I am unable able to attend the Hearings Official hearing on 9/7/23 at 9:30 am. Please add my name to the "interested parties" list.

Thank You,
Deborah Noble
4990 W. Hillside Dr.
Eugene, OR
97405

ADAMS Shawna L

From: Kim O'Dea <Kim@rurallanduse.com>
Sent: Thursday, September 7, 2023 7:42 AM
To: DOBBERSTEIN Julia C; ADAMS Shawna L
Subject: King PA23-05321, PA23-05322, PA 23-05323 hearing submission
Attachments: Letter to HO.pdf

[EXTERNAL ⚠]

Julia and Shawna:

Please add the attached to each of the files listed above. Good luck this morning!

Kim O'Dea
Land And Development Law
541-954-0095
Kim@rurallanduse.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

LAND AND DEVELOPMENT LAW

September 7, 2023

Julia Doberstein/Shawna Adams
LMD
2050 N. Delta Hwy
Eugene, OR 97408

RE: King PA23-05321, PA23-05322, PA 23-05323

Dear staff:

I represent the following clients and submit this letter on their behalf to establish standing: Jeremy Keepers, Greg Demers, ATR Services, Fern Hollow Farms, Melvin McDougal, McDougal Bros, Inv., McDougal Bros, Inc., LeeLynn, Inc, Mike Miller, Weston Hallstead, and MPM Land and Timber, Robert Gill and Lynda McCord.

.

These individuals and entities own impacted (F-2) timberland in Lane County. All of these clients have seen their timberland rights and investments shattered by interpretation and application of Policy 11. Correction is needed. The above support Mr. King's applications and the arguments contained within, and hereby adopt them as their own.

This letter constitutes an appearance that provides the above parties standing pursuant to state law.

Thank you,

/s/ Kimberly JR O'Dea

Kimberly JR O'Dea
Attorney at Law
Representing the above named

Kim O'Dea
Land and Development Law
PO Box 1061, Marcola, OR 97454, (541) 954-0095; Kim@rurallanduse.com

Goal 5 big game habitat in Lane County is protected from most conflicting uses through compliance with the RCP and application of resource land zoning to protect and conserve sensitive wildlife habitats. LC 16.211(5)(a) states that all the listed (i-iv) sighting standards must be meet, with which the applicant currently doesn't comply. Clustering requires that dwellings and other structures are located near each other, and existing roads, dwellings and other structures are located to avoid habitat conflicts and utilize least valuable habitat areas; and road development is minimized. Department staff are concerned that the applicant has not demonstrated how the functions of this Goal 5 resource will be maintained.

The above referenced tax lots are within designated Goal 5 Major Big Game Habitat in a 2017 analysis for West Side Deer and Elk Habitat. Major Big Game Habitat includes areas identified and mapped by the department as providing essential functions and values (e.g., thermal cover, security from predation and harassment, forage quantity, adequate nutritional quality, calving and fawning areas, etc.) for non-migratory deer or elk. Major Habitat is categorized Habitat Category 3 per the department's Fish and Wildlife Mitigation Policy (OAR 635-415-0000 through 0025). The mitigation goal for Habitat Category 3 is no net loss in either habitat quantity or quality (OAR 635-415-0025(3)(a)). The Department shall act to achieve the mitigation goal for Category 3 habitat by requiring avoidance of impacts through alternatives to the proposed development action or mitigation of impacts, if unavoidable, through reliable in-kind, in-proximity habitat mitigation to achieve no net loss in either pre-development habitat quantity or quality. If neither of these options can be achieved, the Department shall recommend against the proposed development action.

It is uncommon that a single development action would have a critical impact on big game. However, development has a cumulative effect on wildlife habitat and associated wildlife populations as well as many other natural resource and social issues important to Oregonians and the residents of Lane County. It was the need to plan and account for these cumulative impacts that resulted in the development of the RCP and it is in the context of cumulative effects that impacts of proposed amendments should be considered. It is the intent of the F-2 Impacted Forest Lands Zone to protect fish and wildlife habitat (LC 16.211(1)). Fragmentation of habitat can impact connectivity between varying habitats that wildlife use as corridors to navigate through our developed landscape. Loss of habitat can have adverse effects on wildlife species with the potential for localized population decline and an increase in human wildlife conflicts (i.e., vehicle strikes, damage, and human health and safety issues). Existing or proposed non-forest or non-farm uses (i.e., dwellings) within the Forest Land District (F-2) must recognize that the intent of the district is to protect resources, and that in the event of a conflict this chapter will be interpreted in favor of resource management practices (LC 10.104-05).

The department relies on local and state compliance with the land use planning goals to consider natural resources, and we can provide technical assistance to the applicant and the county to properly address the impacts to big game and their habitat in a way that is consistent with the department's Fish and Wildlife Habitat Mitigation Policy and the existing Goal 5 protections for wildlife.

Thank you for your consideration of the department's comments. For clarification or any questions, please contact me at 541-757-5301.

Respectfully,

Joseph Stack
Regional Habitat Biologist
Oregon Department of Fish and Wildlife

ADAMS Shawna L

From: Andrew Mulkey <andrew@friends.org>
Sent: Thursday, September 7, 2023 9:04 AM
To: ADAMS Shawna L
Cc: DAVIES Anne; Hope S; KLOOS BILL (LCOG List); Sean Malone
Subject: Comments for PA23-05321, 05322, 05323

[EXTERNAL ⚠]

Hearings Officer Davies,

On behalf of 1000 Friends of Oregon, please accept the following comments for the record in the planning actions set for hearing this morning. PA23-05321, 05322, 05323.

The county must correctly apply its Goal 5 big game habitat standards in these applications. Within resource zones, the county must apply the big game density standards of one dwelling per 40 acres and one dwelling per 80 acres depending on the habitat type. These provisions cannot be waived on forestland for reasons similar to those discussed by LUBA in its recent decision in LandWatch Lane County v Lane County, LUBA 2023-037. If the county does not apply the density standards then it must conduct and ESEE analysis pursuant to OAR 660-023 and consistent with Goal 5 and it's implementing provisions.

Please include me in any notice of decision for these matters.

--

Andrew Mulkey
Rural Lands Attorney
Pronouns: he/him
1000 Friends of Oregon
Office: 503.497.1000 x138
Direct: 971.420.0916

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

ADAMS Shawna L

From: STACK Joseph P * ODFW <Joseph.P.STACK@odfw.oregon.gov>
Sent: Thursday, September 7, 2023 9:13 AM
To: ADAMS Shawna L; DOBBERSTEIN Julia C
Subject: RE: Notice of Public Hearing - 509-PA23-05321/05322/05323
Attachments: 509-PA23-05321_05322_05323 ODFW JS comments 2023.doc

[EXTERNAL ⚠]

Please accept ODFW's comments regarding applications 509-PA23-05321/05322/05323. Please include me in all subsequent communications sent to 'parties.

Cheers,
Joe

Joe Stack
Regional Habitat Biologist
Oregon Dept of Fish and Wildlife
South Willamette Watershed District
Office: 541-757-5301/ Cell: 541-650-2840

From: RUIZ-MAYA David R <David.RUIZ-MAYA@lanecountyor.gov>
Sent: Wednesday, August 16, 2023 2:49 PM
To: LCTPReferrals <lcpwtpreferrals@lanecountyor.gov>; PAUGH Jennifer A <jennifer.paugh@lanecountyor.gov>; Kristina Deschaine <KRISTINA.DESCHAINE@STATE.OR.US>; ERKERT Lisa <lisa.erkert@eweb.org>; PIKE Brandon <brandon.pike@odav.oregon.gov>; ODAV Planning Dept <Planning@odav.oregon.gov>; OFWO <FW1OFWO@fws.gov>; STACK Joseph P * ODFW <Joseph.P.STACK@odfw.oregon.gov>
Cc: DOBBERSTEIN Julia C <Julia.DOBBERSTEIN@lanecountyor.gov>; ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Notice of Public Hearing - 509-PA23-05321/05322/05323

David Ruiz-Maya | Senior Office Assistant
Lane County, Public Works, Land Management Division
P-(541) 682-6768
david.ruiz-maya@lanecountyor.gov

Oregon
Tina Kotek, Governor

Department of Fish and Wildlife
South Willamette Watershed District Office
7118 NE Vandenberg Ave
Corvallis, 97330
(541) 757-4186
(541) 757-4252

7 September 2023

Via Email
Julia Dobberstein and Shawna Adams
Lane County Land Management Division
julia.dobberstein@lanecountyor.gov shawna.adams@lanecountyor.gov
(541) 682-3958 (541) 682-8904
3050 N. Delta Hwy.
Eugene, OR 97408

RE: 509-PA23-05321, 509-PA23-05322, 509-PA23-05323

The Oregon Department of Fish and Wildlife (department) appreciates the opportunity to provide comments on the applications for dwellings being proposed in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions on three different properties adjacent to the Oakridge State Airport (T21S, R2E, Section 12, Tax Lot 843, and T21S, R3E, Section 7, Tax Lots 2900 and 2800). It is policy of the state of Oregon to manage fish and wildlife to prevent serious depletion of indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state (ORS 496.012). In accordance with this mission, the department provides the following comments for the record on September 7, 2023.

The department has been engaging with local governments on land use planning since SB 100, the creation of the Statewide Planning Program and adoption of the State Agency Coordination Agreement which ensures the department's role in providing technical assistance to local governments. As local governments drafted comprehensive plans to implement SB 100, the department provided detailed habitat protection plans for each county, which included fish and wildlife habitat inventory information, conflicting uses to those resources and recommendations for protection measures to comply with Statewide Planning Goal 5. The department has consistently recommended density standards to protect wildlife habitat, minimize habitat fragmentation and maintain the carrying capacity of the land for wildlife. For example, the department's Land Use Planning Guide from 1989 includes a wildlife guide for land use planning and specific development densities through development per acre standards for big game. This is consistent with the existing Goal 5 protections in the Lane County Rural Comprehensive Plan (RCP) Flora & Fauna Policy 11.

The department's recommended dwelling density for major big game habitat is one unit per 80 acres or with clustering, one unit per 40 acres The department evaluates dwelling density by using a unit/acre or dwelling per acre approach, where each parcel/tax lot is reviewed on its own to see if it meets the qualifications. While utilizing clustering standards could allow for development of a 40-acre property in major big game habitat, the above-mentioned tax lots are significantly smaller, being approximately 12-13 acres in size. When a lot on which a dwelling will be sited lies within an area designated in the RCP as habitat of big game, the siting of the dwelling must be consistent with the limitation on density upon which the RCP and land use regulations intended to protect (LC 16.211(3)(b)(vii)).

ADAMS Shawna L

From: Kim O'Dea <Kim@rurallanduse.com>
Sent: Thursday, September 7, 2023 10:10 AM
To: DOBBERSTEIN Julia C; ADAMS Shawna L
Cc: Casey Jones
Subject: RE: King PA23-05321, PA23-05322, PA 23-05323 hearing submission
Attachments: Letter to HO 090723.docx

[EXTERNAL ⚠]

Julia and Shawna:

Here is an additional appearance and standing letter. Please place this letter in the record for each appeal.

Thank you,
Kim

Kim O'Dea
Land And Development Law
541-954-0095
Kim@rurallanduse.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: Kim O'Dea
Sent: Thursday, September 07, 2023 7:42 AM
To: DOBBERSTEIN Julia C <Julia.DOBBERSTEIN@lanecountyor.gov>; ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: King PA23-05321, PA23-05322, PA 23-05323 hearing submission

Julia and Shawna:

Please add the attached to each of the files listed above. Good luck this morning!

Kim O'Dea
Land And Development Law
541-954-0095
Kim@rurallanduse.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

LAND AND DEVELOPMENT LAW

September 7, 2023

Julia Doberstein/Shawna Adams
LMD
2050 N. Delta Hwy
Eugene, OR 97408

RE: King PA23-05321, PA23-05322, PA 23-05323

Dear staff:

I represent the following clients and submit this letter on their behalf to establish standing: Casey Jones and McKenzie Land and Timber.

.

These individuals/entities own impacted (F-2) timberland in Lane County. All of these clients have seen their timberland rights and investments shattered by interpretation and application of Policy 11. Correction is needed. The above support Mr. King's applications and the arguments contained within, and hereby adopt them as their own.

This letter constitutes an appearance that provides the above parties standing pursuant to state law.

Thank you,

/s/ Kimberly JR O'Dea

Kimberly JR O'Dea
Attorney at Law
Representing the above named

Kim O'Dea
Land and Development Law
PO Box 1061, Marcola, OR 97454, (541) 954-0095; Kim@rurallanduse.com

LANE COUNTY HEARINGS OFFICIAL AGENDA

LOCATION: Goodpasture Room, Lane County Customer Service Center
3050 N Delta HWY, Eugene, OR 97408 & Online via ZOOM*

TIME: 9:30 AM Public Hearing

DATE: Thursday, September 7th, 2023

Lane County complies with state and federal laws and regulations relating to discrimination, including the Americans with Disabilities Act of 1990 (ADA). The meeting location is wheelchair-accessible. If you need special accommodations (hearing impaired, language translation, chemical sensitivity needs or large print copies of the agenda), please request at least 48 hours prior to the meeting by calling 541-682-6768.

ITEM 1

Application File	Assessor's Map & Tax Lot	Applicant/Owner
509-PA23-05321	21-25-12-00-00843	Edward J. King/E.J.K. Investments
509-PA23-05322	21-35-07-30-02900	Edward J. King/E.J.K. Investments
509-PA23-05323	21-35-07-30-02800	Edward J. King
Agent	**Staff**	**Hearing Official**
Bill Kloos, Law Office of Bill Kloos	Julia Dobberstein (509-PA23-05321); Shawna Adams (509-PA23-05322/05323)	Anne Davies

Description

509-PA23-05321 Proposal: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4, House Bill 2225, and RCP Goal 5 Flora and Fauna Policy 11."

509-PA23-05322 Proposal: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4, House Bill 2225, and RCP Goal 5 Flora and Fauna Policy 11."

509-PA23-05323 Proposal: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4, House Bill 2225, and RCP Goal 5 Flora and Fauna Policy 11."

Format

a) Announcement of the nature & purpose of the hearing.
b) Announcement of opportunities for submission of information & appeal.
c) Disclosure of ex parte contacts
d) Report by the Director
e) Applicant's testimony
f) Testimony of persons in favor
g) Testimony of other persons
h) Any additional comments by the Director
i) Applicant rebuttal
j) Conclude the hearing

The Hearings Official will not make a decision on these matters at this hearing. The County Code requires that a written decision must be made within 10 days of this hearing date. To receive a copy of the Hearings Official's decision, fill out a request form at the public hearing, email county staff in charge of this application, or call the Land County Land Management Division at 541-682-6768.

*ZOOM Details

Join from a PC, Mac, iPad, iPhone or Android device via ZOOM:

Please click this URL to join:	Webinar ID:	Passcode:
https://us06web.zoom.us/j/89674043984?pwd=NWQ1VFBGaDBiN1Nyd1RqbTNRSDRHUT09	896 7404 3984	901976

Join by Phone

Dial (US):	One tap mobile:	International numbers available:
+1 206 337 9723 +1 253 215 8782	+12063379723,,89674043984# (Seattle) +12532158782,,89674043984# (Tacoma)	https://us06web.zoom.us/u/kuHmLQ5U8

ADAMS Shawna L

From: John White <joruwh@hotmail.com>
Sent: Sunday, September 24, 2023 9:05 PM
To: ADAMS Shawna L
Subject: Re: 509-PA23-05321,05322,05323 (King)

[EXTERNAL ⚠]

Thank you, Shawna. I will get in touch if I have any questions.

John

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Monday, September 18, 2023 11:04 AM
To: John White <joruwh@hotmail.com>
Cc: DOBBERSTEIN Julia C <Julia.DOBBERSTEIN@lanecountyor.gov>
Subject: RE: 509-PA23-05321,05322,05323 (King)

Hello John, The public hearings before the Hearings Official for these template dwelling applications were held on September 7, so the opportunity to be an official "interested party" of record for the proceeding has passed. I am happy to add you to the you to the list of parties requesting notice of the Hearings Official decisions. I'd also be happy to discuss any questions you have about the applications or process via phone if you would like.

Kind regards,
Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning
Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: John White
Sent: Wednesday, September 13, 2023 9:57 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Re: 509-PA23-05321,05322,05323 (King)

[EXTERNAL ⚠]

Hi Shawna Adams,

Please add my name to the list of "interested parties" regarding 509-PA23-05321,05322,05323 (King).

Thank you,

John White
81928 River Drive
Creswell, OR. 97426

ADAMS Shawna L

From:	ADAMS Shawna L
Sent:	Friday, October 13, 2023 4:50 PM
To:	billkloos@landuseoregon.com; Thom Lanfear (tlanfear@pacinfo.com); Hope S; Jim McLaughlin; Mike Farthing; Sean Malone; ellenannej@gmail.com; miloindustries2021@gmail.com; sharon.carroll@att.net; jim@westerncascades.com; carlettelarson@kw.com; dragocontracting@yahoo.com; landplancon@comcast.net; kay@rrking.net; caseyjoneswelldrilling@yahoo.com; chris@superiorec.net; jjk.timber@gmail.com; dnoble4990@aol.com; sassypeanut@comcast.net; kim@rurallanduse.com; andrew@friends.org; joseph.p.stack@odfw.oregon.gov; MERWIN Amy KWVA (SMTP)
Cc:	BELL Amber R; EICHNER Lindsey A; GILBRIDE Kevin E; DOBBERSTEIN Julia C; Juine Chada; DAVIES Anne
Subject:	Applicant's Final Rebuttal for 509-PA23-05322 & 05323 (King Hearing 1) and PA23-05321 (King Hearing 2)
Attachments:	Draft County Board Interpretation of Goal 5 Policy 11 - 10.12.2023.pdf; Applicant's Final Argument Lttr 10.12.2023.pdf

Concerned Parties, Attached are the applicant's Final Rebuttal submittals for the two hearing records that concern the three King template dwelling applications under review. The submittals for both hearing items are the same and were received before the close of the period at 4pm yesterday. These materials will be uploaded to the website at the top of the week, but will likely be combined into a single document and renamed. Parties of record that have provided an address and others that have requested formal notice of the decision will be provided a notice of the decision via standard mail once the Hearings Official has made a decision. We also endeavor to provide a courtesy email with the Hearings Official decision to this list.

https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19771787&contextId.94636=6285783&parentId.94636=19734019

As a reminder, the Hearings Official has allowed for an extended hearing record period subject to the following deadlines:

- ~~Open Record for all parties of record until September 21, 2023 at 4:00 PM;~~
- ~~Comment/Response to Open Record submittals until October 5, 2023 at 4:00 PM; and~~
- ~~Final Rebuttal by the Applicant until October 12, 2023 at 4:00 PM.~~

Please direct questions directly to me and Julie Dobberstein on any emails (julia.dobberstein@lanecountyor.gov).

Kind regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

October 12, 2023

Lane County Hearing Official
c/o Shawna Adams, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: PA23-05321, PA23-05322, PA23-05323
Applicants' Final Argument

Dear Hearing Official:

Our hearing letter noted two discrete bases for approval: (1) the operation of ORS 197.307(4)(2017), which allows only clear and objective standards to be applied, as in the *Helsel* relative farm help dwelling approval; and (2) the directive of the BCC to the Director to bring this matter to it on appeal, so as to get its opportunity to interpret the ambiguous Big Game Policy 11 in the first instance.

The first basis is on hold, while the Court of Appeals resolves its review of the LUBA decision in *LandWatch Lane County v. Lane County*, LUBA No. 2023-037 (Aug. 28, 2023)(*Helsel*). We have reasserted that basis here to preserve it.

The second basis will unfold before the County Board, provided the Director follows through with their appeal to the BCC as instructed and does so in a timely manner – that is, before the 12 days to request HO reconsideration. Presumably, if the Director acts too slowly, the HO decision could be appealed directly to LUBA by those not interested in BCC review, and the County Board would be edged out of its requested review.

The balance of this letter is in two parts: A. which is the merits of the three pending applications on all issues other than Big Game Policy 11; and B. which is the applicant's perspective on how the BCC should interpret Policy 11. The applicant believes that the most efficient way for the County to proceed on this matter would be for the HO to find compliance with all substantive standards for the three applications but for the Policy 11 question. That would simplify the work for the BCC. It will be able to focus on what it is uniquely qualified to do – state the governing body's interpretation of the ambiguous Policy 11.

A. The merits of the three applications other than the Big Game Policy 11 issue.

PA23-05321 and PA23-05322 were denied by the HO based on LUBA's *Nimpkish* opinion, with the denial being affirmed by LUBA. PA23-05323 was on a slower track; it was never decided by the Director and was withdrawn after the *Nimpkish* decision.

The applicant's intention was to get solid staff support for all three applications on all issues but for Big Game Policy 11, thus simplifying the review by the BCC. We believe that was accomplished. The only substantive issue raised by staff related to where the site plans showed the proposed access to the dwellings. Staff wanted clarity as to whether the access was proposed to be in the existing BPA right-of-way or outside it, which would require more clearing. Our First Open Record submittal included amended Site Plans that more clearly showed the access in the BPA right of way. That minimizes impacts.

B. Applicant's suggested BCC interpretation of Big Game Policy 11.

Enclosed with this Final Argument is a draft interpretation for the Board that we believe should be entitled to be affirmed by LUBA under the deference standard in *Siporen.* Our proposal is based on the proposal of the Home Builders submitted to the Board in 2022. That proposal had good bones. It was included as the last exhibit in the Staff Report. We started with the structure of that proposal and expanded it with more detail, relying on the extensive compilation of documents from the acknowledgment era that the applicant submitted in the First Open Record period. That submittal included "Attachments" 1 through 12. Each attachment was separately paginated for this submittal. Also included was an Annotated Table of Contents for all the Attachments, which were organized chronologically. Thus, a visit to the Annotated Table of Contents provides a chronological stroll through the most exciting highlights of the acknowledgment process from 1980 through 1984.

We have included in this record all the documents we believe are relevant and material to a BCC interpretation because it is unclear whether the BCC will make its decision based on a closed or open record.

The draft interpretation is a bit lengthy. It must account for all the relevant documents; it must consider all suggested plausible interpretations; and it must not conflict with any express language in the plan or code.

The HO has several ways to approach the Policy 11 in the decision:

- Deny the applications based on LUBA's decisions in *Nimpkish/King* and defer the interpretation to BCC, which has a different standard of review than did LUBA;

- Deny and offer some advice to the BCC that the HO considers to be relevant to the BCC interpretation;

- Deny and suggest a complete interpretation for consideration by the BCC.

The first alternative would be the most efficient; it would recognize that the HO and the BCC must apply different rules to the interpretation. The second and third options would have the HO stand in the shoes of the BCC when making suggestions.

The draft interpretation examines two questions:

1. Whether Policy 11 applies: Was Policy 11 intended to be an independent review standard when considering requests for approval of dwellings on F-2 land, as provided for in LC 16.211?

2. What Policy 11 means: In any context where Policy 11 is an independent standard for the decision, what was Policy 11 intended to mean?

Our draft suggests the following interpretation by the BCC regarding those questions:

1. Policy 11 was not intended at the time of acknowledgment to be an independent standard for review of dwelling applications on existing parcels of F-2 land. That intention has not changed in the interim.

2. In any situation where Policy 11 is an independent standard for making land use decisions, the Policy does not incorporate minimum lot or parcel sizes for site-specific dwelling approvals. The reference to "overall residential density" states a target for planning for Big Game Habitat that has not been done. The regulations submitted for acknowledgment intended to resolve residential density in Big Game Habitat through clustering and siting standards, not minimum lot sizes.

Our review of the text, context and legislative history of acknowledgment is in Part III of the draft at page 4. The discussion is divided into three time periods – the **first period** up to the LCDC's denial of the county's first plan and code in 1981; the **second period** up to the February 29, 1984 county adoption of the plan and code that were resubmitted for acknowledgment; and the **third period** of DLCD review and county amendments to comply and LCDC acknowledgment on October 3, 1984.

The **first period** - the failed plan and code - was based on the "subarea" planning model, including for Big Game. That reflected the ODFW's 1980 letter to the BCC explaining how to plan for Big Game. That letter included the following qualification about the 80/40-acre recommendation for dwelling density. "The Department's recommendations relate to overall residential density and not minimum lot size." (Emphasis added).

The **second period** began with the subarea planning model but eventually dropped it in favor of a single set of policies for the entire county. The Flora and Fauna Working Paper (March 1982) was issued early in this period. It reflected the ODFW 1980 advice to plan for "overall residential density" and proposed determining "carrying capacity" for dwellings in habitat by regions. In November 1982 the County adopted its first set of Rural Plan Policies, which included the first two sentences of what is now Policy 11. The Working Paper Addendum was also issued in November 1983. It abandoned the carrying capacity by region methodology in favor of a working with ODFW to arrive at regulations prescribing the manner in which density occurs. This was a major shift, with the operative parts of Policy 11 already in place.

On February 29, 1984 the County adopted the plan and code as resubmitted for acknowledgment. That included the entirety of Policy 11 in its current form. It also included a Purpose statement for the F-2 zone saying those regulations, which contained fire and siting standards, were intended to protect wildlife.

The **third period** was the DLCD review, which included mandated code changes for Big Game, which were made by the County. Those mandates were in response to ODFW and 1000 Friends objections about dwellings in Big Game habitat. In response to those objections, the DLCD required the County to "either require larger minimum lot sizes in Big Game Habitat * * * or contain clustering requirements in those areas." The county chose the latter option and resubmitted the code with clustering requirements but not minimum lot sizes. The DLCD reviewed those amendments, found them to be adequate, and recommended acknowledgment.

Based on the above, Part IV explains the bases for each interpretation. It explains why the standards in the F-2 zone are intended to be an exhaustive list of standards for dwellings. It also explains why Policy 11 was never intended to apply independently to dwelling decisions. Policy 11 does not state or incorporate minimum lot sizes for dwellings. When it was put into the plan in November 1982, the plan still anticipated adopting carrying capacities for regions. The Addendum adopted in 1983 shifted to regulating density without minimum lot sizes. Policy 11 was objected to by the ODFW but upheld by the DLCD without any statement requiring minimum lot sizes. It is important to note, as LandWatch concedes, that at no location in the plan or code or background documents is there a county commitment to minimum lot sizes for individual dwelling decisions.

Part V. of the draft reviews the history of interpretations of Policy 11. Notably, interpretations by the Planning Director and HO have been consistent since acknowledgment. That consistency held until the *Nimpkish/King* LUBA decisions. The interpretation suggested here is consistent with that proposed in 1986 by Planning Staff involved in the acknowledgment. The Staff has, however, proposed a new gloss on the Policy in the Staff Report submitted here. However, that Staff proposal is looking for the "correct" decision, rather than a "plausible" interpretation by the BCC. The LandWatch position in the briefing here is that the County is bound by the LUBA decision; the BCC does not have authority to interpret in the first instance.

That is a short summary of a long draft interpretation.

LandWatch is not at all keen on the BCC doing its job of interpreting Policy 11 – an ambiguous county plan policy. It has filed letters by attorney Malone in the First and Second Open Record periods.

The Malone 9/21 letter asserts that the HO is bound by the LUBA decision. That begs the question of what the BCC may do. It has not yet done an interpretation.

The Malone 9/21 letter takes issue the Staff's proposed interpretation here. The applicant agrees the staff should not be looking for the new "right" interpretation here. It should be supporting

the BCC in making its own interpretation based on what the County intended in the original acknowledged plan. The ODFW materials the staff found for this proceeding are helpful. The Staff's proposed interpretation is flawed in a number of ways. It puts weight on what the ODFW wanted in the acknowledgment process, not what the County wanted. It puts weight on ESEE analyses that were done in the acknowledgment process to give meaning to Policy 11. The county's site-specific ESEE analysis is not relevant to the meaning of Policy 11 as adopted.

The Malone 9/21 letter at 8 takes issue with the HBA's proposed interpretation. The expanded draft interpretation offered here responds to those allegations. Generally, LandWatch points out where the draft interpretation conflicts with the LUBA decision. As a starting point, the LUBA decision did not review a governing body interpretation. A LUBA interpretation applies different rules than a governing body interpretation. For that reason the former can't bind the latter. LUBA looks for the correct or best interpretation in its view. The BCC looks for a plausible interpretation in its view. These are wholly different undertakings.

The Malone 9/12 letter at 12 raises issue preclusion, citing *Nelson*. As LUBA recently pointed out, "issue preclusion does not generally apply in local land use hearings." *O'Connor v. Clackamas County*, __ Or LUBA __ (No. 2019-119, May 26, 2020), citing *Lawrence v. Clackamas County*, 40 Or LUBA 507, 519 (2001), *aff'd*, 180 Or App 495, 43 P3d 1192, *rev den*, 334 Or 327 (2002)." In *Nelson* LUBA declined to apply issue preclusion due to intervening changes in the facts and the law. Here there is no basis for an issue preclusion defense. Here we will have a different final decision maker applying a different legal standard. The BCC will be making a governing body plan interpretation to be reviewed under the plausible interpretation standard. Up to this point we have only Hearing Official interpretations reviewed under the "correct interpretation" standard applied by LUBA.

The Malone 10/5 letter references the letter of testimony dated September 21, 2023 as to what density the ODFW wishes to see to comply with Goal 5, and then argues that the minimum lot size has to be honored to find Goal 5 compliance. This position by ODFW and argument by LandWatch conflates what those parties now believe Goal 5 requires with what the DLCD/LCDC acknowledged as complying with Goal 5 in 1984. LandWatch has conceded that none of the 1984 plan and code provisions that were acknowledged stated an 80/40 minimum lot size. Yet they were acknowledged. Thus, their current position requires reading into the plan and code and acknowledgement numbers and requirements that were not there and still are not there.

//

The Malone 10/5 letter also states a procedural complaint that the applicant's First Open Record submittal is just documents and no argument, and LandWatch reserves the right to respond to arguments based on those documents. All of the applicant's documents, as shown by the annotated Table of Contents, related directly to acknowledgment, and most were also put in by staff. LandWatch is not prejudiced by the applicant having a final argument based on all that is in the record.

Sincerely,

Bill Kloos

Bill Kloos

Applicant's Proposed Interpretation of Big Game Policy 11 by County Board

This states the Board's interpretation of Rural Comprehensive Plan (RCP) Goal 5, Policy 11, as it relates to minimum parcel size for a Forest Template Dwelling on land zoned F-2, Impacted Forest, in areas that are mapped as Major or Peripheral Big Game Habitat in the county's Goal 5 program.

The language of Policy 11 is:

> "**Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County.** Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

I. Introduction and Summary

In recent decisions, the Land Use Board of Appeals found that the first sentence of the Policy, shown in **bold**, is ambiguous.[1]

Absent any previous interpretation of Policy 11 by this Board, LUBA interpreted Policy 11on its own, without any deference to how the County Planning Director and Hearing Officials have applied the Policy for several decades.

It is important for the County Board to do this interpretation because it allows the Board a level of self-determination in how the RCP is to be applied. When the County Board, as the governing body that enacted the plan or code, interprets ambiguous provisions, LUBA is bound to defer to any "plausible" interpretation by the Board. However, absent an interpretation by the County Board, LUBA interprets the language on its own, without any deference to the county Hearings Official or Planning Director, and without deference to previous county practice. See, generally, *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010)("[W]hen a local government plausibly interprets its own land use regulations by considering and then choosing between or harmonizing conflicting provisions, that interpretation must be affirmed, * * * unless the interpretation is inconsistent with *all* of the 'express language' that is relevant to the interpretation, or inconsistent with the purposes or policies underpinning the regulations." Emphasis original)

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[1] See *LandWatch Lane County v. Lane County (Nimpkish LLC)*, __ Or LUBA __ (No. 2020-030, Jan. 23, 2021)(remanding county approval of dwelling approval on 10- acre parcel); *King v. Lane County*, __ Or LUBA __ (LUBA Nos. 2021-047/052, Oct. 15, 2021), *aff'd without opinion* 317 Or App 136, 501 P3d 1058 (2022)(affirming county denial of dwellings on two 12-acre parcels).

As explained in *Siporen*, because the Board, as the governing body, is responsible for the language of its code, the Board interpretation, if plausible, will be afforded deference when this interpretation is relied upon in county decisions that are later appealed to LUBA and the Courts. The Board believes this interpretation is correct; the Board expects it will be deferred to because it will meet the "plausible" test when it is reviewed by LUBA.

The County Board did not have an opportunity to conduct its own interpretation of Policy 11 in the *Nimpkish* and *King* decisions. Recent amendments to Lane Code Chapter14 removed the Board from review of site-specific land use applications. Thus, in *Nimpkish* the Hearing Official followed county practice and approved the dwelling; the appeal was directly to LUBA, which interpreted Policy 11 without deference to the County and remanded the approval as being on a parcel smaller than 80 acres, contrary to its interpretation of Policy 11. In *King* the Hearing Official was obligated to follow LUBA's interpretation in the *Nimpkish* and, therefore, denied the dwellings for being on parcels smaller than 80 acres. LUBA affirmed that decision as consistent with *Nimpkish.*

The current code allows only the Planning Director to appeal a decision by the Hearing Official to the County Board. The Planning Director has not filed an appeal to the Board prior to this one. Recognizing the need for guidance as to what plan policies are intended to mean, the Board on June 13, 2023 instructed the Director to bring the next forest template dwelling decision to the Board by filing an appeal. This interpretation is the result of that appeal. Three Forest Template Dwelling decisions are bundled in this appeal. This interpretation applies to all three. More importantly, this interpretation will apply in all instances where the meaning of Policy 11 is in question.

This is an important and timely interpretation for the Board to make. There are many owners of vacant, small tracts of F-2 Impacted Forest land in the County. F-2 tracts, by definition, are intended to be smaller than 80 acres, and the many are much smaller than 40 acres in size, such as in the present applications. F-2 parcels tend to be located in areas that are close to existing rural development and other small parcels. These small-tract owners have expected, based on decades of county practice, that they would eventually be able to get approval to place a single dwelling on their F-2 land, regardless of the small parcel size, if they can meet the other criteria for a dwelling. That expectation was secure until LUBA issued its own interpretation of Policy 11 in the *Nimpkish* and *King* decisions. Because this interpretation will be upheld on appeal if it is found to be plausible, it should restore owners' rights to dwellings that were negated by the LUBA decisions.

This is an interpretation of Policy 11 to determine its meaning as it is presently stated and in the context of the balance of the plan and code. Policy 11 has not changed since it was acknowledged as complying with Goal 5 in 1984. The purpose here is not to make any new policy decisions about whether the Policy 11 or other plan and code provisions do a good enough job to protect big game, or whether regulations should be amended to do a better job. Those points are policy discussions for another day.

It is plain from the plan documents and plan acknowledgment materials that the County anticipated doing more planning for Big Game protection than was actually done and acknowledged by LCDC in 1984 as complying with Goal 5. That additional planning work has not been done yet. The County Board on June 13 directed the Staff to identify what further work should be done. The ODFW should be consulted by Staff prior to reporting back to the Board. Even with that commitment, however, the Board is interpreting the current plan language now in order to give citizens the clarity and benefit of the Board's original intent.

LUBA is correct that Policy 11 is ambiguous and needs to be interpreted. There are two questions that need to be answered about Policy 11:

1. Whether Policy 11 applies: Was Policy 11 intended to be an independent review standard when considering requests for approval of dwellings on F-2 land, as provided for in LC 16.211?

2. What Policy 11 means: In any context where Policy 11 is an independent standard for the decision, what was Policy 11 intended to mean?

Section II below summarizes LUBA's rationale in its recent decisions that negated F-2 owners' dwelling rights. In section III the Board identifies the text and context of the county plan and code, and its legislative history from acknowledgment in the 1980's, that is relevant to this interpretation. Section IV states and explains this Board's interpretation. Section V examines other interpretations of Policy 11.

It is important to recognize that this interpretation is not intended refute the LUBA decision. It is, instead, for this county's governing body to look at its own plan and code, as it was submitted to the DLCD for acknowledgment, and amended during that review process, and determine what the County intended when it adopted the language.

To summarize the Board's interpretation, based on review of the text and context of Policy 11, and review of documents relevant and material to the acknowledgment process in 1984, and considering all of the arguments relevant to the interpretation questions, the Board determines:

1. Policy 11 was not intended at the time of acknowledgment to be an independent standard for review of dwelling applications on existing parcels of F-2 land. That intention has not changed in the interim.

2. In any situation where Policy 11 is an independent standard for making land use decisions, the Policy does not incorporate minimum lot or parcel sizes for site-specific dwelling approvals. The reference to "overall residential density" states a target for planning for Big Game Habitat that has not been done. The regulations submitted for acknowledgment intended to resolve residential density in Big Game Habitat through clustering and siting standards, not minimum lot sizes.

It is the Board's expectation that this interpretation will restore the property rights of F-2 landowners to the *status quo ante* – that is, to the situation prior to the *Nimpkish* and *King* decisions.

All parties in the Hearing Official proceeding submitted materials believed to be relevant to this interpretation. The applicant included a compilation of 12 documents identified as Attachments 1 through 12, as listed in an Annotated Table of Contents. Many of these documents were also submitted by Staff and other parties. We refer to the applicant's "Attachments" here; its Annotated Table of Contents is also attached here for reference.

II. LUBA's Interpretations in *Nimpkish* and *King*

In *Nimpkish,* LUBA remanded a county approval of a forest template dwelling on a 10-acre F-2 parcel. It held that Policy 11 applies to a forest template dwelling application in Major or Peripheral Big Game Range. Slip op 9. Based on the legislative history materials that were available and examined in *Nimpkish*, LUBA believed that the county's Goal 5 program for Big Game was premised on the county's commitment to honor the 80 and 40-acre density minimums in all applications. LUBA said:

> "We understand DLCD to have concluded that the county's Goal 5 program protects habitat because it adopts residential densities in accordance with ODFW's recommendations and requires that, if 'proposals are made' that exceed those densities, the county will conduct an ESEE analysis for that individual proposal." Slip op 14.

LUBA reasoned that because acknowledgment was premised on a commitment to residential density minimums, Policy 11 must apply directly in the F-2 zone because there is no other basis in the plan or code for ensuring minimum residential densities. Slip op 15. Thus, 80-acre and 40-acre minimums are threshold criteria for any dwelling application on F-2 land in mapped Major and Peripheral Big Game Habitat areas, respectively.

In *King* LUBA reviewed a fuller record of documents relevant to its interpretation. Slip op 13. LUBA agreed Policy 11 is ambiguous. "Policy 11 is ambiguous and requires interpretation to determine whether and how its density limitations function as approval criteria for dwelling permit applications." Slip op 12. Based on the legislative history, LUBA read the addition of clustering and siting standards for forest dwellings, which were added to the code to gain acknowledgment, as supplementing rather than replacing the ODFW minimum lot size recommendations referenced in Policy 11. Slip op 20. In *King* LUBA reached the same conclusion as to the applicability of Policy 11 as it did in *Nimpkish.*

Because Policy 11 is ambiguous it is important for the County Board to do its own interpretation.

III. Text, context and legislative history relevant to this interpretation.

The applicant's Annotated Table of Contents and compiled documents includes the most and material documents supporting this interpretation.

Looking at the list of documents provided by the applicant, those documents break into three chronological periods:

A. The period up to and including the county's first plan and code which were denied acknowledgment in 1981.

B. The planning effort from the LCDC denial in 1981 up to the two plan and code ordinances adopted on February 29, 1984.

C. The LCDC 1984 acknowledgment review process, which extended from the June 29 DLCD Staff Report, through the July 19 and September 12 DLCD Staff Reports, and concluding with the October 3, 1984 LCDC Acknowledgment Order.

What follows is a factual, chronological summary of events in those three periods, as they relate to this interpretation. This factual summary is referenced to the applicant's supporting documents. A Table of Contents of the supporting documents is attached here.

A. The period up to and including the county's first plan and code which were denied acknowledgment in 1981.

The County had a failed attempt at acknowledgment in 1981. The LCDC denied acknowledgment on Feb. 13, 1981. Attach 4 page 4. This failed submittal was based on adoption of "subarea plans," which were based on watersheds.

It was during this initial planning effort that the County received ODFW's most direct recommendation about how to avoid conflicts with Big Game Habitat. The recommendation was attached to an ODFW letter to the County Board dated June 16, 1980. Attach 1 page 7. The recommendation discussed the desired density for dwellings in Big Game Habitat to avoid conflict. However, the recommended 80/40-acre lot sizes for Major and Peripheral Big Game Habitat were qualified as <u>not</u> stating minimum lot sizes as the standard. The recommendation included the following qualification in FN 2: "The Department's recommendations relate to <u>overall residential density</u> and not minimum lot size." (Emphasis added). That qualification was never changed by the ODFW in any subsequent communication with the County, and, therefore, it was a foundation for county planning for Big Game.

B. The planning effort from the LCDC denial in 1981 up to the two plan and code ordinances adopted on February 29, 1984,

The second planning effort began with the subarea plan methodology but eventually abandoned that in favor of having a single set of Rural Comprehensive Plan policies organized by the Statewide Planning Goals.

The Flora and Fauna Working Paper was published in March 1982. Attach 2. That Working Paper identified the primary conflict for Big Game Range, based on the 1980 advice from the ODFW:

> "Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game." Attach 2 page 25 para 6. (Emphasis added)

The proposal at that time was still to divide the county into 10-20 regions, look at the number of dwellings and the area of Big Game Range, compare that density to the 1980 ODFW "overall residential density" recommendation, and determine the remaining capacity for dwellings in each region. Exceeding the "overall" density for a region would be a conflict requiring an ESEE analysis to justify. Attach 2 page 26.

The March 1982 Working Paper included a "policy discussion" that emphasized determining the "minimum parcel size for regions in the County," not for the whole County. Attach 2 page 35 item 3.

An Addendum to the Flora and Fauna Working Paper was published in November 1983. Attach 3. The Addendum abandoned the "carrying capacity" by region methodology in favor of applying clustering and siting standards for dwelling in Big Game Range. The replacement language describing the shift is at page 14 of the Addendum. Attach 3 page 16. The key language is at page 16 para 2, describing the rationale for the shift:

> "Although this [carrying capacity methodology] is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists."

The new language in the Addendum committed to further planning work with the ODFW:

> "The county should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner – including the involvement of that agency in land use regulation development." Attach 3 page 17.

In November 1982 the County adopted its first set of Rural Comprehensive Plan Policies. That was done in Ordinance 870 (November 10, 1982). Ordinance 870 and adopted policies remained in effect until repealed by new enactments on Feb. 29, 1984. A full copy of Ord. 870 and the plan policies it adopted appears at Attach 4 page 22. Ordinance 870 contained the initial Policy 11 language, which included the first and second sentences as they appear today, but not the third sentence about working with the ODFW. Attach 4 page 44 item 12.

On February 29, 1984 the County adopted two Ordinances stating its plan and implementing regulations, in anticipation of resubmittal for acknowledgment. Ord. PA 883 adopted the Rural Comprehensive Plan Policies. Attach 4. Ordinance 1-84 adopted the Chapter 16 Development Code. Attach 5.

Ordinance PA 883 legislative findings summarized the county planning efforts to date. Attach 4 pages 5-6. It described the failed plan that was denied for acknowledgment in February 1981. It described the shift to Working Papers to provide technical support for the new plan. Attach 4 page 5. Ordinance PA 883 formally stated that the Working Papers were "supportive technical information used in the preparation of this plan." Attach 4 page 1.

Ordinance PA 883 adopted the Rural Plan Policies as Exhibit B. Attach 4 page 1, 71. The plan policy at issue here, RCP Goal 5, Flora and Fauna Policy 11, was included in the RCP in its present form with three sentences, as quoted above. Attach 4 page 88.

Ordinance 1-84 adopted the F-2 zone regulations in LC 16.211. Attach 5 page 34. The "Purpose" statement of the F-2 zone, as originally written in LC 16.211(1)(1984), was:

> "**Purpose.** The purpose of the Impacted Forest Lands Zone (F-2-RCP) is:
>
> (a) to implement the forest land policies of the Lane County Rural Comprehensive Plan which recognize that certain forest lands are impacted by nonforest uses and merit different treatment than nonimpacted forest lands.
>
> (b) *To conserve forest land for forest uses* consistent with Statewide Planning Goal #4, *including* commercial timber management, watershed protection, maintenance and *protection of fish and wildlife resources*, livestock habitat and recreation.
>
> (c) In area of mixed farm/forest uses where forest uses do not predominate, to conserve such land for uses consistent with Statewide Planning Goals #3 and #4.
>
> (d) To protect lands mentioned in LC 16.211(1)(b) and (c) above from the intrusion of noncompatible uses by restricting nonforest uses or nonforest and nonfarm uses that create potential impacts." Attach 5 page 34 [*Emphasis added*]

Among other dwelling types, the original F-2 zone allowed dwellings necessary and accessory to a forest use. LC 16.211(3)(b)(1984); Attach 5 page 36. All dwellings were subject to "Siting and Fire/Safety Standards for Dwellings" listed in LC 16.211(8)(1984). These included "clustering" options. Attach 5 pages 44-45.

C. The LCDC 1984 acknowledgment review process, which extended from the June 29 DLCD Staff Report, through the July 19 and September 12 DLCD Staff Reports, and concluding with the October 3, 1984 LCDC Acknowledgment Order.

The DLCD issued its first Staff Report reviewing the new county submittal on June 29, 1984. This report did not address Goal 5. Attach 6. However, it included a summary of the acknowledgment review process to date, describing the shift from the failed initial submittal, based on 13 subarea plans, to the current submittal based on a single comprehensive plan policy document. Attach 6 page 8.

The DLCD issued its second Staff Report on July 19, 1984. Attach 7. Part I dealt with Goal 5 compliance for the rural plan area outside the Metro Plan boundary. Attach 7 page 2. The DLCD conclusions for the rural plan area are stated at Attach 7 page 77.

The ODFW raised two objections related to Big Game Habitat. Attach 7 page 36 items 2 and 3.

First, ODFW objected to the language of Policy 11, saying that it allows densities above its recommendations through the ESEE process. Attach 7 page 36 objection 2. Second, ODFW also objected because the F-1 and F-2 zones do not require siting or clustering that must accompany the density levels allowed in those zones. Attach 7 pages 77-78 objection 3.

The DLCD's responses to these objections appear at Attach 7 page 39.

In response to ODFW's first objection, the DLCD said that Policy 11 does not conflict with Goal 5 because it says that densities that exceed the "overall residential densities" will require an ESEE and plan amendment. It explained, however, that the County still needs to amend its code to ensure the recommended densities will be met. "However, the County still needs to adopt measures in its F-2, ML, and EFU zones which ensure that ODFW's density standards will be achieved." Attach 7 page 40 item 3.

In response to ODFW's second objection, the DLCD agreed that the code needs to be amended to ensure density recommendations are met.

> "ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone." Attach 7 page 40 item 3.

Based on those DLCD findings about the ODFW objections, this Staff Report included only a single directive for change (an "In Order To Comply" or "IOTC") relating to Big Game Habitat. That was stated as IOTC 2.d. under directives related to Fish and Wildlife Habitat. IOTC 2.d. required the County to:

> "2.d. Amend the F-2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must <u>either</u> require larger minimum lot sizes in the Big Game Habitat portions of those zones <u>or</u> contain clustering requirements in those areas." Attach 7 page 77. Emphasis added.

With this single IOTC issued relating to Big Game Habitat, the County went to work amending the F-2 and EFU zones as directed by the IOTC 2.d. This was done with two ordinances that also addressed other IOTCs on various subjects.

The first was Ordinance 9-84 adopted on August 9, 1984. Attach 8. This readopted the entire Chapter 16 with nine major changes needed for acknowledgment. The nine topics are stated in the ordinance title. The F-2 district, LC 16.211, appears at Attach 8 page 32. Notwithstanding the reference to the F-2 zone on the title page, this ordinance does not reflect any changes for the F-2 district.

The second was Ordinance 11-84 (Sept. 12, 1984). Attach 9. The title explains this ordinance was making further amendments to Chapter 16 that had been readopted in the Ordinance above. Eight amendment topics are listed in the title. Item D. in the title explains the ordinance is "D. Revising the siting requirements in the Impacted Forests, F-2 Zone to provide clustering of residences on existing tracts."

The introductory language in Ord. 11-84 explains the code amendments are intended to "bring it into compliance with the requirements of the DLCD staff report dated July 26 [*sic* 19], 1984." Attach 9 page 3. The explanation for change 2.D." is:

> "2.D. Revising the siting requirements in the Impacted Forest, F-2, Zone to provide for clustering of residences on existing tracts."

The Ordinance includes "Legislative Findings" as Exhibit A. Attach 9 page 26. These explain the purpose of the changes as being the protection of Big Game Habitat. The relevant statement of purpose is:

> "Under Lane Code Ch. 16 as amended here, residences in the Impacted Forest zones (F-2) which are also located within a designated big game range will be required to be sited near existing residences and with minimal intrusions into forest areas undeveloped by non-forest uses. Setback dimension guidelines (balances with lot dimensions, proximity to other residences and intrusions into forest area) are also set forth. Notwithstanding the fact that the property is zoned F-2, a concerted effort should be made to locate new residences so as to avoid adversely impacting resource uses and big game habitats. This change in LC 16.211(8) will, on the whole, provide for siting criteria which will protect those interests."

The amendments to boost the siting and clustering standards in Big Game Habitat are in LC 16.211(8). They appear at Attach 9 page 12.

On the same day that Ordinance 11-84 was signed, the DLCD issued its September 12, 1984 Staff Report reviewing all the code changes the County was directed to make to comply with the July 19 DLCD Staff Report. Attach 10. This Staff Report described and quoted the clustering and siting amendments the County had made to comply with the DLCD directive about Big Game Habitat, and it said the code complies.

It is not clear why the Director is recommending abandoning the interpretation the Director has stuck with for about four decades. If it is because of the LUBA opinion in *Nimpkish*, then the Director misunderstands the task here. Where, as here, the Board needs to resolve the ambiguity with a plausible interpretation of its own, the Director and the Hearing Official can be most helpful by explaining why, based on the record, the Director's and Hearing Official's four-decade interpretation can be supported as plausible, and, therefore, will be upheld by LUBA on appeal.

The Board's task is to state an interpretation that is not inconsistent with the express language of the plan and code. The Staff Report does not explore the possible answers to that question. Instead, the Director's Staff Report revisits the LUBA interpretation based on a fuller record of the acknowledgment proceeding and attempts to state a single correct interpretation.

The reasoning in the Staff Report supporting this proposed reading relies very heavily on: (1) The language in the 1984 objections filed by 1000 Friends and ODFW related to Policy 11 and code standards for lot size. (2) What the DLCD Staff Reports had to say in summarizing the objections and how the County was approaching the issue. (3) How the DLCD resolved during the acknowledgment process an ESEE analysis for Big Game Habitat in connection with a specific development proposal – Cerro Gordo, near Cottage Grove.

Initially, this is not the correct methodology for determining the meaning the County Board gave to the language it adopted for acknowledgment or the language it adopted during the DLCD review to gain acknowledgment. What 1000 Friends and ODFW and DLCD Staff were thinking or advocating in 1984 does indicate what the County was thinking in 1984. Furthermore, the content of an ESEE analysis for Cerro Gordo is unrelated to the meaning of new standards being adopted and intended to be generally applicable across the County. Each ESEE decision reflects a specific policy decision about a specific development proposal at a particular site. It is not a place to look for County Board intent about the plan and code language it was adopting to be generally applicable.

This new staff recommendation fails to reconcile the very explicit policy choice given to the County by the DLCD on July 19. The Staff is suggesting that the policy choice (between minimum lot standards or clustering) was really a bundling, requiring both minimum lot size and clustering.

VI. Conclusion

In summary, the Board's task here is not to make new Goal 5 policy, although that is something the Board has instructed county planners it is interested in exploring in the future. It is to interpret existing Goal 5 policy in the first sentence of Policy 11 which LUBA has stated, and the Board agrees, is ambiguous. The Board has conducted this interpretation by starting with the text of Policy 11, and then considering the text and context of the policy in the balance of the plan and code, in the Working Papers that are official background for the policy, and in the county's response to the acknowledgment review process. The Board recognizes that there are multiple possible interpretations of the ambiguous sentence. That is the nature of ambiguity. As

the Supreme Court has explained, the County Board is in the best position to interpret ambiguous language because, as the governing body of the county, it adopted the language in question.

Here the Board has interpreted the ambiguous language to mean what the Planning Director and the Hearing Official have said it means in likely hundreds of decisions made over the past four decades. For individual dwelling applications on F-2 land, Policy 11 does not apply as an independent standard; it is applied through the code standards for dwellings in the F-2 zone. Furthermore, Policy 11 does not state a minimum lot size for individual dwellings in Big Game Habitat; that is not evident in the express language of the policy; furthermore, in the acknowledgment process the County chose clustering of dwellings over minimum lot sizes.

ADAMS Shawna L

From: Bill Kloos <billkloos@landuseoregon.com>
Sent: Thursday, October 12, 2023 2:03 PM
To: ADAMS Shawna L
Cc: Bill Kloos; Thom Lanfear (tlanfear@pacinfo.com); Sean Malone (seanmalone8@hotmail.com)
Subject: FW: PA23-05323 - Applicant's Final Argument
Attachments: Draft County Board Interpretation of Goal 5 Policy 11 - 10.12.2023.pdf; Applicant's Final Argument Lttr 10.12.2023.pdf

[EXTERNAL ⚠]

Shawna –

Here is the same submittal for the item above.

Bill Kloos
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ADAMS Shawna L

From: DAVIES Anne C <ADAVIES@Lcog.org>
Sent: Thursday, October 5, 2023 10:08 AM
To: ADAMS Shawna L; DOBBERSTEIN Julia C
Cc: CHANEY James A
Subject: King
Attachments: King Order party status.docx

[EXTERNAL ⚠]

Shawna and Julia—Please find attached an order of the Hearings Official confirming staff's determination that Ms. Chada's e-mail should not be included in the record. I will be asking Jim to sign it in my absence and put it in the pony to Julia.

Thanks!

Anne

October 5, 2023

Mr. Keir Miller, Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Order; *(PA 23-05321; King)*

Dear Mr. Miller:

On September 7, 2023, the Hearings Official held a hearing on the above-referenced case. At the end of the hearing, the Hearings Official adopted the following open record briefing schedule:

September 21, 2023—Evidence and argument by staff and all parties

October 5, 2023—Response by staff and all parties to the material submitted during the first open record period

October 12, 2023—Final Rebuttal by applicant, no evidence

On September 21st at 12:58 p.m., County staff received an e-mail message from Juine Chada requesting information about how to be added as a concerned party for PA 23-05321. In a response e-mail from staff at 1:41 p.m., staff explained that the open record period was limited to those who appeared at the hearing or those who had previously submitted materials on the matter. Ms. Chada then responded that she was interested in "any and all county land use and zoning decisions that affect rural properties."

On September 23, 2023, County staff received an e-mail from Kim O'Dea, a local land use attorney, who argued that Ms. Chada's letter needed to be included in the record and that staff lacks authority to exclude submissions from the record.

First, it is unclear whether Ms. O'Dea represents Ms. Chada, as there was no indication whether she represents Ms. Chada. Second, the Hearings Official disagrees with Ms. O'Dea that staff does not have authority to exclude submission from the record. Staff routinely refuses to accept submissions that are filed late, beyond the 4:00 p.m. deadline of a particular date provided for submitting open record submissions. Similarly, when a submission is filed by a person who does not have standing or authority to file such submission, staff has the right to refuse to include that submission in the record. That said, even if the staff does not have that authority, the Hearings Official does. As discussed below, the Hearings Official confirms the staff's determination to refuse to include Ms. Chada's e-mail in the record.

Both state law and the Lane Code limit written submissions that are filed during the open record period to those who participated prior to or during the hearing. ORS 197.797(6)(a) and (c); LC 14.070(17)(b) and (d). The procedure set out in the statute and the Code is a bit different that the process generally articulated by the Hearings Official. Under the statute and Code, a participant in the hearing may request that the record be left open for additional submittals for a period no shorter than seven days. Following submittal by that person or entity who requested the record be left open, any "participant" may request in writing an opportunity to respond to any new evidence submitted during that open record period.

The Hearings Official generally builds into the open record period, once requested, an opportunity for responses to the material submitted during the first open record period. In this way, a participant at the hearing need not file a written request to respond to new evidence submitted during the open record period. That said, the statute and the Code still limit the opportunity to participate in the open record period, either in the first open record period, or in response period, to "participants" at the hearing. The Hearings Official articulated this limitation at the hearing, and staff subsequently clarified that limitation in follow up correspondence.

Accordingly, because Ms. Chada did not "participate" at the hearing, she may not provide written submittals during the open record period. Staff was correct in declining to include her e-mail in the record.

Sincerely,

p.p. AD

Anne C. Davies
Lane County Hearings Official

ADAMS Shawna L

From: ADAMS Shawna L
Sent: Wednesday, October 4, 2023 1:55 PM
To: DAVIES Anne
Subject: FW: FYI county response Fwd: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)

From: Kim O'Dea <Kim@rurallanduse.com>
Sent: Saturday, September 23, 2023 10:25 AM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>; DOBBERSTEIN Julia C <Julia.DOBBERSTEIN@lanecountyor.gov>
Cc: juine@icloud.com
Subject: Fwd: FYI county response Fwd: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)

[EXTERNAL ⚠]

Shawna and Julia,

Ms. Chada's letter must be included. Staff does not have authority to exclude submissions from the record. If any party does not like the submission, they can formally object.

Kim

Sent from my iPhone

Begin forwarded message:

> **From:** Juine Chada <juine@icloud.com>
> **Date:** September 21, 2023 at 4:51:50 PM PDT
> **To:** Kim O'Dea <Kim@rurallanduse.com>
> **Subject: FYI county response Fwd: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)**
>
> Hi there,
> Not sure what to make of this response from county.
> Juine
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** ADAMS Shawna L <shawna.adams@lanecountyor.gov>
> > **Date:** September 21, 2023 at 4:37:55 PM PDT
> > **To:** Juine Chada <juine@icloud.com>
> > **Cc:** DOBBERSTEIN Julia C <Julia.DOBBERSTEIN@lanecountyor.gov>
> > **Subject: RE: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)**

Hi again Juine, Unfortunately that email you were forwarded was directed to people that had presented testimony to the hearings official on or before the September 7 public hearing. The hearing was closed at that time with the exception of the extended record period schedule specific to those persons already a party.

This means that the time has passed for providing testimony concerning the King applications. However, we are happy to add you to the notice list as a courtesy. Feel free to give me a call if you have questions.

Julia Dobberstein is copied on this email and her number should have been included on the email that was sent to you. Her direct line is 541-682-3958. Can you share who forwarded the email or advise them that the hearing was closed to new parties on August 7?

Best regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Juine Chada <juine@icloud.com>
Sent: Thursday, September 21, 2023 2:18 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: Re: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)

[EXTERNAL ⚠]

Hi Shawna,
I was not aware of the parties of record until today so I missed the opportunity to be at the September 7 hearing and the chance to provide a written statement for the record today.
Yes, I would like to be added to **any** notices of decisions, scheduled hearings and opportunities to provide oral or written testimony.

My interest is in any and all county land use and zoning decisions that affect rural properties.
My email address is juine@icloud.com

It is my understanding from information you provided to interested parties of record that:

The Hearings Official has allowed for an extended hearing record period subject to the following deadlines:

1. Open Record for all parties of record until September 21, 2023 at 4:00 PM;
2. Comment/Response to Open Record submittals until October 5, 2023 at 4:00 PM; and
3. Final Rebuttal by the Applicant until October 12, 2023 at 4:00 PM.

Would you be so kind to provide Julia Dobberstein's contact information.

Thank you for your help and response.
Sincerely,
Juine Chada
C: 541-521-1218

Sent from my iPhone

> On Sep 21, 2023, at 1:41 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:
>
> Hello Juine, The open record period that closes today allows for those parties of record that appeared before the hearings official on September 7, or who submitted written letters that were presented to the hearings official during the public hearings, to submit additional information. I don't have you on the list of parties that participated in the hearings on that date. Could I be overlooking any testimony you may have submitted?
>
> If you would like to be added to the notice of decision list, we would be happy to add you to the list if you confirm your mailing address. Please also confirm if your interest is specific to the planning action file 509-PA23-05321 that was the subject of the 2nd King hearing, or if you are also interested in the outcome of the application files for the first King hearing (509-PA23-05322 and 509-PA23-05323). Please also note that the staff planner for the 509-PA23-05321 (King Hearing #2) is Julia Dobberstein and future correspondence regarding that application should be directed to her or to us both.
>
> It would be most appreciated if you would forward the communication you received about the record period so I can better respond to your question or any questions from others.
>
> Best regards,
>
> **Shawna Adams | Senior Planner**
> Lane County | Land Management Division
> 3050 North Delta Hwy | Eugene, OR 97408
> Office: 541-682-8904 | Fax: 541-682-3947
> shawna.adams@lanecountyor.gov | www.lanecounty.org/planning
>
> Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Juine Chada <juine@icloud.com>
Sent: Thursday, September 21, 2023 12:58 PM
To: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Cc: Juine Chada <jc.chada@gmail.com>
Subject: Re: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)

[EXTERNAL ⚠]

Hello Shawna,
This is Juine Chada who left you a lengthy voicemail today.
I am writing to inquire if you have information about how to proceed to be added to concerned parties of record regarding 509-PA23-05321 (King Hearing #2)
I was forwarded information today indicating that today was the final day for:

Open Record for all parties of record until September 21, 2023 at 4:00 PM

Please let me know as soon as possible.

Sincerely,
Juine Chada

Sent from my iPhone

ADAMS Shawna L

From:	ADAMS Shawna L
Sent:	Thursday, October 5, 2023 6:57 PM
To:	billkloos@landuseoregon.com; Thom Lanfear (tlanfear@pacinfo.com); Hope S; Jim McLaughlin; Mike Farthing; Sean Malone; ellenannej@gmail.com; miloindustries2021 @gmail.com; sharon.carroll@att.net; jim@westerncascades.com; carlettelarson@kw.com; dragocontracting@yahoo.com; landplancon@comcast.net; kay@rrking.net; caseyjoneswelldrilling@yahoo.com; chris@superiorec.net; jjk.timber@gmail.com; dnoble4990@aol.com; sassypeanut@comcast.net; kim@rurallanduse.com; andrew@friends.org; joseph.p.stack@odfw.oregon.gov; MERWIN Amy KWVA (SMTP)
Cc:	BELL Amber R; EICHNER Lindsey A; GILBRIDE Kevin E; DOBBERSTEIN Julia C; Juine Chada; DAVIES Anne
Subject:	HO Order for PA23-05321 (King Hearing 1) & Open Record Response Submittals for 509-PA23-05322 & 05323 (King Hearing 1 & 2)
Attachments:	509-PA2305321-05231 (King Hearing 1 & 2)-Larson-Response.pdf; PA2305321 (King Hearing 1) - HO Order-Chada party status.pdf; Pa2305321-05323(King Hearing 1 & 2)-Malone-Response.pdf

Concerned Parties, During the open record response period ending at 4pm today for Planning Action files 509-PA23-05321-05323 (King Hearing #1 and #2), staff received submittals from Sean Malone (LWLC) and Carlette Larson concerning all three applications. The open record response submittals are attached along with a Hearings Official Order concerning party of record status related to 509-PA23-05321 (King Hearing #2) . These materials will be uploaded to the website sometime soon.

https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19771787&contextId.94636=6285783&parentId.94636=19734019

As a reminder, the Hearings Official has allowed for an extended hearing record period subject to the following deadlines:

- ~~Open Record for all parties of record until September 21, 2023 at 4:00 PM;~~
- ~~Comment/Response to Open Record submittals until October 5, 2023 at 4:00 PM; and~~
- Final Rebuttal by the Applicant until October 12, 2023 at 4:00 PM.

Please direct any submittals or questions directly to me and Julie Dobberstein on any emails (julia.dobberstein@lanecountyor.gov). If you plan to submit information please provide digital copies to me by email prior to the deadline (if your submittal is over 20 pages please also submit a paper copy for each hearing record).

Kind regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Sean Malone
To: ADAMS Shawna L; ADAMS Shawna L; Hope S; Bill Kloos; Andrew Mulkey; DAVIES Anne C
Subject: LandWatch Response Testimony - King 509-PA23-05321, 05322, PA23-05323
Date: Thursday, October 5, 2023 3:57:19 PM
Attachments: Malone to Lane County re King2.0 10.05.23.pdf

[EXTERNAL]

Please find attached LandWatch's responsive testimony for King 509-PA23-05321, 05322, PA23-05323 . Please add to the record.

Thank you,

Sean Malone
Attorney at Law
PO Box 1499
Eugene, OR 97440
ph. 303.859.0403
seanmalone8@hotmail.com

Sean T. Malone

Attorney at Law

PO Box 1499

Eugene, OR 97440

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

October 5, 2023

Via Email

Lane County Hearings Official
c/o Shawna Adams, Senior Planner
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-6765

Re: LandWatch Lane County Response Testimony, Request for a Template Dwelling, 509-PA23-05321, PA23-05322, PA23-05323 (King)

Dear Hearings Official,

Please accept this letter in opposition to the application and in support of the issue that has been resolved by LUBA twice and the Court of Appeals once: the applicability and interpretation of Lane County Rural Comprehensive Plan Policy 11.

In response to ODFW's letter, the matter is conclusive, the density standards ensure that Lane County appropriately satisfies the basic conditions of acknowledgment and compliance with goal 5[1]:

> "As local governments drafted comprehensive plans to implement SB 100, the department provided detailed habitat protection plans for each county, which included fish and wildlife habitat inventory information, conflicting uses to those

[1] In this regard, the interpretations of Landwatch, LUBA, and staff are all in agreement. The density standards are half of the acknowledgment equation. In its simplest terms, density standards + siting standards = goal 5 acknowledgment. That inescapable conclusion compels the Hearings Official to deny the applications.

resources and recommendations for protection measures to comply with Statewide Planning Goal 5. *The department has consistently recommended density standards to protect wildlife habitat, minimize habitat fragmentation and maintain the carrying capacity of the land for wildlife.* For example, the department's Land Use Planning Guide from 1989 includes a wildlife guide for land use planning and specific development densities through development per acre standards for big game. This is consistent with the existing Goal 5 protections in the Lane County Rural Comprehensive Plan (RCP) Flora & Fauna Policy 11."

ODFW letter, September 21, 2023 (emphasis added). There is no local government interpretation that can change acknowledgment. Acknowledgment is a matter of compliance with the statewide planning goals, and that is a matter of state law. In its simplest terms, the County Board of Commissioners cannot interpret their way out of this issue, and ODFW's letter confirms that conclusion. Moreover, the County cannot make an interpretation of Policy 11 in a manner that is inconsistent with Goal 5 and its acknowledgment.

ODFW also notes that its historic correspondence with staff "by no means provide a clear and full picture of the discussions that Lane County and department staff had on the discrepancies within the original draft of the Lane County Plan." ODFW letter, September 21, 2023. The ODFW letter also notes that:

> *"[t]he clustering standards outlined in LC 16.211(5)(a) were designed as a tool to minimize the impacts to big game when the department's recommended density is not met.* Goal 5 big game habitat in Lane County is protected from most conflicting uses through compliance with the RCP and application of resource land zoning to protect and conserve sensitive wildlife habitats. LC 16.211(5)(a) states that all the listed (i-iv) siting standards must be met, with which the applicant currently does not comply. Clustering requires that dwellings and other structures are located near each other, and existing roads, dwellings and other structures are located to avoid habitat conflicts and utilize least valuable habitat areas; and road development is minimized. Department staff are concerned that the applicant has not demonstrated how the functions of this Goal 5 resource will be maintained."

ODFW letter, September 21, 2023 (emphasis added). Again, ODFW's conclusion is the same as that argued by LandWatch for years: compliance with the RCP policy 11 is one half of the protection and the other is the siting standards. Both are necessary to accomplish and satisfy the protections afforded Oregonians under Statewide Planning

Goal 5. And without both, there is no compliance with Goal 5 or the County's acknowledgment.

> As it relates to the F-2 zone (Impacted Forestlands), ODFW notes that:
>
> "*Currently, most of the big game habitat in the County falls within the Non-Impacted or Impacted Forest Land zones.* The Impacted Forest Land zone is described as forest land that warrants a high level of protection from conversion to non-forest uses. This land has the capability to produce timber or is designated for one or more of the other forest uses. Statewide Planning Goal 4 and the definition of "other forested lands" includes the values for fish and wildlife habitat, in addition to forestry values. Uses that are not forest or farm related should be allowed only after assurance that such uses will not adversely affect the surrounding forest land.
>
> *It is the intent of the F-2 Impacted Forest Lands Zone to protect fish and wildlife habitat (LC 16.211(1)).* Fragmentation of habitat can impact connectivity between varying habitats that wildlife use as corridors to navigate through our developed landscape. Loss of habitat can have adverse effects on wildlife species with the potential for localized population decline and an increase in human wildlife conflicts (e.g., vehicle strikes, damage, and human health and safety issues). Existing or proposed non-forest or non-farm uses (e.g., dwellings) within the Forest Land District (F-2) must recognize that the intent of the district is to protect resources, and that in the event of a conflict this chapter will be interpreted in favor of resource management practices (LC 10.104-05).
>
> Big game should be considered a resource similar to timber, where game species are managed by the department to maintain healthy big game populations while still providing huntable opportunities to the public."

ODFW letter, September 21, 2023 (emphasis added). ODFW is confirming that F-2 lands are important for wildlife protection and where conflicts exist with other uses, the conflict should be resolved in favor of resource protection. The Homebuilders' interpretation would do just the opposite.

As to the May 8, 1984, letter from ODFW to DLCD attached to staff's submission, the letter is of little assistance because it assumes there would be a minimum lot size for development in the F-2 zone, when, in fact, there is no minimum size for development of an F-2 template dwelling, unlike other counties: "We note that the minimum lot sizes in the F-1 and F-2 zones are the minimum acceptable to correspond to

our density recommendation." Again, unlike other counties, there is no minimum size in Lane County to site a template dwelling on F-2 zoned land, which makes the density recommendations all the more important.

LandWatch agrees with and incorporates 1000 Friends' comments. The basic issue is whether the applicant can lobby the County to use its deferential interpretation to demonstrate compliance. The

As to the applicant's submission of 909 pages, there is no explanation or narrative by which to respond to the evidence submitted. If the applicant subsequent to open record timeline includes a narrative that cites to or relies on what the applicant has submitted, LandWatch reserves the right to respond. Regardless, there does not appear to be anything new in that evidence that would otherwise change LUBA's and the Court of Appeals' decisions.

Finally, it is important that the Hearings Official rule on the applications, not simply lay out the various interpretations. The Board of Commissioners will likely respect the Hearings Official's rationale and analysis as to why the Homebuilders interpretation is legally deficient and why LandWatch's, Staff's, and LUBA's interpretation satisfies the conditions of acknowledgment and protect goal 5 resources. Again, the basic error is that the applicants would like to avoid the density recommendations – whether those are the recommendations advocated by staff or those advocated by LandWatch and LUBA – because it requires an ESEE analysis in the event the density standards are exceeded. As confirmed by ODFW, the density recommendations and resolution of conflicts through the ESEE analysis are a necessary component of Lane County's compliance with Goal 5. The County Board of Commissioners will get no deference in trying to avoid compliance with Goal 5 because compliance with Goal 5 and the conditions of acknowledgment are matters of state law.

LandWatch respectfully requests that the Hearings Official uphold LUBA's and the Court of Appeals' interpretation of Policy 11 and deny the applications.

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

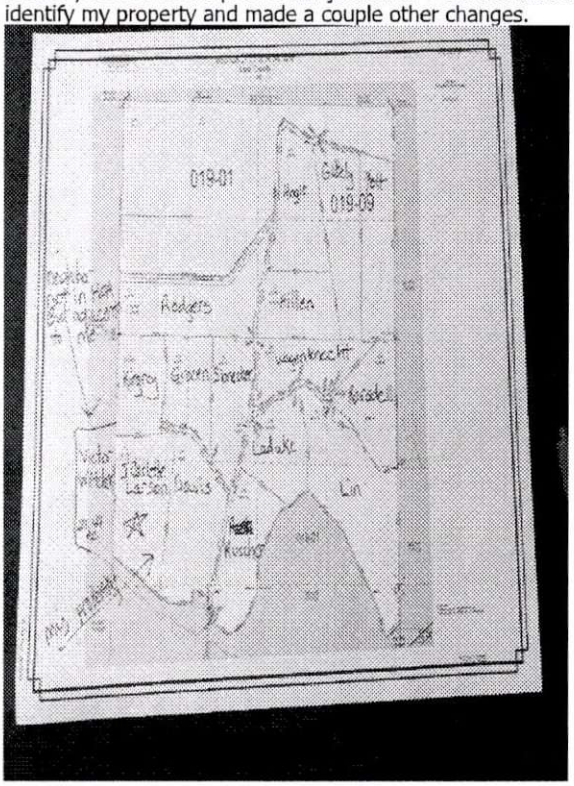
Cc:
Client

From: Carlette Larson
To: ADAMS Shawna L
Cc: DOBBERSTEIN Julia C
Subject: Re: 509-PA23-5322, 509-PA23-5323 - Ed King Hearings, J Carlette Larson added Petitioner
Date: Thursday, October 5, 2023 2:28:56 PM
Attachments: King - Coversheet-1.pages
MAHA 1 -
apps.lanecounty.orgpropertyaccountinformation_gl=1ikkartp_gaMTk1NTU2NTE5NS4xNjk2NTI2NDEx_ga_G30BCGQ9RYMTY5NjUyNjQxMC4xLjEuMTY5NjUyNjQyNC4wLjAuMA..#.pdf
MAHA 2
-apps.lanecounty.orgpropertyaccountinformation_gl=1ikkartp_gaMTk1NTU2NTE5NS4xNjk2NTI2NDEx_ga_G30BCGQ9RYMTY5NjUyNjQxMC4xLjEuMTY5NjUyNjQyNC4wLjAuMA..#.pdf
MAHA 3 - Tax Maps.pdf
King Estates 1 - DownloadFileByUrl.aspx.pdf
King - Loan Fir 35 acres - Lane Property Account Information Portal.pdf
King - Loan Fir 35 acres - Lane Property Account Information Portal.pdf

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EXTERNAL

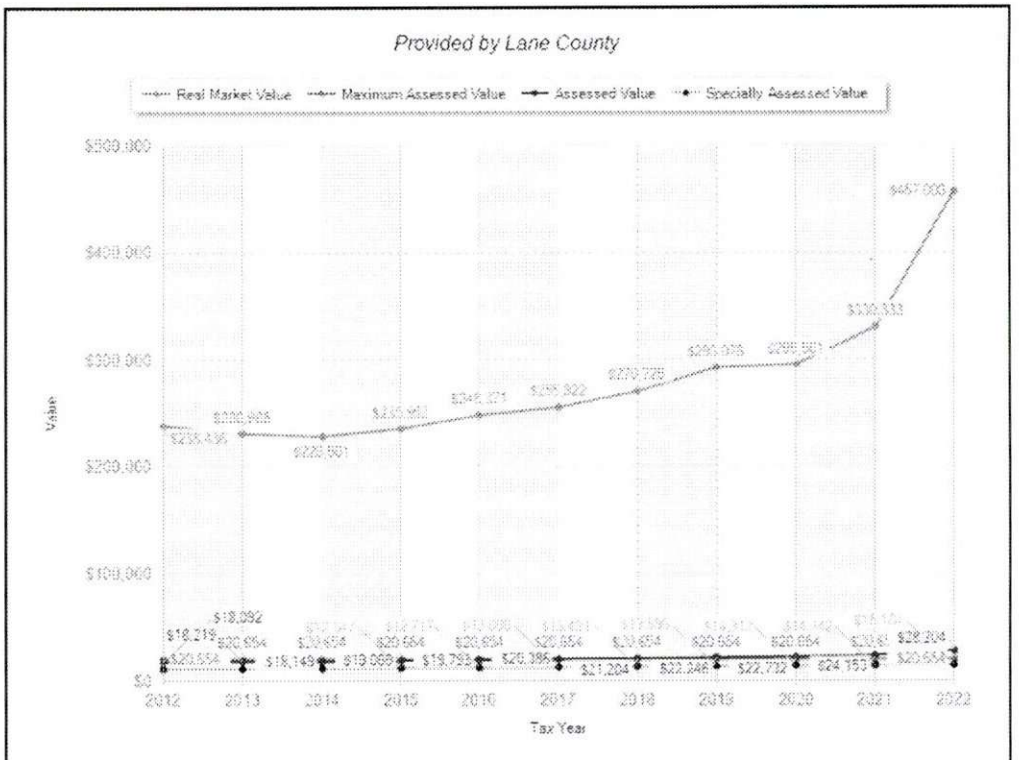
I need you to toss the prior email just sent. I did see that there were some issues that needed to be added. I failed to identify my property and made a couple other changes.



Carlette Larson, Realtor, SFR
Licensed in the State of Oregon
Keller Williams Realty Eugene and Springfield
2644 Suzanne Way
Eugene, OR 97408
(541) 953-3008
carlettelarson@kw.com
www.CarletteLarson.com

On Thu, Oct 5, 2023 at 3:52 PM Carlette Larson <carlettelarson@kw.com> wrote:

> Attached you will find the needed information of my petition request on the above note information. Would you please confirm you are in receipt of this email?


Provided by Lane County
Real Market Value
Maximum Assessed Value
Assessed Value
Specially Assessed Value
$500,000
$400,000
$300,000
$200,000
$100,000
$0
Value
$457,000
$330,333
$18,092
$18,219
$20,654
$18,149
$19,069
$19,793
$20,386
$21,204
$23,346
$22,732
$24,153
$28,204
$20,654
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
Tax Year

ADAMS Shawna L

From: Bill Kloos <billkloos@landuseoregon.com>
Sent: Tuesday, October 3, 2023 11:01 AM
To: DOBBERSTEIN Julia C; ADAMS Shawna L
Cc: Bill Kloos; Thom Lanfear (tlanfear@pacinfo.com)
Subject: Timeline Waivers PA23-05321, 05322, 05323
Attachments: Three timeline waivers.pdf

[EXTERNAL ⚠]

Shawn and Julie –

Attached are three timeline waivers, as promised.

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Ave., Suite 204
Eugene, OR 97401
Phone: 541-954-1260
Email: Bill Kloos@LandUseOregon.com
Web: www.LandUseOregon.com

CONFIDENTIALITY NOTICE: The information contained in this email communication may contain confidential information that is legally privileged. If you are not the intended recipient, or if you have reason to believe that this message has been addressed to you in error, you are hereby notified that your receipt of this email was not intended by the sender and any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information except its direct delivery to the intended recipient is strictly prohibited. If you have received this email in error, please notify me immediately by telephone at the numbers listed above or by email and then delete the e-mail from your computer and do not print, copy or disclose it to anyone else. Thank you.

LAND MANAGEMENT DIVISION

Waiver/Extension of Statutory Timeline Requirements

Instructions: To waive or extend the statutory timeline requirements applicable to your land use application, please complete all applicable fields, sign, date, and return this form to the address listed below.

I, Bill Kloos, as owner or authorized representative of the owner of
Applicant (Print Name)
the property known as Assessor's Map and Tax Lot(s) Map 21-35-07-30 #2900 that is the subject of the land use application Department File Number PA23-05323 and is the subject of this request, do hereby voluntarily **(Check Only One Box)**:

☒ **Waive** the statutory timeline requirements of ORS 215.427, including any rights to a refund as provided for by ORS 215.427(8), and the associated right to seek mandamus as provided for by ORS 215.429(1). Furthermore, I hereby voluntarily request that the County delay processing of the application until NA. **(6 months maximum)**
(Enter M/D/Y or "/NA" If No Delay Requested)

☐ **Extend** the statutory timeline requirements of ORS 215.427 for _____ days[1] in order to submit
(Enter # Calendar Days)
additional information. Furthermore, I do hereby voluntarily request that the County delay processing of the application for the same number of days. **(check box):** ☐ **Yes** ☐ **No**

I understand:

1) By signing this form, I am making an irrevocable decision to extend/waive the statutory timeline requirements of ORS 215.427. I may not change my mind later except by withdrawing my application, filing a new application, and paying the associated fees.
2) This statutory timeline waiver/extension is given freely and without compulsion by the County, and is not conditioned on any County action apart from granting the delay requested for processing the application, if any.
3) I may request that the County resume processing my application at any time and understand that any such request has no effect on the statutory timeline extension/waiver granted.
4) Lane County is not obligated to accept this statutory timeline waiver/extension request.

Bill Kloos — 9/22/23

Signature (Authorized Representative/Owner) **Date Signed**

Return to: **Lane County – Public Works**
Land Management Division
3050 N. Delta Hwy.
Eugene, OR 97408

[1] Per ORS 215.427(5), the total period of time an application can be put on hold and final action timeline extended by an applicant may not exceed 215 days, except as provided in ORS 215.427(10). Additionally, unless a hold on processing the application is expressly requested in conjunction with a timeline waiver/extension request and accepted by County staff, the County reserves the right to resume processing the application at any time.

(Version 4/20)

ADAMS Shawna L

From: DOBBERSTEIN Julia C
Sent: Friday, September 22, 2023 4:54 PM
To: ADAMS Shawna L; billkloos@landuseoregon.com; Thom Lanfear (tlanfear@pacinfo.com); Hope S; Jim McLaughlin; Mike Farthing; Sean Malone; ellenannej@gmail.com; miloindustries2021@gmail.com; sharon.carrol@att.net; jim@westerncascades.com; carlettelarson@kw.com; dragocontracting@yahoo.com; landplancon@comcast.net; kay@rrking.net; caseyjoneswelldrilling@yahoo.com; chris@superiorec.net; jjk.timber@gmail.com; dnoble4990@aol.com; sassypeanut@comcast.net; kim@rurallanduse.com; andrew@friends.org; joseph.p.stack@odfw.oregon.gov; MERWIN Amy KWVA (SMTP)
Cc: BELL Amber R; EICHNER Lindsey A; GILBRIDE Kevin E
Subject: RE: Open Record Period Submittals - 509-PA23-05321 (King Hearing #2)

Concerned Parties, open record submittals for Planning Action file 509-PA23-05321 (King Hearing #2) have been uploaded to the County website and can be found at the following link along with all other materials related to this hearing item and the King Hearing #1 items.
https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19771787&contextId.94636=6285783&parentId.94636=19734019

You should find open record submittals from staff, Bill Kloos (Applicant), Sean Malone (LWLC), Andrew Mulkey (1001 Friends), and Joseph Stack (ODFW). All past and future submittals can be found at the same link.

As a reminder, the Hearings Official has allowed for an extended hearing record period subject to the following deadlines:

- ~~Open Record for all parties of record until September 21, 2023 at 4:00 PM;~~
- Comment/Response to Open Record submittals until October 5, 2023 at 4:00 PM; and
- Final Rebuttal by the Applicant until October 12, 2023 at 4:00 PM.

Please direct any submittals or questions directly to me. Please copy Shawna Adams on any emails (Shawna.Adams@lanecountyor.gov). If you plan to submit information please provide digital copies to me by email prior to the deadline (if your submittal is over 20 pages please also submit a paper copy).

Best regards,

Julia Dobberstein | Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-3958

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

MEMORANDUM

Date: September 21, 2023
To: Lane County Hearings Official
From: LMD Planning Staff – Shawna Adams & Julia Dobberstein
Department Files: 509-PA23-05322 & 509-PA23-05323 (King Hearing #1)
509-PA23-05321 (King Hearing #2)
Re: Staff Open Record Submittal

Staff has obtained from DLCD the attached ODFW correspondence dated May 8, 1984. This correspondence appears to be the ODFW objection letter referenced in the July 19, 1984, DLCD staff report to LCDC.

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife

506 S.W. MILL STREET, P.O. BOX 3503, PORTLAND, OREGON 97208

May 8, 1984

DEPARTMENT OF LAND
CONSERVATION AND DEVELOPMENT

MAY 9 1984

SALEM

Mr. James Ross, Director
Department of Land Conservation
and Development
1175 Court St., N.E.
Salem, Oregon 97310

Dear Mr. Ross:

The Oregon Department of Fish and Wildlife has completed its review of the Lane County Rural Comprehensive Plan. We have both comments on and objections to the plan:

COMMENTS

For background, you should know that over the last year the Department worked very closely with the County to revise and update inventory information, make recommmendations and review and comment on plan materials (working papers, policies and zoning codes). Throughout the process, we believe a spirit of working cooperation prevailed and until the final hearings the plan overall had our full support.

The Department compliments the County for the Riparian Vegetation protection provisions it has adopted. We believe these provisions are highly workable and will be effective in providing resource protection. We judge them to be among the finest local protection methods in the state. In addition, we support the 1B approach to wetlands as we recognize that specific examination of the resource is needed. Finally, the County has done an excellent job in providing protection for most significant sites identified in the metropolitan area plan. These sites involve wetlands, forest areas and the "Confluence" heronry. In particular, the Department supports the balanced protection mechanisms set out by the County for these sites.

Notwithstanding the fine performance noted above, the following are the points we must raise and on which we base our objection to acknowledgement.

OBJECTIONS

Pudding Creek Heronry

The Department believes an inconsistency exists in the Metropolitan Area Plan. The element on the Pudding Creek Heronry indicates an "NR" plan designation is applied and specifies land exchange as the means to resolve sand and gravel use conflicts. The Department

supported this plan designation and worked extensively to implement it. At this time however, we understand that the zone applied is sand and gravel. We must object to this zoning as it would fail to protect the heronry consistent with plan policy.

Big Game Range

The County was provided clear information on Department policies for protection of game range from conflicting uses. The working paper describes much of the information. Flora and Fauna Policy Number 11 makes a commitment to achieve the Department's overall density recommendations. The policy, however, is flawed in that it regards densities above Department recommendations to constitute a conflict. The Department regards its policies to be the approach which resolves the conflict between dwellings and game range as required by Goal 5.

We note that the minimum lot sizes in the F-1 and F-2 zones are the minimum acceptable to correspond to our density recommendations. Previous drafts of the zone provided larger lot sizes based on the data in the Forest Lands Working Paper. Contrary to the plan policy addressing our recommendations however, the F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany these density levels. We note later that the policy, as written, would seem to apply to all zones where range is present.

Sensitive Bird Nesting and Use Sites (Non-coastal Plan Element)

The plan is ambiguous with regard to this concern. First, it is clear from the Flora/Fauna Working Paper (page 1) the County has complete inventory information. The Department recently updated this information. Second, the County designates some but not all of the inventoried species as Endangered, Threatened or Special Interest Species (Flora and Fauna Report, page 11). Specifically inventoried, but not designated, are Heron Rookeries and Pigeon Mineral Springs. No plan policies specifically address protection of all the species designated by the County or the sensitive species of particular focus on the part of our Department (Bald Eagles, Heron Rookeries, Snowy Plover, Spotted Owls, Osprey nests and Pigeon Springs). Flora/Fauna Plan Policy Number 15 places three of the listed species in a 1B category. The Department believes sufficient information exists to complete the Goal 5 process for species of concern to us by developing a generic ESEE analysis and specifying County protection will cover only non-forest operation uses or activities. Our view is that the location, quantity and quality of information provided the County is similar to that provided to other counties who completed the Goal 5 process and are acknowledged.

Goal 5 Application to Marginal and Nonresource Lands

We have been unable to identify any evidence that Goal 5 has been applied in the process of designating marginal and nonresource lands. This is of great concern to our Department in the context of big game range. Considering plan provisions for lots of record, resource and nonresource related dwellings, marginal lands and nonresource lands, we believe considerable development could occur in game range. As discussed above, the County's commitment to maintain compatible densities is not completely or satisfactorily implemented. That discussion focused on the F-1 and F-2 zones. The Department notes that the policy is to be applied to "regions of the County" which would include marginal and nonresource lands. Finally, it was not possible to determine what marginal and nonresource lands were in game range areas. The zone map format and resource inventory map formats were not easily comparable.

Thank you for the opportunity to express our comments. The Department also will continue its commitment to the County to assist where possible in completing an acknowledgement.

Sincerely,

Neal L. Coenen

Neal L. Coenen
Program Leader
Land and Waterway Use
Environmental Management Section

SW
cc: Roy Burns, Lane County
Jim Mann, Lane County
Lantz/Hutchison, ODFW

From: Andrew Mulkey
To: ADAMS Shawna L
Cc: Sean Malone; Hope S
Subject: Comments for PA23-05321, 05322, 05323
Date: Thursday, September 21, 2023 3:59:21 PM

[EXTERNAL]

Shawna,

On behalf of 1000 Friends of Oregon, please accept the following comments for the record in the following applications: PA23-05321, 05322, 05323.

1000 Friends disagrees with the Staff's conclusion that the county has adopted or implemented clustering standards that are commensurate with imposing a specific dwelling density that is smaller than the 80-acre or 40-acre dwelling density in ODFW's recommended densities. The county cannot use a post-hoc interpretation of the text of Policy 11 to substitute for its lack of implementation measures. Rather the record is clear that the county has failed to adopt implementation measures contemplated by Policy 11, and in lieu of implementing the comprehensive plan, the county must rely on a site-specific ESEE analysis and the provisions of OAR 660-023.

Although the county adopted siting standards (Staff report Attachment 6.35), the county did not purport to adopt the standards for the purpose of achieving a specific dwelling density greater than dwelling density described by Policy 11. If that were the case, the county would have needed to explicitly state that the siting provisions would allow a specific development density. The county did not do so. The county cannot claim that LDCD or DLCD acknowledged an otherwise unstated Goal 5 density requirement.

Andrew

Andrew Mulkey
Rural Lands Attorney
Pronouns: he/him
1000 Friends of Oregon
Office: 503.497.1000 x138
Direct: 971.420.0916



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

From: STACK Joseph P * ODFW
To: ADAMS Shawna L; DOBBERSTEIN Julia C
Subject: RE: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)
Date: Thursday, September 21, 2023 2:34:05 PM
Attachments: 509-PA23-05321_05322_05323 ODFW JS comments 2023 Vs2.doc
Attachment 1_ODFW.pdf

EXTERNAL

Please add the additional comments and referenced attachment to the record for this case.

Thank you,
Joe

Joe Stack
Regional Habitat Biologist
Oregon Dept of Fish and Wildlife
South Willamette Watershed District
Office: 541-757-5301/ Cell: 541-650-2840

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Friday, September 8, 2023 7:18 PM
To: billkloos@landuseoregon.com; Thom Lanfear (tlanfear@pacinfo.com) <tlanfear@pacinfo.com>; Hope S <lsv1953@gmail.com>; Jim McLaughlin <cewmjtm@gmail.com>; Mike Farthing <mefarthing@yahoo.com>; Sean Malone <seanmalone8@hotmail.com>; ellenannej@gmail.com; miloindustries2021@gmail.com; jim@westerncascades.com; carlettelarson@kw.com; dragocontracting@yahoo.com; landplancon@comcast.net; kay@rrking.net; caseyjoneswelldrilling@yahoo.com; chris@superiorec.net; jjk.timber@gmail.com; dnoble4990@aol.com; sassypeanut@comcast.net; kim@rurallanduse.com; andrew@friends.org; STACK Joseph P * ODFW <joseph.p.stack@odfw.oregon.gov>; MERWIN Amy KWVA (SMTP) <amy@informproductions.com>; Sharon Carroll <sharon.carroll@att.net>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; GILBRIDE Kevin E <kevin.gilbride@lanecountyor.gov>; DOBBERSTEIN Julia C <Julia.DOBBERSTEIN@lanecountyor.gov>
Subject: Hearing Recording and Submittals - 509-PA23-05321 (King Hearing #2)

Concerned Parties, Attached is the hearing/pre-hearing written testimony received for Planning Action files 509-PA23-05321, which was the subject of yesterday's second hearing concerning King template dwelling applications. The testimony has been combined into a single document along with an index for your reference. The same testimony is included in the record for yesterday's first hearing, which was addressed in the previous email you should have received. The index is specific to the second hearing. Please contact me directly if you have any questions or require assistance prior to September 20, as Julia Dobberstein, the assigned staff planner for this hearing item is

scheduled out of the office until then.

Sometime soon the attached document will be available on our website along with the other hearing related items for the September 7 hearings, which can be found at the following link: https://www.lanecounty.org/cms/One.aspx?pageId=6285782&portalId=3585881&objectId.94636=19715258&contextId.94636=6285783&parentId.94636=19699820. The Hearing recordings have already been posted.

The Hearings Official has allowed for an extended hearing record period subject to the following deadlines:

- Open Record for all parties of record until September 21, 2023 at 4:00 PM;
- Comment/Response to Open Record submittals until October 5, 2023 at 4:00 PM; and
- Final Rebuttal by the Applicant until October 12, 2023 at 4:00 PM.

If you plan to submit information please provide digital copies to me by email prior to the deadline (if your submittal is over 20 pages please also submit a paper copy). Please direct any written communication to Julia and copy me on any emails so we can better assist you and facilitate a smooth process.

Kind regards,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning
Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

Oregon
Tina Kotek, Governor

Department of Fish and Wildlife
South Willamette Watershed District Office
7118 NE Vandenberg Ave
Corvallis, 97330
(541) 757-4186
(541) 757-4252

21 September 2023

Via Email
Julia Dobberstein and Shawna Adams
Lane County Land Management Division
julia.dobberstein@lanecountyor.gov shawna.adams@lanecountyor.gov
(541) 682-3958 (541) 682-8904
3050 N. Delta Hwy.
Eugene, OR 97408

RE: 509-PA23-05321, 509-PA23-05322, 509-PA23-05323

Dear Chairman Farr, Vice Chair Trieger, Commissioner Buch, Commissioner Loveall:

The Oregon Department of Fish and Wildlife (department) appreciates the opportunity to provide comments on the applications for dwellings being proposed in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions on three different properties adjacent to the Oakridge State Airport (T21S, R2E, Section 12, Tax Lot 843, and T21S, R3E, Section 7, Tax Lots 2900 and 2800). It is policy of the state of Oregon to manage fish and wildlife to prevent serious depletion of indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state (ORS 496.012). In accordance with this mission, the department provides the following comments for the record on September 21, 2023.

The department has been engaging with local governments on land use planning since SB 100, the creation of the Statewide Planning Program and adoption of the State Agency Coordination Agreement which ensures the department's role in providing technical assistance to local governments. As local governments drafted comprehensive plans to implement SB 100, the department provided detailed habitat protection plans for each county, which included fish and wildlife habitat inventory information, conflicting uses to those resources and recommendations for protection measures to comply with Statewide Planning Goal 5. The department has consistently recommended density standards to protect wildlife habitat, minimize habitat fragmentation and maintain the carrying capacity of the land for wildlife. For example, the department's Land Use Planning Guide from 1989 includes a wildlife guide for land use planning and specific development densities through development per acre standards for big game. This is consistent with the existing Goal 5 protections in the Lane County Rural Comprehensive Plan (RCP) Flora & Fauna Policy 11.

Department staff, like many of the other concerned parties took time to review the historic correspondence submitted into the record by Lane County staff. It should be noted that these documents by no means provide a clear and full picture of the discussions that Lane County and department staff had on the discrepancies within the original draft of the Lane County Plan. The department letter from December 9, 1980, to the Director of the Department of Land Conservation and Development, states that

the department opposes the acknowledgment of the Lane County Plan because of its failure to satisfy department recommendations for residential development densities. Specifically, this letter stated the department's "*original recommendations indicated that the desirable level of density within deer winter range was the equivalent of one dwelling per 80 acres or the equivalent of one dwelling per 40 acres with cluster development. In elk winter range the desirable density level was the equivalent of one dwelling per 160 acres or one per 80 acres with cluster development.*"

In the mid-1970's, department staff developed a table of recommended dwelling densities within big game range. The Land Conservation and Development Commission accepted the recommended density table as part of our State Agency Coordination program developed in 1977 to comply with the land use planning goals and guidelines (Appendix 1). The densities in the table are similar to what the department had recommended in the 1980 letter and should be interpreted as the intended density standards for the County. Table 1: Wildlife Guide for Land Use Planning, defines development densities as the number of dwellings per acre, these densities fall within two different categories, desirable (recommended) level of development or acceptable level of development when clustering can be applied. The addition of clustering and siting standards for forest dwellings should be seen as supplementary to the department's density recommendations, with the ultimate goal of providing the highest amount of protection for big game. It is in this context that the agency utilizes the Fish and Wildlife Habitat Mitigation Policy in OAR 635-425; avoid impacts first, then minimize, then mitigate.

The clustering standards outlined in LC 16.211(5)(a) were designed as a tool to minimize the impacts to big game when the department's recommended density is not met. Goal 5 big game habitat in Lane County is protected from most conflicting uses through compliance with the RCP and application of resource land zoning to protect and conserve sensitive wildlife habitats. LC 16.211(5)(a) states that all the listed (i-iv) siting standards must be met, with which the applicant currently does not comply. Clustering requires that dwellings and other structures are located near each other, and existing roads, dwellings and other structures are located to avoid habitat conflicts and utilize least valuable habitat areas; and road development is minimized. Department staff are concerned that the applicant has not demonstrated how the functions of this Goal 5 resource will be maintained.

Department staff highlighted the issues the County would face with resources and zoning in its November 1st, 1983, letter to the Lane County Planning Department. The basic issue being that the County needed to determine if a special code would be applied as an overlay to address all fish and wildlife resources or if they would be addressed specifically in other zones. At that time a Natural Resource Zone was being considered for lands that fell within mapped big game habitat, but ultimately the County decided to go in a different direction. Currently, most of the big game habitat in the County falls within the Non-Impacted or Impacted Forest Land zones. The Impacted Forest Land zone is described as forest land that warrants a high level of protection from conversion to non-forest uses. This land has the capability to produce timber or is designated for one or more of the other forest uses. Statewide Planning Goal 4 and the definition of "other forested lands" includes the values for fish and wildlife habitat, in addition to forestry values. Uses that are not forest or farm related should be allowed only after assurance that such uses will not adversely affect the surrounding forest land.

It is the intent of the F-2 Impacted Forest Lands Zone to protect fish and wildlife habitat (LC 16.211(1)). Fragmentation of habitat can impact connectivity between varying habitats that wildlife use as corridors to navigate through our developed landscape. Loss of habitat can have adverse effects on wildlife species with the potential for localized population decline and an increase in human wildlife conflicts (e.g., vehicle strikes, damage, and human health and safety issues). Existing or proposed non-forest or non-farm uses (e.g., dwellings) within the Forest Land District (F-2) must recognize that the intent of the district is to protect resources, and that in the event of a conflict this chapter will be interpreted in favor of resource management practices (LC 10.104-05).

Big game should be considered a resource similar to timber, where game species are managed by the department to maintain healthy big game populations while still providing huntable opportunities to the public. In 2019 alone, hunting and wildlife watching provided significant economic benefit to Lane County, with people spending just over $34 million on these activities according to Travel Oregon's Outdoor Recreation Economic Impact Study completed that year. Intensification of land-use beyond normal agricultural and forestry uses generally conflicts with maintenance of big game populations. Hunting opportunities are usually entirely eliminated when such changes take place, and big game damage problems may develop. It is uncommon that a single development action would have a critical impact on big game. However, development has a cumulative effect on wildlife habitat and associated wildlife populations as well as many other natural resource and social issues important to Oregonians and the residents of Lane County. It was the need to plan and account for these cumulative impacts that resulted in the development of the RCP and it is in the context of cumulative effects that impacts of proposed amendments should be considered.

The department relies on local and state compliance with the land use planning goals to consider natural resources, such as wildlife habitat protecting big game. However, most County Goal 5 programs have not been updated since plan acknowledgement to incorporate the best available data and how to protect significant Goal 5 resources. Department staff recommend the County initiate a revision of their Goal 5 Program, including an update of Policy 11 so that it provides clear and objective standards. The department acknowledges the effort that a project of this magnitude will take and can provide technical assistance to the County regarding the best available data for wildlife habitat, identifying conflicting uses and providing recommendations to address conflicting uses in a way that is consistent with the department's Fish and Wildlife Habitat Mitigation Policy and Goal 5.

Thank you for your consideration of the department's comments. For clarification or any questions, please contact me at 541-757-5301.

Respectfully,

Joseph Stack
Regional Habitat Biologist
Oregon Department of Fish and Wildlife

TABLE 1. WILDLIFE GUIDE FOR LAND USE PLANNING

Table 1. is a guide for the biologist working with local land use plans. The table relates wildlife sensitive habitat to development densities, special land use restrictions, and the expected reduction of carrying capacity. Comments for both desirable and acceptable levels of development are grouped by species or habitat type.

The absence of development provides the optimum situation to maintain and preserve sensitive habitat areas. However, this is an unrealistic expectation. The development densities and projected reductions in carrying capacity are based on professional judgement from many years of Department field experience and interpretation of the literature. There may undergo further refinement as experience and supporting documentation dictate.

Definition of Terms Used in the Table:

Sensitive Habitat Areas - Areas important to the survival of a species or group of species and habitats with limited area. They are listed on the table.

Symbols - C =
D = The desirable level of development
A = The acceptable level of development
X = This item applies
1-1 = Range of reduction in carrying capacity

Compatible Land Uses - Use of land that is compatible with wildlife.

Development Densities - The number of dwellings per acre.

Cluster Development - Concentration of structures on one part of a lot to preserve the remainder of the property for open space habitat.

Reduction of Carrying Capacity - Carrying capacity reduction could be expected to occur within these limits.

Unacceptable Uses - These uses are not compatible with the wildlife present, nor maintenance of the sensitive habitat areas.

Fences - Fencing requirements (conditional use required for change):

No fences = No fences on area

Homestead only = Fence only around house and outbuildings

Livestock control = Only livestock control fences should be built

3-wire, 18" bottom strand = Specification of any fence built

No woven wire = Woven wire not allowed in fence construction

Vegetation Clearing - Clearing restrictions (conditional use required to exceed):

Percentages = Percent of vegetation that may be cleared (shrubs and trees)

50% per 10 years = No more than 50% of vegetation cleared every ten years

Not more than 10% edge = No more than 10% of the edge vegetation should be removed

Not within 50 yards = No vegetation clearing within 50 yards of sensitive areas

Not within 100 yards = No vegetation clearing within 100 yards of sensitive areas

Not cut nest trees = Trees with nest species identified in sensitive areas cannot be cut (e.g., eagle nests)

Roads - Road construction and use restrictions (conditional use required to exceed):

Access only = Roads for access use only

No road in or next to = No road in or next to sensitive habitat areas

No off-road travel = Off-road travel not allowed during period except for farm and forest operations when noted

Special Restriction - Land uses that should not be allowed:

No water crossings = No water fords, crossing only by bridge or open bottom culvert

No developments, 1/4 mile = All developments (buildings and roads) to be 1/4 mile from sensitive habitat areas

No developments below high water = No development below the high water line

Potential for Conflicts (Damage) - Notice to planner and developer that wildlife could cause damage to private property development in this area (e.g., deer damage).

The importance of existing wildlife habitat that is not classified as "sensitive" should be identified in the narrative of each comprehensive land use plan. To assure understanding of this point, the following statement is suggested for inclusion within the comprehensive plan.

"The designation of sensitive areas is not intended to identify only a select group of habitat or wildlife as important. But, rather to focus attention on particular habitat and species that are especially sensitive to land use activities. Few, if any, areas are devoid of wildlife and all areas are subject to land use impacts. Therefore, it is not only important that sensitive habitats or species receive protection, but it is also important to consider impacts of land and water use on all habitats and species."

Table One: WILDLIFE GUIDE FOR LAND USE PLANNING

| SENSITIVE HABITAT AREAS | COMPATIBLE LAND USES | Development Densities (Development/acre) None | 1:640 | 1:320 | 1:160 | 1:80 | 1:40 | 1:20 | 1:10 | 1:<8 | Cluster development | Reduction of Carrying Capacity (percentage) 100 | 80 | 60 | 50 | 30 | 25 | 20 | 10 | 5 | 0 | Acceptable Uses Rock pit | Feed lot | Parks | Dogs at large | Land fills | Water hole | Fire pump hole | Open concrete canal | Major highways | Airports | Grazing | Fence No fence | Homestead only | Livestock control | 3 wire-18" bottom | No woven wire | Conditional Use Considerations: Vegetation Clearing (percent) 10 | 20 | 30 | 50 | Not more than 10% edge | Not within 50 yds | Not within 100 yds | No cut nest trees | Roads Access only | No roads in or next to | Nov.-Apr. | Dec.-Apr. | No off road import | None | Special Restrict. No water bnds | No devel. 1/4 mi | No devel. in meadow | No devel. below highway | Potential for Damage by Wildlife High | Medium | Low | None |
|---|---|---

From: Sean Malone
To: ADAMS Shawna L; ADAMS Shawna L; Hope S; billkloos@landuseoregon.com; DAVIES Anne C
Subject: LandWatch Open Record - King 509-PA23-05321
Date: Thursday, September 21, 2023 3:55:30 PM
Attachments: Ex. B - LWLC Answering Brief Final.pdf
Malone to Lane County re King2.0 9.21.23.pdf

[EXTERNAL]

Shawna,

Please find attached LandWatch's Open Record testimony and one exhibit (Exhibit B - LandWatch's Response Brief in the prior *King* matter before the Court of Appeals). Two other exhibits were uploaded to the County earlier today due to their size: (1) Exhibit A - the Court of Appeals Record in *King* and (2) a copy of the June 13, 2023 Board of Commissioners hearing (video). Please add to the record.

Thank you,

Sean Malone
Attorney at Law
PO Box 1499
Eugene, OR 97440
ph. 303.859.0403
seanmalone8@hotmail.com

Sean T. Malone

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Eugene, OR 97440

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

September 21, 2023

Via Email

Lane County Hearings Official
c/o Shawna Adams, Senior Planner
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-6765

Re: LandWatch Lane County Open Record Testimony and Evidence, Request for a Template Dwelling, 509-PA23-05321 (King)

Dear Hearings Official,

Please accept this letter in opposition to the application and in support of the issue that has been resolved by LUBA twice and the Court of Appeals once: the applicability and interpretation of the Lane County Rural Comprehensive Plan Policy 11.

LandWatch understands the County to have included the local record before LUBA for the *King* cases. LandWatch has included as Exhibit A the record before the Court of Appeals in the *King* cases, as well as the video of the County Board's hearing on June 13, 2023, hearing in which the County Board directed staff to elevate the next applicable case to the County Board.

As noted in the *King* decision before LUBA:

> "[t]he principle of *stare decisis* applies to our final opinions. ORS 197.805 (instructing that LUBA decisions 'be made consistently with sound principles governing judicial review'). We will reconsider a prior decision if a party demonstrates that we erred in making it because we were not presented with an

> important argument. *Nicita v. City of Oregon City*, _ Or LUBA _, (LUBA Nos 2020-037/039, Sept 21, 2021) (slip op at 20) (citing Farmers Ins. Co. v. Mowy, 350 Or 686,698,261 P3d 1 (2011)). In *Nimpkish*, no party made any arguments based on either the Addendum or the DLCD staff reports, and our opinion did not address all of those documents in analyzing Policy 11's text, context, and legislative history. We do so now, and we uphold our decision in *Nimpkish*.

Exhibit A, LUBA Record 54. LandWatch believes that a plethora of arguments were made as to the working papers and DLCD staff reports in *Nimpkish*. Those documents were the basis for LandWatch's arguments in *Nimpkish*. Regardless, after *King*, those issues have been put to rest, and the Hearings Official is bound by LUBA's decisions in *Nimpkish* and *King*. As addressed below, the only new information brought forth in this appeal is by County staff, which included correspondence between ODFW and the County. LandWatch does not believe this new information changes the analysis. It must also be noted that the applicant does not set forth anything new in its argument or interpretation that was not set forth previously in *King*.

LUBA/LandWatch's interpretation is the "law of the land" and must be upheld by the Hearings Official.

LUBA's interpretations in *Nimpkish* and *King* are the same as LandWatch's interpretations. LandWatch submits that these cases are the "law of the land," and that the Hearings Official is bound by those decisions. The only reason the applicant repeats its arguments and application here is because the applicant hopes to get deference from the Board of Commissioners. Nothing else has changed, except for the political make-up of the County Board.

LUBA has determined that, under the decisions in *Nimpkish* and *King* interpretation, the County is adequately implementing Goal 5 through its Flora and Fauna policy 11. Importantly, the density recommendations do not prohibit development; instead, the density recommendations require – for those properties that are within big game range and are less than the requisite acreage – the applicant to prepare an ESEE analysis. The applicant has refused to prepare an ESEE analysis and attempt to resolve the conflict through the ESEE process.

LandWatch adopts LUBA's interpretations as set forth in *Nimpkish* (*see* LandWatch Lane County v. Lane County, __ Or LUBA __ (LUBA No. 2020-030, Jan 21, 2021)) and *King* (Exhibit A, LUBA Record 37-68), LandWatch's Response Brief in *King* before LUBA (Exhibit A, LUBA Rec. 77-137) and the Court of Appeals (Exhibit B)

as well as the briefing in *Nimpkish* (Consolidated Record for LUBA No. 2021-052 at 77-94).

Staff's Interpretation misconstrues the correct density standards

With the exception of Lane County/ODFW correspondence[1], staff is relying on the same documents that were at issue in *Nimpkish* and the *King* cases. LandWatch does not believe that correspondence (Attachment 4 from the Staff Report) changes LUBA's decision.[2] In the *King* cases before LUBA and the Court of Appeals, the applicant continually alleged that new documents had been brought forward, when that was not true, and the same documents were considered in *Nimpkish* as were considered by the decision-maker in the *King* cases. LandWatch understands the Lane County/ODFW correspondence to be new but, again, does not believe it materially changes LUBA's analysis and conclusions. Importantly, however, staff's position retains the requirement for an ESEE analysis, which ensures compliance with Goal 5. LandWatch acknowledges that there are statements in the correspondence about decreasing lot sizes increases impacts on big game. *See e.g.*, 4.13 ("our view is that as the lot size decreases (and density increases) the impact increases and needs to be mitigated. This can be done throught ordinance provisions requiring residences: to be as close as possible to each other; located adjacent to existing roads and minimizing residential serving roads."). LandWatch submits that the ESEE analysis coupled with the siting standards results in a conclusion that the conflict should be prohibited, allowed to some extent, or allowed fully. *See* OAR 660-023-0040(5)(a)-(c). That analysis is how the Cerro Gordo property was established, though the analysis occurred pursuant to the defunct Goal 5 ESEE provisions at OAR 660-016-0000 *et seq*. Staff's interpretation leaves the analysis required of the ESEE analysis out of the equation.

Staff relies on Cerro Gordo, for example, but Cerro Gordo was a "nonresource area" and it went through an ESEE analysis and resolution of conflicts:

---

[1] In *Nimpkish*, the parties made public records requests to DLCD, which apparently did not include the correspondence from ODFW to Lane County.

[2] Indeed, that correspondence refers to the 80/40 acres density standards. *See* Staff Report, Attachment, 4.11 and 4.108 ("Sensitive Big Game Range: 1:80 acres" and "Peripheral Big Game Range: 1:40 acres"); Staff report, Attachment 4.2 ("Forest lands above 80 acres, if planned and zoned for 80-acre minimums, would be consistent with our game range policies.").

"the Goal 5 conflicting uses/ESEE consequences analysis for one of the nonresource areas – Cerro Gordo – does not justify the residential densities proposed.... The applicant has proposed a wildlife management plan which calls for clustering buildings and maintaining wildlife corridors. Although the proposed clustering and wildlife corridor measures will help resolve some of the conflicts identified, the overall density of the development 'with clustering' is one unit per five acres. ODWF recommendations are one per 80 acres (or one per 40 acres with clustering) in peripheral habitat. According to the County's own plan (Policy 11), such densities cannot be exceeded without beign justified through an ESEE consequences analysis ..."

Staff Report at 7-8. First, Cerro Gordo was apparently non-resource land, and there was an ESEE analysis that resolved any conflicts by imposing clustering and wildlife corridors. It is the ESEE analysis – through its resolution of conflicts (OAR 660-023-0040(5)) – which allows the County to determine to what extent clustering and siting standards can resolve the conflict.

Staff has also performed an analysis of the many documents, including staff reports, working papers, amendments, etc. After that analysis, staff came to a slightly different conclusion than LandWatch and LUBA and the Court of Appeals. Staff's interpretation is different only as it relates to the density calculation. Whereas LUBA has ruled and LandWatch has maintained that the density 80/40 for primary/peripheral, staff alleges that the correct density is less when considering clustering. For example, staff alleges as follows:

- "Specifically, the Director asks the Hearings Official to consider text, context, and legislative history which indicates that, at the time of plan adoption and acknowledgment, DLCD, the county, and ODFW recognized the applicable density standard under Policy 11 to be much less restrictive than the one dwelling/80-acre standard that has been presumed to apply. In the Director's view, the legislative history and context makes clear that Policy 11 allows double the density that was presumed in Nimpkish and King, meaning that the subject properties would only need to be 40 acres in size, rather than 80 acres, to meet the applicable Policy 11 density standard for dwelling approval." Staff Report, 2 of 11.

- "As LUBA concluded in King, 'the legislative history is reasonably clear that the LC 16.211(5) clustering standards were intended to supplement, rather than to replace, the other components of the county's Goal 5 program, including Policy

> 11'. Equally clear to the Director, is that the F-2 siting standards were adopted to allow for the doubling of densities in big game habitat in keeping with Policy 11 density limitations." Staff Report, 4 of 11.

As noted below, there is no ambiguity in the working papers' basic conclusion:

> 'The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/ 40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.' Record 542."

Nimpkish, slip p at 5, n 3. Those are the standards referenced in Policy 11. While ODFW appears to presently endorse a standard of "on unit per acres or with clustering, one unit per 40 acres," ODFW letter, September 7, 2023, that is not what was presented above in the Working Paper. Moreover, there is no articulation of how to cluster under any given scenario or what standards apply to cluster a dwelling. Under LandWatch's reading – confirmed by LUBA and the Court of Appeals – that resolution occurs through the ESEE process. *See* OAR 660-023-0040 and -0040(5).

Staff also relies on the following statement from the July 19, 1984, DLCD Staff Report to LCDC:

> "'[Response 3]. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 zone, since in general, dwellings are not permitted in that zone." (p. 39, emphasis added)[.]"

Staff Report, 5 of 11. This provision was briefed before LUBA. *See* Exhibit A, LUBA Record 20-21 (King LUBA decision, page 16). LandWatch addressed that provision in its LUBA Response Brief:

conflicts between dwellings and big game."). More importantly, DLCD noted that ODFW's objections required *both density standards and siting or clustering requirements*: "ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, *the County's F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones*." R 2021-052 at 908 (R 2021-052 at 146-147) (emphasis added). DLCD also noted that:

> "ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minim lot sizes in the F-1, and F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable. This is a problem in the F-2 and EFU zones in particular, but not in the F-1 zone, since, in general, dwellings are not permitted in that zone."

R 2021-052 at 912 (R 2021-052 at 150); *id.* ("Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made."). The September staff report did not take back or negate any of what was said above. Rather, it just required that one-half of protections be implemented in the code through siting standards and the other half would be implemented through the ODFW's residential density recommendations.

Exhibit A, LUBA Record 101-102 (LandWatch Response Brief in *King*).

Staff also relies on the following provision from the July 19, 1984, DLCD Staff Report to LCDC:

> "'[IOTC 2.d.] Amend the F-2 and EFU zones to carry out the intent of [Policy 11]. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.' (p. 75, emphasis added)." Staff Report, 5 of 11.

Notably, the County *never required minimum lot sizes for F-2 dwellings.* To repeat, unlike many counties, Lane County has never imposed a minimum lot size for F-2 dwellings. LUBA was well-aware of Lane County's shortcomings in this respect:

> "However, the county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. Rather, the second sentence of RCP Goal 5, Flora and Fauna Policy 11, remains operative, and it provides that '[a]ny density above [the ODFW recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the county to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgement of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program. Moreover, the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d)."

Nimpkish, slip op at 12-14. LUBA goes on to cite support of its conclusion. *See id.* at 14-16.

Finally, while staff has an interpretation that would reduce the density standards by one-half, staff has not addressed the basic conclusion in the Flora and Fauna Working Paper (and identified by LUBA in *Nimpkish*) where the density standards are expressly identified, *with no mention of the a 40/20 acre standard with clustering*:

> "The RCP characterizes the Flora and Fauna Working Paper as 'background information * **to be used to help interpret and understand [the RCP].' RCP Part l(C). The Flora and Fauna Working Paper explains in more detail that the ODFW

residential density recommendations for Major Big Game Range were one dwelling unit per 80 acres:

> 'The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/ 40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.' Record 542."

Nimpkish, slip p at 5, n 3. Staff's interpretation of a lower density standard requires putting several different disparate citations together, whereas the above citation is straightforward and LUBA has already agreed with it. Therefore, LandWatch respectfully requests that the Hearings Official continue to rely on the density standard articulated in *Nimpkish* and *King*.

Homebuilder's interpretation is contrary to the plain language, underlying policy, and purpose of Policy 11.

The Homebuilders' interpretation falls short for the basic reason that it gives no effect to the density standards identified in the plan and working papers. That is contrary to Lane County's compliance with the goals and compliance with the conditions of acknowledgment, which means that the Homebuilders' post-hoc interpretation is not in compliance with Goal 5. Because the issue here revolves around the issue of goal 5 acknowledgment, and includes many un-performed or unfinished tasks, the issue is necessarily a matter of the correct interpretation of state law, including compliance with goal 5. LUBA has already concluded – and the Court of Appeals has upheld – the conclusion that its interpretation allows the County to comply with Goal 5. To change that interpretation and not require the ESEE analysis in light of a conflict would be contrary to the county's acknowledgment requirements. Therefore, the Homebuilders' interpretation cannot be upheld.

The Homebuilders interpretation alleges that the basic requirement to abide by the density recommendation "is necessarily planning work to be done in the future, ..." Staff Report, Attachment at 7.6 (Homebuilders letter). Not so. The planning requirement is contained in another sentence of the policy, and the subject sentence requires compliance with ODFW's density recommendations.

The Homebuilders interpretation of the second sentence is also contrary to LUBA's decision. The Homebuilders allege that:

> "The entirety of the second sentence will become operative when the future planning work is done. Once overall residential densities are established for regions, and those changes are acknowledged as Post Acknowledgment Plan Amendments, then any densities exceeding the new limits based on regions would trigger a new plan amendment in accordance with state law in OAR 660-16. Therefore, the second sentence is a statement that decision making following future planning work will comply with state law in division 16."

This interpretation hinges upon the as-of-yet-county-action to fulfill acknowledgment, which means that the County is not in compliance with Goal 5 and acknowledgment. The same is true of the Homebuilders' interpretation of the third sentence. There is nothing that actually implements Goal 5, according to the Homebuilders' interpretation. This interpretation does not implement Goal 5, much less account for the plain language to apply the density limitations.

The Homebuilders note that the Working Papers were completed before the Comprehensive Plan because the Comprehensive Plan – including policy 11 at issue here – relies upon the Working Papers. As to what was allegedly "removed," the Homebuilders' interpretation is incorrect, and these same parties briefed this very issue before LUBA and the Court of Appeals:

> "Turning first to the Addendum, intervenor initially responds that it is unclear whether the new language in the Addendum replaced all or only a portion the original language in the Working Paper describing the regional approach. In any case, intervenor argues, the new Addendum language may represent a step back from primary reliance on the regional approach, but nothing in the Addendum purports to completely abandon the ODFW density recommendations or suggests that siting or clustering standards, in themselves, are sufficient to establish compliance with Goal 5.
>
> We agree with intervenor that nothing in the Addendum purports to eliminate or reduce the role of the ODFW density recommendations in the county's program to protect big game habitat. The Addendum left in place the original Working Paper language stating that an overall residential density greater than one dwelling per 80 acres in Major Big Game Range conflicts with Goal 5. See n 9. Notably, both the Working Paper and the Addendum include language describing a process to

ensure compliance with Goal 5 In the event that other identified measures (the regional approach, minimum parcel sizes, and clustering) are insufficient—by applying the Goal 5 rule. In the county's Goal 5 program to protect big game habitat, the process to ensure compliance with Goal 5 is operationally embodied in the second sentence of Policy 11. The county added other measures, as requested by ODFW, but it chose to leave that process in place. LCDC acknowledged Policy 11, and the other components of the county's Goal 5 program, with that process In place. If petitioners are correct that the county's Goal 5 program consists entirely of the siting standards at LC 16.211(5), then the second sentence of Policy 11 is a nullity.

In our view, the legislative history is reasonably clear that the LC 16.211(5) clustering standards were intended to supplement, rather than replace, the other components of the county's Goal 5 program, including Policy 11. The July 19, 1984 DLCD staff report concluded that Policy 11 is insufficient to ensure compliance with Goal 5, and It ultimately required additional measures, but there is no suggestion in any legislative history that the county or DLCD believed that siting standards or any other measures could eliminate the need for Policy 11's density limitations. The July 19, 1984 DLCD staff report addressed criticism that Policy 11 is inadequate:

> 'Objectors are not correct that [Policy 11] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through [Policy II], however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, [Marginal Lands] and EFU Zones which ensure that ODFW's standards will be achieved." 2021-047 Record 149; 2021-052 Record 150.

The foregoing clearly illustrates DLCD's expectation that, while additional measures were necessary to ensure full compliance with Goal 5, the ODFW density standards embodied in Policy 11 would continue to play a role in evaluating development proposals. Nothing in the acknowledgment process eliminated or vitiated the applicability of those density standards to proposed residential development in big game habitat."

Exhibit A, LUBA Record 54-57. Simply put, LUBA has resolved this issue already.

The reference to "mere numbers game" has also been briefed before LUBA and the Court of Appeals. *See* Exhibit A at LUBA Record 18-19 ('Petitioners argue that the language that we relied upon to interpret the reference to 'regions of the County' in the first sentence of Policy 11 was deleted the Addendum and replaced with different language that appears to downplay, a mere 'numbers game,' the regional approach. The new language instead focuses on two other measures: minimum parcel sizes for new parcels in forest zones and siting standards that require clustering of dwellings.' This argument was ultimately rejected under the analysis section of LUBA's decision. *See* Exhibit A, LUBA Record 22-25). It is not a mere numbers game because the ESEE analysis is half of the equation and siting standards are the other half of the equation. Moreover, the ESEE analysis allows for conflict resolution, which is not simply a "numbers game."

The Homebuilders are correct when they state that there is no "minimum lot sizes for dwellings on F-2 land[.]" That means that density standards are important and cannot be simply set aside, as the Homebuilders would like. The Homebuilders also point to statements in the July 19, 1984 DLCD Staff Report at 75, to

> "Amend the F-2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones or contain clustering requirements in those areas." July 19, 1984 DLCD Staff Report at 75 (emphasis added)."

As noted above, the County did not adopt any minimum lot sizes for the F-2 zone, and, therefore, the County opted to also use clustering requirements and siting standards. That, however, does not take away from the fact that the County's policy plainly requires an ESEE analysis in the event of conflict. That policy was adopted and needs to be given some effect. That is the basic shortcoming of the Homebuilders' proposed interpretation. It ignores half of the equation, including the plain language of policy 11.

The Homebuilders' conclusion alleges that the County's policy was an either/or scenario:

> "In summary, the County entered and exited acknowledgment review without minimum lot sizes for Forest Template Dwelling approvals on F-2 land in mapped Big Game Habitat. The acknowledgment process gave the County the option of protecting Big Game Habitat on F-2 land by establishing minimum lot sizes or

bolstering clustering and siting standards. The County chose the latter, and that choice was acknowledged."

Again, the basic problem with the Homebuilders' interpretation, which is indistinguishable from those interpretations set forth in *Nimpkish* and *King*, is that it gives no effect to the plain language of policy 11. The Homebuilders' interpretation, even if given *Siporen* deference, is contrary to the plain text, underlying policy, and purpose of Policy 11.

Issue preclusion bars relitigation of the same issue that LUBA and the Court of Appeals have already resolved.

Issue preclusion bars relitigation of an issue in subsequent proceedings when the issue has been determined by a valid and final determination in a prior proceeding. While issue preclusion does not bar issues previously determined by local government tribunal, *see O'Connor v. Clackamas County*, __ Or LUBA __ (LUBA No. 2019-119, May 26, 2020); *Lawrence v. Clackamas County*, 40 Or LUBA 507, 519 (2001), *aff'd*, 180 Or App 495, 43 P3d 8 1192, *rev den*, 334 Or 327 (2002), here, the issue has been determined by both LUBA (*Nimpkish* and *King*) and the Court of Appeals (*King*). Issue preclusion has been found when all of the following are satisfied:

> (1) The issue in the two proceedings must be identical. (2) The issue must have been actually litigated and essential to a final decision on the merits in the prior proceeding. (3) The party sought to be precluded had a full and fair opportunity to be heard. (4) The party sought to be precluded was a party or was in privity with a party in the prior proceeding. (5) The prior proceeding was the type of proceeding to which a court will give preclusive effect.

Nelson v. Clackamas County, 19 Or LUBA 131 (1990). Here, (1) the issue is the same as *King* – the correct interpretation of policy 11; (2) the *King* cases were fully litigated previously, up to the Court of Appeals; (3) the parties here had the opportunity to be heard in *King* because (4) they were parties in the prior proceeding. Finally, (5) these matters were resolved before LUBA and the Court of Appeals, which should give preclusive effect to the same arguments presented here. The parties and staff appear to acknowledge that this is just a "re-filing" of a matter that has already been resolved.

LandWatch respectfully requests that the Hearings Official uphold LUBA's and the Court of Appeals' interpretation of Policy 11 and deny the applications.

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

Enclsoures

Exhibit A - the Court of Appeals Record in *King*

Exhibit B - LandWatch's Response Brief in the prior *King* matter before the Court of Appeals

A copy of the June 13, 2023 Board of Commissioners hearing (video)

IN THE COURT OF APPEALS
FOR THE STATE OF OREGON

EDWARD J. KING,

Petitioner,

v.

LANE COUNTY and
LANDWATCH LANE COUNTY,

Respondents.

E. J. K. INVESTMENTS,

Petitioner,

v.

LANE COUNTY and
LANDWATCH LANE COUNTY,

Respondents.

Land Use Board of Appeals
LUBA Nos. 2021-047/052

CA No. A177205

EXPEDITED PROCEEDING
UNDER ORS 197.850-855

ANSWERING BRIEFOF RESPONDENT LANDWATCH LANE COUNTY

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November 24, 2021

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I. STATEMENT OF THE CASE

A. Response to the Nature of the Proceeding and Relief Sought

Petitioners allege, more than once, that the Planning Director determined that all relevant criteria had been satisfied, but that is misleading because the controlling case, *LandWatch Lane County v. Lane County,* __ Or LUBA __ (LUBA No. 2020-030, Jan 21, 2021) (*Nimpkish*), had not issued from LUBA until *after* the Planning Director's decision issued:

> "The planning director approved the applications, and intervenor appealed each decision to the hearings officer. After the appeals were filed, we issued our decision in *LandWatch Lane County v. Lane County*, __ Or LUBA __ (LUBA No. 2020-030, Jan 21, 2021) (*Nimpkish*). Briefly, in *Nimpkish*, we held that the county's Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) program to protect big game habitat includes a comprehensive plan policy that limits the density of dwellings in big game habitat."

ER-3-4. After planning staff became aware of *Nimpkish,* planning staff recommended denial and the Hearings Official denied the applications: "Based on our holdings in *Nimpkish,* planning staff recommended denial of the applications. The hearings officer held hearings on each and denied each application." ER-4.

Respondent LandWatch Lane County respectfully requests that the Court of Appeals affirm LUBA's decision.

B. Response to the Nature of the Final Agency Decision to be Reviewed

The decision on appeal is a LUBA final opinion and order that affirms the Lane County Hearings Official's denial of two applications for forest template dwellings.[1]

C. Response to Jurisdiction

Respondent agrees that this Court has jurisdiction to hear this matter.

D. Timeliness of the Appeal

Respondents agree that the appeal is timely.

E. Questions Presented

Respondent disagrees with Petitioners' characterization of the questions presented and offers the following questions instead:

1. Did LUBA account for all portions of Policy 11, including the first two sentences that explain that ODFW's residential density recommendations would be used to identify conflicts, and, if exceeded, an ESEE analysis, pursuant to OAR 660-16-000 would be used to resolve those conflicts?

---

[1] Respondent's citations to the record will be to the Excerpt of Record as "ER", and the record from LUBA to the Court of Appeals as "LUBA Rec." As noted by LUBA, "[t]he county transmitted separate records for LUBA Nos. 2021-047 and 2021-052," *King,* slip op at 11 n 7 (ER-11, n 7), and LUBA referred to the record in LUBA No. 2021-047 as "2021-047 Record" and LUBA No. 2021-052 as "2021-052 Record." Petitioners simply cite to EJK record, which fails to distinguish between the two records at issue. Respondents will cite to the record as LUBA did, so that the records are distinguishable.

2. Was Policy 11, which contains the direction to use ODFW's residential density recommendations, adopted as part of Lane County's comprehensive plan and acknowledged by LCDC?

3. If no party is attempting to invalidate any part of the code or policy, then is there any legal basis to allege that the County's and LUBA's decisions constitute a collateral attack?

F. Response to Petitioners' Summary of Arguments

LUBA did not err. At the heart of Petitioners' faulty argument is that the County's Goal 5 program to protect Big Game Range rests solely on siting/clustering standards. The very obvious problem with this argument is that it fails to account for the direction in Policy 11 to use ODFW's residential density recommendations for Big Game Range. Policy 11's first and, and more importantly, second sentences were initially proposed as part of the Working Papers and subsequently adopted and acknowledged, unchanged, by LCDC. The proposal for clustering/siting requirements do not fully implement Policy 11 because the policy itself requires that residential density not exceed specific ODFW recommendations, a requirement that is not implemented in Lane Code, and, if the residential density requirement is exceeded, then the applicant must resolve the conflict through a Goal 5 ESEE process (via OAR 660-16-000). It is only the third sentence of Policy 11 that refers to siting/clustering standards.

Petitioners' theory only accounts for half of the County's program to protect Big Game Range, and ignores the other half, which relies on ODFW's residential dwelling recommendations. Moreover, under Petitioner's theory, the Wildlife Inventory Maps for Big Game Range, adopted pursuant to Goal 5, would be superfluous. Finally, if Petitioners were correct that the ODFW recommendations could be ignored, then the County would not be complying with a condition that LCDC required for acknowledgement of their comprehensive plan.

G. Summary of Facts

Respondent draws their summary of facts from LUBA's recitation of the facts:

> "Petitioners each applied for approval of a forest template dwelling pursuant to ORS 215.750, OAR 660-006-0027, and the Lane Code (LC) provisions implementing that statute and rule. The properties are contigiuos; each is approximately 12 acres in size; both are zoned Impacted Forest Lands (F-2), a zone that implements Statewide Planning Goal 4 (Forest Lands); and both are designated as Major Big Game Range.
>
> The planning director approved the applications, and intervenor appealed each decision to the hearings officer. After the appeals were filed, we issued our decision in *LandWatch Lane County v. Lane County*, __ Or LUBA __ (LUBA No. 2020-030, Jan 21, 2021) (*Nimpkish*). Briefly, in *Nimpkish*, we held that the county's Statewide Planning goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) program to protect big game habitat includes a comprehensive plan policy that limits the density of dwellings in big game habitat. We discuss our decision in *Nimpkish* in more detail later in this opinion.
>
> Based on our holdings in *Nimpkish*, planning staff recommended denial of the applications. The hearings officer held hearings on and denied each application. These appeals followed."

ER-3-4.

II. FIRST ASSIGNMENT OF ERROR – LUBA's decision was not unlawful in substance. LUBA's decision accounts for all relevant caselaw and for all portions of Policy 11, including the ODFW residential dwelling recommendations, that implement the County's Goal 5 program to protect Big Game Range. Policy 11 was adopted into the comprehensive plan in order to gain acknowledgment by LCDC. LUBA also accounted for the County's Flora and Fauna Working Papers and LCDC acknowledgment reports as part of the acknowledgment process. Petitioners' theory fails to account for ODFW's recommendations in Policy 11, as well as their adoption and acknowledgment.

A. Preservation of Error

Respondent does not contest preservation.

B. Standard of Review

Respondent does not disagree with standard of review.

C. Argument

1. Introduction

LUBA's decision is not unlawful in substance. Rather, LUBA's decision was well-reasoned and based on a series of cases, including *Save TV Butte v. Lane County*, __ Or LUBA __ (LUBA No. 2017-031, Jan 8, 2018), *Cattoche v. Lane County*, __ Or LUBA __ (LUBA No. 2018-109, May 22, 2019), and *LandWatch Lane County v. Lane County*, __ Or LUBA __ (LUBA No. 2020-030, Jan 21, 2021) (*Nimpkish*), as well as a host of documents, including Lane County's Flora and Fauna Working Papers, Addendum to the Flora and Fauna Working Papers,

and a series of DLCD staff reports issued during Lane County's comprehensive plan acknowledgment proceedings. To overturn this case, the Court of Appeals would have to effectively overturn LUBA's decisions in *Save TV Butte*, *Cattoche, Nimpkish,* and *King v. Lane County,* __ Or LUBA __ (LUBA Nos. 2021-047/052, October 15 ,2021) (*King)*, the consolidated decision on review here.

Petitioners begin from an erroneous first step, alleging that the County engaged in a "policy choice for managing big game habitat on land zoned F-2 through *only* clustering and siting development standards, …." Opening Brief at 10 (emphasis added). Petitioners narrow focus on only the siting/clustering provisions ignores the plain language of Policy 11 that requires an ESEE analysis in the absence of compliance with the ODFW residential density recommendations. *See* LUBA Rec 9 ("Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.*"*). That language was a product of the Working Papers, introduced at the beginning of the acknowledgment proceedings, was never changed during the acknowledgment proceedings, and, ultimately, adopted into the comprehensive plan and acknowledged.

2. Respondent's Response to Petitioner's "Legal Framework"

Petitioners have included a section entitled "Legal Framework" that contains argument, mischaracterizations, and omissions. It is important to review the recent caselaw about Lane County's program to protect big game range under Goal 5. But first, it is necessary to review the comprehensive plan policy at issue. Flora and Fauna Policy 11 (Policy 11) provides as follows:

> "Oregon Department of Fish and Wildlife [(ODFW)] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program."

LUBA Rec 9. The first sentence establishes that the County would use ODFW's residential density recommendations to determine the allowable residential units within regions of the County.[2] All parties agree that Lane County never divided the County into regions, which was a requirement of its acknowledged

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[2] Those recommendations are found in the working paper, and they provide for one dwelling per 80 acres in Major Big Game Habitat and one dwelling per 40 acres in Peripheral Big Game Habitat. *See* 2021-047 Record (Working Papers Addendum: "The primary conflict to big game … is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.").

comprehensive plan, and all parties agree that ODFW did establish residential densities for Major and Peripheral Big Game Habitat in the County. The second sentence provides that any residential density above what ODFW established will be considered to be a conflict with Goal 5 and that an ESEE analysis would be used to resolve the conflict. OAR 660-16-000 was the original Goal 5 codification of the ESEE analysis that was in effect at the time of acknowledgment. The final sentence commits the County to continue working with ODFW and rely upon existing land use regulations (such as the siting and clustering requirements that were adopted the same day as acknowledgment). This means that the Goal 5 program to protect Big Game Range is comprised of two parts: (1) ODFW's residential density recommendations (and the ESEE process if that density is exceeded); and (2) the siting/clustering provisions adopted by the County. Petitioners would have this Court ignore the first half of the program and rely solely on the second half of the program. As the Court can tell from simply reviewing the policy's plain language, Petitioners' narrow focus is unavailing and fails to account for the requirements in the first and second sentence, which are not implemented through land use regulations.

Turning to the caselaw addressing the County's Goal 5 program to protect Big Game Range, chronologically, the first case is *Save TV Butte v. Lane County*, __ Or LUBA __ (LUBA No. 2017-031, January 8, 2018). At issue in that case was

whether Lane County was required to protect Big Game Range Habitat at all, despite Lane County designating parts of the County as Major Big Game Range, Peripheral Big Game Range, and Impacted Big Game Range[3]. LUBA determined that the inventoried big game habitat is a "significant or important" resource (i.e., 1C) under Goal 5:

> "The county's Flora & Fauna Working Paper (1) identifies the Lane County Wildlife Inventory Maps that were developed based on ODFW big game range maps, (2) identifies the location, quality and quantity of the big game range, (3) identifies conflicts with big game range and (4) explains how those conflicts are to be mitigated by existing zoning. Supp. Rec. 4785-89. Based on what the county did in the Flora & Fauna Working Paper, it is most accurate to say the county adopted a 1C inventory decision, *i.e.,* that the inventoried big game habitat is 'significant or important.' While one can question whether the Flora & Fauna Working Paper complies fully with the Goal 5 rule, it is quite clear the county did not adopt a 1A decision, and despite the planner's suggestions to the contrary, it did not adopt a 1B decision either, because it adopted in the Flora & Fauna Working Paper, which explains how the county will go about implementing ODFW's density recommendations in big game ranges. We agree with petitioners that the county erroneously determined that its adopted inventory of big game habitat is not 'an acknowledged list of significant resources ...."

*Save TV Butte, s*lip op at 26-27.

Then, in *Cattoche v. Lane County,* __ Or LUBA __ (LUBA No. 2018-109, May 22, 2019), LUBA explained that the County did not "quantify a residential density allowed in the F-2 zone, and instead used the ODFW 40-acre standard for areas inventoried as Peripheral Big Game Range [and the 80-acres standard for

[3] Impacted Big Game Range has no protections, and ODFW did not adopt minimum residential density for Impacted Big Game Range.

areas inventoried as Major Big Game Range][4]," despite that the County's "initial intent was to preserve the 40-acre standard through zoning":

> "As discussed below, as part of its program to achieve Goal 5, the county has adopted a standard of no more than one dwelling per 40-acres to protect Peripheral Big Game Range (Residential Density Standard). That standard is found in the Flora & Fauna March 1992 Lane County Comprehensive Plan Working Paper Revisions document (Flora and Fauna Working Paper), [ ]. The Flora and Fauna Working Paper indicates that the initial intent was to preserve the 40-acre standard through *zoning*. However, the county's inclusion of the subject property in the Peripheral Big Game Range inventory is geographical and is not tied to or dependent on the current F-2 zoning. The challenged decision does not purport to remove the subject property from the Peripheral Big Game Range inventory and associated habitat protections, including the limitation of one dwelling per 40 acres.
>
> * * *
>
> The Flora and Fauna Working Paper the county incorporated into its findings explains that the Big Game Range protection:
>
> > 'premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.' [ ].
>
> The Flora and Fauna Working Paper states that the county will be divided into regions and the county will determine the number of existing residences and the:
>
> > 'additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of

[4] At issue in *Cattoche* was land designated Peripheral Big Game Range (one residence per 40 acres) and, here, it is Major Big Game Range (one residence per 80 acres).

> remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 [or 80] acres, whichever is lesser, will be recommended in the region for residential density for big game purposes.
>
> * * * * *
>
> If this figure is ever exceeded, it constitutes a conflict with Big Game Range. [ ].'

The Body of the Flora and Fauna Working Paper therefore states that the lesser of this figure or the county's 40-acre figure [or in this case the 80-acre figure because the property is designated Major Big Game] will be 'recommended in the region for residential density for big game purposes.' *Id.* If this figure is exceeded, there is a conflict and an ESEE analysis is required. *Id. Ultimately, however, the Flora and Fauna Working Paper identified as its selected strategy that 'ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.'* [].

In the challenged decision, the county did not identify the level of residential density allowed in the F-2 zone * * * *

We observe that the F-2 zone does not provide a general residential density standard. The use table for impacted forest zones lists six types of dwellings allowed in the F-2 zone. LC Table 16.211, 2.1-2.6. Those dwellings include: (1) caretaker residence for public parks and pubic fish hatcheries, (2) large tract forest dwelling, (3) lot of record dwelling, (4) template dwelling, (5) replacement dwelling, (6) temporary hardship dwelling. *Id.* A large tract forest dwelling may be allowed in the F-2 zone on a tract that is 'at least 160 contiguous acres or 200 acres in one ownership that are not contiguous but are in Lane County or adjacent counties and zoned for forest use.' LC 16.211(3)(a)(ii). The remaining five types of dwellings do not require a particular minimum lot or parcel size. LC 16.211(3). The minimum lot or parcel size for new or adjusted lots or parcels in the F-2 zone is 80 acres. LC 16.211(7); *see also* ORS 215.780 (providing generally applicable 80-acre minimum requirement); OAR 660-006-0026 (same). However, the F-2 zoning indicates that predominant land ownerships are 80 acres or less. *Accordingly, as we understand it, the county did not quantify a residential density allowed in the F-2 zone, and instead used the ODFW 40-*

> *acre standard for areas inventoried as Peripheral Big Game Range [and an 80-acre standard for areas inventoried as Major Big Game Range].*"

Cattoche, slip op *16-21 (emphasis added). Densities were not incorporated into the zoning – let alone the F-2 zoning – and regions were not identified. Instead, it was the 40- and 80-acre residential density standards for Peripheral and Major Big Game designations, respectively, that were adopted and this standard, in addition to the siting/clustering requirements, comprises the Goal 5 program to protect Big Game Range in Lane County.

Next, in *Nimpkish*, in reliance on OAR 660-006-0027(6)(a) and OAR 660-006-0025(6), the caselaw above, and the legislative history contained in the Flora and Fauna working papers and the DLCD acknowledgment reports, Petitioners argued that:

> "RCP Goal 5, Flora and Fauna Policy 11, applies to the application and that, because the density of the subject property with a forest template dwelling would be one dwelling unit per 10 acres, which would exceed the ODFW recommendations on overall density for protection of Major Big Game Range, the applicant could not be approved absent 'resolution in accordance with OAR 660-16-000.'"

*Nimpkish, s*lip op at 5-6. LUBA agreed and determined that:

> "the county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. Rather, the *second sentence* of RCP Goal 5, Flora and Fauna Policy 11, remains operative, and it provides that

'[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the count to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgment of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program. Moreover, the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d).

This view is supported by language in DLCD's final staff report leading to acknowledgment of the county's proposed program, DLCD explained its understanding of why the county's program did not conflict with Goal 5:

> 'Objectors are not correct that [RCP Goal 5, Flora and Fauna Policy 11,] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. *The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis.'* Record 212-13- (emphasis added).

We understand DLCD to have concluded that the county's Goal 5 program protects habitat because it adopts residential densities in accordance with ODFW's recommendations and requires that, if 'proposals are made' that exceed those densities, the county will conduct an ESEE analysis for that individual proposal.

* * *

The siting and clustering standards in LC 16.211(5)(a) do not quantify a residential density standard. A requirement to site dwellings '[n]ear

> dwellings on other tracts' is not a density standard. LC 16.211(5)(a)(i). Nor do the rest of the F-2 zone provisions support the hearings officer's interpretation. The use table for the F-2 zone lists six types of allowed dwellings, five of which do not require any particular parcel size. The F-2 zone does not provide any residential density standard at all. As we explained in *Cattoche v. Lane County*, the county has not quantified a residential density standard in the F-2 zone but 'instead use[s] the ODFW 40-acre standard [referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper] for areas inventoried as Peripheral Big Game Range.' 79 LUBA 466, 479 (2019). Similarly, here, we conclude that the county uses the one-dwelling-per-80-acres standard referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper to determine the allowed residential density in areas inventoried as Major Big Game Range."

Nimpkish, slip op at 12-15. LUBA concluded that Policy 11 applied to template dwelling applications, and where the density exceeds ODFW recommendations, an ESEE analysis must be prepared to resolve the conflict.

As for the challenged decision, the legal background provided by LUBA is worth repeating here:

> "Goal 5 is [intended] '[t]o protect natural resources and conserve scenic and historic areas and open spaces.' OAR 660-015-0000(5). In order to implement Goal 5, local governments are required to 'adopt programs that will protect natural resources.' *Id.* The county's program to protect natural resources was acknowledged by the Lane Conservation and Development Commission (LCDC) to comply with Goal 5 in 1984. The county's Goal 5 program includes a map and inventory of big game habitat determined to be 'significant or important' within the meaning of OAR 660-016-0000(5)(c) (Big Game Habitat Inventory). *Save TV Butte v. Lane County*, 77 Or LUBA 22, 40 (2018). As noted, the subject properties are included on that inventory as Major Big Game Range.
>
> One component of the county's acknowledged Goal 5 program is Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11 (Policy 11), which provides:

> 'Oregon Department of Fish and Wildlife [(ODFW)] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.'

The ODFW recommendations referenced in Policy 11 consist of an overall residential density standard of one dwelling per 80 acres in Major Big Game Range and one dwelling per 40 acres in Peripheral Big Game Range.

The application of Policy 11 to proposed development in big game habitat was at the heart of the parties' dispute in *Nimpkish*, and it is one of the issues in these appeals. In *Nimpkish,* we concluded that Policy 11 is part of and implements the county's acknowledged Goal 5 program to protect big game habitat and that the county was required to comply with the second sentence of Policy 11, which provides that proposed densities above ODFW's recommendations conflict with Goal 5 and that conflicts must be resolved through application of the Goal 5 rule. The hearings officer in *Nimpkish* concluded that Policy 11 did not apply to proposed dwellings on existing parcels and that it applied only in the context of land divisions and zone changes. We rejected that interpretation, concluding that nothing in the text, context, or legislative history of Policy 11 suggests that its applicability is so limited. To give some effect to the second sentence of Policy 11, we held, the county must apply Policy 11 to residential development where the proposed density exceeds the ODFW recommendations. Because it was undisputed in *Nimpkish* that the proposed density exceeded the applicable limitation of one dwelling unit per 80 acres, we further concluded that the proposed density conflicted with Goal 5. As required by the second sentence of Policy 11, the proposed density could be 'allowed only after resolution in accordance with OAR 660-16-000.' Accordingly, we remanded the decision for further proceedings.

In the present cases, the hearings officer relied on our holdings in *Nimpkish* that (1) Policy 11 applies to proposed residential development of

> existing parcels within big game habitat and (2) an applicant for such development must either demonstrate that the proposed development complies with the applicable density standard or seek resolution of the conflict under the Goal 5 rule. As discussed under the second assignment of error, petitioners argued that Policy 11 could be satisfied by demonstrating that the average residential density across all Major Big Game Range in the entire county is less than one dwelling per 80 acres. The hearings officer rejected that effort to demonstrate that the proposed dwellings comply with the applicable density standard, concluded that the proposed dwellings in fact do not comply with the applicable density standard, and, because petitioners had not attempted to resolve the conflicts under the Goal 5 rule, denied both applications."

ER-4-8.

Petitioners' "legal framework" section alleges that "LCDC acknowledged the … siting standards, finding that they not only implement the intent of Flora and Fauna Policy #11, but also comply with the Goal 5 requirements for big game habitat on F-2 land without the use of any density requirements or minimum parcels sizes." Opening Brief at 13. This statement is patently false. At no point did LCDC state that ODFW's residential density recommendations were no longer part of the program to protect Big Game Range pursuant to Goal 5. The density recommendations began in the Working Papers, then proposed in the LCDC acknowledgment reports, and finally adopted into the acknowledged comprehensive plan.

The applicant also argues under the "legal framework" that "[c]compliance with plan policies is not required for template dwelling applications[.]" Opening Brief at 15. As noted above, in *Nimpkish,* and in LUBA's decision on review, two

administrative rules require that applicable comprehensive plan policies apply to template dwelling applications, which Petitioners failed to cite in their brief, despite being the first step in the analysis:

- "OAR 660-006-0027(6)(a) provides, in relevant part, that '[a] proposed 'template' dwelling under this rule is allowed only if '[i]t will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law.' OAR 660-006-0025(6) provides that '[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands." *Nimpkish*, slip op at 8, n 5.

- "Further, as we noted in *Nimpkish*, OAR 660-006-0027(6)(a) and OAR 660-006-0025(6), which LCDC adopted to implement ORS 215.750, specifically allow the county to apply standards in its comprehensive plan to forest template dwellings. __ Or LUBA at __ n 5 (slip op at 8 n 5[)]. As far as petitioners have established, there is no statutory, code-based, or other legal prohibition on the county applying Policy 11, or any other applicable comprehensive plan provision, to approval or denial of forest template dwellings; in the F-2 zone." *King,* slip op at 11-12 (ER-11-12); *see also King*, slip op at 12, n 8 (ER-12 n 8).

Either Petitioners have failed to appreciate the relevance of these administrative rules, which are central to both *Nimpkish* and *King*, or Petitioners intentionally omitted any mention of these rules in their briefing.

Petitioners next cite to Policy 11 and allege that: "LUBA reads Policy #11's second sentence in isolation, and it assumes that the only way to demonstrate compliance with Goal 5 is through density standards or through the Goal 5 rule ESEE process set forth in OAR 660 division 16." Opening Brief at 15. Again,

Petitioners misstate LUBA's conclusion in *Nimpkish* and *King*. LUBA thoroughly addressed all of Policy 11, the LCDC acknowledgment reports, the Flora and Fauna working papers wherein ODFW delineated its residential density recommendations, administrative rules ignored by Petitioners, and so forth.

The legislative history demonstrates that the ODFW density standards *and* siting standards/clustering provisions are how LCDC understood Lane County to implement Goal 5 protections for big game range. In fact, to do otherwise would ignore the Policy 11's specific requirement for compliance with ODFW's residential density recommendations. Petitioners allege that "LCDC acknowledged a different approach for F-2 zoned lands (as well as EFU-zoned lands) as sufficient to comply with the Goal 5 requirements for big game habitat in Lane County," Opening Brief at 15, *all the while ignoring that Policy 11 is part of the acknowledged comprehensive plan*. Petitioners entire case is premised upon ignoring the central policy at issue and the relevant excerpts from the Working Papers and LCDC's acknowledgement reports.

3. Petitioners mischaracterize LCDC's acknowledgement process for Lane County's Goal 5 Program to Protect Big Game Range

Petitioners mischaracterize LCDC's acknowledgment process. At the heart of Petitioners' shortcomings is the failure to account for the first two sentences of Policy 11, which require an ESEE analysis if ODFW's residential density recommendations were exceeded. These sentences were settled on early in the

acknowledgment process and were never changed or removed. The remaining issue was to either double the minimum lot size or implement siting/clustering requirements, and the County chose the latter. What was acknowledged, therefore, was a combination of Policy 11's requirement for compliance with ODFW's residential density recommendations and the siting/clustering requirements as the Goal 5 program to protect Big Game Range. As noted by LUBA, the siting/clustering requirements do not impose minimum densities. *See Nimpkish*, slip op at 15 ("The siting and clustering standards in LC 16.211(5)(a) do not quantify a residential density standard. A requirement to site dwellings '[n]ear dwellings on other tracts' is not a density standard. LC 16.211(5)(a)(i).").

Petitioners include a chronology of Lane County's comprehensive plan acknowledgment process, specifically for Goal 5 compliance. Petitioners allege that the "course of the acknowledgment proceedings, the options provided to the County for demonstrating goal 5 compliance, and the policy choice the County made and LCDC acknowledged lay bare the error in LUBA's interpretation and decision." Opening Brief at 17. Just as Petitioners omitted the caselaw on Lane County's Goal 5 compliance and the relevant administrative rules, Petitioners omit important components of the acknowledgment process that run counter to Petitioners' theory.

Petitioners point to the 1982 Working Paper, wherein the County proposed one methodology that included "dividing the County into 10 to 20 regions." It is undisputed that such a methodology has never been put into place by the County, as noted in both *Cattoche* and *Nimpkish*. *See supra*. The County proposed the first two sentences of what would become Policy 11 (then, referred to as Policy 12) in the 1982 Working Paper, ER-42, and those two sentences were ultimately adopted and acknowledged. Petitioners' interpretation does not account for these first two sentences, and the failure to give any effect to those sentences means that, under the Petitioners' interpretation, the County would not apply a standard that the County proposed as a condition of acknowledgment. Petitioners point to what it refers to as "a clear policy shift in how the County would approach big game habitat density standards," Opening Brief at 18, but the very obvious problem for Petitioners is that the first two sentences of policy 11 were adopted and acknowledged, unchanged from their initial proposal. If there was a change in policy, it did not affect those two sentences.

Petitioners then broadly allege that:

> "The County abandoned the 'regional carrying capacity' methodology, deleting the respective findings from the Working Paper, in favor of continuing to apply residential development restrictions and acreage requirements to commercial timber zoning (F-1) and some other zones, applying clustering and siting standards where appropriate elsewhere (F-2 and EFU), and utilizing the ESEE process when zoning provisions do not succeed in pre-empting conflicts (i.e., development proposals cannot comply

> with the relevant density standards or clustering and siting standards). ER-39."

The citation to ER-39 is what replaced some deleted language, which has been disputed. Policy 11, itself, however, was never deleted, and, in fact, Policy 11 was adopted and acknowledged. Under Petitioners' reading, Policy 11's direction to comply with ODFW's density recommendations and Goal 5 would be entirely lost in favor of only siting/clustering requirements. Again, the inescapable problem for Petitioners *is that Policy 11 was adopted and acknowledged* and there are no land use regulations in Lane Code implementing the residential density standard in Policy 11. As noted by LUBA in *Nimpkish*, siting/clustering standards do not quantify a minimum density standard, so those standards do not implement ODFW's minimum density recommendations, slip op at 15, and, importantly, Petitioners do not challenge that holding, here. Siting/clustering standards are addressed in Policy 11's final sentence, and that final sentence is implemented by those standards.

As to what was deleted, LUBA explained in the challenged decision that, regardless of whether a paragraph or more was deleted, the conclusion is the same: the program to protect Big Game Range includes (1) ODFW's minimum density recommendations and (2) siting/clustering standards. LUBA explained:

> "Petitioners argue that the language that we relied upon to interpret the reference to 'regions of the County' in the first sentence of Policy 11 was deleted by the Addendum and replaced with different language that appears

to downplay, as a mere 'numbers game,' the regional approach. The new language instead focuses on two other measures: minimum parcel sizes for new parcels in forest zones and siting standards that require clustering of dwellings.

Petitioners argue that the deletion of the language discussing a regional approach, and the inclusion of new language referring to clustering and siting standards, supports their view that the county proposed, and LCDC acknowledged, abandoning any reliance on density limitations as part of the county's Goal 5 program to protect big game habitat. Instead, petitioners argue, the county chose to rely solely on the siting standards at LC 16.211(5) to protect big game habitat.

* * *

Turning first to the Addendum, intervenor initially responds that it is unclear whether the new language in the Addendum replaced all or only a portion of the original language in the Working Paper describing the regional approach. In any case, intervenor argues, the new Addendum language may represent a step back from primary reliance on the regional approach, *but nothing in the Addendum purports to completely abandon the ODFW density recommendations or suggests that siting or clustering standards, in themselves, are sufficient to establish compliance with Goal 5.*

We agree with intervenor that *nothing in the addendum purports to eliminate or reduce the role of the ODFW density recommendations in the county's program to protect big game habitat. The Addendum left in place the original Working Paper language stating that an overall residential density greater than one dwelling per 80 acres in Major Big Game Range conflicts with Goal 5. See* n 9. Notably, both the Working Paper and the Addendum include language describing a process to ensure compliance with Goal 5 in the event that other identified measures (the regional approach, minimum parcel sizes, and clustering) are insufficient – by applying the Goal 5 rule. In the county's Goal 5 program to protect big game habitat, the process to ensure compliance with Goal 5 is operationally embodied in the second sentence of Policy 11. The county added other measures, as requested by ODFW, but it chose to leave that process in place. LCDC acknowledged Policy 11, and the other components of the county's Goal 5 program, with that process in place. If petitioners are correct that the

county's Goal 5 program consists entirely of the siting standards at LC 16.211(5), then the second sentence of Policy 11 is a nullity.

In our view, the legislative history is reasonably clear the LC 16.211(5) clustering standards were intended to supplement, rather than replace, the other components of the county's Goal 5, including Policy 11. The July 19, 1984 DLCD staff report concluded that Policy 11 is insufficient to ensure compliance with Goal 5, and it ultimately required additional measures, but there is no suggestion in any legislative history that the county or DLCD believed that siting standards or any other measures could eliminate the need for Policy 11's density limitations. The July 19, 1984 DLCD staff report addressed criticism that Policy 11 is inadequate:

> 'Objectors are not correct that [Policy 11] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through [Policy 11], however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2 [Marginal Lands] and EFU Zones which ensure that ODFW's density standards will be achieved.' 2021-047 Record 149; 2021-052 record 150.'

The foregoing clearly illustrates DLCD's expectation that, while additional measures were necessary to ensure full compliance with Goal 5, the ODFW density standards embodied in Policy 11 would continue to play a role in evaluating development proposals. Nothing in the acknowledgment process eliminated or vitiated the applicability of those density standards to proposed residential development in big game habitat.

* * *

For purposes of the first assignment of error, however, we reject petitioners' arguments that LUBA erred in concluding in *Nimpkish* that Policy 11 is applicable as an approval criterion to development proposals that may exceed the ODFW density recommendations."

Petitioners continue their protests but cannot escape the fact that Policy 11's first two sentences were adopted and acknowledged and are expressed in mandatory language. Petitioners acknowledge that Policy 11 complies with Goal 5. Opening Brief at 21 ("the Staff Report disagreed with the objectors, in part, and concluded that the amended RCP Policy #11 (the same now as it was in 1984) complies with Goal 5."). That should be the end of the inquiry because Petitioners concede that Policy 11, including its first two sentences, complies with Goal 5, and there is no argument that those first two sentences have ever been implemented in the code and there is no argument that the siting/clustering standards do not quantify a minimum residential density. *Nimpkish,* slip op at 15. In fact, LCDC noted that "ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations," but that language *was included* in the adopted and acknowledged Policy 11.

Petitioners next point to the following quote: "[w]ithout siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable)." This is essentially the same directive given in the In-Order-To-Comply: either enact siting/clustering requirements or increase the minimum lot size. As noted by Petitioners, the In-Order-To-Comply directive states that "the zones must either require larger minimum lot sizes in the Big Game habit portions

of those zones or contain clustering requirements in those areas." ER-57. The County did not double the minimum lot sizes and, instead, adopted siting/clustering standards. That choice did not affect Policy 11's requirement to comply with ODFW's residential density standard, as noted by LCDC: "Densities above those recommended by ODFW would certainly constitute a conflict with big game. The county has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made." ER-56. That policy was already proposed and never changed but more was required: either double the minimum lot sizes or adopt siting/clustering standards. The County chose the latter, in addition to the ODFW residential density recommendations. The September DLCD staff report settled on one-half of the protections for Big Game Range, and the other half (the ODFW recommendations) had already been settled prior to the September staff report. Most importantly, those ODFW recommendations were adopted and acknowledged.

Petitioners believe that siting/clustering standards are the only mechanism by which the County's comprehensive plan could be acknowledged and comply with Goal 5. That position, however, ignores the adopted and acknowledged language in Policy 11. LCDC explicitly understood "[d]ensities above those recommended by ODFW would certainly constitute a conflict with big game," and

that "[t]he county has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made." ER-56. LUBA and Respondent recognize LCDC's acknowledgement of the ODFW recommendations and the ESEE to resolve conflicts are one-half of the County's program to protect Big Game Range. The other half of the program, as required by ODFW and acknowledged by LCDC, was either doubling the minimum lot size or implementing siting/clustering standards. As noted by Petitioners, those siting/clustering standards were adopted into Lane Code, but ODFW's minimum density recommendations were also left in place in the Policy 11.

Petitioners then steer off course by citing to DLCD's summary about forestlands, under Goal 4, instead of Goal 5. *See* Opening Brief at 23-24. The two block quotes do not reference or otherwise affect the acknowledgment process for Goal 5. Petitioners' theories about the F-1 and F-2 zone are a red herring, as they are departure from the Goal 5 program to protect Big Game Range.

Petitioners next present this Court with a false statement, alleging that "[i]mposing ODFW minimum parcel sizes for F-2 land would have, due to the 80-acre or less standard in the Plan to apply the F-2 zone, prevented all or nearly all residential development on those parcels." Under ODFW's residential density recommendations, residential development is not prohibited. Instead, if residential

density is greater than one residence per 80 acres in Major Big Game Range (or 40 acres in Peripheral Big Game Range), then that is considered a conflict with Goal 5, and an ESEE analysis is necessary to resolve that conflict, as provided by the plain language of Policy 11 and acknowledged by LCDC.

In apparent disregard for the plain language of Policy 11, Petitioners confidently and incorrectly allege that "[t]he County did not adopt ODFW recommended minimum parcel sizes for the F-2 or EFU zones as a Goal 5 implementing measure." Petition at 26. There was no need to implement ODFW's recommendations in the code because they were already in place in Policy 11 and the Working Papers, and that language was never restricted, removed, or negated.

At Opening Brief 27, Petitioners point to a 1986 planning staff memo that concedes that both Policy 11 and the adopted clustering requirements constitute the Goal 5 program to protect Big Game Range:

> "Goal 5 Flora and Fauna Policy #11 together with the clustering requirements of the F-2/RCP zone (LC 16.211(8)) and of the EFU/RCP zone (LC 16.212(8)) determine allowable residential densities within the Big Game Range Habitat areas."

It is Policy 11 "*together with the clustering requirements*" that determines the allowable residential density. In other words, it is both the policy and clustering requirements. The policy is one half of the Big Game Range protections and the siting/clustering standards is the other half. This is exactly what Respondent argued in *Nimpkish* and in the consolidated cases on review, and LUBA has

agreed. That 1986 memo goes on to reiterate that LCDC required the County, at the request of ODFW, to either double the minimum lot sizes or impose clustering requirements. *See* Opening Brief at 27. The operative portion of Policy 11 *had already been settled* and was not otherwise changed. The only remaining loose end was to either increase the minimum lot size or adopt siting/clustering standards, and the County chose the latter to gain acknowledgment.

4. Response to Petitioner's Argument.

Petitioners continue to rehash the same argument, and Respondents are compelled to respond. Again, Petitioners misconstrue the process and its conclusion when they allege that "LCDC found the County's F-2 residential code amendments, made during the acknowledgment process, as adequately implementing the intent of the big game habitat protections afforded by Policy #11 by using clustering and siting standards and without the use of ODFW recommended minimum parcel sizes." Opening Brief at 28. As noted by Petitioners in their brief, the first two sentences of Policy 11 were settled early in the process and those sentences never changed. LCDC specifically acknowledged that the County chose to prepare an ESEE analysis if there was a conflict with ODFW's residential density recommendations. At no point did LCDC reject that policy choice and, the Court can be certain of this, because that language was adopted and acknowledged, and the siting/clustering requirements do not quantify

a minimum residential density standard. In fact, Petitioners slip up and concede that it is "both the adopted policies and the adopted code provisions" that comprise the program to protect Big Game Range. Opening Brief at 28-29.

Petitioners also fail to account for the Wildlife Inventory Maps, referenced in *Save TV Butte*, that identify where, in the County, the Big Game habitat is Major, Peripheral, or Impacted. The ODFW recommendations are couched in terms of Major and Peripheral (and there are no protections for Impacted Big Game habitat). Without the ODFW recommendations, there would be no greater or different protections afforded to Major or Peripheral. The entire premise of ODFW's recommendations is that some Big Game Range habitat is of greater quality than others and Peripheral Big Game Range has a greater density (40 acres per dwelling) than Major Big Game Range (80 acres). *See* ER-6 ("The ODFW recommendations referenced in Policy 11 consist of an overall residential density standard of one dwelling per 80 acres in Major Big Game Range and one dwelling per 40 acres in Peripheral Big Game Range."). The Wildlife Inventory maps and ODFW big game range maps would become superfluous under Petitioners reading, and those maps are inventoried under Goal 5. *See Save TV Butte,* slip op at 26 ("The county's Flora and Fauna Working Paper (1) identifies the Lane County Wildlife Inventory Maps that were developed based on ODFW big game range

maps, (2) identifies the location, quality and quantity of the big game range, (3) identifies conflicts with big game range ....").

5. LCDC's acknowledgment legislative history establishes that Policy 11 and clustering/sting requirements are the protections for Goal 5 Big Game Range

Petitioners continue to rehash their same argument under a different heading, alleging that "[t]he County elected to use siting and clustering standards to comply with the Goal 5 big game habitat protection requirements contained in Policy 11 for land zoned F-2 and EFU, instead of and without reliance on ODFW recommended minimum lot sizes or density standards for those zones." Opening Brief at 30. Petitioners have not pointed to anything in the DLCD staff reports that changes the conclusion about ODFW's "recommended densities as the approach to resolve conflicts between dwellings and big game range." R 2021-052 at 908 (R 2021-052 at 146); *id.* at 912 (R 2021-052 at 150) ("ODFW is correct that its recommended density standards ... would constitute an approach to resolve and/or prevent conflicts between dwellings and big game."). More importantly, DLCD noted that ODFW's objections required *both density standards and siting or clustering requirements*: "ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones." R 2021-052 at 908 (R

2021-052 at 146-147) (emphasis added). LCDC understood that Policy 11 contained an important component of the Goal 5 protections because it noted that "[d]ensities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made." ER-56. Policy 11 already "adopt[ed] ODFW's density recommendations in big game habitat areas" and the only remaining issue is whether, as directed by the DLCD, the County would double the minimum lot size or adopt siting/clustering standards, in addition to what was already included in Policy 11.

Petitioner next takes a detour into allegations of what appears to be a collateral attack argument, alleging that "[t]he time to have challenged that approach and LCDC's conclusions concerning the relationship between the adopted code provisions, Policy #11 and Goal 5 was at the time of acknowledgment." Opening Brief at 30-31. Ironically, it is the applicant that is challenging the meaning of the adopted code provisions, Policy 11, and Goal 5 acknowledgment process. Regardless, Petitioners have already concluded that Policy 11 is ambiguous, and no party (nor did LUBA) attempts to invalidate Policy 11. As such, any allegation of collateral attack is meritless.

6. Response to Petitioners' arguments about "Planning efforts cited in Policy #11."

Petitioners next turn to the "planning efforts" for Policy 11. *See* Opening Brief at 32. Petitioners point to the intention to "break the County down into regions," but, as demonstrated above, Lane County never fulfilled that component of their comprehensive plan, as explained in *Cattoche. See supra*. LUBA also understood that the County's failure did not allow the County to simply abandon its Goal 5 program to protect Big Game Range. *See Nimpkish,* slip at 13 ("'To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the count to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgment of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program."). Notably, Petitioners do not challenge *Cattoche's* holding here nor did Petitioners do so before LUBA. In apparent ignorance of *Cattoche*, Petitioners fail to understand that "the Flora and Fauna Working Paper identified as its selected strategy that 'ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.'" *Cattoche*, slip op at 19. Petitioners attempt to plug the holes in its theory, a theory already disproven by LUBA's explanation in

Cattoche, by alleging that the reason that the relevant language remained in Policy 11 is "anyone's guess" and "lost to history."' Opening Brief at 33.

Petitioners next turn to the third sentence of Policy 11. Opening Brief at 33. Petitioners allege that the County "ultimately adopted clustering and siting standards," pursuant to this sentence, which is correct, but that leaves the first two sentences of Policy 11 unresolved under Petitioners' theory. The first two sentences, as explained throughout, are one-half of the Goal 5 program to protect Big Game Range and the last sentence is the second half of the program. There is simply no support for Petitioners' position, nor did LUBA agree, that only the third sentence is intended to fully implement the program embodied in Policy 11.

In apparent contradiction to their argument, Petitioners also allege, rather confusingly, that "the first two sentences of Policy #11 recognize that the County will apply the ODFW recommended density standards where appropriate." Opening Brief at 34. There is no logic behind this allegation and there is no attempt to explain when it is "appropriate" to apply the density standards. ODFW, the Working Papers, and the LCDC acknowledgment reports already inform when the residential density recommendations are to be applied. Petitioners are simply not presenting a coherent legal theory.

7. <u>LUBA did not commit an interpretive error in *Nimpkish* and *King*</u>

Petitioners allege that *Nimpkish* contained an incomplete record. Respondent disputed that below[5], *See* LUBA Rec at 88-89, but, regardless, Petitioners maintain that the complete record has been presented to LUBA in the appealed decision. LUBA, however, continued to disagree with Petitioners in *King*. In other words, the unfounded notion that *Nimpkish* was based on an incomplete record is irrelevant because Petitioners have apparently produced the full record here, and LUBA continues to disagree.

Petitioners allege that "LUBA's decision effectively disregards the plain legislative history that demonstrates that the County's policy choice and intent to implement big game protections in the F-2 zone through clustering and siting standards only, …." Opening Brief at 35. To accept Petitioners' position, this Court must entirely ignore the entirety of Policy 11 and only focus on the third sentence. That, unfortunately, would make the first two sentences superfluous, as well as the Wildlife Inventory Maps adopted by the County, which identify the different Big Game Range habitats (*i.e.*, Major, Peripheral, Impacted). ORS 174.010. Petitioners' allegation that that "LUBA's interpretive exercise erred by proceeding as if acknowledgment never happened" is simply unfounded. Over the

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[5] At no point have Petitioners identified what documents were allegedly omitted in *Nimpkish*. LandWatch Lane County was party to both *Nimpkish* and *King*, and established that all acknowledgment reports and working papers were included *Nimpkish* and *King*.

course of *Cattoche*, *Nimpkish*, and *King*, the acknowledgment process has been repeatedly scrutinized.

8. LUBA did not misunderstand the framework for Lane County's Goal 5 Big Game Range program acknowledged by LCDC

Without relying on all of the relevant caselaw, Petitioners incredulously allege that LUBA either misunderstood the program to protect big game range or ignored the options DLCD gave the County for complying with Goal 5. Opening Brief at 35. As is evident from *Save TV Butte, Cattoche, Nimpkish,* and *King*, it remains to be seen what has been ignored, and LUBA has fully addressed the acknowledgment process and the resulting program to protect Big Game Range. Indeed, Petitioners do not identify any ignored provisions. Instead, Petitioners repeat their basic claim that only siting/clustering requirements constitute the program to protect Big Game Range.

Petitioners focus on LUBA's finding that "[t]he county added other measures, as requested by ODFW, but chose to leave that [*i.e.*, ODFW's recommended residential densities] process alone. ER-20." Opening Brief at 35. Instead of addressing the first two sentences of Policy 11 and accounting for their adoption and acknowledgment, Petitioners narrowly focus, as they have repeatedly done, on a final condition to either double the minimum lot sizes or adopt siting/clustering requirements. Again, ODFW's residential density recommendations remained unchanged in Policy 11.

Importantly, as LUBA noted, if Petitioners (and others proposing similar development of Lane County's resource lands) are correct, then the County will have not complied with a requirement LCDC understood that the County would impose to gain acknowledgment. As noted by LUBA, "[t]o find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the County to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgment of its Goal 5 program[.]" Nimpkis, slip op at 13. The very premise of Petitioners' argument is that the requirements imposed to gain acknowledgment could not have been satisfied by the County. Petitioners have wrapped themselves into such contradictions that they are arguing that the County did not implement the conditions and requirements necessary to gain acknowledgment from LCDC.

Petitioners next return to their theory about what was deleted and what was not deleted in the Flora and Fauna Working Paper, but that has already been addressed above, *see supra*.

9. Petitioners' unfocused argument about the correct weight placed upon the Working Papers and the Acknowledgment procedures is unavailing.

On one hand, Petitioners fault the decision in *Nimpkish* for not considering all of the materials below[6], including the Working Papers and Addendum, and, on the other hand, Petitioners allege that "LUBA's position relies too heavily on the Flora and Fauna Working Paper and the Addendum." Opening Brief at 39. Petitioners would like to have their cake and eat it too. Petitioners then allege that LUBA ignored a host of documents that LUBA clearly did, in fact, consider, especially if one considers the caselaw that Petitioners ignored.

Petitioners then acknowledge that LUBA treated the working paper as "background information * * * to be used to help interpret and understand [the RCP]," ER-14, which is consistent with how LUBA has treated such working papers in past cases. *See* Opening Brief at 39-40. Petitioners allege that the Working Papers do "not reflect the options DLCD gave to the County for bringing the Lane Code into compliance with Goal 5 or the choices the County made during the acknowledgment proceedings. Again, the obvious problem is that the first two sentences of the Comprehensive Plan were initially settled upon during the DLCD process, drew upon the Working Papers, and ultimately adopted within Policy 11. The subsequent options to either double the minimum lot size or enact siting/clustering requirements did not negate or affect the requirement for ODFW's

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[6] Again, Respondents disagree, and Respondents demonstrated below that all relevant materials were before the local government and LUBA in both *Nimpkish* and *King*.

residential density recommendations and the possibility for an ESEE analysis to resolve the conflict in the event recommended densities were exceeded. Had there been an intent to do away with ODFW's residential density recommendations, then that language would have been removed from the Policy. Again, Petitioners cannot explain away the policy's plain language. Petitioners attempt to sow confusion by alleging that LUBA focused on the Working Papers instead of the acknowledgment proceedings is simply unfounded. Over the course of numerous cases, LUBA has exhaustively addressed the Working Paper, the Addendum, and the LCDC acknowledgment reports.

IV. Conclusion

For the reasons set forth above, Respondent respectfully requests that this Court affirm LUBA's Order and Opinion.

s/ Sean Malone Dated: November 24, 2021

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CERTIFICATE OF SERVICE

I certify that on November 24, 2021, I filed the original of the foregoing with the State Court Administrator, by electronic filing.

I also certify that on said date, I served a copy of said documents upon each of the following persons by using the court's electronic filing system:

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CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief length

I certify that: (1) this brief complies with the word count limitation in ORAP 5.05(2)(d), and; (2) the word county of this brief (as described in ORAP 5.05(1)(b)) is 9978.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnote as required by ORAP 5.05(4)(f).

s/ Sean Malone Dated: November 24, 2021

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BEFORE THE COURT OF APPEALS
OF THE STATE OF OREGON

EDWARD J. KING and E. J. K. INVESTMENTS,
Petitioners,

vs.

LANE COUNTY and LANDWATCH LANE COUNTY,
Respondents.

LUBA No. 2021-047/052

CA A177205

RECORD TRANSMITTAL

I, Melissa M. Ryan, Board Member of the Land Use Board of Appeals, pursuant to ORS 197.850(5), list below and transmit herewith a certified copy of the original of the entire record under review in the above proceedings.

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EXHIBITS

Record of Local Proceeding (Provided to Court of Appeals Only***)

Record (2021-052) - 1 Flash Drive	06/17/21
Record (2021-047) - 1 Flash Drive	06/21/21
Record (2021-047/052) - 1 Flash Drive	06/23/21

***The Record of Local Proceeding was previously provided to the parties or their attorneys during the LUBA proceeding. Please contact LUBA at (503) 373-1265 if you require an additional copy of the Record of Local Proceeding.

Recording of Oral Argument in LUBA Proceeding 08/24/21

Dated this 4th day of November 2021.

Melissa M. Ryan
Board Member

Certificate of Mailing

I hereby certify that I served the foregoing Record Transmittal for LUBA No. 2021-047/052 on November 4, 2021, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 4th day of November, 2021.

Erin Pence
Executive Support Specialist

Vanessa Steele
Executive Support Specialist

LUBA
NOV 01 2021 PM 02:25

IN THE COURT OF APPEALS OF THE STATE OF OREGON

ORIGINAL

EDWARD J. KING, and E.J.K. INVESTMENTS,
Petitioners,

v.

LANE COUNTY and LANDWATCH LANE COUNTY,
Respondents.

Land Use Board of Appeals
Nos. 2021-047, 2021-052



CA A 179205

EXPEDITED PROCEEDING UNDER ORS 197.850

PETITION FOR JUDICIAL REVIEW OF EDWARD J. KING and E.J.K. INVESTMENTS

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LUBA Record 000001

Petitioners Edward J. King and E.J.K. Investments seek judicial review of the final decision of the Land Use Board of Appeals in LUBA case numbers 2021-047 and 2021-052, in which LUBA issued a Final Opinion and Order dated October 15, 2021 The LUBA proceeding was a consolidation of two appeals

The parties to the LUBA proceeding in 2021-047 were:

Petitioners: Edward J. King.

Respondent: Lane County

Respondent-Intervenor: LandWatch Lane County

The parties to the LUBA proceeding in 2021-052 were:

Petitioners: E.J.K. Investments

Respondent: Lane County

Respondent-Intervenor: LandWatch Lane County

The name, bar number, address, phone number, and email address of the attorney for each party is:

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A.

Attached to this petition is a copy of LUBA's Final Opinion and Order for which review is sought.

B.

Petitioners participated in the local proceedings before Lane County and was the Petitioner in each LUBA appeal, which resulted in the Final Opinion and Order for which review is sought. Petitioners therefore have statutory standing under ORS 197.850 to invoke jurisdiction of the Court.

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LUBA Record 000003

C.

Petitioners are not willing to stipulate that the agency record may be shortened.

DATED: October 28, 2021.

Respectfully submitted,

/s/ Bill Kloos

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LUBA Record 000004

LUBA
OCT 15 2021

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

EDWARD J. KING,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-047

E.J.K. INVESTMENTS,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-052

FINAL OPINION
AND ORDER

Appeal from Lane County.

LUBA Record 000005

Bill Kloos filed the petition for review and reply brief and argued on behalf of petitioners.

No appearance by Lane County.

Sean Malone filed the response brief and argued on behalf of intervenor-respondent.

RYAN, Board Member; ZAMUDIO, Board Chair; RUDD, Board Member, participated in the decision.

AFFIRMED 10/15/2021

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

In these consolidated appeals, petitioners appeal two hearings officer decisions denying applications for forest template dwellings.

MOTION TO INTERVENE

Landwatch Lane County (intervenor) moves to intervene on the side of the county. There is no opposition to the motion, and it is allowed.

FACTS

Petitioners each applied for approval of a forest template dwelling pursuant to ORS 215.750, OAR 660-006-0027, and the Lane Code (LC) provisions implementing that statute and rule.[1] The properties are contiguous; each is approximately 12 acres in size; both are zoned Impacted Forest Lands (F-2), a zone that implements Statewide Planning Goal 4 (Forest Lands); and both are designated as Major Big Game Range.

The planning director approved the applications, and intervenor appealed each decision to the hearings officer. After the appeals were filed, we issued our

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[1] Briefly, ORS 215.750 and OAR 660-006-0027 allow a county to approve a dwelling on land zoned for forest use if (1) all or part of a prescribed number of lots or parcels that existed on January 1, 1993, are located within a 160-acre square "template" that is centered on the center of the subject parcel and (2) at least three dwellings existed on the other lots or parcels on January 1, 1993. The prescribed number of lots or parcels differs depending on the quality of the soils on the subject parcel and whether the parcel is located in eastern or western Oregon.

decision in *Landwatch Lane County v. Lane County*, ___ Or LUBA ___ (LUBA No 2020-030, Jan 21, 2021) (*Nimpkish*). Briefly, in *Nimpkish*, we held that the county's Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) program to protect big game habitat includes a comprehensive plan policy that limits the density of dwellings in big game habitat. We discuss our decision in *Nimpkish* in more detail later in this opinion.

Based on our holdings in *Nimpkish*, planning staff recommended denial of the applications. The hearings officer held hearings on and denied each application. These appeals followed.

INTRODUCTION

Goal 5 is "[t]o protect natural resources and conserve scenic and historic areas and open spaces." OAR 660-015-0000(5). In order to implement Goal 5, local governments are required to "adopt programs that will protect natural resources." *Id.* The county's program to protect natural resources was acknowledged by the Land Conservation and Development Commission (LCDC) to comply with Goal 5 in 1984. The county's Goal 5 program includes a map and inventory of big game habitat determined to be "significant or important" within the meaning of OAR 660-016-0000(5)(c) (Big Game Habitat Inventory). *Save*

TV Butte v. Lane County, 77 Or LUBA 22, 40 (2018).[2] As noted, the subject properties are included on that inventory as Major Big Game Range.[3]

One component of the county's acknowledged Goal 5 program is Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11 (Policy 11), which provides:

> "Oregon Department of Fish and Wildlife [(ODFW)] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

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[2] LCDC adopted Goal 5 in 1974. It adopted its first set of Goal 5 rules in 1981, which are codified at OAR chapter 660, division 16. In 1996, LCDC adopted a second set of Goal 5 rules, which are codified at OAR chapter 660, division 23. Because LCDC acknowledged the county's program to protect natural resources in 1984, the 1981 rules applied. *See Delta Property Co., LLC v. Lane County*, 271 Or App 612, 616-19, 617 n 1, 352 P3d 86 (2015).

[3] The Lane County Wildlife Inventory maps were developed based on Oregon Department of Fish and Wildlife big game habitat maps and identify the location, quality, and quantity of big game habitat, identify conflicts with big game habitat, and explain how those conflicts are to be mitigated. *Nimpkish*, ___ Or LUBA at ___ n 2 (slip op at 4 n 2).

The ODFW recommendations referenced in Policy 11 consist of an overall residential density standard of one dwelling per 80 acres in Major Big Game Range and one dwelling per 40 acres in Peripheral Big Game Range.

The application of Policy 11 to proposed development in big game habitat was at the heart of the parties' dispute in *Nimpkish*, and it is one of the issues in these appeals. In *Nimpkish*, we concluded that Policy 11 is part of and implements the county's acknowledged Goal 5 program to protect big game habitat and that the county was required to comply with the second sentence of Policy 11, which provides that proposed densities above ODFW's recommendations conflict with Goal 5 and that conflicts must be resolved through application of the Goal 5 rule. The hearings officer in *Nimpkish* concluded that Policy 11 did not apply to proposed dwellings on existing parcels and that it applied only in the context of land divisions and zone changes. We rejected that interpretation, concluding that nothing in the text, context, or legislative history of Policy 11 suggests that its applicability is so limited. To give some effect to the second sentence of Policy 11, we held, the county must apply Policy 11 to residential development where the proposed density exceeds the ODFW recommendations.[4] Because it was

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[4] We noted in *Nimpkish* that, in the 36 years since acknowledgment, the county has made no attempt to implement a regional approach to applying density limitations, as described in the first sentence of Policy 11. However, we held:

> "[T]he county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that

undisputed in *Nimpkish* that the proposed density exceeded the applicable limitation of one dwelling unit per 80 acres, we further concluded that the proposed density conflicted with Goal 5. As required by the second sentence of Policy 11, the proposed density could be "allowed only after resolution in accordance with OAR 660-16-000." Accordingly, we remanded the decision for further proceedings.

In the present cases, the hearings officer relied on our holdings in *Nimpkish* that (1) Policy 11 applies to proposed residential development of existing parcels within big game habitat and (2) an applicant for such development must either demonstrate that the proposed development complies with the applicable density

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> the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in [Policy 11] or that the density recommendations simply do not apply. Rather, the *second sentence* of [Policy 11] remains operative, and it provides that '[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the county to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgement of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program." *Nimpkish*, ___ Or LUBA at ___ (slip op at 12-13) (emphasis in original; footnote omitted).

standard or seek resolution of the conflict under the Goal 5 rule. As discussed under the second assignment of error, petitioners argued that Policy 11 could be satisfied by demonstrating that the average residential density across all Major Big Game Range in the entire county is less than one dwelling per 80 acres. The hearings officer rejected that effort to demonstrate that the proposed dwellings comply with the applicable density standard, concluded that the proposed dwellings in fact do not comply with the applicable density standard, and, because petitioners had not attempted to resolve the conflicts under the Goal 5 rule, denied both applications.

On appeal, under the first assignment of error, petitioners urge us to revisit our first holding in *Nimpkish* that Policy 11 applies as an approval criterion to proposed dwellings in big game habitat. In the alternative, under the second assignment of error, petitioners argue that, if Policy 11 does apply to the subject applications, then the hearings officer erred in rejecting petitioners' proposed interpretation of Policy 11 and in adopting an interpretation of Policy 11 that is not supported by its text, context, or legislative history. Under the third assignment of error, petitioners challenge the hearings officer's comments on the evidence that petitioners offered to demonstrate compliance with the applicable density standard under their proposed interpretation of Policy 11.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that LUBA erred in concluding, in *Nimpkish*, that Policy 11, specifically the second sentence of Policy 11, applies as an approval criterion

to applications for dwellings in big game habitat. According to petitioners, the county's acknowledged Goal 5 program to protect big game habitat with respect to conflicting residential uses is entirely implemented by LC 16.211(5), which provides siting standards that regulate the location of development on parcels in the F-2 zone.[5]

The LC includes a minimum parcel size of 80 acres for *new parcels* in the F-2 zone. LC 16.211(7)(a). However, it does not include a minimum parcel size

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[5] LC 16.211(5) provides, in relevant part:

> "The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. * * *
>
> "(a) Residences, dwellings, and structures must be sited as follows:
>
> "(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);
>
> "(ii) With minimal intrusion into forest areas undeveloped by nonforest uses; [and]
>
> "(iii) Where possible, * * * at least 500 feet from the adjoining lines of property zoned [Nonimpacted Forest Lands] and 100 feet from the adjoining lines of property zoned F-2 or [Exclusive Farm Use.]"

for *dwellings* in the F-2 zone or any other standards that implement the ODFW density standards referenced in Policy 11. Nonetheless, petitioners argue that, as a matter of text, context, and legislative history, those density standards do not apply to proposed dwellings in the F-2 zone. Instead, petitioners argue, the county's acknowledged Goal 5 program to protect Major Big Game Range from the impacts of dwellings in the F-2 zone is limited to the siting standards at LC 16.211(5).

A. ORS 215.416(8)(a)

ORS 215.416(8)(a) enjoins counties to affirm or deny permit applications based on standards and criteria "set forth in the zoning ordinance or other appropriate ordinance or regulation of the county."[6] In the first subassignment of error, petitioners argue that, because Policy 11 is not listed or explicitly identified in LC 16.211 as one of the approval criteria for forest template dwellings, it cannot be applied as an approval criterion.

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[6] ORS 215.416(8)(a) provides:

> "Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole."

Intervenor responds that no party raised ORS 215.416(8)(a) as an issue below or otherwise argued that, because LC 16.211 does not list Policy 11 as an approval criterion for forest template dwellings, Policy 11 cannot constitute an applicable criterion. Accordingly, intervenor argues, such issues are waived pursuant to ORS 197.763(1) and ORS 197.835(3). In the petition for review, petitioners cite 2021-052 Record 27, 317, and 582 to preserve all of the arguments under the first assignment of error.[7] Petitioners do not otherwise respond to intervenor's waiver argument. We have reviewed the cited record pages, and we agree with intervenor that nothing in them raises the issues raised in the first subassignment of error.

However, even if the issue was preserved, we agree with intervenor that ORS 215.416(8)(a) does not prohibit the hearings officer from applying Policy 11 to forest template dwelling applications. First, ORS 215.416(8)(a) does not limit the county to applying only those standards that are set forth in its zoning ordinance, such as LC 16.211. It also allows for the application of "other appropriate ordinance[s] or regulation[s] of the county," which is broad enough to include the county's comprehensive plan. Further, as we noted in *Nimpkish*, OAR 660-006-0027(6)(a) and OAR 660-006-0025(6), which LCDC adopted to implement ORS 215.750, specifically allow the county to apply standards in its

[7] The county transmitted separate records for LUBA Nos. 2021-047 and 2021-052. We refer to the record in LUBA No. 2021-047 as "2021-047 Record." We refer to the record in LUBA No. 2021-052 as "2021-052 Record."

comprehensive plan to forest template dwellings. ___ Or LUBA at ___ n 5 (slip op at 8 n 5.[8] As far as petitioners have established, there is no statutory, code-based, or other legal prohibition on the county applying Policy 11, or any other applicable comprehensive plan provision, to approval or denial of forest template dwellings in the F-2 zone.

The first subassignment of error is denied.

B. Remaining Subassignments of Error

Petitioners' remaining subassignments of error argue that, even if there is no legal impediment to applying Policy 11 as an approval criterion, for several reasons, LUBA erred in *Nimpkish* in interpreting Policy 11 to function as an approval criterion under the county's Goal 5 program, given its text, context, and legislative history.

Petitioners first observe—correctly—that Policy 11 is ambiguous and requires interpretation to determine whether and how its density limitations function as approval criteria for dwelling permit applications. In these subassignments of error, petitioners urge us to revisit the question of *whether* the

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[8] OAR 660-006-0027(6)(a) provides that proposed template dwellings are allowed only if they "will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law." OAR 660-006-0025(6) provides that "[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands."

density limitations in Policy 11 apply as approval criteria. In the second assignment of error, discussed below, petitioners assume that the density limitations apply but challenge the hearings officer's interpretation of *how* they apply.

Turning to petitioners' challenges to the hearings officer's reliance on our holdings in *Nimpkish*, petitioners argue that, while it may be plausible to interpret Policy 11 to constitute an applicable approval criterion, the better interpretation, considering all of the text, context, and legislative history, is that Policy 11 does not apply to development proposals in big game habitat and that the only standards that apply to such development under the county's acknowledged Goal 5 program are the siting standards in LC 16.211(5). That argument is based primarily on documents that we did not discuss in *Nimpkish*, some of which were included in the record in *Nimpkish* and all of which are included in the records in the present appeals.

1. Addendum to Flora and Fauna Working Paper

The county's Goal 5 program was developed, in part, by relying on a March 1982 Flora and Fauna Working Paper (the Working Paper), as amended by a November 1983 Addendum to the Flora and Fauna Working Paper (the Addendum). The county and the Department of Land Conservation and Development (DLCD) relied on the Working Paper and the Addendum as

background documents to the RCP.[9] In *Nimpkish*, the record included, and we relied, in part, on the Working Paper to interpret the first sentence of Policy 11 that refers to "regions of the County." *Nimpkish*, ___ Or LUBA at ___ (slip op at 12). That Working Paper language explained that the county had intended to divide the county into 10 to 20 regions and determine for each region the number of acres, existing dwellings, and additional dwellings allowable to comply with the applicable density limitation. *Id.* at ___ n 7 (slip op at 10 n 7).

Petitioners argue that the language that we relied upon to interpret the reference to "regions of the County" in the first sentence of Policy 11 was deleted by the Addendum and replaced with different language that appears to downplay, as a mere "numbers game," the regional approach.[10] The new language instead

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[9] The RCP characterizes the Working Paper as "background information * * * to be used to help interpret and understand [the RCP]." RCP Part 1(C). The Working Paper explains in more detail that the ODFW residential density recommendations for Major Big Game Range were one dwelling unit per 80 acres:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game." 2021-047 Record 525; 2021-052 Record 522.

[10] The inserted text states:

focuses on two other measures: minimum parcel sizes for new parcels in forest zones and siting standards that require clustering of dwellings.

> "Although [the regional approach] is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.
>
> "A prime example is that of 'clustering' dwelling units in Peripheral or Major Range areas—siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.
>
> "The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirements of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.
>
> "* * * * *
>
> "The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner—including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the [Goal 5] process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenance." 2021-047 Record 556; 2021-052 Record 553.

Petitioners argue that the deletion of the language discussing a regional approach, and the inclusion of new language referring to clustering and siting standards, supports their view that the county proposed, and LCDC acknowledged, abandoning any reliance on density limitations as part of the county's Goal 5 program to protect big game habitat. Instead, petitioners argue, the county chose to rely solely on the siting standards at LC 16.211(5) to protect big game habitat.

2. DLCD Staff Reports

The second set of documents that petitioners rely upon are two DLCD staff reports that, in petitioners' view, demonstrate that DLCD accepted that the county intended to protect big game habitat *exclusively* via the LC 16.211(5) siting standards and would not implement *any* density limitations on dwellings in big game habitat.

In addressing ODFW's objections to the adequacy of the county's initial efforts to protect big game habitat, including Policy 11, the July 19, 1984 DLCD staff report commented:

> "ODFW is correct that the County's [Nonimpacted Forest Lands (F-1)] and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-l, F-2 and [Exclusive Farm Use (EFU)] zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable)." 2021-047 Record 149; 2021-052 Record 150.

LUBA Record 000020

The July 19, 1984 DLCD staff report concluded that, in order to comply with Goal 5, the county had to, among other things,

> "[a]mend the F-2 and EFU zones to carry out the intent of [Policy 11]. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas." 2021-047 Record 186; 2021-052 Record 187.

Petitioners argue that DLCD gave the county a choice to demonstrate full compliance with Goal 5: *either* require larger minimum lot sizes in big game habitat *or* adopt clustering requirements in such areas.[11] Petitioners contend that the county chose the latter option. The September 12, 1984 DLCD staff report explained that the county had subsequently adopted an earlier version of the siting standards at LC 16.211(5), and it recommended that LCDC acknowledge the county's legislation as complying with Goal 5. 2021-047 Record 286-87; 2021-052 Record 287-88.

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[11] As mentioned, the LC currently limits the size of *new parcels* in the F-2 zone to 80 acres. LC 16.211(7)(a). At the time of the 1983 to 1984 acknowledgment proceedings, the minimum parcel size in the F-2 zone was "20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel." 2021-047 Record 143; 2021-052 Record 144. At some point not shown in the records, the county apparently amended the F-2 zone to specify a minimum parcel size of 80 acres for new parcels. However, the purpose statement of the F-2 zone explains that "[t]he minimum parcel size and other standards established by this zone are intended to promote commercial forest operations." LC 16.211(1). Thus, it is not clear what role, if any, the current 80-acre minimum parcel size in the F-2 zone plays as part of the county's Goal 5 program to protect big game habitat.

According to petitioners, the foregoing legislative history indicates that LCDC acknowledged that compliance with the siting standards at LC 16.211(5) is sufficient, without more, to ensure that residential development in big game habitat is consistent with Goal 5. Under this view, petitioners argue, Policy 11 plays no role in approving proposed dwellings in big game habitat.

3. Analysis

The principle of *stare decisis* applies to our final opinions. ORS 197.805 (instructing that LUBA decisions "be made consistently with sound principles governing judicial review"). We will reconsider a prior decision if a party demonstrates that we erred in making it because we were not presented with an important argument. *Nicita v. City of Oregon City*, ___ Or LUBA ___, ___ (LUBA Nos 2020-037/039, Sept 21, 2021) (slip op at 20) (citing *Farmers Ins. Co. v. Mowry*, 350 Or 686, 698, 261 P3d 1 (2011)). In *Nimpkish*, no party made any arguments based on either the Addendum or the DLCD staff reports, and our opinion did not address all of those documents in analyzing Policy 11's text, context, and legislative history. We do so now, and we uphold our decision in *Nimpkish*.

Turning first to the Addendum, intervenor initially responds that it is unclear whether the new language in the Addendum replaced all or only a portion

of the original language in the Working Paper describing the regional approach.[12] In any case, intervenor argues, the new Addendum language may represent a step back from primary reliance on the regional approach, but nothing in the Addendum purports to completely abandon the ODFW density recommendations or suggests that siting or clustering standards, in themselves, are sufficient to establish compliance with Goal 5.

We agree with intervenor that nothing in the Addendum purports to eliminate or reduce the role of the ODFW density recommendations in the county's program to protect big game habitat. The Addendum left in place the original Working Paper language stating that an overall residential density greater than one dwelling per 80 acres in Major Big Game Range conflicts with Goal 5. *See* n 9. Notably, both the Working Paper and the Addendum include language describing a process to ensure compliance with Goal 5 in the event that other identified measures (the regional approach, minimum parcel sizes, and clustering) are insufficient—by applying the Goal 5 rule. In the county's Goal 5

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[12] Under the heading "Working Paper Revisions," the Addendum instructs, "DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place[.]" 2021-047 Record 543, 556; 2021-052 Record 540, 553. Intervenor argues that it is unclear whether the Addendum intended to delete only the last paragraph on page 24 and the remainder of *that paragraph* at the top of page 25 or whether it intended to delete all of the paragraphs on page 25. For purposes of our analysis, we assume, as petitioners do, that the Addendum was intended to replace all of the paragraphs on page 25 of the Working Paper.

program to protect big game habitat, the process to ensure compliance with Goal 5 is operationally embodied in the second sentence of Policy 11. The county added other measures, as requested by ODFW, but it chose to leave that process in place. LCDC acknowledged Policy 11, and the other components of the county's Goal 5 program, with that process in place. If petitioners are correct that the county's Goal 5 program consists entirely of the siting standards at LC 16.211(5), then the second sentence of Policy 11 is a nullity.

In our view, the legislative history is reasonably clear that the LC 16.211(5) clustering standards were intended to supplement, rather than replace, the other components of the county's Goal 5 program, including Policy 11. The July 19, 1984 DLCD staff report concluded that Policy 11 is insufficient to ensure compliance with Goal 5, and it ultimately required additional measures, but there is no suggestion in any legislative history that the county or DLCD believed that siting standards or any other measures could eliminate the need for Policy 11's density limitations. The July 19, 1984 DLCD staff report addressed criticism that Policy 11 is inadequate:

> "Objectors are not correct that [Policy 11] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through [Policy 11], however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, [Marginal Lands] and EFU Zones which ensure that ODFW's

density standards will be achieved." 2021-047 Record 149; 2021-052 Record 150.

The foregoing clearly illustrates DLCD's expectation that, while additional measures were necessary to ensure full compliance with Goal 5, the ODFW density standards embodied in Policy 11 would continue to play a role in evaluating development proposals. Nothing in the acknowledgment process eliminated or vitiated the applicability of those density standards to proposed residential development in big game habitat.

We consider petitioners' arguments below regarding exactly what role Policy 11 plays in the county's Goal 5 program to protect big game habitat. For purposes of the first assignment of error, however, we reject petitioners' arguments that LUBA erred in concluding in *Nimpkish* that Policy 11 is applicable as an approval criterion to development proposals that may exceed the ODFW density recommendations.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

In the second assignment of error, petitioners challenge the hearings officer's interpretations regarding how the Policy 11 density limitations are properly applied.

We repeat the text of Policy 11, numbering each of the three sentences:

> "[1] [ODFW] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. [2] Any density above that limit shall be considered to conflict with Goal 5

> and will be allowed only after resolution in accordance with OAR 660-16-000. [3] The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

As noted, the text of Policy 11 is ambiguous and requires interpretation to determine how to apply the ODFW density limitations for purposes of the second sentence. The hearings officer observed:

> "Anybody who has studied residential densities, either in urban or rural settings, understand[s] that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings/acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county." 2021-047 Record 5; 2021-052 Record 5.

Before the hearings officer, petitioners attempted to demonstrate compliance with Policy 11 based on their interpretation of that policy. Specifically, petitioners argued that, to determine whether the "overall residential density" exceeds one dwelling per 80 acres, the applicant need only (1) determine the number of acres in the county designated as Major Big Game Range, including all federal, state, and private lands (roughly 2.5 million acres, stretching from the Cascade Range to the Pacific Ocean), and (2) divide that number by the number of existing dwellings in areas designated as Major Big Game Range (roughly 3,137 dwellings). The resulting number, in petitioners' view, is the "overall residential density" (in this case, an average of approximately one dwelling per 819 acres). Alternatively, petitioners performed the same

calculations using large regions of the county, for example, by dividing the county into eastern and western halves at Interstate 5 and separately calculating the "overall residential density" in each half (also resulting in densities of less than one dwelling per 80 acres).

The hearings officer rejected that approach. The hearings officer first noted that, in *Nimpkish*, LUBA remanded, in part, because there was no dispute that development of the 10-acre subject property would violate the one-dwelling-per-80-acres density limitation. That conclusion can be read to suggest that Policy 11 imposes, essentially, a minimum parcel size of 80 acres for dwellings in big game habitat. The hearings officer characterized that suggestion as *dicta* because the primary issue in *Nimpkish* was whether Policy 11 applies, not how it should be applied or what denominator should be used in determining residential density.

Given the lack of dispute in *Nimpkish* that the proposed dwelling violated Policy 11, we agree with the hearings officer that it was not necessary for LUBA to suggest any particular approach to applying Policy 11. To the extent that we suggested in *Nimpkish* that Policy 11 effectively imposes a minimum parcel size of 80 acres for dwellings, that suggestion was *dicta* and, moreover, not supported by any analysis.

The hearings officer conducted an analysis of the text and context of Policy 11, along with relevant case law, in order to evaluate the parties' arguments regarding permissible approaches to demonstrating compliance with Policy 11. As noted, the hearings officer ultimately rejected petitioners' interpretation that

the appropriate denominator for determining residential density is the roughly 2.5 million acres of the county that are designated as Major Big Game Range. Instead, the hearings officer held that, until the county divides the county into regions as described in the first sentence of Policy 11, the only appropriate denominator for purposes of applying the second sentence of Policy 11 is the acreage of the subject parcel. As a practical matter, the hearings officer noted, this means that a proposed dwelling on a parcel less than 80 acres in size can be approved in big game habitat only pursuant to the Goal 5 rule, as described in the second sentence of Policy 11.

As further support for their conclusion that the appropriate denominator is the subject parcel's acreage, the hearings officer cited *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003), which involved a destination resort proposal and a code provision that limited residential density to one dwelling per 40 acres in peripheral big game habitat. The code did not specify the appropriate denominator for purposes of applying that density standard, so the county applied as the denominator a large planning area consisting of 1,121,378 acres. Under the county's interpretation, the subject 500 acres could have been developed at a much greater density than one dwelling per 40 acres, as long as the *average* density across the 1,121,387-acre planning area remained below that ratio. However, we rejected that interpretation as inconsistent with the purpose of the density standard, which was to protect big game habitat from residential density. Absent specification in the code of a different denominator, we held that the

denominator most consistent with the purpose of the density standard was the acreage of the subject property.

The hearings officer applied our reasoning in *Wetherell* to the present cases, rejecting petitioners' proposal to use over 2.5 million acres of the county as the denominator because that interpretation is inconsistent with the purpose of the residential density standard to protect big game habitat. Further, the hearings officer concluded that, absent definition by the county of a different denominator, based on regional averages or some other approach, the only denominator that is consistent with the purpose of the density standard is the acreage of the subject property. Consequently, the hearings officer concluded, the proposed densities conflict with Goal 5 and can be approved only via application of the Goal 5 rule, pursuant to the second sentence of Policy 11.

Petitioners challenge the hearings officer's interpretations. First, petitioners distinguish *Wetherell* because, unlike the code provision at issue in that case, Policy 11 references an "overall" residential density. Petitioners argue that the qualifier "overall" clearly denotes some kind of *averaging* of multiple parcel sizes and that no averaging is possible when only the acreage of the subject property is considered.

The hearings officer noted that, while the adjective "overall" appears in the first sentence of Policy 11, it does not appear in the second sentence. Instead, the second sentence refers simply to "that limit." The hearings officer concluded

that the second sentence of Policy 11 has no express denominator.[13] We understand the hearings officer to have concluded that, for purposes of the second sentence, no averaging or "overall" density need be calculated.

We agree with petitioners that the phrase "that limit" in the second sentence of Policy 11 refers to the ODFW density standards, which are described in terms of an "overall residential density." We further agree with petitioners that the term "overall" suggests averaging more than one unit or number, for example, averaging parcel sizes for two or more parcels. However, we see no mathematical or logical reason why the appropriate denominator cannot be based on the number of acres in a single unit of land. That, in fact, is the approach that the county board

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[13] The findings state:

> "The applicant argues that the term 'overall' in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County on the east or west side of Interstate 5. [Intervenor] points out that the use of the term 'overall' in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of 'overall residential density.' The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to 'determine the allowable number of residential dwelling units within regions of the county.' The next sentence does not use the 'overall' modifier: 'Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal." 2021-047 Record 5-6; 2021-052 Record 5-6.

of commissioners adopted, and LUBA affirmed, in *Cattoche v. Lane County*, 79 Or LUBA 466 (2019).

Cattoche involved a proposal to rezone a 131.55-acre parcel in order to subdivide it and develop it with two additional dwellings, for a total of three dwellings. The parcel was designated as Peripheral Big Game Range and, pursuant to Policy 11, the county applied a density standard of one dwelling per 40 acres. The county found that the Policy 11 density standard was satisfied because the resulting density of the three dwellings would have been less than one dwelling per 40 acres, using the 131.55 acres of the subject parcel as the denominator. On appeal to LUBA, the petitioners argued that the commissioners misapplied the one-dwelling-per-40-acres density standard by failing to include in their density calculation the dwellings on and acreage of an adjoining property that was previously part of the same tract. Although we remanded the decision on other grounds, we rejected the petitioners' argument and affirmed the commissioners' implicit interpretation of the density standard as limiting the denominator to the acreage of the subject property.

Cattoche illustrates that the county has, in at least some cases, chosen to calculate "overall residential density" for purposes of Policy 11 based solely on the acreage of the subject property. We therefore reject petitioners' categorical argument that, in all cases, the denominator used to determine "overall residential density" must be based on averaging the acreage of multiple parcels. It is true that, in *Cattoche*, the subject parcel was relatively large and could be developed

with multiple dwellings consistent with the ODFW density limitations. However, petitioners identify no principled reason why the size of the subject parcels makes a difference. *Cattoche* also involved a zone change application, while the present cases do not. However, we perceive no principled basis to calculate the denominator differently based on whether the proposed development involves a zone change.

Based on the legislative history of Policy 11, it is reasonably clear that the phrase "overall residential density" was originally formulated with the expectation that the county would engage in a post-acknowledgment process that, among other things, would identify some 10 to 20 regions of the county and determine, based on the number of acres and existing dwelling units within each region, how many new dwelling units can be constructed within each region consistent with the ODFW density standards. However, as noted, ODFW apparently had concerns about the adequacy of that regional approach to ensuring compliance with Goal 5, and it ultimately recommended that the county adopt additional measures while leaving the original density limitations in place. As also noted, the county has made no effort in the intervening post-acknowledgment period to adopt a regional approach or, indeed, any regulations fleshing out how "overall residential density" should be calculated. In the absence of such regulations, *Cattoche* suggests that the county has chosen to apply the density limitations in Policy 11 using the acreage of the subject parcel as the

relevant denominator. Petitioners have not demonstrated that that approach is legal error.

In any case, petitioners have certainly not demonstrated that the only permissible denominator is the total acreage of vast portions of the county designated as Major Big Game Range. While *Wetherell* involved a different code provision and different facts, it is instructive in noting that ambiguous regulations implementing a statewide planning goal must be interpreted in a manner that is consistent with the goal that they implement. ORS 197.829(1)(d). The obvious purpose of the ODFW density limitations is to protect big game habitat from conflicts by limiting residential density. Because big game habitat is not fungible, determining residential density in that context is necessarily an inquiry into reasonably *local* circumstances. It seems highly inconsistent with Goal 5 and the purpose of the density limitations to justify high-density residential development in one area of big game habitat based on the fact that, hundreds of miles away, on the other side of the county, there are public forests and large private commercial timber holdings with little or no residential development. In that sense, petitioners' preferred approach to calculating overall residential density, using vast portions of the county as the denominator, is much more of a mere "numbers game" than the regional approach about which ODFW expressed reservations during the acknowledgment process.

In sum, petitioners have not demonstrated that the hearings officer erred in calculating residential density based on the acreage of the subject property.

Accordingly, the hearings officer did not err in concluding that the proposed densities conflict with Goal 5 and that those conflicts must be resolved based on application of the Goal 5 rule.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

In support of their theory of how to determine residential density, petitioners relied on data taken from various non-county sources regarding how many acres in the county are designated as Major Big Game Range and how many dwellings exist thereon. In one portion of their decisions, the hearings officer expressed skepticism that data and evidence that is not included in the county's comprehensive plan can be used to support quasi-judicial decisions, citing Statewide Planning Goal 2 (Land Use Planning) and case law interpreting that goal. 2021-047 Record 8-9; 2021-052 Record 8-9.

Goal 2 requires that land use decisions be supported by an "adequate factual base." The hearings officer understood the cited cases to stand for the proposition that, where an applicant relies on a buildable lands inventory or similar inventory to support a land use decision, the inventory must be adopted into the applicable comprehensive plan. In a footnote, the hearings officer noted that their musings regarding Goal 2 are not necessary to support the primary conclusion that the appropriate denominator is the acreage of the subject property. 2021-047 Record 9 n 8; 2021-052 Record 9 n 8.

On appeal, petitioners argue that the hearings officer misconstrued Goal 2, the applicable case law, and the applicable county legislation to the extent that they concluded that petitioners' evidence can be relied upon to support the decisions only if it is adopted into the county's comprehensive plan.

We need not resolve this assignment of error because petitioners challenge a legal conclusion that is, at best, a contingent and alternative basis for denying the applications. We would have to address challenges to that contingent conclusion only if we had rejected the hearings officer's primary conclusion and affirmed petitioners' preferred approach to determining overall residential density for purposes of Policy 11. However, we have instead affirmed the hearings officer's primary conclusion and rejected petitioners' preferred approach. Accordingly, petitioners' arguments under the third assignment of error provide no basis for reversal or remand.

The third assignment of error is denied.

The county's decisions are affirmed.

CERTIFICATE OF FILING AND SERVICE

I certify that on October 28, 2021, I filed the foregoing by electronic filing with the Appellate Court Administrator.

I further certify that on October 28, 2021, I served a true and correct copy of the foregoing on the parties listed below, by certified mail, return receipt requested:

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DATED: October 28, 2021.

Respectfully submitted,

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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

EDWARD J. KING,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-047

E.J.K. INVESTMENTS,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-052

FINAL OPINION
AND ORDER

Appeal from Lane County.

LUBA Record 000037

Bill Kloos filed the petition for review and reply brief and argued on behalf of petitioners.

No appearance by Lane County.

Sean Malone filed the response brief and argued on behalf of intervenor-respondent.

RYAN, Board Member; ZAMUDIO, Board Chair; RUDD, Board Member, participated in the decision.

AFFIRMED 10/15/2021

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

In these consolidated appeals, petitioners appeal two hearings officer decisions denying applications for forest template dwellings.

MOTION TO INTERVENE

Landwatch Lane County (intervenor) moves to intervene on the side of the county. There is no opposition to the motion, and it is allowed.

FACTS

Petitioners each applied for approval of a forest template dwelling pursuant to ORS 215.750, OAR 660-006-0027, and the Lane Code (LC) provisions implementing that statute and rule.[1] The properties are contiguous; each is approximately 12 acres in size; both are zoned Impacted Forest Lands (F-2), a zone that implements Statewide Planning Goal 4 (Forest Lands); and both are designated as Major Big Game Range.

The planning director approved the applications, and intervenor appealed each decision to the hearings officer. After the appeals were filed, we issued our

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[1] Briefly, ORS 215.750 and OAR 660-006-0027 allow a county to approve a dwelling on land zoned for forest use if (1) all or part of a prescribed number of lots or parcels that existed on January 1, 1993, are located within a 160-acre square "template" that is centered on the center of the subject parcel and (2) at least three dwellings existed on the other lots or parcels on January 1, 1993. The prescribed number of lots or parcels differs depending on the quality of the soils on the subject parcel and whether the parcel is located in eastern or western Oregon.

decision in *Landwatch Lane County v. Lane County*, ___ Or LUBA ___ (LUBA No 2020-030, Jan 21, 2021) (*Nimpkish*). Briefly, in *Nimpkish*, we held that the county's Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) program to protect big game habitat includes a comprehensive plan policy that limits the density of dwellings in big game habitat. We discuss our decision in *Nimpkish* in more detail later in this opinion.

Based on our holdings in *Nimpkish*, planning staff recommended denial of the applications. The hearings officer held hearings on and denied each application. These appeals followed.

INTRODUCTION

Goal 5 is "[t]o protect natural resources and conserve scenic and historic areas and open spaces." OAR 660-015-0000(5). In order to implement Goal 5, local governments are required to "adopt programs that will protect natural resources." *Id.* The county's program to protect natural resources was acknowledged by the Land Conservation and Development Commission (LCDC) to comply with Goal 5 in 1984. The county's Goal 5 program includes a map and inventory of big game habitat determined to be "significant or important" within the meaning of OAR 660-016-0000(5)(c) (Big Game Habitat Inventory). *Save*

TV Butte v. Lane County, 77 Or LUBA 22, 40 (2018).[2] As noted, the subject properties are included on that inventory as Major Big Game Range.[3]

One component of the county's acknowledged Goal 5 program is Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11 (Policy 11), which provides:

> "Oregon Department of Fish and Wildlife [(ODFW)] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

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[2] LCDC adopted Goal 5 in 1974. It adopted its first set of Goal 5 rules in 1981, which are codified at OAR chapter 660, division 16. In 1996, LCDC adopted a second set of Goal 5 rules, which are codified at OAR chapter 660, division 23. Because LCDC acknowledged the county's program to protect natural resources in 1984, the 1981 rules applied. *See Delta Property Co., LLC v. Lane County*, 271 Or App 612, 616-19, 617 n 1, 352 P3d 86 (2015).

[3] The Lane County Wildlife Inventory maps were developed based on Oregon Department of Fish and Wildlife big game habitat maps and identify the location, quality, and quantity of big game habitat, identify conflicts with big game habitat, and explain how those conflicts are to be mitigated. *Nimpkish*, ___ Or LUBA at ___ n 2 (slip op at 4 n 2).

The ODFW recommendations referenced in Policy 11 consist of an overall residential density standard of one dwelling per 80 acres in Major Big Game Range and one dwelling per 40 acres in Peripheral Big Game Range.

The application of Policy 11 to proposed development in big game habitat was at the heart of the parties' dispute in *Nimpkish*, and it is one of the issues in these appeals. In *Nimpkish*, we concluded that Policy 11 is part of and implements the county's acknowledged Goal 5 program to protect big game habitat and that the county was required to comply with the second sentence of Policy 11, which provides that proposed densities above ODFW's recommendations conflict with Goal 5 and that conflicts must be resolved through application of the Goal 5 rule. The hearings officer in *Nimpkish* concluded that Policy 11 did not apply to proposed dwellings on existing parcels and that it applied only in the context of land divisions and zone changes. We rejected that interpretation, concluding that nothing in the text, context, or legislative history of Policy 11 suggests that its applicability is so limited. To give some effect to the second sentence of Policy 11, we held, the county must apply Policy 11 to residential development where the proposed density exceeds the ODFW recommendations.[4] Because it was

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[4] We noted in *Nimpkish* that, in the 36 years since acknowledgment, the county has made no attempt to implement a regional approach to applying density limitations, as described in the first sentence of Policy 11. However, we held:

> "[T]he county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that

undisputed in *Nimpkish* that the proposed density exceeded the applicable limitation of one dwelling unit per 80 acres, we further concluded that the proposed density conflicted with Goal 5. As required by the second sentence of Policy 11, the proposed density could be "allowed only after resolution in accordance with OAR 660-16-000." Accordingly, we remanded the decision for further proceedings.

In the present cases, the hearings officer relied on our holdings in *Nimpkish* that (1) Policy 11 applies to proposed residential development of existing parcels within big game habitat and (2) an applicant for such development must either demonstrate that the proposed development complies with the applicable density

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> the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in [Policy 11] or that the density recommendations simply do not apply. Rather, the *second sentence* of [Policy 11] remains operative, and it provides that '[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the county to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgement of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program." *Nimpkish*, ___ Or LUBA at ___ (slip op at 12-13) (emphasis in original; footnote omitted).

standard or seek resolution of the conflict under the Goal 5 rule. As discussed under the second assignment of error, petitioners argued that Policy 11 could be satisfied by demonstrating that the average residential density across all Major Big Game Range in the entire county is less than one dwelling per 80 acres. The hearings officer rejected that effort to demonstrate that the proposed dwellings comply with the applicable density standard, concluded that the proposed dwellings in fact do not comply with the applicable density standard, and, because petitioners had not attempted to resolve the conflicts under the Goal 5 rule, denied both applications.

On appeal, under the first assignment of error, petitioners urge us to revisit our first holding in *Nimpkish* that Policy 11 applies as an approval criterion to proposed dwellings in big game habitat. In the alternative, under the second assignment of error, petitioners argue that, if Policy 11 does apply to the subject applications, then the hearings officer erred in rejecting petitioners' proposed interpretation of Policy 11 and in adopting an interpretation of Policy 11 that is not supported by its text, context, or legislative history. Under the third assignment of error, petitioners challenge the hearings officer's comments on the evidence that petitioners offered to demonstrate compliance with the applicable density standard under their proposed interpretation of Policy 11.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that LUBA erred in concluding, in *Nimpkish*, that Policy 11, specifically the second sentence of Policy 11, applies as an approval criterion

to applications for dwellings in big game habitat. According to petitioners, the county's acknowledged Goal 5 program to protect big game habitat with respect to conflicting residential uses is entirely implemented by LC 16.211(5), which provides siting standards that regulate the location of development on parcels in the F-2 zone.[5]

The LC includes a minimum parcel size of 80 acres for *new parcels* in the F-2 zone. LC 16.211(7)(a). However, it does not include a minimum parcel size

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[5] LC 16.211(5) provides, in relevant part:

> "The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. * * *
>
> "(a) Residences, dwellings, and structures must be sited as follows:
>
> "(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);
>
> "(ii) With minimal intrusion into forest areas undeveloped by nonforest uses; [and]
>
> "(iii) Where possible, * * * at least 500 feet from the adjoining lines of property zoned [Nonimpacted Forest Lands] and 100 feet from the adjoining lines of property zoned F-2 or [Exclusive Farm Use.]"

for *dwellings* in the F-2 zone or any other standards that implement the ODFW density standards referenced in Policy 11. Nonetheless, petitioners argue that, as a matter of text, context, and legislative history, those density standards do not apply to proposed dwellings in the F-2 zone. Instead, petitioners argue, the county's acknowledged Goal 5 program to protect Major Big Game Range from the impacts of dwellings in the F-2 zone is limited to the siting standards at LC 16.211(5).

A. ORS 215.416(8)(a)

ORS 215.416(8)(a) enjoins counties to affirm or deny permit applications based on standards and criteria "set forth in the zoning ordinance or other appropriate ordinance or regulation of the county."[6] In the first subassignment of error, petitioners argue that, because Policy 11 is not listed or explicitly identified in LC 16.211 as one of the approval criteria for forest template dwellings, it cannot be applied as an approval criterion.

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[6] ORS 215.416(8)(a) provides:

> "Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole."

Intervenor responds that no party raised ORS 215.416(8)(a) as an issue below or otherwise argued that, because LC 16.211 does not list Policy 11 as an approval criterion for forest template dwellings, Policy 11 cannot constitute an applicable criterion. Accordingly, intervenor argues, such issues are waived pursuant to ORS 197.763(1) and ORS 197.835(3). In the petition for review, petitioners cite 2021-052 Record 27, 317, and 582 to preserve all of the arguments under the first assignment of error.[7] Petitioners do not otherwise respond to intervenor's waiver argument. We have reviewed the cited record pages, and we agree with intervenor that nothing in them raises the issues raised in the first subassignment of error.

However, even if the issue was preserved, we agree with intervenor that ORS 215.416(8)(a) does not prohibit the hearings officer from applying Policy 11 to forest template dwelling applications. First, ORS 215.416(8)(a) does not limit the county to applying only those standards that are set forth in its zoning ordinance, such as LC 16.211. It also allows for the application of "other appropriate ordinance[s] or regulation[s] of the county," which is broad enough to include the county's comprehensive plan. Further, as we noted in *Nimpkish*, OAR 660-006-0027(6)(a) and OAR 660-006-0025(6), which LCDC adopted to implement ORS 215.750, specifically allow the county to apply standards in its

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[7] The county transmitted separate records for LUBA Nos. 2021-047 and 2021-052. We refer to the record in LUBA No. 2021-047 as "2021-047 Record." We refer to the record in LUBA No. 2021-052 as "2021-052 Record."

comprehensive plan to forest template dwellings. ___ Or LUBA at ___ n 5 (slip op at 8 n 5.[8] As far as petitioners have established, there is no statutory, code-based, or other legal prohibition on the county applying Policy 11, or any other applicable comprehensive plan provision, to approval or denial of forest template dwellings in the F-2 zone.

The first subassignment of error is denied.

B. Remaining Subassignments of Error

Petitioners' remaining subassignments of error argue that, even if there is no legal impediment to applying Policy 11 as an approval criterion, for several reasons, LUBA erred in *Nimpkish* in interpreting Policy 11 to function as an approval criterion under the county's Goal 5 program, given its text, context, and legislative history.

Petitioners first observe—correctly—that Policy 11 is ambiguous and requires interpretation to determine whether and how its density limitations function as approval criteria for dwelling permit applications. In these subassignments of error, petitioners urge us to revisit the question of *whether* the

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[8] OAR 660-006-0027(6)(a) provides that proposed template dwellings are allowed only if they "will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law." OAR 660-006-0025(6) provides that "[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands."

density limitations in Policy 11 apply as approval criteria. In the second assignment of error, discussed below, petitioners assume that the density limitations apply but challenge the hearings officer's interpretation of *how* they apply.

Turning to petitioners' challenges to the hearings officer's reliance on our holdings in *Nimpkish*, petitioners argue that, while it may be plausible to interpret Policy 11 to constitute an applicable approval criterion, the better interpretation, considering all of the text, context, and legislative history, is that Policy 11 does not apply to development proposals in big game habitat and that the only standards that apply to such development under the county's acknowledged Goal 5 program are the siting standards in LC 16.211(5). That argument is based primarily on documents that we did not discuss in *Nimpkish*, some of which were included in the record in *Nimpkish* and all of which are included in the records in the present appeals.

1. Addendum to Flora and Fauna Working Paper

The county's Goal 5 program was developed, in part, by relying on a March 1982 Flora and Fauna Working Paper (the Working Paper), as amended by a November 1983 Addendum to the Flora and Fauna Working Paper (the Addendum). The county and the Department of Land Conservation and Development (DLCD) relied on the Working Paper and the Addendum as

background documents to the RCP.[9] In *Nimpkish*, the record included, and we relied, in part, on the Working Paper to interpret the first sentence of Policy 11 that refers to "regions of the County." *Nimpkish*, ___ Or LUBA at ___ (slip op at 12). That Working Paper language explained that the county had intended to divide the county into 10 to 20 regions and determine for each region the number of acres, existing dwellings, and additional dwellings allowable to comply with the applicable density limitation. *Id.* at ___ n 7 (slip op at 10 n 7).

Petitioners argue that the language that we relied upon to interpret the reference to "regions of the County" in the first sentence of Policy 11 was deleted by the Addendum and replaced with different language that appears to downplay, as a mere "numbers game," the regional approach.[10] The new language instead

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[9] The RCP characterizes the Working Paper as "background information * * * to be used to help interpret and understand [the RCP]." RCP Part 1(C). The Working Paper explains in more detail that the ODFW residential density recommendations for Major Big Game Range were one dwelling unit per 80 acres:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game." 2021-047 Record 525; 2021-052 Record 522.

[10] The inserted text states:

focuses on two other measures: minimum parcel sizes for new parcels in forest zones and siting standards that require clustering of dwellings.

> "Although [the regional approach] is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.
>
> "A prime example is that of 'clustering' dwelling units in Peripheral or Major Range areas—siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.
>
> "The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirements of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.
>
> "* * * * *
>
> "The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner—including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the [Goal 5] process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenance." 2021-047 Record 556; 2021-052 Record 553.

LUBA Record 000051

Petitioners argue that the deletion of the language discussing a regional approach, and the inclusion of new language referring to clustering and siting standards, supports their view that the county proposed, and LCDC acknowledged, abandoning any reliance on density limitations as part of the county's Goal 5 program to protect big game habitat. Instead, petitioners argue, the county chose to rely solely on the siting standards at LC 16.211(5) to protect big game habitat.

2. DLCD Staff Reports

The second set of documents that petitioners rely upon are two DLCD staff reports that, in petitioners' view, demonstrate that DLCD accepted that the county intended to protect big game habitat *exclusively* via the LC 16.211(5) siting standards and would not implement *any* density limitations on dwellings in big game habitat.

In addressing ODFW's objections to the adequacy of the county's initial efforts to protect big game habitat, including Policy 11, the July 19, 1984 DLCD staff report commented:

> "ODFW is correct that the County's [Nonimpacted Forest Lands (F-1)] and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-l, F-2 and [Exclusive Farm Use (EFU)] zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable)." 2021-047 Record 149; 2021-052 Record 150.

The July 19, 1984 DLCD staff report concluded that, in order to comply with Goal 5, the county had to, among other things,

> "[a]mend the F-2 and EFU zones to carry out the intent of [Policy 11]. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas." 2021-047 Record 186; 2021-052 Record 187.

Petitioners argue that DLCD gave the county a choice to demonstrate full compliance with Goal 5: *either* require larger minimum lot sizes in big game habitat *or* adopt clustering requirements in such areas.[11] Petitioners contend that the county chose the latter option. The September 12, 1984 DLCD staff report explained that the county had subsequently adopted an earlier version of the siting standards at LC 16.211(5), and it recommended that LCDC acknowledge the county's legislation as complying with Goal 5. 2021-047 Record 286-87; 2021-052 Record 287-88.

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[11] As mentioned, the LC currently limits the size of *new parcels* in the F-2 zone to 80 acres. LC 16.211(7)(a). At the time of the 1983 to 1984 acknowledgment proceedings, the minimum parcel size in the F-2 zone was "20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel." 2021-047 Record 143; 2021-052 Record 144. At some point not shown in the records, the county apparently amended the F-2 zone to specify a minimum parcel size of 80 acres for new parcels. However, the purpose statement of the F-2 zone explains that "[t]he minimum parcel size and other standards established by this zone are intended to promote commercial forest operations." LC 16.211(1). Thus, it is not clear what role, if any, the current 80-acre minimum parcel size in the F-2 zone plays as part of the county's Goal 5 program to protect big game habitat.

According to petitioners, the foregoing legislative history indicates that LCDC acknowledged that compliance with the siting standards at LC 16.211(5) is sufficient, without more, to ensure that residential development in big game habitat is consistent with Goal 5. Under this view, petitioners argue, Policy 11 plays no role in approving proposed dwellings in big game habitat.

3. Analysis

The principle of *stare decisis* applies to our final opinions. ORS 197.805 (instructing that LUBA decisions "be made consistently with sound principles governing judicial review"). We will reconsider a prior decision if a party demonstrates that we erred in making it because we were not presented with an important argument. *Nicita v. City of Oregon City*, ___ Or LUBA ___, ___ (LUBA Nos 2020-037/039, Sept 21, 2021) (slip op at 20) (citing *Farmers Ins. Co. v. Mowry*, 350 Or 686, 698, 261 P3d 1 (2011)). In *Nimpkish*, no party made any arguments based on either the Addendum or the DLCD staff reports, and our opinion did not address all of those documents in analyzing Policy 11's text, context, and legislative history. We do so now, and we uphold our decision in *Nimpkish*.

Turning first to the Addendum, intervenor initially responds that it is unclear whether the new language in the Addendum replaced all or only a portion

of the original language in the Working Paper describing the regional approach.[12] In any case, intervenor argues, the new Addendum language may represent a step back from primary reliance on the regional approach, but nothing in the Addendum purports to completely abandon the ODFW density recommendations or suggests that siting or clustering standards, in themselves, are sufficient to establish compliance with Goal 5.

We agree with intervenor that nothing in the Addendum purports to eliminate or reduce the role of the ODFW density recommendations in the county's program to protect big game habitat. The Addendum left in place the original Working Paper language stating that an overall residential density greater than one dwelling per 80 acres in Major Big Game Range conflicts with Goal 5. *See* n 9. Notably, both the Working Paper and the Addendum include language describing a process to ensure compliance with Goal 5 in the event that other identified measures (the regional approach, minimum parcel sizes, and clustering) are insufficient—by applying the Goal 5 rule. In the county's Goal 5

---

[12] Under the heading "Working Paper Revisions," the Addendum instructs, "DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place[.]" 2021-047 Record 543, 556; 2021-052 Record 540, 553. Intervenor argues that it is unclear whether the Addendum intended to delete only the last paragraph on page 24 and the remainder of *that paragraph* at the top of page 25 or whether it intended to delete all of the paragraphs on page 25. For purposes of our analysis, we assume, as petitioners do, that the Addendum was intended to replace all of the paragraphs on page 25 of the Working Paper.

program to protect big game habitat, the process to ensure compliance with Goal 5 is operationally embodied in the second sentence of Policy 11. The county added other measures, as requested by ODFW, but it chose to leave that process in place. LCDC acknowledged Policy 11, and the other components of the county's Goal 5 program, with that process in place. If petitioners are correct that the county's Goal 5 program consists entirely of the siting standards at LC 16.211(5), then the second sentence of Policy 11 is a nullity.

In our view, the legislative history is reasonably clear that the LC 16.211(5) clustering standards were intended to supplement, rather than replace, the other components of the county's Goal 5 program, including Policy 11. The July 19, 1984 DLCD staff report concluded that Policy 11 is insufficient to ensure compliance with Goal 5, and it ultimately required additional measures, but there is no suggestion in any legislative history that the county or DLCD believed that siting standards or any other measures could eliminate the need for Policy 11's density limitations. The July 19, 1984 DLCD staff report addressed criticism that Policy 11 is inadequate:

> "Objectors are not correct that [Policy 11] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through [Policy 11], however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, [Marginal Lands] and EFU Zones which ensure that ODFW's

density standards will be achieved." 2021-047 Record 149; 2021-052 Record 150.

The foregoing clearly illustrates DLCD's expectation that, while additional measures were necessary to ensure full compliance with Goal 5, the ODFW density standards embodied in Policy 11 would continue to play a role in evaluating development proposals. Nothing in the acknowledgment process eliminated or vitiated the applicability of those density standards to proposed residential development in big game habitat.

We consider petitioners' arguments below regarding exactly what role Policy 11 plays in the county's Goal 5 program to protect big game habitat. For purposes of the first assignment of error, however, we reject petitioners' arguments that LUBA erred in concluding in *Nimpkish* that Policy 11 is applicable as an approval criterion to development proposals that may exceed the ODFW density recommendations.

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

In the second assignment of error, petitioners challenge the hearings officer's interpretations regarding how the Policy 11 density limitations are properly applied.

We repeat the text of Policy 11, numbering each of the three sentences:

> "[1] [ODFW] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. [2] Any density above that limit shall be considered to conflict with Goal 5

> and will be allowed only after resolution in accordance with OAR 660-16-000. [3] The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

As noted, the text of Policy 11 is ambiguous and requires interpretation to determine how to apply the ODFW density limitations for purposes of the second sentence. The hearings officer observed:

> "Anybody who has studied residential densities, either in urban or rural settings, understand[s] that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings/acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county." 2021-047 Record 5; 2021-052 Record 5.

Before the hearings officer, petitioners attempted to demonstrate compliance with Policy 11 based on their interpretation of that policy. Specifically, petitioners argued that, to determine whether the "overall residential density" exceeds one dwelling per 80 acres, the applicant need only (1) determine the number of acres in the county designated as Major Big Game Range, including all federal, state, and private lands (roughly 2.5 million acres, stretching from the Cascade Range to the Pacific Ocean), and (2) divide that number by the number of existing dwellings in areas designated as Major Big Game Range (roughly 3,137 dwellings). The resulting number, in petitioners' view, is the "overall residential density" (in this case, an average of approximately one dwelling per 819 acres). Alternatively, petitioners performed the same

calculations using large regions of the county, for example, by dividing the county into eastern and western halves at Interstate 5 and separately calculating the "overall residential density" in each half (also resulting in densities of less than one dwelling per 80 acres).

The hearings officer rejected that approach. The hearings officer first noted that, in *Nimpkish*, LUBA remanded, in part, because there was no dispute that development of the 10-acre subject property would violate the one-dwelling-per-80-acres density limitation. That conclusion can be read to suggest that Policy 11 imposes, essentially, a minimum parcel size of 80 acres for dwellings in big game habitat. The hearings officer characterized that suggestion as *dicta* because the primary issue in *Nimpkish* was whether Policy 11 applies, not how it should be applied or what denominator should be used in determining residential density.

Given the lack of dispute in *Nimpkish* that the proposed dwelling violated Policy 11, we agree with the hearings officer that it was not necessary for LUBA to suggest any particular approach to applying Policy 11. To the extent that we suggested in *Nimpkish* that Policy 11 effectively imposes a minimum parcel size of 80 acres for dwellings, that suggestion was *dicta* and, moreover, not supported by any analysis.

The hearings officer conducted an analysis of the text and context of Policy 11, along with relevant case law, in order to evaluate the parties' arguments regarding permissible approaches to demonstrating compliance with Policy 11. As noted, the hearings officer ultimately rejected petitioners' interpretation that

the appropriate denominator for determining residential density is the roughly 2.5 million acres of the county that are designated as Major Big Game Range. Instead, the hearings officer held that, until the county divides the county into regions as described in the first sentence of Policy 11, the only appropriate denominator for purposes of applying the second sentence of Policy 11 is the acreage of the subject parcel. As a practical matter, the hearings officer noted, this means that a proposed dwelling on a parcel less than 80 acres in size can be approved in big game habitat only pursuant to the Goal 5 rule, as described in the second sentence of Policy 11.

As further support for their conclusion that the appropriate denominator is the subject parcel's acreage, the hearings officer cited *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003), which involved a destination resort proposal and a code provision that limited residential density to one dwelling per 40 acres in peripheral big game habitat. The code did not specify the appropriate denominator for purposes of applying that density standard, so the county applied as the denominator a large planning area consisting of 1,121,378 acres. Under the county's interpretation, the subject 500 acres could have been developed at a much greater density than one dwelling per 40 acres, as long as the *average* density across the 1,121,387-acre planning area remained below that ratio. However, we rejected that interpretation as inconsistent with the purpose of the density standard, which was to protect big game habitat from residential density. Absent specification in the code of a different denominator, we held that the

denominator most consistent with the purpose of the density standard was the acreage of the subject property.

The hearings officer applied our reasoning in *Wetherell* to the present cases, rejecting petitioners' proposal to use over 2.5 million acres of the county as the denominator because that interpretation is inconsistent with the purpose of the residential density standard to protect big game habitat. Further, the hearings officer concluded that, absent definition by the county of a different denominator, based on regional averages or some other approach, the only denominator that is consistent with the purpose of the density standard is the acreage of the subject property. Consequently, the hearings officer concluded, the proposed densities conflict with Goal 5 and can be approved only via application of the Goal 5 rule, pursuant to the second sentence of Policy 11.

Petitioners challenge the hearings officer's interpretations. First, petitioners distinguish *Wetherell* because, unlike the code provision at issue in that case, Policy 11 references an "overall" residential density. Petitioners argue that the qualifier "overall" clearly denotes some kind of *averaging* of multiple parcel sizes and that no averaging is possible when only the acreage of the subject property is considered.

The hearings officer noted that, while the adjective "overall" appears in the first sentence of Policy 11, it does not appear in the second sentence. Instead, the second sentence refers simply to "that limit." The hearings officer concluded

that the second sentence of Policy 11 has no express denominator.[13] We understand the hearings officer to have concluded that, for purposes of the second sentence, no averaging or "overall" density need be calculated.

We agree with petitioners that the phrase "that limit" in the second sentence of Policy 11 refers to the ODFW density standards, which are described in terms of an "overall residential density." We further agree with petitioners that the term "overall" suggests averaging more than one unit or number, for example, averaging parcel sizes for two or more parcels. However, we see no mathematical or logical reason why the appropriate denominator cannot be based on the number of acres in a single unit of land. That, in fact, is the approach that the county board

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[13] The findings state:

> "The applicant argues that the term 'overall' in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County on the east or west side of Interstate 5. [Intervenor] points out that the use of the term 'overall' in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of 'overall residential density.' The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to 'determine the allowable number of residential dwelling units within regions of the county.' The next sentence does not use the 'overall' modifier: 'Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal." 2021-047 Record 5-6; 2021-052 Record 5-6.

of commissioners adopted, and LUBA affirmed, in *Cattoche v. Lane County*, 79 Or LUBA 466 (2019).

Cattoche involved a proposal to rezone a 131.55-acre parcel in order to subdivide it and develop it with two additional dwellings, for a total of three dwellings. The parcel was designated as Peripheral Big Game Range and, pursuant to Policy 11, the county applied a density standard of one dwelling per 40 acres. The county found that the Policy 11 density standard was satisfied because the resulting density of the three dwellings would have been less than one dwelling per 40 acres, using the 131.55 acres of the subject parcel as the denominator. On appeal to LUBA, the petitioners argued that the commissioners misapplied the one-dwelling-per-40-acres density standard by failing to include in their density calculation the dwellings on and acreage of an adjoining property that was previously part of the same tract. Although we remanded the decision on other grounds, we rejected the petitioners' argument and affirmed the commissioners' implicit interpretation of the density standard as limiting the denominator to the acreage of the subject property.

Cattoche illustrates that the county has, in at least some cases, chosen to calculate "overall residential density" for purposes of Policy 11 based solely on the acreage of the subject property. We therefore reject petitioners' categorical argument that, in all cases, the denominator used to determine "overall residential density" must be based on averaging the acreage of multiple parcels. It is true that, in *Cattoche*, the subject parcel was relatively large and could be developed

with multiple dwellings consistent with the ODFW density limitations. However, petitioners identify no principled reason why the size of the subject parcels makes a difference. *Cattoche* also involved a zone change application, while the present cases do not. However, we perceive no principled basis to calculate the denominator differently based on whether the proposed development involves a zone change.

Based on the legislative history of Policy 11, it is reasonably clear that the phrase "overall residential density" was originally formulated with the expectation that the county would engage in a post-acknowledgment process that, among other things, would identify some 10 to 20 regions of the county and determine, based on the number of acres and existing dwelling units within each region, how many new dwelling units can be constructed within each region consistent with the ODFW density standards. However, as noted, ODFW apparently had concerns about the adequacy of that regional approach to ensuring compliance with Goal 5, and it ultimately recommended that the county adopt additional measures while leaving the original density limitations in place. As also noted, the county has made no effort in the intervening post-acknowledgment period to adopt a regional approach or, indeed, any regulations fleshing out how "overall residential density" should be calculated. In the absence of such regulations, *Cattoche* suggests that the county has chosen to apply the density limitations in Policy 11 using the acreage of the subject parcel as the

relevant denominator. Petitioners have not demonstrated that that approach is legal error.

In any case, petitioners have certainly not demonstrated that the only permissible denominator is the total acreage of vast portions of the county designated as Major Big Game Range. While *Wetherell* involved a different code provision and different facts, it is instructive in noting that ambiguous regulations implementing a statewide planning goal must be interpreted in a manner that is consistent with the goal that they implement. ORS 197.829(1)(d). The obvious purpose of the ODFW density limitations is to protect big game habitat from conflicts by limiting residential density. Because big game habitat is not fungible, determining residential density in that context is necessarily an inquiry into reasonably *local* circumstances. It seems highly inconsistent with Goal 5 and the purpose of the density limitations to justify high-density residential development in one area of big game habitat based on the fact that, hundreds of miles away, on the other side of the county, there are public forests and large private commercial timber holdings with little or no residential development. In that sense, petitioners' preferred approach to calculating overall residential density, using vast portions of the county as the denominator, is much more of a mere "numbers game" than the regional approach about which ODFW expressed reservations during the acknowledgment process.

In sum, petitioners have not demonstrated that the hearings officer erred in calculating residential density based on the acreage of the subject property.

Accordingly, the hearings officer did not err in concluding that the proposed densities conflict with Goal 5 and that those conflicts must be resolved based on application of the Goal 5 rule.

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

In support of their theory of how to determine residential density, petitioners relied on data taken from various non-county sources regarding how many acres in the county are designated as Major Big Game Range and how many dwellings exist thereon. In one portion of their decisions, the hearings officer expressed skepticism that data and evidence that is not included in the county's comprehensive plan can be used to support quasi-judicial decisions, citing Statewide Planning Goal 2 (Land Use Planning) and case law interpreting that goal. 2021-047 Record 8-9; 2021-052 Record 8-9.

Goal 2 requires that land use decisions be supported by an "adequate factual base." The hearings officer understood the cited cases to stand for the proposition that, where an applicant relies on a buildable lands inventory or similar inventory to support a land use decision, the inventory must be adopted into the applicable comprehensive plan. In a footnote, the hearings officer noted that their musings regarding Goal 2 are not necessary to support the primary conclusion that the appropriate denominator is the acreage of the subject property. 2021-047 Record 9 n 8; 2021-052 Record 9 n 8.

On appeal, petitioners argue that the hearings officer misconstrued Goal 2, the applicable case law, and the applicable county legislation to the extent that they concluded that petitioners' evidence can be relied upon to support the decisions only if it is adopted into the county's comprehensive plan.

We need not resolve this assignment of error because petitioners challenge a legal conclusion that is, at best, a contingent and alternative basis for denying the applications. We would have to address challenges to that contingent conclusion only if we had rejected the hearings officer's primary conclusion and affirmed petitioners' preferred approach to determining overall residential density for purposes of Policy 11. However, we have instead affirmed the hearings officer's primary conclusion and rejected petitioners' preferred approach. Accordingly, petitioners' arguments under the third assignment of error provide no basis for reversal or remand.

The third assignment of error is denied.

The county's decisions are affirmed.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2021-047/052 on October 15, 2021, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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LUBA
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ORIGINAL

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON



E.J.K. INVESTMENTS,
Petitioner,

v.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-052
PA 20-05064

EDWARD J. KING,
Petitioner,

v.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-047
PA 20-05066

REPLY BRIEF

(Counsel on reverse)

August 9, 2021

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1. Petitioners intentionally included the entire *Nimpkish* LUBA record in the local record of this proceeding.

The petition recites that the *Nimpkish* decision was not dealing with all the correct documents. Intervenor takes great issue with that characterization. Int. Br at 7 line 9.

Petitioner's point, throughout its initial briefing, was that several references to documents in the *Nimpkish* opinion as being the final relevant documents were not in fact the final version of those documents. It is for that reason that petitioners included the entirety of the *Nimpkish* LUBA record in the record of this local proceeding.

Most relevant, of course, is the LUBA reference in *Nimpkish* to the March 1982 Flora and Fauna Working Paper, when the November 1983 version of the Working Paper was what was finally reviewed for acknowledgment. Also relevant is the Board's reference to language in the July 18, 1984 DLCD Staff Report as being the final position of the agency, when it was actually the September 17, 1984 DLCD Staff Report that stated the agency's final position on what was being acknowledged.

2. Intervenor misstates the final language of the Flora and Fauna Working Paper.

A critical question is what constitutes the final language of the county's working paper for flora and fauna. The original working paper was dated March

1982. See Petition at App-36. The addendum was issued in November 1983. See Petition at App-39.

Note that the addendum was issued well before the July 1984 DLCD Staff Report on acknowledgment. It was the amended working paper that entered the formal acknowledgment process.

The operative language stating the county's policy choice as to what was being removed from the working paper and what was being added appeared in the addendum. It is at petition App-40.

> "DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place: * * * *'

Intervenor asks the Board to give the instruction above the following meaning:

> "DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of **the first paragraph of** text on page 25, and ADD the following in its place: * * * *'

Petitioner, of course, believes that the reading immediately above inserts editorial language into the instruction that is not there, contrary to the most basic rule of construction.

In the view of intervenor, the language of page of page 25 of the working paper, other than the first paragraph being stricken, would remain in the working paper. Petition App-38. To this would be added the new language on page 14 of the addendum. Petition App-40.

The problem with intervenor's reading, of course, is that the language it would like to leave in the working paper fundamentally conflicts with the language that was plainly added in the addendum. The language on page 25 elaborates upon the paragraph that intervenor agrees was deleted. Both the plain language and the logic of the argument being made in the addendum support only the conclusion that the entirety of page 25 of the working paper was dropped.

The addendum language reflects a clear policy shift at the county as to how to deal with the needs of big game. The original working paper reflected a commitment to the ODFW 40/80 standard as a baseline methodology. Petition App-38. That was dropped in the addendum with a clear statement of policy rejecting a "mere numbers game." The policy choice was to rely on the very restrictive nature of the zoning for commercial timber lands (no dwellings allowed on F-1 land) together with clustering and siting standards in the code. Petition App-40.

LUBA should reject the intervenor's invitation to read back into the working paper language that was excised in the November 1983 addendum and which would render the working paper a hodge-podge of conflicting policy statements.

Dated: August 9, 2021.

Respectfully submitted,

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LUBA Record 000074

CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief Length

I certify that (1) this brief complies with the word-count limitation in OAR 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is 670 words.

Type Size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by OAR 661-010-0030(2).

Dated August 9, 2021.

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CERTIFICATE OF FILING AND SERVICE

I certify that on August 9, 2021, I filed the original and four copies of this Reply Brief by personal delivery to:

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I further certify that on said date I served a true and correct copy of said document on the party or parties listed below, by causing the same to be deposited in the United States Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid, and addressed as follows:

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ORIGINAL

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

E.J.K. INVESTMENTS,
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EDWARD J. KING,
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LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Petitioner

Consolidated Case Nos:
LUBA No. ~~2020~~ 047/052
2021



INTERVENOR-RESPONDENT'S RESPONSE BRIEF

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August 2, 2021

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I. RESPONSE TO PETITIONERS' STANDING TO APPEAL

Intervenor-Respondent LandWatch Lane County (Intervenor) does not contest Petitioners' standing to appeal.

II. RESPONSE TO STATEMENT OF THE CASE

A. NATURE OF THE LAND USE DECISION AND RELIEF SOUGHT

Intervenor requests that LUBA affirm the County's decision.

B. SUMMARY OF RESPONSE TO ARGUMENTS

1. Response to First Assignment of Error. LUBA correctly decided the *Nimpkish* decision and the Hearings Official was correct to adhere to that decision. The full record was before LUBA in Nimpkish and Petitioners offer no new evidence. The arguments are the same as those presented to LUBA in Nimpkish. Petitioners' allegations about the Flora and Fauna Working Papers and the administrative rules are incorrect.

2. Response to Second Assignment of Error. Petitioners' *ad hoc* density denominator has no basis in the Comprehensive Plan, the Working Papers, or the Acknowledgment Reports, and it should be rejected. The applicable density denominator is the subject property where a Template Dwelling is proposed in Major or Peripheral Big Game Range.

LUBA Record 000082

3. Response to Third Assignment of Error. The Hearings Official did not err in finding that Petitioners could not, consistent with Goal 2, aggregate plan data to demonstrate compliance with Policy 11, absent a plan amendment.

C. RESPONSE TO PETIIONERS' SUMMARY OF MATERIAL FACTS

Intervenor does not contest the "Summary of Material Facts" presented by Petitioner.

III. JURISDICTION

Intervenor does not dispute that LUBA has jurisdiction over this matter.

V. RESPONSE TO ARGUMENTS

A. RESPONSE TO PETITIONERS' "INTRODUCTION TO ALL ASSIGNMENTS OF ERROR"

Much of what Petitioners put in their "introduction to all assignments of error" is background information. However, Petitioners attempt to recite LUBA's rationale for its decision in *LandWatch Lane County v. Lane County,* __ Or LUBA __ (LUBA No. 2020-030, Jan. 21, 2021) (*Nimpkish*) is not accurate. *See* Petition at 9-10. For example, Petitioners omit any mention of the administrative rules referenced in the *Nimpkish* petition for review and cited by LUBA. *See Nimpkish*, slip op at 8, n. 5. Next, while Petitioners allege that LUBA did not apply Policy 11, LUBA clearly stated that:

LUBA Record 000083

> "In conclusion, we agree with petitioners that the hearings officer's conclusion that RCP Goal 5, Flora and Fauna Policy 11, does not apply because the application does not involve a land division or a zone change improperly construes RCP Goal 5, Flora and Fauna Policy 11. There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres. Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' RCP Goal 5, Flora and Fauna Policy 11."

Nimpkish, slip op at 15-16; *id.* at 15 ("Similarly, here, we conclude that the county uses the one-dwelling-per-80-acres standard referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper to determine the allowed residential density in areas inventoried as Major Big Game Range."). LUBA's closing paragraph is as close to applying Policy 11 as it gets. Petitioners concede these points. *see* Petition at 10. To the extent this is dicta is *dicta*, it sets forth LUBA's rationale for applying Policy 11, and LUBA should be consistent in its application. Petitioners allege that, "most importantly, the methodology prescribed in Policy 11 for meeting the ODFW density recommendations is inherently ambiguous and requires interpretation. LUBA typically allows the County to take a stab at the initial interpretation of an ambiguous standard." Petition at 11. That is exactly what happened here given that the Hearings Official in *Nimpkish* interpreted Policy 11 (and did so incorrectly) and the Hearings Official here attempted to interpret and apply Policy 11 (and did so correctly).

B. RESPONSE TO FIRST ASSIGNMENT OF ERROR – LUBA correctly decided the *Nimpkish* decision and the Hearings Official was correct to adhere to that decision

1. Preservation of assignment of error

At page 14 and 17 of the Petition and First assignment of Error, Petitioner cites to ORS 215.416(8)(a). At no point in the record does the applicant cite to that provision or even quote language from the statutory provision relied upon now. Because Petitioners never cited to or quoted ORS 215.416(8)(a), this statutory provision below, Petitioners cannot do that for the first time before LUBA.

Moreover, as to the merits of the *Nimpkish* case, that which Petitioners contest here, the Hearings Official acknowledged that the applicant did not challenge the holding of *Nimpkish*. After reviewing the holding in *Nimpkish*, the Hearings Official stated that:

> "The petitioners in *Nimpkish* focused on the second sentence of Policy 11, arguing that the County is prohibited from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis. LUBA agreed.
>
> The applicant in this case does not challenge that holding *per se*. Rather, he argues that the addition of this one dwelling does not violate the ODFW-recommended limits, and therefore, an ESEE is not required. That contention is based on his interpretation of the significance of the term 'overall' in Policy 11."

R 2021-047 at 4. The Hearings Official's decisions then goes on to address that issue specifically and does not re-address the merits of the *Nimpkish* decision.

Even the Hearings Official expressly did not understand the applicant to be re-litigating the holding in *Nimpkish*.

Petitioners also allege that they "explicitly incorporated into their local argument briefing in *Nimpkish* in which the applicant there asserted at LUBA that 'The Hearings Official correctly concluded that Goal 5, Flora and Fauna, Policy 11 regarding overall residential densities for protection of Big Game Habitat in the acknowledged comprehensive plan did not apply as criteria for a forest template dwelling." Petition at 15. What the applicant quotes, however, was not expressly set forth when Petitioners incorporated the *Nimpkish* briefing below. Instead, the applicant pointed to the issue of the "zoning approach," which was put to rest in *Nimpkish*:

> "VI. Policy 11 does not apply directly because the required ESEE analysis was done as part of the County acknowledgment process.
>
> In Nimpkish, the property owner was represented by Mike Farthing. For the reasons set for [sic] in Mr. Evans [sic] brief, any required ESEE analysis has already been done. The County took a 'zoning' approach. The arguments set forth in the attached briefs (Exhibit K1 and K2) are incorporated herein and adopted as my own, as are any of Mr. Farthings' arguments contained within the LUBA record. Exhibit K3."

R 2021-052 at 317. Petitioners do not rely on the "zoning" argument, but rather allege a specific argument buried in the *Nimpkish* briefing that was generally incorporated. In other words, what the applicant relies on here is based upon the allegation below that "[t]he arguments set forth in the attached briefs (Exhibit K1

and K2) are incorporated herein and adopted as my own, as are any of Mr. Farthings' arguments contained within the LUBA record." *Id.* In other words, Petitioners believe that the Hearings Official was required to scour the entirety of the briefing and the record in *Nimpkish* to respond to all arguments. This proves far, far too much. Unless specifically raised, Petitioners cannot rely on the entirety of the briefing and the record in *Nimpkish* to raise specific issues therein.

2. Standard of review

Intervenor does not contest the standard of review.

3. Response to Petitioners' Argument

a. Petitioners simply attempt to relitigate Nimpkish

On one hand, Petitioners allege that "[t]he First Assignment below is not a simple rehash of the merits that was lost in *Nimpkish*," Petition at 12, and, on the other hand, Petitioners purport, in their preservation of error, to have "explicitly incorporated into their local argument the briefing in *Nimpkish* in which the applicant there asserted at LUBA that 'The Hearings Official correctly concluded that Goal 5, Flora and Fauna, Policy 11 regarding overall residential densities for protection of Big Game Habitat in the acknowledged comprehensive plan did not apply as criteria for a forest template dwelling.' Petitioners' Lttr (March 18, 2021) incorporating LUBA brief, EJK Rec 317; and *Nimpkish* responding brief, EJK Rec 582," Petition at 15. Indeed, Petitioners rely on an incorporation of not just all of

the briefing in *Nimpkish* but also the entire record in *Nimpkish*. *See* R 2021-052 at 317 ("The arguments set forth in the attached briefs (Exhibit K1 and K2) are incorporated herein and adopted as my own, *as are any of Mr. Farthing's arguments contained within the LUBA record.*") (emphasis added). The irony of alleging that the First Assignment of Error is not a rehash while relying on an incorporation of the applicant's briefing in *Nimpkish* is plainly apparent.

Petitioners also allege that "it is apparent from review of the source documents that *Nimpkish* was not dealing with all the correct documents. At least what is indicated by the references in the opinion." Petition at 12. Intervenor adamantly disagrees with Petitioners' characterization of whether the "correct documents" were considered. Nothing new and pertinent is presented here that was not already presented in *Nimpkish*. This allegation is apparently focused on two issues, one related to the working papers and one related to the staff reports. Because these issues are wholly unfounded, Intervenors will dispose of them at the outset. The *Nimpkish* record was included in the record for this case. *See* Record, Table of Contents, Page 3, Item 7.1.a.viii. Exhibit K: Nimpkish brief and record (R 2021-052 at 576-1736). The Flora and Fauna Working Papers were included in the *Nimpkish* record at R 2021-052 at 1257-1279. The June 29 and July 19, 1984 staff

reports[1] are located in the *Nimpkish* record at R 2021-052 at 752-939, and the September 12, 1984 staff report[2] is located in the *Nimpkish* record at R 2021-052 at 1324-1368.

b. Response to First Sub-Assignment of Error: The Hearings Official's decision was based on Policy 11, an applicable standard

Petitioners' First Assignment of Error is hopelessly unfocused, with bolded paragraphs at the beginning that do not reflect the bolded paragraphs within the body of the argument that would appear to divide the assignment of error into four parts. Intervenor will do their best to respond to the variety of arguments presented, haphazard as they have been set forth, by responding to the numbered and bolded paragraphs that occur throughout the First Assignment of Error.

The First bolded language presented by Petitioners is as follows:

"1. Policy 11 is not in the code's exhaustive list of standards for Forest Template Dwellings; it is implemented through the code; based on text and context and explicit language in the acknowledgment proceeding, it is not an independent, mandatory standard for Forest Template Dwellings. The Hearings Official's obligation is to make decisions based

[1] The *Nimpkish* record contained a DLCD Acknowledgment staff report dated June 29 and July 27, 1984, (R 2021-052 at 752-939) (header beginning on second page has both dates), and another staff report dated only dated July 19, 1984, R 2021-052 at 112-240 (header beginning on second page has only one date). All citations herein are contained within both of these documents, and Intervenors have not found any differences with the exception of the addition of the June 29 staff report into the document with both dates.

[2] Petitioners refer to this as the "Sept 17, 1984: DLCD Staff Report re acknowledgment," Petition at 27, but the correct date is September 12, 1984 and the Commission action occurred on September 13, 1984.

on the standards in the code. ORS 215.416(8)(a). Here, the decision was made based on an inapplicable standard."

Petition at 17 (bold in original). As noted above, this issue has been waived because the applicant never cited to, argued about, or quoted the language of ORS 215.416(8)(a).

Petitioners begin by citing caselaw about whether a comprehensive plan policy constitutes an approval standard, *see* Petition at 17-18, but never applies that caselaw to policy 11. Regardless, Intervenors here (and petitioners in *Nimpkish*) made that very argument to LUBA in *Nimpkish* and LUBA already decided that issue. This is nothing more than a re-hash of an already settled matter that was not appealed further. Intervenor included their Petition for Review from *Nimpkish* into the record and specifically argued this issue:

> "For a comprehensive plan to act as decision criteria, LUBA has determined that the text and context of the comprehensive plan must establish both (1) that the plan requirement is mandatory (rather than hortatory or aspirational) and (2) that the mandate must be applied directly as a permit approval standard for the permit decision on appeal. *Friends of the Hood River Waterfront v. City of Hood River,* 68 Or LUBA 459 (2013). Here, when coupled with the administrative and statutory provisions cited above, Flora and Fauna Policy 11's use of mandatory terms and that Policy 11 applies in circumstances where residential density exceeds the ODFW recommendations, Policy 11 must apply as an approval standard or criterion.
>
> The Lane County Rural Comprehensive Plan contains policies related to big game range, and Flora and Fauna policy 11 provides as follows:
>
> "*Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of*

> *the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.* The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

Appx 14; R 506. The two italicized sentences at the beginning of the policy are mandatory, using the word "shall" on two occasions and "will" and the operative command is that any density above the ODFW recommendation will result in a conflict that must be resolved through an ESEE analysis. The administrative rule cited is the old Goal 5 administrative rule, which contained the requirement for an ESEE analysis at the time the county plan was adopted."

R 2021-047 at 32-33. There is more to the argument, *see* R 2021-047 at 33-42, but, again, LUBA has already decided the issue raised here.

Petitioners move on to argue that "[t]he text of this code supports a conclusion that for this kind of application the relevant standards are to be found in the code, not in the plan." Petition at 18. Petitioners fail to address the operative administrative rules and statute that were the beginning of the analysis in *Nimpkish*, as noted in the LandWatch's Petition for Review:

> "Uses authorized in Forest Zones are set forth in OAR 660-006-0025 and statute, and OAR 660-006-0025(1)(d) provides for '[d]wellings authorized by ORS 215.705 to 215.757[,]' which includes forest template dwellings, the type of dwelling at the center of the challenged approval. *See* ORS 215.750. OAR 660-006-0025(6), in turn, provides that '[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.' *See also* ORS 215.416(4)(a); OAR 660-006-0027(6)(a) ('A proposed

> 'template' dwelling under this rule is not allowed ... if it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, or other provisions of law.'). On its face, this provision, which the Hearings Official fails to address, appears to acknowledge that comprehensive plan policies, and explicitly those comprehensive plan policies that implement Goal 5, apply to dwelling approvals and other uses in the forest zone, including requests for template dwellings."

R 31-32. Petitioners solely focus on the code but fail to address the provisions above that expressly state that the comprehensive plan policies (including those under Goal 5) are applicable. Petitioners allege that "the code includes no statement, suggestion, hint or room for discussion that any plan policy might also be a standard to be applied." Petition at 18. The problem with Petitioners' argument is that it fails to address the administrative rule provisions cited by the Petitioner in *Nimpkish* and specifically cited by LUBA in its decision. *See Nimpkish*, slip op at 8, n. 5 (citing OAR 660-006-0027(6)(a) and OAR 660-006-0025(6)). The mere fact that Lane County ignored its policy for almost four decades and failed to implement that policy through its code simply bolsters LUBA's decision in *Nimpkish* and Intervenor's arguments here that the policy itself is applicable and not found within the code. In other words, the County's willful ignorance of an applicable plan policy and subsequent refusal to implement that plan policy is not somehow evidence that the plan policy does not apply.

Petitioners also rely upon the purpose statement for the F-2 zone to somehow support its argument. Purpose statements are not approval criteria.

While the applicant alleges that the "standards listed in the code for Forest Template Dwellings are intended to protect Goal 5 wildlife resources, too," that is not what the purpose statement says. The purpose provision instead alleges that the purpose is, amongst other things, "to protect scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the county." The habitat here is not simply "wildlife habitat" but something more specific: Inventoried Major Big Game Range habitat. Throughout Lane County, there is a great deal of wildlife habitat, not just big game. Petitioners are once again jumping to conclusions. Regardless, the applicant fails to address, in any cursory or meaningful way, the administrative rule provisions cited above. *See* OAR 660-006-0027(6)(a) and OAR 660-006-0025(6). Without addressing these bases for applying the comprehensive plan, Petitioners' allegations miss the mark entirely. It is not surprising that the applicant does not find policy 11 in the code, and the reason for that is because the standard is in the comprehensive plan, as permitted by OAR 660-006-0027(6)(a) and OAR 660-006-0025(6). Indeed, Goal 5 comprehensive plan policies are directly referenced in OAR 660-006-0027(6)(a). While Petitioners make bare allegations about the County's intent to "incorporate density limits directly into the standards for Forest Template dwellings," the applicant again fails to demonstrate why it is legal error to find that authority in the above cited administrative rules,

and, furthermore, why LUBA should reconsider and overrule its holding in *Nimpkish*. After ignoring the text of policy 11 and the administrative rules cited above that were also cited in *Nimpkish*, Petitioners fault LUBA for allegedly "fail[ing] to follow the correct methodology to identify the applicable standards." Petition at 21. It is Petitioners who fail to follow the correct methodology.

Petitioners next analyze policy 11, focusing initially on the first sentence and more specifically the phrase "overall residential density." Petition at 22. Petitioners then allege that the "minimum lot size of 40/80 acres may be one plausible interpretation. However, it is not the only possible interpretation and is not likely the best interpretation." *Id.* The applicant is simply jumping to conclusions, untethered to the Working Paper, the language of the comprehensive plan, and so forth. The phrase "overall residential density" clearly refers to the densities listed in the working papers, and Petitioners fail to otherwise explain ODFW's 40/80 acre densities explicitly set forth in the working papers. For example, the working paper states, and LUBA cites to in *Nimpkish*, that the:

> "ODFW has recommended *overall* densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: *overall residential density* greater than one dwelling unit/40 acres in Peripheral Range and * * * one dwelling unit/80 acres in Major Range conflicts with habitat for big game."

Nimpkish, slip op at 5, n.3 (emphasis added). Clearly, the phrase "overall residential density" used in policy 11 of the comprehensive plan and the phrases

"overall densities" and "overall residential density" used in the Working Papers refer to the same thing. Petitioners then point to the word "regions," and questions its use in the policy. LUBA resolved this issue in *Nimpkish*. As noted in the decision, which quotes the working papers, the original intent was that

> "[t]he County will be divided into regions convenient for planning purposes. These have not yet been determined but will probably result in 10-20 regions in the County.
>
> Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.
>
> If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict."

Nimpkish, slip op at 10-11, n. 7. LUBA next addressed the use of the term "regions":

> "The first sentence of RCP Goal 5, Flora and Fauna Policy 11, refers to the process that the county was supposed to follow, which included taking actions to identify '10-20 regions' and to 'base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations.' *See* n. 7. All parties agree that, during the 36 years since its Goal 5 program was acknowledged, the county has never taken the steps described in the first sentence and has never created any 'regions' or

> 'base[d] zoning by region on the overall densities or ODFW minimum parcel size recommendations.
>
> * * *
>
> However, the county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game habitat Inventory as Major Big Game Range through the residential density recommendations referred to in RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. Rather, the *second sentence* of the RCP Goal 5, Flora and Fauna Policy 11, remains operative, and it provides that '[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.' The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning. To find that the second sentence has no effect absent the creation of zoning areas would be to allow the count to fail to perform an action it assured LCDC it would perform in order to obtain acknowledgment of its goal 5 program, and it would have the effect of eliminating Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program. Moreover, the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d)."

Nimpkish, slip op at 12-14. LUBA goes on to explain how "[t]his view is supported by language in DLCD's final staff report leading to acknowledgment of the county's Goal 5 program." *See id.* at 14.

Petitioners next turn to the phrase "that limit" in the second sentence and allege that "[c]ontrary to LUBA statement in *Nimpkish*, the second sentence is tethered to the first. 'That limit' refers to the 'overall residential density' in the

first sentence, which needs to be calculated by some methodology that is not stated in the policy." Petition at 22. There are a great deal of missteps and mistakes in the Petitioners' rationale. First, the context of the Hearings Official's decision in *Nimpkish* must be understood. There the Hearings Official determined that policy 11 only applied to rezones and land divisions. That is why LUBA stated that "[t]he second sentence is not tethered to or derivative of the first sentence, which envisions the creation of *zoning areas* [or regions] that the county has never completed." *Nimpkish,* slip op at 13. The "zoning areas" or "regions" that were never completed are not necessary to the second sentence because they residential density recommendations still apply, otherwise the County will not fully implement Goal 5. *See Nimpkish,* slip op at 12 ("All parties agree that, during the 36 years since its Goal 5 program was acknowledged, the county has never taken the steps described in the first sentence and has never created any 'regions' or 'base[d] zoning by region on the overall residential densities or ODFW minimum parcel size recommendations."), and an interpretation that is contrary to Goal 5 would be contrary to law, *id.* at 13 ("the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d)."). The working papers demonstrate that the "overall residential densities" are the 40/80 acres-per-

dwelling standard referenced in the working papers. The methodology is simple. If, in Major Big Game habitat, a dwelling is proposed on a property that is less than 80 acres, a conflict exists that must be resolved through an ESEE analysis.

Next, Petitioners refer to the first sentence and then lead into a "discussion in the Second Assignment that looks at the total forest zone acreage and the total units in the forest zones to document the average or 'overall residential density.'" Petition at 23. This issue is the focus of the Second Assignment of Error and will be addressed there fully. Petitioners are simply making up their own standards at this point, alleging that the "overall residential density," despite what is said in the working papers, is something that has no reference in any documentation. Petitioners' allegations are entirely speculative, and have no basis in any action or policy of Lane County.

Petitioners address the second sentence of policy 11, stating that "[t]he second sentence established the threshold of density that constitutes a conflict and triggers an ESEE." Petition at 23. Petitioners are generally correct but the threshold density is well understood and it is set out in the working papers: 40 acres per dwelling in Peripheral Big Game Range and 80 acres per dwelling in Major Big Game Range. R 2021-052 at 1241 ("The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one

dwelling unit per 40 acres; for Major Big Game range at one dwelling unit per 80 acres."). Petitioners have no explanation for those densities and that is a fatal error in their argument.

The applicant also cites some vague violation of ORS 215.416.(8)(a), a statutory provision never cited or quoted below. The argument appears to be that ORS 215.416(8)(a) was violated because the "plan policy was not identified by the code in the list of standards in LC 16.211 that apply to Forest Template Dwelling applications." Petition at 23-24. As noted above, Petitioners fail to challenge the applicability of OAR 660-006-0027(6)(a) and OAR 660-006-0025(6) and further fail to demonstrate why that provision – by its plain terms – prohibits the application of mandatory policies intended to implement Goal 5. Petitioners' argument is unavailing because policy 11 is set forth in the comprehensive plan. The mere fact that the County and the many applicants over the years have ignored and avoided compliance does not assist the Petitioners' arguments. Moreover, there was no question whether the County was required to apply policy 11 to the subject application in light of the *Nimpkish* decision, and, therefore, Petitioners' arguments related to ORS 215.416(8)(a) have no merit.

c. <u>Response to Second and Third Sub-Assignments of Error: The full record was before LUBA in Nimpkish and Petitioners offer no new evidence. The arguments are the same as those presented to LUBA in Nimpkish.</u>

Petitioners next move on to what appears to be their Second and Third assignments of error in their second argument under the First Assignment of Error:

> "2. The County erred in applying the *Nimpkish* holding, which said the County had committed to the DLCD that it would apply the ODFW density standards directly to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true.
>
> 3. The county erred in applying the *Nimpkish* holding, which said that the DLCD understood it was acknowledging direct application of ODFW density standards to dwelling decisions. The fuller record of the acknowledgment proceeding shows the contrary is true."

Petition at 24.

First, Petitioners allege that LUBA quoted from something other than the "Final Staff Report." First, it is without question that the June/July and September staff reports were in the record in *Nimpkish*, just as they are here. *See* R 2021-052 at 752-939 (DLCD staff report June 29/July 19, 1984); R 2021-052 at 1324-1368 (September 12, 1984 staff report). Petitioners ascribe no significance to any other staff reports. For example, for the August 17, 1984 staff report, Petitioners merely allege that "Report says DLCD staff met with county staff on August 8; IOTC 2.d is still outstanding." Petition at 27. Second, LUBA was well aware of the final staff report, dated September 12, 1984, in *Nimpkish*. *See* R 2021-052 at 81 (quoting Hearings Official's findings in *Nimpkish* referring to the September 12, 1984, DLCD compliance report). In fact, petitioners in *Nimpkish* cited to and quoted from the September 12, 1984, report. *See* R 2021-052 at 90 ("The DLCD

Supplemental Staff Report (September 12, 1984) provides as follows [and quoting 2.d.]. Third, Petitioners ascribe no significance to that misstatement, and Petitioners have not pointed to anything in the September staff report that changes the conclusion about ODFW's "recommended densities as the approach to resolve conflicts between dwellings and game range." R 2021-052 at 908 (R 2021-052 at 146); *id.* at 912 (R 2021-052 at 150) ("ODFW is correct that its recommended density standards ... would constitute an approach to resolve and/or prevent conflicts between dwellings and big game."). More importantly, DLCD noted that ODFW's objections required *both density standards and siting or clustering requirements*: "ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, *the County's F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones*." R 2021-052 at 908 (R 2021-052 at 146-147) (emphasis added). DLCD also noted that:

> "ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minim lot sizes in the F-1, and F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable. This is a problem in the F-2 and EFU zones in particular, but not in the F-1 zone, since, in general, dwellings are not permitted in that zone."

R 2021-052 at 912 (R 2021-052 at 150); *id.* ("Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County

has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made."). The September staff report did not take back or negate any of what was said above. Rather, it just required that one-half of protections be implemented in the code through siting standards and the other half would be implemented through the ODFW's residential density recommendations.

Petitioners' pages of bullet points purport to summarize the staff reports, many without citations to the record. *See* Petition at 26-29. Again, as noted above, none of what the Petitioner points to here is different than what the parties addressed in *Nimpkish*. For example, Petitioners simply rehash arguments about 2.d. and clustering already set forth in *Nimpkish*. *See* R 2021-052 at 90 (petition for review in *Nimpkish*, addressing 2.d. requirement, stating that "[2.d.] appl[ies] to the last sentence of Policy 11, which expressly address 'siting requirements: The county shall work with [ODFW] officials to prevent conflicts between development and Big Game range through land use regulation in resource areas, *siting requirements* and similar activities which are already a part of the County's rural resources zoning program.'"); R 2021-052 at 90 ("In addition to Policy 11 and the ODFW recommendations, there are also, however, the siting standards that were carried forward as part of the acknowledgment process."); R 2021-052 at 587, 594 (response brief in *Nimpkish* addressing requirement 2.d.). The petitioner

in *Nimpkish* alleged that "[t]hese siting standards apply regardless of whether the particular property proposed for a dwelling is less than or greater than 80 acres, but if the property proposed for a dwelling is less than the residential density, then the first two sentences of Policy 11 serve to carry out the program to achieve Goal 5 by requiring an ESEE analysis. In other words, together, the adopted Policy 11 and the siting standards carry out Goal 5 for big game range." R 2021-052 at 91-92. DLCD clearly noted, as pointed out by Petitioner, that "[d]ensities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made." R 92. As it relates to clustering, LUBA correctly determined that:

> "[t]he siting and clustering standards in LC 16.211(5)(a) do not quantify a residential density standard. A requirement to site dwellings '[n]ear dwellings on other tracts' is not a density standard. LC 16.211(5)(a)(i). Nor do the rest of the F-2 zone provisions support the hearings officer's interpretation. The use table for the F-2 zone lists six types of allowed dwellings, five of which do not require any particular parcel size. The F-2 zone does not provide any residential density standard at all."

Nimpkish, slip op at 15. The issues about 2.d., siting standards, clustering requirements, and so forth have all been briefed and resolved by LUBA.

Petitioners are essentially asking LUBA to reconsider their decision in *Nimpkish* because they have not pointed to anything new that was not already raised or addressed in *Nimpkish*. As LUBA has recently held, LUBA lacks the

ability to reconsider a decision. *See Roninger v. Klamath County*, __ Or LUBA __ (LUBA No. 2021-027, July 28, 2021), slip op at 3 ("We do not have authority to reconsider our final decision in light of petitioner's arguments in this appeal. *Sarti v. City of Lake Oswego,* 20 Or LUBA 562 (1991) (explaining that LUBA lacks statutory authority to reconsider its final decision)."). Even if this case is not governed by those cases, the applicant never accounts for the administrative rules allowing plan policies to apply, fails to demonstrate how the September staff report walked back any of the density standard requirements, resolution of conflicts through an ESEE analysis, and so forth. Petitioners focus on only half of the protections: siting standards and clustering requirements. Petitioners fail to give any effect to the recommended density standards that are addressed in the June/July staff report, even though the requirement is expressly included in policy 11. If Petitioners were correct, the particular language in policy 11 would never have been included.

d. Response to Fourth Sub-Assignment of Error: Petitioners' allegations about the Flora and Fauna Working Papers and the administrative rules are incorrect

Petitioners Fourth Sub-Assignment of Error under the First Assignment of Error focuses on the Working Papers and, finally, the administrative rules and is set forth as follows:

"4. Other aids *Nimpkish* relied upon to read Policy 11 into the standards for Forest Template Dwellings are not a basis for amending a clear list of standards through interpretation."

Petition at 29. Petitioners point to footnote 7 in *Nimpkish*, *see Nimpkish,* slip op at 10-11, and allege that "the language from the 1982 working paper quoted in *Nimpkish* 7 was completely stricken from the working paper by the November 1983 'Flora and Fauna Working Paper Addendum.'" Petition at 30. In short, and it is dealt with in more detail below, Petitioners misread the instructions to delete the entirety of the paragraph beginning on page 24 and the entirety of page 25, instead of deleting the text of the paragraph beginning on page 24 and the remainder of the paragraph on page 25. *See* R 2021-052 at 48 ( ) ("DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place[.]").

First, this same issue was raised in *Nimpkish* in Mr. Farthing's Response Brief, and, in fact, Mr. Farthing quoted the exact same provision from the 1984 Addendum to the Working Papers that Petitioners here quote:

> "Also cancelled was the regional approach to forestland zoning that had been previously proposed. Rec 542-543, 573. Instead, it was replaced with the adoption of the following policy in the Addendum to the Flora and Fauna Working Paper:
>
> > J. DELETE text: beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place:

Although this is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.

A prime example is that of 'clustering' dwelling units in Peripheral or Major Range areas – siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.

The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirements of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.

Within Developed and Committed areas. ODFW officials are examining the utility of continuing to designate some of these lands as either Peripheral or Major Range. Developed and Committed areas should be considered as Impacted, and contiguous uses permitted.

The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner – including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with the conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenance.

Policies concerning this issue are proposed in the concluding section of this Working Paper.'

(Emphasis supplied) Rec 573."

See R 2021-052 at 588-590. The above quote is the same quote that occurs at Petitioners' Appendix 40 that Petitioners highlight in the argument about deleted text. Petitioners, in their reply in *Nimpkish*, addressed this issue, stating:

> "The Response Brief focuses on amendments to the Working Paper, Response at 8-9, but those amendments do not delete the density recommendations on page 24 and only deletes a single paragraph that spans page 24 and 25 (R 542-543). Regardless, the added text explicitly states that "the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirements of Peripheral Range," but that does not account for the majority of template dwellings, including the one at issue here, that exist on dramatically smaller lots. In fact, Lane County has no minimum acreage size for a forest template dwelling. *See Cattoche,* slip op at 21 ("the county did not quantify a residential density allowed in the F-2 zone"). When those density recommendations are not met, Policy 11 plainly requires an ESEE analysis to resolve the conflict. Siting standards and clustering have the potential resolve the conflict *when the density recommendations are met.* More importantly, the Working Papers did not change Policy 11's text."

Intervenors' Appendix at 6-7 (LandWatch Reply Brief in *Nimpkish*). Intervenors 1,000 Friends, in *Nimpkish*, also concluded in their reply brief that:

> "[p]age 14 of the addendum replaces the last paragraph on page 24 and the 'remainder of the text on page 25' left over from the last paragraph on page 24. The rest of page 25 remains in the Working Paper. And even if that were not the case, DLCD and LCDC relied on the plain text of Policy 11 and the amended Working Paper to conclude that Policy 11 triggers Goal 5 when a proposal exceeds ODFW's recommended dwelling densities in big game habitat. The applicant's proposal exceeds those limits in this case."

Intervenor's Appendix at 14-15 (1000 Friends Reply Brief in *Nimpkish*). As explained in *Nimpkish* above and below, the direction was to delete the entirety of the text from the paragraph that spans pages 24-25 of the Working Paper. Again,

these issues were already presented to LUBA, and LUBA resolved those issues. Petitioners offer nothing new.

Second, the copy of the Working Paper used by Petitioners contains handwritten notes, alleging "deleted in addendum" (Petitioners' App-37) and "deleted by addendum" (App-38). LUBA should be mindful of those unauthorized additions.

Third, and most importantly, Petitioners completely misread the direction from the 1984 Working Paper Addendum. The 1984 Addendum states: "DELETE text beginning with the paragraph on page 24 of the Working Paper through the remainder of the text on page 25, and ADD the following in its place[.]" R 2021-052 at 48 (Petitioner's App-40). As noted above and in the reply brief in *Nimpkish*, the direction was to delete the paragraph that began on page 24 and the remainder of the paragraph on page 25, not the entirety of page 25. Regardless, the language to be added in place of the deleted paragraph again specifically addresses the 40/80-acre density recommendations. Clearly, those figures were not intended to be lost in the acknowledgment process. Moreover, the language in policy 11 remained unchanged.

Fourth, under Petitioners' reading, if there was no requirement for a a density standard, then there would be no appreciable difference between Major and Peripheral big game range because siting standards and clustering requirements

apply to both. There would be no additional protection afforded Major Big Game over Peripheral Big Game as there is with ODFW's residential density recommendations. Petitioners are simply wrong to assume that the direction was to delete everything rather than the identified paragraph that spans pages 24-25 of the working paper. *See* R 2021-052 at 522-523 (Petitioner's App-37-38). Petitioners are incorrect to argue that "the County chose to rely on clustering and siting standards, and the LCDC acknowledged that choice, as implemented by the Count, as consistent with Goal 5." Petition at 31. This ignores the text of policy 11, the existing ODFW recommendations, and fails to differentiate, in any way, between the Major and Peripheral ranges inventoried by the County, which would render the difference utterly meaningless.

Petitioners finally turn their focus on OAR 660-006-0025(6) ("[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.") and OAR 660-006-0027(6)(a) ("A proposed 'template' dwelling under this rule is not allowed … if it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, or other provisions of law."). The applicant's only defense against these provisions is that "the acknowledged code in this instance is a complete list

of standards for review of Forest Template Dwellings." Petition at 32. In light of Policy 11, clearly, it is not, and the applicant simply ignores the plain text of the administrative rules, and fails to otherwise account for their explicit reference to Goal 5 and Forest Template Dwellings.

Petitioners move on to their "conclusion" to the First Assignment of Error, repeating their arguments. *See* Petition at 32-34. Intervenors will respond to each of the six concluding paragraphs. First, Policy 11 was acknowledged and it contains specific language that residential density recommendations for big game would require an ESEE analysis if there is a conflict. The Working Papers explicitly identify when the conflict occurs:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. * * * to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range * * * conflicts with habitat for big game."

R 2021-052 at 522 (Flora and Fauna Draft Working Paper, Page 24). Petitioners fail to explain away these requirements.

Second, the June/July staff report that identified the ESEE analysis as the means to resolve conflicts when ODFW's recommendations are exceeded was never overruled in the September staff report. The clustering/siting requirements were half of the protections and the density recommendations were the other half of the protections. *See* R 2021-052 at 908 (R 2021-052 at 146-147): "ODFW

objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, *the County's F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones*." (emphasis added). If the density recommendations were not included, then the difference between Major and Peripheral Big Game Range would be meaningless because clustering/siting requirements would apply to both without any greater protections for Major Big Game Range.

Third, the applicant focuses only on the September staff report's with the "option of minimum lot sizes or clustering standards" and ignores the entirety of the June/July staff report. Clustering standards alone are not adequate to implement Policy 11 and comply with Goal 5. Clustering/siting standards are simply half of the protections, as indicated by the June/July staff reports, and there would be no additional protections for Major Big Game Range as compared to Peripheral Big Game Range if only clustering/siting requirements were enough to implement policy 11 and comply with Goal 5.

Petitioners Fourth argument simply repeats the arguments above.

Fifth, the applicant has not identified any significant issue with identifying the June/July staff report as the final report. LUBA had before it the September staff report and all parties addressed the September report. A simple misstatement without any significance is not subject to reversal or remand.

Petitioners final concluding argument is that LUBA was "way off track … to conclude that Policy 11 had to be applied directly for any part of it to be given effect." LUBA's decision was not appealed, and without the density recommendations applying to Major and Peripheral Big Game Range, there would be no meaningful difference in protections for these two different Big Game Ranges. Moreover, the applicant simply ignores the June/July staff report.

Petitioners has not provided a single argument that was not already addressed in *Nimpkish*, and the LUBA should not accept Petitioners' invitation to overrule its prior ruling, assuming that is even possible.

C. RESPONSE TO SECOND ASSIGNMENT OF ERROR –.

1. Preservation of assignment of error

Intervenor does not contest preservation because this issue constituted the bulk of the arguments below. Unlike the issue presented in the First Assignment of Error, the Second Assignment of Error was squarely raised below.

2. Standard of review

Intervenor does not contest the standard of review.

3. Response to Petitioners' Assignment of Error

As to Petitioners' Second Assignment of Error, Petitioners attempt to create their own regions of the County, instead of using ODFW's explicit recommendations, that are nothing more than *ad hoc* calculations that have no

support whatsoever in the text, context, or legislative history. They are purely of the Petitioners' own machinations. In response, the Hearings Official reviewed the text, context, and caselaw, and rejected Petitioners' arguments, ultimately agreeing with Intervenor that in Big Game Range, an applicant for a forest template dwelling must prepare an ESEE analysis if the proposed dwelling exceeds ODFW's recommended residential densities.

The Hearings Official also determined that "[e]ven if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that he could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan." R 2021-047 at 8. Analogizing to Goal 10's buildable lands inventory,

> "which must be incorporated into the comprehensive plan, so that future applicants are using the same data.
>
> As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study. Until that work is completed, Policy 11 makes clear, any density above the ODFW recommended density limits 'shall be considered to conflict with Goal 5' and will be allowed only following an ESEE analysis."

R 2021-047 at 9. In response to Policy 11's text referring to "Oregon Department of Fish and Wildlife recommendations," the applicant turns to the dictionary, instead of turning to ODFW's recommendations contained in the working papers

that unequivocally identify density standards for Major and Peripheral Big Game Range. The mere fact that the County never identified the regions of the County does not absolve the County from complying with Goal 5. Petitioners first step is a misstep. Petitioners focus on "overall" while ignoring any of the other text, including "Oregon Department of Fish and Wildlife recommendations," is telling. Clearly, reference to the agency and its recommendations would indicate that the agency made some recommendations on density, and it is undisputed that those recommendations are included in the Flora and Fauna Working Papers that Petitioners cite to in their Petition at page 37. Petitioners concede that Policy 11's reference to "overall residential density" matches what is in the Working Papers. Petition at 37. Petitioners allege that there is no reference to "minimum lot size for any dwelling" but that is because residential density recommendations and clustering/siting requirements constitute the protections for Big Game Range. The County never implemented minimum lot sizes for the F-2 zone, as acknowledged in *Nimpkish* and *Cattoche*. Petitioners have not pointed to anything that compels the use of an *ad hoc* density denominator that has no basis in the Comprehensive Plan, Working Papers, or the DLCD staff reports.

Petitioners next attempt to pull some support from the Working Paper addendum by pointing to a paragraph that acknowledges that the 40/80-acre density standard is a "useful index," but "a mere 'numbers game' is not the

optimum manner to deal with conflicts to the Big Game Range resource." Petition at 38. This is not a rejection of the density standards because (1) it does not reject anything from the June/July staff report about conflicts, density recommendations, and ESEE analysis to resolve the conflict, and (2) the same page references the 40/80-acre zones that would apply to Peripheral and Major Big Game Range, respectively. Petitioners ignore that paragraph because it does not support Petitioners' narrative.

Petitioners present two sentences addressing the "acknowledgment reports" and simply dismisses the objections by ODFW – the agency that formulated residential density recommendations – and 1000 Friends objections to Policy 11. Petitioners make the far-fetched argument that the "summary sheds no light on how to operationalize 'overall," despite the fact that they are ODFW's recommendations. Petitioners refuse to see what is right in front of them.

Petitioners next return to the code in an attempt to resolve alleged ambiguities in the code. Petition at 38. In doing so, Petitioners rely, again, on the acknowledgment review that it has already raised numerous times. The density standards were already addressed and the objections resolved in the June/July staff report. That was the first half of the Big Game protections. The only remaining issue was whether the clustering/siting requirements would be implemented in the code, which was the second half of the Big Game protections. Again, without the

density recommendations, there would be no difference in protections for Major and Peripheral Big Game Range. That difference would be rendered meaningless under Petitioners' unfounded theory.

Petitioners next allege that the "[t]ext, context and legislative history indicate that Policy 11 does not state a minimum lot size standard for a dwelling." Petition at 39. Petitioners attempt to confuse and conflate by using "minimum lot size" and "residential density recommendations." The former was never implemented, and the residential density recommendations are contained in the Working Papers and referenced in Policy 11.

Intervenors believe that the ultimate conclusion reached by the Hearings Official is the same as the statement in *Nimpkish* from LUBA that the property at issue is the relevant density denominator:

> "There is no dispute that the density of *the subject property* with the proposed dwelling would exceed one dwelling unit per 80 acres. Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-15-000."

Nimpkish, slip op at 15 (emphasis added). While Intervenors believe that LUBA's conclusion resolves the issue, Intervenors also agree with and incorporate the Hearings Official's analysis. Petitioners do not distinguish *Wetherell v. Douglas County,* 44 Or LUBA 745, 756 (2003), in any meaningful manner. Instead,

Petitioners return to the word "overall" to the exclusion of virtually all other text in Policy 11. *See* Petition at 40.

Petitioners next argue that their interpretation is most consistent with the "overall residential density" standard. *See* Petition at 40-41. Again, Petitioners ignore all other language, including the identification of the agency that provides the density recommendations. Instead of looking to ODFW's density recommendations, Petitioners concoct their own density recommendations. *See* Petition at 40-41. Petitioners' density recommendations do not arise from anything other than the isolated word "overall," and Petitioners ignore all text, context, and caselaw that LUBA, the Hearings Official, and Intervenors rely upon.

D. RESPONSE TO THIRD ASSIGNMENT OF ERROR – The Hearings Official did not err in finding that Petitioners could not, consistent with Goal 2, aggregate plan data to demonstrate compliance with Policy 11, absent a plan amendment.

1. Preservation of assignment of error

Intervenor does not contest preservation.

2. Standard of review

Intervenor does not contest the standard of review.

3. Response to Petitioners' Arguments

As they must, Petitioners next turn to the Hearings Official's alternative holding cited above, related to Goal 2. Petitioners allege that "[n]o one takes issue with the source or the quality of the data or the math," Petition at 41, but

Intervenors and the Hearings Official take issue with the applicability of Petitioners *ad hoc* methodology that has no basis in the Comprehensive Plan, Working Papers, or Acknowledgment staff reports. Petitioners ask LUBA to ignore Policy 11's text and the Working Papers' express ODFW residential density recommendations, and, instead, approve Petitioners' methodology based entirely on a single word: "overall." While Petitioners call the Hearings Official's rationale "nonsense," Petition at 42, Intervenors believe that Petitioners' unsupported methodology is more applicable to that term.

Petitioners again focus exclusively on the term "overall" to the exclusion of all other text in Policy 11. That alone should demonstrate that Petitioners' theory is misplaced and without merit. The Hearings Official correctly understood that any such density standard must originate from the comprehensive plan (and ODFW), and there is simply nothing in Petitioners' theory that originates from the Comprehensive Plan with the exception of a single, isolated word. Petitioners allege that "'[o]verall residential density' has a meaning that can be operationalized with the plan as is," but, again, that ignores that the "overall residential density" is qualified by the phrase "Oregon Department of Fish and Wildlife recommendations on overall residential density." With that qualifying information, it is readily apparent that the acknowledged policy 11 contemplates a particular recommendation from ODFW, and that density recommendation is

unequivocally found within the Working Papers, as has exhaustively been demonstrated both here and in *Nimpkish*. An "adequate factual basis for the policy" exists because the ODFW recommended density referred to in the Policy is found in Working Papers. Petitioners do not address the density listed in the Working Papers and that failure is fatal to their argument. Petitioners cannot introduce a density without addressing the ODFW's residential density recommendations that are referenced *in the Comprehensive Plan.* It is axiomatic that if Petitioners want to include a density standard that is not found in or referenced in the Comprehensive Plan, then a comprehensive plan amendment would have to be promulgated to introduce a new density standard and determine that it is compatible with the requirements Goal 5. Petitioners conclude that the "Hearings Official has not explained why any of this effort runs afoul of Goal 2." Petition at 45. To the contrary, the Hearings Official spent two pages of her decision demonstrating why introducing a density standard that has no basis in the Comprehensive Plan, the Working Papers, or the Acknowledgment staff reports is not compatible with Goal 2, and, in the absence of "regional study" that was initially contemplated, "Policy 11 makes clear, any density above the ODFW recommended density limits 'shall be considered to conflict with Goal 5' and will be allowed only following an ESEE analysis." R 2021-052 at 9 (Petitioners' App-8).

VI. CONCLUSION

Intervenor respectfully requests that LUBA affirm the County's decision.

Respectfully submitted this 2nd day of August, 2021.

By: _____

Sean T. Malone, # 084060
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LandWatch Lane County

CERTIFICATE OF COMPLIANCE, FILING, AND SERVICE

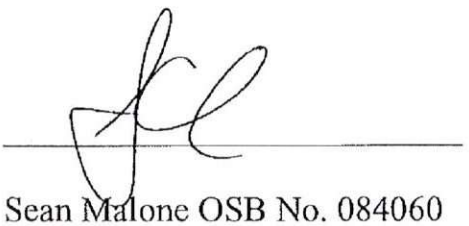
I certify that (1) this brief complies with the word-count limitation in OAR 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is 9763 words.

I certify that on August 2, 2021, I filed the original of Intervenor's Response Brief along with four copies with the Land Use Board of Appeals, DSL Building, 775 Summer Street NE, Suite 330, Salem OR 97301-1283, by Certified First Class Mail, Return Receipt Requested.

I also certify that on August 2, 2021, I served a true and correct copy of this Response Brief by First Class Mail to the following person(s):

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2. 1000 Friends Or Oregon Reply Brief in LUBA No. LUBA No. 2020-030, dated Nov. 3, 2020.....App 10-16

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LANDWATCH LANE COUNTY Petitioner, and 1000 FRIENDS OF OREGON, Intervenor-Petitioner vs. LANE COUNTY, Respondent, and NIMPKISH LLC, Intervenor-Respondent.	)	LUBA No. 2020-030

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November 3, 2020

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I. Reply Brief

A. REPLY TO FIRST ASSIGNMENT OF ERROR

The Response Brief half-heartedly and repeatedly alleges that Policy 11 should not require an ESEE analysis because that has not happened for 36 years. (Response Brief at 3, 4, 5, 6, 8 etc.). It should also be known that even preparing ESEE analyses in the context of plan amendments and zone changes is only a recent phenomenon in Lane County. Simply put, past unlawful practice and alleged backroom deals (or "grand bargain[s]" (Response at 13)) at the "11th hour" that are only known to a handful of individuals are not dispositive.[1] Notably, the allegations about the "grand bargain" are not evidenced in the acknowledgment staff reports and orders, and, most importantly, there is no evidence of them in the comprehensive plan. Instead of following the alleged backroom deals known only to a few planners, Petitioners believe the goals, statutes, rules, and local criteria (including the comprehensive plan) should guide the outcome here.

The Response Brief alleges that there is "no mention of Policy 11" in the implementation of the F-2 provisions, yet, there is Policy 11 in the comprehensive plan and OAR 660-006-0025(6), ORS 215.416(4)(a), and OAR 660-006-0027(6)(a) ("A proposed 'template' dwelling under this rule is not allowed ... if it

[1] Oregon's land use system is not contingent upon backroom deals and grand bargains that are hidden from the public and only know by a few former planners now working as development consultants.

is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, or other provisions of law."). These provisions are undeniably state law and the decision-maker here is not the County Board; therefore, *Siporen* deference does not apply to this case.

Petitioner argues that the 1984 acknowledgement disposes of any and all requirements of Policy 11. Response 6-8. Petitioner does not question that the third sentence is implemented by adopted land use regulations for siting standards. However, that third sentence does not account for the mandate to use ODFW density recommendations to determine conflicts and then explicitly use the ESEE analysis process to resolve that conflict, *as set forth in the first and second sentence*. That is the problem for both the Intervenor and the Hearings Official's findings: they fail to account for and therefore misapply Policy 11. In other words, there is more to Policy 11 than what is implemented, and, coupled with the statutes and rules, the first and second sentences apply directly to proposals for template dwellings if they exceed the density standards, only to be resolved by an ESEE analysis. The Response Brief fails to point to any land use regulation that implements the first and second sentence of Policy 11.

The Response relies upon the recollections of former County planners who are now development consultants themselves. LUBA has previously disagreed with the planners in their recollections in other Lane County Goal 5 cases. *See*

Save TV Butte v. Lane County, __ Or LUBA __ (LUBA No. 201-031, Jan. 8, 2018) (LUBA disagreeing with planner that alleged County did not designate big game habitat as 1C significant). Inside information of backroom deals should be treated with skepticism, especially when compared with the actual acknowledgment orders and ultimately the comprehensive plan that was adopted. Policy 11 was adopted; and the Response Brief ignores Policy 11's first two sentences.

The Response Brief focuses on amendments to the Working Paper, Response at 8-9, but those amendments do not delete the density recommendations on page 24 and only deletes a single paragraph that spans page 24 and 25 (R 542-543). Regardless, the added text explicitly states that "the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirements of Peripheral Range," but that does not account for the majority of template dwellings, including the one at issue here, that exist on dramatically smaller lots. In fact, Lane County has no minimum acreage size for a forest template dwelling. *See Cattoche,* slip op at 21 ("the county did not quantify a residential density allowed in the F-2 zone"). When those density recommendations are not met, Policy 11 plainly requires an ESEE analysis to resolve the conflict. Siting standards and clustering have the potential resolve the conflict *when the density recommendations are met.* More importantly, the Working Papers did not change Policy 11's text.

The Response Brief also attempts to rely on a separate Hearings Official decision that differed in its analysis. Response 16. That decision was not challenged, nor is it at issue here.

B. REPLY TO SECOND ASSIGNMENT OF ERROR

The Response Brief attempts to read a "feasibility" finding into the decision, but the decision does not contain such a finding. Moreover, it is Mr. Remboldt, the geotechnical consultant, that determined that "a more comprehensive evaluation (Level II) when the actual development is proposed" is necessary because the "development is within a very high landslide hazard area[, which] is an indication that that potential development problems may exist." Appx 11 (R12). If that is so, then there is good reason that there was no feasibility finding: because such a finding was not justified absent a more comprehensive geotechnical evaluation. That Level II report is intended to ensure that the geohazard criteria are satisfied, but Petitioners have no opportunity to challenge whether the report *does, in fact, satisfy the criteria*. The very fact that building inspector is looking for problems that would require restrictions is evidence of discretionary decision-making not suitable for a building official.

C. REPLY TO SECOND ASSIGNMENT OF ERROR

If the prohibition on placing more than one template dwelling on a tract can be so easily avoided by splitting up the tract, while retaining control over the tract,

then the Hearings Official's interpretation is contrary to the underlying policy and purpose of ORS 215.750(4)(c) and its local implementing provision, then that interpretation cannot be affirmed.

II. CONCLUSION

Petitioner respectfully requests that LUBA reverse or remand the County's decision.

Respectfully submitted this 3rd day of November, 2020.

By: _____
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Counsel for Petitioner

CERTIFICATE OF COMPLIANCE, FILING, AND SERVICE

I certify that (1) this brief complies with the word-count limitation in OAR 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is 1000 words.

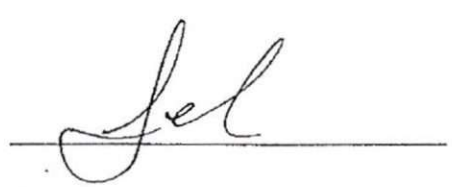
I certify that on November 3, 2020, I filed the original of Petitioner's Petition for Review and the Appendix along with four copies with the Land Use Board of Appeals, DSL Building, 775 Summer Street NE, Suite 330, Salem OR 97301-1283, by Certified First Class Mail, Return Receipt Requested.

I also certify that on November 3, 2020, I served a true and correct copy of this Petition for Review by First Class Mail to the following person(s):

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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LANDWATCH LANE COUNTY, Petitioner, and 1000 FRIENDS OF OREGON Intervenor-Petitioner, v. LANE COUNTY, Respondent, and NIMPKISH, LLC, Intervenor-Respondent.	INTERVENOR-PETITIONER'S REPLY LUBA No 2020-030

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Intervenor-Respondent's (the applicant) Response mischaracterizes the timing and significance of the amendments to the flora and fauna working paper in the 1983 addendum. The applicant also misinterprets the extent of the amendment. R-573 (Addendum 14).

The county created the November 1983 addendum (R-558-579) before the "waning days of the summer of 1984." Resp-LandWatch 8:8-12; R-559. The 1983 addendum was attached to DLCD's 1984 June/July staff report. R-56; *see* R-201 (citing identified primary conflict from "Working Paper p.24" and quoting "Addendum, p.14"). The changes to the working paper were not part of some last-minute deal, and they did not change the text of Policy 11. *Compare* R-202, 332 and App-3.

Siting requirements were part of Policy 11 from the beginning. R-202. They were not implemented as part of a last-minute compromise for the F-1 zone. Resp-LandWatch 8:18-20. In its first report, DLCD understood that "the F-1 zone does not allow dwellings." R-206, 336. And referring to the last sentence in Policy 11, objectors pointed out "that the... Addendum and Policy 11 prescribe clustering and siting standards, but these are not carried out in the F-2 zone." R-209, 339 (citing addendum 14).

In its response to objections, DLCD recognized that the lack of siting requirements was "a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone." R-213. The county addressed that objection by proposing clustering provisions for dwellings in the F-2 zone. R-649-50. In its September report, DLCD concluded that siting requirement had been met. R-650. The applicant's proposed spin on events is simply wrong. The resolution of that objection did not involve some grand compromise related to the F-1 zone.

Nothing in the applicant's Response challenges the fact that ODFW's recommended densities define when a conflict occurs in big game habitat. R-542 (Working Paper 24). Nothing changes the fact that the minimum parcel sizes in the F-2 do not address overall dwelling densities. And nothing in the applicant's Response challenges the plain language of the first two sentences of Policy 11, which as DLCD recognized in its staff report, require the county to address "[d]ensities above those recommended by ODFW" by "applying the entire Goal 5 process when such proposals are made." R-212-213. The county did not address the objections to the first two sentences of Policy 11 after

DLCD's June/July staff report, because DLCD concluded that Policy 11 complied with Goal 5. R-213.

Instead of adopting ODFW's density standards directly into its resource zones—which "would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat"—the county chose to choose to rely on the process outlined in Policy 11. *See* App-5-6 (Excerpt from Linn County Comprehensive Plan, showing example of county that implemented DLCD density standards in its resource zones). That policy requires implementing measures to establish regions, which Lane County "still needs to adopt." R-212. That was true in 1984, and it is true today. In 1996, Lane County proposed but ultimately postponed addressing density conflicts in big game habitat. R-404. Until it is fully implemented, Policy 11, requires the county to address proposals that exceed ODFW density limits using the Goal 5 ESEE process.

Finally, the applicant is wrong about the extent of the amendment to the Working Paper in the November 1983 addendum. Page 14 of the addendum replaces the last paragraph on page 24 and the "remainder of the text on page 25" left over from the last paragraph on page 24. The

rest of page 25 remains in the Working Paper. And even if that were not the case, DLCD and LCDC relied on the plain text of Policy 11 and the amended Working Paper to conclude that Policy 11 triggers Goal 5 when a proposal exceeds ODFW's recommended dwelling densities in big game habitat. The applicant's proposal exceeds those limits in this case.

DATED: November 3, 2020.[1]

Respectfully,

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[1] Certificate of Compliance: I certify that this Reply is written in 14-point font and contains *** words.

CERTIFICATE OF FILING AND SERVICE

I certify that on the date indicated below, I filed the original of the foregoing Reply with four copies by first class mail with the Land Use Board of Appeals:

Land Use Board of Appeals, DSL Building,
775 Summer Street, NE, Suite 330,
Salem, OR 97301-1283

I also certify that on the same date I served a true and correct copy of the foregoing Reply on the following counsel of record by first class mail:

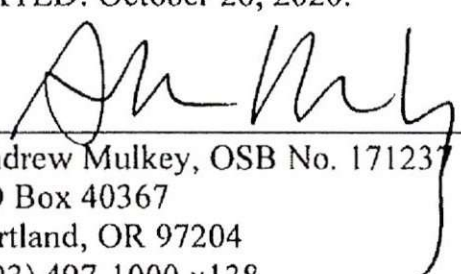
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RE: **New Conference Call Instructions for Oral Argument**
King et al v. Lane County
LUBA No. 2021-047/052

The oral argument that is scheduled for August 24, 2021 at 1:00 PM will be held via telephone conference.

Please be advised the conference call instructions have changed. Please call **844-766-2282** and enter the access code of **620100** to participate in the conference call.

Respondent will arrange for any oversize exhibits listed in the record to be transmitted to the board prior to oral argument.

OAR 661-010-0040(3) provides that "A party shall seek the consent of other parties before requesting a change in the scheduled time or date for oral argument." If you need to request a change to the date or time scheduled for oral argument, please contact LUBA by phone or email to inquire about available dates and times in advance of requesting a change. LUBA has a busy docket and cannot guarantee that your preferred date and/or time can be accommodated, but will provide you with available dates and times.

Best Regards,

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RE: King et al v. Lane County
LUBA No. 2021-047/052

The oral argument for the above-referenced appeal scheduled for August 24th, 2021 at 1:00pm will be held via telephone conference. Please call 1-877-848-7030 and enter the access code of 240954 on the designated day and time to participate in the conference call.

Respondent will arrange for any oversize exhibits listed in the record to be transmitted to the board prior to oral argument.

OAR 661-010-0040(3) provides that "A party shall seek the consent of other parties before requesting a change in the scheduled time or date for oral argument." If you need to request a change to the date or time scheduled for oral argument, please contact LUBA by phone or email to inquire about available dates and times in advance of requesting a change. LUBA has a busy docket and cannot guarantee that your preferred date and/or time can be accommodated, but will provide you with available dates and times.

Best Regards,

Erin Pence
Executive Support Specialist

LUBA
JUL 13 2021 AM 11:30

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ORIGINAL

E.J.K. INVESTMENTS,
Petitioner,

v.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-052
PA 20-05064





EDWARD J. KING,
Petitioner,

v.

LANE COUNTY,
Respondent,

and

LANDWATCH LANE COUNTY,
Intervenor-Respondent.

LUBA No. 2021-047
PA 20-05066

CONSOLIDATED PETITION

(Counsel on reverse)

July 12, 2021

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First Assignment

The Hearings Official erred in applying RCP, Goal 5 Flora and Fauna Policy 11 to this site-specific Forest Template Dwelling application. More specifically:

They erred in applying standards other than those identified in the acknowledged code as the standards for making the decision, contrary to ORS 215.416(8)(a). Policy 11 is not listed; it is not acknowledged as among the approval standards; it was explicitly acknowledged as being implemented through the code.

They erred in applying plan Policy 11 directly in this decision when the Purpose section of the F-2 zone is explicit that relevant Goal 5 wildlife plan provisions are implemented through the code.

They erred in applying the *Nimpkish* holding, which said the County had committed to the DLCD that it would apply the ODFW density standards directly to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true.

They erred in applying the *Nimpkish* holding, which said that the DLCD understood it was acknowledging direct application of ODFW density standards to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true.

They erred in finding that Petitioners did not directly challenge LUBA's holding in *Nimpkish* that Policy 11 applies directly to this application. It was directly challenged. App-4 last para. 14

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1. Policy 11 is not in the code's exhaustive list of standards for Forest Template Dwellings; it is implemented through the code; based on text and context and explicit language in the acknowledgment proceeding, it is not an independent, mandatory standard for Forest Template Dwellings. The Hearing Official's obligation is to make decisions based on the standards in the code. ORS 215.416(8)(a). Here the decision was made based on an inapplicable standard. 17

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3. The county erred in applying the *Nimpkish* holding, which said that the DLCD understood it was acknowledging direct application of ODFW density standards to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true 24

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I. PETITIONER'S STANDING

Petitioners EJK Investments and Edward J. King (Petitioners) are the property owners and the Applicants, and each timely filed a Notice of Intent to Appeal. ORS 197.830(2).

II. STATEMENT OF THE CASE

A. Nature of the Land Use Decision and Relief Sought

The decisions on appeal are Hearings Official reversals of Planning Director approvals of forest template dwelling applications. Rec-3. The reversals resulted in the denials of the applications.

This is a consolidated appeal of separate decisions issued on the same day and resolved on the same legal theory. Separate records were filed with LUBA.

The decisions are included in the Appendix. The Hearings Official's decision in EJK Investments (EJK) is at App-1; the related Director decision is at App-9. The Hearings Official's decision in Edward J. King (King) is at App-18; the related Director decision is at App-26. The decisions are the same in all aspects relevant and material to this appeal. Therefore, references herein will be to the EJK decision and record unless otherwise noted.

The sole basis for the denials was the application of Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11. LUBA's recent decision in *1000 Friends of Oregon v. Lane County*, __ Or LUBA __ (No. 2020-030, Jan. 21, 2021) (*Nimpkish*) determined that Policy 11 applies as an

independent mandatory standard to forest template dwelling applications. In these decisions the Hearings Official followed *Nimpkish*, applying Policy 11 as an independent, mandatory standard, then interpreted the policy in the first instance, determined the applications did not comply, and then denied them.

Petitioners assert that the Hearings Official misinterpreted and misapplied Policy; each application complies with the relevant standards under a correct interpretation of the policy. Because Policy 11 was the sole basis for the Hearings Official to deny the applications, and the Hearings Official erred in applying the policy to deny the applications, LUBA should reverse the denials and order the County to approve the applications. ORS 197.835(10)(a)(A); ORS 197.835(9)(a)(D).

The First Assignment contends that the Hearings Official erred in applying Policy 11 at all. The language of the code and its legislative history compel the conclusion that Policy 11 does not apply as an independent, mandatory standard, but rather that Policy 11 is implemented through the code. In raising this assignment, the Petitioners necessarily are requesting LUBA to revisit its reasoning in *Nimpkish*, specifically to address legislative history, included in the record of this proceeding, that was not discussed by the Board in that decision.

The Second Assignment starts with the assumption that the Board will continue to rely on its reasoning in *Nimpkish* that Policy 11 applies to these

decisions, and it challenges the Hearing Official's conclusion that the proposal does not comply with Policy 11.

The Third Assignment is derivative of the Second Assignment. It challenges what appears to be the Hearing Official's conclusion that an applicant cannot demonstrate compliance with Policy 11 without amending the plan inventories. The Hearing Official's legal theory here was not raised or briefed in the local proceeding, and it is based on a misinterpretation of what Policy 11 means.

B. Summary of Arguments

All assignments relate to Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.

> "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

First Assignment: The Hearings Official applied Policy 11 to these decisions because *Nimpkish* found the policy to be a mandatory, independent standard for Forest Template Dwellings. However, the code states a complete list of standards that apply to such decisions; it contains no open-ended or

catchall standards that might invite tapping Policy 11; and it is prefaced with a "Purpose" statement that says the code provisions are intended to protect wildlife habitat and to implement the Goal 4 Rule. Nevertheless, *Nimpkish* held that Policy 11 must be directly applied in addition to the code standards.

The *Nimpkish* opinion appears to have headed in that direction based on two things it states as fact, which are not facts. **First**, it quotes at length from the "Flora and Fauna Working Paper (1982)" which committed the County to develop regional "carrying capacities" for dwellings in Big Game habitat, and then either apply those numbers to its decisions or simply apply the ODFW recommendations for minimum lot sizes for dwellings in Big Game habitat. However, the opinion seems unaware that the quoted Working Paper language was deleted in an addendum – the "Flora and Fauna Working Paper Addendum (1983)." The addendum language instead committed the County to add clustering and siting standards to its code; the DLCD gave the County a choice – either stick with the ODFW lot size recommendations or adopt clustering and siting standards. The County chose the latter approach, adopted the new code standards, and that policy choice was explicitly acknowledged.

Second, the opinion recites that in the acknowledgment process the County committed to apply the ODFW density standards, and DLCD acknowledged the plan based on that commitment. *Nimpkish* references a July 19, 1984 DLCD acknowledgment Staff Report for that proposition. However,

there were two subsequent Staff Reports prior to acknowledgment – August 17 and September 12. The July 19 Staff Report imposed an In Order to Comply ("IOTC") 2.d, which required the County to amend the code to implement Policy 11 either by requiring larger minimum lot sizes in the Big Game Habitat portions of the F-2 zone or by imposing clustering requirements in the zone. App-54, IOTC 2.d. The September 12 Staff report confirmed that the County had added clustering and siting standards to the code, and it recommended acknowledgment based on this code change. Acknowledgment happened.

Thus, the final acknowledgment report stated that Policy 11 was being implemented by amended code language. That language is in the code today. That should settle things.

Nimpkish made a number of secondary, contextual arguments in support of its holding. However, Petitioners hope that when these two very basic factual premises are corrected, LUBA will agree that Policy 11 does not apply independently. The notion that Policy 11 should apply independently simply does not square with the County having complied with the DLCD's directive to implement Policy 11 with code amendments that impose clustering requirements.

Second Assignment: Assuming that Policy 11 must be applied, it first must be interpreted because it is ambiguous. What does it mean to comply with "recommendations on overall residential density for protection of big game?"

Nimpkish included comments on the meaning of this standard, but those were plainly *dicta* because, as the Hearings Official recognized here, the County had not applied Policy 11, and *Nimpkish* dealt with whether Policy 11 applies, not what it means.

Petitioners believe the key, operative phrase is "overall residential density." The ODFW recommendation is 80 acres for dwellings in Major Big Game Range. Policy 11 requires meeting an "overall residential density." That is different from meeting a minimum lot size for any single dwelling.

In these applications, Petitioners used county plan data to summarize the total acreage in Major Big Game Range in the county, and for different parts of the county, and the total number of dwellings in the same areas. All that data, in the record, shows the overall density to range from 406 to 3,137 acres per dwelling (Rec 1745), which is way, way less dense than 80 acres per dwelling.

The Hearings Official interpreted the standard to require a minimum lot size of 80 acres for any dwelling, and neither of these dwellings is on a lot that large. Petitioners request the Board to hold that the Petitioners' interpretation of the standard is correct, and the Hearings Official got it wrong.

Third Assignment: In a second basis for denial, which was not raised or briefed by any party, the Hearings Official held that Policy 11 can't be complied with consistent with Goal 2 unless evidence of compliance is amended to the plan as a new plan inventory. This is a collateral attack on the acknowledged

plan policy.

C. Summary of Material Facts

EJK and King filed respective applications for Forest Template Dwelling approvals in the same neighborhood near Oakridge in rural Lane County. EJK application, EJK Rec 2085; King application, King Rec 2021. These were Type II applications subject to an initial administrative decision and potential appeal and hearing.

Each application was approved by the Director within the first week after LUBA entered its *Nimpkish* opinion. The EJK Director approval for a 12-acre parcel is at App-9. That decision includes a color vicinity map and site plan at App- 15 to 17. The King Director approval for a 13-acre parcel is at App-26. That decision includes a color vicinity map and site plan at App-32 to 34.

LandWatch Lane County appealed both approvals. The appeals were processed together and were heard by the Lane County Hearings Official. The decisions recite that a hearing was held on March 4, 2021, and the records were held open until April 8. App-1. Decisions were entered on April 19. The EJK decision is at App-1. The King decision is at App-18.

These appeals followed.

III. LUBA'S JURISDICTION

The decision is a final "land use decision" per ORS 197.015(10)(a)(A)(iii). LUBA has jurisdiction over review of final land use

decisions. ORS 197.825.

IV. INTRODUCTION TO ALL ASSIGNMENTS

The policy at issue is RCP, Goal 5, Flora and Fauna Policy 11:

> "Oregon Department of Fish and Wildlife [(ODFW)] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

The points below are a preface to both assignments of error.

A. Lane County Forest Template Dwelling decisions are frequent visitors to LUBA.

There have been 12 Lane County Forest Template Dwelling decisions issued by LUBA since the start of 2016.[1] *Nimpkish* is the only decision among the dozen that even addressed Policy 11 in any fashion.

Only two other LUBA opinions have addressed Policy 11, both Marginal Lands rezonings, and neither of those addressed the meaning of the policy. See *LandWatch Lane County v. Lane County (Benedick)*, __ Or LUBA __ (No. 2016-115, April 17, 2017) (affirming Marginal Lands); and *LandWatch Lane*

[1] Of these 12 appeals, 6 approvals were affirmed, four were remanded, and two were dismissed.

County v. Lane County (Iverson), __ Or LUBA __ (No. 2016-019, June 13, 2016) (remanding Marginal Lands).

B. *Nimpkish* addressed the applicability of Policy 11, not its meaning.

The County in *Nimpkish* did not apply Policy 11, the Hearings Official having found that the policy was not an independent, mandatory standard applicable to Forest Template Dwelling applications. The Board held that it was.

> "We review the hearings officer's interpretation of the RCP and the LC to determine whether the hearings officer "[i]mproperly construed the applicable law." ORS 197.835(9)(a)(D). In construing the law, we will consider the text and context of the law at issue in order to determine the intent of the enacting body. * * * * For the reasons explained below, we agree with petitioners that RCP Goal 5, Flora and Fauna Policy 11, applies to intervenor's application for a forest template dwelling on property included on the county's Big Game Habitat Inventory of Major Big Game Range." Slip op 9.
>
> "* * * *
> "In conclusion, we agree with petitioners that the hearings officer's conclusion that RCP Goal 5, Flora and Fauna Policy 11, does not apply because the application does not involve a land division or a zone change improperly construes RCP Goal 5, Flora and Fauna Policy 11." Slip op 15.

The Board's rationale for this holding was that: (1) The text of Policy 11 states the applicability of the policy and does not support it as applying to only land divisions and zone changes; (2) giving meaning to the density limits in the second sentence of the policy supports applying the policy to dwelling applications; (3) directly applying the density limits in the second sentence of

Policy 11 is needed to honor the county's commitment to the DLCD in the acknowledgment review; and (4) directly applying the density limits in the second sentence of Policy 11 is what the DLCD understood it was acknowledging.

Because the county decision in *Nimpkish* decision did not apply Policy 11, there was no county determination about compliance methodology for LUBA to review.

That said, there is language in the *Nimpkish* opinion that addresses applying the density recommendations. For example:

> "Similarly, here, we conclude that the county uses the one-dwelling-per-80-acres standard referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper to determine the allowed residential density in areas inventoried as Major Big Game Range." Slip Op 15.

and

> "There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres. Accordingly, the proposed dwelling "shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." RCP Goal 5, Flora and Fauna Policy 11." Slip op 15-16.

Petitioners fully expect that Intervenor will assert that the Board has determined that applying Policy 11 requires having an 80-acre minimum lot size for any Forest Template Dwelling approval in Major Big Game habitat, based on the language above. That assertion would be erroneous.

Any language in *Nimpkish* that suggests how Policy 11 is to be applied in the context of a site-specific application is mere *dictum*, for several reasons. First, the County did not attempt to apply the density standard in *Nimpkish*; hence there was nothing for LUBA to review with respect to the correct methodology.

Second, and relatedly, the two decisions on appeal here are the first county decisions to apply Policy 11 to a Forest Template Dwelling application. Any discussion by LUBA in any previous opinion about how Policy 11 is to be applied is necessarily advisory – *dictum*.

Third, and most importantly, the methodology prescribed in Policy 11 for meeting the ODFW density recommendations is inherently ambiguous and requires interpretation. LUBA typically allows the County to take a stab at the initial interpretation of an ambiguous standard. *Elenes v. Deschutes County*, 78 Or LUBA 483, 492 (2018); *Moreland v. City of Depoe Bay*, 48 Or LUBA 136, 146-47 (2004); *Opp v. City of Portland*, 153 Or App 10, 14, 955 P2d 768, *rev den*, 327 Or 620 (1998) (LUBA's exercise of the interpretive authority is permissive rather than mandatory, and LUBA may remand the decision to the local government to provide an interpretation that the decision omits).

Policy 11 is not wanting for ambiguity. The policy requires the County to apply ODFW recommendations "on overall residential density for protection of big game." A Goal 5 conflict exists for "[a]ny density above that limit."

What is the meaning of "overall residential density?" Is it an 80-acre minimum lot size for each application, as the Hearings Official determined in this instance? Is it assuring that the total number of dwellings in the Major Big Game Range is at least 80 acres per dwelling on average? Does is require a regional calculation of an 80-acre average density? Any of these is plausible. A term is ambiguous when it is capable of more than one plausible interpretation. *Tirumali v. City of Portland*, 169 Or App 241, 246, 7 P3d 761 (2000). That is certainly the situation here.

Because the methodology stated in Policy 11 is ambiguous, and because the ambiguity was not addressed in *Nimpkish*, any references in *Nimpkish* to the correct methodology for complying with the policy must be considered mere *dictum*. Petitioner's challenge to the meaning given to the Policy 11 methodology is the subject of the Second Assignment. The parties' analysis of that issue will be the first focused discussion of the county's attempt to interpret and apply the methodology.

C. Petitioners' First Assignment raises an issue not addressed in *Nimpkish*.

The First Assignment below is not a simple rehash of the merits that was lost in *Nimpkish*. As discussed in much greater detail below, it is apparent from review of the source documents that *Nimpkish* was not dealing with all the correct documents. At least that is what is indicated by the references in the opinion.

Nimpkish took its basic navigational steer from a county Working Paper on Flora and Fauna. However, the working paper referenced in *Nimpkish* was not the final adopted version. The Addendum to the Working Paper deleted the language that LUBA quoted and relied upon in *Nimpkish*. The opinion is silent about the Addendum.

Similarly, *Nimpkish* relied upon statements in the DLCD acknowledgment Staff Reports reciting what the County was proposing. However, the opinion only references the initial DLCD Staff Report dated July 19, 1984. There were two subsequent DLCD Staff Reports. Those later reports allowed the County to opt for clustering and siting standards for forest dwellings, rather than a wooden application of ODFW recommended minimum parcel sizes. That county policy choice was expressly confirmed in a subsequent staff report and acknowledged.

In summary, Petitioners believe that the *Nimpkish* opinion relied on some very basic misconceptions about what documents are relevant and material to the inquiry, and those misconceptions sent the analysis in the wrong direction. Petitioners request a second look here, based on the fuller, accurate documents.

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V. ASSIGNMENTS OF ERROR

First Assignment

The Hearings Official erred in applying RCP, Goal 5 Flora and Fauna Policy 11 to this site-specific Forest Template Dwelling application. More specifically:

> **They erred in applying standards other than those identified in the acknowledged code as the standards for making the decision, contrary to ORS 215.416(8)(a). Policy 11 is not listed; it is not acknowledged as among the approval standards; it was explicitly acknowledged as being implemented through the code.**
>
> **They erred in applying plan Policy 11 directly in this decision when the Purpose section of the F-2 zone is explicit that relevant Goal 5 wildlife plan provisions are implemented through the code.**
>
> **They erred in applying the *Nimpkish* holding, which said the County had committed to the DLCD that it would apply the ODFW density standards directly to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true.**
>
> **They erred in applying the *Nimpkish* holding, which said that the DLCD understood it was acknowledging direct application of ODFW density standards to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true.**
>
> **They erred in finding that Petitioners did not directly challenge LUBA's holding in *Nimpkish* that Policy 11 applies directly to this application. It was directly challenged. App-4 last para.**

This assignment contends that Policy 11 does not apply directly to Forest Template Dwelling decisions. It takes issue with the *Nimpkish* holding based on a fuller statement of the text and context of the policy, including the acknowledgment administrative history of Policy 11.

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A. Preservation of Error

This issue was summarized in Petitioners' April 1, 2021 post-hearing submittal, which asserted that "Policy 11 does not apply directly, because by complying with LC 16.211 no conflict [with Goal 5 Major Big Game resources] exists." EJK Rec 27.

Petitioners also explicitly incorporated into their local argument the briefing in *Nimpkish* in which the applicant there asserted at LUBA that "The Hearings Official correctly concluded that Goal 5, Flora and Fauna, Policy 11 regarding overall residential densities for protection of Big Game Habitat in the acknowledged comprehensive plan did not apply as criteria for a forest template dwelling." Petitioners' Lttr (March 18, 2021) incorporating LUBA brief, EJK Rec 317; and *Nimpkish* responding brief, EJK Rec 582.

The Policy 11 interpretation issue is preserved. *Gadda v. Gadda*, 341 Or 1, 7-11, 136 P3d 1099 (2006) (a party need only put the construction of a particular statute at issue to preserve an interpretation issue for appeal).

B. Standard of Review

The standard of review here is the same as LUBA summarized in *Nimpkish.*

> "We review the hearings officer's interpretation of the RCP and the LC to determine whether the hearings officer "[i]mproperly construed the applicable law." ORS 197.835(9)(a)(D). In construing the law, we will consider the text and context of the law at issue in order to determine the intent of the enacting body. *PGE*

v. Bureau of Labor and Industries, 317 Or 606, 610-12, 859 P2d 1143 (1993); *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009)." Slip op 9.

The rules of statutory construction apply to the interpretation of local ordinances. *Western Land & Cattle, Inc. v. Umatilla County*, 230 Or App 202, 210, 214 P3d 68 (2009). The purpose of statutory construction is to identify the correct interpretation, whether or not asserted by the parties. *Lovinger v. Lane County*, 206 Or App 557, 565, 138 P3d 51 (2006) (citing *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997)).

C. Argument

The Hearings Official's decision followed closely on the heels of the *Nimpkish* opinion, which allowed the Hearings Official to make short work of the question of the applicability of Policy 11. They treated *Nimpkish* as dispositive that Policy 11 is an independent, mandatory standard for a Forest Template Dwelling decision. "LUBA held that Policy 11 does apply to an application for a forest template dwelling." App-3. Then they moved on to the second issue – what compliance with Policy 11 means. On that issue they agreed that the *Nimpkish* opinion had offered only *dicta*, but they followed the *dicta*. App-4 para 4.

Because the Hearings Official did not conduct their own analysis of whether Policy 11 applies independently, this Petition necessarily involves

revisiting the correctness of the *Nimpkish* holding.

1. Policy 11 is not in the code's exhaustive list of standards for Forest Template Dwellings; it is implemented through the code; based on text and context and explicit language in the acknowledgment proceeding, it is not an independent, mandatory standard for Forest Template Dwellings. The Hearing Official's obligation is to make decisions based on the standards in the code. ORS 215.416(8)(a). Here the decision was made based on an inapplicable standard.

A decision maker's most basic obligation is to limit themselves to making a decision under the standards that are relevant to the decision. ORS 215.416(8)(a).[2] What constitutes a standard for a decision is a question of law. *Holland v. City of Cannon Beach*, 154 Or App 450, 458, 962 P2d 701 (1998).

The Board recognizes that whether a plan policy constitutes an approval standard depends upon the wording and context of the specific plan provision. *Bennett v. City of Dallas*, 17 Or LUBA 450, 456, *aff'd* 96 Or App 645, 773 P2d 1340 (1989). In analyzing plan policies, the Board has recognized that there are several different categories that plan policies fall into. The Board has explicitly

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[2] ORS 215.416(8)(a):

> "Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole."

recognized: (1) plan policies that apply directly to a development application; (2) plan policies that may not apply to a particular development application because the standard expressed in that policy is irrelevant to the particular application; and (3) policies that, even if relevant, do not apply directly because they are implemented by other land use regulation standards that do apply directly to the development application. *Shelter Resources v. City of Cannon Beach*, 27 Or LUBA 229, 235 (1994).

The text of this code supports a conclusion that for this kind of application the relevant standards are to be found in the code, not in the plan.

The Lane Code authorizes Forest Template Dwellings; it lists the standards that apply to review of that proposed use; the listed standards do not include any plan policies; and they do not include any open-ended, catch-all invitations to go to the plan. *See*, LC Chapter 16.211 excerpt at App-64; "Template Dwelling" use authorized in Table 16.211-1, Item 2.4, App-67; and the eight substantive standards for review at LC 16.211(3)(c)(i)-(viii), App-74.

More specifically, the code explicitly lists the Template Dwelling use as "permitted subject to standards" and then lists the standards that apply. Noteworthy here is that the code includes no statement, suggestion, hint or room for discussion that any plan policy might also be a standard to be applied. App-74.

The text of the code also includes language explaining that standards

listed in the code for Forest Template Dwellings are intended to protect Goal 5 wildlife resources, too. The purpose statement includes:

> "16.211 Impacted Forest Lands (F-2, RCP) (1) Purpose. The purpose of the Impacted Forest Land (F-2) Zone is to protect and maintain forest lands for grazing, and rangeland use and forest use, consistent with existing and future needs for agricultural and forest products. The F-2 zone is also intended to allow other uses that are compatible with agricultural and forest activities, to protect scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the county.
>
> "The F-2 zone has been applied to lands designated as Forest in the Comprehensive Plan. The provisions of the F-2 zone reflect the forest land policies of the Comprehensive Plan as well as the requirements of ORS Chapter 215 and OAR 660-006. The minimum parcel size and other standards established by this zone are intended to promote commercial forest operations."

This reinforces the conclusion that standards for Forest Template Dwellings are found in LC 16.211 and not other places, like the plan, too.

The context of the code reinforces what the text above says – the standards for Forest Template Dwellings are in the code, not the code and the plan. The code explicitly lists the plan as a source of standards for other kinds of land use decisions, but not for Forest Template Dwellings. The use of a term in one section, but not in another section of the same statute indicates a purposeful omission. *PGE*, 317 Or at 611. The Rural Comprehensive Plan Policies are listed as among the standards for zone changes and land divisions, for example.

The code states zone change standards in LC 16.252(2). That subsection

identifies the plan as a source of standards.

> "Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission." [Emphasis added]

The code states standards for land partition approval in LC 13.060. LC 13.060(1)(b)(ii) says:

> "For all partitions within the Eugene-Springfield Metropolitan Area General Plan boundary, provide evidence that the proposal complies with the density requirements of the applicable plan designation." [Emphasis added]

The same requirement is stated for subdivisions at LC 13.080(1)(b)(ii).

As the above demonstrates, the governing body knows how to expressly require compliance with comprehensive plan policies. Mandating compliance with a plan policy when it is not expressly required by the code impermissibly inserts an approval standard that has been omitted by the governing body. ORS 174.010.[3]

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[3] ORS 174.010 provides:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars

Had the governing body intended to incorporate density limits directly into the standards for Forest Template dwellings, it would have been easy enough to do. The County could have put in the code the 40 and 80-acre density limits for dwellings in the Big Game categories. Or it could have included RCP Policy 11 in the list of standards for the dwellings by calling out Policy 11 as applicable. However, the governing body did neither.

The Board in the *Nimpkish* opinion failed to follow the correct methodology to identify the applicable standards. The Board should have looked at the code text listing the standards for Forest Template Dwellings and found it to be a clear list that did not invoke Policy 11, which is reinforced by the context in the "Purpose" supporting the conclusion that the adopted standards were sensitive to Goal 5 issues. No interpretation was needed of what standards apply. See *Whipple v. Howser*, 291 Or 475, 487, 632 P2d 782 (1981) (unnecessary and improper to conduct interpretation when language is sufficiently clear).

Instead, the Board accepted the invitation of petitioner in *Nimpkish* to read Policy 11 into the list of code standards. That was based on the Board's interpretation of the first two sentences of Policy 11. Each of those sentences is ambiguous.

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such construction is, if possible, to be adopted as will give effect to all."

The first sentence of Policy 11 is:

> "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County." (Emphasis added.)

The reference to "overall residential density" is ambiguous. This does not state a policy on minimum parcel size for any dwelling. It suggests a more sophisticated calculation that paints an "overall" picture. Yes, a minimum lot size of 40/80 acres may be one, plausible interpretation. However, it is not the only possible interpretation and is not likely the best interpretation. "Overall" suggests something other than a simple minimum lot size per unit. Furthermore, if the simple 40/80-acre minimum lot standard were the correct meaning, there would be no need to reference "regions," as the policy does. See discussion in Second Assignment.

The second sentence of Policy 11 is:

> "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." [Emphasis added]

This is also ambiguous. Contrary to LUBA statement in *Nimpkish,* the second sentence is tethered to the first. "That limit" refers to the "overall residential density" in the first sentence, which needs to be calculated by some methodology that is not stated in the policy.

Even if LUBA were to start its analysis with Policy 11, rather than with

the exhaustive list of standards in the code, there is still no basis to force Policy 11 into the list of standards. Each sentence of Policy 11 has a plausible meaning without the need to inject it into the list of forest template dwelling approval standards. Each sentence has a meaning that is implemented through the code via the explicit standards.

The first sentence anticipates an "overall residential density" that determines the "allowable number of residential units within regions of the County." The discussion in the Second Assignment looks at the total forest zone acreage and the total units in the forest zones to document the average or "overall residential density." That density is way, way less dense than the 40 and 80-acre ODWF recommendations. *See,* e.g., Rec 322-28 (Lane Council of Governments (LCOG) Lane County Big Game Range analysis); Rec-1744-1752 (LCOG Lane County Big Game Range Density Analysis (showing densities of 1 dwelling/ 819 acres, 1 dwelling / 1,415 acres and 1 dwelling / 406 acres under different county area scenarios)).

The second sentence establishes the threshold of density that constitutes a conflict and triggers an ESEE.

The third sentence is a directive from the County to itself about prospective planning it intends to do with the ODFW.

The Board should conclude that the Hearings Official erred when they applied plan Policy 11 to this decision when that plan policy was not identified

by the code in the list of standards in LC 16.211 that apply to Forest Template Dwelling applications. Based on text and context of the code, Policy 11 is not an independent, mandatory standard for the decision. Reading Policy 11 into the code's list of dwelling standards would effectively amend the code through interpretation to give effect to the ambiguous Policy 11 as the Board, and now the Hearings Official, would interpret it. Code language that is too strict or too loose may be amended, but not via interpretations. *West Hills & Island Neighbors v. Multnomah County*, 68 Or App 782, 787, 683 P2d 1032, *rev den* 298 Or 150 (1984) ("[W]hat the county did here was an attempt to achieve by interpretation what could only be accomplished by an amendment of its ordinance.").

2. The County erred in applying the *Nimpkish* holding, which said the County had committed to the DLCD that it would apply the ODFW density standards directly to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true.

3. The county erred in applying the *Nimpkish* holding, which said that the DLCD understood it was acknowledging direct application of ODFW density standards to dwelling decisions. The fuller record of the acknowledgment proceeding shows that the contrary is true.

The *Nimpkish* opinion looked to excerpts from the county's Flora and Fauna Working Paper and the DLCD Staff Reports in the early 1980s acknowledgment proceeding as administrative history to aid in determining whether Policy 11 applies directly to dwelling decisions. Based on its review of those documents, LUBA characterized the county and the agency's positions

about the second sentence of Policy 11 as follows:

> "Rather, the *second sentence* of RCP Goal 5, Flora and Fauna Policy 11, remains operative, and it provides that "[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the county to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgement of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program." Slip op 13; Fn 9 omitted.

LUBA quoted from what it understood to be "language in the DLCD's final staff report leading to acknowledgment of the county's Goal 5 program." Slip op 14. Based on this LUBA reasoned:

> "We understand DLCD to have concluded that the county's Goal 5 program protects habitat because it adopts residential densities in accordance with ODFW's recommendations and requires that, if "proposals are made" that exceed those densities, the county will conduct an ESEE analysis for that individual proposal." Slip op 14.

LUBA's assumption about how the acknowledgment review was finally resolved was based on an erroneous assumption about what constituted the final Staff Report. LUBA was quoting from page 39 of the July 19, 1984 DLCD Staff Report, which the Board apparently believed was the final staff report. App-53, 3rd para. However, what was discussed by LUBA in *Nimpkish* was not

the final staff report. The final DLCD Staff Report accompanying acknowledgment was dated September 12, 1984. App-58 to 63.

Here is a chronology of the key events in the acknowledgment saga, with references to excerpts in the Appendix and fuller documents in the record.

- March 1982: The County issued is "Flora and Fauna Working Paper." App-35; Excerpt at EJK Rec 43; full Report at EJK Rec 498. This Report:
    - Proposed a methodology to derive a carrying capacity for dwellings in Big Game range in 10-20 regions of the County. App-37 to 38.
- November 1983: The County issued its "Addendum to Working Paper: Flora & Fauna." App-39; excerpt at EJK Rec 47-51; full Report at EJK Rec 538. This Report:
    - Abandoned the "carrying capacity" methodology in favor of applying clustering and siting standards. App-40.
    - Committed to continue planning work with the ODFW and conduct a new ESEE if the clustering and siting standards methodology was not effective at avoiding conflicts. App-40.
    - Added to Policy 11 the third sentence, as it appears today. App-41.
- February 1984: County adopted "Rural Comprehensive Plan Policies," including Policy 11 in its current form. Excerpt App-44 to 45; EJK Rec 52-53.
- July 19, 1984: DLCD Staff Report re acknowledgment. App-46; EJK Rec 54-63; full Staff Report at EJK Rec 112. In this Staff Report:
    - ODFW and 1000 Friends objection as to residential densities in Big Game habitat is at page 36. App-51.
    - Report says: RCP Policy 11 (the same now as in 1984) (quoted at Report page 39, App-53) complies with Goal 5.
    - Report says the F-2 code standards need work:

However, "the County still needs to adopt measures in its F-2, ML, and EFU zones which ensure that ODFW's density standards will be achieved. * * * * ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, or do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone." App-53.

- The In-Order-To-Comply conclusion was:

  2.d. "Amend the F-2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones or contain clustering requirements in those areas." *Id.* at 75, App-54 (emphasis added).

- August 17, 1984: DLCD Staff Report re acknowledgment. App-56; excerpt at EJK Rec 54; Full Staff Report at EJK Rec 242.

  - Report says DLCD staff met with county staff on August 8; IOTC 2.d. is still outstanding. App-57.

- Sept. 17, 1984: DLCD Staff Report re acknowledgment. App-58; excerpt at EJK Rec 66-69; full Staff Report at EJK Rec 263.

  - Report says that in response to the IOTC 2.d. requiring either larger lot sizes or clustering the County has amended the code to require clustering, etc., and with those changes the code complies with Goal 5. Staff Report at 25, App-59. The operative quote is:

    "Response

    "Lane County has added the following new language to both the F-2 and EFU zones:

"(a) The approval authority shall balance the setback standards of LC 211(8)(a) with the siting requirements and application approval criteria specified elsewhere in CL 16.211 in order to minimize adverse impact upon forest uses and to assure optimal siting of proposed residences consistent with the purpose of the F-2 [EFU] zone.

(i) Residence to be siting upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be siting as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

"Conclusion

Requirement 2.d. has been met."

- On page 36 of the Staff Report, incorporated into the Acknowledgement Order, LCDC makes its ultimate conclusion:

"Conclusion – Goal 5. Lane County complies with Goal 5." App-61.

So, looking at what the County and the LCDC did in the acknowledgment process, the following unequivocal conclusions jump off the pages at the reader:

- Policy 11 went into and exited from the acknowledgment process in the same form as it appears today. The LCDC explicitly acknowledged it as adequate to comply with Goal 5.

- Policy 11 was acknowledged as adequate without regional planning for Big Game being done or required to be done on any time frame.

- In contrast, the code standards for F-2 dwellings in Big Game habitat were not adequate, and the LCDC issued an IOTC on July 19 – IOTC 2.d. – which directed the County to amend the F-2 zone to "carry out the intent of the Flora and Fauna Policy 11." That is, the DLCD intended that the code should implement Policy 11.

- The IOTC explicitly afforded the County the option of either meeting the ODFW development density standards for lot sizes or adopting clustering requirements for the F-2 zone.

- The County opted to adopt clustering standards instead of increasing lot size requirements.

- The LCDC reviewed the new clustering standards for the F-2 zone and acknowledged those as in compliance with Goal 5 for Big Game habitat.

- The code standards for Forest Template Dwellings were acknowledged without a minimum lot size for dwellings on existing lots in Big Game habitat; meeting the clustering standards in the code is enough for the code to comply with Goal 5.

4. Other aids *Nimpkish* relied upon to read Policy 11 into the standards for Forest Template Dwellings are not a basis for amending a clear list of standards through interpretation.

Flora and Fauna Working Paper (1982): Throughout the opinion, *Nimpkish* leans heavily on the initial Working Paper as context to conclude that the County committed to apply the ODFW density limitations and to read Policy 11 into the dwelling review standards. *Nimpkish* footnote 7 quotes extensively from that section of the 1982 working paper that proposes a methodology to divide the county into 10-20 regions and then determine a carrying capacity for dwellings in Big Game habitat, stating a commitment to implement the carrying

capacities or the ODFW density recommendations, whichever is less.

There are several shortcomings with assigning any contextual weight to this working paper language as *Nimpkish* did. First, the language from the 1982 working paper quoted in *Nimpkish* footnote 7 was completely stricken from the working paper by the November 1983 "Flora and Fauna Working Paper Addendum." See chronology above. The 1982 Working Paper language that was stricken is on pages 24 and 25 and is indicated with a margin notation at App-37 to 38. The replacement language in the Addendum is at App-40 to 41. Simply put, *Nimpkish* stated as relevant context working paper language that was completely replaced by the County.

Second, 1983 amendments to the Working Paper, which were published eight months before the first DLCD Goal 5 Staff Report in July 1984, reflected a clear policy shift by the County away from a "mere numbers game" for density and toward a focus on clustering and siting standards. "While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists." 1983 Working Paper Addendum at 14, App-40, Rec 48. Thus, all of the DLCD Staff Reports issued after the Staff Report cited by LUBA in *Nimpkish* were reviewing a plan and code that had shifted away from strict conformance with minimum lot size standards and toward clustering and siting requirements. The changes required by the IOTC 2.d. plainly afforded the County the option of

refining its code clustering and siting standards or incorporating the ODFW minimum lot standards. The County elected to tune up its code clustering standards, and the LCDC acknowledged the final standards, now reflected in the code.

In summary, because it referenced the wrong version of the working paper, *Nimpkish* described the ultimate county policy choice backwards. The County did not choose to insert ODFW density standards directly in its code. Instead of a "mere numbers game," the County chose to rely on clustering and siting standards, and the LCDC acknowledged that choice, as implemented by the County, as consistent with Goal 5.

OAR 660-006-0025 and 0027: Footnote 5 in the *Nimpkish* opinion references OAR 660-006-0025 and 027, presumably in support of the direct application of Policy 11. Subsection 27 is a Goal 4 rule saying that Forest Template Dwelling approvals must comply with acknowledged plans, code and other applicable law. To the extent that a party may again point to this rule as a basis for direct application of Policy 11, it is important to restate that the acknowledged code in this instance is a complete list of standards for review of Forest Template Dwellings. Relevant plan policies are implemented through the code. This should be apparent from the code's exhaustive listing of standards and the lack of any catch-all standard. The Purpose statement of the F-2 zone says that the code implements the Goal 4 Rule. And the acknowledgment

proceeding, which put the plan and the code under the acknowledgment scalpel, is devoid of any suggestion that that plan Policy 11 is cross-pollinated into the code standards. On the contrary, the DLCD required amending the F-2 code to implement Policy 11.

Summary: Based on all of the above, Petitioners suggest that the following assumptions reflected in the *Nimpkish* opinion are unsupported by, and indeed contradicted by, the merits of the acknowledgment.

First, it was erroneous for *Nimpkish* to opine that any aspect of Policy 11 that remains unfulfilled (e.g., the more specific planning for forest dwelling parcel sizes for regions of the county) has any bearing on whether Policy 11 should be applied directly to Forest Template Dwellings. Policy 11 took its current form prior to the first acknowledgment Staff Report in July 1984, and it was found to be adequate and consistent with Goal 5 even with envisioned planning work for regions being undone.

Second, *Nimpkish* was simply wrong to say that the County had represented to the LCDC that it would apply any minimum lot size standards in making decisions on individual dwelling applications in Big Game range. The DLCD gave the County an option in its IOTC on Big Game habitat – bigger dwelling lots or clustering – and the County opted to go with clustering standards. The DLCD reviewed that choice and blessed it with the oil of acknowledgment.

Third, *Nimpkish* was also wrong to say that the LCDC acknowledged the code expecting the County to apply larger minimum lot sizes in its code to dwelling approvals in Big Game habitat. Again, the full acknowledgment documentation shows that the LCDC gave the County the option of larger minimum lot sizes or clustering standards, the county adopted specific clustering standards, and the LCDC explicitly said those were adequate to implement Policy 11 and comply with Goal 5.

Fourth, *Nimpkish* was in error to rely on the acknowledgment proceedings in any fashion as support for reading RCP Policy 11 into the standards for Forest Template Dwellings. The opposite is the situation. The acknowledgment findings stated that RCP Policy 11 complied with Goal 5 and, separately, the code standards with the clustering requirement implemented Policy 11 and also complied with Goal 5.

Fifth, the "linkage" that *Nimpkish* posited between Policy 11 and the code standards for Forest Template Dwellings, based on the acknowledgment reports, is unfounded in the acknowledgment reports and is contrary to the plain language of the acknowledgment reports. The opinion refers to the July 19, 1984 Staff Report as being the final report. It was not. There were two subsequent reports, as listed above. The final report confirmed the adoption of the clustering standards and said those satisfied the IOTC 2.d.

Finally, it was way off track for LUBA to conclude that Policy 11 had to

be applied directly for any part of it to be given effect. IOTC 2.d. required amending the F-2 zone in order implement Policy 11. That was done and acknowledged. Making Policy 11 directly applicable again, after the code was amended to give effect to Policy 11, runs directly contrary to what was acknowledged.

It appears to Petitioners that the wrong turn apparent in *Nimpkish* is attributable primarily to: (1) assuming the county's approach to dwelling density in Big Game habitat was stated in language in the 1982 Working Paper that was later removed in the 1983 Working Paper Addendum; and (2) failing to recognize that the Goal 5 Big Game habitat IOTC 2.d. gave the County the choice between putting larger minimum lot sizes in its code or clustering and siting standards, and that the County chose the latter, and the LCDC acknowledged that choice. There is no need to reach into Policy 11 to borrow minimum lot sizes for dwellings because the LCDC acknowledged the code clustering and siting standards as adequate to do the job.

In conclusion, LUBA should revisit *Nimpkish* based on the fuller working paper and acknowledgment documentation contained in this record and discussed above, and it should conclude that Policy 11 does not apply directly to this application.

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Second Assignment

The Hearings Official erred in findings that the Policy 11 imposes an 80-acre minimum lot size standard for a Forest Template Dwelling in Major Big Game habitat.

Here we begin with the assumption that LUBA determines that Policy 11 applies directly. In that event, the County erred in holding that a dwelling can't be approved consistent with Policy 11 on a parcel under 80 acres in size absent an ESEE analysis, which is a plan amendment. EJK, App-7; King, App-24.

A. Preservation of Error

The bulk of the applicant's submittal to the County in the local appeal was an attempt to demonstrate compliance with the density standard of Policy 11. See applicant's final argument. EJK Rec 16-17.

B. Standard of Review

See First Assignment.

C. Argument

The Hearings Official recognized the "overall residential density" standard is ambiguous and looked to text, context and also case law from another county. They concluded that an 80-acre minimum lot size is required. A shopping list of considerations contributed to that conclusion, including because they thought that is what LUBA would likely say.

> "The Hearings Official believes that the applicant's proposed interpretation in this case is similar to the position taken by Douglas County in *Wetherell.* LUBA rejected that interpretation,

> and the Hearings Official feels certain that LUBA would, for the reasons set forth above, also reject the applicant's interpretation in this case. Until the County conducts its region-by-region analysis, which is called for in Policy 11, the density denominator must be the subject property." (App-6 to 7; Footnote 7 omitted)

Petitioner believes that a basic text/context/legislative history inquiry leads to a contrary conclusion.

1. Starting points.

We begin with the following baseline points from the First Assignment discussion.

1. The county's Goal 5 program for Major Big Game habit is acknowledged. *Nimpkish*, slip op 12 line 19.

2. As discussed in the First Assignment, Policy 11 was explicitly acknowledged as being implemented by the final clustering and siting standards in the F-2 zone.

3. The commitment in Policy 11 to conduct regional analysis and to continue working with the ODFW to better understand residential impact on habitat was not a condition of gaining acknowledgment of the policy or its implementing code.

2. Text - Ordinary meaning of "overall."

Absent a definition in the plan, the dictionary is the starting point for the meaning of "overall" residential density. The most relevant definition is:

"3. Overall *** 1: including everything between the two extreme

points * * *2a: taking all units into account * * * b: of or relating to something as a whole: viewed as a whole."

Webster's Third New Int'l Dictionary, 1606 (unabridged ed 2002).

This definition does not easily reduce to a minimum parcel size for any dwelling approval. It fits much more closely with an averaging of all parcel sizes.

3. Legislative history as context.

a. **Working Paper:** Missing from the record is any document from the ODFW that explicitly states the agency's recommendations. The closest source is a secondary source in the 1982 Working Paper, which is legislative history:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game at one dwelling unit per 40 areas (*sic*); for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game." App-37.

This legislative history matches the policy as it emerged in the plan. In each instance the reference is to "overall residential density." In neither instance is there a reference to minimum lot size for anydwelling, which would have been a very easy metric to state if that had been the intent communicated by the ODFW to the County.

b. The **Working Paper Addendum** continues the discussion of the 80/40 overall density standard with negative language about a minimum lot size

standard for any dwelling.

> "Although this is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists." App-40.

Rejecting the numbers game in favor of the manner that densities occur is fundamentally inconsistent with a minimum lot size standard for any dwelling.

c. The **acknowledgment reports** are also legislative history. The July 19, 1984 Staff Report summarizes ODFW and 1000 Friends objections to Policy 11. App-52. That summary sheds no light on how to operationalize "overall."

4. Code language a context.

Ambiguities in the plan may be resolved by reference to the implementing code, which is a part of the plan. *McKay Creek Valley Assn. v. Washington County*, 104 Or App 690, 692, 803 P2d 753 (1990)(The code is a part of the plan and can properly be considered to resolve an ambiguity in the plan.)

In this instance Policy 11 entered and exited acknowledgment without change, but the code implementing that plan policy was required to be amended. Acknowledgment review required implementing Policy 11 by amending the standards for Big Game habitat to <u>either</u> require larger minimum lot sizes in resource zones <u>or</u> contain clustering requirements. The County chose the latter approach, and that choice was acknowledged. See discussion in First

Assignment.

If the LCDC understood Policy 11 as setting a minimum lot size standard across the board for any dwelling in Big Game habitat, then the DLCD would not have afforded the County the option to choose clustering standards versus minimum lot sizes in the implementing code. In that circumstance only a minimum lot size would ensure the plan and its implanting regulations are in sync.

5. Summary of text, context and legislative history.

Text, context and legislative history indicate that Policy 11 does not state a minimum lot size standard for a dwelling. Its implementing code also does not state a minimum lot size. "Overall residential density" connotes an averaging or considering all the habitat; "minimum lot size" does not.

6. The Hearings Official erred by reading Policy 11 to create a minimum lot size standard for a dwelling.

a. The Hearing Official erroneously relied on the Douglas County code to give meaning to Policy 11. App-5. In *Wetherell v. Douglas County*, 44 Or LUBA 745, 756 fn 4 (2003), LUBA interpreted this code provision:

> "All quasi-judicial requests for dwellings or land divisions that will result in eventual placement of a dwelling, or administrative review of nonresource dwellings (ORS 215.213(3)) which could result in an average density of greater than 1 dwelling per 40 acres, shall be referred to the Oregon Department of Fish and Wildlife (ODFW) for review and recommendation. If the ODFW cannot recommend approval or suggest acceptable mitigation measures, a Variance, pursuant to Article 40, shall be required."

LUBA read the code provision as applying the 40-acre minimum lot size to the 500-acre development proposal, not to a 1,121,378-acre part of the County. There are many reasons why *Wetherell* has no utility in interpreting Policy 11. Starkest perhaps is that the Douglas County provision is not qualified by "overall," and, furthermore, Lane County has code language with clustering standards as an alternative to minimum lot size. More importantly, perhaps, an ambiguous Lane County plan policy must be interpreted based on text, context and legislative history of the county that enacted it, not legislation from a different county or another planet.

b. The Hearings Official reasoned that the subject property must meet the 80-acre standards until the County does the region-by-region analysis called for in Policy 11. App-7 para 1. This is a holding that Policy 11 imposes an 80-acre minimum lot standard until the County gets something different acknowledged. Again, this reads the term "overall" out of the policy, and it ignores the code was acknowledged to implement Policy 11 with clustering rather than a minimum lot standard. In addition, this line of reasoning reads a contingency into the acknowledgment that was not present in the language of the acknowledgment Staff Reports.

7. Petitioners' methodology is most consistent with the "overall residential density" standard in Policy 11 and demonstrates compliance.

Petitioners submitted evidence of overall density of residences in Major

Big Game Range using the county's own plan data. The methodology was:

> "1. Determine the acreage of the Major Big Game Range within Lane County's Rural Comprehensive Plan outside of Metro Plan, UGB's and Developed and Committed Areas.
>
> 2. Identify the number of dwellings that fall within that amount of acreage.
>
> 3. Determine the overall density of dwellings per acre."

The full Report appears at App-77 and EJK Rec 1744. It shows that there are 3,137 dwellings on 2,571,426 acres of Major Big Game Range in rural Lane County – outside the Metro Plan, UGBs and exception lands. The average is 1 dwelling per 819 acres. This is an overall density that demonstrates compliance with Policy 11.

Third Assignment

The Hearings Official erred in finding that Petitioners could not, consistent with Goal 2, aggregate plan data to demonstrate compliance with Policy 11, absent a plan amendment.

The Second Assignment describes how Petitioners had the local intergovernmental planning agency (Lane Council of Governments) aggregate and then map data on plan designations, Major Big Game Range acreages, and dwellings to arrive at density – the data that the County says is relevant to applying Policy 11. No one takes issue with the source or the quality of the data or the math. However, the Hearings Official appears to be saying that Goal 2 prevents the Petitioners from using those data to demonstrate compliance with

the plan policy density standard unless the data are first adopted by the County and acknowledged as a plan inventory. App-7 to 8.

This second, belt-and-suspenders theory for denial of the applications is the sole creation of the Hearings Official. It was not raised or briefed by any party below. Not having been briefed, it is not well thought out. It is just nonsense.

A. Preservation of Error

This basis for denial was not raised in the proceeding below by any party, as best Petitioners can determine. Because it appeared for the first time in the decision, the preservation rule does not apply.

B. Standard of Review

See First Assignment.

C. Argument

The Hearing Official's position is that if any meaning is given to "overall" other than the 80-acre minimum lot standard, then there is now way consistent with Goal 2 for an applicant to demonstrate compliance with Policy 11 absent a plan amendment:

> "Even if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that the applicant could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan." App-7.

The Hearings Official continued:

> "As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study." App-8.

The Hearings Official concluded:

> "The applicant's argument for approval hinges on its proposed interpretation of Policy 11, which allows a density calculation that is based on using the entire County (or a very large swath of the County) as the density denominator. As discussed above, that interpretation would do little if anything to protect the County's designated Major Big Game Range from conflicting residential development. It is thus inconsistent with Goal 5 and is not reasonable or correct.
>
> "Because the County has not yet completed its regional study, the only appropriate density denominator is the subject property. In this case, the subject property is only 13.28 acres, and the ODFW-recommended overall residential density of one dwelling per 80 acres is exceeded. An ESEE is required. Because no ESEE analysis has been provided, the Planning Director's approval must be reversed." App-8.

If the Hearings Official is saying that a finding of compliance with Policy 11 cannot be made absent a regional study that is incorporated into the plan that is legally incorrect. Policy 11 was acknowledged without any requirement for regional studies. "Overall residential density" has a meaning that can be operationalized with the plan as is. Because Policy 11 is acknowledged, there necessarily must be an adequate factual basis for the policy in the plan, in the form of an inventory or otherwise; otherwise Policy 11 would not have been acknowledged.

If the Policy must be applied, there must be an avenue for compliance without a new plan amendment. The Hearing Official's finding to the contrary conflicts with the status of Policy 11 as part of an acknowledged plan. It amounts to a collateral attack on the acknowledged plan. The Hearings Official is saying, in different words, that if Policy 11 means anything other than a minimum lot size then a new inventory and plan amendment is needed to put te policy into effect. Yet we already know, from the acknowledgment order, that the policy is effective and consistent with the goals.

Putting aside the "regional analysis," if Policy 11 requires looking at a county-wide density calculation, it must be possible to make that calculation with data that is available in the acknowledged plan. "Overall residential density" was acknowledged to mean something that can be determined from the factual base for the plan. To borrow from the Hearing Official's own logic, Goal 2 required the County to have an adequate factual basis for Policy 11 to gain acknowledgment. If the Hearings Official is putting an interpretation on the policy that prevents it from being applied without a plan amendment, then that suggests they are assigning the wrong meaning to the policy. Petitioners see only two exit strategies for giving meaning to Policy 11 without requiring a plan amendment. 1) Recognize that the policy was acknowledged as being implemented by the code. 2) Or recognize that the "overall" qualifier means comparing the average residential density with the 80-acre standard. Under

either view the Petitioners have proved up.

Finally, if Policy 11 means looking at the average density as being the measure of "overall," then all of the data Petitioners have submitted is inventory data or simple evidence. The summary of plan acreage is from the county's own data base. The location and acreage of the Major Big Game Range is from the county's plan inventory. All the Petitioners are doing is adding evidence of residential dwellings to the other two inventories. The Hearings Official has not explained why any of this effort runs afoul of Goal 2.

VI. CONCLUSION

For the reasons provided above, LUBA should reverse the Hearings Official's decision and order the county to approve the applications consistent with the Planning Director's approval of the forest template dwelling applications.

Dated: July 12, 2021.

Respectfully submitted,

/s/ Bill Kloos

Bill Kloos, OSB #811400
Attorney for Petitioners

Statement of Criteria

Lane Code 16.211(5) and (8)
House Bill 2225

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 2900, assessor's map 21–35–07–30, which is immediately north of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries.

   The property is approximately 12.05 acres and is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration easement that transects the property.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The entire property is designated Major Big Game by the Oregon Department of Fish and Wildlife (ODFW) Habitat Maps.

2. The subject application is one of two template dwelling applications approved by the Planning Director on the same date. The other application concerns a forest template dwelling proposal on a contiguous 13.28-acre parcel identified as tax lot 2800 of the same assessor's map, which is also designated Big Game Range.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 20–05064) BY E.J.K. INVESTMENTS FOR A FOREST TEMPLATE DWELLING ON TAX LOT 2900, ASSESSOR'S MAP 21–35–07–30 IS REVERSED.

Justification for the Decision

The applicant is requesting approval to construct a single–family forest template dwelling in the F-2 zone as provided by Lane Code 16.211(5)(c).

A. Goal 5

The subject property is designated Major Big Game Habitat. Big Game Habitat is a Statewide Planning Goal 5 resource and thus is entitled to certain protections. Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) sets forth a process for evaluating, inventorying, and protecting significant natural resources, including big game habitat. The evaluation includes consideration of uses that conflict with the protected significant resource. In order to implement Goal 5, local governments are required to

adopt programs that will protect natural resources, and includes consideration and weighing the values of conflicting uses and the natural resource. OAR 660-015-0000(5).

ODFW has determined that the main use that conflicts with, and poses a significant threat to, big game habitat is residential development. Lane County's Goal 5 program includes the following comprehensive plan policy that implements Goal 5 and is intended to address this main conflict:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."* Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.[1]

The *Nimpkish* appeal referenced above involved a request for a forest template dwelling on a 10-acre property. The appellant in that case argued that a dwelling on a 10-acre property would violate the recommended density limitation (80 dwellings per acre), and thus violated Policy 11. The applicant asserted that Policy 11 did not apply to discrete land use applications for forest template dwellings. LUBA held that Policy 11 does apply to an application for a forest template dwelling.

As LUBA explained, the first sentence of Policy 11 acknowledges that the County is using the ODFW density recommendations as the baseline. The first sentence, and the County's Working Paper, also acknowledges that the County intended to study different regions of the County (most likely the County would be divided into 10 to 20 different regions in that study) to come up with a "residential carrying capacity." That information would then be used to determine appropriate zoning in the area. The petitioners in *Nimpkish* focused on the second sentence of Policy 11, arguing that the County is prohibited from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis. LUBA agreed.

The applicant in this case does not challenge that holding *per se*. Rather, it argues that the addition of this one dwelling does not violate the ODFW-recommended limits, and therefore, an ESEE analysis is not required. That contention is based on the applicant's interpretation of the significance of the term "overall" in Policy 11.

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[1] The ODFW recommendation for overall residential density in the Major Big Game Range Habitat is no more than 80 dwellings per acre. For Peripheral Big Game Range Habitat, the recommended density is no more than 40 dwellings per acre.

Anybody who has studied residential densities, either in urban or rural settings, understand that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings / acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county. The applicant argues that the denominator here should be the entire County, or at least a very large portion of the County, because Policy 11 uses the term "overall residential density."[2]

LandWatch relies on one sentence in LUBA's decision in *Nimpkish* in support of its argument that the subject property, not the entire County, must serve as the density denominator: "There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres." Slip op. 15.[3]

The applicant contends that LandWatch cannot rely on that statement because it was technically *dicta*. The issue addressed in that statement (whether the addition of the proposed dwelling would constitute a conflict that triggered an ESEE analysis) was not before LUBA in the *Nimpkish* appeal. The issue in that appeal was whether Policy 11 applied to a discrete application for a forest template dwelling. The Hearings Official had held that it did not, and LUBA overturned that ruling. On that basis, the decision was remanded. LUBA was not called upon to address (and the parties presumably did not brief) the issue of what the appropriate density denominator would be once it was determined that Policy 11 applied.

It may well be that LUBA's statement in *Nimpkish* that "the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres" was *dicta*. That said, even if that statement was *dicta* and, thus, is not clear precedent in this case, it seems clear that LUBA believed that, if Policy 11 applied, the appropriate density denominator would be the subject property. In other words, if the issue had been before LUBA, we now know how LUBA would have ruled. However, because LUBA made that statement somewhat in passing, it did not conduct a full interpretation of Policy 11 to reach that conclusion. That analysis is now provided here.

Text

The applicant argues that the term "overall" in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County

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[2] Applicant submitted evidence supporting his conclusion that the "overall density" when viewed at the County level, is well below the ODFW recommended "overall density." He also submitted documentation regarding the residential density of smaller subsets of the County; *i.e.*, the area east of Interstate 5 and the area west of Interstate 5; regions divided by highway corridors; and watershed regions. All sets of numbers confirmed his theory that the residential densities are well below the ODFW recommended "overall" densities. Thus, the addition of one dwelling would not result in a Goal 5 conflict.

[3] LUBA then went on to make the following legal conclusion: "Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.'"

on the east or west side of Interstate 5. LandWatch points out that the use of the term "overall" in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of "overall residential density." The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to "determine the allowable number of residential dwelling units within regions of the county." The next sentence does not use the "overall" modifier: "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal.

Context/Caselaw

RCP Policy 11 implements Goal 5. Accordingly, Policy 11 must be interpreted in a manner that is consistent with the Goal that it implements. As stated above, Goal 5 is aimed at preserving and protecting significant natural resources, such as big game habitat. The evident purpose of applying a residential density limit is to minimize human impacts to wildlife habitat. LandWatch asserts that the applicant's proposed interpretation would effectively permit large areas protected as wildlife habitat to be developed at densities that destroy its value as wildlife habitat.

In a 2003 LUBA appeal, Douglas County made an interpretation of its code that is similar to the interpretation of Policy 11 that the applicant presents in this appeal. *See Wetherell v. Douglas County*, 44 Or LUBA 745 (2003). The application in that case was for approval of a site plan for a destination resort. The property fell within an area designated as Peripheral Big Game Habitat. The request was therefore subject to a code provision (LUDO 3.32.300) that limited residential density to one dwelling unit per 40 acres.[4] As is the case here, the code provision did not explicitly state the appropriate density denominator. The County determined that the appropriate density denominator under the applicable code provisions was an area of the county that included 1,121,378 acres.[5] On appeal to LUBA, the opponent argued that the proper denominator was a 500-acre portion of the subject 2,700-acre ranch. The Hearings Official sets forth LUBA's analysis in that case at length, because the analysis is the exact same analysis the Hearings Official adopts in this appeal:

> "LUDO 3.32.200 provides no express denominator for the density standard, so the county's view that the pertinent denominator is a 1,121,378-acre area of the county is not necessarily inconsistent with the text of LUDO 3.32.200. However, we agree with petitioners that that view is inconsistent with the purpose of the

[4] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[5] The area the county used was the Calapooya and Elk Creek geographic Planning Advisory Committee area.

density standard, to "preserve identified peripheral habitat areas." See n 4. Neither intervenors nor the county's decision provides any basis to question petitioners' view that the purpose of the density standard is to preserve big game wildlife habitat by minimizing human impacts on that habitat, specifically by limiting the density of residential uses. Under the county's view, large areas of Goal 5-protected wildlife habitat may be developed at residential densities that significantly exceed one dwelling per 40 acres, as long as the average density over a much larger area of the county does not exceed that standard. As the county interpreted LUDO 3.32.300, it will have no regulatory effect at all until over 28,000 dwellings are built in the 1,121,378-acre PBGHO. At that point, its regulatory effect would change from nonexistent to exceedingly harsh, because it would effectively impose a residential building moratorium throughout the PBGHO. * * * It seems exceedingly unlikely to us that anyone who thought about how LUDO 3.32.300 would be implemented could possibly have intended that it work in that way.

* * *

A construction of LUDO 3.32.300 that is far more consistent with its apparent purpose and the language of LUDO 3.32.300 is that the denominator for the one dwelling per 40-acre density limit is the subject property, in this case the 500 acres that make up the proposed destination resort.

* * *

We recognize that a density standard that permitted selection of some larger local area, i.e., a local area larger than the 500-acre subject property but smaller than the 1,121,378-acre applied here, might provide the county with desirable flexibility to permit clustered residential development in areas with lesser habitat value if some way could be found to further limit or bar residential development altogether in areas with high habitat value. However desirable that flexibility might be, as written, LUDO 3.32.300 does not permit application of the one dwelling unit per 40 acres standard over an area that is larger than the property that is the subject of the application. If the county wishes the density limit to apply in some other manner, it must amend LUDO 3.32.300 to achieve that result. In sum, the county's view that the denominator required by the LUDO 3.32.300 density standard is a 1,121,378-acre portion of the county is not reasonable and correct."[6]

The Hearings Official believes that the applicant's proposed interpretation in this case is similar to the position taken by Douglas County in *Wetherell*.[7] LUBA rejected that

[6] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[7] The applicant attempts to distinguish *Wetherell—Wetherell* did not involve a forest template dwelling application; *Wetherell* interpreted a code provision, not a comp plan policy; and the Douglas County code provision at issue did not include the term "overall." While the posture of that case was a bit different, the policy considerations and analysis are the same. The term "overall" in Policy 11 refers to the ODFW

interpretation, and the Hearings Official feels certain that LUBA would, for the reasons set forth above, also reject the applicant's interpretation in this case. Until the County conducts its region-by-region analysis, which is called for in Policy 11, the density denominator must be the subject property.

The applicant may assert that this approach is overly restrictive because it essentially means that a forest template dwelling proposed on a property smaller than 80 acres in the Major Big Game Habitat area will always be deemed to conflict with the resource. The Hearings Official responds that the determination of a conflict does not result in the development being prohibited. It merely requires that an ESEE analysis be conducted to determine whether the additional dwelling would harm the protected resource.

Summary

The subject property in this case is only 13.28 acres in size. If the forest template dwelling were approved, the residential density would exceed the ODFW recommended density of one dwelling per 80 acres, and, absent an ESEE analysis, would violate Policy 11.

B. Goal 2

Even if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that the applicant could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan.

Statewide Planning Goal 2 (Land Use Planning) requires that land use decisions be based on an "adequate factual base." There are circumstances where that requirement demands that the "factual base" upon which the quasi-judicial decision is based be found in the comprehensive plan. For instance, both LUBA and the Oregon Court of Appeals have held that for purposes of Statewide Planning Goal 10, an inventory of buildable lands that is relied upon for a quasi-judicial decision must first be adopted as part of the comprehensive plan. *See D.S. Parklane Development Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005); *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005); *Lengkeek v. City of Tangent*, 52 Or LUBA 509, 515 (2006). This requirement reflects the emphasis in Goal 2 on consistency and predictability. "Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve

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density recommendation, which is apparently stated as an "overall residential density" standard. As LandWatch points out, the second sentence of Policy 11 does not use the "overall" modifier. Accordingly, this case is similar to *Wetherell*, where the text of the code did not spell out the density denominator. The context provided by the policies furthered by Goal 5 protections are the same in both cases--in *Wetherell*, those policies were set forth in the code's purpose section; in this case, the Goal 5 policies are relevant to the interpretation because Policy 11 implements Goal 5 and must be interpreted in a manner that is consistent with Goal 5. An interpretation that does nothing to protect big game habitat from conflicting residential uses is not consistent with Goal 5.

as the basis for land use decisions, rather than running the risk of being 'sandbagged' by government's reliance on new data." *1000 Friends of Oregon v. City of Dundee*, 203 Or App at 216.

The question here is whether the information provided by the applicant is regular, run of the mill evidence that can be relied upon, or whether it is more in the vein of a buildable lands inventory, which must be incorporated into the comprehensive plan, so that future applicants are using the same data.

As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study. Until that work is completed, Policy 11 makes clear, any density above the ODFW recommended density limits "shall be considered to conflict with Goal 5" and will be allowed only following an ESEE analysis.

The ideal solution is for the County to conduct the regional studies that Policy 11 and the Working Paper call for. Arguably, an applicant could perform all or some part of that work. However, if it were relied upon by an applicant to justify foregoing the ESEE analysis called for in Policy 11, then the documentation would have to first be adopted into the comprehensive plan.[8]

Conclusion

The applicant's argument for approval hinges on its proposed interpretation of Policy 11, which allows a density calculation that is based on using the entire County (or a very large swath of the County) as the density denominator. As discussed above, that interpretation would do little if anything to protect the County's designated Major Big Game Range from conflicting residential development. It is thus inconsistent with Goal 5 and is not reasonable or correct.

Because the County has not yet completed its regional study, the only appropriate density denominator is the subject property. In this case, the subject property is only 13.28 acres, and the ODFW-recommended overall residential density of one dwelling per 80 acres is exceeded. An ESEE analysis is required. Because no ESEE analysis has been provided, the Planning Director's approval must be reversed.

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

[8] This Goal 2 discussion is not necessary for the Hearings Official's conclusion in this appeal. The Policy 11 interpretation set forth above stands on its own. If, on appeal, LUBA disagrees with the Goal 2 discussion, it could still affirm the Hearings Official's decision.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date:	JAN 27 2021
Department File:	509-PA20-05064
Owner/Applicant:	E.J.K. Investments
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

Enclosed is a vicinity map and site plan that shows the proposed location of the dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report can be made available electronically at no cost, and copies will be provided at reasonable cost. The Lane County Land Management Division representative to contact is **Shawna Adams** at **(541) 682-8904** or **shawna.adams@co.lane.or.us**.

This decision will become final at 4 P.M. on FEB 08 2021 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information along with all of the materials and information required in the appeal form, the appeal fee, and all materials required by LC 14.080(1).
2. Submit the completed appeal to the Planning Director so that the Director receives it prior to the date and time that the decision becomes final (see above deadline). The Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.
3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals (LUBA).

Prepared by: _____ **Date:** JAN 27 2021
Shawna Adams, Senior Planner

Authorized by: _____ **Date:** JAN 27 2021
Amber Bell, Planning Director

EXHIBITS

Exhibit A:	Conditions of Approval
Exhibit B:	Vicinity Map
Exhibit C:	Approved Site Plan

Exhibits below are mailed to the Applicant only. Copies are available upon request. Please contact staff at (541) 682-6911.

Exhibit D:	Staff Report
Exhibit E:	Lane County Transportation Planning Referral Response, dated 07/10/2020
Exhibit F:	LandWatch Lane County Comments, received April 16, 2020
Exhibit G:	BPA comments and correspondence, dated 4/14/2020, 4/16/2020, 4/20/2020, 4/27/20
Exhibit H:	DOA comments and correspondence, dated 3/26/2020 & 11/9/2020
Exhibit I:	Neighbor Comments, received 3/30/2020 & 4/2/2020
Exhibit J:	Applicant's Supplemental Information, received 9/29/2020, 11/23/2020
Exhibit K:	Additional County GIS LIDAR & Contour Maps
Exhibit L:	Farm Use and Forest Management Easement

EXHIBIT A

CONDITIONS OF APPROVAL
509-PA20-05064

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of 509-PA20-05064 is valid for a four-year period from the final date of approval unless and extension is granted in accordance with Lane Code Chapter 14 provisions in effect at the time the request is made.

2. The dwelling must be located within the reduced 70 x110-foot approved home site area shown in **Exhibit C**.

3. The dwelling must be located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

4. The subject properties are located within the Airport Safety Combining Zone (/AS) and the Transitional Surface of the Oakridge Airport. Development shall comply with the applicable requirements of LC 16.246. Pursuant to LC 16.246(3)(a) and (5)(e), no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

5. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office).

6. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. Submit a copy of the stocking survey report to Lane County Land Management Division with evidence of receipt by Lane County Assessment and Taxation.

7. Obtain Lane County Facility Permit to verify the shared access easement approach to Airport Road is adequate to support a shared approach to multiple properties/dwellings as proposed. For more information about Facility Permits, contact 541-682-6902 or visit: https://lanecounty.org/ government/ county_departments/ public_works/right-of-way_permits/facility_permits/.

8. Any private access easements serving the subject property must comply with LC 15.055(4), (5), and (7), specifically including provisions for utilities. Submit a copy of the recorded access easement(s) demonstrating compliance with this requirement and specifically including documentation verifying legal right of use for any segments coinciding with BPA access and transmission line easements. This can be satisfied by providing a copy of BPA approval or court rulings.

9. Improve the existing roadway access Airport Road and the dwelling site to the minimum standards of LC 16.211(8)(e) and the applicable standards of Lane Code Chapter 15. The shared access easement road between Airport Road and the easternmost base of the driveway loop must be improved to road standards, with turnarounds spaced not more than 500 feet. Between the shared access easement road and the home

site, the driveway loop must be improved to driveway standards with a turnaround. As specified in LC 16.211(8)(e), Oregon Registered Professional Engineer or fire district certifications must be provided for the road and driveway grades that exceed eight percent and for any culverts or bridges.

10. Submit written verification from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, and driveways comply with and meet the construction standards Lane Code 16.211(8)(e) and the Fire District standards.

11. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c)(i). These fuel breaks shall be maintained in perpetuity. The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet to the extent this can be established on lands owned or controlled by the owner. Primary fuel breaks, including any Additional Safety Zone Down Slopes, must be fully accommodated on site. The approved preliminary site plan in **Exhibit C** must be revised accordingly.

12. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). This can be satisfied by providing a copy of the Well Log for the property that complies with the requirements outlined in Lane Manual Chapter 9.160, specifically a five-hour flow test.

13. Upon completion of **conditions #5 through #12**, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. **Attach to this form a copy of:**

- Signed, notarized, and recorded Farm Use and Forest Management Agreement and description of property, along with all required exhibits;
- Recorded shared access easement(s) with BPA right of use documentation;
- Approved facility permit;
- Forest stocking survey with evidence of receipt from the County Assessor;
- Well log or well constructor's report and pump test that complies with the Lane Manual 9.160;
- Verification letter from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route and the adequacy of the constructed road and driveway improvements;
- A revised final Site Plan that conforms with the approved plan, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These plans shall show the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(8)(c)(i), the entire access between Airport Road and the home site, surfacing widths, turnouts, turnarounds, bridges, culverts, airport surface, easements, including BPA easements, transmission lines etc.

14. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in **conditions #3, #9, and #11** have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(e) and (c) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the determination of the Planning Director.

15. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the

appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

16. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the final approved site development plan, except as authorized by the Planning Director. Per Lane Code Chapter 14, modifications to the final approved site plan not within the scope of the original approval may be subject to a new Type II or Type III Modification of Approval.

The following condition shall be met prior to building permit issuance for above ground construction.

17. Prior to building permit submittal, the applicant must submit documentation demonstrating compliance with LC 16.246(3)(a) and (5)(e), with the maximum height limitation to be indicated on the building permit plans. Preliminary calculations under **Finding 28** indicate a single-story structure is feasible.

18. Prior to building permit submittal, the property owner must complete a FAA Form 7460-1 for the proposed dwelling and return to Seth Thompson, Aviation Planner at ODA and receive a Letter of Determination for the proposed construction as required by OAR 738-070-0060. Submit a copy of the completed form and letter of determination to Lane County Land Management Division at the time of building permit.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

19. The proposed dwelling shall meet the following requirements, to be indicated on the building permit plans and verified by the Lane County Building Official:
    a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.
    b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

20. The applicant is responsible for complying with any applicable local, state, and federal laws, including Oregon Department of State Lands (DSL) and/or Army Corps of Engineers (ACOE) wetland regulations and Oregon Department of Aviation (ODA) and Federal Aviation Administration (FAA) requirements. See **Exhibit H** for more information about ODA and FAA requirements.

21. Future development must comply with the limitations and standards of the Airport Safety Combining Zone, LC 16.246.

22. The applicant is responsible for procuring the necessary agreements with the Bonneville Power Association. Recent and past BPA communications indicate that portions of tax lots 2800 & 2900 are encumbered by an easement for high-voltage transmission lines and an access road easement. Per the BPA, these easements grant certain rights to BPA and limit the landowner's use within the easement area. A portion of BPA's rights include the right of ingress and egress, and the right to keep the easements free and clear of vegetation and buildings, sheds, fences, roads or any other type of structure. All activities planned within the BPA easement need to be reviewed by BPA prior to their occurrence. Do not build, dig or plant within the easement area without first contacting BPA. Requests for information regarding the process for reviewing proposed uses of the easement may be addressed to Janai Soto at jasoto@bpa.gov or 541/988-7409.

23. Per LC 16.005, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and the character of soils for fill and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

24. The subject property is within a "High" and "Moderate" landslide susceptibility area according to DOGAMI. This designation may require a geotechnical report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 to confirm requirements.

25. Any future naming of the proposed shared access easement road is subject to the provisions of LC 15.305 through 15.335.

26. Storm water runoff from the subject property shall not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

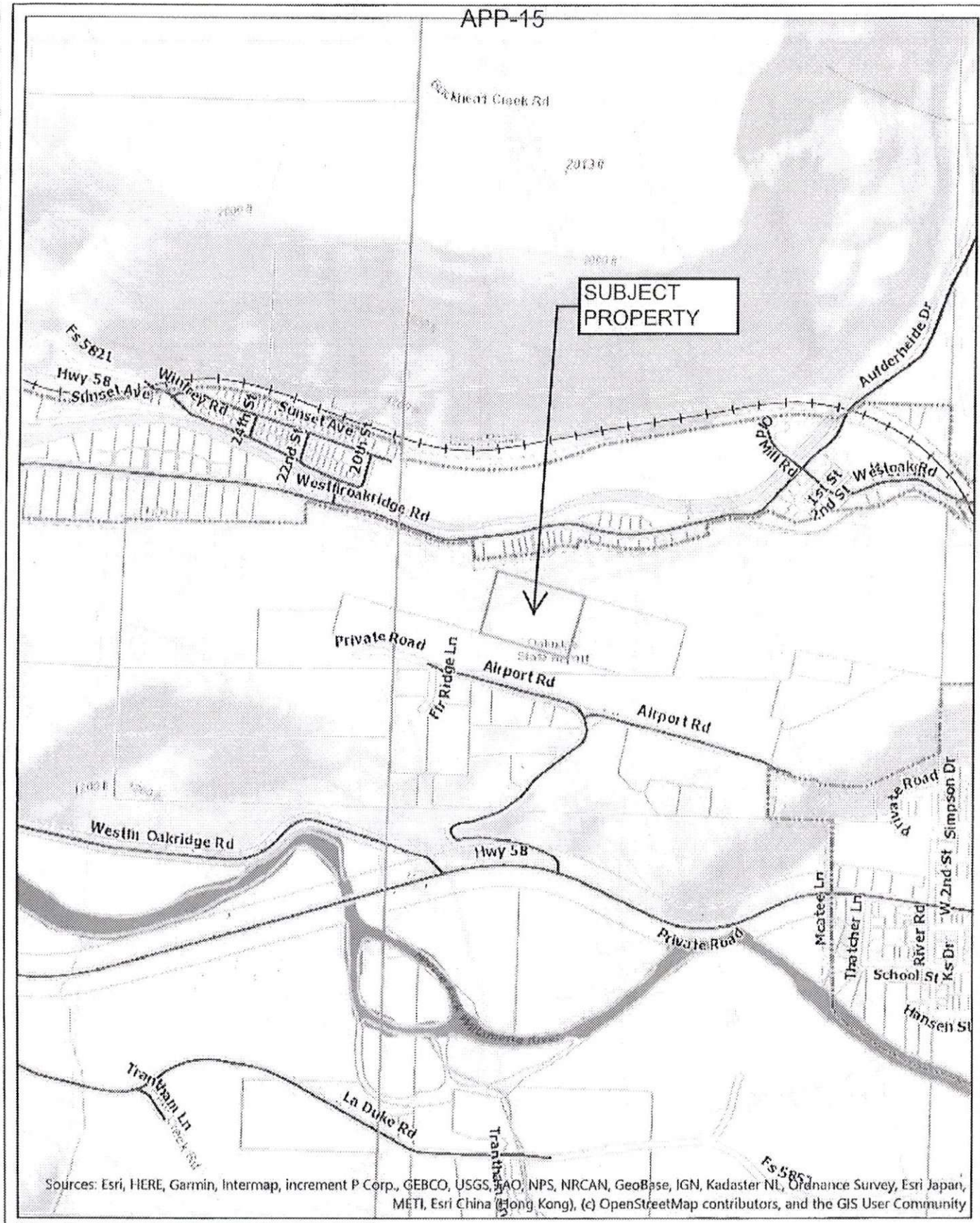
27. The owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(e). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County).

28. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

"THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.

APP-15



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

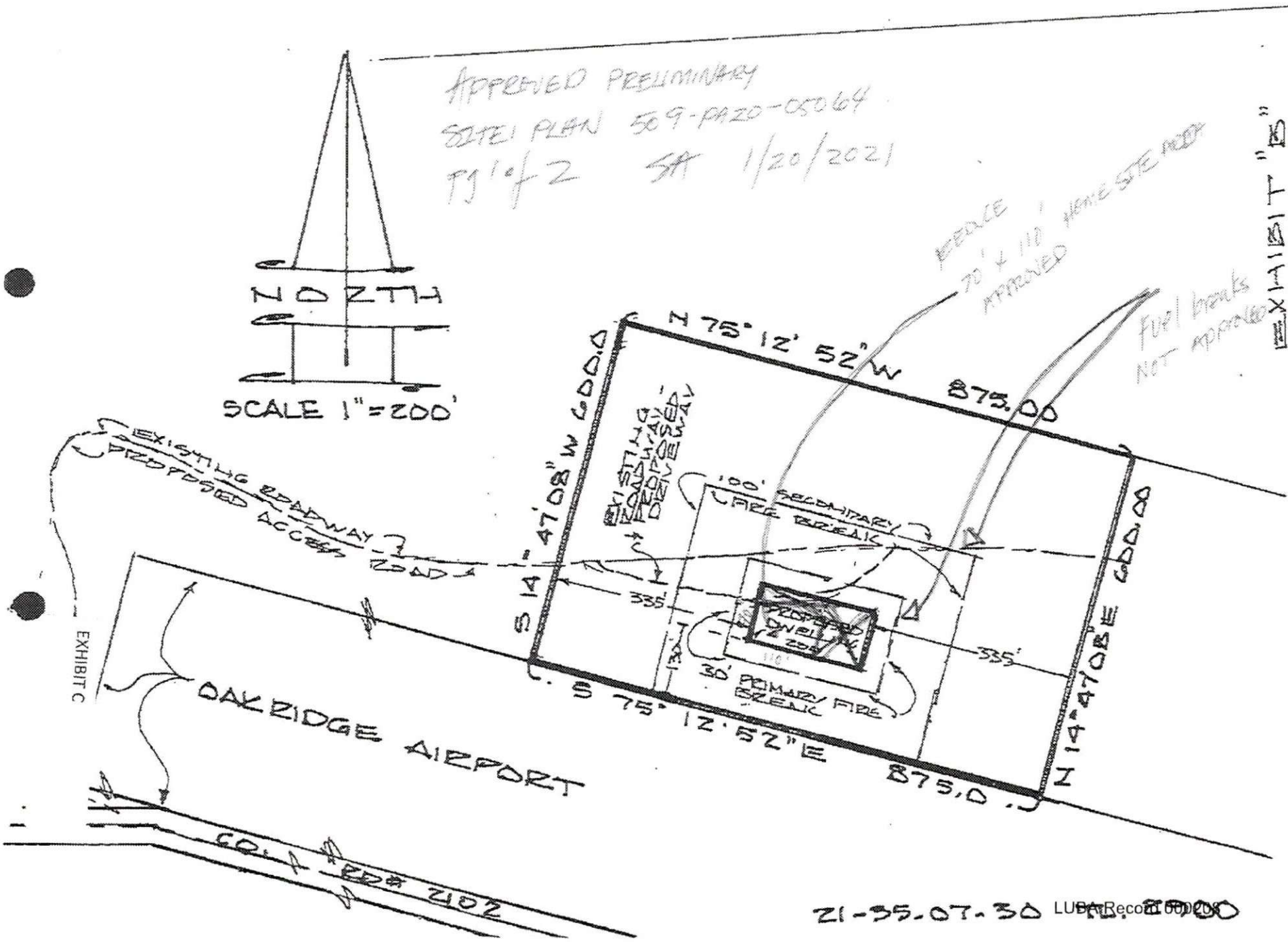
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VICINITY MAP: PA20-05064

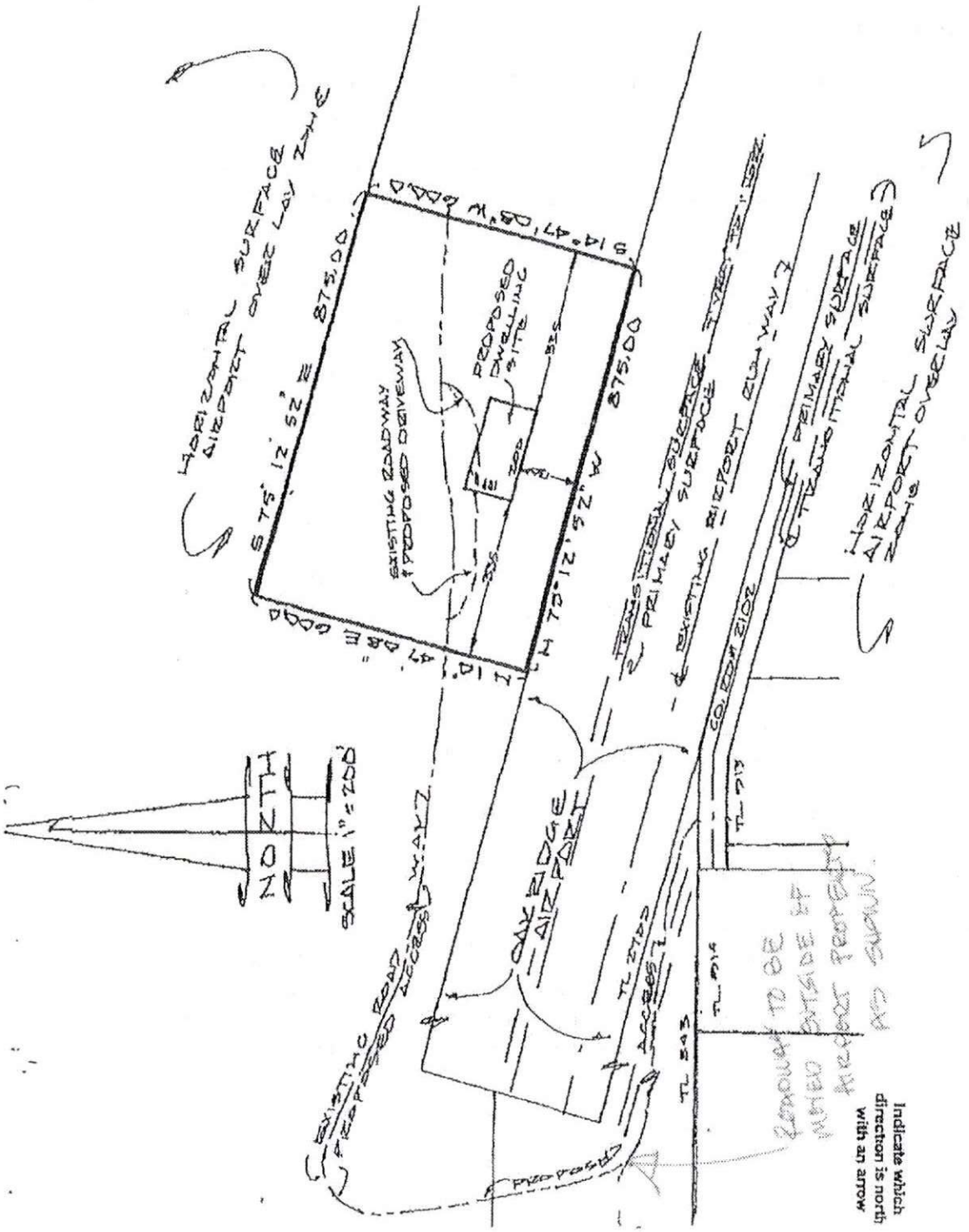
Lane County, Oreg

EXHIBIT B
LUBA Record 000207


APPROVED PRELIMINARY
SITE PLAN 509-PA20-05064
TJ 1 of 2 SA 1/20/2021
NORTH
SCALE 1" = 200'
EXISTING ROADWAY
PROPOSED ACCESS ROAD
EXISTING ROADWAY TO BE ABANDONED
PROPOSED DRIVEWAY
N 75° 12' 52" W 875.00
S 14° 47' 08" W 600.0
N 14° 47' 08" E 600.0
S 75° 12' 52" E 875.0
100' SECONDARY FIRE BREAK
335'
335'
134'
110'
PROPOSED DWELLING 20'
30' PRIMARY FIRE BREAK
PEDICE 70' x 110' MANUFACTURED HOME SITE PLOT APPROVED
Fuel breaks NOT APPROVED
EXHIBIT "B"
EXHIBIT C
OAK RIDGE AIRPORT
60.1 ACRES
21-35-07-30 TAX LOT 200

SITE PLAN SUBMITTAL FORM

OWNER NAME: ESK INVESTMENTS	Map and Taxlot #: 21-35-07-30 TL 2900	APPLICANT NAME: NICKELL LAND SURVEYING
PHONE #:		PHONE #: 541-915-2005
ADDRESS: 30414 LOBELIA ROAD EUGENE, OR, 97405	Scale: 1" = 200'	ADDRESS: 33775 CRAIG LOOP CRESCENT CITY, OR 97424



Site Plan (Not to Scale)

EXHIBIT C

SP-19-20-05064
APPROVED PRELIMINARY SITE PLAN- UNLESS SAT 1/20/2021 LUBA Record 000209 of 2

RECEIVED APR 19 2021

BEFORE THE LANE COUNTY HEARINGS OFFICIAL

APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On February 5, 2020, the applicant, Edward J. King, filed an application seeking to establish a dwelling in the Impacted Forest Lands (F–2) zone on tax lot 2800, assessor's map 21–35–07-30. PA 20-05066. The application was deemed complete on March 6, 2020. On January 27, 2021, the Director approved the application, and on February 8, 2021, a timely appeal was submitted by LandWatch Lane County (LandWatch).

On January 21, 2021, six days before the Planning Director issued their decision approving the subject application, the Oregon Land Use Board of Appeals (LUBA) issued its decision in *LandWatch Lane County v. Lane County (Nimpkish)*, ___ Or LUBA ___ (LUBA No. 2020-030, January 21, 2021). As discussed further below, LandWatch based its appeal in this case on LUBA's holding in *Nimpkish*. In its staff report to the Hearings Official, staff concurred with LandWatch as to the significance of *Nimpkish* to the resolution of this appeal, and recommended denial.

Parties of Record

Edward J. King (Kim O'Dea)
Michael Farthing
LandWatch Lane County (Lauri Segel; Sean Malone)

Jim McLaughlin

Application History

Hearing Date: March 4, 2021
(Record Held Open Until April 8, 2021)

Decision Date: April 19, 2021

Appeal Deadline

A party may request reconsideration of this decision by the Hearings Official, pursuant to Lane Code 14.080(1)(a)(iii) and (1)(b), by filing a notice of appeal within 12 business days after the date the notice of decision was mailed. If a party seeking further review chooses not to seek reconsideration, they must file an appeal directly with LUBA within the timelines set forth in state law. See LUBA's website for more information on appeal deadlines.

//////////////

Statement of Criteria

Lane Code 16.211(5) and (8)
House Bill 2225

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 2800, assessor's map 21–35–07–30, which is immediately north of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries.

   The property is approximately 13.28 acres and is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration easement that transects the property.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The entire property is designated Major Big Game by the Oregon Department of Fish and Wildlife (ODFW) Habitat Maps.

2. The subject application is one of two template dwelling applications approved by the Planning Director on the same date. The other application concerns a forest template dwelling proposal on a contiguous 12.05-acre parcel identified as tax lot 2900 of the same assessor's map, which is also designated Big Game Range.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 20–05066) BY EDWARD J. KING FOR A FOREST TEMPLATE DWELLING ON TAX LOT 2800, ASSESSOR'S MAP 21–35–07–30 IS REVERSED.

Justification for the Decision

The applicant is requesting approval to construct a single–family forest template dwelling in the F-2 zone as provided by Lane Code 16.211(5)(c).

A. Goal 5

The subject property is designated Major Big Game Habitat. Big Game Habitat is a Statewide Planning Goal 5 resource and thus is entitled to certain protections. Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) sets forth a process for evaluating, inventorying, and protecting significant natural resources, including big game habitat. The evaluation includes consideration of uses that conflict with the protected significant resource. In order to implement Goal 5, local governments are required to

adopt programs that will protect natural resources, and includes consideration and weighing the values of conflicting uses and the natural resource. OAR 660-015-0000(5).

ODFW has determined that the main use that conflicts with, and poses a significant threat to, big game habitat is residential development. Lane County's Goal 5 program includes the following comprehensive plan policy that implements Goal 5 and is intended to address this main conflict:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."* Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.[1]

The *Nimpkish* appeal referenced above involved a request for a forest template dwelling on a 10-acre property. The appellant in that case argued that a dwelling on a 10-acre property would violate the recommended density limitation (80 dwellings per acre), and thus violated Policy 11. The applicant asserted that Policy 11 did not apply to discrete land use applications for forest template dwellings. LUBA held that Policy 11 does apply to an application for a forest template dwelling.

As LUBA explained, the first sentence of Policy 11 acknowledges that the County is using the ODFW density recommendations as the baseline. The first sentence, and the County's Working Paper, also acknowledges that the County intended to study different regions of the County (most likely the County would be divided into 10 to 20 different regions in that study) to come up with a "residential carrying capacity." That information would then be used to determine appropriate zoning in the area. The petitioners in *Nimpkish* focused on the second sentence of Policy 11, arguing that the County is prohibited from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis. LUBA agreed.

The applicant in this case does not challenge that holding *per se*. Rather, he argues that the addition of this one dwelling does not violate the ODFW-recommended limits, and therefore, an ESEE analysis is not required. That contention is based on his interpretation of the significance of the term "overall" in Policy 11.

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[1] The ODFW recommendation for overall residential density in the Major Big Game Range Habitat is no more than 80 dwellings per acre. For Peripheral Big Game Range Habitat, the recommended density is no more than 40 dwellings per acre.

Anybody who has studied residential densities, either in urban or rural settings, understand that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings / acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county. The applicant argues that the denominator here should be the entire County, or at least a very large portion of the County, because Policy 11 uses the term "overall residential density."[2]

LandWatch relies on one sentence in LUBA's decision in *Nimpkish* in support of its argument that the subject property, not the entire County, must serve as the density denominator: "There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres." Slip op. 15.[3]

The applicant contends that LandWatch cannot rely on that statement because it was technically *dicta*. The issue addressed in that statement (whether the addition of the proposed dwelling would constitute a conflict that triggered an ESEE analysis) was not before LUBA in the *Nimpkish* appeal. The issue in that appeal was whether Policy 11 applied to a discrete application for a forest template dwelling. The Hearings Official had held that it did not, and LUBA overturned that ruling. On that basis, the decision was remanded. LUBA was not called upon to address (and the parties presumably did not brief) the issue of what the appropriate density denominator would be once it was determined that Policy 11 applied.

It may well be that LUBA's statement in *Nimpkish* that "the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres" was *dicta*. That said, even if that statement was *dicta* and, thus, is not clear precedent in this case, it seems clear that LUBA believed that, if Policy 11 applied, the density denominator would be the subject property. In other words, if the issue had been before LUBA, we now know how LUBA would have ruled. However, because LUBA made that statement somewhat in passing, it did not conduct a full interpretation of Policy 11 to reach that conclusion. That analysis is now provided here.

Text

The applicant argues that the term "overall" in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County

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[2] Applicant submitted evidence supporting his conclusion that the "overall density" when viewed at the County level, is well below the ODFW recommended "overall density." He also submitted documentation regarding the residential density of smaller subsets of the County; *i.e.*, the area east of Interstate 5 and the area west of Interstate 5; regions divided by highway corridors; and watershed regions. All sets of numbers confirmed his theory that the residential densities are well below the ODFW recommended "overall" densities. Thus, the addition of one dwelling would not result in a Goal 5 conflict.

[3] LUBA then went on to make the following legal conclusion: "Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.'"

on the east or west side of Interstate 5. LandWatch points out that the use of the term "overall" in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of "overall residential density." The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to "determine the allowable number of residential dwelling units within regions of the county." The next sentence does not use the "overall" modifier: "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal.

Context/Caselaw

RCP Policy 11 implements Goal 5. Accordingly, Policy 11 must be interpreted in a manner that is consistent with the Goal that it implements. As stated above, Goal 5 is aimed at preserving and protecting significant natural resources, such as big game habitat. The evident purpose of applying a residential density limit is to minimize human impacts to wildlife habitat. LandWatch asserts that the applicant's proposed interpretation would effectively permit large areas protected as wildlife habitat to be developed at densities that destroy its value as wildlife habitat.

In a 2003 LUBA appeal, Douglas County made an interpretation of its code that is similar to the interpretation of Policy 11 that the applicant presents in this appeal. *See Wetherell v. Douglas County*, 44 Or LUBA 745 (2003). The application in that case was for approval of a site plan for a destination resort. The property fell within an area designated as Peripheral Big Game Habitat. The request was therefore subject to a code provision (LUDO 3.32.300) that limited residential density to one dwelling unit per 40 acres.[4] As is the case here, the code provision did not explicitly state the appropriate density denominator. The County determined that the appropriate density denominator under the applicable code provisions was an area of the county that included 1,121,378 acres.[5] On appeal to LUBA, the opponent argued that the proper denominator was a 500-acre portion of the subject 2,700-acre ranch. The Hearings Official sets forth LUBA's analysis in that case at length, because the analysis is the exact same analysis the Hearings Official adopts in this appeal:

> "LUDO 3.32.200 provides no express denominator for the density standard, so the county's view that the pertinent denominator is a 1,121,378-acre area of the county is not necessarily inconsistent with the text of LUDO 3.32.200. However, we agree with petitioners that that view is inconsistent with the purpose of the

[4] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[5] The area the county used was the Calapooya and Elk Creek geographic Planning Advisory Committee area.

density standard, to "preserve identified peripheral habitat areas." See n 4. Neither intervenors nor the county's decision provides any basis to question petitioners' view that the purpose of the density standard is to preserve big game wildlife habitat by minimizing human impacts on that habitat, specifically by limiting the density of residential uses. Under the county's view, large areas of Goal 5-protected wildlife habitat may be developed at residential densities that significantly exceed one dwelling per 40 acres, as long as the average density over a much larger area of the county does not exceed that standard. As the county interpreted LUDO 3.32.300, it will have no regulatory effect at all until over 28,000 dwellings are built in the 1,121,378-acre PBGHO. At that point, its regulatory effect would change from nonexistent to exceedingly harsh, because it would effectively impose a residential building moratorium throughout the PBGHO. * * * It seems exceedingly unlikely to us that anyone who thought about how LUDO 3.32.300 would be implemented could possibly have intended that it work in that way.

* * *

A construction of LUDO 3.32.300 that is far more consistent with its apparent purpose and the language of LUDO 3.32.300 is that the denominator for the one dwelling per 40-acre density limit is the subject property, in this case the 500 acres that make up the proposed destination resort.

* * *

We recognize that a density standard that permitted selection of some larger local area, i.e., a local area larger than the 500-acre subject property but smaller than the 1,121,378-acre applied here, might provide the county with desirable flexibility to permit clustered residential development in areas with lesser habitat value if some way could be found to further limit or bar residential development altogether in areas with high habitat value. However desirable that flexibility might be, as written, LUDO 3.32.300 does not permit application of the one dwelling unit per 40 acres standard over an area that is larger than the property that is the subject of the application. If the county wishes the density limit to apply in some other manner, it must amend LUDO 3.32.300 to achieve that result. In sum, the county's view that the denominator required by the LUDO 3.32.300 density standard is a 1,121,378-acre portion of the county is not reasonable and correct."[6]

The Hearings Official believes that the applicant's proposed interpretation in this case is similar to the position taken by Douglas County in *Wetherell.*[7] LUBA rejected that

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[6] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[7] The applicant attempts to distinguish *Wetherell—Wetherell* did not involve a forest template dwelling application; *Wetherell* interpreted a code provision, not a comp plan policy; and the Douglas County code provision at issue did not include the term "overall." While the posture of that case was a bit different, the policy considerations and analysis are the same. The term "overall" in Policy 11 refers to the ODFW

interpretation, and the Hearings Official feels certain that LUBA would, for the reasons set forth above, also reject the applicant's interpretation in this case. Until the County conducts its region-by-region analysis, which is called for in Policy 11, the density denominator must be the subject property.

The applicant may assert that this approach is overly restrictive because it essentially means that a forest template dwelling proposed on a property smaller than 80 acres in the Major Big Game Habitat area will always be deemed to conflict with the resource. The Hearings Official responds that the determination of a conflict does not result in the development being prohibited. It merely requires that an ESEE analysis be conducted to determine whether the additional dwelling would harm the protected resource.

Summary

The subject property in this case is only 13.28 acres in size. If the forest template dwelling were approved, the residential density would exceed the ODFW recommended density of one dwelling per 80 acres, and, absent an ESEE analysis, would violate Policy 11.

B. Goal 2

Even if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that he could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan.

Statewide Planning Goal 2 (Land Use Planning) requires that land use decisions be based on an "adequate factual base." There are circumstances where that requirement demands that the "factual base" upon which the quasi-judicial decision is based be found in the comprehensive plan. For instance, both LUBA and the Oregon Court of Appeals have held that for purposes of Statewide Planning Goal 10, an inventory of buildable lands that is relied upon for a quasi-judicial decision must first be adopted as part of the comprehensive plan. *See D.S. Parklane Development Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005); *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005); *Lengkeek v. City of Tangent*, 52 Or LUBA 509, 515 (2006). This requirement reflects the emphasis in Goal 2 on consistency and predictability. "Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve

---

density recommendation, which is apparently stated as an "overall residential density" standard. As LandWatch points out, the second sentence of Policy 11 does not use the "overall" modifier. Accordingly, this case is similar to *Wetherell*, where the text of the code did not spell out the density denominator. The context provided by the policies furthered by Goal 5 protections are the same in both cases--in *Wetherell*, those policies were set forth in the code's purpose section; in this case, the Goal 5 policies are relevant to the interpretation because Policy 11 implements Goal 5 and must be interpreted in a manner that is consistent with Goal 5. An interpretation that does nothing to protect big game habitat from conflicting residential uses is not consistent with Goal 5.

as the basis for land use decisions, rather than running the risk of being 'sandbagged' by government's reliance on new data." *1000 Friends of Oregon v. City of Dundee*, 203 Or App at 216.

The question here is whether the information provided by the applicant is regular, run of the mill evidence that can be relied upon, or whether it is more in the vein of a buildable lands inventory, which must be incorporated into the comprehensive plan, so that future applicants are using the same data.

As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study. Until that work is completed, Policy 11 makes clear, any density above the ODFW recommended density limits "shall be considered to conflict with Goal 5" and will be allowed only following an ESEE analysis.

The ideal solution is for the County to conduct the regional studies that Policy 11 and the Working Paper call for. Arguably, an applicant could perform all or some part of that work. However, if it were relied upon by an applicant to justify foregoing the ESEE analysis called for in Policy 11, then the documentation would have to first be adopted into the comprehensive plan.[8]

Conclusion

The applicant's argument for approval hinges on his proposed interpretation of Policy 11, which allows a density calculation that is based on using the entire County (or a very large swath of the County) as the density denominator. As discussed above, that interpretation would do little if anything to protect the County's designated Major Big Game Range from conflicting residential development. It is thus inconsistent with Goal 5 and is not reasonable or correct.

Because the County has not yet completed its regional study, the only appropriate density denominator is the subject property. In this case, the subject property is only 13.28 acres, and the ODFW-recommended overall residential density of one dwelling per 80 acres is exceeded. An ESEE analysis is required. Because no ESEE analysis has been provided, the Planning Director's approval must be reversed.

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

[8] This Goal 2 discussion is not necessary for the Hearings Official's conclusion in this appeal. The Policy 11 interpretation set forth above stands on its own. If, on appeal, LUBA disagrees with the Goal 2 discussion, it could still affirm the Hearings Official's decision.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date:	JAN 2 7 2021
Department File:	**509-PA20-05066**
Owner/Applicant:	Edward J. King
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02800
Address:	N/A
Size:	13.28+/- Acres
Base Zone:	Impacted Forest Lands (F-2), Non-Impacted Forest Lands (F-1)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

Enclosed is a vicinity map and site plan that shows the proposed location of the dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report can be made available electronically at no cost, and copies will be provided at reasonable cost. The Lane County Land Management Division representative to contact is **Shawna Adams** at **(541) 682-8904** or **shawna.adams@co.lane.or.us**.

This decision will become final at 4 P.M. on FEB 0 8 2021 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information along with all of the materials and information required in the appeal form, the appeal fee, and all materials required by LC 14.080(1).
2. Submit the completed appeal to the Planning Director so that the Director receives it prior to the date and time that the decision becomes final (see above deadline). The Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.
3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals (LUBA).

Prepared by: _____ **Date:** JAN 27 2021
Shawna Adams, Senior Planner

Authorized by: _____ **Date:** JAN 27 2021
Amber Bell, Planning Director

EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Exhibits below are mailed to the Applicant only. Copies are available upon request. Please contact staff at (541) 682-6911.

Exhibit D: Staff Report
Exhibit E: Lane County Transportation Planning Referral Response, dated 07/10/2020
Exhibit F: LandWatch Lane County Comments, received April 16, 2020
Exhibit G: BPA comments and correspondence, dated 4/14/2020, 4/16/2020, 4/20/2020, 4/27/20
Exhibit H: DOA comments and correspondence, dated 3/26/2020 & 11/9/2020
Exhibit I: Neighbor Comments, received 3/29/2020 & 3/30/2020
Exhibit J: Applicant's Supplemental Information, received 9/29/2020, 11/23/2020
Exhibit K: Additional County GIS LiDAR & Contour Maps
Exhibit L: Farm Use and Forest Management Easement

EXHIBIT A

CONDITIONS OF APPROVAL
509-PA20-05066

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of 509-PA20-05066 is valid for a four-year period from the final date of approval unless and extension is granted in accordance with Lane Code Chapter 14 provisions in effect at the time the request is made.

2. The dwelling must be located within the reduced home site area (200 x150-foot minus 105x50 feet at northwest corner) shown in **Exhibit C**.

3. The dwelling must be located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

4. The subject properties are located within the Airport Safety Combining Zone (/AS) and the Transitional Surface of the Oakridge Airport. Development shall comply with the applicable requirements of LC 16.246. Pursuant to LC 16.246(3)(a) and (5)(e), no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface.

The following conditions must be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

5. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office).

6. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. Submit a copy of the stocking survey report to Lane County Land Management Division with evidence of receipt by Lane County Assessment and Taxation.

7. Obtain Lane County Facility Permit to verify the shared access easement approach to Airport Road is adequate to support a shared approach to multiple properties/dwellings as proposed. For more information about Facility Permits, contact 541-682-6902 or visit: https://lanecounty.org/ government/ county departments/ public works/right-of-way permits/facility permits/.

8. Any private access easements serving the subject property must comply with LC 15.055(4), (5), and (7), specifically including provisions for utilities. Submit a copy of the recorded access easement(s) demonstrating compliance with this requirement, including documentation verifying legal right of use for any segments coinciding with BPA access and transmission line easements. This can be satisfied by providing a copy of BPA approval or court rulings.

9. Improve the existing roadway access Airport Road and the dwelling site to the minimum standards of LC 16.211(8)(e) and the applicable standards of Lane Code Chapter 15. The shared access easement road between Airport Road and the easternmost driveway for the approved dwelling on Tax Lot 2900 and any additional portion of the access beyond the driveway used by the BPA, must be improved to road standards

with turnarounds spaced not more than 500 feet. Between that portion of the access and the home site, the driveway must be improved to driveway standards. If the driveway is over 200 feet long, turnouts spaced not more than 400 feet must be provided. As specified in LC 16.211(8)(e), Oregon Registered Professional Engineer or fire district certifications must be provided for the road and driveway grades that exceed eight percent and for any culverts or bridges.

10. Submit written verification from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, and driveways comply with and meet the construction standards Lane Code 16.211(8)(e) and the Fire District standards.

11. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c)(i). These fuel breaks shall be maintained in perpetuity. The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet to the extent this can be established on lands owned or controlled by the owner. Primary fuel breaks, including any Additional Safety Zone Down Slopes, must be fully accommodated on site. The approved preliminary site plan in **Exhibit C** must be revised accordingly.

12. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). This can be satisfied by providing a copy of the Well Log for the property that complies with the requirements outlined in Lane Manual Chapter 9.160, specifically a five-hour flow test.

13. Upon completion of **conditions #5 through #12**, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. **Attach to this form a copy of:**

- Signed, notarized, and recorded Farm Use and Forest Management Agreement and description of property, along with all required exhibits;
- Recorded shared access easement(s) with BPA right of use documentation;
- Approved facility permit;
- Forest stocking survey with evidence of receipt from the County Assessor;
- Well log or well constructor's report and pump test that complies with the Lane Manual 9.160;
- Verification letter from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route and the adequacy of the constructed road and driveway improvements;
- A revised final Site Plan that conforms with the approved plan, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These plans shall show the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(8)(c)(i), the entire access between Airport Road and the home site, surfacing widths, turnouts, turnarounds, bridges, culverts, airport surface, easements, including BPA easements, transmission lines etc.

14. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in **conditions #3, #9, and #11** have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(e) and (c) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the determination of the Planning Director.

15. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

16. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the final approved site development plan, except as authorized by the Planning Director. Per Lane Code Chapter 14, modifications to the final approved site plan not within the scope of the original approval may be subject to a new Type II or Type III Modification of Approval.

The following condition shall be met prior to building permit issuance for above ground construction.

17. Prior to building permit submittal, the applicant must submit documentation demonstrating compliance with LC 16.246(3)(a) and (5)(e), with the maximum height limitation to be indicated on the building permit plans. Preliminary calculations under **Finding 28** indicate a single-story structure is feasible.

18. Prior to building permit submittal, the property owner must complete a FAA Form 7460-1 for the proposed dwelling and return to Seth Thompson, Aviation Planner at ODA and receive a Letter of Determination for the proposed construction as required by OAR 738-070-0060. Submit a copy of the completed form and letter of determination to Lane County Land Management Division at the time of building permit.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

19. The proposed dwelling shall meet the following requirements, to be indicated on the building permit plans and verified by the Lane County Building Official:
    a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.
    b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

20. The applicant is responsible for complying with any applicable local, state, and federal laws, including Oregon Department of State Lands (DSL) and/or Army Corps of Engineers (ACOE) wetland regulations and Oregon Department of Aviation (ODA) and Federal Aviation Administration (FAA) requirements. See **Exhibit H** for more information about ODA and FAA requirements.

21. Future development must comply with the limitations and standards of the Airport Safety Combining Zone, LC 16.246.

22. The applicant is responsible for procuring the necessary agreements with the Bonneville Power Association. Recent and past BPA communications indicate that portions of Tax Lot 2800 and the existing roadway between Airport Road and the home site are encumbered by an easement for high-voltage transmission lines and an access road easement. Per the BPA, these easements grant certain rights to BPA and limit the landowner's use within the easement area. A portion of BPA's rights include the right of ingress and egress, and the right to keep the easements free and clear of vegetation and buildings, sheds, fences, roads or any other type of structure. All activities planned within the BPA easement need to be reviewed by BPA prior to their

occurrence. Do not build, dig or plant within the easement area without first contacting BPA. Requests for information regarding the process for reviewing proposed uses of the easement may be addressed to Janai Soto at jasoto@bpa.gov or 541/988-7409.

23. Per LC 16.005, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and the character of soils for fill and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

24. The subject property is within a "Moderate" landslide susceptibility area according to DOGAMI. This designation may require a geotechnical report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 to confirm requirements.

25. Any future naming of the proposed shared access easement road is subject to the provisions of LC 15.305 through 15.335.

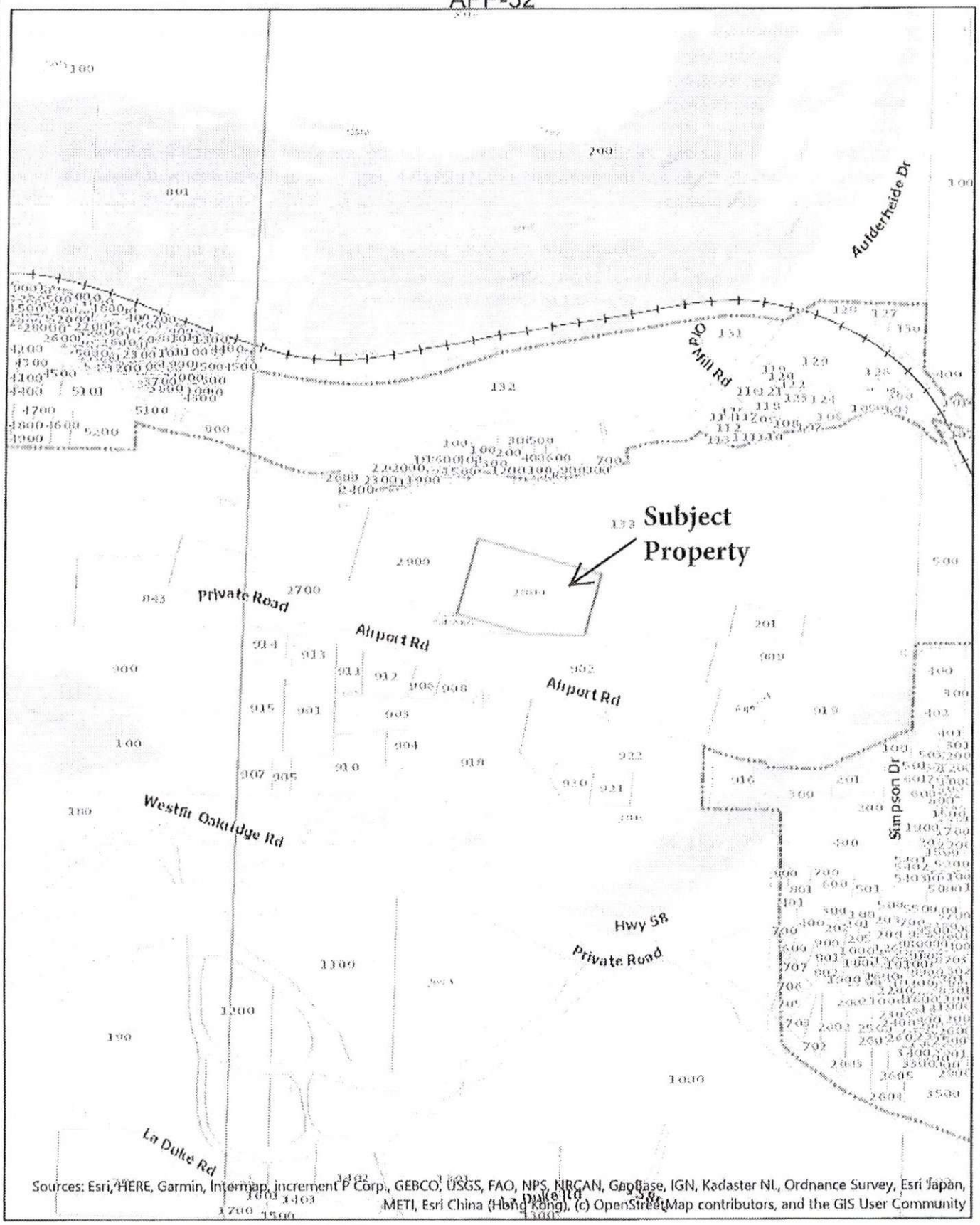
26. Storm water runoff from the subject property shall not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

27. The owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(e). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County).

28. The following is provided for informational purposes as an **Advisory Notice:** Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

    "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

    This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but it is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

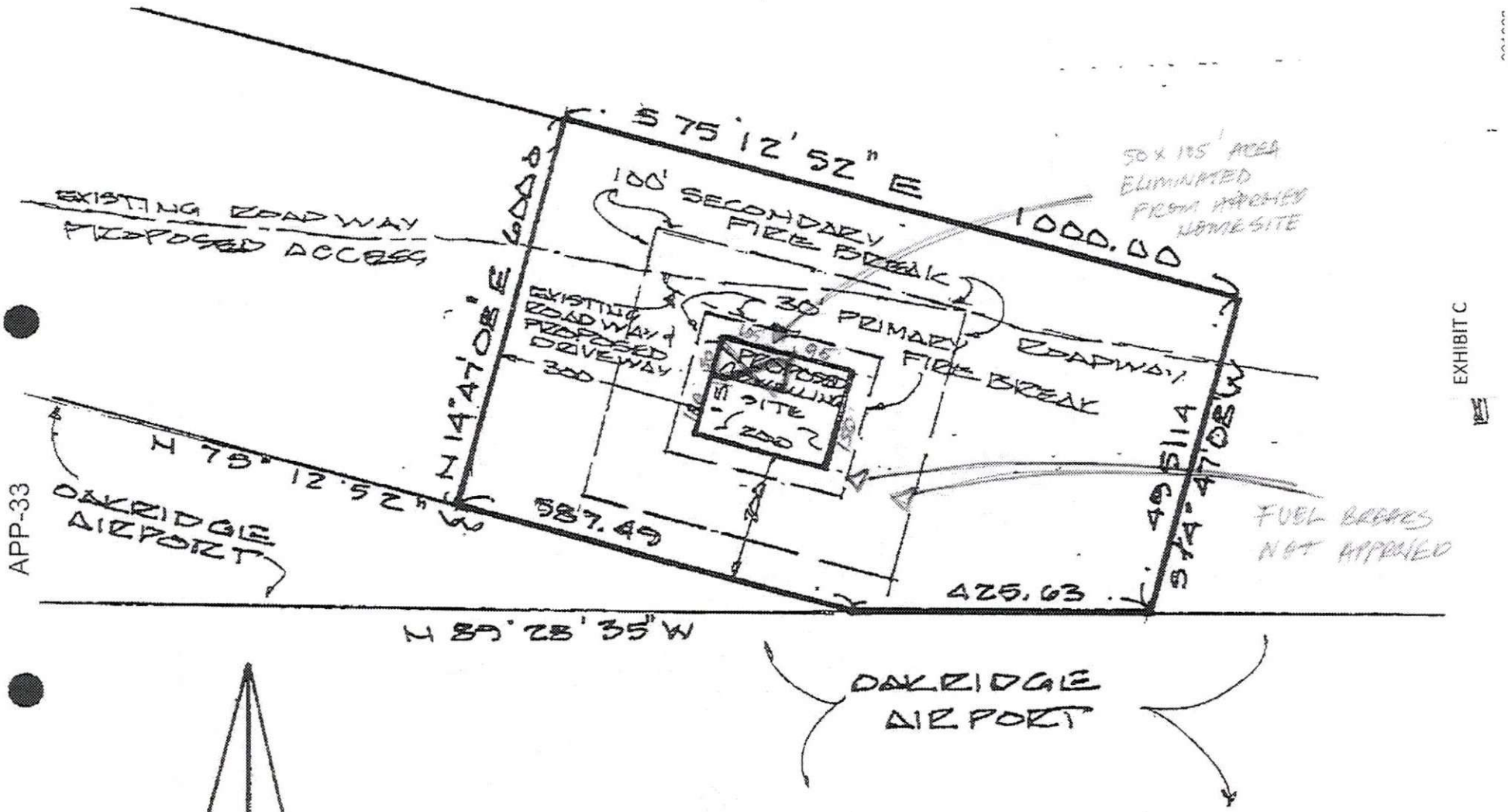
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0 245 490 980 Feet

VICINITY MAP : 509-PA20-05066

EXHIBIT C

Lane County, Ore



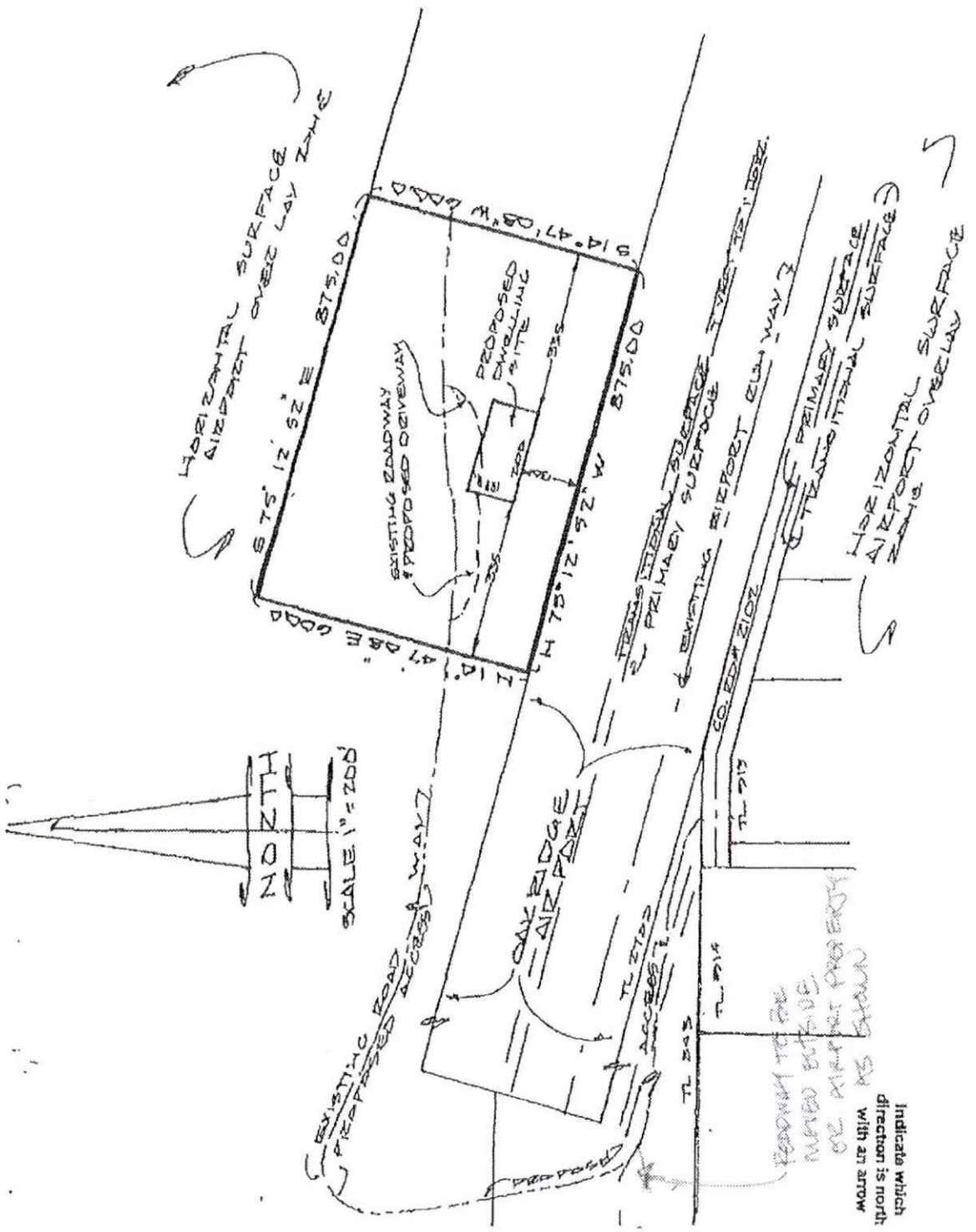
APPROVED PRELIMINARY SITE PLAN 509-PA20-05066 Pg 1 of 2
SA 1/20/2021

21-35-07-30 TL 2800

LUBA Record 000225

SITE PLAN SUBMITTAL FORM

OWNER NAME:	Map and Taxlot #:	APPLICANT NAME:
ESL TRUST/SYMELIT	21-36-07-30 TL 2500	NICHOLL LAND SURVEYING
PHONE #		PHONE # 541-525-2505
ADDRESS:		ADDRESS:
30414 LORELEI ROAD	Scale: 1" = 200'	23225 CRAIG LOOP
EUGENE, OR, 97405		COTTAGE GROVE, OR 97424



Site Plan (Not to Scale)

EXHIBIT C

589-PA20-05046 Rec. 1/20/2021
APPROVED PRELIMINARY SITE PLAN - ACCESS
ID 242

LUBA Record 000226

WORKING PAPER:

Flora & Fauna

DRAFT

MAR ~ 1982
COMPREHENSIVE PLAN REVISION
LANE COUNTY, OREGON

EXHIBIT N

LUBA Record 000227

BIG GAME RANGE

LCDC Orders to Comply required implementing measures for the protection and/or resolution of conflicts with Big Game Range. The County must clarify the types of uses which conflict with big game habitat, and would therefore be reviewable by the County under any implementing measures developed. The primary conflicting use mentioned by LCDC is residential use at certain densities.

Location. The Oregon Department of Fish and Wildlife (ODFW) has divided big game range in Lane County into three categories as follows:

> Major Big Game Range - That portion of the County which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.
>
> Peripheral Big Game Range - Foothill areas of the County generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals in severe winters.
>
> Impacted Big Game Range - Those areas of the County that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

These areas are mapped on Lane County Wildlife Inventory maps. As a general depiction, Major Big Game Range occurs on federal lands, large timber company holdings, and some private lands which are sparsely developed. Peripheral Big Game Range encompasses primarily foothills and smaller valleys. Impacted Range includes cultivated fields and developed areas, often on valley floors.

Because of the large amount of undeveloped timberland in Lane County, the majority of the County is Major Big Game Range. But, due to scattered ownership patterns, many areas within the Major Range are small, private parcels. Peripheral Range often falls along small valley floors which are privately owned and often fairly extensively developed. For example, most of the Fall Creek, Mohawk and Lorane valleys are within Peripheral Range, as well as large tracts of land west of Elmira.

Wildlife Inventory maps have not been included in this Working Paper due to budget constraints, but are available for review in the Planning Department office.

Quality. The majority of big game use occurs on Major Range. This can be considered the highest quality habitat as man's intrusion with developments is the least. Peripheral Range is also important habitat, and can be particularly crucial in severe winters, but has enough development to limit big game use and management options. Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.

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One other category of lands should be mentioned here. Outside Urban Growth Boundaries, areas exist which are committed to nonresource use. Exceptions for these areas will be taken as "Built Upon and Committed Lands" and acknowledged by LCDC. These small pockets of development within Major or Peripheral Range are essentially Impacted areas due to their level of use by man. They were not large enough, generally to include on the Big Game maps as Impacted. These areas will be treated as Impacted areas for implementation purposes.

Quantity. Areas of of Major, Peripheral and Impacted Big Game Range have not been computed. Figures for acreage of some other categories of land may be useful, though, for illustrative purposes.

Total amount of land in Lane County	2,959,400 acres
Commercial forest land (primarily Major Range)	1,813,220 acres
Other public lands (primarily Major Range, some Peripheral Range)	735,112 acres
Farms (primarily Impacted Range)	255,712 acres

Over 61 percent of the County is considered commercial forest land, a category with essentially no residential development. Including other public lands, such as the Dunes National Recreation Area, Oregon State lands, Corps of Engineers lands and County parks, approximately 85 percent of the County is not available for residential use. A good portion of the remaining acreage is farmland, a category very difficult to justify as available for residential use, but also not prime big game habitat.

Conflict Identification

The clearing of natural vegetation for agricultural purposes decreases an area's habitat value for big game. But since important, existing agricultural lands are already considered Impacted Big Game Range, this is not an issue now. Impacted Range has essentially been "written off" for big game management.

Management of land for timber production does not conflict with big game habitat. With proper forest management techniques, big game habitat can be significantly enhanced. The forage provided to deer and elk in clear-cut areas is very important, but the combination of areas in various successional stages is probably the vital factor in enhancing numbers of deer and elk. Lands zoned for the primary purpose of timber production are subject to the requirements of the Oregon Forest Practices Act. For our purposes, timber harvesting activities do not constitute a conflict to Big Game Range.

The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.

The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning

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by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.

The County will be divided into regions convenient for planning purposes. These have not yet been determined, but will probably result in 10-20 regions in the County.

Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.

Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process.

As a final note regarding residences in Big Game Range, damage to landscaping and gardens is a common problem around these residences. For new residential building permits within Major and Peripheral Range, the applicant will be notified that compatibility problems with big game may exist.

Several recommendations in the Policies Section of this Working Paper relate to the method the County will use to protect Big Game Range.

DEFINED BY ASSOCIATION

LUBA Record 000230

ADDENDUM TO WORKING PAPER:

FLORA & FAUNA

November, 1983

EXHIBIT O

J. DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place:

Although this is a useful index, officials of the ODFW stress the fact that a mere "numbers game" is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.

A prime example is that of "clustering" dwelling units in Peripheral or Major Range areas -- siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.

— siting standards

The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirments of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.

= Coordination between Goals 3, 4 + 5

Within Developed and Committed areas, ODFW officials are examining the utility of continuing to designate some of these lands as either Peripheral or Major Range. Developed and Committed areas should be considered as Impacted, and conflicting uses permitted.

The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenence.

Policies concerning this issue are proposed in the concluding section of this Working Paper.

6. To existing Policies 10 and 11, add the following words (underlined):

"...the 1982 Lane County Working Paper on Flora and Fauna, as revised and updated in 1983...."

7. Add to existing Policy 12 the following statement:

"The County shall work with ODFW officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program."

8. Add a new Policy 14 as follows:

"14. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met."

Existing (December 1982) Policies are duplicated on the following two pages of this document. They do not include the changes proposed above.

III. Conclusion and Necessary Action

The preceding pages of material is intended to meet LCDC requirements and thereby assist the County in complying with statewide planning Goal 5 requirements. It is recommended that the Planning Commissions and the Board of County Commissioners

- Receive the material and review it as technical supportive data,
- Consider the proposed Policy revisions in light of the new data,
- Carry the proposed Policy revisions -- or modified versions thereof -- forward to public hearings and adoption as amendments to the General Plan Policies document.

Ordinance language intended to implement the Policy proposals is now being prepared and will be brought before the Planning Commissons and Board as a part of the Lane Code revision effort. Changes to the Policies will possibly require parallel changes to the proposed ordinance language.

###

EXISTING FLORA AND FAUNA POLICIES from GENERAL PLAN POLICIES Document....

Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County is encouraged to investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and shall be a consideration in Special Use Permits and Zone Changes.

7. Because of the inadequate inventory in Lane County, freshwater wetlands are being placed in a 1B category (insufficient data existing, per Goal 5 requirements, to decide on preserving the resource or not). When National Wetland Inventory (or equivalent) maps are available for all private lands in the County, these wetlands will be evaluated for quality and quantity as per the Goal 5 administrative rule (OAR 660-16-000). If the wetlands are determined to be significant, they will be evaluated against the rule's standardized set of ESEE (Environmental-Special-Economic-Energy) factors and conflict resolution proposed. This action will take place within one plan update period after the maps are available.

8. Lane County shall rely on the Oregon Forest Practices Act for protection of wildlife habitats and areas on lands zoned for the primary use of commercial growing and harvesting of forest tree species. Such habitats and areas shall include sensitive fish and waterfowl areas, riparian vegetation, wetlands areas, and big game ranges.

9. Sensitive Fish and Waterfowl Areas, as identified in the 1982 Lane County Working Paper on Flora and Fauna, are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

10. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

11. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna.

How Policy Read prior to previous page Recommendations

12. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.

13. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

Lane County
Rural Comprehensive Plan
Policies Document
Adopted February, 1984

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora an Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the

LUBA Record 000237

EXHIBIT C.3

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan
Goal 2--Nonresource Lands, Goal 5, Goal 15

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:
August 17, 1984

REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow amendments to the plan to comply with Statewide Planning Goals 2, 5, and 15. The Commission should hear testimony on these issues July 19, 1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the Eugene/Springfield Metro Area General Plan under Goals 2, 5, and 15. The Commission should not take final action on this until the August Commission hearing.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Mike Rupp (Goals 2--Nonresource Lands
Claire Puchy (Goals 5 and 15)
Phone: 378-4926

COORDINATOR: Gary Darnielle
Phone: 687-4283

Date of Report: July 19, 1984

EXHIBIT Q

EXHIBIT C.24

Nevertheless, the County has decided to allow small sites in its F-1 and F-2 Zones conditionally. Larger sites will require plan amendments, along with application of the Goal 5 Rule, exceptions to appropriate goals and possible development and application of a special zone. The County has adopted a policy commitment to this effect. In the meantime, resource zoning will help prevent potential sites from being lost to other uses. (See, however, the Goal 4 section of this report for a discussion of problems with the F-2 Zone.)

* pre-existing Please Highlight. ignora.

Fish and Wildlife Areas and Habitats

Inventory

Information about Lane County's fish and wildlife resources is contained in its Flora and Fauna Working Paper and the addendum to that working paper. Pages 5-10 describe in general each of the 11 major habitat types in the County, along with a discussion of the value of the habitat type to wildlife, and general location of each habitat type. These include:

1. Estuary and Bay
2. Inland Marsh
3. Wet Meadows
4. Lakes and Reservoirs
5. Riparian Vegetation
6. Annual and Perennial Grasslands
7. Coastal Shore Pine/Spruce
8. Douglas Fir/Trailing Blackberry
9. True Fir/Alpine
10. Deciduous Hardwoods
11. Agricultural Lands.

The County prefaces this material by stating that this information "is not considered an inventory and is not accompanied by maps. It is intended merely as background information."

The Working Paper and its addendum contain special sections addressing endangered, threatened, and special concern species, riparian and wetland areas, sensitive fish and waterfowl areas, and big game range. These are discussed separately below.

Endangered, Threatened and Special Concern Species: The Working Paper lists plants and animals which are threatened, endangered, or of special interest (pp. 11-12). Further information is provided for six of these species--northern spotted owl, northern bald eagle, wolverine, silverspot

EXHIBIT C,25

butterfly, western snowy plover, and American osprey (pp. 12-13). This information does not provide location, quality, or quantity information on any specific habitat areas or sites. However, the County indicates that:

1. No spotted owl or bald eagle nests are known to occur on private property;

2. Wolverine habitat is in high elevation, remote areas and therefore in federal ownership;

3. Snowy plover habitat is within state jurisdiction.

4. Osprey nests are found throughout the County, although not in great numbers. The County indicates the ODFW maps show their locations, but these maps have not been adopted or submitted for review.

5. Silverspot butterfly habitat is found only "along a small section of the Oregon Coast." It is recognized in the Coastal Resource Management Plan of Lane County.

Lane County has indicated that Silverspot butterfly habitat occurs on federal land adjacent to the Big Creek (Reneghan) Exception Area as well as on the Renaghan property itself (Exhibit E--Renaghan Amendment, pp. 27, 31). It should be noted that the Exception document contains one statement (Finding 37e) on page 27 which appears to contradict this. Specifically, finding 37e states there are no sensitive species on the property, and that the Silverspot butterfly habitat is located on adjacent federal land only. The Exception document contains several other statements indicating that such habitat occurs in the northwest corner of the property.

The County provides no information at all regarding great blue heron rookeries or pigeon mineral springs, which are considered sensitive bird habitat areas by the Department of Fish and Wildlife. (The exception to this is for two rookeries in the Willamette Greenway. They are addressed in the Goal 15 section of this report.) The inventory of sensitive bird sites developed by ODFW and provided to the Department of Forestry (DOF) as part of a recent management agreement between those agencies, identifies 15 great blue heron rookeries, 21 osprey nest sites, three pigeon mineral springs, and at least one bald eagle nest site in Lane County, most of which are on nonfederal land. According to Flora and Fauna Policy 15, "currently known pigeon springs, heron and raptor (hawk, osprey, and eagle) nest sites. . . shall be placed in a '1B' category."

Pre-existing. Highlight. Please ignore.

Riparian and Wetland Areas: Riparian lands are defined by the County as all lands along both banks of Class I streams in Lane County, to a setback line of 100 feet from ordinary high water (Addendum, p. 7).

The County indicates in its Flora and Fauna Working Paper (p. 16) that all lakes, reservoirs, and Class I streams in Lane County have been mapped, but were not included because of budgetary limitations. They are

available in the Planning Department offices. The Addendum to the Working Paper (p. 6) states that ODFW has provided maps of all Class I streams, as well as major significant wetland areas. Detailed maps are available for review in County offices, and a generalized summary map is included in the Addendum (p. 20).

The Flora and Fauna Working Paper discusses the values associated with wetlands and riparian areas for both fish and other wildlife types (pp. 14-15). The County notes that the U.S. Fish and Wildlife Service has identified a number of wetland types in its National Wetland Inventory. Currently, about half of the County has been mapped, enabling identification of major wetlands. These include:

1. Fern Ridge periphery, exclusive of parkland;

2. Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel;

3. North Fork Siuslaw fresh-water marsh;

4. Maple Creek marsh;

5. Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

The County indicates that these areas are mapped in detail on the Plan Diagram maps. More specific location, quality, and quantity information for each of these five wetland areas is contained in the Working Paper Addendum (pp. 11-13).

The County has not inventoried a wetland south of Sutton Lake and east of Highway 101, or a Darlingtonia bog east of Florence. As noted in the 1983 Coastal Goals review of Lane County (p. 8), these wetland were to be addressed under Goal 5:

> The County notes there are only two Goal 18 resource areas east of Highway 101 which do not fall within the coastal shorelands boundary. They are two wetland habitat areas identified in the coastal resource inventory maps. The County should note that it will have to adequately address these two areas later under Goal 5 when it brings the remainder of the County plan into compliance.

The Darlingtonia bog is addressed in more detail in the Natural Areas section of this report.

Sensitive Fish and Waterfowl Areas: The County notes that this is a subcategory of the previous section, Riparian and Wetland Areas (p. 20). Maps have been provided the County by ODFW showing important waterfowl nesting habitat and streams that receive high use by anglers and/or game fish (p. 20), but were not submitted for review. A large-scale map is available in the County Planning offices (Addendum, p. 5). A

generalized, small-scale map is included on page 20 of the Addendum which shows the locations of important streams and stream reaches. A list of these specific reaches, by basin, is included in the Addendum (pp. 2-4). All identified areas are of high quality and are considered important (Working Paper, p. 21). The extent of riparian vegetation is described in the previous subsection of this report. The County notes that there are native anadramous fish runs in Big Creek within the Big Creek Exception Area (Exhibit E--Renaghan Amendment, p. 44). These include coho salmon, cutthroat trout and steelhead.

Big Game Range: The County notes that ODFW divides big game range in Lane County into three categories--Major, Peripherial, and Impacted. The Major Range supports the majority of big game and, in general, consists of sparcely developed commercial forest lands. Peripheral Range is generally located on foothill areas between commercial forest lands and valley floors. Peripheral Range supports substantial big game populations and serves as wintering areas for animals in severe winters. Impacted Range consists of those areas that have existing levels of development which preclude future wildlife management options for maintaining viable wildlife populations and recreational opportunity, although they frequently contain big game populations.

All three big game range areas are depicted on Lane County Wildlife Inventory Maps, according to the Flora and Fauna Working Paper (p. 23). However, these maps were not submitted for review because of budget constraints. They are available in the Planning Department Office (p. 23). The Working Paper notes that the highest quality big game range is in the Major Range because development is limited. Peripheral Range is important, but has enough development to limit big game use and managment options. Impacted Range is of the lowest quality because of existing development (p. 23). The County provides acreages for these three categories (p. 24).

The County recognizes major elk habitat on a portion of the Big Creek Exception site (Exhibit E-Renaghan Amendment, p. 52).

Conflicting Uses/ESEE Consequences Analyses

Endangered, Threatened and Special Concern Species: As indicated earlier, Lane County knows of no spotted owl or bald eagle nest sites on private land. Similarly, wolverine habitat is on federal land. The County notes that the State Parks Division of ODOT regulates vehicular uses in snowy plover habitat (Working Paper pp. 12-13). Specific conflicts with osprey nest areas are not identified, but the County notes that protective measures in riparian areas (e.g., Willamette Greenway permit requirements, coastal shorelands overlays, riparian and wetland area provisions) will resolve conflicts (Addendum, p. 15).

The Working Paper indicates that the Coastal Resources Management Plan of Lane County recognizes the Silverspot butterfly and applies a prime wildlife managment unit to its habitat (p. 13). Specific conflicts and ESEE consequences are not discussed in the Working Paper, however.

EXHIBIT C.37

sensitive. Missing are designations of heron rookeries and pigeon mineral springs. Policy 15 addresses all sensitive species (bald eagle nests, heron rookeries, snowy plover habitat, spotted owl nests, osprey nests and pigeon mineral springs). Further, objectors point out that Policy 15 places these species in a (1B) category. Both ODFW and 1000 Friends indicate that the County possesses inventory information (including recent ODFW updated information) which is sufficient to complete the Goal 5 process for this resource category. ODFW indicates that the location, quality, and quantity information provided the County is similar to that provided to other counties which have completed the Goal 5 process and which have been acknowledged. The League of Women Voters is concerned that two years is too long for these resource sites to be without protection. Most are not in the Greenway, and therefore do not even receive minimal protection.

1000 Friends also objects to the fact that neither Flora and Fauna Policy 2 or 3 provides adequate protection for these sensitive species. Policy 2 simply indicates the County will recognize existing programs that protect species; it does not bind the County to any particular course of action. 1000 Friends believes the County must make an affirmative commitment to protect threatened and endangered fish and wildlife species. Policy 3 also fails to guarantee protection of sensitive species since it requires the County to seek to minimize adverse impacts through County regulations (including zoning). 1000 Friends suggests that present zoning may be construed to "minimize adverse impacts" but this may not necessarily provide adequate protection for particular sites.

1000 Friends also objects to the use of the definition of "sensitive species" used in Policy 3. Objectors believe it is overly general and could be construed by decision-makers to exclude certain species. Objectors believe that County Policy 3 should reference the list of "species of special concern" that appears in the Working Paper, rather than use a vague term in the policy. Similar comments have been filed by Oregon Forest Industries Council.

2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations "if conflicts can be resolved in accordance with OAR 660-16-000." Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.

OBJECTIONS NOTED BY DLCD

3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements

CONT. ⇒

that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting of standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

4. ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal and nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where marginal and nonresource lands are located, and therefore the extent to which they are in game range areas, since the zone map format and resource inventory map formats are not easily comparable. 1000 Friends points out the Goal 5 must be applied whereever Goal 5 resources occur, even in areas designated marginal or nonresource land.

5. ODFW, 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's treatment of the Pudding Creek Heronry. Objectors point out that the County conducted a Goal 5 ESEE consequences analysis, but that inasmuch as the sand and gravel plan and zone designations have been retained on the site, conflicts have not been resolved. Please refer to the Goal 15 section of this report for further details concerning objections to the zoning of this site.

6. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Objectors indicate that the County has not adopted a program that is adequate to protect and/or resolve conflicts with the site under Section (3C) of the Goal 5 Rule. Objectors point out that the 1981 LCDC order for the Eugene/Springfield Metro area include a requirement that the ESEE consequences of designating the island for sand and gravel use must be evaluated in the context of regional aggregate supply and demand. The IOTC further required that if the island were to retain a partial sand and gravel designation, the Metro Area Plan and the Lane Code (Section 10.210) must be amended to require that limited aggregate extraction will minimize the impact on scenic and wildlife values.

process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

> Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

Response to objections by DLCD

Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.

EXHIBIT C.7B

Conclusion - Goal 5

Lane County does not comply with Goal 5.

Lane County has compiled inventory information for most Goal 5 resource categories and has made (1A), (1B) and (1C) decisions, based on this information. Conflicting uses for most categories have been analyzed. Based upon this work, the County has made protection/nonprotection decisions and has adopted plan policies and applied several implementing measures to many Goal 5 sites. Most noteworthy of these implementing measures are the County's riparian setback and vegetation maintenance standards, its groundwater protection provisions, and its Natural Resource zone. However, there are a number of deficiencies in the County's Goal 5 element which must be corrected before acknowledgement can be granted. These deficiencies have been summarized in the previous sections of this report.

In order to comply with Goal 5, Lane County and the Cities of Springfield and Eugene must:

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SG which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

2. Fish and Wildlife Habitats:

   a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

   b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation maintenance standards, or (2) incorporate by reference another section of the Lane Code which contains such standards.

   c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.

   e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.(*)

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

i. Carry out Forest Lands Policy 17 (Plan, p. 10) by identifying sites that are considered more important than commercial timber management activities, based on a Goal 5 ESEE consequences analysis, and adopt appropriate implementing measures to protect and/or resolve timber management conflicts with those sites, consistent with that policy.

4. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.(*)

5. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

6. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

7. Oregon Recreation Trails:

   a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

EXHIBIT D.1

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

M E M O R A N D U M

August 17, 1984

TO: Land Conservation and Development Commission

FROM: James F. Ross, Director

SUBJECT: ITEM 7.1: LANE COUNTY ACKNOWLEDGMENT REVIEW

TOPICS: Response to Exceptions to the Lane County Acknowledgment Review and Proposed Amendments to the Lane County Acknowledgment Review for Goals 5, 15, and Goal 2 Nonresource Areas.

This memorandum is divided into two parts. Part I includes by Goal topic responses to exceptions filed by objectors to the Lane County Acknowledgment Review. Part II contains by Goal Topic the Department's recommended changes to the Lane County Continuance Report along with the reasons to support those changes.

I. Response to Exceptions

A. Goal 2--"Nonresource" Lands

1. David Hemenway and Paul Mehnert regarding Dillard Highlands Second Addition

Mr. Hemenway indicates that some errors are contained within the Department's Report discussing Dillard Highlands' Second Addition. We concur with Mr. Hemenway regarding objections 1 (page 112 of the Department's report), 2 (page 113), and 4 (page 115). Corrections to the Department's report for the objections discussed above are contained in Part II of this memorandum. We disagree with Mr. Hemenway regarding objections 3 and 5.

Objection 3 claims that the Department's report is incorrect because the "County's" soils investigation report, quoted by the Department, is inaccurate. The Department is unable to reconcile the factual inconsistencies contained within the County's findings for Dillard Highlands' Second Addition.

EXHIBIT R

EXHIBIT D.2

The two sets of soils data, provided as findings, present different conclusions about the characteristics of the site. The County must review this material to determine which soils data are accurate. We recommend that Mr. Hemenway be afforded the opportunity to be involved in this determination.

Objection 5 claims that the Department's recommendation for Dillard Highlands' Second Addition is in error. The record lacks substantial evidence indicating that Goals 3 and 4 do not apply to this land. Until the County clearly indicates from revised soils information, that Goal 3 is not applicable to this site, the County lacks substantial evidence supporting its claim regarding Goal 3. Additionally, reliance on a forester's economic analysis to support the conclusion that Goal 4 does not apply to this site, when the record indicates it is composed predominantly of soils with commercial forest capabilities (Site Class III and IV, County's Findings, p. 14) is inconsistent with Goal 4's requirements (see amended conclusion for Dillard Highlands' Second Addition).

2. Canfield and Associates on behalf of Cerro Gordo

Mr. Canfield's exceptions to the Department's report are only partially sustained. The issues regarding the proposed density of this development as discussed in the report remain. However, the Department concurs with Mr. Canfield that amendments to clarify the Department's position are necessary (see amendments to the report).

B. Goal 5

1. Lane County

Lane County filed an exception to in-order-to-comply requirements 2c, d, e, f, and i. All pertain to fish and wildlife habitat issues.

Response: On August 8, DLCD staff met with Lane County planners to discuss these issues. All were resolved. IOTC 2c, d, e, and f remain, but 2i should be eliminated (see amendments to staff report in the Part II of this memo).

2. Wildish Sand and Gravel Company

Wildish believes that several statements in the July 19, 1984, report are inaccurate. Specifically:

EXHIBIT E 1

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE
Lane County
(Rural Portion, Excluding Eugene Metro Area)
Supplement to Staff Reports of June 29, 1984 and July 19, 1984 as Amended

DATE RECEIVED:
August 16, 1984 through September 13, 1984

DATE OF COMMISSION ACTION:
September 13, 1984

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission acknowledge the rural portion of Lane County's plan and land use regulations to be in compliance with Statewide Planning Goals 1-14, 17.

FIELD REPRESENTATIVES: Bob Rindy, Glen Hale
Phone: 378-4095

LEAD REVIEWER: Doug White, Mike Rupp, Claire Puchy
Phone: 378-4926

PLANNING DIRECTOR: Roy Burns
Phone: 687-3958

Date of Supplemental Report: September 12, 1984

EXHIBIT S
LUBA Record 000250

EXHIBIT E.26

Response

Lane County has responded to this JOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade Wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

- clustering + siting stds

EXHIBIT E.26

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts,

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(i)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

EXHIBIT E.36

Conclusion

Requirement 7b has been met.

Requirement

8. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflicting-resolution recommendations contained in the Metro Plan Update Working Paper.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 5

Lane County complies with Goal 5.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

Requirement

1. Amend the Development Code to require review of any propcsed development within known geologic hazard areas.

Response

Lane County Development Code was amended (ORD. 9-84) to include the following provision (LC 16.005):

> "(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of an application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose."

Lane County

Gary Darnielle
Lane County Heanings Official
North Plaza Level PSB
125 E. 8th Ave.
Eugene, OR 97401

September 11, 1986

RE: PA2131-86

Dear Mr. Darnielle:

In your September 9, 1986 memorandum to Roy Burns, you requested staff to prepare responses to 2 questions in regards to the above referenced application. This memorandum is in response to your request.

Question 1). Which Rural Comprehensive Plan policies and implementation regulations determine allowable residential densities within areas designated as Big Game Range? Specifically, how does County staff reconcile the clear language of Rural Comprehensive Plan Flora and Fauna Policy #11 with the residential density analysis suggested by the "Flora & Fauna Working Paper" (March 1982) and the revised language to the working paper in the "Addendum to Working Paper: Flora & Fauna" (November 1983)?

Response: Goal 5 Flora and Fauna Policy #11 together with the clustering requirements of the F-2/RCP zone (LC16.211(8)) and of the EFU/RCP zone (LC16.212(8)) determine allowable residential densities within Big Game Range Habitat areas.

A better understanding of how Policy #11 and the implementing measures for clustering in the F-2/RCP and EFU/RCP zones can be obtained by reviewing the DLCD review comments for Lane County's Rural Comprehensive Plan.

In the DLCD Report, July 19, 1984, page 75, 2.e., DLCD indicated that the F-2/RCP and EFU/RCP zones must either be amended to contain larger minimum lot sizes or to contain clustering requirements for residences in Big Game Range Habitat areas. The reasoning for this recommendation was discussed in pages 33, 34, 35, 36 and 39 of the July 19, 1984 DLCD Staff Report.

In response to the DLCD recommendations in their July 19, 1984 report, Lane County amended it's F-2/RCP and EFU/RCP zones to contain clustering provisions for the siting of residences. In the Sept. 12, 1984 DLCD report, pp 25-26, DLCD noted their recommendations from their July 19th report and the amendments Lane County enacted to its F-2/RCP and EFU/RCP zones and concluded that the intent of Flora & Fauna Policy #11 had been carried out and met the Goal 5 requirements.

EXHIBIT T
LUBA Record 000254

Question 2) To what extent has County staff been pursuing the development of a Goal #2 "developed and committed" exception to the Baxter's Acres Subdivision? What specific factors have the staff examined or will the staff be examining which they believe will determine whether the subdivision is committed to nonresource use?

Response: County Staff have discussed a "developed" exception with Dave Pedersen who has represented Weyerhaeuser and a number of lot owners in Baxter's Acres. Our last discussion with Dave Pedersen occurred on September 9, 1986 during which we agreed that it would not be appropriate to proceed with initiating a Plan Amendment at this time due to the multiple applications for the same property being contested with the Hearings Official. Staff had intended to bring to the Lane County Planning Commission facts relating to the developed nature of Baxter's Acres and to let the LCPC decide if there appears to be a basis for taking a developed exception. The LCPC could then initiate a Plan Amendment/ Zone Change to more formally consider the matter.

Another impetus for initiating an amendment is the fact that if, through an arduous hearing process, dwellings could be allowed in the F-2/RCP zone, then a much simpler process would be to amend the Plan and change the zoning. The factors to be considered for a developed exception would be those required by the OAR for a developed exception (i.e., roads, utilities, sewage disposal systems, etc.).

Kent Howe - Associate Planner

Jim Mann - Senior Planner

Attachments: Excerpts from DLCD Reports.

cc: Roy Burns

IMPACTED FOREST LANDS ZONE (F-2, RCP)

RURAL COMPREHENSIVE PLAN

F-2 Zone Table of Contents

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16.211 Impacted Forest Lands (F-2, RCP)

(1) Purpose

The purpose of the Impacted Forest Land (F-2) Zone is to protect and maintain forest lands for grazing, and rangeland use and forest use, consistent with existing and future needs for agricultural and forest products. The F-2 zone is also intended to allow other uses that are compatible with agricultural and forest activities, to protect scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the county.

The F-2 zone has been applied to lands designated as Forest in the Comprehensive Plan. The provisions of the F-2 zone reflect the forest land policies of the Comprehensive Plan as well as the requirements of ORS Chapter 215 and OAR 660-006. The minimum parcel size and other standards established by this zone are intended to promote commercial forest operations.

(2) Use Table

Table of Permitted Uses

Table 16.211-1 sets forth the uses allowed in the F-2 zone subject to Type I, II, or III approval processes. This table applies to all new uses, expansions of existing uses, and changes of use when the expanded or changed use would require a Type I, II, or, III process, unless otherwise specified on Table 16.211-1. All uses and their accessory buildings are subject to the general provisions, special conditions, additional restrictions, siting standards, fire siting standards, and exceptions set forth in LC 16.211.

As used in Table 16.211-1:

(a) Use Type:

(i) "A" means the use is allowed outright or permitted subject to standards.

(ii) "C" means the use is a Conditional Use, subject to Section (4) and other listed criteria.

(b) Local Procedure Type:

(i) "P" means the use is permitted outright; uses and activities and their accessory buildings and uses are permitted subject to the general provisions set forth by this Chapter.

(ii) "AL" means Assembly License, subject to LC 3.995.

(iii) Type I uses and activities are permitted subject to the general provisions and exceptions set forth by this chapter of Lane Code.

(iv) Type II uses may be allowed provided a land use application is submitted and approved by the Director pursuant to LC Chapter 14.

(v) Type III uses may be allowed provided a land use application is submitted and approved by the Hearings Official pursuant to LC Chapter 14.

(c) The "Subject To" column identifies any specific provisions of LC 16.211 to which the use is subject. All uses and development are subject to the development standards provisions of LC 16.211(5)(b) and (6)(c). Residences, dwellings, and structures must comply with LC 16.211(5) and (6). Any new structure subject to LC 16.211(5)(a) is subject to a Type II procedure pursuant to LC Chapter 14.

(d) A determination by the Director for whether or not a use fits within the classification of uses listed as Type I, Permitted Outright, or Assembly License in the use table may constitute a "permit" as defined by ORS 215.402(4), "...discretionary approval of a proposed development of land..." an owner of land where the use would occur therefore may request to elevate review of a Type I, Permitted Outright, or Assembly License use to a Type II land use application pursuant to LC Chapter 14. The burden of proof in the application will be upon the owner of land to demonstrate that the proposed use fits within the classification.

Table 16.211-1: Use Table for Impacted Forest Zones
I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License

	Use	Use Type	Local Procedure Type	Subject to
1.	**Forest, Farm and Natural Resource Uses**			

Table 16.211-1: Use Table for Impacted Forest Zones I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License				
	Use	**Use Type**	**Local Procedure Type**	**Subject to**
1.1.	Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of a forest tree species, application of chemicals and disposal of slash	A	P	
1.2.	Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation	A	I	(5)(b), (6)(c)
1.3.	Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities	A	P	
1.4.	Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources	A	P	
1.5.	Farm use as defined in LC 16.090.	A	P	
1.6.	Uninhabitable structures accessory to fish and wildlife enhancement	A	I	(5)(b), (6)(c)
1.7.	Agricultural building	A	I	(5)(b), (6)(c)
1.8.	Log scaling and weigh stations	C	II	(4), (5), (6)
1.9.	Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations	C	II	(4), (5), (6)
1.10.	Marijuana production	A	I	LC 16.420, (5)(b), (6)(c)
1.11.	Marijuana wholesale distribution	A	I	LC 16.420, (5)(b), (6)(c)
1.12.	Marijuana research	A	I	LC 16.420, (5)(b), (6)(c)
2.	**Residential Uses**			

Table 16.211-1: Use Table for Impacted Forest Zones I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License				
	Use	**Use Type**	**Local Procedure Type**	**Subject to**
2.1.	Caretaker residences for public parks and public fish hatcheries	A	II	(3)(p), (5), (6)
2.2.	Large tract forest dwelling	A	II	(3)(a), (3)(p), (3)(q), (5), (6)
2.3.	Lot of record dwelling	A	II	(3)(b), (3)(p), (3)(q), (5), (6)
2.4.	Template dwelling	A	II	(3)(c), (3)(p), (3)(q), (5), (6)
2.5.	Alteration, restoration, or replacement of a lawfully established dwelling	A	I or II	(3)(d), (3)(p), (3)(r), (5), (6)
2.6.	Temporary hardship dwelling	C	II	(3)(e), (3)(p), (4), (5), (6)
3.	**Commercial Uses**			
3.1.	Temporary portable facility for the primary processing of forest products	A	I	(5)(b), (6)(c)
3.2.	Temporary forest labor camps	A	I	(5)(b), (6)(c)
3.3.	Private hunting and fishing operations without any lodging accommodations	A	P or II	(5), (6)
3.4.	Parking of up to seven dump trucks and trailers	C	II	(4)
3.5.	In-home commercial activity (Minor Home Occupation)	A	I	(3)(g)
3.6.	Home occupations	C	II	(3)(e), (4)
3.7.	Permanent facility for the primary processing of forest products	C	II	(3)(k), (4), (5), (6)

Table 16.211-1: Use Table for Impacted Forest Zones I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License				
	Use	**Use Type**	**Local Procedure Type**	**Subject to**
3.8.	Permanent logging equipment repair and storage	C	II	(4), (5), (6)
3.9.	Private seasonal accommodations for fee hunting operations	C	II	(3)(g), (4), (5), (6)
3.10.	Private accommodations for fishing occupied on a temporary basis	C	II	(3)(h), (4), (5), (6)
3.11.	Marijuana processing, provided an on-site dwelling is present	C	II	LC 16.420, (4)
4.	**Mineral, Aggregate, Oil and Gas Uses**			
4.1.	Exploration for aggregate resources as defined in ORS chapter 517	A	P	
4.2.	Exploration for and production of geothermal, gas, oil and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head	A	P	
4.3.	Mining and processing of oil, gas or other subsurface resources, as defined in ORS chapter 520, and not otherwise permitted by 4.2 above (e.g. compressors, separators, and storage servicing multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS chapter 517	C	III	(4), (4)(d)
4.4.	Temporary asphalt and concrete batch plants as accessory uses to specific highway projects	C	II	(4)
5.	**Transportation Uses**			
5.1.	Climbing and passing lanes within the right of way existing as of July 1, 1987	A	P	
5.2.	Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result	A	P	

Table 16.211-1: Use Table for Impacted Forest Zones I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License				
	Use	**Use Type**	**Local Procedure Type**	**Subject to**
5.3.	Temporary public road and highway detours that will be abandoned and restored to condition or use in effect prior to construction of the detour at such time as no longer needed	A	P	
5.4.	Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways	A	P	
5.5.	Operations, maintenance, and repair as defined in LC 15.010 of existing transportation facilities, services, and improvements, including road, bicycle, pedestrian, port, airport and rail facilities, and major regional pipelines and terminals	A	P	
5.6.	Dedication of right-of-way, authorization of construction and the construction of facilities and improvements, where the improvements are consistent with clear and objective dimensional standards	A	P	
5.7.	Preservation as defined in LC 15.010, and rehabilitation activities and projects as defined in LC 15.101 for existing transportation facilities, services, and improvements, including road bicycle, pedestrian, port, airport and rail facilities, and major regional pipelines and terminals	A	P	
5.8.	Changes in the frequency of transit, rail and airport services	A	P	
5.9.	Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels	C	II	(4)
5.10.	Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels	C	II	(4)
5.11.	Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels	C	II	(4)
5.12.	Bikeways, footpaths, and recreation trails not otherwise allowed as a modification or part of an existing road	C	II	(4)
5.13.	Park and ride lots	C	II	(4)
5.14.	Railroad mainlines and branch lines	C	II	(4)

Table 16.211-1: Use Table for Impacted Forest Zones I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License				
	Use	**Use Type**	**Local Procedure Type**	**Subject to**
5.15.	Pipelines	C	II	(4)
5.16.	Navigation channels	C	II	(4)
5.17.	Realignment as defined in LC 15.010 not otherwise permitted pursuant to this chapter	C	II	(3)(I), (4)
5.18.	Replacement of an intersection with an interchange	C	II	(3)(I), (4)
5.19.	Continuous median turn lanes	C	II	(3)(I), (4)
5.20.	New roads as defined in LC 15.010 that are County Roads functionally classified as Local Roads or Collectors, or are Public Roads or Local Access Roads as defined in LC 15.010(35) in areas where the function of the road is to reduce local access to or local traffic on a state highway	C	II	(3)(I), (4)
5.21.	Transportation facilities, services, and improvements other than those listed in LC 16.211 that serve local travel needs	C	II	(3)(I), (4)
5.22.	Expansion of lawfully existing airports	C	II	(4), (5), (6)
6.	**Utility and Power Generation, Solid Waste**			
6.1.	Local distribution lines (e.g. electric, telephone, natural gas) & accessory equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment that provides service hookups, including water service hookups	A	P	
6.2.	Water intake facilities, canals and distribution lines for farm on and ponds	A	P	
6.3.	Disposal site for solid waste approved by the governing body of a city or county or both and for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation;	C	II	(4), (5), (6)
6.4.	Television, microwave and radio communication facilities and transmission towers	C	II	(4), (5), (6)
6.5.	New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210. New distribution lines (e.g. gas, oil, geothermal, telephone, fiber optic cable) with rights-of-way 50 feet or less in width	C	II	(4)

Table 16.211-1: Use Table for Impacted Forest Zones I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License				
	Use	**Use Type**	**Local Procedure Type**	**Subject to**
6.6.	Water intake facilities, related treatment facilities, pumping stations and distribution lines	C	II	(4), (5), (6)
6.7.	Reservoirs and water impoundments	C	II	(4)
6.8.	Commercial utility facilities for the purpose of generating power	C	II	(3)(i), (4), (5), (6)
6.9.	Telecommunication tower changeout	A	I	(8)
6.10.	Collocation to an existing telecommunication tower: Spectrum Act exemption eligible	A	I	(8)
6.11.	Telecommunication tower collocation	A	II	(8)
6.12.	New telecommunication tower or replacement tower	C	III	(4), (5), (6), (8)
7.	**Public and Quasi-public Uses**			
7.1.	Towers and fire stations for forest fire protection	A	II	(5), (6)
7.2.	Youth camps	A	II	(3)(m), (5), (6)
7.3.	Aids to navigation and aviation	C	II	(4), (5), (6)
7.4.	Firearms training facility as provided in ORS 197.770	C	II	(4), (5), (6)
7.5.	Fire stations for rural fire protection	C	II	(4), (5), (6)
7.6.	Cemeteries	C	II	(4)
7.7.	Public parks and public campgrounds, including those uses specified under OAR 660-034-0035 or OAR 660-034-0040	C	II	(4), (5), (6)
7.8.	Private parks and private campgrounds	C	II	(3)(j), (4), (5), (6)
7.9.	Storage structures for emergency supplies	C	II	(3)(n), (4), (5), (6)
8.	**Outdoor Gatherings**			

Table 16.211-1: Use Table for Impacted Forest Zones I = Type I II = Type II III = Type III P = Permitted Outright AL = Assembly License				
	Use	**Use Type**	**Local Procedure Type**	**Subject to**
8.1.	An outdoor gathering of fewer than 3,000 persons, that is not anticipated to continue for more than 120 hours in any three-month period	A	P or AL (if over 1,000 persons)	LC 3.995
8.2.	An outdoor mass gathering of more than 3,000 persons, that is not anticipated to continue for more than 120 hours in any three-month period, and which is held primarily in open spaces and not in any permanent structure as provided in ORS 433.735-760	A	III	ORS 433.735-760
8.3.	Any outdoor gathering of more than 3,000 persons that is anticipated to continue for more than 120 hours in any three-month period is subject to review by the Planning Commission under ORS 433.763, notwithstanding Type III Hearings Official review	C	III (LCPC)	(3)(o)
9.	**Accessory Uses**			
9.1.	Uses and buildings accessory to existing uses and development permitted by LC 16.211.	A	P or II	(3)(r), (5), (6)

(3) Use Standards

(a) A large tract forest dwelling may be allowed on a lot or parcel zoned for forest use, but it must comply with other provisions of law, including the following:

(i) The tract does not include a dwelling.

(ii) The tract is at least 160 contiguous acres or 200 acres in one ownership that are not contiguous but are in Lane County or adjacent counties and zoned for forest use.

(aa) A tract cannot be considered to consist of less than 160 acres because it is crossed by a public road or a waterway.

(iii) Prior to issuance of a building permit, a deed restriction must be filed for all tracts that are used to meet the acreage requirements of this subsection pursuant to:

(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located.

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.

(b) A lot of record dwelling may be allowed on a lot or parcel zoned for forest use pursuant to the following:

(i) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in paragraph (iv):

(aa) Since prior to January 1, 1985; or

(bb) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985;

(ii) The tract on which the dwelling will be sited does not include a dwelling;

(iii) If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(iv) For purposes of this subsection, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members;

(v) The dwelling must be located on a tract that is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species and is located within 1,500 feet of a public road as defined in LC Chapter 15 that provides or will provide access to the subject tract. The road must be maintained and either paved or surfaced with rock and cannot be:

(aa) A United States Bureau of Land Management road; or

(bb) A United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency;

(vi) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract must be consolidated into a single lot or parcel when the dwelling is allowed; and

(vii) When the lot or parcel on which the dwelling will be sited lies within an area designated in the Rural Comprehensive Plan as habitat of big game, the siting of the dwelling must be consistent with the limitations on density upon which the Rural Comprehensive Plan and land use regulations intended to protect the habitat are based.

(c) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

(i) If the lot or parcel is predominantly composed of soils that are:

(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

(iv) Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(v) The following applies where a tract 60 acres or larger abuts a road or perennial stream:

(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;

(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

(vi) A proposed "template" dwelling under this section is not allowed:

(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(a)(iii) for the other lots or parcels that make up the tract are met; or

(bb) If the tract on which the dwelling will be sited includes a dwelling;

(vii) Where other lots or parcels that make up a tract in Subsection (vi):

(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(d) Alteration, restoration, or replacement of a lawfully established dwelling, subject to the following:

(i) The dwelling was lawfully established;

(ii) The lawfully established dwelling:

(aa) Has intact exterior walls and roof structures;

(bb) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(cc) Has interior wiring for interior lights; and

(dd) Has a heating system;

(iii) In the case of replacement, is removed, demolished, or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling.

(e) A temporary hardship dwelling is subject to the following:

(i) One manufactured dwelling (MH), recreational vehicle (RV), or the temporary residential use of an existing building may be allowed in conjunction with an existing dwelling as a temporary use for the term of the hardship suffered by the existing resident or relative, subject to the following:

(aa) The hardship dwelling must use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If a public sanitary sewer system is available, the hardship dwelling may connect to the public system and not use a subsurface sewage disposal system;

(bb) Except as provided in (3)(e)(i)(cc) below, approval of a temporary hardship dwelling permit is valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situation ceases or unless in the opinion of the Lane County Sanitarian the on-site sewage disposal system no longer meets DEQ requirement;

LCOG
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FOR OUR COMMUNITY
03/02/2021

Report - Major Big Game Range in Lane County RCP

There were three objectives for the analysis:

1. Determine the acreage of the Major Big Game Range within Lane County's Rural Comprehensive Plan outside of Metro Plan, UGB's and Developed and Committed Areas.
2. Identify the number of dwellings that fall within that amount of acreage.
3. Determine the overall density of dwellings per acre.

ESRI GIS software and geoprocessing tools in combination with various data (see sources below) was used to perform the analysis, which included filtering specific data both spatially and tabularly.

The acreage within the study area was calculated from the digitized boundary layer of the Major Big Game Range. This acreage was then refined by subtracting acreage that was found to be within the Metro Plan, UGB's and Developed and Committed Areas. Analysis was also performed separately for the east and west parts of the County as the Major Big Game Range is not contiguous across the lands within and adjacent to the I-5 corridor.

Spatial and tabular filters were applied to the Lane County's Rural Plan Designation layer, specifically, those designated Residential, Commercial, or Industrial. All lands that have a plan designation of R, C or I that are outside of UGB's and the Metro Plan boundary by necessity must be within a Developed and Committed Lands Exception (D&C) Area to receive that Plan designation. All areas within a D&C Area are considered Impacted Big Game Range (per Lane County RCP Goal 5 Flora and Fauna Policy #10) and not Major Big Game Range. Therefore, any of the D&C areas that lie within the digitized boundary layer of the Major Big Game Range were excluded from the total acreage calculation. Since there is no specific digitized layer for D&C areas outside of the Metro Plan, the only way to identify and exclude these lands was to utilize the Rural Plan Designation layer.

Tabular filters were also applied to the regional address layer to determine residential dwellings outside of exclusion areas. Specifically, only addresses with a HUD/BPR residential use code (D,K,M,N,S,Q) were used. The official reference for the HUD/BPR codes (also commonly known as the SLUCM codes) is the Standard Land Use Code Manual from the Urban Renewal Administration, Bureau of Public Roads published in 1965. The coding scheme has been modified in its details to meet the local needs of Lane County. Address points are almost always located where the structure/dwelling exists, and there may be instances where a portion of a given parcel or property is within an exclusion area, while the dwelling is not.

Analysis Results (acreage values are as mapped):
Total Acres (land & water) in Lane County = 2,955,953
Major Big Game Range in Lane County (no exclusions) = 2,596,120 acres

Map 1:
Major Big Game Range in Lane County with exclusions = 2,571,426 acres
Residential Addresses (dwellings) outside of exclusion areas = 3,137
Overall Density = 1 dwelling / 819 acres

Map 2:
Major Big Game Range in Lane County east of I-5 with exclusions = 1,818,537 acres
Residential Addresses (dwellings) outside of exclusion areas and east of Interstate 5 = 1,285
Overall Density = 1 dwelling / 1,415 acres

Map 3:
Major Big Game Range in Lane County west of I-5 with exclusions = 752,889 acres
Residential Addresses (dwellings) outside of exclusion areas and west of Interstate 5 = 1,852
Overall Density = 1 dwelling / 406 acres

Source & Data:

Lane County-
- Major Big Game Range Habitat Area
- Rural Plan Designations

Lane Council of Governments (LCOG)-
- Addresses
- Eugene/Springfield Metro Plan Boundary
- Lane County Boundary

State of Oregon-
- Urban Growth Boundaries
- PLSS Township/Range

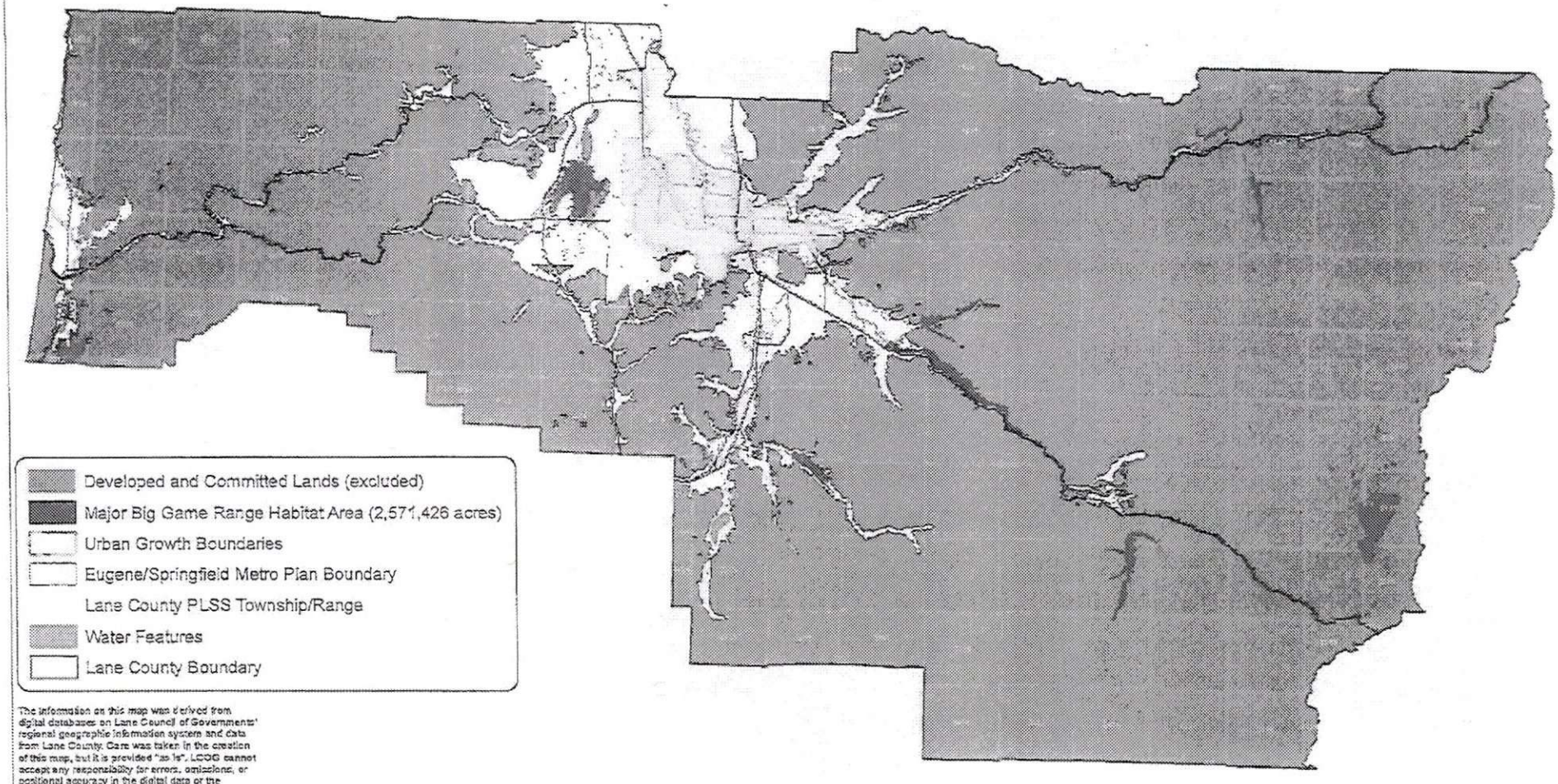
National Hydrography Dataset (NHD)-
- Water Features

---All data except for the analysis output can be verified here:
https://lcmaps.lanecounty.org/LaneCountyMaps/ZoneAndPlanMapsApp/Index.html

Created on 03/02/2021 by: Kyle Overstake – GIS Associate, Lane Council of Governments

The information in this report was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the analysis and creation of the report, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions in results and/or underlying records. There are no warranties, expressed or implied, accompanying this product.

Major Big Game Range in Lane County RCP



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859 Willamette St., Suite 500
Eugene, Oregon 97401-2910

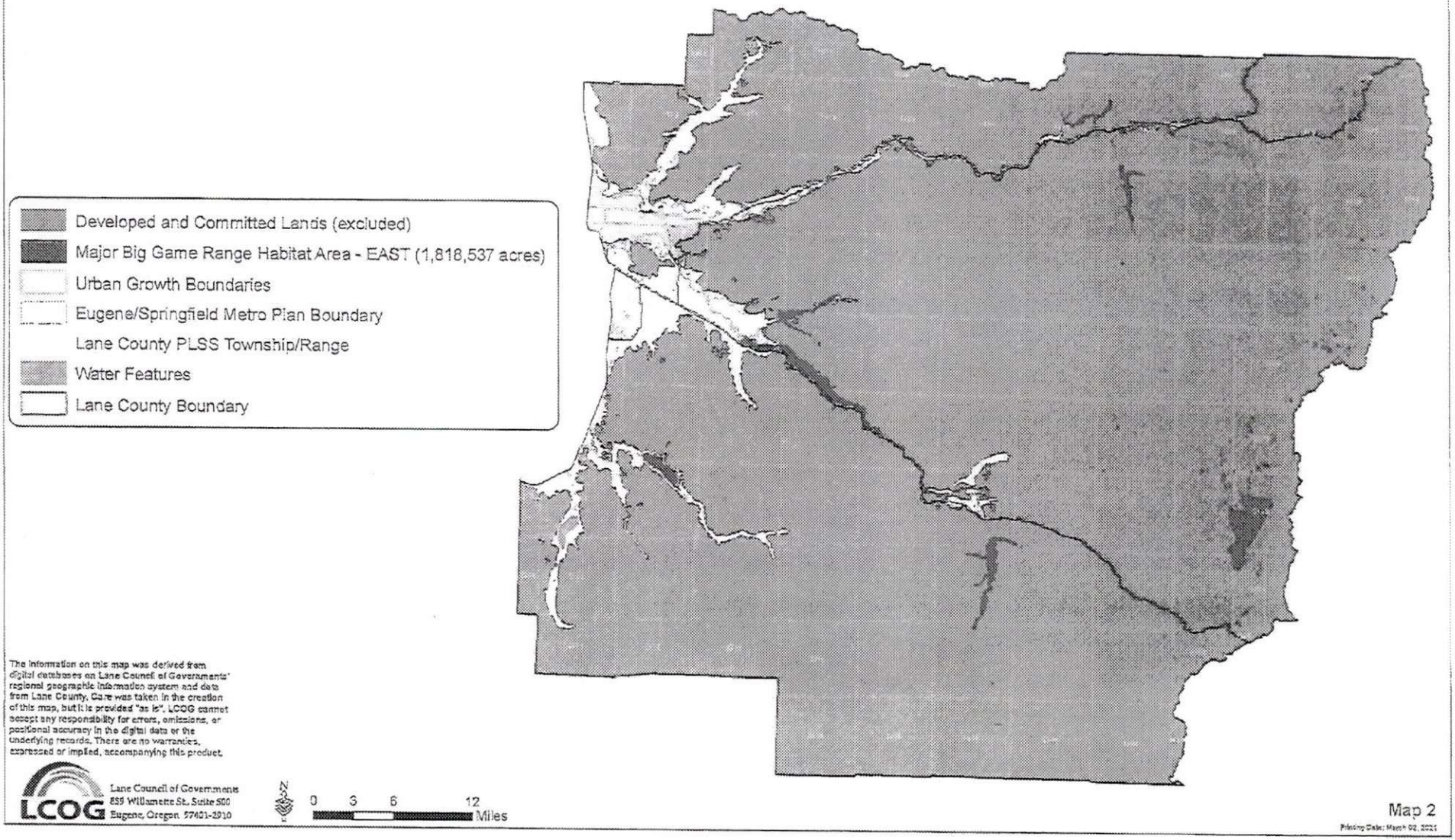
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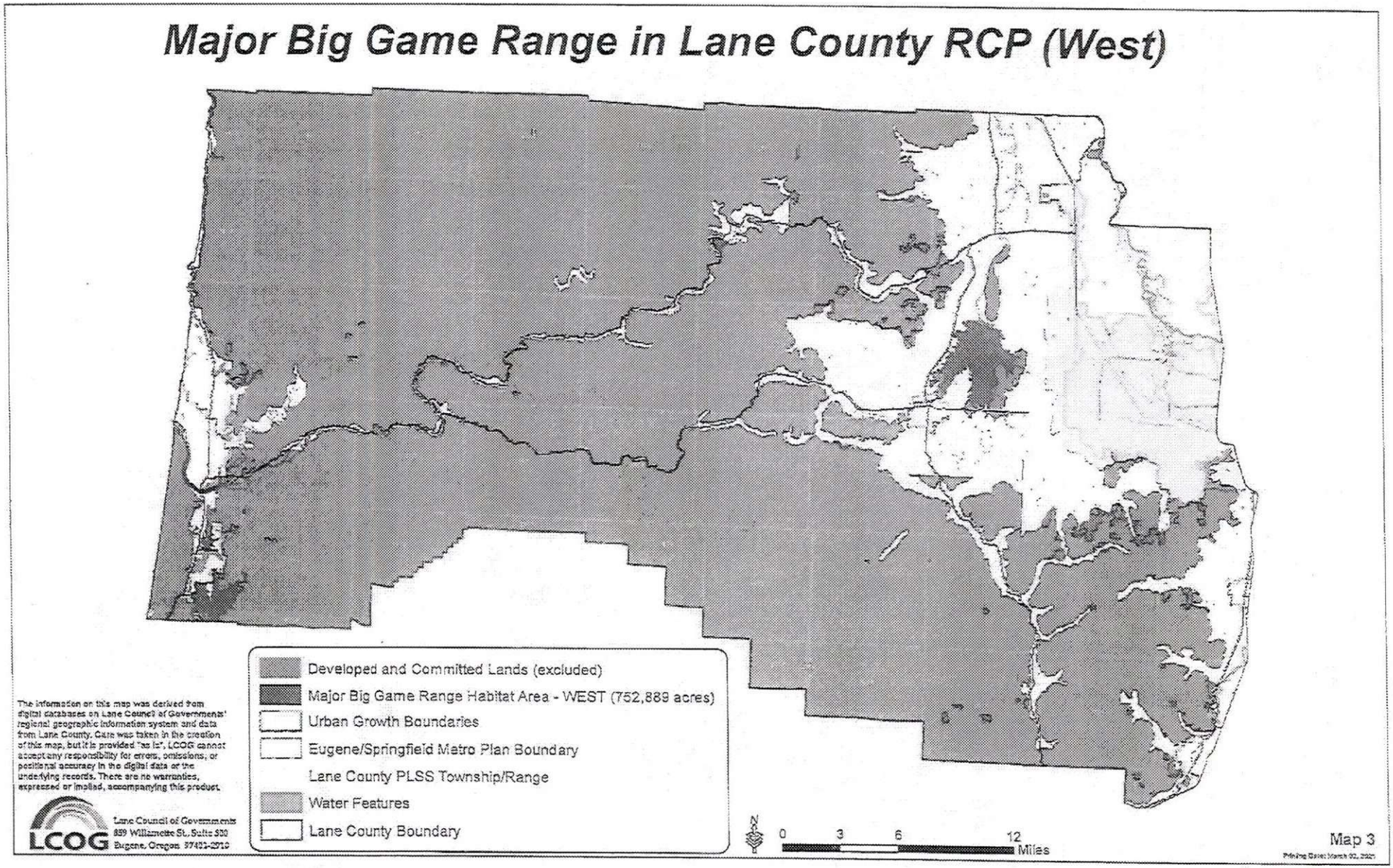
Map 1

Printing Date: March 02, 2021

Major Big Game Range in Lane County RCP (East)



Major Big Game Range in Lane County RCP (West)

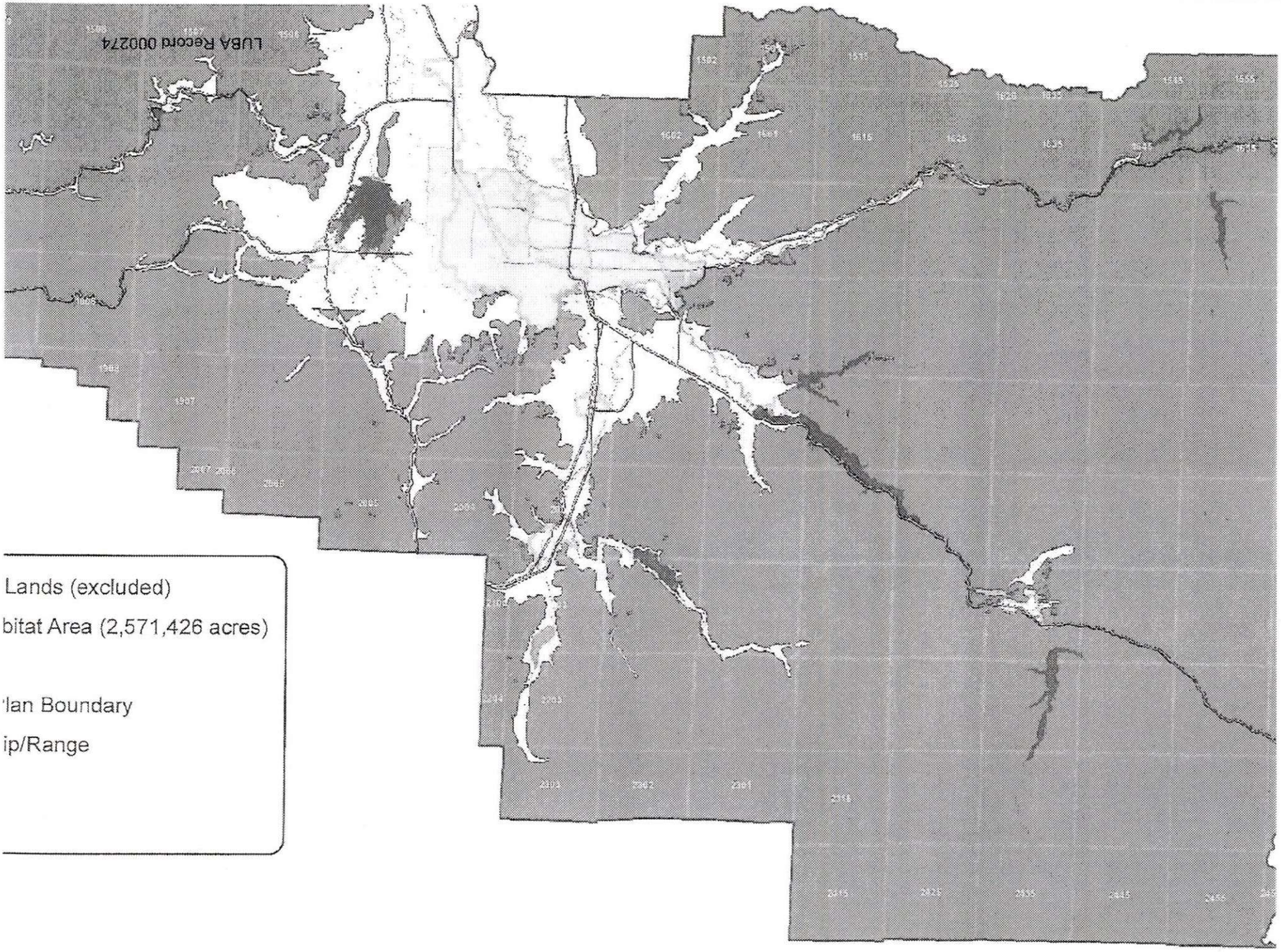


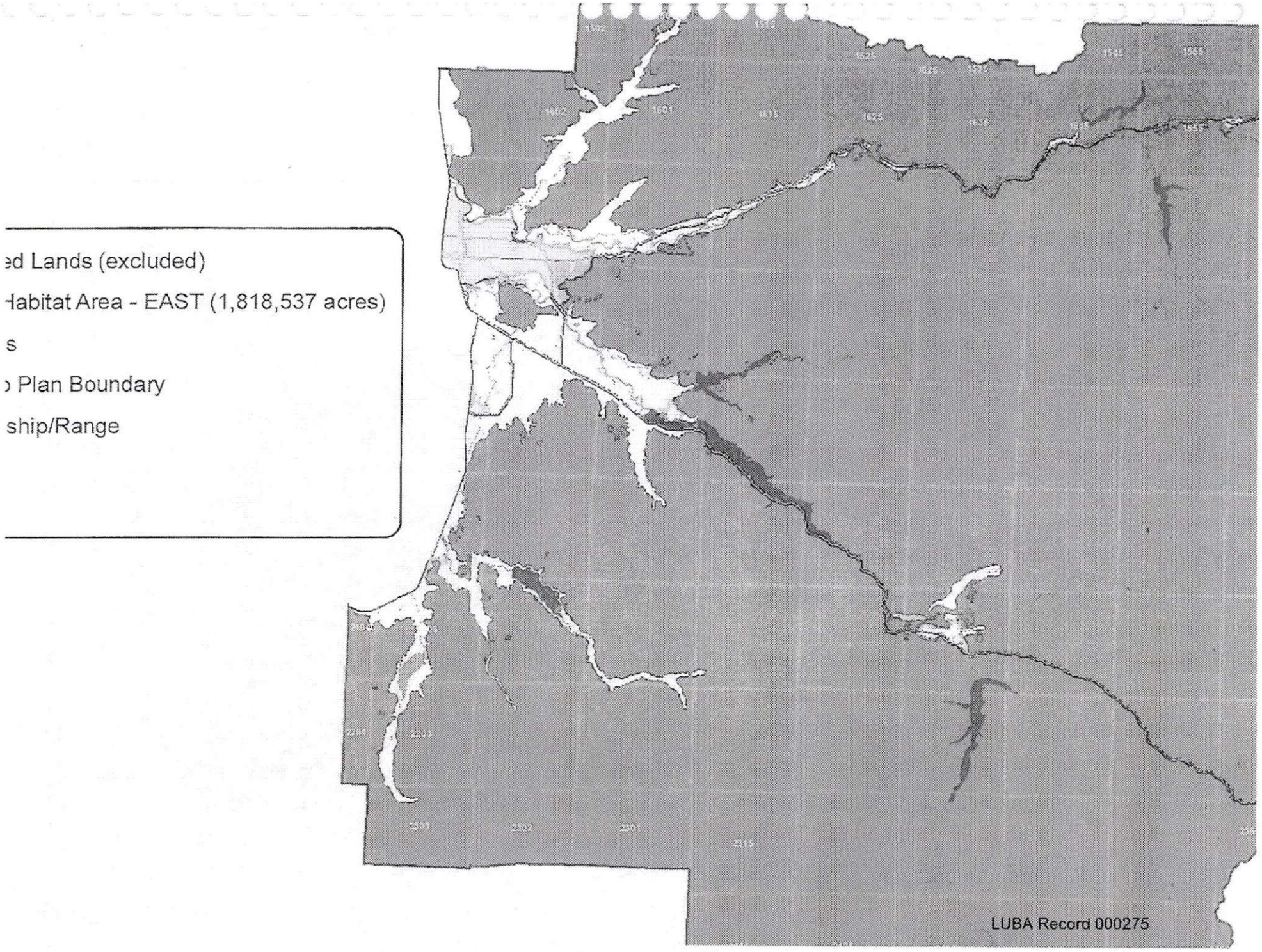
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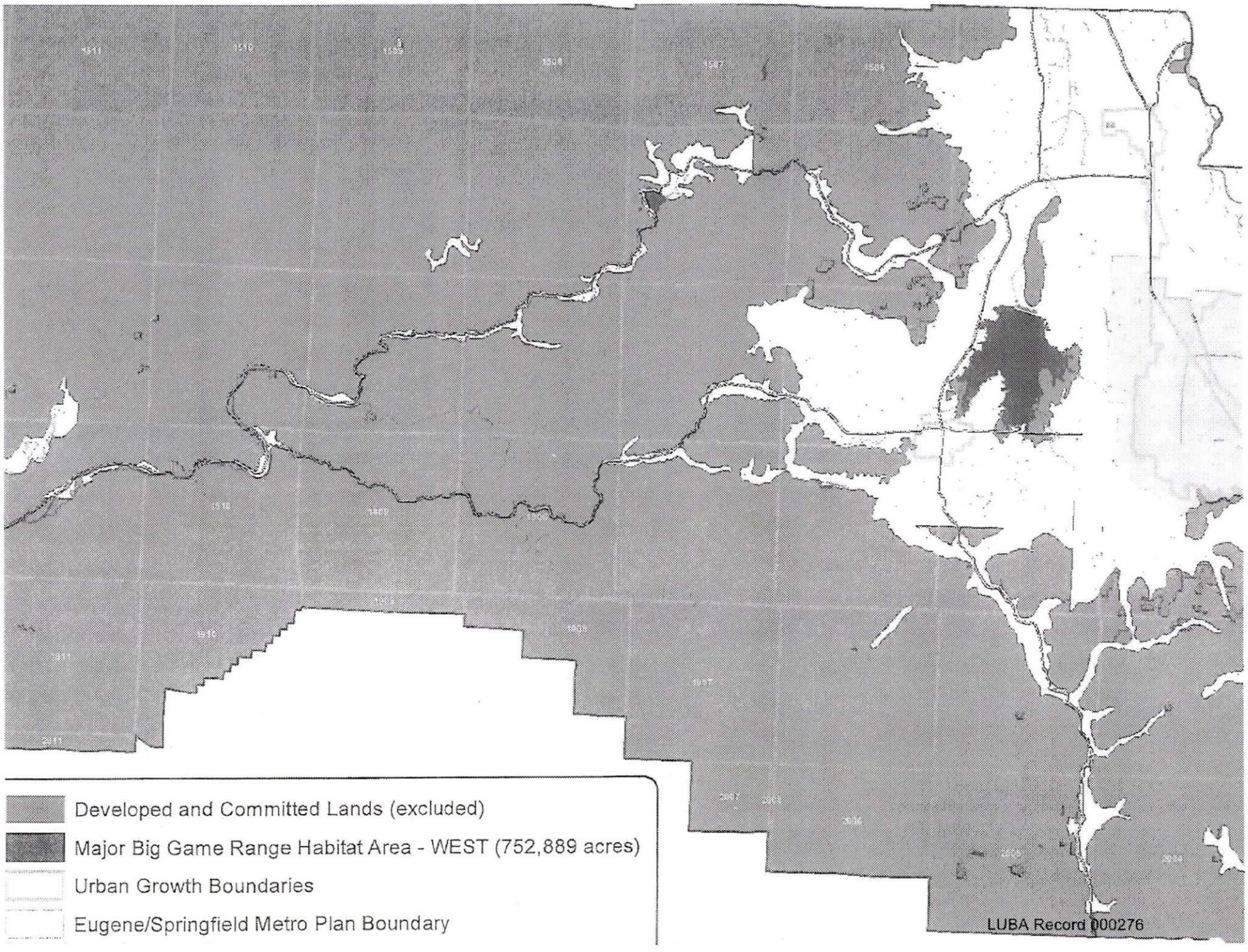
LCOG Lane Council of Governments
859 Willamette St., Suite 500
Eugene, Oregon 97401-2910

Map 3

Printing Date: March 02, 2020


LUBA Record 000274
Lands (excluded)
bitat Area (2,571,426 acres)
lan Boundary
ip/Range


ed Lands (excluded)
Habitat Area - EAST (1,818,537 acres)
s
Plan Boundary
ship/Range
LUBA Record 000275


Developed and Committed Lands (excluded)
Major Big Game Range Habitat Area - WEST (752,889 acres)
Urban Growth Boundaries
Eugene/Springfield Metro Plan Boundary
LUBA Record 000276

CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE SIZE REQUIREMENTS

Brief Length

I certify that (1) this brief complies with the word-count limitation in OAR 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is 10,861 words.

Type Size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by OAR 661-010-0030(2).

Dated this 12th day of July, 2021.

Bill Kloos

Bill Kloos, OSB # 811400
Attorney for Petitioners

CERTIFICATE OF FILING AND SERVICE

I certify that on July 12, 2021, I filed the original and four copies of this PETITION FOR REVIEW, by US First Class Mail, postage prepaid, on:

Land Use Board of Appeals
DSL Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

I further certify that on said date I served a true and correct copy of said document on the party or parties listed below, by causing the same to be deposited in the United States Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid, and addressed as follows:

H. Andrew Clark
Assistant County Counsel
Lane County Office of Legal Counsel
125 East 8th Avenue
Eugene, OR 97401

Sean Malone
Attorney at Law
295 E. 5th Ave., Suite 200-C
Eugene, OR 97401

Dated July 12, 2021

Bill Kloos

Bill Kloos, OSB 811400
Attorney for Petitioners

LUBA
JUN 23 2021 PM 1:15

LANE COUNTY OFFICE OF LEGAL COUNSEL

PUBLIC SERVICE BLDG. / 125 EAST 8TH AVE. / EUGENE, OR 97401 / 541-682-4442 / FAX 541-682-3803 / www.lanecounty.org

June 14, 2021

Land Use Board of Appeals
Department of State Lands Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: Edward J. King et al v. Lane County
LUBA No. 2021-047

Dear Board Members:

Enclosed is a thumb drive of the electronic version of the original RECORD OF PROCEEDING UNDER REVIEW. The thumb drive will also contain a recording from Lane County Hearings Official from March 4, 2021. A copy of the above is being mailed to Bill Kloos, attorney for Petitioner, and Sean Malone, attorney for intervenor, in a thumb drive format.

Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL

H. Andrew Clark
Of Attorneys for Lane County

HAC; mtc
Enclosures

cc: Sean Malone (w/enc.)
Bill Kloos (w/enc.)

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Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer St NE, Ste 330
Salem, OR 97301-1283
(503) 373-1265

June 22, 2021

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375 W 4th Avenue, Suite 204
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Sean T. Malone
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259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401

RE: King et al v. Lane County
LUBA No. 2021-047/052

We are in receipt of the supplemental record for the above-captioned appeal. We will refer to the Board's Procedural Rules for the calculation of the briefing schedule.

The petition for review is due twenty-one days after receipt of the supplemental record. The respondent's brief is due forty-two days after receipt of the supplemental record. The supplemental record was received by the Board on June 21, 2021.

Very truly yours,

Vanessa Steele
Executive Support Specialist

LUBA
JUN 21 2021 PM01:59

LANE COUNTY OFFICE OF LEGAL COUNSEL

PUBLIC SERVICE BLDG. / 125 EAST 8TH AVE. / EUGENE, OR 97401 / 541-682-4442 / FAX 541-682-3803 / www.lanecounty.org

June 14, 2021

Land Use Board of Appeals
Department of State Lands Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: Edward J. King et al v. Lane County
LUBA No. 2021-047

Dear Board Members:

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Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL

H. Andrew Clark
Of Attorneys for Lane County

HAC; mtc
Enclosures

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Bill Kloos (w/enc.)

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Kate Brown, Governor

Land Use Board of Appeals
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June 17, 2021

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Sean T. Malone
Attorney at Law
259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401

RE: King et al v. Lane County
LUBA No. 2021-047/052

We are in receipt of the record transmittal for the above-captioned appeal. We will refer to the Board's Procedural Rules for the calculation of the briefing schedule.

The petition for review is due twenty-one days after receipt of the record by the Board. The respondent's brief is due forty-two days after receipt of the record. The record was received by the Board on June 17, 2021.

As a courtesy LUBA will email electronic copies of LUBA's Final Opinion and Order to the parties (or their attorneys if parties are represented) after it is issued. If you have not already done so, please call (503) 373-1265 and provide LUBA with your email address.

Best Regards,

Vanessa Steele
Executive Support Specialist

Enclosure

LUBA
JUN 17 2021 PM12:45

LANE COUNTY OFFICE OF LEGAL COUNSEL

PUBLIC SERVICE BLDG. / 125 EAST 8TH AVE. / EUGENE, OR 97401 / 541-682-4442 / FAX 541-682-3803 / www.lanecounty.org

June 14, 2021

Land Use Board of Appeals
Department of State Lands Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: EJK Investments v. Lane County
LUBA No. 2021-052

Dear Board Members:

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Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL

H. Andrew Clark
Of Attorneys for Lane County

HAC; mtc
Enclosures

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Bill Kloos (w/enc.)

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Miranda C. Rollins, Workers' Comp Analyst
miranda.rollins@lanecountyor.gov

LUBA
MAY 21 2021 AM11:30

ORIGINAL

LUBA
MAY 21 2021 AM11:59

BEFORE THE LAND USE BOARD OF APPEALS OF THE STATE OF OREGON

EDWARD J. KING

Petitioners,
vs.

LANE COUNTY

Respondent.

E.J.K INVESTMENTS,

Petitioners,
vs.

LANE COUNTY

Respondent.

LUBA No.: 2021-047 & -052

UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE THE RECORD



Respondent Lane County requests an extension of time to file the record from Monday, May 31, 2021 to Thursday, June 14, 2021 due to staffing and resource limitations. These issues will preclude completion and transmittal of the record within the required 21 days.

Respondent Lane County conferred with counsels for Petitioner; they indicate they have no objection to this extension or opposition to this motion.

DATED this 19th day of May, 2021.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. Andrew Clark, OSB #881818
Of Attorneys for Respondent Lane County

LANE COUNTY OFFICE OF LEGAL COUNSEL
125 East 8th Avenue
Eugene, Oregon 97401
Telephone: 541.682.4442; Fax 541.682.3803

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date indicated below, I filed the enclosed original and two copies of the **UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE THE RECORD** with the:

LAND USE BOARD OF APPEALS
775 Summer Street NE, Suite 330
Salem, Oregon 97301-1283

by first class mail, postage prepaid, deposited with the United States Postal Service.

On the same date, I served a true and correct copy of the same document by first class mail, postage prepaid and deposited with the USPS, on the following:

Bill Kloos
Law Office of Bill Kloos, PC
375 W. 4th Street, Suite 204
Eugene, OR 97401
billkloos@landuseoregon.com
Attorney for Petitioner

DATED this 19th day of May, 2021.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. Andrew Clark, OSB #881818
Of Attorneys for Respondent Lane County

IT IS SO ORDERED.

Dated this 21st day of May 2021.

Melissa M. Ryan
Board Member

Certificate of Mailing

I hereby certify that I served the foregoing Order It is so for LUBA No. 2021-047/052 on May 21, 2021, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Andrew Clark
Lane County Office of Legal Counsel
125 E 8th Ave
Eugene, OR 97401

Bill Kloos
Law Office of Bill Kloos PC
375 W 4th Avenue, Suite 204
Eugene, OR 97401

Sean T. Malone
Attorney at Law
259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401

Dated this 21st day of May, 2021.

Erin Pence
Executive Support Specialist

Vanessa Steele
Executive Support Specialist

Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer St NE, Ste 330
Salem, OR 97301-1283
(503) 373-1265

May 21, 2021

Sean T. Malone
Attorney at Law
259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401

RE: King et al v. Lane County
LUBA No. 2021-047/052

This is to acknowledge that LUBA received your motion to intervene on LUBA Case No. 2021-052 in the above appeal. Enclosed with this letter is a notice of the option to seek mediation in this matter.

Sincerely,

Erin Pence
Executive Support Specialist

Enclosure
cc w/o encl.: Bill Kloos, Andrew Clark

Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer St NE, Ste 330
Salem, OR 97301-1283
(503) 373-1265

May 20, 2021

Sean T. Malone
Attorney at Law
259 E. 5th Avenue, Suite 200-C
Eugene, OR 97401

RE: King et al v. Lane County
LUBA No. 2021-047/052

This is to acknowledge that LUBA received your motion to intervene for LUBA Case No. 2021-047 in the above consolidated appeal. Enclosed with this letter is a notice of the option to seek mediation in this matter.

Sincerely,

Erin Pence
Executive Support Specialist

Enclosure

cc w/o encl.: Bill Kloos, Andrew Clark

LUBA
MAY 20 2021 PM 01:24

ORIGINAL

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON



E.J.K INVESTMENTS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	LUBA No. 2021-052
	)	
LANE COUNTY,	)	
	)	
Respondent.	)	



MOTION TO INTERVENE

I.

LANDWATCH LANE COUNTY hereby moves to intervene on the side of Respondent Lane County, in the above-captioned appeal. This Motion to Intervene is filed within 21 days of the date of the Notice of Intent to Appeal (filed April 26, 2021) and is therefore timely. OAR 661-010-0050(2). The appeal challenges the decision of the Lane County Hearings Official entitled "Appeal of a Planning Director Approval of a Template Dwelling within an F-2 District," PA 20-05064.

II.

The name, address, and telephone number of the attorney for proposed

intervenor is as follows:

Sean T. Malone, OSB # 084060
Attorney at Law
259 E. 5th Ave., Suite 200-C
Eugene OR 97401
(303) 859-0403
seanmalone8@hotmail.com

III.

LandWatch Lane County appeared and participated before the Hearings Official and is listed as a party of record in the attached decision. *See* Exhibit A at 1. Accordingly, LandWatch Lane County has standing to intervene pursuant to OAR 661-010-0050(1), and the intervention fee for each appeal is enclosed herein.

Respectfully submitted, Dated: May 17, 2021

Sean T. Malone, OSB # 084060
Attorney at Law
259 E. Fifth Ave, Ste 200-C
Eugene OR 97401
(303) 859-0403
seanmalone8@hotmail.com

Certificate of Service

I hereby certify that on May 17, 2021, I filed one original of the foregoing with one copy with the Land Use Board of Appeals, Land Use Board of Appeals, DSL Building, 775 Summer Street NE, Suite 330, Salem OR 97301-1283, by certified, return-receipt requested mail.

Certificate of Filing

I also certify that on May 17, 2021, I served a true and correct copy of the foregoing by First Class Mail with proper postage affixed on the following persons:

H. Andrew Clark, OSB # 881818
Lane County Office of Legal Counsel
Lane County Courthouse
125 E 8th Ave
Eugene OR 97401
(541) 682-44426049
andy.clark@co.lane.or.us

Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Avenue, Ste 204
Eugene, OR 97401

Dated this 17th day of May, 2021

Sean T. Malone
Attorney for Proposed Intervenor

Exhibit A

RECEIVED APR 19 2021

BEFORE THE LANE COUNTY HEARINGS OFFICIAL

APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On February 5, 2020, the applicant, E.J.K Investments, filed an application seeking to establish a dwelling in the Impacted Forest Lands (F–2) zone on tax lot 2900, assessor's map 21–35–07–30. PA 20-05064. The application was deemed complete on March 6, 2020. On January 27, 2021, the Director approved the application, and on February 8, 2021, a timely appeal was submitted by LandWatch Lane County (LandWatch).

On January 21, 2021, six days before the Planning Director issued their decision approving the subject application, the Oregon Land Use Board of Appeals (LUBA) issued its decision in *LandWatch Lane County v. Lane County (Nimpkish)*, ___ Or LUBA ___ (LUBA No. 2020-030, January 21, 2021). As discussed further below, LandWatch based its appeal in this case on LUBA's holding in *Nimpkish*. In its staff report to the Hearings Official, staff concurred with LandWatch as to the significance of *Nimpkish* to the resolution of this appeal, and recommended denial.

Parties of Record

E.J.K. Investments (Kim O'Dea)
Michael Farthing
LandWatch Lane County (Lauri Segel; Sean Malone)

Jim McLaughlin

Application History

Hearing Date: March 4, 2021
(Record Held Open Until April 8, 2021)

Decision Date: April 19, 2021

Appeal Deadline

A party may request reconsideration of this decision by the Hearings Official, pursuant to Lane Code 14.080(1)(a)(iii) and (1)(b), by filing a notice of appeal within 12 business days after the date the notice of decision was mailed. If a party seeking further review chooses not to seek reconsideration, they must file an appeal directly with LUBA within the timelines set forth in state law. See LUBA's website for more information on appeal deadlines.

//////////////

Statement of Criteria

Lane Code 16.211(5) and (8)
House Bill 2225

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 2900, assessor's map 21–35–07–30, which is immediately north of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries.

   The property is approximately 12.05 acres and is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration easement that transects the property.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The entire property is designated Major Big Game by the Oregon Department of Fish and Wildlife (ODFW) Habitat Maps.

2. The subject application is one of two template dwelling applications approved by the Planning Director on the same date. The other application concerns a forest template dwelling proposal on a contiguous 13.28-acre parcel identified as tax lot 2800 of the same assessor's map, which is also designated Big Game Range.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 20–05064) BY E.J.K. INVESTMENTS FOR A FOREST TEMPLATE DWELLING ON TAX LOT 2900, ASSESSOR'S MAP 21–35–07–30 IS REVERSED.

Justification for the Decision

The applicant is requesting approval to construct a single–family forest template dwelling in the F-2 zone as provided by Lane Code 16.211(5)(c).

A. Goal 5

The subject property is designated Major Big Game Habitat. Big Game Habitat is a Statewide Planning Goal 5 resource and thus is entitled to certain protections. Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) sets forth a process for evaluating, inventorying, and protecting significant natural resources, including big game habitat. The evaluation includes consideration of uses that conflict with the protected significant resource. In order to implement Goal 5, local governments are required to

adopt programs that will protect natural resources, and includes consideration and weighing the values of conflicting uses and the natural resource. OAR 660-015-0000(5).

ODFW has determined that the main use that conflicts with, and poses a significant threat to, big game habitat is residential development. Lane County's Goal 5 program includes the following comprehensive plan policy that implements Goal 5 and is intended to address this main conflict:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."* Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.[1]

The *Nimpkish* appeal referenced above involved a request for a forest template dwelling on a 10-acre property. The appellant in that case argued that a dwelling on a 10-acre property would violate the recommended density limitation (80 dwellings per acre), and thus violated Policy 11. The applicant asserted that Policy 11 did not apply to discrete land use applications for forest template dwellings. LUBA held that Policy 11 does apply to an application for a forest template dwelling.

As LUBA explained, the first sentence of Policy 11 acknowledges that the County is using the ODFW density recommendations as the baseline. The first sentence, and the County's Working Paper, also acknowledges that the County intended to study different regions of the County (most likely the County would be divided into 10 to 20 different regions in that study) to come up with a "residential carrying capacity." That information would then be used to determine appropriate zoning in the area. The petitioners in *Nimpkish* focused on the second sentence of Policy 11, arguing that the County is prohibited from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis. LUBA agreed.

The applicant in this case does not challenge that holding *per se*. Rather, it argues that the addition of this one dwelling does not violate the ODFW-recommended limits, and therefore, an ESEE analysis is not required. That contention is based on the applicant's interpretation of the significance of the term "overall" in Policy 11.

---

[1] The ODFW recommendation for overall residential density in the Major Big Game Range Habitat is no more than 80 dwellings per acre. For Peripheral Big Game Range Habitat, the recommended density is no more than 40 dwellings per acre.

Anybody who has studied residential densities, either in urban or rural settings, understand that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings / acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county. The applicant argues that the denominator here should be the entire County, or at least a very large portion of the County, because Policy 11 uses the term "overall residential density."[2]

LandWatch relies on one sentence in LUBA's decision in *Nimpkish* in support of its argument that the subject property, not the entire County, must serve as the density denominator: "There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres." Slip op. 15.[3]

The applicant contends that LandWatch cannot rely on that statement because it was technically *dicta*. The issue addressed in that statement (whether the addition of the proposed dwelling would constitute a conflict that triggered an ESEE analysis) was not before LUBA in the *Nimpkish* appeal. The issue in that appeal was whether Policy 11 applied to a discrete application for a forest template dwelling. The Hearings Official had held that it did not, and LUBA overturned that ruling. On that basis, the decision was remanded. LUBA was not called upon to address (and the parties presumably did not brief) the issue of what the appropriate density denominator would be once it was determined that Policy 11 applied.

It may well be that LUBA's statement in *Nimpkish* that "the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres" was *dicta*. That said, even if that statement was *dicta* and, thus, is not clear precedent in this case, it seems clear that LUBA believed that, if Policy 11 applied, the appropriate density denominator would be the subject property. In other words, if the issue had been before LUBA, we now know how LUBA would have ruled. However, because LUBA made that statement somewhat in passing, it did not conduct a full interpretation of Policy 11 to reach that conclusion. That analysis is now provided here.

Text

The applicant argues that the term "overall" in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County

[2] Applicant submitted evidence supporting his conclusion that the "overall density" when viewed at the County level, is well below the ODFW recommended "overall density." He also submitted documentation regarding the residential density of smaller subsets of the County; *i.e.*, the area east of Interstate 5 and the area west of Interstate 5; regions divided by highway corridors; and watershed regions. All sets of numbers confirmed his theory that the residential densities are well below the ODFW recommended "overall" densities. Thus, the addition of one dwelling would not result in a Goal 5 conflict.

[3] LUBA then went on to make the following legal conclusion: "Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.'"

on the east or west side of Interstate 5. LandWatch points out that the use of the term "overall" in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of "overall residential density." The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to "determine the allowable number of residential dwelling units within regions of the county." The next sentence does not use the "overall" modifier: "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal.

Context/Caselaw

RCP Policy 11 implements Goal 5. Accordingly, Policy 11 must be interpreted in a manner that is consistent with the Goal that it implements. As stated above, Goal 5 is aimed at preserving and protecting significant natural resources, such as big game habitat. The evident purpose of applying a residential density limit is to minimize human impacts to wildlife habitat. LandWatch asserts that the applicant's proposed interpretation would effectively permit large areas protected as wildlife habitat to be developed at densities that destroy its value as wildlife habitat.

In a 2003 LUBA appeal, Douglas County made an interpretation of its code that is similar to the interpretation of Policy 11 that the applicant presents in this appeal. *See Wetherell v. Douglas County*, 44 Or LUBA 745 (2003). The application in that case was for approval of a site plan for a destination resort. The property fell within an area designated as Peripheral Big Game Habitat. The request was therefore subject to a code provision (LUDO 3.32.300) that limited residential density to one dwelling unit per 40 acres.[4] As is the case here, the code provision did not explicitly state the appropriate density denominator. The County determined that the appropriate density denominator under the applicable code provisions was an area of the county that included 1,121,378 acres.[5] On appeal to LUBA, the opponent argued that the proper denominator was a 500-acre portion of the subject 2,700-acre ranch. The Hearings Official sets forth LUBA's analysis in that case at length, because the analysis is the exact same analysis the Hearings Official adopts in this appeal:

> "LUDO 3.32.200 provides no express denominator for the density standard, so the county's view that the pertinent denominator is a 1,121,378-acre area of the county is not necessarily inconsistent with the text of LUDO 3.32.200. However, we agree with petitioners that that view is inconsistent with the purpose of the

[4] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[5] The area the county used was the Calapooya and Elk Creek geographic Planning Advisory Committee area.

density standard, to "preserve identified peripheral habitat areas." See n 4. Neither intervenors nor the county's decision provides any basis to question petitioners' view that the purpose of the density standard is to preserve big game wildlife habitat by minimizing human impacts on that habitat, specifically by limiting the density of residential uses. Under the county's view, large areas of Goal 5-protected wildlife habitat may be developed at residential densities that significantly exceed one dwelling per 40 acres, as long as the average density over a much larger area of the county does not exceed that standard. As the county interpreted LUDO 3.32.300, it will have no regulatory effect at all until over 28,000 dwellings are built in the 1,121,378-acre PBGHO. At that point, its regulatory effect would change from nonexistent to exceedingly harsh, because it would effectively impose a residential building moratorium throughout the PBGHO. * * * It seems exceedingly unlikely to us that anyone who thought about how LUDO 3.32.300 would be implemented could possibly have intended that it work in that way.

* * *

A construction of LUDO 3.32.300 that is far more consistent with its apparent purpose and the language of LUDO 3.32.300 is that the denominator for the one dwelling per 40-acre density limit is the subject property, in this case the 500 acres that make up the proposed destination resort.

* * *

We recognize that a density standard that permitted selection of some larger local area, i.e., a local area larger than the 500-acre subject property but smaller than the 1,121,378-acre applied here, might provide the county with desirable flexibility to permit clustered residential development in areas with lesser habitat value if some way could be found to further limit or bar residential development altogether in areas with high habitat value. However desirable that flexibility might be, as written, LUDO 3.32.300 does not permit application of the one dwelling unit per 40 acres standard over an area that is larger than the property that is the subject of the application. If the county wishes the density limit to apply in some other manner, it must amend LUDO 3.32.300 to achieve that result. In sum, the county's view that the denominator required by the LUDO 3.32.300 density standard is a 1,121,378-acre portion of the county is not reasonable and correct."[6]

The Hearings Official believes that the applicant's proposed interpretation in this case is similar to the position taken by Douglas County in *Wetherell.*[7] LUBA rejected that

[6] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[7] The applicant attempts to distinguish *Wetherell—Wetherell* did not involve a forest template dwelling application; *Wetherell* interpreted a code provision, not a comp plan policy; and the Douglas County code provision at issue did not include the term "overall." While the posture of that case was a bit different, the policy considerations and analysis are the same. The term "overall" in Policy 11 refers to the ODFW

interpretation, and the Hearings Official feels certain that LUBA would, for the reasons set forth above, also reject the applicant's interpretation in this case. Until the County conducts its region-by-region analysis, which is called for in Policy 11, the density denominator must be the subject property.

The applicant may assert that this approach is overly restrictive because it essentially means that a forest template dwelling proposed on a property smaller than 80 acres in the Major Big Game Habitat area will always be deemed to conflict with the resource. The Hearings Official responds that the determination of a conflict does not result in the development being prohibited. It merely requires that an ESEE analysis be conducted to determine whether the additional dwelling would harm the protected resource.

Summary

The subject property in this case is only 13.28 acres in size. If the forest template dwelling were approved, the residential density would exceed the ODFW recommended density of one dwelling per 80 acres, and, absent an ESEE analysis, would violate Policy 11.

B. Goal 2

Even if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that the applicant could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan.

Statewide Planning Goal 2 (Land Use Planning) requires that land use decisions be based on an "adequate factual base." There are circumstances where that requirement demands that the "factual base" upon which the quasi-judicial decision is based be found in the comprehensive plan. For instance, both LUBA and the Oregon Court of Appeals have held that for purposes of Statewide Planning Goal 10, an inventory of buildable lands that is relied upon for a quasi-judicial decision must first be adopted as part of the comprehensive plan. *See D.S. Parklane Development Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005); *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005); *Lengkeek v. City of Tangent*, 52 Or LUBA 509, 515 (2006). This requirement reflects the emphasis in Goal 2 on consistency and predictability. "Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve

---

density recommendation, which is apparently stated as an "overall residential density" standard. As LandWatch points out, the second sentence of Policy 11 does not use the "overall" modifier. Accordingly, this case is similar to *Wetherell*, where the text of the code did not spell out the density denominator. The context provided by the policies furthered by Goal 5 protections are the same in both cases--in *Wetherell*, those policies were set forth in the code's purpose section; in this case, the Goal 5 policies are relevant to the interpretation because Policy 11 implements Goal 5 and must be interpreted in a manner that is consistent with Goal 5. An interpretation that does nothing to protect big game habitat from conflicting residential uses is not consistent with Goal 5.

as the basis for land use decisions, rather than running the risk of being 'sandbagged' by government's reliance on new data." *1000 Friends of Oregon v. City of Dundee*, 203 Or App at 216.

The question here is whether the information provided by the applicant is regular, run of the mill evidence that can be relied upon, or whether it is more in the vein of a buildable lands inventory, which must be incorporated into the comprehensive plan, so that future applicants are using the same data.

As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study. Until that work is completed, Policy 11 makes clear, any density above the ODFW recommended density limits "shall be considered to conflict with Goal 5" and will be allowed only following an ESEE analysis.

The ideal solution is for the County to conduct the regional studies that Policy 11 and the Working Paper call for. Arguably, an applicant could perform all or some part of that work. However, if it were relied upon by an applicant to justify foregoing the ESEE analysis called for in Policy 11, then the documentation would have to first be adopted into the comprehensive plan.[8]

Conclusion

The applicant's argument for approval hinges on its proposed interpretation of Policy 11, which allows a density calculation that is based on using the entire County (or a very large swath of the County) as the density denominator. As discussed above, that interpretation would do little if anything to protect the County's designated Major Big Game Range from conflicting residential development. It is thus inconsistent with Goal 5 and is not reasonable or correct.

Because the County has not yet completed its regional study, the only appropriate density denominator is the subject property. In this case, the subject property is only 13.28 acres, and the ODFW-recommended overall residential density of one dwelling per 80 acres is exceeded. An ESEE analysis is required. Because no ESEE analysis has been provided, the Planning Director's approval must be reversed.

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

[8] This Goal 2 discussion is not necessary for the Hearings Official's conclusion in this appeal. The Policy 11 interpretation set forth above stands on its own. If, on appeal, LUBA disagrees with the Goal 2 discussion, it could still affirm the Hearings Official's decision.

LUBA
MAY 19 2021 PM 12:42
ORIGINAL

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

EDWARD J. KING,	)	
	)	
Petitioner,	)	
	)	
vs.	)	LUBA No. 2021-047
	)	
LANE COUNTY,	)	
	)	
Respondent.	)	

MOTION TO INTERVENE

I.

LANDWATCH LANE COUNTY hereby moves to intervene on the side of Respondent Lane County, in the above-captioned appeal. This Motion to Intervene is filed within 21 days of the date of the Notice of Intent to Appeal and is therefore timely. OAR 661-010-0050(2). The appeal challenges the decision of the Lane County Hearings Official entitled "Appeal of a Planning Director Approval of a Template Dwelling within an F-2 District," PA 20-05066.

II.

The name, address, and telephone number of the attorney for proposed

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LUBA Record 000301

intervenor is as follows:

Sean T. Malone, OSB # 084060
Attorney at Law
259 E. 5th Ave., Suite 200-C
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III.

LandWatch Lane County appeared and participated before the Hearings Official and is listed as a party of record in the attached decision. *See* Exhibit A at 1. Accordingly, LandWatch Lane County has standing to intervene pursuant to OAR 661-010-0050(1), and the intervention fee for each appeal is enclosed herein.

Respectfully submitted, Dated: May 17, 2021



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Attorney at Law
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Bill Kloos
Law Office of Bill Kloos PC
375 W. 4th Avenue, Ste 204
Eugene, OR 97401

Dated this 17th day of May, 2021

Sean T. Malone
Attorney for Proposed Intervenor

Exhibit A
RECEIVED APR 19 2021

BEFORE THE LANE COUNTY HEARINGS OFFICIAL

APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F-2 DISTRICT

Application Summary

On February 5, 2020, the applicant, Edward J. King, filed an application seeking to establish a dwelling in the Impacted Forest Lands (F-2) zone on tax lot 2800, assessor's map 21-35-07-30. PA 20-05066. The application was deemed complete on March 6, 2020. On January 27, 2021, the Director approved the application, and on February 8, 2021, a timely appeal was submitted by LandWatch Lane County (LandWatch).

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Parties of Record

Edward J. King (Kim O'Dea)
Michael Farthing
LandWatch Lane County (Lauri Segel; Sean Malone)

Jim McLaughlin

Application History

Hearing Date: March 4, 2021
(Record Held Open Until April 8, 2021)

Decision Date: April 19, 2021

Appeal Deadline

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Lane Code 16.211(5) and (8)
House Bill 2225

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 2800, assessor's map 21–35–07–30, which is immediately north of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries.

   The property is approximately 13.28 acres and is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration easement that transects the property.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The entire property is designated Major Big Game by the Oregon Department of Fish and Wildlife (ODFW) Habitat Maps.

2. The subject application is one of two template dwelling applications approved by the Planning Director on the same date. The other application concerns a forest template dwelling proposal on a contiguous 12.05-acre parcel identified as tax lot 2900 of the same assessor's map, which is also designated Big Game Range.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 20–05066) BY EDWARD J. KING FOR A FOREST TEMPLATE DWELLING ON TAX LOT 2800, ASSESSOR'S MAP 21–35–07–30 IS REVERSED.

Justification for the Decision

The applicant is requesting approval to construct a single–family forest template dwelling in the F-2 zone as provided by Lane Code 16.211(5)(c).

A. Goal 5

The subject property is designated Major Big Game Habitat. Big Game Habitat is a Statewide Planning Goal 5 resource and thus is entitled to certain protections. Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) sets forth a process for evaluating, inventorying, and protecting significant natural resources, including big game habitat. The evaluation includes consideration of uses that conflict with the protected significant resource. In order to implement Goal 5, local governments are required to

adopt programs that will protect natural resources, and includes consideration and weighing the values of conflicting uses and the natural resource. OAR 660-015-0000(5).

ODFW has determined that the main use that conflicts with, and poses a significant threat to, big game habitat is residential development. Lane County's Goal 5 program includes the following comprehensive plan policy that implements Goal 5 and is intended to address this main conflict:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."* Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.[1]

The *Nimpkish* appeal referenced above involved a request for a forest template dwelling on a 10-acre property. The appellant in that case argued that a dwelling on a 10-acre property would violate the recommended density limitation (80 dwellings per acre), and thus violated Policy 11. The applicant asserted that Policy 11 did not apply to discrete land use applications for forest template dwellings. LUBA held that Policy 11 does apply to an application for a forest template dwelling.

As LUBA explained, the first sentence of Policy 11 acknowledges that the County is using the ODFW density recommendations as the baseline. The first sentence, and the County's Working Paper, also acknowledges that the County intended to study different regions of the County (most likely the County would be divided into 10 to 20 different regions in that study) to come up with a "residential carrying capacity." That information would then be used to determine appropriate zoning in the area. The petitioners in *Nimpkish* focused on the second sentence of Policy 11, arguing that the County is prohibited from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis. LUBA agreed.

The applicant in this case does not challenge that holding *per se*. Rather, he argues that the addition of this one dwelling does not violate the ODFW-recommended limits, and therefore, an ESEE analysis is not required. That contention is based on his interpretation of the significance of the term "overall" in Policy 11.

---

[1] The ODFW recommendation for overall residential density in the Major Big Game Range Habitat is no more than 80 dwellings per acre. For Peripheral Big Game Range Habitat, the recommended density is no more than 40 dwellings per acre.

Anybody who has studied residential densities, either in urban or rural settings, understand that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings / acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county. The applicant argues that the denominator here should be the entire County, or at least a very large portion of the County, because Policy 11 uses the term "overall residential density."[2]

LandWatch relies on one sentence in LUBA's decision in *Nimpkish* in support of its argument that the subject property, not the entire County, must serve as the density denominator: "There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres." Slip op. 15.[3]

The applicant contends that LandWatch cannot rely on that statement because it was technically *dicta*. The issue addressed in that statement (whether the addition of the proposed dwelling would constitute a conflict that triggered an ESEE analysis) was not before LUBA in the *Nimpkish* appeal. The issue in that appeal was whether Policy 11 applied to a discrete application for a forest template dwelling. The Hearings Official had held that it did not, and LUBA overturned that ruling. On that basis, the decision was remanded. LUBA was not called upon to address (and the parties presumably did not brief) the issue of what the appropriate density denominator would be once it was determined that Policy 11 applied.

It may well be that LUBA's statement in *Nimpkish* that "the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres" was *dicta*. That said, even if that statement was *dicta* and, thus, is not clear precedent in this case, it seems clear that LUBA believed that, if Policy 11 applied, the density denominator would be the subject property. In other words, if the issue had been before LUBA, we now know how LUBA would have ruled. However, because LUBA made that statement somewhat in passing, it did not conduct a full interpretation of Policy 11 to reach that conclusion. That analysis is now provided here.

Text

The applicant argues that the term "overall" in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County

[2] Applicant submitted evidence supporting his conclusion that the "overall density" when viewed at the County level, is well below the ODFW recommended "overall density." He also submitted documentation regarding the residential density of smaller subsets of the County; *i.e.*, the area east of Interstate 5 and the area west of Interstate 5; regions divided by highway corridors; and watershed regions. All sets of numbers confirmed his theory that the residential densities are well below the ODFW recommended "overall" densities. Thus, the addition of one dwelling would not result in a Goal 5 conflict.

[3] LUBA then went on to make the following legal conclusion: "Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.'"

on the east or west side of Interstate 5. LandWatch points out that the use of the term "overall" in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of "overall residential density." The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to "determine the allowable number of residential dwelling units within regions of the county." The next sentence does not use the "overall" modifier: "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal.

Context/Caselaw

RCP Policy 11 implements Goal 5. Accordingly, Policy 11 must be interpreted in a manner that is consistent with the Goal that it implements. As stated above, Goal 5 is aimed at preserving and protecting significant natural resources, such as big game habitat. The evident purpose of applying a residential density limit is to minimize human impacts to wildlife habitat. LandWatch asserts that the applicant's proposed interpretation would effectively permit large areas protected as wildlife habitat to be developed at densities that destroy its value as wildlife habitat.

In a 2003 LUBA appeal, Douglas County made an interpretation of its code that is similar to the interpretation of Policy 11 that the applicant presents in this appeal. *See Wetherell v. Douglas County*, 44 Or LUBA 745 (2003). The application in that case was for approval of a site plan for a destination resort. The property fell within an area designated as Peripheral Big Game Habitat. The request was therefore subject to a code provision (LUDO 3.32.300) that limited residential density to one dwelling unit per 40 acres.[4] As is the case here, the code provision did not explicitly state the appropriate density denominator. The County determined that the appropriate density denominator under the applicable code provisions was an area of the county that included 1,121,378 acres.[5] On appeal to LUBA, the opponent argued that the proper denominator was a 500-acre portion of the subject 2,700-acre ranch. The Hearings Official sets forth LUBA's analysis in that case at length, because the analysis is the exact same analysis the Hearings Official adopts in this appeal:

> "LUDO 3.32.200 provides no express denominator for the density standard, so the county's view that the pertinent denominator is a 1,121,378-acre area of the county is not necessarily inconsistent with the text of LUDO 3.32.200. However, we agree with petitioners that that view is inconsistent with the purpose of the

[4] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[5] The area the county used was the Calapooya and Elk Creek geographic Planning Advisory Committee area.

density standard, to "preserve identified peripheral habitat areas." See n 4. Neither intervenors nor the county's decision provides any basis to question petitioners' view that the purpose of the density standard is to preserve big game wildlife habitat by minimizing human impacts on that habitat, specifically by limiting the density of residential uses. Under the county's view, large areas of Goal 5-protected wildlife habitat may be developed at residential densities that significantly exceed one dwelling per 40 acres, as long as the average density over a much larger area of the county does not exceed that standard. As the county interpreted LUDO 3.32.300, it will have no regulatory effect at all until over 28,000 dwellings are built in the 1,121,378-acre PBGHO. At that point, its regulatory effect would change from nonexistent to exceedingly harsh, because it would effectively impose a residential building moratorium throughout the PBGHO. * * * It seems exceedingly unlikely to us that anyone who thought about how LUDO 3.32.300 would be implemented could possibly have intended that it work in that way.

* * *

A construction of LUDO 3.32.300 that is far more consistent with its apparent purpose and the language of LUDO 3.32.300 is that the denominator for the one dwelling per 40-acre density limit is the subject property, in this case the 500 acres that make up the proposed destination resort.

* * *

We recognize that a density standard that permitted selection of some larger local area, i.e., a local area larger than the 500-acre subject property but smaller than the 1,121,378-acre applied here, might provide the county with desirable flexibility to permit clustered residential development in areas with lesser habitat value if some way could be found to further limit or bar residential development altogether in areas with high habitat value. However desirable that flexibility might be, as written, LUDO 3.32.300 does not permit application of the one dwelling unit per 40 acres standard over an area that is larger than the property that is the subject of the application. If the county wishes the density limit to apply in some other manner, it must amend LUDO 3.32.300 to achieve that result. In sum, the county's view that the denominator required by the LUDO 3.32.300 density standard is a 1,121,378-acre portion of the county is not reasonable and correct."[6]

The Hearings Official believes that the applicant's proposed interpretation in this case is similar to the position taken by Douglas County in *Wetherell*.[7] LUBA rejected that

[6] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[7] The applicant attempts to distinguish *Wetherell—Wetherell* did not involve a forest template dwelling application; *Wetherell* interpreted a code provision, not a comp plan policy; and the Douglas County code provision at issue did not include the term "overall." While the posture of that case was a bit different, the policy considerations and analysis are the same. The term "overall" in Policy 11 refers to the ODFW

interpretation, and the Hearings Official feels certain that LUBA would, for the reasons set forth above, also reject the applicant's interpretation in this case. Until the County conducts its region-by-region analysis, which is called for in Policy 11, the density denominator must be the subject property.

The applicant may assert that this approach is overly restrictive because it essentially means that a forest template dwelling proposed on a property smaller than 80 acres in the Major Big Game Habitat area will always be deemed to conflict with the resource. The Hearings Official responds that the determination of a conflict does not result in the development being prohibited. It merely requires that an ESEE analysis be conducted to determine whether the additional dwelling would harm the protected resource.

Summary

The subject property in this case is only 13.28 acres in size. If the forest template dwelling were approved, the residential density would exceed the ODFW recommended density of one dwelling per 80 acres, and, absent an ESEE analysis, would violate Policy 11.

B. Goal 2

Even if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that he could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan.

Statewide Planning Goal 2 (Land Use Planning) requires that land use decisions be based on an "adequate factual base." There are circumstances where that requirement demands that the "factual base" upon which the quasi-judicial decision is based be found in the comprehensive plan. For instance, both LUBA and the Oregon Court of Appeals have held that for purposes of Statewide Planning Goal 10, an inventory of buildable lands that is relied upon for a quasi-judicial decision must first be adopted as part of the comprehensive plan. *See D.S. Parklane Development Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005); *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005); *Lengkeek v. City of Tangent*, 52 Or LUBA 509, 515 (2006). This requirement reflects the emphasis in Goal 2 on consistency and predictability. "Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve

---

density recommendation, which is apparently stated as an "overall residential density" standard. As LandWatch points out, the second sentence of Policy 11 does not use the "overall" modifier. Accordingly, this case is similar to *Wetherell*, where the text of the code did not spell out the density denominator. The context provided by the policies furthered by Goal 5 protections are the same in both cases--in *Wetherell*, those policies were set forth in the code's purpose section; in this case, the Goal 5 policies are relevant to the interpretation because Policy 11 implements Goal 5 and must be interpreted in a manner that is consistent with Goal 5. An interpretation that does nothing to protect big game habitat from conflicting residential uses is not consistent with Goal 5.

as the basis for land use decisions, rather than running the risk of being 'sandbagged' by government's reliance on new data." *1000 Friends of Oregon v. City of Dundee*, 203 Or App at 216.

The question here is whether the information provided by the applicant is regular, run of the mill evidence that can be relied upon, or whether it is more in the vein of a buildable lands inventory, which must be incorporated into the comprehensive plan, so that future applicants are using the same data.

As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study. Until that work is completed, Policy 11 makes clear, any density above the ODFW recommended density limits "shall be considered to conflict with Goal 5" and will be allowed only following an ESEE analysis.

The ideal solution is for the County to conduct the regional studies that Policy 11 and the Working Paper call for. Arguably, an applicant could perform all or some part of that work. However, if it were relied upon by an applicant to justify foregoing the ESEE analysis called for in Policy 11, then the documentation would have to first be adopted into the comprehensive plan.[8]

Conclusion

The applicant's argument for approval hinges on his proposed interpretation of Policy 11, which allows a density calculation that is based on using the entire County (or a very large swath of the County) as the density denominator. As discussed above, that interpretation would do little if anything to protect the County's designated Major Big Game Range from conflicting residential development. It is thus inconsistent with Goal 5 and is not reasonable or correct.

Because the County has not yet completed its regional study, the only appropriate density denominator is the subject property. In this case, the subject property is only 13.28 acres, and the ODFW-recommended overall residential density of one dwelling per 80 acres is exceeded. An ESEE analysis is required. Because no ESEE analysis has been provided, the Planning Director's approval must be reversed.

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

[8] This Goal 2 discussion is not necessary for the Hearings Official's conclusion in this appeal. The Policy 11 interpretation set forth above stands on its own. If, on appeal, LUBA disagrees with the Goal 2 discussion, it could still affirm the Hearings Official's decision.

05/10/21 mt 2:17 LUBA

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

EDWARD J. KING,
Petitioner,

vs.

LANE COUNTY
Respondent.

LUBA No. 2021-047

E.J.K. INVESTMENTS,
Petitioner,

vs.

LANE COUNTY,
Respondent.

LUBA No. 2021-052

ORDER ON CONSOLIDATION

Under OAR 661-010-0055, LUBA "may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s) or limited land use decision(s)." Petitioners request that LUBA consolidate LUBA Nos. 2021-047 and 2021-052 because, petitioners argue, the appeals seek review of "closely related * * * decision(s)." Petitioners state that the county agrees with petitioners' consolidation request. Accordingly, LUBA Nos. 2021-047 and 2021-052 shall be consolidated for LUBA review.

LUBA Record 000312

The county shall submit separate records for each appeal. The records in this consolidated proceeding shall be transmitted to the Board on or before May 31, 2021.

Dated this 10th day of May 2021.

Melissa M. Ryan
Board Member

LUBA Record 000313

Certificate of Mailing

I hereby certify that I served the foregoing for LUBA No. 2021-047/052 on May 10, 2021, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Andrew Clark
Lane County Office of Legal Counsel
125 E 8th Ave
Eugene, OR 97401

Bill Kloos
Law Office of Bill Kloos PC
375 W 4th Avenue, Suite 204
Eugene, OR 97401

Dated this 10th day of May, 2021.

Erin Pence
Executive Support Specialist

Vanessa Steele
Executive Support Specialist

Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer St NE, Ste 330
Salem, OR 97301-1283
(503) 373-1265

May 7, 2021

Andrew Clark
Lane County Office of Legal Counsel
125 E 8th Ave
Eugene, OR 97401

RE: E.J.K. Investments v. Lane County
LUBA No. 2021-052

This is to advise you that a Notice of Intent to Appeal was filed on May 04, 2021 in the above matter and that OAR 661-010-0015 requires that service of the notice of intent to appeal be made upon the respondent within 21 days after the date of the land use decision being appealed.

A copy of the record is to be prepared by respondent and transmitted to the Board within 21 days of the date of such service. Enclosed is a summary of the specifications for preparation of the record as set out in OAR 661-010-0025(4).

If the decision being appealed is on remand from LUBA and the record on remand incorporates the original record, you will need to refile a copy of the original record as we no longer maintain records from closed appeals.

Attached to this letter is a notice of the option to seek mediation in this matter.

Sincerely,

Erin Pence
Executive Support Specialist

Enclosures

cc: Bill Kloos

LUBA
MAY 06 2021 PM12:45

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4TH STREET, SUITE 204
EUGENE, OR 97401
TEL (541) 343-8596
FAX (541) 343-8702
E-MAIL BILLKLOOS@LANDUSEOREGON.COM

May 4, 2021

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: *E.J.K. Investments v. Lane County*

Dear LUBA:

Enclosed is an original and two copies of a NITA in the matter above, which I thought I had filed with its companion appeal, now designated 2021-047.

Also enclosed is my $800 check for the filing fees in both appeals.

Finally, my initial filing included a Motion to Consolidate, which stated the concurrence of the County.

My apologies, again, for the wrinkles in my filings.

Sincerely,

Bill Kloos

Bill Kloos

cc: As stated in NITA

LUBA
MAY 06 2021 PM12:51

ORIGINAL

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

E.J.K. INVESTMENTS, Petitioner,	)	
v.	)	LUBA No. 2021-052
LANE COUNTY, Respondent.	)	Forest Template Dwelling PA 20-05064

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioner intends to appeal that land use decision or limited land use decision of the Lane County Hearings Official in PA 20-05064 and entitled "Appeal of a Planning Director Approval of a Template Dwelling Withing an F-2 District." which became final on April 19, 2021.

II.

Petitioner is represented by Bill Kloos, Law Office of Bill Kloos, PC, 375 W. 4th Avenue, Suite 204, Eugene, OR 97401; Phone: (541) 343-8596.

III.

Respondent, Lane County, has as its mailing address and telephone number: Lane County Board, 125 E. 8th Ave., Eugene OR 97401; Phone: (541) 682-5010;

and it has as its legal counsel Andrew Clark, Lane County Office of Legal Counsel, 125 E. 8th Ave., Eugene, OR 97401 Eugene; Phone: (541) 682-4129.

IV.

Persons mailed notice of this decision other than the applicant are:

Michael Farthing, Attorney at Law, PO Box 10126, Eugene, OR 97440; Sean Malone, Attorney for LandWatch Lane County, 259 E. 5th Ave., Suite 200-C, Eugene, OR 97401; Jim McLaughlin, 325 West 13th Ave., Eugene, OR 97401.

NOTICE:

Anyone designated in paragraph IV of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-10-050.

LAW OFFICE OF BILL KLOOS PC

Bill Kloos

Bill Kloos, OSB No. 81140

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2021, I served a true and correct copy of this Notice of Intent to Appeal on all persons listed in paragraphs III and IV of this Notice pursuant to OAR 661-010-0015(2) by first class mail.

Dated: May 4, 2021.

Bill Kloos

Bill Kloos

Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer St NE, Ste 330
Salem, OR 97301-1283
(503) 373-1265

April 29, 2021

Law Office of Bill Kloos
375 W. 4th St. STE 204
Eugene, OR 97401

Dear Mr. Kloos,

On April 28, 2021, we received a Notice of Intent to Appeal that was accompanied by your check payable to LUBA in the amount of $800. That Notice of Intent to Appeal was assigned LUBA No. 2021-047. The filing fee and deposit for costs for filing a notice of intent to appeal is $400. Therefore, we are returning the check in the amount of $800 to you.

Not later than May 6, 2021, you must remit a new check payable to the Land Use Board of Appeals in the amount of $400 for the filing fee and deposit for costs for LUBA No. 2021-047. If you do not remit a new check on or before that date, the Board will dismiss your appeal pursuant to OAR 661-010-0015(1)(c).

Best Regards,

Vanessa Steele
Executive Support Specialist

Enclosure

cc w/o enclosure: Andy Clark

Oregon
Kate Brown, Governor

Land Use Board of Appeals
775 Summer St NE, Ste 330
Salem, OR 97301-1283
(503) 373-1265

April 29, 2021

Andrew Clark
Lane County Office of Legal Counsel
125 E 8th Ave
Eugene, OR 97401

RE: King v. Lane County
LUBA No. 2021-047

This is to advise you that a Notice of Intent to Appeal was sent regular mail on an unspecified date and received by the Board on April 28, 2021, in the above matter and that OAR 661-010-0015 requires that service of the notice of intent to appeal be made upon the respondent within 21 days after the date of the land use decision being appealed.

A copy of the record is to be prepared by respondent and transmitted to the Board within 21 days of the date of such service. Enclosed is a summary of the specifications for preparation of the record as set out in OAR 661-010-0025(4).

If the decision being appealed is on remand from LUBA and the record on remand incorporates the original record, you will need to refile a copy of the original record as we no longer maintain records from closed appeals.

Attached to this letter is a notice of the option to seek mediation in this matter.

Best Regards,

Vanessa Steele
Executive Support Specialist

Enclosure

cc w/Enclosure: Bill Kloos

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4TH STREET, SUITE 204
EUGENE, OR 97401
TEL (541) 343-8596
FAX (541) 343-8702
E-MAIL BILLKLOOS@LANDUSEOREGON.COM

LUBA
APR 28 2021 PM01:43

April 26, 2021

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: *E.J.K. Investments v. Lane County*
Edward J. King v. Lane County

Dear LUBA:

Enclosed is an original and two copies of a NITA in each of these matters, together with a Motion to Consolidate, which has the concurrence of Lane County. Also enclosed is check in the amount of $800 for the filing fees.

Sincerely,

Bill Kloos

Bill Kloos

cc: Clients
Lane County Counsel

LUBA
APR 28 2021 PM01:43
ORIGINAL

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

EDWARD J. KING, Petitioner,	)	
v.	)	LUBA No. 2021-047 Forest Template Dwelling
LANE COUNTY, Respondent.	)	PA 20-05066

NOTICE OF INTENT TO APPEAL

I.

Notice is hereby given that petitioner intends to appeal that land use decision or limited land use decision of the Lane County Hearings Official in PA 20-05066 and entitled "Appeal of a Planning Director Approval of a Template Dwelling Withing an F-2 District." which became final on April 19, 2021.

II.

Petitioner is represented by Bill Kloos, Law Office of Bill Kloos, PC, 375 W. 4th Avenue, Suite 204, Eugene, OR 97401; Phone: (541) 343-8596.

III.

Respondent, Lane County, has as its mailing address and telephone number: Lane County Board, 125 E. 8th Ave., Eugene OR 97401; Phone: (541) 682-5010;

LUBA Record 000322

and it has as its legal counsel Andrew Clark, Lane County Office of Legal Counsel, 125 E. 8th Ave., Eugene, OR 97401 Eugene; Phone: (541) 682-4129.

IV.

Persons mailed notice of this decision other than the applicant are:

Michael Farthing, Attorney at Law, PO Box 10126, Eugene, OR 97440; Sean Malone, Attorney for LandWatch Lane County, 259 E. 5th Ave., Suite 200-C, Eugene, OR 97401; Jim McLaughlin, 325 West 13th Ave., Eugene, OR 97401.

NOTICE:

Anyone designated in paragraph IV of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-10-050.

LAW OFFICE OF BILL KLOOS PC

Bill Kloos

Bill Kloos, OSB No. 81140

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2021, I served a true and correct copy of this Notice of Intent to Appeal on all persons listed in paragraphs III and IV of this Notice pursuant to OAR 661-010-0015(2) by first class mail.

Dated: April 26, 2021.

Bill Kloos

Bill Kloos

LUBA
APR 28 2021 PM01:42

ORIGINAL

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

E.J.K. INVESTMENTS, Petitioner, v. LANE COUNTY, Respondent.	)	LUBA No. 2021-_52 Forest Template Dwelling PA 20-05064
EDWARD J. KING, Petitioner, v. LANE COUNTY, Respondent.	)	LUBA No. 2021-_047 Forest Template Dwelling PA 20-05066

PETITIONERS' MOTION TO CONSOLIDATE

Pursuant to OAR 661-010-0055, Petitioners request the Board to consolidate these two appeals. The decisions were made on the same day, involve adjacent tracts of land, involve a request for the same approval, and were denied for the same reason – the county's interpretation of the meaning of the Rural Comprehensive Plan Goal 5 Policy 11, which was at issue in *LandWatch Lane County v. Lane County (Nimpkish)*, __ Or LUBA __ (No. 2020-030, Jan. 21, 2021). They will raise the same assignments of error.

Counsel for Lane County represents that the county concurs in this motion.

LUBA Record 000324

Dated: April 26, 2021.

Respectfully submitted,

Bill Kloos

Bill Kloos, OSB #811400
Attorney for Petitioners

CERTIFICATE OF FILING AND SERVICE

I certify that on April 26, 2021, I filed the original and one copy of this document by US First Class Mail, postage prepaid, on:

Land Use Board of Appeals
DSL Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

I further certify that on said date I served a true and correct copy of said document on the party or parties listed below, by causing the same to be deposited in the United States Mail at Eugene, Oregon, enclosed in a sealed envelope with postage prepaid, and addressed as follows:

H. Andrew Clark
Assistant County Counsel
Lane County Office of Legal Counsel
125 East 8th Avenue
Eugene, OR 97401

Sean Malone
Attorney at Law
295 E. 5th Av., Suite 200-C
Eugene, OR 97401

Dated: April 26, 2021.

Bill Kloos

Bill Kloos, OSB 811400
Attorney for Petitioners

Additional Information Submitted

Date Stamp

RECEIVED SEP 21 2023

Submitted By: Bill Kloos

Phone Number: 541-954-1260

Email Address: billkloos@landuseoregon.com

Project Address: _____

Permit Number (BP, PA, SP, SI): PA 23-05321

Submittal Description: REVISED SITE PLAN - ACCESS

Please Route to SHAWNA ADAMS

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

rev 12/26/2018

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

BILL KLOOS
BILLKLOOS@LANDUSEOREGON.COM

September 21, 2023

Lane County Hearing Official
c/o Shawna Adams, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: PA23-05321, PA23-05322, PA23-05323;
Applicants' First Open Record Submittal – Site Plan

Dear Shawna:

Enclosed are tuned up site plans that confirm the existing road in the BPA easement area will be used for access.

Sincerely,

Bill Kloos

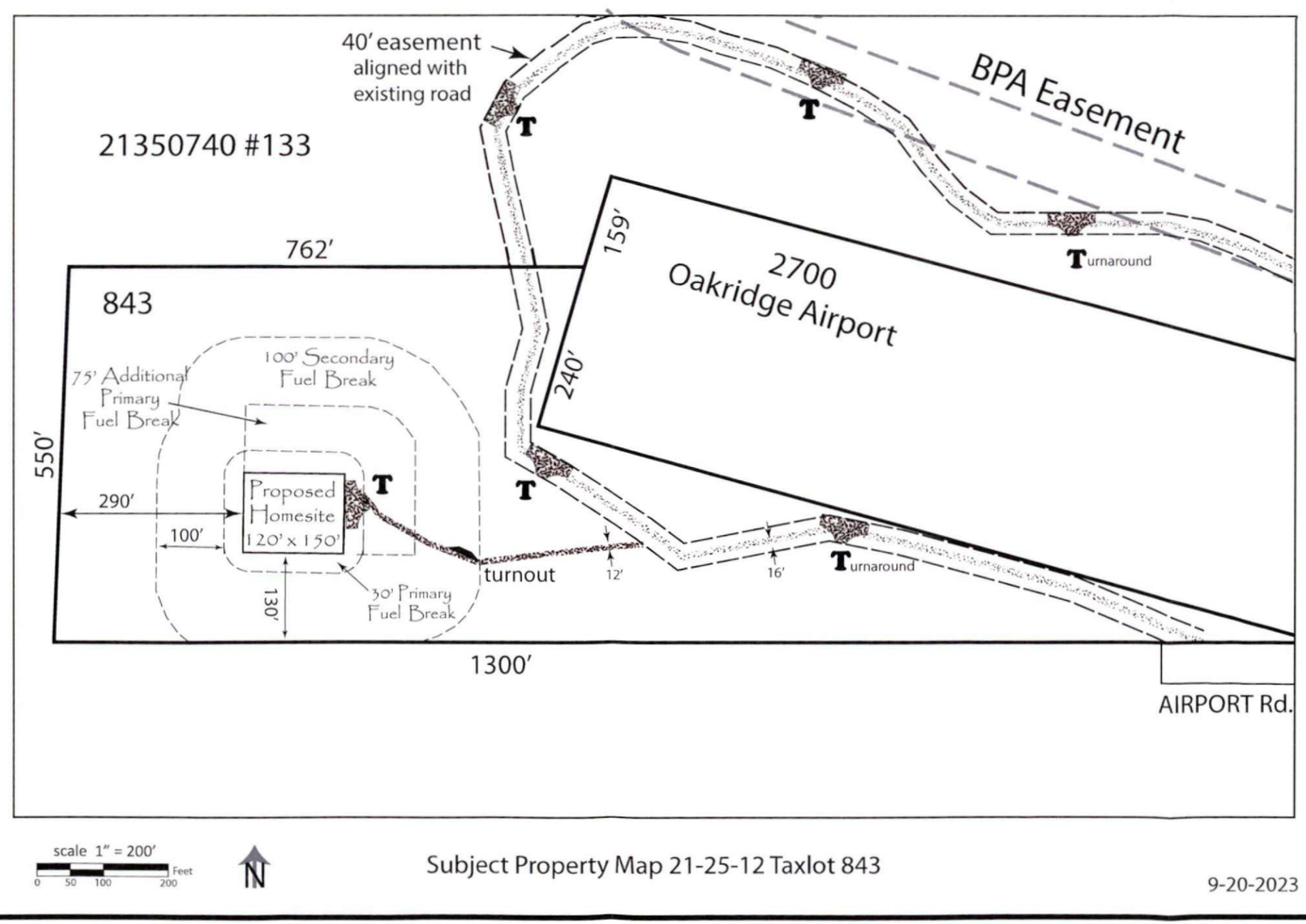
Bill Kloos

Cc: Clients

SITE PLAN SUBMITTAL FORM

OWNER NAME: E.J.K. Investments **PHONE #** **ADDRESS:** 30414 Lebleu Road Eugene, OR 97405	**Map and Taxlot #:** 21-25-12 Tax Lot 843 **Scale:** ! inch = 200 feet	**APPLICANT NAME:** Edward J. King **PHONE #** **ADDRESS:** 30414 Lebleu Road Eugene, OR 97405

Site Plan

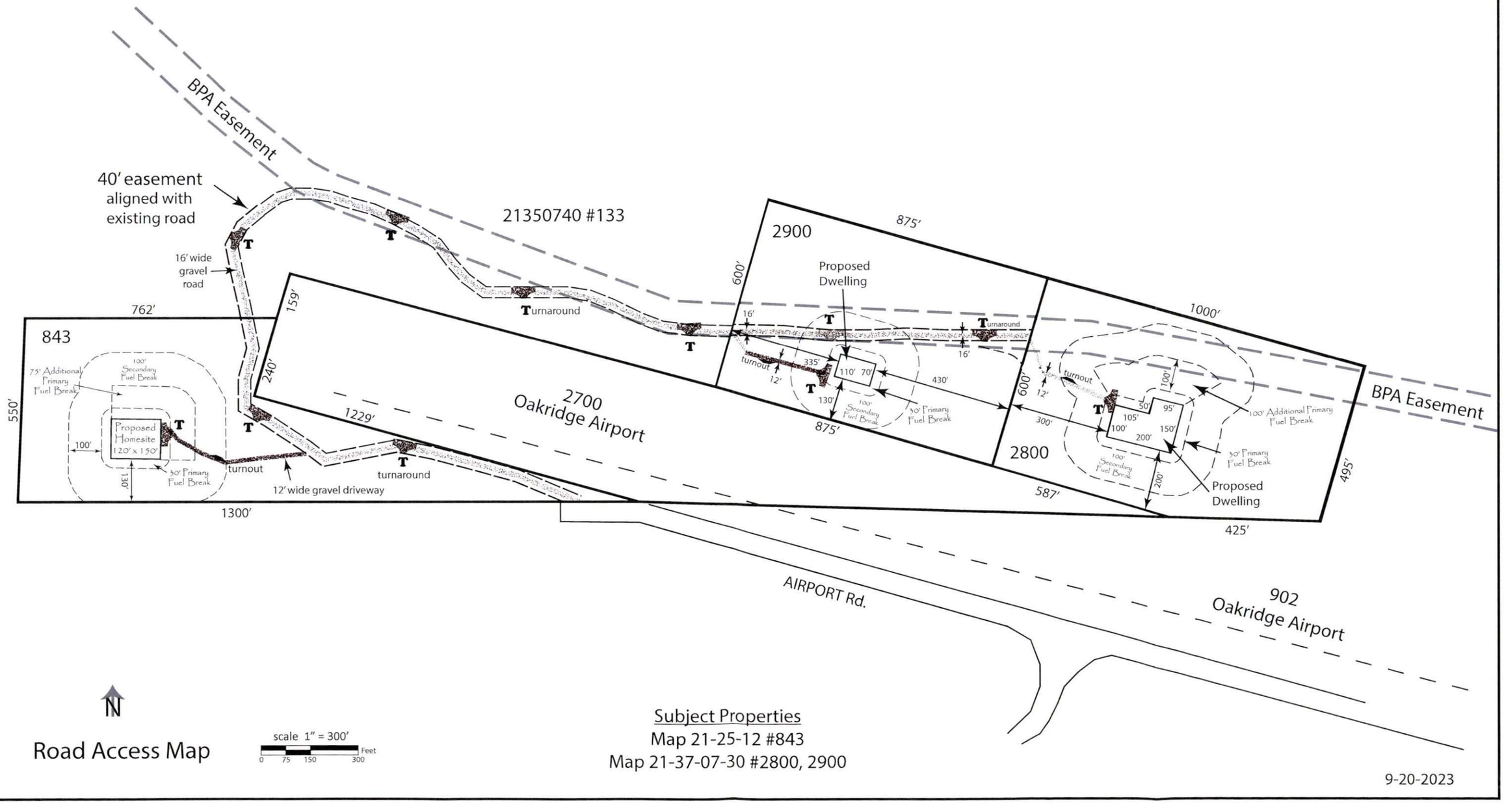


scale 1" = 200'
0 50 100 200 Feet

N

Subject Property Map 21-25-12 Taxlot 843

9-20-2023


BPA Easement
40' easement aligned with existing road
21350740 #133
16' wide gravel road
762'
843
159'
240'
550'
1229'
2700 Oakridge Airport
1300'
875'
600'
2900
875'
Proposed Dwelling
16'
Turnaround
turnout
12'
335'
110'
70'
430'
130'
100' Secondary Fuel Break
50' Primary Fuel Break
75' Additional Primary Fuel Break
Proposed Homesite 120' x 150'
100'
130'
12' wide gravel driveway
1000'
600'
300'
2800
587'
105'
95'
100'
200'
150'
100' Additional Primary Fuel Break
495'
425'
AIRPORT Rd.
902 Oakridge Airport
N
Road Access Map
scale 1" = 300'
0 75 150 300 Feet
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
9-20-2023

LANE COUNTY OFFICE OF LEGAL COUNSEL

PUBLIC SERVICE BLDG. / 125 EAST 8TH AVE. / EUGENE, OR 97401 / 541-682-4442 / FAX 541-682-3803 / *www.lanecounty.org*

June 14, 2021

Land Use Board of Appeals
Department of State Lands Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: EJK Investments v. Lane County
LUBA No. 2021-052

Dear Board Members:

Enclosed is a thumb drive of the electronic version of the original RECORD OF PROCEEDING UNDER REVIEW. The thumb drive will also contain a recording from Lane County Hearings Official from March 4, 2021. A copy of the above is being mailed to Bill Kloos, attorney for Petitioner, and Sean Malone, attorney for intervenor, in a thumb drive format.

Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL

H. Andrew Clark
Of Attorneys for Lane County

HAC; mtc
Enclosures

cc: Sean Malone (w/enc.)
Bill Kloos (w/enc.)

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Miranda C. Rollins, Workers' Comp Analyst
miranda.rollins@lanecountyor.gov

BEFORE THE LAND USE BOARD OF APPEALS OF THE STATE OF OREGON

EDWARD J. KING **Petitioner,** **vs.** **LANE COUNTY** **Respondent.** **E.J.K INVESTMENTS,** **Petitioner,** **vs.** **LANE COUNTY** **Respondent.**	**LUBA No.: 2021-047 & -052**

RECORD OF PROCEEDING UNDER REVIEW

Lane County Board of Commissioners

H. Andrew Clark
Assistant County Counsel
Lane County Office of Legal Counsel
125 East 8th Avenue
Eugene, OR 97401
(541) 682-4129
Andy.clark@lanecountyor.gov
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Attorney for Intervenor- Respondent

Bill Kloos
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375 W. 4th Street, Suite 204
Eugene, OR 97401
billkloos@landuseoregon.com
Attorney for Petitioner

TABLE OF CONTENTS OF RECORD

EJK INVESTMENTS, Petitioner,

vs.

LANE COUNTY, Respondent.

LANDWATCH LANE COUNTY, Intervenor-Respondent

LUBA No. 2021-052

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4 April 1, 2021, Email from Malone to Adams, et al., re: RE: LandWatch Responsive Testimony for King Template Dwelling Appeals, PA20-05066 and -05064, including attachments: 72
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10 March 4, 2021, Lane County Hearings Official Agenda. 1790

11 March 4, 2021, Lane County Hearings Official Audio.

[please see thumb drive for audio]

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17	November 9, 2020, Email thread between Thompson to Bauder, Adams, & Peck re: ODA Comment: 509-PA20-05065 & 509-PA20-05066 including attachment:	2013-2015
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18	September 25, 2020, Additional Information Submitted by O'Dea including:	2019
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I, H. Andrew Clark, certify that the Items described above and included herein are true copies of the originals, although the filed Record may contain black-in-white or reduced copies of materials originally submitted in color or non-standard sizes.

DATED this 14th day of June, 2021.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. Andrew Clark, OSB #881818
Of Attorneys for Respondent Lane County

7

DO NOT SEPARATE PACKET

CERTIFICATE OF MAILING

509-PA20-05064/PA20-05066
E J K /KING/O'DEA
4/22/2021

This is to certify that I, Rachel Adams, mailed Notification of

Hearing official Decision

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: APR 2 2 2021

End of Comment Period:

Appeal Deadline: MAY 0 4 2021

Hearing Date:

Rachel Adams

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

RECEIVED APR 19 2021

BEFORE THE LANE COUNTY HEARINGS OFFICIAL

APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On February 5, 2020, the applicant, E.J.K Investments, filed an application seeking to establish a dwelling in the Impacted Forest Lands (F–2) zone on tax lot 2900, assessor's map 21–35–07–30. PA 20-05064. The application was deemed complete on March 6, 2020. On January 27, 2021, the Director approved the application, and on February 8, 2021, a timely appeal was submitted by LandWatch Lane County (LandWatch).

On January 21, 2021, six days before the Planning Director issued their decision approving the subject application, the Oregon Land Use Board of Appeals (LUBA) issued its decision in *LandWatch Lane County v. Lane County (Nimpkish)*, ___ Or LUBA ___ (LUBA No. 2020-030, January 21, 2021). As discussed further below, LandWatch based its appeal in this case on LUBA's holding in *Nimpkish*. In its staff report to the Hearings Official, staff concurred with LandWatch as to the significance of *Nimpkish* to the resolution of this appeal, and recommended denial.

Parties of Record

E.J.K. Investments (Kim O'Dea)
Michael Farthing
LandWatch Lane County (Lauri Segel; Sean Malone)

Jim McLaughlin

Application History

Hearing Date: March 4, 2021
(Record Held Open Until April 8, 2021)

Decision Date: April 19, 2021

Appeal Deadline

A party may request reconsideration of this decision by the Hearings Official, pursuant to Lane Code 14.080(1)(a)(iii) and (1)(b), by filing a notice of appeal within 12 business days after the date the notice of decision was mailed. If a party seeking further review chooses not to seek reconsideration, they must file an appeal directly with LUBA within the timelines set forth in state law. See LUBA's website for more information on appeal deadlines.

//////////////

Statement of Criteria

Lane Code 16.211(5) and (8)
House Bill 2225

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 2900, assessor's map 21–35–07–30, which is immediately north of the Oakridge Airport and situated between the Westfir and Oakridge Urban Growth Boundaries.

   The property is approximately 12.05 acres and is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration easement that transects the property.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The entire property is designated Major Big Game by the Oregon Department of Fish and Wildlife (ODFW) Habitat Maps.

2. The subject application is one of two template dwelling applications approved by the Planning Director on the same date. The other application concerns a forest template dwelling proposal on a contiguous 13.28-acre parcel identified as tax lot 2800 of the same assessor's map, which is also designated Big Game Range.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 20–05064) BY E.J.K. INVESTMENTS FOR A FOREST TEMPLATE DWELLING ON TAX LOT 2900, ASSESSOR'S MAP 21–35–07–30 IS REVERSED.

Justification for the Decision

The applicant is requesting approval to construct a single–family forest template dwelling in the F-2 zone as provided by Lane Code 16.211(5)(c).

A. Goal 5

The subject property is designated Major Big Game Habitat. Big Game Habitat is a Statewide Planning Goal 5 resource and thus is entitled to certain protections. Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) sets forth a process for evaluating, inventorying, and protecting significant natural resources, including big game habitat. The evaluation includes consideration of uses that conflict with the protected significant resource. In order to implement Goal 5, local governments are required to

adopt programs that will protect natural resources, and includes consideration and weighing the values of conflicting uses and the natural resource. OAR 660-015-0000(5).

ODFW has determined that the main use that conflicts with, and poses a significant threat to, big game habitat is residential development. Lane County's Goal 5 program includes the following comprehensive plan policy that implements Goal 5 and is intended to address this main conflict:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."* Lane County Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11.[1]

The *Nimpkish* appeal referenced above involved a request for a forest template dwelling on a 10-acre property. The appellant in that case argued that a dwelling on a 10-acre property would violate the recommended density limitation (80 dwellings per acre), and thus violated Policy 11. The applicant asserted that Policy 11 did not apply to discrete land use applications for forest template dwellings. LUBA held that Policy 11 does apply to an application for a forest template dwelling.

As LUBA explained, the first sentence of Policy 11 acknowledges that the County is using the ODFW density recommendations as the baseline. The first sentence, and the County's Working Paper, also acknowledges that the County intended to study different regions of the County (most likely the County would be divided into 10 to 20 different regions in that study) to come up with a "residential carrying capacity." That information would then be used to determine appropriate zoning in the area. The petitioners in *Nimpkish* focused on the second sentence of Policy 11, arguing that the County is prohibited from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis. LUBA agreed.

The applicant in this case does not challenge that holding *per se*. Rather, it argues that the addition of this one dwelling does not violate the ODFW-recommended limits, and therefore, an ESEE analysis is not required. That contention is based on the applicant's interpretation of the significance of the term "overall" in Policy 11.

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[1] The ODFW recommendation for overall residential density in the Major Big Game Range Habitat is no more than 80 dwellings per acre. For Peripheral Big Game Range Habitat, the recommended density is no more than 40 dwellings per acre.

Anybody who has studied residential densities, either in urban or rural settings, understand that the determination of residential density depends on the denominator that is used. That is, the relevant residential density as stated by ODFW is a ratio (dwellings / acre). If the denominator of that ratio (area studied) is a discrete property, the density calculation will be very different than if the denominator is the entire county. The applicant argues that the denominator here should be the entire County, or at least a very large portion of the County, because Policy 11 uses the term "overall residential density."[2]

LandWatch relies on one sentence in LUBA's decision in *Nimpkish* in support of its argument that the subject property, not the entire County, must serve as the density denominator: "There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres." Slip op. 15.[3]

The applicant contends that LandWatch cannot rely on that statement because it was technically *dicta*. The issue addressed in that statement (whether the addition of the proposed dwelling would constitute a conflict that triggered an ESEE analysis) was not before LUBA in the *Nimpkish* appeal. The issue in that appeal was whether Policy 11 applied to a discrete application for a forest template dwelling. The Hearings Official had held that it did not, and LUBA overturned that ruling. On that basis, the decision was remanded. LUBA was not called upon to address (and the parties presumably did not brief) the issue of what the appropriate density denominator would be once it was determined that Policy 11 applied.

It may well be that LUBA's statement in *Nimpkish* that "the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres" was *dicta*. That said, even if that statement was *dicta* and, thus, is not clear precedent in this case, it seems clear that LUBA believed that, if Policy 11 applied, the appropriate density denominator would be the subject property. In other words, if the issue had been before LUBA, we now know how LUBA would have ruled. However, because LUBA made that statement somewhat in passing, it did not conduct a full interpretation of Policy 11 to reach that conclusion. That analysis is now provided here.

Text

The applicant argues that the term "overall" in Policy 11 means that the density denominator must be the entire County, or in the alternative, the portions of the County

[2] Applicant submitted evidence supporting his conclusion that the "overall density" when viewed at the County level, is well below the ODFW recommended "overall density." He also submitted documentation regarding the residential density of smaller subsets of the County; *i.e.*, the area east of Interstate 5 and the area west of Interstate 5; regions divided by highway corridors; and watershed regions. All sets of numbers confirmed his theory that the residential densities are well below the ODFW recommended "overall" densities. Thus, the addition of one dwelling would not result in a Goal 5 conflict.

[3] LUBA then went on to make the following legal conclusion: "Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.'"

on the east or west side of Interstate 5. LandWatch points out that the use of the term "overall" in Policy 11 relates only to the ODFW recommendation. Apparently, the ODFW density recommendations are stated in terms of "overall residential density." The first sentence of Policy 11 makes clear that the County was going to use those numbers (one dwelling per 80 acres in the Major Big Game habitat) to "determine the allowable number of residential dwelling units within regions of the county." The next sentence does not use the "overall" modifier: "Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." The second sentence of Policy 11 provides no express denominator for the density standard. So the text itself does not clearly answer the question presented in this appeal.

Context/Caselaw

RCP Policy 11 implements Goal 5. Accordingly, Policy 11 must be interpreted in a manner that is consistent with the Goal that it implements. As stated above, Goal 5 is aimed at preserving and protecting significant natural resources, such as big game habitat. The evident purpose of applying a residential density limit is to minimize human impacts to wildlife habitat. LandWatch asserts that the applicant's proposed interpretation would effectively permit large areas protected as wildlife habitat to be developed at densities that destroy its value as wildlife habitat.

In a 2003 LUBA appeal, Douglas County made an interpretation of its code that is similar to the interpretation of Policy 11 that the applicant presents in this appeal. *See Wetherell v. Douglas County*, 44 Or LUBA 745 (2003). The application in that case was for approval of a site plan for a destination resort. The property fell within an area designated as Peripheral Big Game Habitat. The request was therefore subject to a code provision (LUDO 3.32.300) that limited residential density to one dwelling unit per 40 acres.[4] As is the case here, the code provision did not explicitly state the appropriate density denominator. The County determined that the appropriate density denominator under the applicable code provisions was an area of the county that included 1,121,378 acres.[5] On appeal to LUBA, the opponent argued that the proper denominator was a 500-acre portion of the subject 2,700-acre ranch. The Hearings Official sets forth LUBA's analysis in that case at length, because the analysis is the exact same analysis the Hearings Official adopts in this appeal:

> "LUDO 3.32.200 provides no express denominator for the density standard, so the county's view that the pertinent denominator is a 1,121,378-acre area of the county is not necessarily inconsistent with the text of LUDO 3.32.200. However, we agree with petitioners that that view is inconsistent with the purpose of the

[4] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[5] The area the county used was the Calapooya and Elk Creek geographic Planning Advisory Committee area.

density standard, to "preserve identified peripheral habitat areas." See n 4. Neither intervenors nor the county's decision provides any basis to question petitioners' view that the purpose of the density standard is to preserve big game wildlife habitat by minimizing human impacts on that habitat, specifically by limiting the density of residential uses. Under the county's view, large areas of Goal 5-protected wildlife habitat may be developed at residential densities that significantly exceed one dwelling per 40 acres, as long as the average density over a much larger area of the county does not exceed that standard. As the county interpreted LUDO 3.32.300, it will have no regulatory effect at all until over 28,000 dwellings are built in the 1,121,378-acre PBGHO. At that point, its regulatory effect would change from nonexistent to exceedingly harsh, because it would effectively impose a residential building moratorium throughout the PBGHO. * * * It seems exceedingly unlikely to us that anyone who thought about how LUDO 3.32.300 would be implemented could possibly have intended that it work in that way.

* * *

A construction of LUDO 3.32.300 that is far more consistent with its apparent purpose and the language of LUDO 3.32.300 is that the denominator for the one dwelling per 40-acre density limit is the subject property, in this case the 500 acres that make up the proposed destination resort.

* * *

We recognize that a density standard that permitted selection of some larger local area, i.e., a local area larger than the 500-acre subject property but smaller than the 1,121,378-acre applied here, might provide the county with desirable flexibility to permit clustered residential development in areas with lesser habitat value if some way could be found to further limit or bar residential development altogether in areas with high habitat value. However desirable that flexibility might be, as written, LUDO 3.32.300 does not permit application of the one dwelling unit per 40 acres standard over an area that is larger than the property that is the subject of the application. If the county wishes the density limit to apply in some other manner, it must amend LUDO 3.32.300 to achieve that result. In sum, the county's view that the denominator required by the LUDO 3.32.300 density standard is a 1,121,378-acre portion of the county is not reasonable and correct."[6]

The Hearings Official believes that the applicant's proposed interpretation in this case is similar to the position taken by Douglas County in *Wetherell*.[7] LUBA rejected that

[6] Douglas County has a Peripheral Big Game Habitat Overlay (PBGHO) zone that is used to identify and preserve big game habitat. LUDO 3.32.300 provides the purpose, permitted uses, and density limitations within that overlay zone.

[7] The applicant attempts to distinguish *Wetherell*—*Wetherell* did not involve a forest template dwelling application; *Wetherell* interpreted a code provision, not a comp plan policy; and the Douglas County code provision at issue did not include the term "overall." While the posture of that case was a bit different, the policy considerations and analysis are the same. The term "overall" in Policy 11 refers to the ODFW

interpretation, and the Hearings Official feels certain that LUBA would, for the reasons set forth above, also reject the applicant's interpretation in this case. Until the County conducts its region-by-region analysis, which is called for in Policy 11, the density denominator must be the subject property.

The applicant may assert that this approach is overly restrictive because it essentially means that a forest template dwelling proposed on a property smaller than 80 acres in the Major Big Game Habitat area will always be deemed to conflict with the resource. The Hearings Official responds that the determination of a conflict does not result in the development being prohibited. It merely requires that an ESEE analysis be conducted to determine whether the additional dwelling would harm the protected resource.

Summary

The subject property in this case is only 13.28 acres in size. If the forest template dwelling were approved, the residential density would exceed the ODFW recommended density of one dwelling per 80 acres, and, absent an ESEE analysis, would violate Policy 11.

B. Goal 2

Even if the applicant were correct that the entire county (or even half of the County) could be used as the density denominator, the Hearings Official is doubtful that the applicant could rely on the evidence presented in this appeal without first incorporating it into the comprehensive plan.

Statewide Planning Goal 2 (Land Use Planning) requires that land use decisions be based on an "adequate factual base." There are circumstances where that requirement demands that the "factual base" upon which the quasi-judicial decision is based be found in the comprehensive plan. For instance, both LUBA and the Oregon Court of Appeals have held that for purposes of Statewide Planning Goal 10, an inventory of buildable lands that is relied upon for a quasi-judicial decision must first be adopted as part of the comprehensive plan. *See D.S. Parklane Development Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000); *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 216, 124 P3d 1249 (2005); *Lengkeek v. City of Tangent*, 50 Or LUBA 367 (2005); *Lengkeek v. City of Tangent*, 52 Or LUBA 509, 515 (2006). This requirement reflects the emphasis in Goal 2 on consistency and predictability. "Citizens must be able to rely on the fact that the acknowledged comprehensive plan and information integrated in that plan will serve

---

density recommendation, which is apparently stated as an "overall residential density" standard. As LandWatch points out, the second sentence of Policy 11 does not use the "overall" modifier. Accordingly, this case is similar to *Wetherell*, where the text of the code did not spell out the density denominator. The context provided by the policies furthered by Goal 5 protections are the same in both cases--in *Wetherell*, those policies were set forth in the code's purpose section; in this case, the Goal 5 policies are relevant to the interpretation because Policy 11 implements Goal 5 and must be interpreted in a manner that is consistent with Goal 5. An interpretation that does nothing to protect big game habitat from conflicting residential uses is not consistent with Goal 5.

as the basis for land use decisions, rather than running the risk of being 'sandbagged' by government's reliance on new data." *1000 Friends of Oregon v. City of Dundee*, 203 Or App at 216.

The question here is whether the information provided by the applicant is regular, run of the mill evidence that can be relied upon, or whether it is more in the vein of a buildable lands inventory, which must be incorporated into the comprehensive plan, so that future applicants are using the same data.

As explained above, Policy 11 acknowledges that the County has not yet quantified a residential density standard in the F-2 zone. As the Working Paper makes clear, DLCD anticipated that the County would conduct a regional study. Until that work is completed, Policy 11 makes clear, any density above the ODFW recommended density limits "shall be considered to conflict with Goal 5" and will be allowed only following an ESEE analysis.

The ideal solution is for the County to conduct the regional studies that Policy 11 and the Working Paper call for. Arguably, an applicant could perform all or some part of that work. However, if it were relied upon by an applicant to justify foregoing the ESEE analysis called for in Policy 11, then the documentation would have to first be adopted into the comprehensive plan.[8]

Conclusion

The applicant's argument for approval hinges on its proposed interpretation of Policy 11, which allows a density calculation that is based on using the entire County (or a very large swath of the County) as the density denominator. As discussed above, that interpretation would do little if anything to protect the County's designated Major Big Game Range from conflicting residential development. It is thus inconsistent with Goal 5 and is not reasonable or correct.

Because the County has not yet completed its regional study, the only appropriate density denominator is the subject property. In this case, the subject property is only 13.28 acres, and the ODFW-recommended overall residential density of one dwelling per 80 acres is exceeded. An ESEE analysis is required. Because no ESEE analysis has been provided, the Planning Director's approval must be reversed.

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

[8] This Goal 2 discussion is not necessary for the Hearings Official's conclusion in this appeal. The Policy 11 interpretation set forth above stands on its own. If, on appeal, LUBA disagrees with the Goal 2 discussion, it could still affirm the Hearings Official's decision.

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED FEB 05 2020

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only: FILE # 509-PA20-05066 FEE: $3445.00

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: _____

Agent (print name): Kim O'Dea, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-0095 Email: kimodea@landuseoregon.com

Agent Signature: _____

Land Owner (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: Edward J. King

LOCATION

21-35-07-30 Taxlot 2800

Assessor's Map and Taxlot Number

Airport Road (no address assigned)

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

Version 2/2019

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED FEB 05 2020

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only: FILE # 509-PA20-05064 FEE $3445.00

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: see below

Agent (print name): Kim O'Dea, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-0095 Email: kimodea@landuseoregon.com

Agent Signature: _____

Land Owner (print name): E.J.K. Investments

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: _____ for EJK Invest. LLC

LOCATION

21-35-07-30 Taxlot 2900

Assessor's Map and Taxlot Number

Airport Road (no address assigned)

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

Version 2/2019

LAND MANAGEMENT DIVISION

Date Received:

RECONSIDERATION REQUEST OF HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT *3050 NORTH DELTA HIGHWAY, EUGENE OR 97408*
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only: *FILE #* *FEE:*

Appellant: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

LOCATION (subject property)

_____
Assessor's Map and Tax Lot

This form is required for request for reconsideration of a Type III Hearings Official decision or a Hearings Official decision on an appeal of a Type II Director decision. Please note that your appeal application requesting reconsideration will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). A notice of appeal must be filed with the Director prior to 4 p.m. Pacific Time 12 days after the date the notice of decision is mailed (see deadline specified on the decision).

1. A copy of the decision being appealed, with the Department file number: _____ and the date of the decision_____

2. The $1,216 appeal fee, payable to Lane County.

3. The appeal deadline, as stated in the Hearings Official's Decision: MAY 04 2021

4. Address each of the following:

   a. Check one of the items below demonstrating how the person filing the appeal is a party as that term is defined in LC 14.015(22) with the right to appeal the Hearings Official's decision:

      ☐ I am the applicant for the subject application;

      ☐ I am the owner or contract purchaser of the subject property;

Revised on 12/2019

☐ Prior to the decision, I provided testimony before the Hearings Official;

☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision and my appeal submittal identifies how I qualify as a party (provide written description).

b. Please provide a written statement explaining the reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

c. Please provide an explanation with detailed support specifying one or more of the following assignments of error, or request for reconsideration:

☐ The Hearings Official exceeded his or her authority;

☐ The Hearings Official failed to follow the procedure applicable to the matter;

☐ The Hearings Official rendered a decision that is unconstitutional;

☐ The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria; or

☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

d. Include any additional information in support of your appeal.

5. Per Lane Code 14.080(4)(a), if the applicant is requesting reconsideration, the applicant must first agree to extension of any statutory application timelines, and such extension must be in addition to any other extensions already given.

Notes:

- Lane County Ordinance No. 19-03, the adopting Ordinance for Lane Code Chapter 14 that regulates the Hearings Official decision and appeals process is under appeal to the Oregon Land Use Board of Appeals (LUBA). In the event that an appeal to LUBA results in a remand or reversal, the Ordinance will no longer be effective and the applicable version of Lane Code Chapter 14 will revert back to Lane County Ordinance No. 14-09 (December 2014).

- An appeal of a Hearings Official decision to the Lane County Board of County Commissioners is no longer allowed per the regulations of Lane Code Chapter 14 (Lane County Ordinance No. 19-03).

509-PA20-05064/PA20-05066
E J K /KING/O'DEA
4/22/2021

2135073002900
*E J K INVESTMENTS LLC
30414 LE BLEU RD
EUGENE OR 97405

LAW OFFICE OF BILL KLOOS
*KIM O'DEA
375 W 4TH AVE STE 204
EUGENE OR 97401

LANDWATCH LANE COUNTY
PO BOX 5347
EUGENE OR 97405

MICHAEL FARTHING
PO BOX 10126
EUGENE OR 97440

SEAN MALONE
259 E 5TH AVE SUITE 200-C
EUGENE OR 97401

JIM MCLAUGHLIN
2600 19TH ST
SPRINGFIELD OR 97477

TIMBER VALLEY DEVELOPMENT
ATTN: JEREMY KEEPERS
81711 MAHR LANE
CRESWELL OR 97426

RECEIVED APR 13 2021

Additional Information Submitted

Date Stamp
RECEIVED
Hard Copy
APR 13 2021

Submitted By: Kim O'Dea

Phone Number: 541-954-0095

Email Address: kimodea@landuseoregon.com

Project Address: _____

Permit Number (BP, PA, SP, SI): PA 20-05064 20-05066 April 8, 2021 Email Submittal

Submittal Description: _____

Material Submitted: _____

Please Route to Shawna Adams

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

rev 12/26/2018

RECEIVED APR 13 2021

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.0095
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM

April 8, 2021
FINAL RESPONSE/ARGUMENT

Anne Davies
Lane County Hearings Official
c/o Shawna Adams
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: King and EJK Inv.; Reissue Expired Director's Decision for Template Dwellings; PA 20-05066 and PA 20-05064, Map 21-35-07-30, TL 2800 and 2900

Ms. Davies:

Please accept this as my final Response. At the center of this analysis is RCP Policy 11. What does it say; what does it mean?

Policy 11 of the Lane County RCP Goal 5 Flora and Fauna element, states:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."*

This policy has several elements:

- It identifies the standard: "[ODFW] recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units ***."[1]
- It identifies the anticipated scope of the analysis: "*** within regions of the County."

[1] ODFW recommended densities are found in the Flora and Fauna Working Paper, page 24, *"ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than *** one dwelling unit/80 acres in Major Range conflicts with habitat for big game."*

- It identifies the trigger for "conflict" and ESEE analysis, "Any density above [ODFW recommendations on overall residential density] shall be considered to conflict with Goal 5," and required an ESEE analysis.
- It states the program to achieve the goal, "The County shall work with [ODFW] to prevent conflicts *** through land use regulation *** siting requirements and similar activities" that are already part of Lane Code.

The County did not get divided into regions. However, that does not lift the burden of complying with Policy 11. As LUBA stated in *Nimpkish*,

> "*"*** the county's failure to take the steps of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in the RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. Rather *** Policy 11 remains operative, and it provides that "[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict ***." Pg 13. (Emphasis added)*

Policy 11 applies directly and, per LUBA the County must apply the "*residential density recommendations referred to in *** Policy 11.*" Those density recommendations are, "overall residential density," per the plain language of Policy 11. The specific densities are identified in the Flora and Fauna Working paper, which also refers to "overall" density. See Footnote 1.

Based on the above, Policy 11 applies directly, and Policy 11 and the F&F Working paper both refer to "overall" density. We are now left to determine what "overall density" means and how to apply it. Per *Nimpkish*, "*The county must interpret a provision of the RCP *** adopted to *** protect Big Game *** through density standards, in a manner that is not inconsistent with Goal 5.*" Pg. 14, Exhibit C.

I. Landwatch Objection

Landwatch offers only one objection: the scope of the analysis must be the subject property itself. Landwatch hangs their entire argument on one sentence in *Nimpkish*,

> *"There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres."*

However, there was "no dispute" because the meaning of "overall density" was not at issue in *Nimpkish*. The issue in *Nimpkish* was whether Policy 11 applied, not what it meant. And while LUBA, within the scope of the question at hand, did review Policy 11, it reviewed it for applicability, not precise language. LUBA's statement is mere dicta, and conflicts with evidence

and language throughout the decision. In fact, the above quoted statement is directly contrary to LUBA's statement on page 14.

> "*We understand DLCD to have concluded that the county's Goal 5 program protects habitat because it adopts residential densities in accordance with ODFW's recommendations* ***."

The densities referred to are "overall" densities. See Policy 11 and Footnote 3 of the LUBA decision. In short, despite having acknowledged throughout the decision that the density requirements are those stated in the RCP and F&F Working Paper, LUBA misstated the factual outcome because the question before us now was not in front of the Board at the time.

Landwatch claims that LUBA extinguished the "overall" language from Policy 11, and dismisses the Flora and Fauna Working Paper as being irrelevant. Both of these claims are inconsistent with *Nimpkish* and the RCP. A block quote from LUBA is set out on page 2, above. In the emphasized language, LUBA makes clear that the ODFW densities outlined in the F&F Working Paper continue to apply despite the fact that the county was not divided into regions. Those densities are articulated in Footnote 3 of the *Nimpkish* decision[2], and are "overall" densities. Even ODFW acknowledges that the subject property is not the basis for the analysis. See ODFW letter submitted by Landwatch.

By relying on language in the Working Papers, LUBA acknowledged Part 1 of the RCP which establishes that the Working Papers, regardless of adoption status, are the technical data supporting the adopted policies and are to be used to help interpret and understand policies. See Exhibit L, Part 1.C, page 4.

Landwatch has failed to provide an alternate analysis that is consistent with Policy 11 and *Nimpkish*. It could have; it chose not to. The applicant has provided four. Landwatch did provide an alternate analysis which left out all public lands, but there is no support for such exclusions. Those lands are designated Major Big Game per the RCP. Further, if Landwatch's map is used, the resulting density is one unit per 390 acres. This is less than the ODFW overall density requirement. As such, no conflict exists and no ESEE is required.

II. Overall Density

What does "overall" mean? "Overall" is something more than the subject property. This position is supported by the definition of "overall," RCP Policy 11, the Flora and Fauna Working Paper, and even ODFW. See applicant's previous letters for a complete analysis.

Thus, the last question to be answered is what is the breadth of overall; how overall is "overall?" The applicant has the burden of making an interpretation.

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[2] Citing the RCP F&F Working Paper

The applicant has provided four alternatives:

1. Overall density over the entire Major Big Game region. LCOG Report dated March 2, 2021, Map 1. This results in a density 1 unit per 819 acres. See applicant's hearing submission, Exhibit A.
2. Overall density over non-contiguous regions[3] of Major Big Game (east and west of I-5). LCOG Report dated March 2, 2021, Maps 2 and 3. This results in a density 1 unit per 1,415 acres, east of I-5. See applicant's hearing submission, Exhibit A.
3. Overall density over regions of Major Big Game defined by highway corridors (barrier-based). LCOG Report dated March 17, 2021, Map 1. This results in a density 1 unit per 1979 acres in Region E. See applicant's open record submission, Exhibit F.
4. Overall density over regions of Major Big Game defined by historic RCP subareas (adopted subarea based). LCOG Report dated March 17, 2021, Map 1. This results in a density 1 unit per 7,370 acres in the UMFS subarea. See applicant's open record submission, Exhibit I.

The subject property is located near Oakridge, north of Hwy 58. It lies east of I-5, in Region E and in the UMFS (subarea). Regardless of which option is used, the overall density is less than 1 unit per 80 acres.

Option 1 best represents the true meaning of "overall density." This option elicits a knee-jerk reaction from Staff and Landwatch because the density is so low. However, this results from LUBA's flawed analysis of county history, not the density calculation. The County was not required under the Statewide Planning Goals to preserve F-1 land. F-1 land could have been available for residential development. ODFW's density recommendation was not based on the F-1/F-2 distinction, it was an overall density for all Major Big Game habitat. F-1 land could have been available for residential development, but it was not. This results in low density. It does not matter how many new houses could be built before ODFW's density figure it exceeded. That is not the proper analysis. What matters is that up until the point where density is exceeded, there is no conflict and no ESEE analysis is required.

The smallest area that should be considered is Option 4, the historic RCP subareas. These subareas were based on watersheds and adopted by the Board[4], but were not adopted into the final RCP due to LCDC objections relating to how regulations were implemented in these subareas[5]. Despite this flaw, and despite that fact that subarea requirements were deleted from the F&F Working Paper[6], this is the best evidence of the smallest analysis area contemplated by the County. Said another way, if the County was still considering any sort of division of the

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[3] Land on either side of Interstate 5 is designated Impacted or Peripheral Big Game, which is excluded from the Major Big Game analysis. As such, I-5 provides not only a potential physical barrier division, but a convenient planning division.

[4] Exhibits G and H.

[5] LCDC did not object to the regions, but objected to the county's proposal to have different regulations for each regions. LCDC found that such regulation was not "comprehensive planning."

[6] The language in the F&F Working Paper contemplating regions was deleted. See Applicant's April 1 submission.

county into "areas convenient for planning purposes" after the deletion of such language from the F&F Working Paper, these areas appear to be the best candidate for what was intended, and there is no evidence of any more limited or narrow review area.

In short, if Policy 11 was instructional, and the Board had intended to divide the county into "regions convenient for planning purposes," the best evidence of what those regions would be is represented by the already adopted subarea maps[7]. However, the County decided against such subareas by deleting the language from the F&F Working Paper. Exhibits N and O. Instead, the County was left whole, clustering was applied, and the overall density analysis is applied across the county to Major Big Game range.

Even OAR 660-023-0010(3) support the applicant's position because it requires the analysis "over an impact area," not just the subject property.

The smallest analysis area justified by evidence in the record is the subarea maps, the largest analysis area justified by evidence in the record is the entire Major Big Game range. Under either of these analysis areas, and everything in between, the proposal exceeds overall density, there is no conflict, and as such no ESEE analysis is required.

III. CONCLUSION:

LUBA's decision in *Nimpkish* relies on F&F Working Paper language that was deleted from the F & F Working Paper, and replaced with other language. For this, and other reasons outlined in previous submission, *Nimpkish* does not provide sound precedent. See Applicant's April 1 letter, pages 5-6. Further, the issue of "overall" was not discussed or briefed in either *Nimpkish* or *Cattoche*. Therefore, neither are precedent for this issue.

Even if LUBA's holding in *Nimkish* is correct, the proposal does not exceed ODFW recommended overall density under any of the scenarios provided. As such, there is no conflict. An ESEE analysis is only required when a conflict occurs.

Sincerely,
/s/ *Kimberly JR O'Dea*
Kimberly J.R. O'Dea

[7] The maps were not rejected, the Code language surrounding the maps was.

Additional Information Submitted

Date Stamp: RECEIVED APR 06 2021

Submitted By: Kim O'Dea

Phone Number: 541-954-0095

Email Address: kimodea@landuseoregon.com

Project Address:

LANE COUNTY OREGON

Permit Number (BP, PA, SP, SI): PA 20-05064 King

Submittal Description: APRIL 1, 2021 email Submittal

Material Submitted: Response

Please Route to Shawna Adams.

Type of Submittal:

- [X] Additional Information
- [ ] Response to Plan Review Comments
- [ ] Revisions to Approved Plans
- [ ] Other:
- [ ] Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to:

Amount Due:

- [ ] Approved
- [ ] Applicant contacted

How will fess be paid? [ ] In person [ ] Online [ ] By phone

swm 12/26/2018

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April 1, 2021
RESPONSE LETTER

Anne Davies
Lane County Hearings Official
c/o Shawna Adams
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: King and EJK Inv.; Reissue Expired Director's Decision for Template Dwellings; PA 20-05066 and PA 20-05064, Map 21-35-07-30, TL 2800 and 2900

Ms. Davies:

Please accept this as my response to Staff's memo of March 18 and Landwatch's letter of March 18.

I. Staff's Memo

This appears to be an opinion statement, more than an analysis of the law and the facts. Staff appears to argue that the RCP density analysis must be based on individual lot size ("subject property"), and thus any parcel less than 80 acres in the Major Big Game area cannot qualify for a dwelling without an ESEE analysis. That position conflicts with the term, "overall" in RCP Goal 5 Big Game Policy 11, RCP Goal 4 Forestland Policy 15, which pushes residential development onto parcels less than 80 acres, and other language in the RCP acknowledgment paperwork.

A. Overall Density

The definition of "overall" is addressed in my previous letter. Inherent in the term "overall" is the idea that some things will meet the standard and some will not. For example, "the overall color of the bananas will be yellow." By definition, some bananas will not be yellow. As applied to density, some units of land will be larger than 80 acres and some will be smaller. This is not inconsistent with the purpose of Major Big Game range, as big game does not view or use its habitat on a parcel-by-parcel basis. If one parcel is 10 acres, one parcel is 30 acres and one parcel is 200 acres, the big game will just stroll on through. This scenario results in an "overall density" of 1 house per 80 acres, which is consistent with ODFW overall density requirements.

The concept of "overall" density is specifically noted by ODFW, and is found in numerous places in the Comprehensive Plan. See discussion below. That parcel size alone should not be

the sole focus of a density analysis is reflected in the 1983 Addendum to the Flora and Fauna Working Paper, page 14.

> *"***officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts ***. While overall densities are important indicators of conflict, the manner in which these densities occur can either create *** conflict or reduce [it]."* (emphasis added)

B. Goal 4

Staff's position that parcel size alone is determinative of compliance with overall density is contrary to RCP Goal 4 Forestland Policy 15. SWPG 4 was addressed and adopted into RCP Goal 4, which is implemented by LC 16.210 and LC 16.211. The RCP and Chapter 16 have been acknowledged by LCDC as being consistent with all statewide planning Goals. Thus, it has been found that RCP Goal 4 is consistent with RCP Goal 5, and visa versa. If fact, this coordination between RCP Goal 4 and RCP Goal 5 is found throughout the Goal 5 working papers.

Policy 15 of RCP Goal 4 divides all forestlands in Lane County into two zoning districts: F-1 and F-2. Exhibit L. Per OAR 660-06-026, minimum lot size in both zones is 80-acres. Per LC 16.210 and LC 16.211, new dwellings are only allowed in the F-2 zone. Policy 15 anticipates dwellings on parcels less than 80 acres. In fact, Policy 15 encourages dwellings on parcels less than 80 acres[1].

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[1] *Policy 15. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:*

a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

b. Non-impacted Forest Land Zone (F-1,RCP) Characteristics:

(1) Predominantly ownerships not developed by residences or non-forest uses.

(2) Predominantly contiguous, ownerships of 80 acres or larger in size.

(3) Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.

(4) Accessed by arterial roads or roads intended primarily for forest management.

(5) Primarily under commercial forest management.

c. Impacted Forest Land Zone (F-2, RCP) Characteristics

(1) Predominantly ownerships developed by residences or non-forest uses.

(2) Predominantly ownerships 80 acres or less in size.

(3) Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

> *Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon *** a conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone.*

A defining characteristic is whether the land is 80 acres or larger in size. If the land is larger than 80-acres in size (conforming to minimum lot size), it is weighted toward F-1 zoning under Policy 15.b.2. New residential development is prohibited on F-1 land. If the land is less than 80 acres in size (nonconforming to minimum lot size), it is weighted toward F-2 zoning under Policy 15.c.2. New residential development is allowed on F-2 land. As such, the county specifically intended to allow residential development on lands that were less than 80 acres in size. This policy choice was acknowledged by LCDC as being consistent with all statewide planning goals, including Goal 5 Big Game. This coordination is reflected in the RCP working papers. Exhibit O.

C. Text and context

Staff argues that "*a lot size denominator is the most reasonable measure of compliance *** with consideration of the text and context.*"

First, staff points to *Nimpkish*. However, as addressed previously, the question before LUBA was whether Policy 11 applied directly, not what Policy 11 means. *Nimpkish* is not helpful because the issue at hand was not briefed or squarely in front of the Board. *Nimpkish* is addressed in more detail under Section II, below.

Second, staff cites the working papers, but ignores the term, "overall." This is a fatal flaw. Staff goes on to discuss zoning. The applicant concurs that the working papers do coordinate Goal 4 zoning and Goal 5 protection. See my point above, which establishes that subject property lot size cannot be the basis for the density analysis. In her footnote (i), staff cites page 24 of the working paper, which includes the word "overall." Then she quotes a paragraph that was deleted from working paper. See Working Paper Addendum, page 14. Exhibit O. In a unique twist, staff appears to argue here what the Intervenor argued in *Nimpkish* … and lost.

It is unclear what staff's footnote (ii) is intended to show. All of the Big Game issues noted were resolved. See Order to Comply, page 75, item 2.d., which was further addressed on the 9/12/84 acknowledgment order, page 25, item 2.d. Exhibit Q and S. Again, it appears staff is arguing that *Nimpkish* was decided incorrectly, and that the County adopted protections into the zoning districts. While I concur, that is not helpful here.

---

(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

Staff goes on to make the 'absurd result' argument, couched in the term "reasonable." As the hearing official has noted in previous decisions, LUBA disfavors the 'absurd result' argument. Further, the applicant's position does not result in an absurd result. While it is true that theoretically many dwellings can be approved before the ODFW overall density is exceeded, the reality is that much of that land is zoned F-1, can never be developed, and is preserved in posterity as Big Game habitat. Exhibit M. There is limited F-2 land available in the Major Big Game area, Exhibit M, and not all that land can meet the template test. Thus, only some of the land zoned F-2 is available for residential development. The end result is that, regardless of overall density, only a small portion of land within the Major Big Game range will be available for development. Staff and LW's "absurd result" arguments are akin to the boy crying wolf.

Staff cites *Wetherell v. Douglas County* (*Conway*) to support her interpretation. However, *Conway* is distinguishable. In *Conway*, LUBA concedes that the subject property is not necessarily the denominator that must be applied. LUBA's denial is based on the precise language of LUDO 3.32.300, which imposes a "density of 1 dwelling unit per 40 acres" and ORS 197.467. That is not the case here. First, there is no Big Game density requirement in either the F-1, F-2 or EFU zone. There is no Big Game zone. Here, a plan policy is being applied. Second, the density requirement is an "overall" density. The code language in *Conway* does not include this broader term. Finally, ORS 197.467 does not apply to template dwellings. In short, *Conway* is a different application in a different county with different underly code and plan requirements. It has no value in the interpretation needed here. Here, the Hearings Official must give weight to the term "overall."

D. ODFW interpretation

Staff's position that parcel size alone is determinative of compliance with overall density is contrary to ODFW interpretation. As discussed throughout this letter, ODFW's intent to based analysis on "overall density" is found in Policy 11 and throughout the RCP and supporting documents. Further, there appears to have been no ODFW objection to RCP Policy 15 of Goal 4 pushing development onto parcels less than 80 acres, or to Goal 3 policies. Even on a case-by-case basis, ODFW concedes that the analysis includes more than the subject property, though how much more remains undetermined. See 2017 ODFW letter submitted by Landwatch discussed further below.

II. Landwatch Letter of March 18

A. Nimpkish and "overall density"

Landwatch applies *Nimpkish* too broadly. Landwatch claims that in *Nimpkish,* LUBA makes the ultimate decision that the analysis scope is the subject property. That is not true. The question of what Policy 11 meant was not before LUBA. It was not briefed. The question of what "overall" means is not discussed.

Landwatch claims that "overall" must be excluded from the analysis because 'LUBA said so.' Landwatch is taking LUBA's determination out of context. The term "overall density" is used throughout the working papers. It is the ODFW standard that the County was attempting to comply with throughout the acknowledgment process. That LUBA found that the process for meeting the standard was not done, does not change the standard itself. In fact, throughout the decision, LUBA makes clear that the county continues to have the burden to meet "densities recommended by ODFW."

> *"Rather, the second sentence of RCP Goal 5 *** remains operative, and it provides that any density above [the ODFW recommended density] limit shall be considered to conflict."*

LUBA goes on to clarify that its objection to the first sentence of Policy 11 relates to the "zoning areas that were never completed." It does not relate to the standard articulated in the sentence, "overall density," which is supported throughout the record. Examples include:

> RCP Policy 11: *"[ODFW] recommendations on <u>overall</u> residential density ***. Any density above <u>that</u> limit shall *** conflict."* Emphasis added.
>
> F&F Working Paper, Big Game Range, page 24, *"The primary conflict to big game *** is residential use at certain densities. ODFW has recommended <u>overall</u> residential densities *** for Major Big Game at one dwelling unit per 80 acres. Therefore, to restate the conflict: <u>overall</u> residential density greater than *** one dwelling unit/80 acres in Major Range conflicts with habitat for big game."* See additional supporting language on pages 24-25.
>
> November 1983 Addendum to F&F working paper, page 14, *"***<u>overall</u> densities are important indicators of conflict."*

In short, LUBA did not make a determination that ODFW's overall density recommendation was no longer applicable. In fact, the opposite is true.

B. <u>*Nimpkish* in general</u>

Landwatch's reliance on *Nimpkish* is risky, as LUBA failed to consider some key information. The RCP Flora and Fauna Working Paper, Big Game section, pages 24-25 *"outline procedures to be used for implementation of the ODFW density recommendations of big game ranges."* Exhibit N. Those procedures are outlined in the last paragraph of page 24, and the following paragraphs on page 25. Within those paragraphs lies the concept of dividing the county into regions and determining a carrying capacity. Exhibit N. However, those paragraphs were deleted in the 1983 Addendum to the F&F Working Paper, page 14. Exhibit O. New language was added to address *"overall density."* This new language included clustering and siting

standards. It also included coordination between Goal 3, Goal 4 and Goal 5. Additional language was added at page 17[2].

The February 1984 adopted RCP policies includes the updated Policy 11 language. Exhibit P.

The July 19, 1984 acknowledgement report identifies ODFW's and 1000 Friends' objections. Exhibit Q, page 35-36. LCDC's response to these objections are found on page 39. LCDC's instructions to Lane County state,

> *"d. Amend the F-2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portion of those zones, or contain clustering requirements in those areas." (Emphasis added).* At p. 75.

This is an "or" requirement intended to ensure that no conflict would occur.

The August 17, 1984 DLCD report notes that item d remains. Exhibit R.

The September 12, 1984 Acknowledgement Order addresses d. Exhibit S. The Order restates the deficiency, explains what the County did to address the deficiency, and finds that the issue was resolved. Pgs 25-26.

To address the 2.d. deficiency, the county seized on the "or" language of the LCDC's recommendation. The county decided that rather than increasing minimum lot size, it would adopt siting standards. LCDC found that the adoption of the siting standards addressed Big Game concerns regardless of minimum lot size. This history is set out in memorandum to Lane County Hearings Official Gary Darnielle, dated September 11, 1986. Exhibit T.

The siting requirements were adopted into the Lane code and remain there. As such, Policy 11 does not apply directly, because by complying with LC 16.211, no conflict exists.

C. Alternate mapping

The map submitted by Landwatch is in error. The lands that Landwatch attempts to exclude are designated Major Big Game. See previously submitted maps. As such, they cannot be excluded from the analysis regardless of zoning, or lack thereof. If the County had intended to exclude Federal Land from Major Big Game consideration, they would not have designated them as such.

Further, even if there was some basis for excluding Federal Lands, the data provided by Landwatch establishes a density of 1 dwelling per 390 acres. Per the RCP, no conflict occurs, and no ESEE analysis is required.

D. ODFW letter

[2] What is now Policy 11, was then Policy 12. See page 19 of Addendum.

Landwatch includes a 2017 letter from ODFW district wildlife biologist Brian Wolfer relating to a Plan Amendment/Zone Change. It is unclear how this letter is useful, other than to support the applicant's position. It does not discuss Policy 11, it misquotes the density requirement by leaving out the term "overall," and it relates to Peripheral Big Game. Further, it uses the phrases, "I think" and "I believe," and provides no authority for the statements contained within. And finally, the entire letter is a recommendation. See last sentence. This is an opinion letter by a local employee for a specific proposal. However, the letter does concede that the subject property is not analysis denominator, and support the applicant's position that the analysis must go beyond the subject property.

III. Conclusion

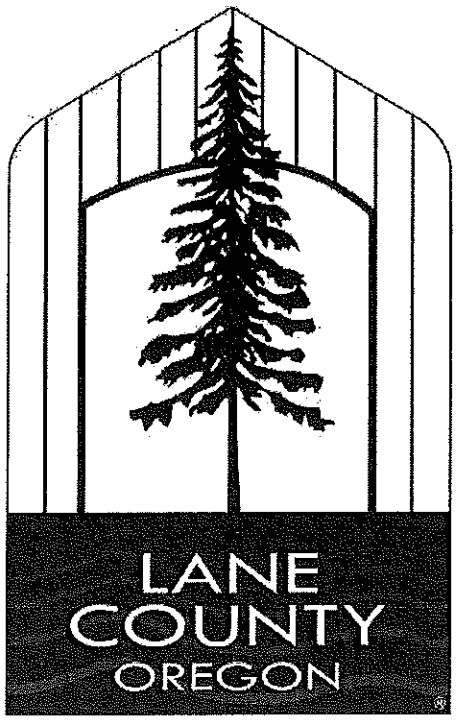
Resolution requires a simple *PGE* analysis. The first step in *PGE* is to determine whether ambiguity exists. Potentially, the word "overall" is ambiguous. However, per plain language, "overall" means something beyond the subject property. Subject property is the only interpretation Landwatch and Staff are offering. Staff's and Landwatch's position that the lot size of each parcel is the end-all and be-all of the density analysis is indefeasible based on the working paper, Policy 11, and even ODFW's comment.

The applicant has provided the only interpretation that honors the ordinary meaning of all the language. There is support for the applicant's interpretation in early versions of the RCP working papers and in old county documents. There is no evidence to the contrary.

Sincerely,
/s/ *Kimberly JR O'Dea*
Kimberly J.R. O'Dea

Exhibits:

L: RCP Goal 4 (excerpt)
M: LCOG F-1/F-2/Major Big Game report and mapping
N: F&F Working Paper (excerpt)
O: Addendum to F&F Working Paper (excerpt)
P: 1984 RCP Goal 5 policies (excerpt)
Q: LCDC Report dated July 19, 1984 (excerpt)
R: LCDC Memo dated August 17, 1984
S: LCDC Acknowledgment Order dated September 12, 1984 (excerpt)
T: Memo from staff to Gary Darnielle dated September 11, 1986



Excerpt
Intro Material
Goal 4

LANE COUNTY

RURAL COMPREHENSIVE PLAN

GENERAL PLAN POLICIES 1984

UPDATED:
January 1998
April 2003
August 2003
December 2003
February 2004
January 2005
June 2005

EXHIBIT L

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PART 1: INTRODUCTORY MATERIAL

A. INTRODUCTION TO THE RURAL COMPREHENSIVE PLAN

The Lane County Rural Comprehensive Plan applies to all unincorporated lands within the County beyond the Urban Growth Boundaries of incorporated cities in the County and beyond the boundary of the Eugene-Springfield Metropolitan Area Plan. Where these lands are beyond County jurisdiction (such as National Forest lands), the Plan applies but its application is regulated by federal law. In addition, it does contain provisions and representations of County positions on various issues, to be used by those agencies, such as the US Forest Service, in their own management actions, and also used in the event that lands not in County jurisdiction enter County jurisdiction.

The Plan follows the format of the LCDC Statewide Planning Goals, recognizing that they must be met by all local jurisdictions in Oregon. It is composed of two major elements:

1. County General Plan Policies: For each LCDC Goal, there are one or more Policies to be applied by the County toward land use and other planning and resource-management issues, in the interests of compliance with sound planning principles and statewide planning law. Policies are binding commitments, but will be carried out within established work programs and over all County priorities. The application of Policies which call for any programs or studies will occur as County resources in terms of both staff and budgetary allocations permit.

2. Plan Diagrams: Two major planning regions are identified for Lane County--the Coastal Region and the Inland Region. For each, detailed representations of land use are depicted on maps, on Plan Diagrams. Land use regulation methods, such as zoning, are applied to carry out the intent of the designations. The application of the general plan is primarily through zoning. In fact planning and zoning designations are set forth on the same map.

Chart One diagrams the relationship of these elements, and also indicates relationships with other portions of the County Comprehensive Plan.

The document now before the reader is one of the two above components--the County General Plan Policies document. The Policies document is the broad, direction-setting portion of the Plan, and lays out approaches for interpretation of County planning needs and means of complying with State of Oregon planning law. This law attaches great importance to local jurisdictions having adopted comprehensive plans which in turn meet the requirements of Statewide Planning Goals. Accordingly, matters of interpretation concerning the General Plan are to be resolved in favor of compliance with these Goals, and the Plan itself shall be recognized as representing the County's best effort in meeting the requirements of LCDC and its policy expressions, including Goals.

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CHART ONE

COMPREHENSIVE PLAN FOR LANE COUNTY
(includes all adopted general and detailed plans)

EUGENE-SPRINGFIELD METROPOLITAN AREA PLAN
(Includes all land within plan boundaries)

SMALL AREA PLANS
EXAMPLE:

NORTH SPRINGFIELD

SPECIAL PURPOSE PLANS

EXAMPLES:
-METRO BIKE PLAN
T-2000 TRANPORTATION PLAN

PLANS FOR SMALL INCORPORATED CITIES
(Areas within Urban Growth Boundaries but outside City Limits)

COTTAGE GOVE
CRESWELL
OAKRIDGE
WESTFIR
PLAN
LOWELL
COBURG
JUNCTION CITY
VENETA
FLORENCE
DUNES CITY

LANE COUNTY GENERAL PLAN
(Includes all unincorporated lands beyond Metropolitan Plan Boundary and Small City Urban Growth Boundaries)
-PLAN POLICIES
-COASTAL PLAN DIAGRAM
-INLAND PLAN DIAGRAM

SINGLE PURPOSE PLAN
(May include both metro, rural and small city areas)

EXAMPLES:
-SOLID WASTE MANAGEMENT PLAN
-PARKS AND OPEN SPACE PLAN
-COASTAL RESOURCES MANAGEMENT PLAN

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B. INTRODUCTION TO THE COUNTY POLICIES COMPONENT OF THE GENERAL PLAN

County Policies are broad, somewhat generalized statements that provide direction to County decision makers in their efforts to choose between competing uses for given resources, and in their efforts to solve historic problems and prevent new ones from occurring. The Policies cover complex topics and lay the groundwork for future actions of various kinds. The Policies expressed here apply to rural Lane County, outside of the Urban Growth Boundaries of cities and beyond the Plan Diagram Boundary of the Eugene-Springfield Metropolitan Area General Plan. They are designed to be compatible with similar Policies--and planning efforts--of other governmental jurisdictions in the County.

In some respects, the Policies can be considered the basis of the County plan, in that they provide the lead, or the general direction, for subsequent County actions to deal with various land use and resource management decisions. In doing so, they are directly intended to fulfill the mandate of the LCDC statewide planning Goals.

Four statewide planning Goals are not addressed in this document: the four "Coastal Goals" (LCDC Goals 16-19). These, and Policies connected with them, are located in a special-purpose Coastal Resource Management Plan developed and adopted for use in the Coastal portion of the County. They should be used in concert with the "basic fifteen" Goals. Since they are special-purpose in nature, and deal more specifically with particular concerns of the Coastal area, conflicts may arise or be generated between the Coastal Policies and the "basic fifteen" and should be resolved in favor of the Coastal Policies until, and if one or the other conflicting statement is changed to eliminate the conflict.

The Willamette Greenway Goal is considered to be part of the "basic fifteen".

C. HISTORY OF THE POLICIES DOCUMENT

The Policies contained in this document were developed during a period of more than a year, beginning in early 1983. A process was devised at the beginning of the period to utilize existing working papers and to prepare a series of new working papers which, along with other sources, were to serve as the technical data based for the Policies. The Working Papers were written and published from mid-1981 to early 1984. Each Working Paper contained information on a given topic or topics, and a number of them contained preliminary Policies which were drawn from the information in the Papers and which were presented for initial discussion purposes.

Hearings were held on the Papers as they were published. Each Planning Commission reported to the Board of County Commissioners containing its reaction to the Paper and draft Policies. Often the Policy statements drew on sources other than the Working Papers--existing County Plan information (such as special-purpose plans or technical studies),comments or testimony of individuals or groups appearing at the hearings, the judgment and views of Planning Commission members and so on--and so represented a broad array of perspectives and attitudes. Each Planning Commission Report cited information used in Policy development, in order to provide a firm basis for Policy use. The background information, including the Working Papers, is to be used to help interpret and understand General Plan

approaches but is not itself designed to be adopted as legislative law. The Board formally adopted the Policies in February of 1984.

D. CITIES, COMMUNITIES AND RURAL LANDS

While the Policies in this document are directed at Lane County government, it is clearly recognized that the County has a responsibility to, and must coordinate efforts closely with, the incorporated cities within its boundaries. Statewide planning law requires that each incorporated city develop and adopt its own land use plan which must itself comply with LCDC Goals. The plan must contain essentially the same elements as the County General Plan, with an additional element of an identified Urban Growth Boundary (required by Goal 14). Future urban growth for each city is to take place within that Boundary. In the case of the Eugene-Springfield Metropolitan Area Plan, a mutual Boundary is adopted by both cities and the County. For all other cities, the County must ratify the cities UGBs by independent evaluation of, and adoption of, appropriate city plan provisions.

Through this method, the County becomes responsible for administering the provisions of city plans within the city UGBs but outside of the corporate city limits. "Joint Agreements for Planning Coordination" drawn up between the County and each city lay the framework for cooperative action in the effort. Policies concerning Goal 14 in this document further indicate County" posture toward city plans. County adoption of city plans--or amendments thereto--ensures that conflicts between city plans and County Plan do not readily occur.

Unincorporated communities are treated differently. They are identified as "community" on the Plan Diagrams, but are not given official Urban Growth Boundaries. Instead, the probable limits of growth over the planning period are reflected in the area within the "community" designation. Since lands within these areas are under County jurisdictions, no Joint Agreements are required, but development there must be justified by "committed lands" exceptions.

Areas within rural Lane County qualifying as Exception areas on the basis of pre-committed uses are not necessarily "communities" as such, but do have some of the characteristics of community development--higher densities, for example. These areas are treated much as unincorporated communities are within the General Plan, in that they are solely under the County jurisdiction, and they are provided with specific land use designations and zoning reflective of their characteristics. They are not portrayed, however, with the broad "community" designation in most cases. For purposes of Plan administration, a parcel of land is either within a UGB or designated: community or it is not--the deciding factor is the portrayal on the Plan Diagram. Lands adjacent to such "boundaries are not considered to be within them until and if the boundaries are adjusted to accommodate them.

Finally, lands considered as agricultural, forest or natural resources are lands not within any of the above classifications. These lands include the vast majority of total Lane County acreage, and are under the jurisdiction of the County plus state and federal governments (National Forests). The Statewide Planning Goals and the Policies of this Plan limited substantial rural development. However, it is recognized that such development may occur provided it is consistent with the policies contained in this document.

E. IMPLEMENTATION

As stated earlier, the County Policies are intended to guide actions and decisions. Although the policies have a common feature (i.e., relating to one or more aspects of land use) they cover a broad range of topics and concerns. Because of this wide range, it is not reasonable to assume all policies are to be implemented in the same manner. Visualizing a policy as being in one or more of the following categories will provide a better understanding as to its application.

Advisory Policies

These are statements describing the County's position on a certain topic or issue; generally but not always, relating neither to a subject, nor under the direct jurisdiction of the County. These policies are primarily intended to inform or influence the actions of other parties. They do not have direct influence on the implementation of the General Plan through Plan Map designation, zoning of land or County Regulations.

Examples: "Lane County recommends that no new wilderness areas be designated without a complete analysis of the revenue and employment impacts on Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvests on other public lands."

Commitment Policies

These are statements describing a future action the County intends to undertake. The policies cover a variety of topics including (a) guidance in County operations, procedures and relationships with other agencies, (b) recognition of state and federal requirements, and (c) general direction or intent. Where the County believes the action is necessary to carry out State Planning Goals or the General Plan the commitment will be in a mandatory, binding form (i.e., Lane County shall . . .). Where the action may be desirable, however, not absolutely necessary, the statement may be phrased in a non-mandatory, advisory manner (i.e., Lane County is encouraged to...). As with advisory policies, the commitment policies do not have a direct influence in plan diagram designations or zoning. Actions resulting from the commitment may, however, have a direct influence. Inasmuch as these policies are describing a future action, lack of achievement at any particular point in time due to lack of resources shall not be construed as a failure to carry out the plan.

Examples: "Lane County shall actively support and assist progressive solid waste management efforts. The Lane County Solid Waste Management Plan shall be the primary instrument to affect this policy".

"Lane County is encouraged to investigate and utilize fee acquisition, easements, cluster development, preferential assessment, development rights acquisition and similar techniques to implement these policies."

"Avoidance and/or control of soil erosion shall be a major criterion addressed in all applicable County review procedures."

GOAL 4: FOREST LANDS

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

   Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

2. Forest lands will be segregated into two categories, Non-impacted and Impacted and these categories shall be defined and mapped by the general characteristics specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics.

3. Forest lands that satisfy the requirements of ORS 197.247 may designate as Marginal Lands and such designations shall also made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands ands shall be those allowed by ORS 197.247.

4. Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in the Oregon Forest Practices Act, ORS 527.722.

5. Prohibit residences on Non-Impacted Forest Lands except for the maintenance, repair or replacement of existing residences.

6. Dwellings shall be allowed in the Impacted Forest Land (F-2/RCP) Zone District as provided in OAR 660-06.

7. The minimum land division size for the Non-impacted Forest Lands (F-1/RCP) Zone shall be 80 acres pursuant to OAR 660-06-026(2)(a) except parcels smaller than 80 acres may be authorized for certain uses pursuant to OAR 660-06_026(3) and (4). Area requirements for Impacted Forest Land must be adequate to conserve forest land for impacted farm and forest uses and be consistent with the following criteria:

   (a) Except as provided in subsection (2) below, for the creation of a wood lot for the purpose of the propagation or harvesting of a forest product, the minimum area shall be at least 20 acres, and that which is consistent with the Douglas fir cubic foot site indexes and minimum area computations promulgated by the Oregon Department of Forestry and specified below, and additional area to accommodate a home site, access and fire breaks, and a logical parcel layout and use of the parcel. There shall be presented for each application sufficient factual documentation to verify that each proposed tract meets the above requirements.

Cubic Foot Site Class	Potential Yield cu.ft./acre/yr	Acreage Minimum
6	20-49 cf/ac	64
5	40-84 cf/ac	43
4	85-119 cf/ac	34
3	120-164 cf/ac	24
2	165-224 cf/ac	17

(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:

(i) Zoned F-2
(ii) Containing at least 160 acres
(iii) For the creation of lots or parcels adjacent to F-1, RCP zoned lands.

(c) Deviation from the standard specified in subsections 7(a) and 7(b) above, for a 40 acre parcel on impacted forest land to be used for farm land may be allowed.

(d) Deviation from the standard specified in subsections 7(a) and 7(b) above, of the impacted forest land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes, or horticultural specialties.

(e) Lot line adjustments consistent with the definition of "divide" in LC 16.090 are permissible.

(f) Parcels smaller than specified in subsections (1)-(4) above may be authorized for certain uses pursuant to OAR 660-06-026(3) and (4).

8. New structures must comply with the Siting and Fire Safety Standards of OAR 660-06-029 and 660-06-035.

9. Recreational activities in the Park and Recreation (PR/RCP) Zone District within resource areas that are outside lands for which a built or committed exception to a Statewide Planning Goal has been taken shall be limited to those uses consistent with Statewide Planning Goals 3 and 4.

10. The effects of a projected shortfall in timber supplies within the near future are of considerable concern to Lane County. The County supports efforts by state and federal agencies in developing plans that will address this situation. The County intends to be an active, committed participant in such plan development.

11. Encourage the consolidation of forest land ownership in order to form larger more viable forest resource units.

12. Encourage the conversion of under-productive forest lands through silvicultural practices and reforestation efforts.

13. Encourage the development of assistance programs, tax laws, educational programs and research that will assist small woodland owners with the management of their forest land.

14. Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal #5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal #5. No other findings, assumptions, goal policy or other planning regulation shall be construed as additional regulation of forest management activities.

15. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

b. Non-impacted Forest Land Zone (F-1,RCP) Characteristics:

(1) Predominantly ownerships not developed by residences or non-forest uses.

(2) Predominantly contiguous, ownerships of 80 acres or larger in size.

(3) Predominantly ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.

(4) Accessed by arterial roads or roads intended primarily for forest management.

(5) Primarily under commercial forest management.

c. Impacted Forest Land Zone (F-2, RCP) Characteristics

(1) Predominantly ownerships developed by residences or non-forest uses.

(2) Predominantly ownerships 80 acres or less in size.

(3) Ownerships generally contiguous to tracts containing less then 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

March 31, 2021

F1 & F2 Land within Major Big Game Range in Lane County RCP

I. OBJECTIVES AND PROCESS

There were two objectives for the analysis:

1. Determine the acreage of land zoned Non-Impacted Forest (F1) within the Major Big Game Range and in Lane County's Rural Comprehensive Plan, but outside of the Metro Plan, UGB's and Developed and Committed Areas.
2. Determine the acreage of land zoned Impacted Forest (F2) within the Major Big Game Range and in Lane County's Rural Comprehensive Plan, but outside of the Metro Plan, UGB's and Developed and Committed Areas.

ESRI GIS software and geoprocessing tools in combination with various data (see sources below) was used to perform the analysis, which included filtering specific data both spatially and tabularly.

The acreage within the study area was calculated from the digitized boundary layers of the Major Big Game Range & Lane County Zoning. All non F1 and F2 areas we filtered out, and then areas outside of the Major Big Game Range and exclusion area were removed.

Spatial and tabular filters were applied to the Lane County's Rural Plan Designation layer, specifically, those designated Residential, Commercial, or Industrial. All lands that have a plan designation of R, C or I that are outside of UGB's and the Metro Plan boundary by necessity must be within a Developed and Committed Lands Exception (D&C) Area to receive that Plan designation. All areas within a D&C Area are considered Impacted Big Game Range (per Lane County RCP Goal 5 Flora and Fauna Policy #10) and not Major Big Game Range. Therefore, any of the D&C areas that lie within the digitized boundary layer of the Major Big Game Range were excluded from the calculation. Since there is no specific digitized layer for D&C areas outside of the Metro Plan, the only way to identify and exclude these lands was to utilize the Rural Plan Designation layer.

II. ANALYSIS

The above analysis was performed for the area within Lane County as mapped on Map 1.

Background Analysis Results (acreage values are as mapped):

EXHIBIT M

Total Acres (land & water) in Lane County = 2,955,953
Major Big Game Range in Lane County (outside of exclusion areas) = 2,596,120 acres

Map 1:
Land zoned F1 within Major Big Game Habitat Area and outside of exclusion areas = 2,386,627 acres
Land zoned F2 within Major Big Game Habitat Area and outside of exclusion areas = 106,945 acres

III. EXHIBITS

Map 1: Map of F1 & F2 zoning specific to the Major Big Game Range within Lane County.

IV. DATA SOURCES

Lane County-

- Major Big Game Range Habitat Area
- Rural Plan Designations
- Zoning

Lane Council of Governments (LCOG)-

- Addresses
- Eugene/Springfield Metro Plan Boundary
- Lane County Boundary

State of Oregon-

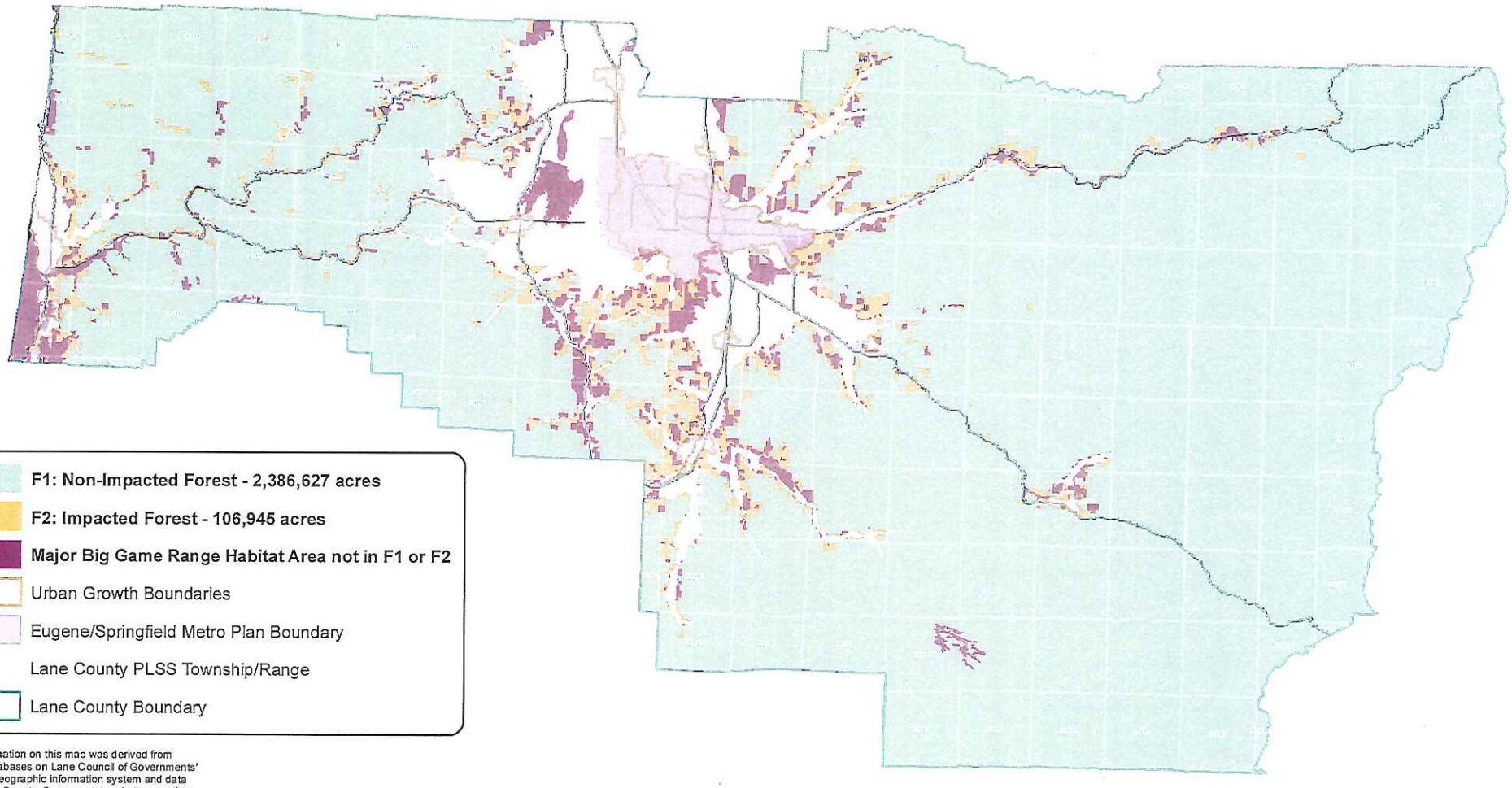
- Urban Growth Boundaries
- PLSS Township/Range

---All data except for the analysis output can be verified here:
https://lcmaps.lanecounty.org/LaneCountyMaps/ZoneAndPlanMapsApp/index.html

Created on 03/31/2021 by: Kyle Overstake – GIS Associate, Lane Council of Governments

The information in this report was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the analysis and creation of the report, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions in results and/or underlying records. There are no warranties, expressed or implied, accompanying this product.

F1 & F2 Land within Major Big Game Range in Lane County RCP



The information on this map was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the creation of this map, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, expressed or implied, accompanying this product.

LCOG
Lane Council of Governments
859 Willamette St., Suite 500
Eugene, Oregon 97401-2910

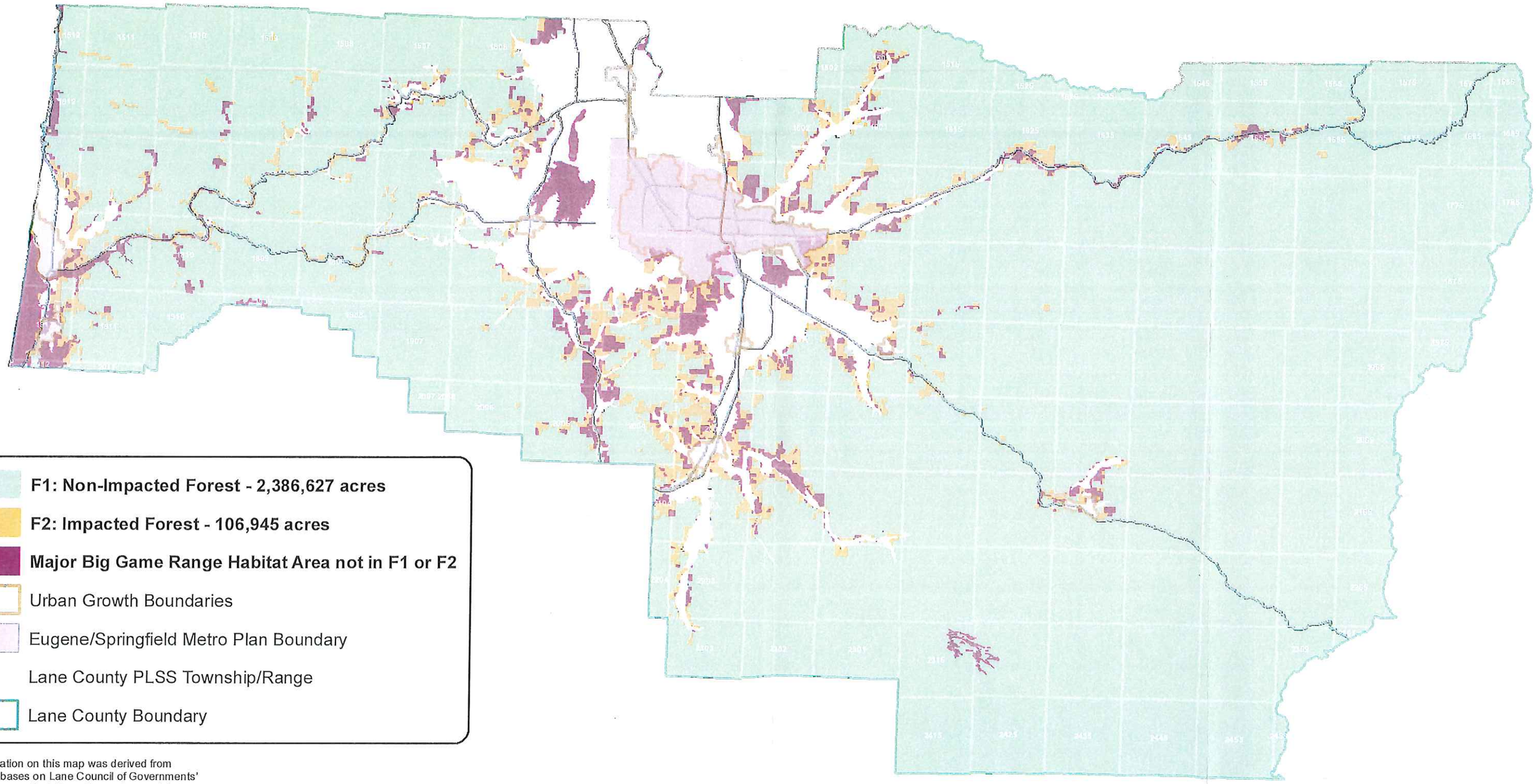
N

0 3 6 12 Miles

Map 1

Printing Date: March 31, 2021

F1 & F2 Land within Major Big Game Range in Lane County RCP



- F1: Non-Impacted Forest - 2,386,627 acres
- F2: Impacted Forest - 106,945 acres
- Major Big Game Range Habitat Area not in F1 or F2
- Urban Growth Boundaries
- Eugene/Springfield Metro Plan Boundary
- Lane County PLSS Township/Range
- Lane County Boundary

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Lane Council of Governments
859 Willamette St., Suite 500
Eugene, Oregon 97401-2910

N

0 3 6 12 Miles

Map 1

Printing Date: March 31, 2021

WORKING PAPER:

Flora & Fauna

DRAFT

MAR ~ 1982
COMPREHENSIVE PLAN REVISION
LANE COUNTY, OREGON

EXHIBIT N

BIG GAME RANGE

LCDC Orders to Comply required implementing measures for the protection and/or resolution of conflicts with Big Game Range. The County must clarify the types of uses which conflict with big game habitat, and would therefore be reviewable by the County under any implementing measures developed. The primary conflicting use mentioned by LCDC is residential use at certain densities.

Location. The Oregon Department of Fish and Wildlife (ODFW) has divided big game range in Lane County into three categories as follows:

Major Big Game Range - That portion of the County which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.

Peripheral Big Game Range - Foothill areas of the County generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals in severe winters.

Impacted Big Game Range - Those areas of the County that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

These areas are mapped on Lane County Wildlife Inventory maps. As a general depiction, Major Big Game Range occurs on federal lands, large timber company holdings, and some private lands which are sparsely developed. Peripheral Big Game Range encompasses primarily foothills and smaller valleys. Impacted Range includes cultivated fields and developed areas, often on valley floors.

Because of the large amount of undeveloped timberland in Lane County, the majority of the County is Major Big Game Range. But, due to scattered ownership patterns, many areas within the Major Range are small, private parcels. Peripheral Range often falls along small valley floors which are privately owned and often fairly extensively developed. For example, most of the Fall Creek, Mohawk and Lorane valleys are within Peripheral Range, as well as large tracts of land west of Elmira.

Wildlife Inventory maps have not been included in this Working Paper due to budget constraints, but are available for review in the Planning Department office.

Quality. The majority of big game use occurs on Major Range. This can be considered the highest quality habitat as man's intrusion with developments is the least. Peripheral Range is also important habitat, and can be particularly crucial in severe winters, but has enough development to limit big game use and management options. Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.

000044

One other category of lands should be mentioned here. Outside Urban Growth Boundaries, areas exist which are committed to nonresource use. Exceptions for these areas will be taken as "Built Upon and Committed Lands" and acknowledged by LCDC. These small pockets of development within Major or Peripheral Range are essentially Impacted areas due to their level of use by man. They were not large enough, generally to include on the Big Game maps as Impacted. These areas will be treated as Impacted areas for implementation purposes.

Quantity. Areas of of Major, Peripheral and Impacted Big Game Range have not been computed. Figures for acreage of some other categories of land may be useful, though, for illustrative purposes.

Total amount of land in Lane County	2,959,400 acres
Commercial forest land (primarily Major Range)	1,813,228 acres
Other public lands (primarily Major Range, some Peripheral Range)	735,112 acres
Farms (primarily Impacted Range)	255,712 acres

Over 61 percent of the County is considered commercial forest land, a category with essentially no residential development. Including other public lands, such as the Dunes National Recreation Area, Oregon State lands, Corps of Engineers lands and County parks, approximately 85 percent of the County is not available for residential use. A good portion of the remaining acreage is farmland, a category very difficult to justify as available for residential use, but also not prime big game habitat.

Conflict Identification

The clearing of natural vegetation for agricultural purposes decreases an area's habitat value for big game. But since important, existing agricultural lands are already considered Impacted Big Game Range, this is not an issue now. Impacted Range has essentially been "written off" for big game management.

Management of land for timber production does not conflict with big game habitat. With proper forest management techniques, big game habitat can be significantly enhanced. The forage provided to deer and elk in clear-cut areas is very important, but the combination of areas in various successional stages is probably the vital factor in enhancing numbers of deer and elk. Lands zoned for the primary purpose of timber production are subject to the requirements of the Oregon Forest Practices Act. For our purposes, timber harvesting activities do not constitute a conflict to Big Game Range.

The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.

The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning

DELETED BY ADDENDUM

by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.

The County will be divided into regions convenient for planning purposes. These have not yet been determined, but will probably result in 10-20 regions in the County.

Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.

Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process.

As a final note regarding residences in Big Game Range, damage to landscaping and gardens is a common problem around these residences. For new residential building permits within Major and Peripheral Range, the applicant will be notified that compatibility problems with big game may exist.

Several recommendations in the Policies Section of this Working Paper relate to the method the County will use to protect Big Game Range.

DELETED BY ADDENDUM

000046

ADDENDUM TO WORKING PAPER:

FLORA & FAUNA

November, 1983

EXHIBIT O

J. DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place:

Although this is a useful index, officials of the ODFW stress the fact that a mere "numbers game" is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.

A prime example is that of "clustering" dwelling units in Peripheral or Major Range areas -- siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.

— siting standards

The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirments of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.

= Coordination between Goals 3, 4 + 5

Within Developed and Committed areas, ODFW officials are examining the utility of continuing to designate some of these lands as either Peripheral or Major Range. Developed and Committed areas should be considered as Impacted, and conflicting uses permitted.

The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenence.

Policies concerning this issue are proposed in the concluding section of this Working Paper.

6. To existing Policies 10 and 11, add the following words (underlined):

"...the 1982 Lane County Working Paper on Flora and Fauna, as revised and updated in 1983...."

7. Add to existing Policy 12 the following statement:

"The County shall work with ODFW officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program."

8. Add a new Policy 14 as follows:

"14. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met."

Existing (December 1982) Policies are duplicated on the following two pages of this document. They do not include the changes proposed above.

III. Conclusion and Necessary Action

The preceding pages of material is intended to meet LCDC requirements and thereby assist the County in complying with statewide planning Goal 5 requirements. It is recommended that the Planning Commissions and the Board of County Commissioners

- Receive the material and review it as technical supportive data,
- Consider the proposed Policy revisions in light of the new data,
- Carry the proposed Policy revisions -- or modified versions thereof -- forward to public hearings and adoption as amendments to the General Plan Policies document.

Ordinance language intended to implement the Policy proposals is now being prepared and will be brought before the Planning Commissons and Board as a part of the Lane Code revision effort. Changes to the Policies will possibly require parallel changes to the proposed ordinance language.

###

EXISTING FLORA AND FAUNA POLICIES from GENERAL PLAN POLICIES Document....

Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County is encouraged to investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and shall be a consideration in Special Use Permits and Zone Changes.

7. Because of the inadequate inventory in Lane County, freshwater wetlands are being placed in a 1B category (insufficient data existing, per Goal 5 requirements, to decide on preserving the resource or not). When National Wetland Inventory (or equivalent) maps are available for all private lands in the County, these wetlands will be evaluated for quality and quantity as per the Goal 5 administrative rule (OAR 660-16-000). If the wetlands are determined to be significant, they will be evaluated against the rule's standardized set of ESEE (Environmental-Special-Economic-Energy) factors and conflict resolution proposed. This action will take place within one plan update period after the maps are available.

8. Lane County shall rely on the Oregon Forest Practices Act for protection of wildlife habitats and areas on lands zoned for the primary use of commercial growing and harvesting of forest tree species. Such habitats and areas shall include sensitive fish and waterfowl areas, riparian vegetation, wetlands areas, and big game ranges.

9. Sensitive Fish and Waterfowl Areas, as identified in the 1982 Lane County Working Paper on Flora and Fauna, are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

10. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

11. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna.

12. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.

How Policy Read prior to previous page Recommendations

13. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

Lane County
Rural Comprehensive Plan
Policies Document
Adopted February, 1984

EXHIBIT P

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora an Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

REFLECTS ADDITIONAL LANGUAGE FROM ADDENDUM

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan
Goal 2--Nonresource Lands, Goal 5, Goal 15

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:
August 17, 1984

REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow amendments to the plan to comply with Statewide Planning Goals 2, 5, and 15. The Commission should hear testimony on these issues July 19, 1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the Eugene/Springfield Metro Area General Plan under Goals 2, 5, and 15. The Commission should not take final action on this until the August Commission hearing.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Mike Rupp (Goals 2--Nonresource Lands
Claire Puchy (Goals 5 and 15)
Phone: 378-4926

COORDINATOR: Gary Darnielle
Phone: 687-4283

Date of Report: July 19, 1984

EXHIBIT Q

Nevertheless, the County has decided to allow small sites in its F-1 and F-2 Zones conditionally. Larger sites will require plan amendments, along with application of the Goal 5 Rule, exceptions to appropriate goals and possible development and application of a special zone. The County has adopted a policy commitment to this effect. In the meantime, resource zoning will help prevent potential sites from being lost to other uses. (See, however, the Goal 4 section of this report for a discussion of problems with the F-2 Zone.)

* Pre-existing. Please Highlight. ignore.

Fish and Wildlife Areas and Habitats

Inventory

Information about Lane County's fish and wildlife resources is contained in its Flora and Fauna Working Paper and the addendum to that working paper. Pages 5-10 describe in general each of the 11 major habitat types in the County, along with a discussion of the value of the habitat type to wildlife, and general location of each habitat type. These include:

1. Estuary and Bay
2. Inland Marsh
3. Wet Meadows
4. Lakes and Reservoirs
5. Riparian Vegetation
6. Annual and Perennial Grasslands
7. Coastal Shore Pine/Spruce
8. Douglas Fir/Trailing Blackberry
9. True Fir/Alpine
10. Deciduous Hardwoods
11. Agricultural Lands.

The County prefaces this material by stating that this information "is not considered an inventory and is not accompanied by maps. It is intended merely as background information."

The Working Paper and its addendum contain special sections addressing endangered, threatened, and special concern species, riparian and wetland areas, sensitive fish and waterfowl areas, and big game range. These are discussed separately below.

Endangered, Threatened and Special Concern Species: The Working Paper lists plants and animals which are threatened, endangered, or of special interest (pp. 11-12). Further information is provided for six of these species--northern spotted owl, northern bald eagle, wolverine, silverspot

butterfly, western snowy plover, and American osprey (pp. 12-13). This information does not provide location, quality, or quantity information on any specific habitat areas or sites. However, the County indicates that:

1. No spotted owl or bald eagle nests are known to occur on private property;

2. Wolverine habitat is in high elevation, remote areas and therefore in federal ownership;

3. Snowy plover habitat is within state jurisdiction.

4. Osprey nests are found throughout the County, although not in great numbers. The County indicates the ODFW maps show their locations, but these maps have not been adopted or submitted for review.

5. Silverspot butterfly habitat is found only "along a small section of the Oregon Coast." It is recognized in the Coastal Resource Management Plan of Lane County.

Lane County has indicated that Silverspot butterfly habitat occurs on federal land adjacent to the Big Creek (Reneghan) Exception Area as well as on the Renaghan property itself (Exhibit E--Renaghan Amendment, pp. 27, 31). It should be noted that the Exception document contains one statement (Finding 37e) on page 27 which appears to contradict this. Specifically, finding 37e states there are no sensitive species on the property, and that the Silverspot butterfly habitat is located on adjacent federal land only. The Exception document contains several other statements indicating that such habitat occurs in the northwest corner of the property.

The County provides no information at all regarding great blue heron rookeries or pigeon mineral springs, which are considered sensitive bird habitat areas by the Department of Fish and Wildlife. (The exception to this is for two rookeries in the Willamette Greenway. They are addressed in the Goal 15 section of this report.) The inventory of sensitive bird sites developed by ODFW and provided to the Department of Forestry (DOF) as part of a recent management agreement between those agencies, identifies 15 great blue heron rookeries, 21 osprey nest sites, three pigeon mineral springs, and at least one bald eagle nest site in Lane County, most of which are on nonfederal land. According to Flora and Fauna Policy 15, "currently known pigeon springs, heron and raptor (hawk, osprey, and eagle) nest sites. . . shall be placed in a '1B' category."

Pre-existing Highlight. Please ignore.

Riparian and Wetland Areas: Riparian lands are defined by the County as all lands along both banks of Class I streams in Lane County, to a setback line of 100 feet from ordinary high water (Addendum, p. 7).

The County indicates in its Flora and Fauna Working Paper (p. 16) that all lakes, reservoirs, and Class I streams in Lane County have been mapped, but were not included because of budgetary limitations. They are

available in the Planning Department offices. The Addendum to the Working Paper (p. 6) states that ODFW has provided maps of all Class I streams, as well as major significant wetland areas. Detailed maps are available for review in County offices, and a generalized summary map is included in the Addendum (p. 20).

The Flora and Fauna Working Paper discusses the values associated with wetlands and riparian areas for both fish and other wildlife types (pp. 14-15). The County notes that the U.S. Fish and Wildlife Service has identified a number of wetland types in its National Wetland Inventory. Currently, about half of the County has been mapped, enabling identification of major wetlands. These include:

1. Fern Ridge periphery, exclusive of parkland;

2. Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel;

3. North Fork Siuslaw fresh-water marsh;

4. Maple Creek marsh;

5. Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

The County indicates that these areas are mapped in detail on the Plan Diagram maps. More specific location, quality, and quantity information for each of these five wetland areas is contained in the Working Paper Addendum (pp. 11-13).

The County has not inventoried a wetland south of Sutton Lake and east of Highway 101, or a Darlingtonia bog east of Florence. As noted in the 1983 Coastal Goals review of Lane County (p. 8), these wetland were to be addressed under Goal 5:

> The County notes there are only two Goal 18 resource areas east of Highway 101 which do not fall within the coastal shorelands boundary. They are two wetland habitat areas identified in the coastal resource inventory maps. The County should note that it will have to adequately address these two areas later under Goal 5 when it brings the remainder of the County plan into compliance.

The Darlingtonia bog is addressed in more detail in the Natural Areas section of this report.

Sensitive Fish and Waterfowl Areas: The County notes that this is a subcategory of the previous section, Riparian and Wetland Areas (p. 20). Maps have been provided the County by ODFW showing important waterfowl nesting habitat and streams that receive high use by anglers and/or game fish (p. 20), but were not submitted for review. A large-scale map is available in the County Planning offices (Addendum, p. 5). A

generalized, small-scale map is included on page 20 of the Addendum which shows the locations of important streams and stream reaches. A list of these specific reaches, by basin, is included in the Addendum (pp. 2-4). All identified areas are of high quality and are considered important (Working Paper, p. 21). The extent of riparian vegetation is described in the previous subsection of this report. The County notes that there are native anadramous fish runs in Big Creek within the Big Creek Exception Area (Exhibit E--Renaghan Amendment, p. 44). These include coho salmon, cutthroat trout and steelhead.

Big Game Range: The County notes that ODFW divides big game range in Lane County into three categories--Major, Peripherial, and Impacted. The Major Range supports the majority of big game and, in general, consists of sparcely developed commercial forest lands. Peripheral Range is generally located on foothill areas between commercial forest lands and valley floors. Peripheral Range supports substantial big game populations and serves as wintering areas for animals in severe winters. Impacted Range consists of those areas that have existing levels of development which preclude future wildlife management options for maintaining viable wildlife populations and recreational opportunity, although they frequently contain big game populations.

All three big game range areas are depicted on Lane County Wildlife Inventory Maps, according to the Flora and Fauna Working Paper (p. 23). However, these maps were not submitted for review because of budget constraints. They are available in the Planning Department Office (p. 23). The Working Paper notes that the highest quality big game range is in the Major Range because development is limited. Peripheral Range is important, but has enough development to limit big game use and managment options. Impacted Range is of the lowest quality because of existing development (p. 23). The County provides acreages for these three categories (p. 24).

The County recognizes major elk habitat on a portion of the Big Creek Exception site (Exhibit E-Renaghan Amendment, p. 52).

Conflicting Uses/ESEE Consequences Analyses

Endangered, Threatened and Special Concern Species: As indicated earlier, Lane County knows of no spotted owl or bald eagle nest sites on private land. Similarly, wolverine habitat is on federal land. The County notes that the State Parks Division of ODOT regulates vehicular uses in snowy plover habitat (Working Paper pp. 12-13). Specific conflicts with osprey nest areas are not identified, but the County notes that protective measures in riparian areas (e.g., Willamette Greenway permit requirements, coastal shorelands overlays, riparian and wetland area provisions) will resolve conflicts (Addendum, p. 15).

The Working Paper indicates that the Coastal Resources Management Plan of Lane County recognizes the Silverspot butterfly and applies a prime wildlife managment unit to its habitat (p. 13). Specific conflicts and ESEE consequences are not discussed in the Working Paper, however.

sensitive. Missing are designations of heron rookeries and pigeon mineral springs. Policy 15 addresses all sensitive species (bald eagle nests, heron rookeries, snowy plover habitat, spotted owl nests, osprey nests and pigeon mineral springs). Further, objectors point out that Policy 15 places these species in a (1B) category. Both ODFW and 1000 Friends indicate that the County possesses inventory information (including recent ODFW updated information) which is sufficient to complete the Goal 5 process for this resource category. ODFW indicates that the location, quality, and quantity information provided the County is similar to that provided to other counties which have completed the Goal 5 process and which have been acknowledged. The League of Women Voters is concerned that two years is too long for these resource sites to be without protection. Most are not in the Greenway, and therefore do not even receive minimal protection.

1000 Friends also objects to the fact that neither Flora and Fauna Policy 2 or 3 provides adequate protection for these sensitive species. Policy 2 simply indicates the County will recognize existing programs that protect species; it does not bind the County to any particular course of action. 1000 Friends believes the County must make an affirmative commitment to protect threatened and endangered fish and wildlife species. Policy 3 also fails to guarantee protection of sensitive species since it requires the County to seek to minimize adverse impacts through County regulations (including zoning). 1000 Friends suggests that present zoning may be construed to "minimize adverse impacts" but this may not necessarily provide adequate protection for particular sites.

1000 Friends also objects to the use of the definition of "sensitive species" used in Policy 3. Objectors believe it is overly general and could be construed by decision-makers to exclude certain species. Objectors believe that County Policy 3 should reference the list of "species of special concern" that appears in the Working Paper, rather than use a vague term in the policy. Similar comments have been filed by Oregon Forest Industries Council.

2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations "if conflicts can be resolved in accordance with OAR 660-16-000." Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.

OBJECTIONS NOTED BY DLCD

3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements

CONT. →

that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting of standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

4. ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal and nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where marginal and nonresource lands are located, and therefore the extent to which they are in game range areas, since the zone map format and resource inventory map formats are not easily comparable. 1000 Friends points out the Goal 5 must be applied whereever Goal 5 resources occur, even in areas designated marginal or nonresource land.

5. ODFW, 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's treatment of the Pudding Creek Heronry. Objectors point out that the County conducted a Goal 5 ESEE consequences analysis, but that inasmuch as the sand and gravel plan and zone designations have been retained on the site, conflicts have not been resolved. Please refer to the Goal 15 section of this report for further details concerning objections to the zoning of this site.

6. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Objectors indicate that the County has not adopted a program that is adequate to protect and/or resolve conflicts with the site under Section (3C) of the Goal 5 Rule. Objectors point out that the 1981 LCDC order for the Eugene/Springfield Metro area include a requirement that the ESEE consequences of designating the island for sand and gravel use must be evaluated in the context of regional aggregate supply and demand. The IOTC further required that if the island were to retain a partial sand and gravel designation, the Metro Area Plan and the Lane Code (Section 10.210) must be amended to require that limited aggregate extraction will minimize the impact on scenic and wildlife values.

EXHIBIT C.41

process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

> Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

Response to objections by DLCD

Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.

Conclusion - Goal 5

Lane County does not comply with Goal 5.

Lane County has compiled inventory information for most Goal 5 resource categories and has made (1A), (1B) and (1C) decisions, based on this information. Conflicting uses for most categories have been analyzed. Based upon this work, the County has made protection/nonprotection decisions and has adopted plan policies and applied several implementing measures to many Goal 5 sites. Most noteworthy of these implementing measures are the County's riparian setback and vegetation maintenance standards, its groundwater protection provisions, and its Natural Resource zone. However, there are a number of deficiencies in the County's Goal 5 element which must be corrected before acknowledgement can be granted. These deficiencies have been summarized in the previous sections of this report.

In order to comply with Goal 5, Lane County and the Cities of Springfield and Eugene must:

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SG which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

2. Fish and Wildlife Habitats:

   a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

   b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation maintenance standards, or (2) incorporate by reference another section of the Lane Code which contains such standards.

   c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.

   e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.(*)

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

i. Carry out Forest Lands Policy 17 (Plan, p. 10) by identifying sites that are considered more important than commercial timber management activities, based on a Goal 5 ESEE consequences analysis, and adopt appropriate implementing measures to protect and/or resolve timber management conflicts with those sites, consistent with that policy.

4. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.(*)

5. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

6. Historic Sites:

a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

7. Oregon Recreation Trails:

a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

EXHIBIT D.1

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

M E M O R A N D U M

August 17, 1984

TO: Land Conservation and Development Commission

FROM: James F. Ross, Director

SUBJECT: ITEM 7.1: LANE COUNTY ACKNOWLEDGMENT REVIEW

TOPICS: Response to Exceptions to the Lane County Acknowledgment Review and Proposed Amendments to the Lane County Acknowledgment Review for Goals 5, 15, and Goal 2 Nonresource Areas.

This memorandum is divided into two parts. Part I includes by Goal topic responses to exceptions filed by objectors to the Lane County Acknowledgment Review. Part II contains by Goal Topic the Department's recommended changes to the Lane County Continuance Report along with the reasons to support those changes.

I. Response to Exceptions

A. Goal 2--"Nonresource" Lands

1. David Hemenway and Paul Mehnert regarding Dillard Highlands Second Addition

Mr. Hemenway indicates that some errors are contained within the Department's Report discussing Dillard Highlands' Second Addition. We concur with Mr. Hemenway regarding objections 1 (page 112 of the Department's report), 2 (page 113), and 4 (page 115). Corrections to the Department's report for the objections discussed above are contained in Part II of this memorandum. We disagree with Mr. Hemenway regarding objections 3 and 5.

Objection 3 claims that the Department's report is incorrect because the "County's" soils investigation report, quoted by the Department, is inaccurate. The Department is unable to reconcile the factual inconsistencies contained within the County's findings for Dillard Highlands' Second Addition.

EXHIBIT R

The two sets of soils data, provided as findings, present different conclusions about the characteristics of the site. The County must review this material to determine which soils data are accurate. We recommend that Mr. Hemenway be afforded the opportunity to be involved in this determination.

Objection 5 claims that the Department's recommendation for Dillard Highlands' Second Addition is in error. The record lacks substantial evidence indicating that Goals 3 and 4 do not apply to this land. Until the County clearly indicates from revised soils information, that Goal 3 is not applicable to this site, the County lacks substantial evidence supporting its claim regarding Goal 3. Additionally, reliance on a forester's economic analysis to support the conclusion that Goal 4 does not apply to this site, when the record indicates it is composed predominantly of soils with commercial forest capabilities (Site Class III and IV, County's Findings, p. 14) is inconsistent with Goal 4's requirements (see amended conclusion for Dillard Highlands' Second Addition).

2. Canfield and Associates on behalf of Cerro Gordo

Mr. Canfield's exceptions to the Department's report are only partially sustained. The issues regarding the proposed density of this development as discussed in the report remain. However, the Department concurs with Mr. Canfield that amendments to clarify the Department's position are necessary (see amendments to the report).

B. Goal 5

1. Lane County

Lane County filed an exception to in-order-to-comply requirements 2c, d, e, f, and i. All pertain to fish and wildlife habitat issues.

Response: On August 8, DLCD staff met with Lane County planners to discuss these issues. All were resolved. IOTC 2c, d, e, and f remain, but 2i should be eliminated (see amendments to staff report in the Part II of this memo).

2. Wildish Sand and Gravel Company

Wildish believes that several statements in the July 19, 1984, report are inaccurate. Specifically:

EXHIBIT 1

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE
Lane County
(Rural Portion, Excluding Eugene Metro Area)
Supplement to Staff Reports of June 29, 1984 and July 19, 1984 as Amended

DATE RECEIVED:
August 16, 1984 through September 13, 1984

DATE OF COMMISSION ACTION:
September 13, 1984

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission acknowledge the rural portion of Lane County's plan and land use regulations to be in compliance with Statewide Planning Goals 1-14, (C).

FIELD REPRESENTATIVES: Bob Rindy, Glen Hale
Phone: 378-4095

LEAD REVIEWER: Doug White, Mike Rupp, Claire Puchy
Phone: 378-4926

PLANNING DIRECTOR: Roy Burns
Phone: 687-3958

Date of Supplemental Report: September 12, 1984

EXHIBIT S

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

- Clustering + Siting Stds

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(1)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

Conclusion

Requirement 7b has been met.

Requirement

8. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflicting-resolution recommendations contained in the Metro Plan Update Working Paper.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 5

Lane County complies with Goal 5.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

Requirement

1. Amend the Development Code to require review of any proposed development within known geologic hazard areas.

Response

Lane County Development Code was amended (ORD. 9-84) to include the following provision (LC 16.005):

> "(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of an application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose."

Lane County

Gary Darnielle
Lane County Heanings Official
North Plaza Level PSB
125 E. 8th Ave.
Eugene, OR 97401

September 11, 1986

RE: PA2131-86

Dear Mr. Darnielle:

In your September 9, 1986 memorandum to Roy Burns, you requested staff to prepare responses to 2 questions in regards to the above referenced application. This memorandum is in response to your request.

Question 1). Which Rural Comprehensive Plan policies and implementation regulations determine allowable residential densities within areas designated as Big Game Range? Specifically, how does County staff reconcile the clear language of Rural Comprehensive Plan Flora and Fauna Policy #11 with the residential density analysis suggested by the "Flora & Fauna Working Paper" (March 1982) and the revised language to the working paper in the "Addendum to Working Paper: Flora & Fauna" (November 1983)?

Response: Goal 5 Flora and Fauna Policy #11 together with the clustering requirements of the F-2/RCP zone (LC16.211(8)) and of the EFU/RCP zone (LC16.212(8)) determine allowable residential densities within Big Game Range Habitat areas.

A better understanding of how Policy #11 and the implementing measures for clustering in the F-2/RCP and EFU/RCP zones can be obtained by reviewing the DLCD review comments for Lane County's Rural Comprehensive Plan.

In the DLCD Report, July 19, 1984, page 75, 2.e., DLCD indicated that the F-2/RCP and EFU/RCP zones must either be amended to contain larger minimum lot sizes or to contain clustering requirements for residences in Big Game Range Habitat areas. The reasoning for this recommendation was discussed in pages 33, 34, 35, 36 and 39 of the July 19, 1984 DLCD Staff Report.

In response to the DLCD recommendations in their July 19, 1984 report, Lane County amended it's F-2/RCP and EFU/RCP zones to contain clustering provisions for the siting of residences. In the Sept. 12, 1984 DLCD report, pp 25-26, DLCD noted their recommendations from their July 19th report and the amendments Lane County enacted to its F-2/RCP and EFU/RCP zones and concluded that the intent of Flora & Fauna Policy #11 had been carried out and met the Goal 5 requirements.

EXHIBIT T

Question 2) To what extent has County staff been pursuing the development of a Goal #2 "developed and committed" exception to the Baxter's Acres Subdivision? What specific factors have the staff examined or will the staff be examining which they believe will determine whether the subdivision is committed to nonresource use?

Response: County Staff have discussed a "developed" exception with Dave Pedersen who has represented Weyerhaeuser and a number of lot owners in Baxter's Acres. Our last discussion with Dave Pedersen occurred on September 9, 1986 during which we agreed that it would not be appropriate to proceed with initiating a Plan Amendment at this time due to the multiple applications for the same property being contested with the Hearings Official. Staff had intended to bring to the Lane County Planning Commission facts relating to the developed nature of Baxter's Acres and to let the LCPC decide if there appears to be a basis for taking a developed exception. The LCPC could then initiate a Plan Amendment/ Zone Change to more formally consider the matter.

Another impetus for initiating an amendment is the fact that if, through an arduous hearing process, dwellings could be allowed in the F-2/RCP zone, then a much simpler process would be to amend the Plan and change the zoning. The factors to be considered for a developed exception would be those required by the OAR for a developed exception (i.e., roads, utilities, sewage disposal systems, etc.).

Kent Howe - Associate Planner

Jim Mann - Senior Planner

Attachments: Excerpts from DLCD Reports.

cc: Roy Burns

ADAMS Shawna L

From: Sean Malone <seanmalone8@hotmail.com>
Sent: Thursday, April 1, 2021 8:16 PM
To: ADAMS Shawna L; ADAMS Shawna L; DAVIES Anne C; kimodea@landuseoregon.com; Hope S
Subject: RE: LandWatch Responsive Testimony for King Template Dwelling Appeals, PA20-05066 and -05064

[EXTERNAL ⚠]

Please note my error in the first paragraph of my letter that state's the density on the subject property is less than the ODFW-recommended density. That was a typo. I intended to say the density was greater than the ODFW-recommended density, consistent with all other points I've made.

Thank you,

Sean Malone
Attorney at Law
259 E. 5th Ave, Ste 200-C
Eugene OR 97401
seanmalone8@hotmail.com
303-859-0403

From: Sean Malone
Sent: Thursday, April 1, 2021 3:55 PM
To: ADAMS Shawna L; shawna.adams@co.lane.or.us; DAVIES Anne C; kimodea@landuseoregon.com; Hope S
Subject: LandWatch Responsive Testimony for King Template Dwelling Appeals, PA20-05066 and -05064

Shawna,

Please find attached testimony and two exhibits (all in one pdf) for the King template dwelling appeals. Please add to the record.

Thank you,

Sean Malone
Attorney at Law
259 E. 5th Ave, Ste 200-C
Eugene OR 97401
seanmalone8@hotmail.com
303-859-0403

Sean T. Malone

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April 1, 2021

Via Email

Lane County Hearings Official
c/o Lane County Planning Department
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-4065

Re: LandWatch Lane County Response Letter re request for two forest template dwelling, 509-PA20-05066 and -05064 (King).

LandWatch submits this responsive testimony in support of its appeals. LandWatch respectfully requests that the Hearings Official reverse the planning director's decision approving the two requests because the applicant has not prepared an ESEE analysis. An ESEE analysis is necessary because the residential density on the applicant's property is far less than the ODFW-recommended densities, which have been adopted by Lane County, for dwellings within major big game range (*i.e.*, a conflict exists if a dwelling is proposed within major big game range on less than 80 acres).

It is clear that the applicant is attempting to re-litigate the *Nimpkish* case. The Hearings Official should not accept the applicant's invitation. LUBA was very clear in its decision that, as a result of Policy 11, the applicant must perform an ESEE analysis to resolve the conflict created by proposing a dwelling on less than 80 acres. The first sentence of policy 11, which the applicant relies upon for the "overall" argument, was never performed or accomplished by the County. LUBA expressly acknowledged this failure and then focused on the second sentence:

> "However, the county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that the county is absolved from protecting

land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations simply do not apply. Rather, the *second sentence* of RCP Goal 5, Flora and Fauna Policy 11, remains operative, and it provides that '[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-015-000.' The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that eh county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the county to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgment of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program. Moreover, the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range form conflicting residential development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d)."

LandWatch Lane County v. Lane County (Nimpkish), __ Or LUBA __ (LUBA No. 2020-030, Jan. 20, 2021) *slip op at 13-14. (italics in original; underlined emphasis added). LUBA has already interpreted policy 11, as well as the issues that the applicant complains of here. The first sentence of policy 11, which was never implemented, contains the issue that the applicant relies upon here, and LUBA found that the second sentence is what is operative, which does not contain the "overall" language. In other words, the applicant is hinging its case on a phrase (*i.e.*, "overall density") that was never actually implemented by the County.

LandWatch also notes, as it did in its open record testimony, that the applicable analysis area was the property. *See Nimpkish*, slip op at 5 ("the density of the subject property with a forest template dwelling would be one dwelling unit per 10 acres, which would exceed the ODFW recommendations on overall density for protection of Major Big Game Range"). The applicant has not established that any other metric has been adopted and implemented by the County, yet LUBA has identified the subject property as the applicable metric in the *Nimpkish* case because *that is where the conflict arises.*[1]

[1] It is notable that within an ESEE analysis, the analysis must define the "impact area," which is the "geographic area within which conflicting uses [*i.e.*, the dwelling] could

The applicant also relies on the working paper, which is not part of the comprehensive plan, instead of focusing on policy 11 itself. The applicant also concedes, as it must, that the language it highlights from the working paper "was not adopted." Applicant Open Record Letter at 1. If it was not adopted, then it has no bearing on the issues at hand.

Next, the applicant alleges that it "provided two regions for Major Big Game, based on connectivity," including "one big region or two regions divided by a break in connectivity," "five regions divided by major highway corridors," and areas "divided by watershed regions." Applicant's Open Record Letter at 1-2. The obvious problem is that the applicant cannot simply create regions out of whole cloth. That is a legislative task for the County Board of Commissioners to accomplish through the appropriate means, not for an applicant to do on an *ad hoc* basis, regardless of whether the applicant believes such an approach is "logical." Applicant Open Record Letter at 1.

The applicant also attempts to recast what was at issue in *Nimpkish* in order to avoid the relevant references to the "subject property." LandWatch has attached the relevant excerpt of their petition for review to demonstrate what was at issue in the *Nimpkish* brief. *See* Exhibit A. The applicant also alleges that "[w]hat policy 11 meant, and how it should be applied was not before LUBA." Applicant Open Record Letter at 2-3. To the contrary, LUBA interpreted policy 11 to find that where a conflict existed because the ODFW-recommended residential density standards were not satisfied, resolution of that conflict would have to occur in accordance with OAR 660-16-000, which is the administrative rule in place at the time that governed goal 5 and an ESEE analysis. In fact, in *Cattoche*, as quoted at Exhibit A, Page 11, LUBA noted that, in reference to the ODFW-density recommendation, "[i]f this figure is exceeded, there is a conflict and an ESEE analysis is required." As noted in the block quote at Exhibit A, Page 12, even the Working Papers understood that an ESEE analysis would be required if the residential density recommendations were exceeded:

> "If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental, and energy consequences shall be used to determine the level of protection necessary for the resource. The procedures outlined in OAR 660-16-000 will be followed."

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adversely affect a significant goal 5 resource," OAR 660-023-0010(3), but to get to that point, the applicant must accept that an ESEE analysis is required.

That citation is from Record Page 552 from the *Nimpkish* record, which the applicant appears to have included in its open record submissions. Petitioners include Record Pages 551-552 here as Exhibit B.

The applicant argues that "[n]either LUBA nor LandWatch can wish away the term 'overall,'" but there is no need for wishes because the County never implemented that particular sentence, and, instead, used the ODFW-recommended densities. LUBA made this clear in *Nimpkish* and *Cattoche*. Any other conclusion would be contrary to Goal 5, as indicated by LUBA in the *Nimpkish* decision. The applicant next incorporates the attorney's response briefing and arguments from Mr. Evans[2]. Apart from the problem that the exhibits are hundreds of pages and the applicant allegedly "incorporates" certain arguments that are unidentified, the bigger problem is that those arguments were already unsuccessful in *Nimpkish* and cannot be re-litigated here.

Because the applicant has failed to prepare an ESEE analysis due to the conflict (i.e., the property will exceed the ODFW-recommended residential density), LandWatch's appeals must be sustained and the applications denied.

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

Enclosures:

Exhibit A – excerpt of *Nimpkish* Petition for Review

Exhibit B – excerpt from *Nimpkish* record, record pages 551-552.

[2] Whoever Mr. Evans is, he did not submit a brief in the *Nimpkish* matter.

with Lane County contour data. *Id.* The County LiDAR data show that slopes range from less than 10% to 40% or more with steep slopes located in the north-west and north-central portion of the subject property. *Id.*

III. JURISDICTION

LUBA has jurisdiction under ORS 197.015(10)(a)(A) and ORS 197.825(1).

IV. ARGUMENT

A. FIRST ASSIGNMENT OF ERROR – The Hearings Official misconstrued applicable law regarding the interpretation of the protections afforded Major Big Game Ranges, in accordance with the Lane County Rural Comprehensive Plan.

1. Preservation of assignment of error

This assignment of error was preserved at R 48-52, 252-253, 502-579, 606-612, 777-780, 831-833.

2. Standard of review

A local government's interpretation of state law and local law that implements state law is not entitled to the deferential standard of review under *Siporen v. City of Medford*, 349 Or 247, 266 (2010). A local government's interpretation of issues not pertaining to state law is afforded *Siporen* deference only if the interpretation is from the governmental entity that promulgated the standards at issue. Where the matter is not one of state law and the approval authority was not the same that promulgated the provisions at issue, then LUBA reviews such interpretations under ORS 197.835(9)(a)(D) to determine whether the

County "[i]mproperly construed applicable law." *Waverly Landing Condo. Owners' Assoc. v. City of Portland,* 61 Or LUBA 448 (2010). If there is no interpretation or the interpretation is inadequate for review, ORS 197.829(2) provides that LUBA may interpret the local provision in the first instance. Where there is no reviewable express or implied interpretation, LUBA has nothing to defer to. *Heitsch v. City of Salem*, 65 Or LUBA 187 (2012). Here, the issues are largely dependent upon state law, including administrative, as well as Lane County's comprehensive plan. Under either circumstance, the County's decision is not due *Siporen* deference because the final decision was made by the Hearings Official and not the Board of Commissioners.

Under ORS 197.829(1), LUBA shall "affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

> "(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
> (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
> (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
> (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

See also PGE v. Bureau of Labor and Industries, 317 Or 606, 859 P2d 1143, 1146 (1993), *modified by State v. Gaines*, 346 Or 160, 171-172, 206 P3d 1042 (2009). Here, the primary issues arising in Petitioner's assignments of error are that the

decision is inconsistent with applicable goals and inconsistent with the comprehensive plan.

When a local government's interpretation of a provision adopted to implement a Statewide Planning Goal is inconsistent with that Goal, under ORS 197.829(1)(d), LUBA shall not affirm that interpretation. *See Oregon Coast Alliance v. Curry County*, __ Or LUBA __ (LUBA No. 2013-033, Oct. 11, 2013) ("LUBA is not required to affirm an interpretation that is inconsistent with the goals."); *Leathers v. Marion County*, 144 Or App 123, 130-31, 925 P2d 148 (1996) (county interpretation of acknowledged land use legislation is reversible under ORS 197.829(1)(d) if the interpretation would allow uses that are prohibited by the statewide planning goals that the legislation was adopted to implement); *Jackson County Citizens League v. Jackson County*, 171 Or App 149, 156, 15 P3d 42 (2000) (a county comprehensive plan urbanization policy that was adopted to implement Goal 14 must be interpreted consistently with Goal 14's prohibition against approval of urban uses on rural land).

"[U]nder ORS 197.829(1), LUBA is required to defer to a local government's interpretation of its land use regulations unless the interpretation is inconsistent with the express text of the regulation, the purpose of the regulation, the underlying policy implemented by the regulation, or a state law that the

regulation carries out." *Kaplowitz v. Lane County,* 285 or App 764, 775, 398 P3d 478 (2017).

3. Argument

a. The Hearings Official's findings below

In response to Petitioner's arguments below that comprehensive plan policies, and specifically Goal 5, should apply to template dwelling applications, the Hearings Official's findings are set forth below:

> "2. ***The Director's decision is not consistent with the protections afforded Major Big Game ranges in accordance with the Lane County Rural Comprehensive Plan.***
>
> The subject property lies within an area designated as Major Big Game Habitat. The Appellant contends that the proposed template dwelling does not comply with the 80-acre minimum density requirement for Major Big Game Habitat mandated by OAR 660-006-0027(1)(d) and (f), and Goal 4, Policy 11 of the Rural Comprehensive Plan.
>
> Lane County's Rural Comprehensive Plan and Chapter 16 of the Lane Code were acknowledged by LCDC in 1984. Big Game Habitat was recognized as a 1C significant Goal 5 resource and the County incorporated some of the protections recommended in two Flora and Fauna Working Papers into the Rural Comprehensive Plan. Thus, Flora and Fauna Policy 11, of Goal 5 of the Rural Comprehensive Plan states that Orgon Department of Fish and Wildlife recommendations on overall residential density for protection of big game were to be used to determine the allowable number of residential units within regions of the County. This policy stated that any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.
>
> The Appellant relies upon LUBA's decision in *Cattoche v. Lane County* for the proposition that density in the Impacted Forest Lands District is determined by the Rural Comprehensive Plan's March 1992 Flora & Fauna Working Paper as it applies to Flora & Fauna Policy # 11 of the Rural

Comprehensive Plan. The Big Game Range section of the 1982 Flora & Fauna Working Paper notes that the County was to be divided into regions convenient for planning purposes; probably between 10 to 20 regions. Within the regions, excluding the Impacted Big Game Ranges, a residential carrying capacity was to be determined. The ODFW recommended a density of one dwelling unit per 80 acres for major big game range areas. Lane County never divided the County into geographic Big Game Range regions and the Appellant has not alleged that its analysis encompasses one of those regions.

It is important to distinguish between the planning work Lane County did in preparation for acknowledgment of compliance and what was actually acknowledged by LCDC. As noted above, the Flora and Fauna Working Paper's strategy of dividing the County up into regions was never implemented.

The DLCD staff report of July 19, 1984 indicates a concern with the minimum lot sizes in the resource zones coupled with a lack of siting and clustering requirements. The minimum parcel size was the County's chosen method to comply with the ODFW recommended maximum densities. The recommended densities – one dwelling per 40 acres in the peripheral big game range – depended entirely on the size of the area being studied. When considering an 80-acre study area, the recommendation would only allow two dwellings. However, the recommendation was intended to apply at a much higher level; which is why the County originally anticipated dividing the County into regions. Ultimately, the County, with the blessing of DLCD and ODFW, decided to rely on minimum parcel sizes to implement the ODFW recommendations. This view is borne out in DLCD's staff report which stated: '*Without clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be double to be acceptable.)*' At this time, Lane County's proposal was to have a minimum lot size of 0 acres for the F-1 Zone, minimum lot size of 20 acres in the F-2 Zone, minimum lot size of 40 acres in the EFU Zone, and no clustering or siting standards for dwellings.

DLCD staff issued a second acknowledge [*sic*] of compliance report regarding Lane County's Rural Comprehensive Plan and implementing ordinances on September 12, 1984. The recommendation in this report was:

> '*Amend the F-2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum parcel sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.*'

Kent Howe, former Lane County Planning Director, and Jim Mann, Former Principle Planner with Lane County, were working on the adoption of the rural Comprehensive Plan in 1983 and 1984. Their recollection was that at the last hour, facing a negative DLCD staff review regarding compliance with Goal 5 issues dealing with wildlife and big game habitat, Lane County made significant changes to how big game habitat was to be protected. Last minute changes included increasing the minimum lot size to 80 acres in the F-2 Zone and adopting siting and clustering requirements in that zone. Where Policy #11 states that '*any density above that limit shall be considered a conflict*' it was referring to when the density prescribed by the minimum parcel size was to be lessened through a land division or rezoning. At that point in time, an ESEE analysis, via a comprehensive plan amendment, would be required.

The template dwelling regulations were adopted by the Legislature in 1993 and subsequently incorporated into administrative rule. These regulations were adopted verbatim by Lane County through a post-acknowledgement plan amendment which was not challenged.

Ultimately, the acknowledged zoning ordinance did not apply the Big Game limitations except in circumstances, such as in the Exclusive Farm Use Zone. And in that case only properties lying within a Major Big Game area were affected. No specific siting regulations for forest template dwellings located within a peripheral big game range were adopted by the acknowledged Chapter 16 zoning code. That is, the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations within the Impact Forest Lands Zone. The density recommendations were not applicable to existing parcels but were to be considered only in rezoning and land division applications. Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards.

This allegation of error is dismissed."

R 8-10 (Appx 7-9) (emphasis in Hearings Official's decision). The Hearings Official's analysis can be summarized as follows: The County's program to achieve Goal 5 for Big Game Range is allegedly to rely on siting standards and minimum lot or parcel sizes incorporated into the zoning. Moreover, Flora and Fauna Policy 11, ODFW's residential density standards, and an ESEE analysis is allegedly only implicated for land divisions.

b. Petitioner's argument

Uses authorized in Forest Zones are set forth in OAR 660-006-0025 and statute, and OAR 660-006-0025(1)(d) provides for "[d]wellings authorized by ORS 215.705 to 215.757[,]" which includes forest template dwellings, the type of dwelling at the center of the challenged approval. *See* ORS 215.750. OAR 660-006-0025(6), in turn, provides that "[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands." *See also* ORS 215.416(4)(a); OAR 660-006-0027(6)(a) ("A proposed 'template' dwelling under this rule is not allowed … if it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, or other provisions of law."). On its face, this provision, which the Hearings Official fails to address, appears to acknowledge that comprehensive plan policies, and

explicitly those comprehensive plan policies that implement Goal 5, apply to dwelling approvals and other uses in the forest zone, including requests for template dwellings.

For a comprehensive plan to act as decision criteria, LUBA has determined that the text and context of the comprehensive plan must establish both (1) that the plan requirement is mandatory (rather than hortatory or aspirational) and (2) that the mandate must be applied directly as a permit approval standard for the permit decision on appeal. *Friends of the Hood River Waterfront v. City of Hood River,* 68 Or LUBA 459 (2013). Here, when coupled with the administrative and statutory provisions cited above, Flora and Fauna Policy 11's use of mandatory terms and that Policy 11 applies in circumstances where residential density exceeds the ODFW recommendations, Policy 11 must apply as an approval standard or criterion.

The Lane County Rural Comprehensive Plan contains policies related to big game range, and Flora and Fauna policy 11 provides as follows:

> "*Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.* The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

Appx 14; R 506. The two italicized sentences at the beginning of the policy are mandatory, using the word "shall" on two occasions and "will" and the operative command is that any density above the ODFW recommendation will result in a conflict that must be resolved through an ESEE analysis. The administrative rule cited is the old Goal 5 administrative rule, which contained the requirement for an ESEE analysis at the time the county plan was adopted.

The plain import of the Flora and Fauna working paper, in turn, identifies the residential densities referenced in policy 11:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. * * * to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range * * * conflicts with habitat for big game."

R 542 (Flora and Fauna Draft Working Paper, Page 24); R 506. The policies themselves are not expressly or implicitly limited to land divisions but they are expressly implicated when the density recommendations are exceeded.

LUBA previously addressed policy 11 and Goal 5 in *Cattoche v. Lane County,* __ Or LUBA __ (LUBA No. 2018-109, May 22, 2019), albeit in the context of a zone change and plan amendment, but the analysis of the Lane County's program to achieve Goal 5 for the Big Game Range is relevant. There, LUBA understood and explained that the County did not "quantify a residential density allowed in the F-2 zone, and instead used the ODFW 40-acre standard for

areas inventoried as Peripheral Big Game Range," despite that the County's "initial intent was to preserve the 40-acre standard through *zoning*":

> "As discussed below, as part of its program to achieve Goal 5, the county has adopted a standard of no more than one dwelling per 40-acres to protect Peripheral Big Game Range (Residential Density Standard). That standard is found in the Flora & Fauna March 1992 Lane County Comprehensive Plan Working Paper Revisions document (Flora and Fauna Working Paper), [ ]. The Flora and Fauna Working Paper indicates that the initial intent was to preserve the 40-acre standard through *zoning*. However, the county's inclusion of the subject property in the Peripheral Big Game Range inventory is geographical and is not tied to or dependent on the current F-2 zoning. The challenged decision does not purport to remove the subject property from the Peripheral Big Game Range inventory and associated habitat protections, including the limitation of one dwelling per 40 acres.
>
> * * *
>
> The Flora and Fauna Working Paper the county incorporated into its findings explains that the Big Game Range protection:
>
> > 'premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.' [ ].
>
> The Flora and Fauna Working Paper states that the county will be divided into regions and the county will determine the number of existing residences and the:
>
> > 'additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 [or 80] acres, whichever is lesser, will be recommended in the region for residential density for big game purposes.

* * * * *

If this figure is ever exceeded, it constitutes a conflict with Big Game Range. [ ].'

The Body of the Flora and Fauna Working Paper therefore states that the lesser of this figure or the county's 40-acre figure [or in this case the 80-acre figure because the property is designated Major Big Game] will be 'recommended in the region for residential density for big game purposes.' *Id.* If this figure is exceeded, there is a conflict and an ESEE analysis is required. *Id. Ultimately, however, the Flora and Fauna Working Paper identified as its selected strategy that 'ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.'* [].

In the challenged decision, the county did not identify the level of residential density allowed in the F-2 zone * * * *

We observe that the F-2 zone does not provide a general residential density standard. The use table for impacted forest zones lists six types of dwellings allowed in the F-2 zone. LC Table 16.211, 2.1-2.6. Those dwellings include: (1) caretaker residence for public parks and pubic fish hatcheries, (2) large tract forest dwelling, (3) lot of record dwelling, (4) template dwelling, (5) replacement dwelling, (6) temporary hardship dwelling. *Id.* A large tract forest dwelling may be allowed in the F-2 zone on a tract that is 'at least 160 contiguous acres or 200 acres in one ownership that are not contiguous but are in Lane County or adjacent counties and zoned for forest use.' LC 16.211(3)(a)(ii). The remaining five types of dwellings do not require a particular minimum lot or parcel size. LC 16.211(3). The minimum lot or parcel size for new or adjusted lots or parcels in the F-2 zone is 80 acres. LC 16.211(7); *see also* ORS 215.780 (providing generally applicable 80-acre minimum requirement); OAR 660-006-0026 (same). However, the F-2 zoning indicates that predominant land ownerships are 80 acres or less. *Accordingly, as we understand it, the county did not quantify a residential density allowed in the F-2 zone, and instead used the ODFW 40-acre standard for areas inventoried as Peripheral Big Game Range.*"

Cattoche, slip op *16-21 (emphasis added). Densities were not incorporated into the zoning – let alone the F-2 zoning, and regions were not identified. Instead, it was the 40- and 80-acre residential density standards for Peripheral and Major Big Game designations, respectively, that were adopted and this standard is the program to achieve Goal 5 when conflicts exist. Moreover, Policy 11 requires that an ESEE analysis occur if residential densities exceed the ODFW's recommendations, which is acknowledged in the Flora and Fauna Working Paper:

> "If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental, and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed."

R 552. Again, *Cattoche* was a plan amendment/zone change case, and there is no dispute that an ESEE analysis is required under those circumstances. The question presented here is whether OAR 660-006-0025(6) and OAR 660-006-0027(6)(a) and ORS 215.416(4)(a) require compliance with Flora and Fauna Policy 11 for a development application because the residential density on the property will far exceed ODFW's residential density recommendation for Major Big Game Range. Flora and Fauna Policy 11 plainly requires that such a conflict be resolved through an ESEE analysis: "Any density above that limit shall be considered to conflict

with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000."[1]

Here, the County approved an application for a dwelling on 10 acres, far below the minimum residential dwelling densit of 80 acres per dwelling in Major Big Game range. The application should have been denied in the absence of resolving the conflict through an ESEE analysis. *See* R 507 ("because minimum residential density is exceeded, pursuant to the plain terms of the comprehensive plan and the working paper, an ESEE analysis is necessary to resolve the conflict.").

Despite the Hearings Official's cautionary statement that "[i]t is important to distinguish between the planning work that Lane County did in preparation for acknowledgment of compliance and what was actually acknowledged by LCDC," R 9 (Appx 8), the Hearings Official failed to give effect to the policy itself, which was adopted, and, instead, gave more credence to the unsubstantiated "recollections" of former LMD staff and issues in the DLCD staff reports. The

[1] OAR 660-16-000 was the first Goal 5 rule. "The initial Goal 5 administrative rule was adopted in 1981, and was in effect when the county's RCP was acknowledged by LCDC in 1984. *See Delta Property Company LLC v. Lane County*, 69 Or LUBA 305, 309-17 (2014), *rev'd and rem'd in part, aff'd in part*, 271 Or App 612, 352 P3d 86 (2015) (discussing the evolution of the Goal 5 rule and the acknowledgment of the Lane County RCP at length)." *Save TV Butte*, slip op at 24-25.

Cattoche case understands that the County "used the ODFW 40-acre standard for areas inventoried as Peripheral Big Game Range."

In addition to Policy 11 and the ODFW recommendations, there are also, however, the siting standards that were carried forward as part of the acknowledgement process. ODFW objected to Lane County's comprehensive plan because "contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones *do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones*." R 209 (emphasis added). The DLCD Supplemental Staff Report (September 12, 1984) provides as follows:

> "2. Fish and Wildlife Habitats:
>
> d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas."

R 649. Assuming the above applies to Policy 11 (it appears as a Roman Numeral II in the staff report), it would apply to the last sentence of Policy 11, which expressly addresses "siting requirements": "The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, *siting requirements* and similar activities which are already a part of the County's

rural resources zoning program." Appx 14; R 506. In response to the staff report's recommendation,

> "Lane County [] added the following new language to both the F-2 and EFU Zones:
>
> > '(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes [*sic*] the F-2 [EFU] Zone.
> >
> > (i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:
> >
> > (aa) Near residences on other tracts.
> >
> > (bb) With minimal intrusion into forest areas undeveloped by nonforest uses.
> >
> > (cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.'
>
> Conclusion
>
> Requirement 2d has been met."

R 649-650. These siting standards apply regardless of whether the particular property proposed for a dwelling is less than or greater than 80 acres, but if the property proposed for a dwelling is less than the residential density, then the first two sentences of Policy 11 serve to carry out the program to achieve Goal 5 by

requiring an ESEE analysis. In other words, together, the adopted Policy 11 and the siting standards carry out the Goal 5 for big game range.

Further support is found in DLCD's resolution of the ODFW objection addressed above, where DLCD recites Policy 11 and finds that Policy 11 is consistent with Goal 5:

> "Objectors are not correct that this policy violates Goal 5. *Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis.* However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved."

R 209. This unequivocally demonstrates that Policy 11 is implicated when the "[d]ensities above those recommended by ODFW" occur, which is not limited to land division applications. It plainly applies to those instances where a new dwelling would exceed those recommendations, and it is without question that a dwelling on a 10-acre unit of land exceeds those recommendations.

As noted above, the Hearings Official relied upon the recollections of Kent Howe and Jim Mann during their time at Lane County's Land Management Division. *See* R 763 and 764-765. LUBA has already disagreed with much of

what is contained in these Howe and Mann letters.[2] For example, the Howe letter alleges that "Policies9, 10, and 11 of the 1982 Flora and Fauna Working Paper do not designate any Big Game Habitat areas as significant '1C.'" R 763. In *Save TV Butte v. Lane County*, __ Or LUBA __ (LUBA No. 2017-031, January 8, 2018), LUBA determined that the inventoried big game habitat is a "significant or important" resource (i.e., 1C):

> "The county's Flora & Fauna Working Paper (1) identifies the Lane County Wildlife Inventory Maps that were developed based on ODFW big game range maps, (2) identifies the location, quality and quantity of the big game range, (3) identifies conflicts with big game range and (4) explains how those conflicts are to be mitigated by existing zoning. Supp. Rec. 4785-89. Based on what the county did in the Flora & Fauna Working Paper, it is most accurate to say the county adopted a 1C inventory decision, *i.e.*, that the inventoried big game habitat is 'significant or important.' While one can question whether the Flora & Fauna Working Paper complies fully with the Goal 5 rule, it is quite clear the county did not adopt a 1A decision, and despite the planner's suggestions to the contrary, it did not a 1B decision either, because it adopted in the Flora & Fauna Working Paper, which explains the count will go about implementing ODFW's density recommendations in big game ranges. We agree with petitioners that the county erroneously determined that its adopted inventory of big game habitat is not 'an acknowledged list of significant resources ...."

Slip at 26-27. Given the inaccuracies, these letters should be treated with skepticism. Moreover, the letters speak to the backroom deals at the "11th hour of the public hearings process" (R 764), but these "11th hour" allegations are not

[2] These former planners routinely submit letters on behalf of development applications, and it is unclear whether they have been compensated for their testimony.

supported by any actual evidence in the record. More importantly, the letters fail to give effect to the plain, mandatory language of Policy 11's first two sentences. If the "11th hour" deals about 84% of the county that would be prohibited from development were correct, then one would expect them to be addressed or substantiated in the staff reports or working papers.

The crux of the issue is that policy 11 uses ODFW's recommendations to trigger an ESEE analysis. If ODFW's residential density recommendations are exceeded, then a Goal 5 ESEE analysis is required according to the express language of Policy 11. R 49. Indeed, there is no restriction on the County's policy to use the framework provided by the ESEE analysis to carry out the intent of Policy 11. Therefore, the Hearings Official's decision is contrary to the express language and intent of the Lane County Comprehensive Plan.

B. SECOND ASSIGNMENT OF ERROR – The Hearings Official misconstrued applicable law when the Hearings Official unlawfully deferred findings of compliance and discretionary decision-making to a county official without allowing the opponents an opportunity to comment, participate, and appeal the decision.

1. Preservation of assignment of error

This issue was preserved below at R 12 (Appx 11) (Hearings Official addressing *Rhyne* v. Multnomah County, 23 Or LUBA 442, 447 (1992); R 261 ("Mr. Malone has objected in other correspondence to the use of the K & A Engineering report stating somehow we are deferring 'discretionary decision-

POLICY DISCUSSION

Several existing policies relate to flora and fauna. These are:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize and support existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies shall be encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall be encouraged to investigate and utilize fee acquistions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement these policies.

While these policies are adequate as far as they go, there are other areas discussed in this Working Paper for which policies have not been developed. The general areas with policy gaps will be mentioned and examples of possible policies given.

- Policy gap: Riparian and wetland vegetation. Examples of policies are:

    1. Riparian and wetland vegetation is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and wetlands, and consideration of the areas in other land use activities such as Special Use Permits and Zone Changes.

    2. Drainage of wetland areas will not be promoted by Lane County. Any drainage project over which Lane County has permit authority shall be approved only after analysis of the ESEE consequences of such an action.

- Policy gap: Sensitive Fish and Waterfowl areas. An example of a policy is:

    1. Sensitive Fish and Waterfowl areas are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

- Policy gap: Big Game Ranges. Some policy examples are:

    1. Residential building permits issued within Major or Peripheral Big Game Range shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

    2. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range.

3. ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.

- Policy gap: Conflicts not anticipated or identified in the plan. Example of policy:

1. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-00 will be followed.

ADAMS Shawna L

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 4:55 PM
To: 'lsv1953@gmail.com'; 'Kimberly O'Dea'; 'DAVIES Anne C'; 'Sean Malone'; 'Michael E. Farthing'; 'Jim McLaughlin'; 'Jeremy Keepers'
Cc: BELL Amber R; EICHNER Lindsey A; BAUDER Jared W
Subject: LWLC Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066
Attachments: Malone to Lane County re King 3.18.21.pdf; Map - FedExclusions.pdf; Wolfer VGH Letter April 2017.pdf

Attached are LandWatch Lane County's open record period #1 submittals for the King appeals.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

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From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 4:44 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: Staff Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Please disregard previous PDF as it did not include the correct document version. Please see Corrected staff submission, that matches the hard copy in the record.

Shawna Adams | Senior Planner
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From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 4:05 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: Staff Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Good afternoon Hearings Official and interested parties,

Attached is staff's open record period #1 submission for the King appeals. Many more emails are to follow with submittals from the applicant and LandWatch Lane County- assuming email box capacity on the receiving side.

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March 18, 2021

Via Email

Lane County Hearings Official
c/o Lane County Planning Department
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-4065

Re: LandWatch Lane County Open Record Letter re request for two forest template dwelling, reconsideration, 509-PA20-05066 and -05064 (King).

LandWatch submits this open record testimony in support of its appeals. LandWatch respectfully requests that the Hearings Official reverse the planning director's decision approving the two requests.

At its simplest, the applicant must prepare an ESEE analysis because the proposed template dwellings will not satisfy the ODFW standard of one dwelling per 80 acres within the major big game range. The applicant attempts to circumvent this basic conclusion by arguing that "the acreage of the subject property is irrelevant to this analysis." Such a statement completely misreads the *Nimpkish* decision. In fact, the problem arose in *Nimpkish* because the size of the property was too small to satisfy the ODFW recommendation. As noted in the decision, the issue was focused on the acreage of the subject property:

> "During the proceedings below, petitioner and intervenor-petitioner (together, petitioners) argued that RCP Goal 5, Flora and Fauna Policy 11, applied to the application and that, because *the density of the subject property with a forest template dwelling would be one dwelling unit per 10 acres, which would exceed the ODFW recommendations on overall density for protection of Major Big Game*

> *Range*, the application could not be approved absent 'resolution in accordance with OAR 660-16-000.'"

Slip op at 5 (emphasis added). Under the applicant's theory, ODFW's recommendation of one dwelling per 80 acres in major big game range would not be implicated until many, many years into the future, assuming template dwellings continue to be approved. It makes no sense to enact a standard that will never be implicated. In support of the applicant's argument, the applicant seizes upon the word "overall," but LUBA, however, understood that what was anticipated by the county and the term "overall" never actually occurred:

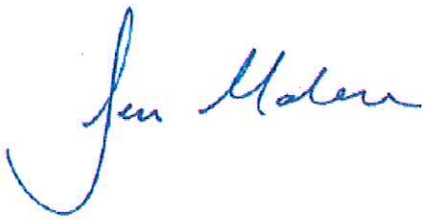
> "The first sentence of RCP Goal 5, Flora and Fauna Policy 11, refers to the process that the county was supposed to follow, which included taking actions to identify '10-20 regions' and to 'base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations.' [ ]. All parties agree that, during the 36 years since its Goal 5 program was acknowledged, the county has never taken the steps described in the first sentence [of policy 11] and has never created any 'regions' or 'base[d] zoning by region on the overall residential densities or ODFW minimum parcel size recommendations.'"

Slip op at 12. The applicant is simply incorrect to rely on the word "overall" as the crux of its argument. The word "overall" was part of a process that never actually occurred.

The second sentence of policy 11, however, "remains operative, and it provides that '[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. [*i.e.*, the old provision for requiring an ESEE analysis]." Slip op at 13. If there were any remaining question as to what scale applies, the following statement from LUBA resolves those uncertainties: "There is no dispute that *the density of the subject property with the proposed dwelling* would exceed one dwelling unit per 80 acres. Accordingly, the proposed dwelling 'shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with [an ESEE analysis].'" Slip op at 15-16 (emphasis added). This final statement on the matter unequivocally demonstrates that the applicable scale is the *subject property*, not the entirety of the county's big game range, and, therefore, an ESEE analysis is necessary to resolve the conflict imposed by the failure to satisfy the ODFW-recommended density.

Even if the applicant's argument were correct, which it is not, the applicant's LCOG map skews the analysis. Attached is a map prepared by LCOG at the request of LandWatch showing appropriate exclusions from any such analysis, including Federal lands, Major Big Game Habitat not including Federal lands, and water features.

Sincerely,

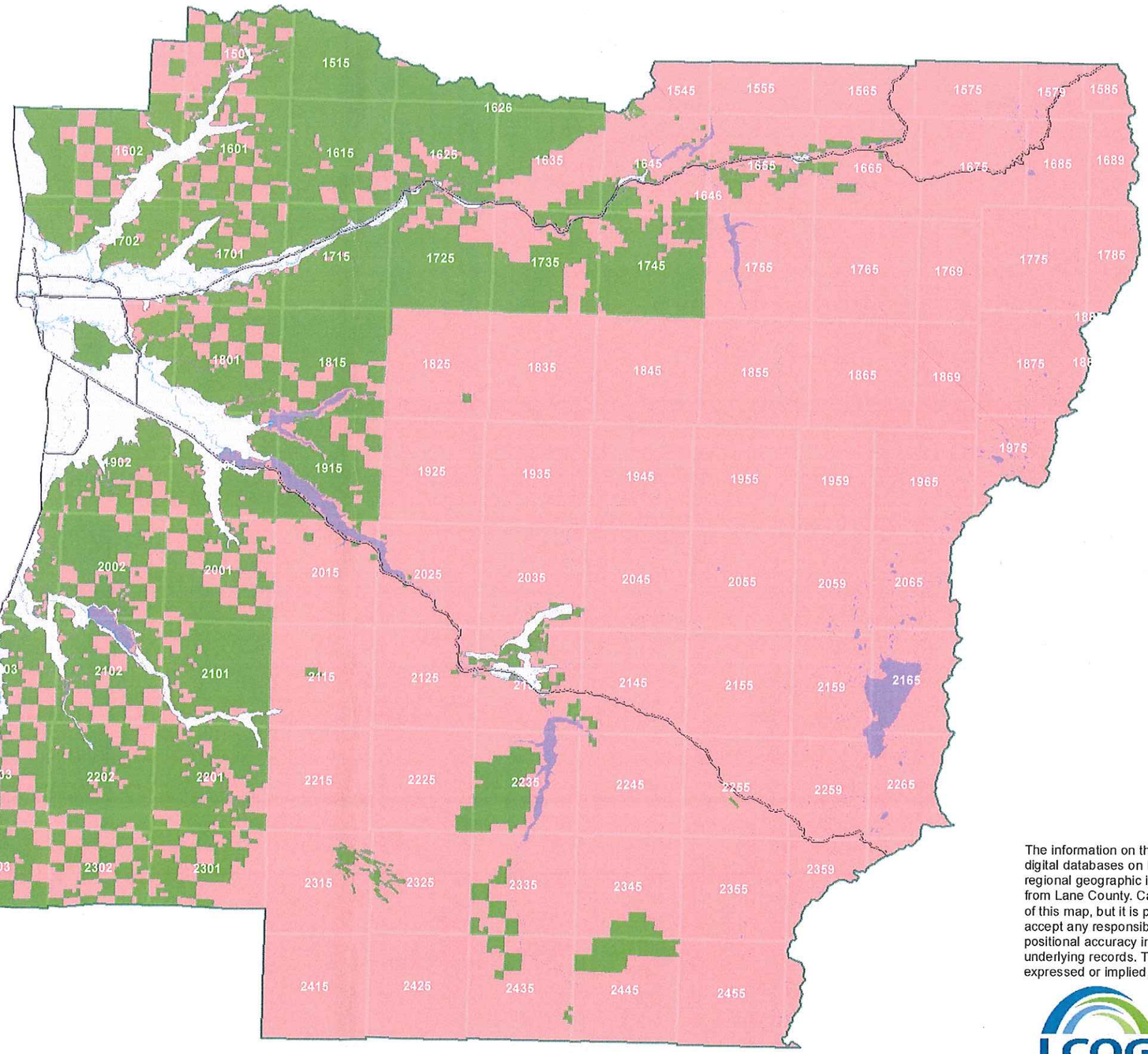


Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

Major Big Game Range in Lane County (East of I-5) - Excluding Federal Lands

Total Major Big Game Habitat Area east of I-5 - no exclusion areas	1,830,536 acres
Total exclusion area acres (Water, MPO/UGB, RCI Lands, and Federally Exempt parcels)	1,334,698 acres
Total Major Big Game Habitat area not in exclusion areas	495,838 acres
Dwellings within non-excluded Big Game Habitat Area	1,271



- Federal Lands (Parcels with Federal Exemption Tax Status)
- Major Big Game Habitat Area - Not including Federal Lands
- Water Features
- Lane County PLSS Township/Range
- Lane County Boundary

N

0 3 6 12 Miles

Printing Date: March 18, 2021

The information on this map was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the creation of this map, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, expressed or implied, accompanying this product.

LCOG
Lane Council of Governments
859 Willamette St., Suite 500
Eugene, Oregon 97401-2910

ATTACHMENT 18

WRIGHT Deanna

From: Brian Wolfer <brian.h.wolfer@state.or.us>
Sent: Wednesday, April 05, 2017 3:38 PM
To: WRIGHT Deanna
Subject: Comments regarding proposed ammendment to RCP
Attachments: ODFW Comments 509-PA15-05722.pdf

Deanna –

Please accept the attached ODFW comments regarding the proposed amendment to the RCP, File No. 509-PA15-05722.

Thank you,

Brian Wolfer
District Wildlife Biologist
Springfield Field Office
(541) 726-3515 ext 25

Oregon
Kate Brown, Governor

Department of Fish and Wildlife
SPRINGFIELD DISTRICT OFFICE
3150 East Main Street
Springfield, OR 97478
(541) 726-3515
FAX (541) 726-2505
www.dfw.state.or.us

03 April 2017

Lane County Planning Commission
3050 N. Delta Highway
Eugene, OR 97408

Re: Proposed Minor Plan Amendment and Zone Change, File No. 509-PA15-05722

Commissioners,

Please except my comments regarding the Gimple Hill Properties LLC proposed Plan Amendment to the County's Rural Comprehensive Plan, File No. 509-PA-15-05722.

The property proposed for rezoning occurs in Peripheral Big Game Range, meaning big game populations are substantial but existing development limits big game use and also limits big game management options when compared with Major Big Game Range. Within Peripheral Big Game Range, the Oregon Department of Fish and Wildlife (ODFW) recommends residential development densities not to exceed one dwelling per 40 acres.

In Exhibit O, the Goal Five Economic, Social, Environmental and Energy Analysis (ESEE), at 13, the applicant references a conversation with me regarding the lack of elk on the property as confirmation that the habitat on this property is not critically important to big game. For context, it is true that I am not aware of Roosevelt elk residing in the immediate vicinity of the applicant property. There is a herd of elk that can frequently be found a few miles west of the property. It is also true that viewed independently, it is uncommon that a single development action would have a critical impact on big game. However, development has a cumulative effect on wildlife habitat and associated wildlife populations as well as many other natural resource and social issues important to Oregonians and the residents of Lane County. It was the need to plan and account for these cumulative impacts that resulted in the development of the Lane County Rural Comprehensive Plan (RCP) and it is in the context of cumulative effects that impacts of proposed amendments should be considered.

In Exhibit O, the applicant minimizes the importance of habitat for the maintenance of healthy big game populations and points to the big game population increases over the last century, a period that also experienced dramatic increases in human populations, as proof that development is not necessarily detrimental to big game. *Id.* at 7. It is true that in the late 1800's many population of big game and other wildlife were severely depleted due to the lack of protections and the occurrence of market hunting. Modern wildlife management has been successful at restoring many of these big game populations with habitat protection through land use planning playing a positive role in the restoration.

The applicant references the declining black-tailed deer population, stating the decline is "likely the result of changing forest management practices, disease, and increased predation rather than as a result of development of the type proposed in this application." *Id.* at 8. This statement is very similar to a statement in the *Oregon Black-tailed Deer Management Plan*, at 2, (ODFW, November 12, 2008), where ODFW states the reduction in the black-tailed deer population "is likely related to the quality and quantity of habitat, increased incidences of disease, and higher rates of predation." The applicant appears to minimize the role the reduction of habitat quantity can have on big game populations.

In Exhibit O, ESEE, at 9, the applicant analyzed the economic losses that could occur due to conflict with big game if this application is approved. The only economic loss recognized by the applicant is the potential for browsing damage to domestic gardens by deer. The applicant did not recognize the potential for loss due to black bear and/or cougar predation of domestic animals if the additional residents raise domestic animals and livestock as part of their rural lifestyle. *Id.* at 11. Although I have not visited the applicant property, I am familiar with the area and would expect black bear and cougar to be part time residents on the property. Development of the property would not necessarily exclude these species from the property but may affect the frequency of their visits to the property. An increase in human residences and associated domestic animals would likely increase the opportunities for depredation or other conflicts to occur.

In Exhibit O, ESEE, at 10, the applicant analyzed the existing dwelling density in the area surrounding the applicant property and found the density to vary from 12.4 to 13.3 acres per dwelling depending on the analysis parameters and argues that approval of the proposal would have minimal impact on dwelling densities. It appears the applicant chose analysis parameters that would minimize the apparent impact of the proposal on existing dwelling densities in the area. One variation of the existing dwelling density analysis included residences occurring outside the analysis area if portion of the lot fell within the analysis area which inaccurately inflated the number of residences considered for the analysis. All but one variation failed to include the applicant property in the analysis. The applicant stated the impact of changing each of these parameters individually but not cumulatively. That shape of the analysis area also appears to affect the analysis. As a result of analyzing a square shaped area, the northeast portion of the two square mile analysis included some residences in the Eugene Urban Growth Boundary and the northeast portion of the three square mile analysis included residences inside the Eugene City Limits. I do not believe it is appropriate to include residences occurring in inside city limits, urban growth boundaries, or Impacted Big Game Range when assessing the impact of this proposal on dwelling densities in Peripheral Big Game Range. I think an appropriate dwelling density analysis for this proposal would include all acres and residences that occur within a set distance of the applicant property (i.e. one mile radius), include the applicant property, and exclude any land and associated residences that are not in Peripheral Big Game Range. If conducted in this manner, I would expect the analysis to show approval of this property to have a greater impact on dwelling densities than reported in the ESEE, however the existing dwelling density would likely be higher than the ODFW recommendation of one dwelling per 40 acres. Even so, ODFW continues to recommend that development in Peripheral Big Game Habitat should be limited to one dwelling per 40 acres.

Respectfully,

Brian Wolfer
District Wildlife Biologist

v.10, revised 1/01/03

ADAMS Shawna L

From:	ADAMS Shawna L
Sent:	Thursday, March 18, 2021 4:44 PM
To:	'lsv1953@gmail.com'; 'Kimberly O'Dea'; 'DAVIES Anne C'; 'Sean Malone'; 'Michael E. Farthing'; 'Jim McLaughlin'; 'Jeremy Keepers'
Cc:	BELL Amber R; EICHNER Lindsey A; BAUDER Jared W
Subject:	RE: Staff Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066
Attachments:	CORRECTED_PA20-05064-04066; Supplement HO Memo_OR1_PACKETf_reduced.pdf

Please disregard previous PDF as it did not include the correct document version. Please see Corrected staff submission, that matches the hard copy in the record.

Shawna Adams | Senior Planner
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Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: Staff Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Good afternoon Hearings Official and interested parties,

Attached is staff's open record period #1 submission for the King appeals. Many more emails are to follow with submittals from the applicant and LandWatch Lane County- assuming email box capacity on the receiving side.

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SUPPLEMENTAL STAFF MEMORANDUM

To: **Anne Davies, Lane County Hearings Official**

From: **Shawna Adams, Senior Planner**

Date: **March 18, 2021**

Re: **Appeals of Application File No. 509-PA20-05064 & 509-PA20-05066**

At the March 4, 2021 hearing for the above referenced appeals, the applicant's agent provided testimony asserting that the subject applications comply with the one dwelling per 80-acre ODFW residential density recommendations required by RCP Goal 5, Flora & Fauna Policy 11. In support of this argument, the applicant's hearing exhibit presents an analysis of existing residential density based on assigned addresses throughout the entire Lane County Major Big Game area, as well as the portions of that area lying east and west of 1-5. The applicant emphasizes that the RCP Policy requires compliance with ODFW's 'overall' residential density recommendations, and contends that this necessarily demands a density calculation based on a countywide Big Game Range area denominator versus a denominator based on a smaller area, specifically including a denominator based on lot size.

Staff do not concur with the applicant's interpretation of RCP Goal 5, Flora & Fauna Policy 11 nor with the assertion that the subject template dwelling proposals comply with the ODFW residential density recommendations as required by the Policy. The applicant's assertions appear to overlook the fact that the RCP Policy language employs 'overall' as a qualifier for ODFW density recommendations for regions that have not yet been identified by Lane County and ODFW. In any case, calculating residential density based on a lot size denominator would not be inconsistent with the requirement to comply with ODFW 'overall' residential density requirements, as the applicant appears to suggest. As one example, the term 'overall' helps to clarify that a dwelling on an 80-acre parcel would meet the density requirement when clustered closely with other dwellings on other 80-acre parcels such that an 80-acre area centered on the dwellings would not otherwise meet the standard.

In staff's view, and in the absence of larger regions identified by Lane County and ODFW, a lot size denominator is the most reasonable measure of compliance with the ODFW residential density recommendation and RCP Goal 5 Flora & Fauna Policy 11, with consideration of the text and context of RCP Goal 5, Flora & Fauna Policy 11 and LUBA's *Nimpkish* decision. In *Nimpkish*, LUBA addressed the petitioners' argument that the subject 10-acre parcel resulted in a one dwelling unit per 10 acre residential density (pgs. 5-6) to be in conflict with ODFW recommendations on overall density for protection of Major Big Game Range. LUBA sustained the petitioners' assertion, finding that RCP Goal 5, Flora & Fauna Policy 11 applied directly to template dwelling applications as part of the County's acknowledged program to achieve Goal 5 compliance and that the proposed template dwelling was in conflict with the ODFW density recommendation (pg. 15). Per LUBA, there was "no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres".

The RCP, Flora & Fauna working papers, and DLCD review letters provided in **Exhibit A-E** contain multiple references to the prescribed ODFW residential density recommendations in relation to minimum lot sizes. The other denominators staff find to be indicated are the regions that have yet to be identified by the County in consultation with ODFW. The applicant's hearing exhibit cites Flora and Fauna Working Paper

language in support of the position that ODFW density recommendations should be calculated based on a countywide Big Game Range Area denominator. However, the applicant leaves out the context of the referenced citation, which directly support a density calculation based on a lot size denominator[i]. As noted, residential use at certain densities is the primary conflict to Big Game and the prescribed procedures for implementation of the ODFW density recommendations is to *"work the overall density figures into the minimum lot size recommendations for regions of the County...The anticipated result is to base zoning on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5."*

Irrespective of the merits of calculating ODFW residential density recommendations based on lot size and any unresolved questions that may remain concerning methodology, staff do not find that calculating residential density based on the total countywide Big Game Range area to be a reasonable interpretation of RCP Goal 5 Flora & Fauna Policy 11, with consideration of the text and context. The total countywide Major Big Game Range and residential density that existed at the time was known when the Policy developed and adopted (**Exhibit C**, pg. 25). Applying the ODFW 80-acre density standard to the total 2,571,426-acre countywide Big Game Range area, or even the portion of that area lying east and west of 1-5, obviates the policy and undermines its purpose as part of the County's acknowledged program for Goal 5 compliance to avoid conflicts with Big Game as a result of residential use at certain densities. DLCD's analysis of compliance and RCP and working paper text recognizes that the absence of an 80-acre lot area zoning development standard allows for conflicts that could only be resolved by applying the entire Goal 5 ESEE process via a plan amendment.[ii] As the ODFW overall density recommendation is interpreted by the applicant, there could be no such conflict to be resolved via the prescribed ESEE process unless and until 29,006 more dwellings are added to the County's Big Game Range area- nearly 10 times the number of 3,137 dwelling that currently exist. In the unlikely event that density threshold would ever be reached, the regulatory effect would change from nonexistent to exceedingly harsh, with little bearing on the intended Goal 5 big game protections. This conclusion is in keeping with LUBA's ruling that such a large area was not a reasonable or correct denominator for determining compliance with ODFW density standards under other circumstances in *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

Staff would note that the context provided in the DLCD review letters prior to acknowledgment (**Exhibits C-D**) gives rise to the question as to whether ODFW density recommendations for Big Game Range areas might also be met with a smaller minimum 40 acre parcel size, versus a minimum 80-acre parcel size with adoption of siting standards.[iii] While this question warrants further analysis, it is irrelevant for the subject template dwelling applications proposed on contiguous parcels that total less than 40 acres combined.

For the reasons explained above, staff confirms its recommendation that the Hearings Official sustain the appellant's assertion of error and reverse the Planning Director approvals of the subject applications.

EXHIBITS ADDED TO PHYSICAL FILE RECORD:

A. RCP Flora & Fauna Working Paper, March 1982
B. RCP Addendum to Flora & Fauna Working Paper, November 1983

EXHIBITS ATTACHED:

C. July 1984, DLCD staff report
D. August 17, 1984 DLCD memorandum with amendments to July 19, 1984 Staff Report
E. September 12, 1984 DLCD Supplemental Report (excerpts)

[i] Excerpt from Flora & Fauna Working Paper , pg. 24
"The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas [sic]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict:***

.

The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue for referrals to ODFW for every land division application. The anticipated result is to base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5."

ii DLCD Response to Objections, July 19, 1984 DLCD memo pg. 39
"2. Objectors are not correct that [RCP Goal 5, Flora and Fauna Policy 11,] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or present conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 zone, since in general, dwellings are not permitted in that zone."

iii Excerpt from July 19, 1984 DLCD Staff Report, pg. 33:
"The F-2 (Impacted Forest Lands) Zone (Lane Code, Section 16.211) requires a minimum of 20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel. However, there is no requirement that, in the big Game Range portions of that zone, densities will not exceed those recommended by ODFW (i.e., one unit per 40 acres in the Peripheral Range, or one unit per 20 acres with clustering and siting standards; one unit per 80 acres in the Major Range, or one unit per 40 acres with clustering and siting standards)"

EXHIBIT C.1

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

July 19, 1984

The Honorable Peter DeFazio
Chairman, Board of Commissioners
Lane County Courthouse
125 East Eighth
Eugene, OR 97401

Dear Chairman DeFazio:

Enclosed is the Department's report on the Lane County and the Eugene/Springfield Metro area request for Acknowledgment of Compliance with Statewide Planning Goals 5 and 15. The Department's recommendation to the Commission is that your request be continued to the August 16-17, 1984 meeting to complete necessary revisions to your plan and land use regulations for Goals 5 and 15.

The Commission will consider your acknowledgment request on August 16 or 17, 1984, at the State Capitol. You and other officials and citizens are welcome to attend this meeting and participate in the Commission's review of your acknowledgment request. You have 10 calendar days from the date the attached report was mailed to file written exceptions to the report with the Commission at the Salem office (OAR 660-03-025(2)). We would urge you to send copies of any exceptions to commentors or objectors affected by exceptions.

Please contact your Field Representatives, Bob Rindy at 378-4095 or Glen Hale at 265-8869, if you have any questions and for the time when your item will appear on the agenda.

Sincerely,

James F. Ross
Director

JFR:TMC:tm/9780B/3B

cc: County Planning Director
City of Springfield
City of Eugene
Bob Rindy, Field Representative
Glen Hale, Field Representative
Claire Puchy, Lead Reviewer File
Doug White, Reviewer
Mike Rupp, Reviewer
Jim Knight, Special Assistant for Agency Coordination
DLCD Library(2)
Portland Office
Coordinator
Objectors and Commentors

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan
Goal 2--Nonresource Lands, Goal 5, Goal 15

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:
August 17, 1984

REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow amendments to the plan to comply with Statewide Planning Goals 2, 5, and 15. The Commission should hear testimony on these issues July 19, 1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the Eugene/Springfield Metro Area General Plan under Goals 2, 5, and 15. The Commission should not take final action on this until the August Commission hearing.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Mike Rupp (Goals 2--Nonresource Lands
Claire Puchy (Goals 5 and 15)
Phone: 378-4926

COORDINATOR: Gary Darnielle
Phone: 687-4283

Date of Report: July 19, 1984

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

This Goal 5 report is divided into two major parts. The first part is the review for all areas of Lane County outside the Metro Plan Boundary. The second part is for those areas inside the Metro Plan Boundary, but outside the Metro Area UGB.

PART I--AREAS OUTSIDE THE METRO PLAN BOUNDARY

Introduction

All Goal 5 resource categories are applicable to Lane County, and are addressed in separate subsections of this report.

According to Section 660-16-025 of the Goal 5 Administrative Rule (OAR 660-6-000 through 660-16-025), the Goal 5 Rule requirements apply to jurisdictions under denial orders as of the date the adoption of the Rule (June 1981). Lane County was issued a denial order in March of 1981. Therefore, the Goal 5 Rule has been used during this review for purposes of judging compliance.

In the following discussion, the numbers and letters in parentheses refer to sections of the Goal 5 Administrative Rule (e.g., (1A), (1B), (1C), (2A), (3A), (3B), (3C)). It should be noted, however, that these are the citations used by the Commission in its June 1981 adoption of the Rule. Since that time, the Secretary of State's office has recodified the Rule and has assigned different numbers and letters to its various subsections. The references in this report are to the Commission's 1981 version, since it is the one with which most readers are familiar. A copy of this Rule is attached to this report for reference.

Goals 16 and 17 establish more specific inventory and protection requirements for some Goal 5 resources that are located in estuarine or coastal shorelands areas.

Lane County's plan and implementing measures were acknowledged as being in compliance with the Coastal Goals in July, 1983. Therefore, this Goal 5 review does not address the following Goal 5 resources in those areas:

	Addressed Under	
Goal 5 Resource	Goal 16	Goal 17
Open Space	X	
Mineral and Aggregate Resources		
Energy Sources		

Fish and Wildlife	X	X (only "riparian," "major marshes and significant wildlife habitats")
Ecologically Significant Natural Areas	X	X
Scientifically Significant Natural Areas	X	
Outstanding Scenic Views and Sites		X (where the quality is primarily derived from or related to the association with coastal water areas)
Watersheds		
Groundwater Resources		
Wetlands	X	X (only "major marshes," "significant wildlife habitat," and wetlands with "exceptional aesthetic quality")
Historic/Archaeological Sites		X
Wilderness	X	X
Oregon Recreation Trails		
Wild and Scenic Rivers and Waterways		

Land Needed or Desirable for Open Space

Inventory

Lane County's Recreational Resources Working Paper contains a section addressing open space (pp. 4-5). The County discusses the various kinds of open space, and the benefits of preserving open space. The County indicates that it considers "all lands designated for agricultural or forest use, or for other clearly similar resource-production use" to be open space (p. 5). Additionally, the County concedes that recreational

areas, including parks, and significant or scientific natural areas also contain open space qualities. Because of "its broad nature, open space is not mapped as a site-specific, separate resource item. Instead...other designations with open space qualities are mapped..." (p. 5). Please refer to the Goal 3, 4, 9, 15 and other Goal 5 portions of this report for more detailed information about Lane County's inventories of lands possessing open space values. See also the July 1983 staff report adopted by the Commission for a discussion of compliance with inventory requirements of Goals 16-18.

Policies

Lane County has adopted one policy which addresses open space resources, per se (Open Space and Scenic Areas Policy 1, Plan, p. 16):

> Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals are developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

In addition, the County has adopted numerous policies regarding agricultural and forest lands, a variety of Goal 5 resources which possess open space values, the Willamette Greenway recreation areas, and coastal resources. Please refer to the Goal 3, 4, 8, 15 and remaining Goal 5 sections of this report for details. See also the July, 1983 Commission action for a discussion of policies addressing Goals 16-18.

Implementing Measures

As noted in the Goal 3 and 4 sections of this report, Lane County has several resource zones which it has applied throughout the County. It has also adopted and applied a Greenway Permit ordinance to lands within the Willamette Greenway (see the Goal 15 section of this report for details). However, these Goals have not yet been fully satisfied, nor have some Goal 2 exceptions been justified. Several coastal zones have been developed and applied in coastal shorelands, estuarine, and beaches and dunes areas (see the July, 1983 staff report adopted by the Commission regarding compliance with Goals 16-18).

Finally, as noted in the remaining subsections of the Goal 5 section of this report, the County has adopted several implementing measures for the protection and/or resolution of conflicts with Goal 5 resource sites containing open space values.

In particular, the County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213), which is intended to protect areas having unique and irreplaceable natural resources which are vital elements for a safe, healthful and pleasant environment for human life. The Natural Resource Zone states that it may be applied to public and private lands where the Rural Comprehensive Plan requires natural resource site

protection, but that the zone is not intended to be applied to other types of resource land, such as agricultural land and forest land. This is not to say, however, that the Natural Resource Zone cannot be applied to agricultural and forest lands. If a Goal 5 resource site is located on agricultural or forest land, Natural Resource zoning will be applied after an analysis of the ESEE consequences of conflicting uses has been completed demonstrating the appropriateness of Natural Resource zoning (confirmed by Jim Mann, Senior Planner, personal communication, June 20, 1984).

Emphasis of the Natural Resource Zone will be placed on limiting and regulating human activity in areas where:

(a) The acceptable water quality of streams, lakes, estuaries of the ocean may be endangered;
(b) Watersheds and their streams or lakes are used for domestic water supplies;
(c) Vegetative cover is essential to maintain soil stability and prevent erosion;
(d) Natural conditions are vital for either unique vegetative ecosystems, aquatic or wildlife habitat; and
(e) Scenic quality or vistas or open space is unique and/or irreplaceable.

In the NR Zone, the following uses are allowed outright (Section 16.213(2):

(a) The following recreational facilities and uses owned by a governmental agency of a nonprofit community organization limited to day use.

(i) Exhibitions of the natural conditions of shorelands, dunelands, forested areas, streams and lakes, marshlands, or similar areas of unique and irreplaceable value, and the vegetation and wildlife supported by such lands and waters provided that in no event shall such activity destroy, or endanger the relationships between the natural conditions being exhibited.

(ii) Picnicking areas, day parks and playgrounds.

(iii) Accessory facilities for outdoor recreation activity such as fishing, clam digging and hunting (provided such activity is conducted only in those areas allowed pursuant to Federal, State and Local fish and game regulations) and hiking and horseback riding.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

Single family dwellings or mobile homes for residential purposes for a watchman, caretaker or operator in conjunction with a permitted use, in the NR Zone above, are considered "Special Uses" subject to approval by the Planning Director (Section 16.213(3)). The following "Special Uses" are subject to approval by a Hearings Officer (Section 16.213(4)):

(a) Piers and boat houses.
(b) Single-family dwelling or mobile home and accessory structures.
(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.
(d) Forest uses and any accessory uses.

Uses in Section 16.213(4) above are subject to compliance with the following conditional use criteria (Section 16.213(5)):

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.
(ii) That the proposed site is on land generally unsuitable for natural resource uses.
(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;
(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby resource lands;
(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;
(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and
(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

Property development standards for all uses allowed in the NR Zone are set forth in Section 16.213(6) and include setbacks from front, side and rear yards.

Specific application of the Natural Resource Zone is discussed in the other Goal 5 sections of this report. A review of the County's zoning maps indicates that the NR Zone has been applied to a number of Goal 5 areas in the County.

Section 16.215 of the Zone Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses outright and conditionally. However, as noted in the Goal 2 Section of this report, the PR Zone allows a number of uses which could conflict with the purpose of the zone. Some of these uses could also conflict with a number of

Goal 5 resources including open space. This issue is dealt with in the Goal 2 portion of this report.

Conclusion--Open Space

Lane County has not inventoried any specific open space areas, per se. However, it considers farm and forest lands, recreation areas as well as natural areas to possess open space values. These have been inventoried as part of other Goal requirements. The County has a policy recognizing all resource lands as open space lands and indicating that resource-related activities shall predominate in these areas. Open space loss will be minimized where development is proposed, according to the County's policy. Resource zoning has been applied to most of the County, along with special zoning districts which help protect open space (e.g., Willamette Greenway, Natural Resource Zones).

Mineral and Aggregate Resources

Inventory

Lane County's inventory of mineral and aggregate resources is contained in its Mineral and Aggregate Working Paper.

Mineral Resources: The Working Paper addresses the following minerals: clay, copper, lead, gold, zinc, silver, mercury, antimony, arsenic, tourmaline, molybdenum, and pumice (pp. 3-5). The general locations of these mineral deposits are shown on a map (Appendix A), and are concentrated in four main areas: Hobart Butte, Bohemia, Fall Creek, and Blue River. The locations of these four areas are shown on the map as well. Information about the general quality, and quantity of these resources is provided. The County has not provided information on the location, quality, and quantity of specific sites, however.

Aggregate Resources: Lane County inventoried its aggregate supplies by examining permit lists from the Department of Geology and Mineral Industries and the Division of State Lands, by conducting telephone searches, taking on-site tours of aggregate-producing areas; and by talking with industry representatives (p. 6). The locations of 30 identified sites appear on a map in Appendix C and are listed by legal descriptions and tax lot numbers in Appendix D. A more extensive list of all tax parcels having any record of previous aggregate extraction is included in Appendices E and F. Appendix D is considered the County's (1C) inventory for lands outside the Metro Planning Area. Appendix E is the (1B) inventory for lands inside the Metro Area. Appendix F is the (1B) inventory for lands outside the Metro Area (confirmed by Mike Copely, Lane County Planner, personal communication, July 16, 1984).

Information on quantity of (1C) sites is presented in cubic yards, but the County cautions that the accuracy of this information is limited. In many cases, individual suppliers had only a cursory knowledge of the extent of their resources (p. 7). Quality of the supplies was not evaluated, due to time and budget constraints as well as the variability of resource materials.

Supply estimates were compiled by region (there are four regions in the County) and then coupled with demand estimates for each region in order to assess localized needs and supply/demand situations (p. 7). Demand forecasts were based on population projections and a per capita consumption figure of 22 tons annually (p. 7). Based on these estimates, cumulative demands for each region were projected. This analysis shows that existing supplies will be sufficient to satisfy demand to the year 2000. This will be particularly true if actual population growth rates are on the low side of the estimates. The available supply for the non-metropolitan area of the County is about three times the figure for projected consumption even when assuming the high population projections (p. 8). However, in terms of the supply/demand situation for each region, the margin of supply over demand for the southern section is relatively small. This is true also (but less so) for the western region. Also, the Metro Area will use some of the County supplies. Similarly, 5 to 10 percent of the U.S. Forest Service and BLM needs are supplied by the private market (p. 9).

Conflicting Uses/ESEE Consequences Analyses

Mineral Resources: Lane County reports that most of the mineral areas are on public lands (either the BLM or U.S. Forest Service). As such, federal laws govern prospecting, claims, and mining activities. Current forest resource designation and zoning for these areas "do not appear to preclude their development potential. Forest management and mining activities are considered to be compatible activites by most authorities" (p. 5).

Aggregate Resources: Each of the 30 inventoried sites was evaluated in terms of the following potential conflicts:

1. Areas of significant natural value contained in the Oregon Natural Heritage Program inventory;
2. Historical resources contained in the Working Paper on Historical Resources;
3. Willamette Greenway;
4. Park and recreation sites contained in the Lane County Parks and Open Space Master Plan;
5. Sensitive fish and waterfowl habitat identified in the Working Paper on Flora and Fauna; and
6. Existing or planned residential development.

Appendix J summarizes the results of the County's analysis. No conflicts were noted for any of the sites. Sites were not evaluated in terms of conflicts with agricultural or forest lands, since all of the sites are existing sites and therefore no longer available for these uses (p. 10).

Policies

A number of mineral and aggregate resources policies have been adopted (Plan, pp. 13-14). These include:

1. Known mineral resource sites within the County, which include those identified in Appendix "D" of the "Mineral and Aggregate Resources Working Paper," shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. Such designation and regulation is to follow the requirements of the Goal 5 rule (OAR 660-16-000 through 660-16-025), which is addressed in Appendix "J" of the "Mineral and Aggregate Resources Working Paper."

2. Exploration for mineral resources (in contrast to actual mining) shall be a permitted activity in the rural portions of the County. Areas designated primarily for residential purposes are to be excluded from this policy as are areas that, having undergone analysis in accordance with OAR 660-16-000, are designated as having some unique natural, historical or cultural value. Exploratory drilling for gas, oil or other hydrocarbons is not within the scope of this policy.

3. Mining operations are regulated by state and federal government agencies. County regulations shall supplement these actions only as necessary to ensure compatibility in the area, or to protect other resources.

4. Conserve and manage land, soil and mineral resources by respecting their physical limitations and environmental assets.

5. Update, in cooperation with local aggregate operations, federal, state and local agencies, past sand and gravel inventories to ensure supply/demand information is current.

6. Protect aggregate deposits from encroachment of incompatible uses and ensure that aggregate material in close proximity to its point of use will be available when needed.

7. Present and future land use controls shall be implemented to allow for the discovery of new mineral and aggregate resources when it is demonstrated that the projected demand for those resources in a given area will exceed available supply and conflict with adjacent uses can be minimized. Conflict analysis and resolution shall follow the methodology set forth in Appendix "J" of the Working Paper: Mineral and Aggregate Resources; however possible impact on agricultural lands, forest lands and residential

development (existing or planned) must also be considered. For sites within the Willamette Greenway or near Goal 5 inventoried resources, notification of the potential conflict shall be sent to the appropriate body (e.g., Pioneer Museum, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, etc.).

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacts during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listed in Appendix "J" of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

10. Sites for which not enough information is presently available to determine quality, quantity and conflicts with other uses which include those sites listed in Appendix "F" of the "Mineral and Aggregate Working Paper," shall be considered "Significant" in terms of OAR 660-16-000 through 660-16-025, but requiring that the Goal 5 evaluation process be delayed (the "1B" option). At such a time as it is clear that these sites will be needed within the County's advance framework, they shall be evaluated per the Goal 5 rule including conflict analysis and implementation of protective measures. Such evaluation will take the form of Plan amendment or revision studies. Notwithstanding the above schedule, all "1B" sites will be evaluated within five years of the date of this Policy adoption. These sites are included herein as Goal #5 Mineral and Aggregate Exhibit A.

11. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Policy 11 above indicates that significant fish and wildlife habitat areas in the Greenway shall be protected in accordance with Section C.3.i. of Goal 15. Section C.3.i. requires that aggregate extraction be allowed only when "subject to compliance with local regulations designated to minimize adverse effects on water quality,

fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation" (emphasis added). The Goal standard for significant fish and wildlife habitat areas, however, is stronger. It is spelled out in Section C.3.d. of Goal 15, rather than simply Section C.3.i. (This is also addressed in the Goal 15 section of this report).

Implementing Measures

Lane County has adopted a Quarry and Mine Operations Combining (/QM-RCP) Zone to protect major deposits of minerals, rock, and related material resources, and to resolve conflicts with surrounding uses (Lane Code, Section 16.216).

The Quarry and Mine Operations Combining Zone shall be available for use by the County for new or existing operations when requests are received as part of an areawide or legislative rezoning, or a specific property or quasi-judicial rezoning. When property under consideration of /QM zoning is in close proximity to existing and planned uses potentially incompatible with /QM uses, the application of the zone may be limited to a specific portion of a property in order to encourage the compatibility and proper management of land uses.

The Quarry and Mine Operations Combining Zone is intended to be applied only to those operations which have been evaluated through the Goal 5 Administrative Rule process. Other quarry and mining operations of short-term or intermittent duration should be provided pursuant to the special use provisions of the various zones.

In the Quarry and Mine Operations Combining Zone, the following types of buildings and uses are permitted, subject to the provisions of the Quarry and Mining Operation Reclamation Permit and exceptions set forth in the code (Section 16.216(4)).

(a) Uses permitted in the parent zone with which the /QM zone is combined.
(b) Extracting and storing of minerals, including equipment and materials necessary to carry out these functions.
(c) Plants for the processing of minerals from quarry and mine extraction operations.
(d) Sale of products generated from the quarrying and mining operation.
(e) Activities pemitted as part of the reclamation process provided for in the Reclamation Plan.
(f) Structures an buildings used in conjunction with the extracting and storing of minerals.

The zone requires that a surface mining permit first be obtained from the Department of Geology and Mineral Industries (Section 16.216(5). Section 16.216(6) sets forth blasting notice and records requirements.

Section 16.217 of the Lane Code is the County's Sand, Gravel, and Rock Products (SG-RCP) Zone. The SG Zone "shall only be applied to those sites which have been evaluated consistently with the Statewide Planning Goal No. 5 Administrative Rule conflict resolution process (Sec. 16.217(4)). In the SG-RCP Zone, sand and gravel operations are permitted subsequent to the following restrictions: For any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal No. 5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

A number of uses are allowed in the SG-RCP Zone when conducted in conjunction with a sand and gravel operation (Sec. 16.217), including asphalt paving-mix plant and accessory buildings; cement concrete batching plant; aggregate products fabrication and sale; sand and gravel resource-related equipment storage yard, maintenance and storage buildings, offices and warehouses "appropriate to the uses permitted in this District"; retail or wholesale sales of products related to the use of sand, gravel and related products; agriculture, grazing or timber raising; dwellings for owners, operators or help required; and signs. The zone contains site improvement standards, as well as setback standards, cover, planting, drainage and topsoil standards, and operating standards.

The SG-RCP Zone establishes a Sand and Gravel Review Committee to determine if operating plans or revised plans comply with the requirements of the zone or with "a river plan which may be adopted by the Board." The committee is made up of the Planning Director, the Public Works Director, the Parks and Recreation Director, the Chief Sanitarian, the County Hydrologist, and the County Floodplain Specialist. The Review Committee is notified of all operating plans and revised plans, and has seven days to approve the plan or require modification of the plan.

It appears, from an examination of zoning maps, that the SG Zone has been applied to a number of sites that are not included on any plan inventory of (1C) sites. Yet, contrary to the zone's purpose statements, the County has not applied the Goal 5 process to these sites to justify SG zoning.

Section 16.218 of the Lane Code is the County's Sand, Gravel and Rock Products-Controlled Process (SG-CP-RCP) Zone. The zone is intended to provide more restrictive control of processing activities than the SG-RCP Zone (described above) for the protection of surrounding properties or for greater control over the location and operation of processing activities. The SG-CP-RCP Zone shall apply only to sites which have been evaluated via the Goal 5 Rule process (Sec. 16.216(3)).

The requirements of the SG-CP-RCP Zone are the same as in the SG-RCP Zone except that the Sand and Gravel Review Committee, in its evaluation of operational plans, must evaluate "the location for the erection or enlargement of all processing equipment and activities, including, but not limited to asphalt paving mix and cement concrete batching plants" according to the following "Operational Plan Approval Criteria":

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity; and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverge and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

Among the permitted uses in the F-1 Zone are (1) mining and quarrying and processing of rock permitted in accordance with the FPA for forest road construction or other forest related uses, or when used solely in conjunction with a farm use on which the mining or quarrying occurs, and (2) operations conducted for the exploration of aggregate or other mineral and subsurface resources (Lane Code, Section 16.210(2)(c) and (g)). Mining, quarry, and processing of mineral, geothermal and other subsurface resources; and rock mining, quarrying and processing which exceeds the standards in 16.210(2)(c), above, are allowed conditionally subject to a Hearings Official approval. Conditional use criteria in the F-1 Zone have been discussed in the Goal 4 section of this report.

In the F-2 Zone, mining, quarrying, and processing of rock for forest or farm road construction is permitted outright on the same tract as the mining or quarrying occurs (Sec. 16.211(2)(c)), as are operations for the exploration for aggregate or other mineral or subsurface resources (Sec. 16.211(2)(e)). The mining, quarrying, and processing of mineral and other subsurface resources; and rock mining and quarrying and processing that exceeds the standards in Section 16.211(2)(c), above are

considered Special Uses, subject to Hearings Official approval (Sec. 16.211(5)(d)). This is also the case for operations conducted for the exploration, mining and processing of aggregate or other mineral resources or other subsurface resources (Sec. 16.211(5)(k)). Criteria for permitting these uses are found in Section 16.211(6).

In the Exclusive Farm Use Zone, operations for the exploration, mining and processing of aggregate and other mineral resources or other subsurface resources are Special Uses, subject to Hearings Official Approval (Sec. 16.212(4)(b)).

Please refer to the Goal 15 section of this report for a discussion of the County's approach to mineral and aggregate sites located within the Willamette Greenway.

Objections

1. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

2. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in the Goal 15 section of this report.

3. James Spickerman (on behalf of Leon Funke and Michael Horton) has objected to the zoning of farm lands for sand and gravel extraction and processing uses.

   a. Objectors are specifically concerned about the following parcels:

      17-03-06 TL 400, 500, 300, 201
      17-03-05 TL 300, 1500, 1300, 1900
      16-03-31 TL 901, 500 and 101

      The 455 acres in these parcels are primarily agricultural land and have been zoned SG-RCP according to objectors. Allowed uses include sand and gravel extraction as well as asphalt paving mix plant, concrete batching plant, aggregate products fabrication and sale, and retail or wholesale sales of products. The land was previously designated EFU. Objectors point out that in Westerburg v. Linn County, LUBA held that a Goal 2 exception to Goal 3 was required when a zone change was made from EFU to aggregate extraction and processing where the new zone permitted

manufacturing processes and activities. Objectors believe, therefore, that Lane County should have taken an exception prior to rezoning these parcels.

b. Objectors claim that the County applied SG zoning to parcel 16-03-31 Tax Lot 601 and 602 without the necessary ESEE consequences analysis of conflicts with Goal 3 uses and other Goal 5 uses. Objectors point out that the site has a "long history of documented conflict between the sand and gravel extraction use and adjacent agricultural and residential uses. Objectors further point out that in Olsen et al. vs. Scappoose Sand and Gravel Co., LUBA indicated that the Goal 5 Rule requires that, where conflicting uses have been identified, the Goal 5 resource site (e.g., mining) may itself have an impact on other uses and these impacts must be considered in analyzing the ESEE consequences.

c. Objectors believe that plan policies do not address the Goals adequately because there is no method set forth in the plan for Goal 5 conflict resolution analysis. The plan states that such analysis and resolution of conflicts shall follow the methodology in Appendix J of the Mineral and Aggregate Working Paper. Objectors, however, state that Appendix J contains no such methodology, but only a statement of conclusions regarding particular sites.

d. Objectors point out that the plan policies set forth no method to reconcile Goal 5 and Goal 3 conflicts (specifically, where agricultural soils are underlaid with aggregate resources).

e. Objectors claim that plan policies make no provision for ESEE analysis of conflicting Goal 5 uses.

f. Objectors claim that the plan does not comply with Goal 5 Guideline B9 which states:

> Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization, as well as for the primary use.

g. Objectors claim that, although a number of sites are to be considered under the (1B) process at a later date, the sites are not included on the plan inventory as a "special category," as required by the Goal 5 Rule.

h. Objectors believe the plan is not internally consistent. Specifically, objectors point out that EFU lands are zoned SG-RCP, but there is no basis for this in policies or in working papers. A number of parcels are zoned for sand and gravel extraction, but not all have been designated for such uses.

Objectors also point out that SG-RCP zoning is contrary to agricultural lands policies (to provide maximum protection for agricultural activities by minimizing activities that could conflict with such uses.

i. Objectors point out that no consideration is given to the effects of SG-RCP zoning on the groundwater resources of agricultural lands adjacent to the land designated SG-RCP.

Response to Objections

1. The response to the objections regarding the Pudding Creek heronry is presented in the Goal 15 section of this report.

2. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

3. a. Objectors contend that sites 17-03-06, TL 400, 500, 300, 201; 17-03-05 TL 300, 1500, 1300, 1900; 16-03-31 TL 901, 500, and 1001 were all rezoned from EFU to S-G-RCP without an exception. Objectors cite Westerberg vs. Linn County as requiring this be done where the new zone permits processing activities. This was based on the fact that ORS 215.213 allows processing conditionally, but at the time of Westerberg vs. Linn County, "processing" did not include the batching and blending of aggregate. However, the 1983 Legislature changed the statutory definition of "processing" (ORS 517.750(9)) to include "crushing, washing, milling, screening as well as the batching and blending of mineral aggregate into asphaltic and portland cement concrete product . . .". Therefore, objectors are not correct in suggesting that a Goal 2 exception be taken for such sites. However, this is not to say that the Goal 5 Rule process does not apply. In the case of the parcels cited by objectors, this process has been completed for only 17-03-06 TL 400, 17-03-05 TL 300, 16-03-31 TL 901, and 16-03-31 TL 1001. The Mineral and Aggregate Working Paper (p. 10) indicates that, because these are existing operating sites, these sites are no longer available for agricultural use. No conflicts were found to exist for any of these four sites.

b. Objectors are correct that parcel 16-03-31 TL 601 has not been analyzed according to the Goal 5 process. Site 16-03-31 TL 602, however, is included as Site No. 21 in Appendix D of the County's Mineral and Aggregate Working Paper. No conflicts were found to exist with Site No. 21. Conflicts with agricultural uses for the site were not analyzed because the site is an operating site and it is assumed it is no longer available for agricultural use (Working Paper, p. 10). Objectors are correct, however, that the County did not address conflicts with adjacent agricultural and residential uses. This has not been required except when a new site or expansion of an existing site is

proposed. Policies 7 and 10 require Goal 5 analysis in such circumstances, including analyzing and resolving conflicts with surrounding uses.

c. Objectors are not correct that the County lacks a method for analyzing and resolving conflicts pertaining to (1C) mineral and aggregate resources in Appendix D. The County indicates that there are no conflicting uses for these sites, and therefore either the SG ,/QM or SG/CP zone will apply. It also indicates that sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts (Mineral and Aggregate Policy 9). All (1B) sites require a full Goal 5 evaluation, including conflict resolution and plan amendments or revision studies before extraction activities are allowed, according to Mineral and Aggregate Policy 10.

Objectors are correct that Appendix J is a statement of conclusions about the conflicts with the 30 (1C) sites, and not a methodology for analyzing and resolving conflicts per se. However, the policy should be interpreted as requiring that the same methodology used in producing Appendix J will be used in future conflict/resolution situations (i.e., determining whether there are conflicts with other Goal 5, 8, and 15 resources, or with planned or existing development). The policy would also require consideration of possible impact or agricultural and forest lands in approval of any new site or expansion of an existing site.

d. Objectors are not correct that there is no plan policy method to reconcile conflicts on agricultural lands that contain aggregate resources for those (1B) sites in Appendix F. Specifically, Mineral and Aggregate Policy 10 requires a full Goal 5 Rule evaluation of (1B) sites. This will require a site-by-site analysis of conflicts (including those with agricultural lands), an ESEE consequences determination of those conflicts, and application of measures to resolve conflicts.

e. There is no specific Goal 5 requirement to adopt plan policies which require analysis of ESEE consequences of identified conflicting uses. Rather, such conflicts are to be resolved during the planning process, based on such an analysis which is to be incorporated into the plan. (The exception to this is for (1B) sites. Jurisdictions must adopt policies to apply all applicable steps of the Goal 5 Rule to such sites. Lane County has such a policy for its (1B) mineral and aggregate resources--Mineral and Aggregate Policy 10).

f. Guidelines do not carry the same weight as the Goals, and therefore, this objector's concern is not a Goal requirement. However, objectors do raise an important concern, and the County is urged to plan such sites for interim, transitional and "second" use.

g. Contrary to objector's statements, the County has placed its (1B) sites on a special category inventory--Appendix E and F of the Mineral and Aggregate Resources Working Paper. It also has expressed this in Mineral and Aggregate Policy 10.

h. Objectors are correct that some lands are zoned SG that are not on the (1C) inventory, nor has the Goal 5 process been applied to them to justify SG zoning rather than EFU, or some other zoning.

SG zoning for a particular site may be counter to the County's policy of providing maximum protection for agricultural activities by minimizing activities that could conflict with such uses. However, Goal 5 requires protection of mineral and aggregate resources. These Goal requirements must be balanced. This is done through the Goal 5 process. When analyzing the ESEE consequences of conflicting uses for a particular site, the requirements of other Statewide Goals must be considered and balanced against Goal 5 requirements.

i. Objectors have not provided information demonstrating how SG zoning will have an effect on groundwater resources of adjacent agricultural lands. Other state statutes require that this concern be addressed.

Conclusion--Mineral and Aggregate Resources

Lane County has inventoried its mineral and aggregate resources and has identified 30 specific aggregate sites which are considered (1C) sites. The amount of aggregate contained in these 30 sites is sufficient to satisfy the demand to the year 2000. The County indicates there are no conflicting uses with any of these sites, and has applied QM-RCP, SG-RCP, or SG-CP-RCP zoning to those sites. These zones assure that extraction can occur, subject to appropriate conditions regarding such things as setbacks, drainage, traffic and operation.

The County has identified a number of (1B) sites which will be evaluated according to the Goal 5 process (including plan amendments, where necessary), within the next five years.

A number of sites not in any plan inventory have been zoned for sand and gravel extraction, but have not been justified as such, based on an analysis of ESEE consequences of conflicting uses.

Energy Sources

Inventory

Lane County has adopted an Energy Working Paper which describes energy consumption and both conventional and alternative energy sources. Conventional sources includes electrical energy from seven utility

companies and natural gas and petroleum from out-of-state sources (pp. 7-15). Alternative sources include solar, hydroelectric, biomass, cogeneration, wind, and geothermal energy (pp. 15-29). Of these, the County considers only hydro power and geothermal sites to be site-specific (p. 39).

The Working Paper identifies eight dams currently generating power or having the potential to do so (p. 18), as well as eight existing nonpower dams with hydroelectric generation potentials exceeding 200kW (p. 18). Maps showing the general locations of these sites are on page 19 of the Working Paper. Information about the dam height, hydraulic head and capacity for each site is presented on page 18. Proposed dams with generation potentials exceeding 25MW and those with potentials between 200kW and 25MW are identified on page 21 of the Working Paper and mapped on page 22. Information about dam height (where known), hydraulic head, system head, and capacity is presented (p. 21).

Wind potential in Lane County is through to be highest along the Coast and Coast Range. Eugene Water and Electric Board (EWEB) and 19 public utilities operate an experimental windmill in the Coast Range north of Lane County, and PP&L operates a wind turbine near Coos Bay. Average wind speeds in Lane County, however are too low to power such windmills (p. 26).

There are two known Geothermal Resource Areas (KGRA's), both of which are in the eastern portion of the County on federal land. Both are under study by the Oregon Department of Geology and Mineral Industries (p. 29). The locations of the two KGRA's--Belknap-Foley KGRA and McCredie KGRA--are shown on Map 7 (p. 30). Information regarding their reservoir temperatures, mean reservoir volume, wellhead thermal energy and thermal power, and resource to land distance is presented in Table 11 (p. 31). The Energy Working Paper also describes the stages of geothermal energy development and discusses the constraints upon geothermal power generation (pp. 28-29). Although the potential for geothermal energy development in Lane County is "significant," further information is needed regarding its potential in the two KGRA's and the environmental impacts associated with such development (p. 29).

A cogeneration facility capable of producing 28,000 kilowatts of power exists at the Weyerhaeuser plant in Springfield, and another facility capable of producing 800 kilowatts is being installed in the Lane Plywood Company of Eugene (pp. 25-26).

The Working Paper disucsses the potential for biomass as an energy source in Lane County (pp. 23-25). There are two major sources--forest lands and farm lands. The potential for energy generation from these sources is great, but economic feasibility and environmental impacts are primary constraints to development of these sources at this time (p. 25).

Conflicting Uses/ESEE Consequences Analyses

General, non-site-specific conflicts are discussed for each of the major energy source categories identified (i.e., hydroelectric, biomass, solar, cogeneration, wind).

Regarding hydro sites, the County states:

> Maps have been presented illustrating a number of alternative hydro sites on various rivers in the County. Since these sites are, at present, in the proposal stage, it is premature to evaluate conflicting uses for each one, but the sites need to be acknowledged by designation on Plan Diagrams, and some effort made to ensure their availability when needed. Conflicting uses will be examined and resolved at such a time as the sites are actually being proposed for development; this could probably be done most efficiently as part of the elaborate permitting process hydro power must undergo before approved. In most cases, conflict resolution is a major factor in hydro development even through many of the sites are located on public land, or lands presently set aside for resource uses--especially timber lands. Existing resource-based zoning can do much to prevent them from being subjected to development if energy considerations are incorporated into the zoning requirements. In Goal 5 language, the "1B" option should be taken at this time (p. 39).

Regarding geothermal sites, the County indicates that because they are located on federal lands, they will have to go through a series of state and federal permit approvals. Zoning "only reflects the County's desire that the sites be protected from conflicting uses." Therefore, the County has not conducted an analysis of conflicting uses (p. 39).

Solar access does not appear to be endangered at this time in the rural areas. However, this is not the case in newly developing residential and commercial areas (p. 39).

Policies

Five Energy Resource policies have been adopted by Lane County (Plan, p. 17):

1. Lane County shall identify energy resource areas within the County and protect such areas through the use of existing ordinances and regulations. Such regulations shall address hydroelectirc, geothermal, and wind power sites.

2. Lane County shall encourage the exploration and development by other agencies of renewable energy resources such as geothermal, wind, biomass, hydroelectric and solar, and shall monitor such development to ensure that the development does not cause adverse effects within the County.

3. Lane County will use the work of the L-COG Committee on Energy, and its report, "Lane County Electic Energy Planning Program, Final Report (1983)" as a source of resource identification and site protection measures. This will supplement the County's own measure expressed in Policy and Zoning Statements.

4. The County shall protect the sites of hydroelectric resources through conditional or special use provisions of its resource zones. Sites for which a license has been applied for with federal and state authorities, or for which water impoundments of more than 100 acre-feet are proposed, or which will generate power in excess of 75KW, shall be shown on the Plan as a special designation, an Exception to applicable LCDC Goals taken if necessary, and a special zoning district applied. At that time, the Goal 5 rule conflict analysis shall also be carried out.

5. For additional energy policies see Goal 3.

Implementing Measures

Hydroelecric generating facilities with water impoundments of less than 100 acre-feet are allowed conditionally subject to Hearing Official approval in the F-1 and F-2 Zones (Lane Code, Sections 16.210(4)(g), 16.211(5)(g)).

A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility is also permitted conditionally (subject to Hearings Official approval) in the F-1 and F-2 zones (Section 16.210(4)(h), 16.211(5)(h)).

The conditional use criteria for approving or denying these hydroelectric facilities are those for other nonforest uses (Sec. 16.210(5)(a) through (f); 16.211(5)(f)(i) through (vi)).

Hydroelectric facilities having impoundments over 100 acre-feet are not permitted outright or conditionally in the Lane Code. Instead, the County shall analyze the conflicts per the Goal 5 Rule, take an Exception to the applicable Goal if necessary, and apply a special zone to those sites, as specified in Energy Policy 4.

As noted in the Working Paper, resource zoning will help prevent possible sites from being developed for other uses.

Conclusion - Energy Sources

Lane County has identified a number of potential energy sources, many of which are on federal land, and all of which are (1B) sites at this time. There is potential for hydroelectric developments on nonfederal land, but the County contends that it is premature to evaluate conflicting uses.

Nevertheless, the County has decided to allow small sites in its F-1 and F-2 Zones conditionally. Larger sites will require plan amendments, along with application of the Goal 5 Rule, exceptions to appropriate goals and possible development and application of a special zone. The County has adopted a policy commitment to this effect. In the meantime, resource zoning will help prevent potential sites from being lost to other uses. (See, however, the Goal 4 section of this report for a discussion of problems with the F-2 Zone.)

Fish and Wildlife Areas and Habitats

Inventory

Information about Lane County's fish and wildlife resources is contained in its Flora and Fauna Working Paper and the addendum to that working paper. Pages 5-10 describe in general each of the 11 major habitat types in the County, along with a discussion of the value of the habitat type to wildlife, and general location of each habitat type. These include:

1. Estuary and Bay
2. Inland Marsh
3. Wet Meadows
4. Lakes and Reservoirs
5. Riparian Vegetation
6. Annual and Perennial Grasslands
7. Coastal Shore Pine/Spruce
8. Douglas Fir/Trailing Blackberry
9. True Fir/Alpine
10. Deciduous Hardwoods
11. Agricultural Lands.

The County prefaces this material by stating that this information "is not considered an inventory and is not accompanied by maps. It is intended merely as background information."

The Working Paper and its addendum contain special sections addressing endangered, threatened, and special concern species, riparian and wetland areas, sensitive fish and waterfowl areas, and big game range. These are discussed separately below.

Endangered, Threatened and Special Concern Species: The Working Paper lists plants and animals which are threatened, endangered, or of special interest (pp. 11-12). Further information is provided for six of these species--northern spotted owl, northern bald eagle, wolverine, silverspot

butterfly, western snowy plover, and American osprey (pp. 12-13). This information does not provide location, quality, or quantity information on any specific habitat areas or sites. However, the County indicates that:

1. No spotted owl or bald eagle nests are known to occur on private property;

2. Wolverine habitat is in high elevation, remote areas and therefore in federal ownership;

3. Snowy plover habitat is within state jurisdiction.

4. Osprey nests are found throughout the County, although not in great numbers. The County indicates the ODFW maps show their locations, but these maps have not been adopted or submitted for review.

5. Silverspot butterfly habitat is found only "along a small section of the Oregon Coast." It is recognized in the Coastal Resource Management Plan of Lane County.

Lane County has indicated that Silverspot butterfly habitat occurs on federal land adjacent to the Big Creek (Reneghan) Exception Area as well as on the Renaghan property itself (Exhibit E--Renaghan Amendment, pp. 27, 31). It should be noted that the Exception document contains one statement (Finding 37e) on page 27 which appears to contradict this. Specifically, finding 37e states there are no sensitive species on the property, and that the Silverspot butterfly habitat is located on adjacent federal land only. The Exception document contains several other statements indicating that such habitat occurs in the northwest corner of the property.

The County provides no information at all regarding great blue heron rookeries or pigeon mineral springs, which are considered sensitive bird habitat areas by the Department of Fish and Wildlife. (The exception to this is for two rookeries in the Willamette Greenway. They are addressed in the Goal 15 section of this report.) The inventory of sensitive bird sites developed by ODFW and provided to the Department of Forestry (DOF) as part of a recent management agreement between those agencies, identifies 15 great blue heron rookeries, 21 osprey nest sites, three pigeon mineral springs, and at least one bald eagle nest site in Lane County, most of which are on nonfederal land. According to Flora and Fauna Policy 15, "currently known pigeon springs, heron and raptor (hawk, osprey, and eagle) nest sites. . . shall be placed in a '1B' category."

Riparian and Wetland Areas: Riparian lands are defined by the County as all lands along both banks of Class I streams in Lane County, to a setback line of 100 feet from ordinary high water (Addendum, p. 7).

The County indicates in its Flora and Fauna Working Paper (p. 16) that all lakes, reservoirs, and Class I streams in Lane County have been mapped, but were not included because of budgetary limitations. They are

available in the Planning Department offices. The Addendum to the Working Paper (p. 6) states that ODFW has provided maps of all Class I streams, as well as major significant wetland areas. Detailed maps are available for review in County offices, and a generalized summary map is included in the Addendum (p. 20).

The Flora and Fauna Working Paper discusses the values associated with wetlands and riparian areas for both fish and other wildlife types (pp. 14-15). The County notes that the U.S. Fish and Wildlife Service has identified a number of wetland types in its National Wetland Inventory. Currently, about half of the County has been mapped, enabling identification of major wetlands. These include:

1. Fern Ridge periphery, exclusive of parkland;

2. Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel;

3. North Fork Siuslaw fresh-water marsh;

4. Maple Creek marsh;

5. Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

The County indicates that these areas are mapped in detail on the Plan Diagram maps. More specific location, quality, and quantity information for each of these five wetland areas is contained in the Working Paper Addendum (pp. 11-13).

The County has not inventoried a wetland south of Sutton Lake and east of Highway 101, or a Darlingtonia bog east of Florence. As noted in the 1983 Coastal Goals review of Lane County (p. 8), these wetland were to be addressed under Goal 5:

> The County notes there are only two Goal 18 resource areas east of Highway 101 which do not fall within the coastal shorelands boundary. They are two wetland habitat areas identified in the coastal resource inventory maps. The County should note that it will have to adequately address these two areas later under Goal 5 when it brings the remainder of the County plan into compliance.

The Darlingtonia bog is addressed in more detail in the Natural Areas section of this report.

Sensitive Fish and Waterfowl Areas: The County notes that this is a subcategory of the previous section, Riparian and Wetland Areas (p. 20). Maps have been provided the County by ODFW showing important waterfowl nesting habitat and streams that receive high use by anglers and/or game fish (p. 20), but were not submitted for review. A large-scale map is available in the County Planning offices (Addendum, p. 5). A

generalized, small-scale map is included on page 20 of the Addendum which shows the locations of important streams and stream reaches. A list of these specific reaches, by basin, is included in the Addendum (pp. 2-4). All identified areas are of high quality and are considered important (Working Paper, p. 21). The extent of riparian vegetation is described in the previous subsection of this report. The County notes that there are native anadramous fish runs in Big Creek within the Big Creek Exception Area (Exhibit E--Renaghan Amendment, p. 44). These include coho salmon, cutthroat trout and steelhead.

Big Game Range: The County notes that ODFW divides big game range in Lane County into three categories--Major, Peripherial, and Impacted. The Major Range supports the majority of big game and, in general, consists of sparcely developed commercial forest lands. Peripheral Range is generally located on foothill areas between commercial forest lands and valley floors. Peripheral Range supports substantial big game populations and serves as wintering areas for animals in severe winters. Impacted Range consists of those areas that have existing levels of development which preclude future wildlife management options for maintaining viable wildlife populations and recreational opportunity, although they frequently contain big game populations.

All three big game range areas are depicted on Lane County Wildlife Inventory Maps, according to the Flora and Fauna Working Paper (p. 23). However, these maps were not submitted for review because of budget constraints. They are available in the Planning Department Office (p. 23). The Working Paper notes that the highest quality big game range is in the Major Range because development is limited. Peripheral Range is important, but has enough development to limit big game use and managment options. Impacted Range is of the lowest quality because of existing development (p. 23). The County provides acreages for these three categories (p. 24).

The County recognizes major elk habitat on a portion of the Big Creek Exception site (Exhibit E-Renaghan Amendment, p. 52).

Conflicting Uses/ESEE Consequences Analyses

Endangered, Threatened and Special Concern Species: As indicated earlier, Lane County knows of no spotted owl or bald eagle nest sites on private land. Similarly, wolverine habitat is on federal land. The County notes that the State Parks Division of ODOT regulates vehicular uses in snowy plover habitat (Working Paper pp. 12-13). Specific conflicts with osprey nest areas are not identified, but the County notes that protective measures in riparian areas (e.g., Willamette Greenway permit requirements, coastal shorelands overlays, riparian and wetland area provisions) will resolve conflicts (Addendum, p. 15).

The Working Paper indicates that the Coastal Resources Management Plan of Lane County recognizes the Silverspot butterfly and applies a prime wildlife managment unit to its habitat (p. 13). Specific conflicts and ESEE consequences are not discussed in the Working Paper, however.

It should be noted that a portion of the critical habitat for the Silverspot butterfly is included in the Rock Creek Federal Wilderness Area, recently approved by Congress. Another portion of the habitat is located within the County's Big Creek Exception Area. That exception indicates that the applicant "will enter into contractual arrangements with the Siuslaw National Forest or Western Oregon State College to take whatever measures are necessary to mitigate any potential conflicts or adverse impacts associated with the development" (Exhibit E--Renaghan Amendment, p. 27). According to the Exception (p. 28), the U.S. Fish and Wildlife Service's Endangered Species Office indicates that this project will have not significant adverse impact on the Silverspot's habitat.

Conflicting uses and ESEE consequences analysis have not been conducted for sensitive bird habitat areas, since these resource sites have been placed in a (1B) category.

Inasmuch as the County failed to inventory a number of nonfederal sites as (1C) resource sites (e.g., great blue heron rookeries, pigeon mineral springs, bald eagle nest, osprey nests), the County has not identified conflicting uses or ESEE consequences of those conflicting uses with these sites. Information does exist for these sites, however, as indicated earlier, enabling the County to conduct such analyses.

Riparian and Wetland Areas: Two major activities conflict with riparian and wetland habitat areas, according to the County's Working Paper (p. 17)--destruction of vegetation for any purpose (e.g., forestry, agriculture, construction, recreation, aggregate extraction), and draining surface or subsurface water which then changes the vegetative structure and generally the habitat value. The County has developed separate ESEE consequence analyses for riparian lands and wetlands.

The riparian lands ESEE consequence analysis is further divided into three categories--(1) resource areas (forest and agricultural lands), (2) rural lands (partially or sparsely developed), and (3) developed and committed lands, including communities (Addendum, pp. 7-10). Based on these analyses, the County decided to develop a (3C) approach in order to limit conflicting uses. ODFW has recommended a 50 foot setback along all class I streams in rural development zones and a 100 foot setback in rural resource zones (Addendum, p. 10).

Separate conflicting uses/ESEE consequences analyses have been conducted for each of the five major wetlands identified (Addendum, pp. 11-13). Based on these analyses, the County has determined that areas owned by the Corps of Engineers (Fern Ridge Reservoir, part of Lower Long Tom, Amazon Canal) have sufficient protection, and furthermore, cannot be regulated by the County since they are in federal ownership. Areas under Coastal Resources Zoning (North Fork Siuslaw, Maple Creek Marsh) are also assumed to be adequately protected. A (3C) approach (e.g., Natural Resource Zoning) is appropriate for all other privately-owned areas (part of Lower Long Tom) (p. 13).

Sensitive Fish and Waterfowl Areas: Removal of riparian vegetation in identified sensitive areas is considered the major conflicting use with these resources (Working Paper, p. 21). The County notes that the ESEE consequences analysis is generally the same as that for riparian areas and wetlands, summarized in the previous section of this report (Working Paper, p. 21). However, the County indicates that since the sensitive fish and waterfowl areas are considered more valuable than others in the County, the effects of vegetation removal can be more significant (p. 21). Based on these analyses, Lane County has chosen a (3C) approach to protect riparian vegetation in such areas "whenever possible" (p. 22). The County notes that ODFW has recommended setbacks of 50 to 100 feet along waterways designated as sensitive fish habitat, plus natural resource zoning for wetlands not within that riparian strip (Addendum, p. 5).

Conflicting uses and ESEE consequences of conflicting uses with fish habitat in the Big Creek Exception Area are addressed on pages 54-56 of the Exception. Based on this analysis, the applicant will be required to protect the anadromous fish through development of a management plan and protection or riparian vegetation (pp. 27, 55).

Big Game Range: The primary conflict with big game range is identified as residential use at densities over one dwelling unit per 40 acres in Peripheral Range, and one unit per 80 acres in Major Range (Working Paper, p. 24). The County indicates that its 80-acre commercial timber zoning is very restrictive in terms of dwelling unit placement, and therefore, "it is unlikely that conflicts will occur" in Major Range areas (Addendum, p. 14). Similarly, the County believes its 40-acre zone will satisfy ODFW's recommended density in Peripheral Range (p. 14). Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas (p. 14).

The conflicts and ESEE consequences of conflicts with major elk habitat in the Big Creek Exception area are discussed on pages 53-54, and 56 of the Exception document. Based on this analysis, the applicant will be required to protect elk winter forage areas (p. 27) and to develop an elk managment plan (p. 32).

Policies

Lane County has adopted numerous policies regarding its fish and wildlife resources (Flora and Fauna Policies, Plan, pp. 14-16). These policies include the following:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "Significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or, that riparian vegetation does actually extend all the way into the 500 foot or 100 foot setback to the location of the proposed improvements.

   Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife.

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per

Goal 5 requirements if it is clearly demonstrated that an unprotected signficiant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process.)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

13. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met.

14. A group known as the "Lane County Flora and Fauna Committee" is to be established and given permanent status by the Board of County Commissioners. The committee shall represent a wide array of environmental interests and the interests of property owners. Its tasks shall include: evaluation of LCDC Goal 5 concerns and resources, development of information to help the County comply with OAT [sic] 660-16-000/025 ("Goal 5 Rule"), research and provision of resource site data to the County, and response to work in progress. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

15. Currently known pigeon springs, heron and raptor (hawk, osprey and eagle) nest sites shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluation per "1B" requirements within two years of the date of plan adoption. Lane County shall consider enlarging the list of significant nest sites whenever information about additional sites becomes available. The significant nest sites shall be those identified by Jim Greer and Jim Hutchison (Department of Fish and Wildlife biologists) in a 12/20/83 letter to Jim Mann (Senior Planner, Lane County Land Management Division), and these sites shall be incorporated into the Lane County General Plan Policies document as Flora and Fauna Exhibit A.

16. Rare and endangered vascular plants, identified in the 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

17. Lane County recognizes that Douglas fir old growth stands provide valuable and unique wildlife habitat and will encourage the Forest Service and Bureau of Land Management to maintain acreage in this age class sufficient to ensure viable populations of dependent wildlife species.

Policy 22 (Plan. p. 5) states:

> Sites considered 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement

process for the "significant" sites and after sufficient information is available regarding the location, quality and quantity of the "significant" sites.

Lane County's Forest Lands Policy 17 (Plan, p. 10) states:

> Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

Implementing Measures

Lane County has adopted the following riparian setback standards and riparian vegetation maintenance standards in its F-1, F-2, E-RCP, ML-RCP, PR-RCP, and DR-RCP Zones (Lane Code, Sections 16.210(7)(a) and (b), 16.211 (9)(b) and (c), 16.212 (8)(b) and (c), 16.214(7)(b) and (c), 16.215(6)(a) and (b), and 16.232(5)(b) and (c), respectively):

> (b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:
>
> (i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and
>
> (ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or
>
> (iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.
>
> (c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:
>
> (i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazard.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

In the PF/RCP C-R, RCP, RA-RCP, and RR-RCP Zones (Sections 16.219(4)(b) and (c); 16.223(5)(b) and (c); 16.229(7)(b) and (c); and 16.231(7)(b) and (c), respectively), the setback is 50 feet, rather than 100 feet.

The following zones indicate the Class I Stream and Riparian Vegetation requirements of LC 16.229-35(2) and (3) shall apply: C-1, RCP (Section 16.220); C-2, RCP (Section 16.221); C-3,RCP (Section 16.222); M-1, RCP (Section 16.224); M-2, RCP (Section 16.225); and M-3, RCP (Section 16.226). The RG-RCP Zone (Section 16.230) indicates that Section 16.299(2) and (3) shall apply. However, the Lane Code does not contain any section with the numbers 16.299-35(2) and (3) or 16.229 (2) and (3).

As discussed in the open space section of this report, Lane County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213) which is, in part, intended to protect aquatic and other wildlife habitat areas. Please refer to that section of this report for details. It should be pointed out that the NR zone does not contain riparian setback and vegetative maintenance standards. Although major development in the NR zone is not anticipated, the NR zone permits a variety of structures. These structures should be required to be set back in order to protect riparian vegetation, just as they are in other zoning districts. In fact, since the purpose of the NR zone is to protect wildlife and aquatic habitats, there is even more reason why such setbacks should be required.

A review of the County's zoning maps indicates that the NR Zone has been applied to a number of habitat areas in the County. One of the sites zoned NR is the Big Creek Exception Area, which contains fish and big game habitat, and habitat for the endangered Silverspot butterfly.

According to the Exception (p. 27), no alteration of the riparian vegetation will occur, and the owner has agreed to enter into contractual arrangements to protect elk winter forage areas. The applicant will also take measures that may be necessary to protect the habitat of the Silverspot butterfly.

Contrary to statements contained in the Flora and Fauna Working Paper, Lane County's F-1 (Nonimpacted Forest Lands) Zone establishes a 40-acre (rather than an 80-acre) minimum lot size (Lane Code, Section 16.210(6)), except that (a) a land division to create a parcel of less than 40 acres may be allowed conditionally if it is for separating an existing residence from adjoining forest land, and (b) a common property boundary may be adjusted so long as no additional parcels are created. As noted in the Flora and Fauna Working Paper (p. 24), and as discussed earlier in this report, ODFW's recommended density in Major Big Game Range (which, according to the County, is mostly zoned F-1) is one unit per 80 acres. Inasmuch as the F-1 zone does not allow dwellings, this density standard has less meaning in Lane County's F-1 Zone.

The F-2 (Impacted Forest Lands) Zone (Lane Code, Section 16.211) requires a minimum of 20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel. However, there is no requirement that, in the Big Game Range portions of that zone, densities will not exceed those recommended by ODFW (i.e., one unit per 40 acres in the Peripheral Range, or one unit per 20 acres with clustering and siting standards; one unit per 80 acres in the Major Range, or one unit per 40 acres with clustering and siting standards).

In the Exclusive Farm Use Zone (Lane Code, Section 16.212), a dwelling or mobile home not in conjunction with farm use may be approved if it meets certain criteria; similarly, a division of land may be allowed for a dwelling not in conjunction with farm use if it meets those criteria and does not conflict with the purpose of the zone. However, none of the criteria address ODFW's dwelling density recommendations, and the purpose statement of the zone does not refer to maintaining wildlife habitat values. As noted in the Goal 3 section of this report, minimum lot size is from 20 to 60 acres, depending upon location. As noted in the Flora and Fauna Working Paper (p. 24) and as discussed earlier in this report, ODFW's recommended density in Peripheral Big Game Range (which, according to the County, is mostly zoned Exclusive Farm Use) is one unit per 40 acres. There are no standards in the zone which require lot sizes to be 40 acres or greater in the Peripheral Big Game Range portions of the zone, or alternatively, that require clustering of dwellings (to allow densities as great as one unit per 20 acres.

Lane County has adopted a Marginal Lands (ML-RCP) Zone (Lane Code, Section 16.214) which appears to have been applied to wildlife habitat areas, and could be applied to other areas in the future. (The County did not submit maps showing the locations of its big game habitat areas, so it cannot be determined with certainty whether it has been applied in big game habitat areas). ORS 197.247(8) requires that application of

such a zone satisfy all requirements of other Goals, in this case, Goal 5. The County has not adopted findings demonstrating how the specific applications of the ML zone comply with the Goal 5 Rule. Criteria for approval of future ML zoning (Section 16.214(4)) do not include compliance with Goal 5.

Section 16.215 of the Lane Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses and activities outright, and a number of others if within a built and committed exception area that is designated as nonresource land. The zone also lists uses that are subject to hearings official approval. Section 16.215(5)(e) of the zone contains the following conditional use approval critera:

> When a use is proposed in an area designated as Major Peripheral Big Game Range or as Sensitive Fish and Waterfowl areas as shown on the Lane County Wildlife inventory, the Oregon Department of Fish and Wildlife shall be notified and their comments shall be considered in evaluating the proposed use.

The PR zone allows a number of uses that could conflict with wildlife habitat and other Goal 5 values, and with the purpose of the zone, as noted in the Goal 2 section of this report.

The County has not adopted any implementing measures to protect and/or resolve conflicts with sensitive bird habitat sites.

As noted in previous acknowledgment reviews (e.g., Tillamook County), the Commission has allowed counties to adopt plan policies and ordinance language which clearly expresses the intent to rely on the FPA, Rules, and the March 1984 agreement between the Board of Forestry (BOF) and the Fish and Wildlife Commission (F&WC) to resolve conflicts between timber management activities and sensitive bird sites. Lane County has no such policy commitment, and it has not inventoried all sites on the BOF/F&WC list of sites covered by this agreement. However, even if such a policy is adopted by counties, they are still required to adopt implementing measures to resolve conflicts between other uses (e.g., development) and sensitive bird sites. Lane County has not adopted such measures.

Lane County has not identified sites that are considered to be more important than commercial forest operations based on a Goal 5 ESEE consequences analysis, per Forest Lands Policy 17 (Plan, p. 10), nor has it adopted and applied any implementing mesures to such sites which regulate timber management activities.

Objections

1. The Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon and the Legue of Women Voters of Central Lane County (LWV) have objected to the County's approach to sensitive bird nesting and use sites. Specifically objectors point out that the Flora and Fauna Working Paper discusses only some of the species considered

sensitive. Missing are designations of heron rookeries and pigeon mineral springs. Policy 15 addresses all sensitive species (bald eagle nests, heron rookeries, snowy plover habitat, spotted owl nests, osprey nests and pigeon mineral springs). Further, objectors point out that Policy 15 places these species in a (1B) category. Both ODFW and 1000 Friends indicate that the County possesses inventory information (including recent ODFW updated information) which is sufficient to complete the Goal 5 process for this resource category. ODFW indicates that the location, quality, and quantity information provided the County is similar to that provided to other counties which have completed the Goal 5 process and which have been acknowledged. The League of Women Voters is concerned that two years is too long for these resource sites to be without protection. Most are not in the Greenway, and therefore do not even receive minimal protection.

1000 Friends also objects to the fact that neither Flora and Fauna Policy 2 or 3 provides adequate protection for these sensitive species. Policy 2 simply indicates the County will recognize existing programs that protect species; it does not bind the County to any particular course of action. 1000 Friends believes the County must make an affirmative commitment to protect threatened and endangered fish and wildlife species. Policy 3 also fails to guarantee protection of sensitive species since it requires the County to seek to minimize adverse impacts through County regulations (including zoning). 1000 Friends suggests that present zoning may be construed to "minimize adverse impacts" but this may not necessarily provide adequate protection for particular sites.

1000 Friends also objects to the use of the definition of "sensitive species" used in Policy 3. Objectors believe it is overly general and could be construed by decision-makers to exclude certain species. Objectors believe that County Policy 3 should reference the list of "species of special concern" that appears in the Working Paper, rather than use a vague term in the policy. Similar comments have been filed by Oregon Forest Industries Council.

2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations "if conflicts can be resolved in accordance with OAR 660-16-000." Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.

3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements

that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting of standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

4. ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal and nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where marginal and nonresource lands are located, and therefore the extent to which they are in game range areas, since the zone map format and resource inventory map formats are not easily comparable. 1000 Friends points out the Goal 5 must be applied whereever Goal 5 resources occur, even in areas designated marginal or nonresource land.

5. ODFW, 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's treatment of the Pudding Creek Heronry. Objectors point out that the County conducted a Goal 5 ESEE consequences analysis, but that inasmuch as the sand and gravel plan and zone designations have been retained on the site, conflicts have not been resolved. Please refer to the Goal 15 section of this report for further details concerning objections to the zoning of this site.

6. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Objectors indicate that the County has not adopted a program that is adequate to protect and/or resolve conflicts with the site under Section (3C) of the Goal 5 Rule. Objectors point out that the 1981 LCDC order for the Eugene/Springfield Metro area include a requirement that the ESEE consequences of designating the island for sand and gravel use must be evaluated in the context of regional aggregate supply and demand. The IOTC further required that if the island were to retain a partial sand and gravel designation, the Metro Area Plan and the Lane Code (Section 10.210) must be amended to require that limited aggregate extraction will minimize the impact on scenic and wildlife values.

The IOTC also referenced Goal 15 requirements and IOTCs. Objectors contend that neither the Goal 5 nor Goal 15 IOTCs have been adequately addressed. These objections are also contained in the Goal 15 section of this report.

7. 1000 Friends of Oregon has objected to the fact that Lane County has placed only five noncoastal wetlands in its (1C) inventory, and has placed all others in a (1B) category. 1000 Friends believes the County has sufficient information to be able to classify the others as either (1A) or (1C), since such information was given to the County by ODFW, interested citizens, and the Lane County Flora and Fauna Committee. Objectors indicate that Goal 2 Policy 22 is inadequate for these (1B) sites since it requires only that interim protection be applied at the beginning of the plan refinement process --no sooner. Objectors point out that Goal 15 requires protective measures be applied as soon as their significance has been determined.

   Finally, 1000 Friends indicates that the U.S. Fish and Wildlife Service's National Wetland Inventory is the basis for Lane County's wetland inventory. Flora and Fauna Policy 7 states that this inventory, although incomplete in Lane County, will be used to evaluate (1B) wetlands within two years of the date of plan adoption or when the national inventory is completed. 1000 Friends points out, however, that such an inventory is not scheduled for completion for another 5-10 years, and Lane County is not within a priority inventory area. Objectors believe the County should amend Policy 7 and the Addendum to the Flora and Fauna Working Paper (p. 6) to recognize alternative sources of data shall be used to assess the significance of wetlands and to identify their boundaries.

8. 1000 Friends has objected because the County definition of wetlands in its Working Paper is much narrower than that contained in the Statewide Planning Goals or the U.S. Fish and Wildlife Service, but the County has not justified how such a definition is consistent with Goal 5. The Working Paper states that a wetland is "an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre." Objectors indicate the County has no definition of wetlands in either its plan policy document or in its zoning ordinance.

9. 1000 Friends objects to the fact that Lane County is relying on the FPA to maintain riparian corridors along Class I streams and wetlands, and will take no actions to limit conflicting uses in areas subject to the FPA. Objectors state that there is no analysis in the submittal materials which demonstrates how the FPA and Rules provide protection for riparian resources consistent with Goal 5. Therefore, 1000 Friends objects to LC 16.210(7) and 16.211(9).

10. 1000 Friends objects to the County's failure to apply riparian protection measures around lakes and along Class II streams. Objectors point out that Class II streams regulate water temperature, quality, and quantity of downstream Class I streams.

11. Friends of the Oregon Coast has objected to the County's Renaghan Amendment (Big Creek Exception) for a number of reasons, some of which relate to fish and wildlife concerns. These are as follows:

    a. Objectors believe that many of the findings are "contractory and irrelevant." Objectors cite two examples. The first is that finding 37d (p. 27) conflicts within finding 37e (p. 27). One calls for establishing permanent elk forage areas; the other calls for maintaining the property in forest. Objectors also indicate that the County's claim that there are no sensitive species on the property contradicts findings 40a (5) and 44b(6) which state that the northwest corner of the property contains Silverspot butterfly habitat.

    b. Objectors claim that because the applicant retained a consulting wildlife biologist, his statements in the record should be expected to support the establishment of a destination resort. Objectors believe that his statements are treated by the County as findings of fact although they sometimes "are argumentative of the County's Coastal Sub-Area Plan and of the Oregon Department of Fish and Wildlife's Management plans."

    c. Objectors believe that, although the applicant and ODFW will be required to work together to mitigate adverse impacts on fish and wildlife, these efforts will be "experimental" and therefore cannot justify the resort complex in the the middle of prime and sensitive habitats.

    d. Objectors point out that the Exception recognizes ODFW's concerns about increased fishing pressure on Big Creek as a result of the development, and that potential harm can only be mitigated by regulating sport fishing (through reductions) on the creek. Objectors feel that long-time anglers will therefore be penalized by the development.

Response to Objections

1. Objectors are correct in pointing out deficiencies in the County's inventory of sensitive bird nesting and use sites. Information on location, quality, and quantity is available, yet the County has taken a (1B) approach to several of the species identified. Sufficient information exists for the County to be able to complete the Goal 5 process for this resource category.

   Objectors are also correct that Flora and Fauna Policies 2 an 3, themselves, do not guarantee protection for sensitive species, particularly in light of the absence of implementing measures to provide such protection. The adequacy of these policies can be judged only after the County completes the Goal 5 process for the habitat areas of these species. Lane County has erroneously placed such species in a (1B) category, and has not yet completed the Goal 5

process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

> Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.

4. Objectors are correct that Goal 5 has not been applied by the County in the process of designating marginal lands. ORS 197.247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5.

5. The response to the objections regarding Pudding Creek Heronry is presented in the Goal 15 section of this report.

6. The response to the objections regarding Big Island is presented in the Goal 15 section of this report.

7. The County has indicated it has sufficient inventory information on only five noncoastal wetlands at this time. 1000 Friends has not provided location, quality, or quantity information on specific wetlands it believes should be (1C) sites, rather than (1B) sites.

   ODFW has not objected to the County's determination that only five wetlands are (1C) and the remainder are (1B) sites. 1000 Friends is correct that Policy 22 calls for protection of (1B) sites only at the beginning of the plan refinement process. However, the Goal 5 Rule does not require any interim protection for (1B) sites.

   Although the incomplete National Wetlands Inventory is the basis for the County's wetlands inventory, 1000 Friends is not correct that the County must wait until the National Inventory is completed before it can apply the Goal 5 process to (1B) sites. Furthermore, Policy 7 does not prevent the County from considering information about other sites not on the national inventory during its plan update process. 1000 Friends, or other parties may supply the County with information about wetlands, and the County would be required to apply the Goal 5 process to those sites. Plan Policy 7 states:

   > Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal; state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the national Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process).

While the policy does not permit the use of alternative sources of information during the update process, 1000 Friends is correct in suggesting that the policy could be improved by actually stating that other sources of information (besides the National Inventory) will be used.

8. 1000 Friends is correct in pointing out that the County's Working Paper definition of "wetlands" is narrower than that contained in the Statewide Planning Goals. Wetlands very often do not have open, standing water present at least six months out of the year. Reliance on the County's definition could result in some wetlands possibly being excluded from the County's (1C) inventory.

9. 1000 Friends is correct that the County is relying on the FPA to resolve conflicts between timber management activities and riparian areas along Class I streams and wetlands, although the County has not made a statement to this effect. It is clear in Forest Lands Policy 17 and in various sections of the Zone Code that the County is not regulating harvest activites. Objectors are also correct that the County has not provided an analysis demonstrating how the FPA and Rules provide protection for the Goal 5 resource. However, it has been Commission practice not to require counties to adopt implementing measures to resolve conflicts between timber management activities and riparian corridors.

10. 1000 Friends is correct that the County has not applied riparian protection measures around lakes or along Class II streams, or otherwise justified not providing such protection, based on an ESEE consequences analysis of conflicting uses. Information in the Flora and Fauna Working Paper (pp. 6 and 15) suggests that these are important Goal 5 resources.

11. The objections of Friends of the Oregon Coast are not sustained with regard to fish and wildlife concerns for the following reasons:

    a. Objectors are correct that the Exceptions document contains some conflicting statements, particularly whether the property contains Silverspot butterfly habitat. Specifically, finding 37e (p. 27) is misleading, since the site does contain Silverspot habitat. In light of the fact that the County's intent is clearly to take whatever actions are necessary to protect the Silverspot butterfly, this inconsistency is not a Goal violation.

       With regard to the Exception documents' statements regarding elk forage, it can be assumed that, although the main intent is to keep the property in forest, portions of the property will be in other uses. These findings are broadly written, and, as such, are not contradictory.

    b. Objectors have not indicated how findings 47d(1) through (13) violate Goal 5, only that they are sometimes "argumentative" of other documents.

c. Objectors have not indicated why they believe ODFW's attempt to mitigate impacts on habitats will be experimental, or otherwise why they cannot suceed in providing adequate protection.

d. Objectors have not indicated how regulating sport fishing on Big Creek to protect the resource long-term violates Goal 5. While it is unfortunate that long-term anglers may be "penalized," this is not a Goal issue.

Comments

Oregon Forest Industries Council (OFIC) and the Lane County Landowners Association have commented that Policy 22's intent is unclear, since it calls for interim protection measures for "significant" Goal 5 resource sites. However, the policy addresses (1B) sites. The association indicates that (1B) applies where some information exists but is inadequate for purposes of identifying a site and determining its significance. Commentors also point out that interim protective measures are neither required nor appropriate for Goal 5 compliance.

Response to Comments

Policy 22 (Plan p. 5) states:

> Sites considerd 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the 'significant' sites and after sufficient information is available regarding the location, quality, and quantity of the 'significant sites.

While it is true that Policy 22 is somewhat ambiguous, the policy appears to recognize the fact that certain Goal 5 resource categories have significance (e.g., all eagle nests are significant), although their specific locations may not be known at this time. Therefore a (1B) classification is appropriate. The Goal 5 Rule does not require interim protection measures for (1B) sites. However, the Rule does not prohibit jurisdictions from adopting and applying interim measures to (1B) sites.

Conclusion -- Fish and Wildlife Habitats

Lane County has adopted inventory information for a number of fish and wildlife habitat areas, and has identified conflicting uses and ESEE consequences of those conflicting uses. Implementing measures including riparian setbacks and vegetation maintenance standards and a Natural Resource Zone have been adopted. However, a number of deficiencies still remain and must be corrected before acknowledgement can be granted. These are summarized below.

Lane County has placed all sensitive bird habitat sites in a (1B) category, even though information is currently available and is adequate for completing the Goal 5 Rule process. The County needs to adopt a (1C) inventory for known sites and complete the Goal 5 process.

Implementing measures which carry out ODFW's development density recommendations in Major and Peripheral Big Game Range areas have not been adopted, particularly in the F-2, ML and EFU zones. The County has not applied the Goal 5 process to "nonresource" lands.

The County's three commercial, three industrial, and its garden-apartment zones reference a nonexisting code section for their riparian setback and vegetation maintenance standards. It is obvious that the County intended to apply such standards in those zones but until the zones are amended to either (1) reference the correct section of the code containing those standards, or (2) incorporate such standards themselves, there are no riparian standards in effect in those seven zones. Riparian protection measures have not been applied around lakes, in the Natural Resources Zone, or along Class II streams, or justified as not being necessary, based on an analysis of ESEE consequences of conflicting uses.

The County uses a narrower definition of "wetlands" than in the Goals, and therefore, some wetlands may be left off any future (1C) inventory.

The Parks and Recreation zone allows a number of uses which could conflict with the purpose of that zone, and with Goal 5 resources present (including fish and wildlife habitat values).

A Natural Resources Zone has been developed and applied to lands in the County, but it is unclear which habitat sites have been given NR zoning or whether it has been appropriately applied.

Ecologically and Scientifically Significant Natural Areas

Inventory

The County's Flora and Fauna Working Paper contains the County's inventory information on natural areas (pp. 26-32). This working paper indicates that the County evaluated the 86 sites on the Natural Heritage Inventory and the nine sites identified by the Natural Areas Preserves Advisory Committee. (Note: The Committee is now known as the Natural Heritage Advisory Council). These sites were evaluated by Lane County, first of all, to determine whether there was adequate information on location, quality and quantity. If this was the case, and that information suggested that a site was "significant," it was placed in a (1C) category. If information existed, but the site was determined to be not significant, it was classified (1A). If there was inadequate information, sites were placed in a (1B) category (pp. 26-27).

The County placed six sites in the (1B) category:

1. Booth Island/Siltcoos Lake
2. McKenzie River Island (not be confused with the island at the confluence of the McKenzie and Willamette Rivers)
3. South Fork Gate Creek
4. Swamp Creek
5. Marshall Island Heronry
6. Willamette Valley Quaking Aspen Grove

The County has provided justification why it believes the (1B) classification is appropriate for each of the site sites (pp. 27-28). The Nature Conservancy has indicated it has no updated information for any of the six sites at this time and that a (1B) classification is appropriate (Curt Soper, personal communication, June 15, 1984).

Fifty-six other sites were determined to be in a (1C) category and therefore constitute the County's natural areas inventory (p. 28). The County has grouped these sites according to their ownership. There are 23 sites on U.S. Forest Service land, six on BLM land, four sites within state parks, and 25 that are either in the Willamette Greenway or covered by the Coastal Resources Management Plan (pp. 30-32). Two additional sites (Upper Yachats Elk Pasture and Fern Ridge) are also (1C) sites, but do not fall into the above categories (p. 32).

No information regarding location, quality or quantity of the federally-owned sites is provided in the Working Paper. Information regarding the natural features present in the State park sites and at the 25 Greenway or Coastal sites is summarized (pp. 30-32). All are significant in terms of quality. Locations of these sites have not been provided.

It should be noted that, during the review of the coastal portion of the Lane County plan, a privately-owned Darlingtonia bog, east of Highway 101 and east of the City of Florence, was identified. The bog did not quailify as an ecologically significant natural area under the Coastal Goal requirements. It does, however, possess natural values that could qualify it as a Goal 5 (1C) natural area. However, Lane County has not addressed this site in its Working Paper or other submittal materials.

Conflicting Uses/ESEE Consequences Analyses

Because of their ownership by the U.S. Forest Service or the BLM, the County believes no conflicts exist for the 29 federal sites (Flora and Fauna Working Paper, p. 28).

The County indicates that no conflicts exist for the four state park sites based on uses allowed in zoning districts applied to those sites (p. 29). The Flora and Fauna Working Paper Addendum (p. 15) states, "the State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen." However, as noted in the Goal 2 section of this report, the Parks and Recreation zone which has been applied to these state parks, allows a number of uses which could conflict with natural area values.

No conflicts have been identified for the Coastal or Greenway sites because of programs and zoning districts applied to them (p. 30).

With regard to the two remaining sites (the Elk Pasture and Fern Ridge), the County indicates there are no conflicts. The Siuslaw National Forest and ODFW own the site and have an agreement concerning use of the site as an elk wintering area. Fern Ridge is owned by the Corps of Engineers and, under a 1980 management plan for the reservoir, the natural values present will be protected (p. 32).

It should be pointed out that public ownership, in and of itself, does not necessarily mean there are no conflicting uses, nor does it guarantee site protection. Although several of the U.S. Forest Service and BLM sites are formally protected by those agencies (e.g., wilderness areas, designated research natural areas), others are not. Unless the federal agencies have formal protection programs in place for natural areas, it cannot be assumed that no conflicts exist, nor can they be considered "2A" (protected) Goal 5 resource sites. However, since the Commission has not required counties to complete steps (2) and (3) of the Goal 5 Rule for sites on federal land, it is recommended--but not required--that Lane County correct the statement on page 28 of the Flora and Fauna Working Paper regarding conflicts on federal land.

Policies

Lane County has adopted the following policies regarding natural areas (Flora and Fauna Policies, Plan, pp. 14-16):

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

12. If uses are identified (which were not previously identified in the Plan which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

16. Rare and endangered vascular plants, identified in a 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

Policy 22 (Plan, p. 5) states:

> Sites considerd "significant" in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the "significant" sites and after sufficient information is available regarding the location, quality, and quantity of the "significant sites".

See also the Goal 15 section of this report and the coastal review of the Lane County Plan for a discussion of other relevant plan policies which address natural area.

Implementing Measures

As indicated by the County, a number of natural area sites are located on federal land, over which the County lacks jurisdiction. A number of other sites are significant natural areas within the Coastal Planning Area and the implementing measures applied to them have been acknowledged as being in compliance with the Coastal Goals. The two Greenway sites are actually riparian areas along the Middle Fork and the Coast Fork of the Willamette River. The County's Greenway Permit ordinance and its riparian setback and maintenance standards provide a degree of protection for these areas. (See, however, the Goal 15 section of this report for a discussion of specific deficiencies in the Greenway ordinance).

The four state parks have been zoned Parks and Recreation. However, as noted in the Goal 2 section of this report, the PR zone allows a number of uses that could conflict with the natural area values of the sites. ODOT has indicated it does not forsee conflicts with the four sites, according to the County. However, there are no management plans for the sites, or letters from ODOT which confirm that this is the case.

Objections

1. The League of Women Voters of Central Lane County (LWV) has objected to the fact that the County has placed rare and endangered plant species in a (1B) category with a two year time delay for their evaluation through the Goal 5 process. The LWV is concerned because it believes two years it too long for these resources to be without protection. Objectors point out that since most of these resources are not within the Willamette Greenway, they will not receive even minimum interim protection.

2. Lane County Audubon Society and 1000 Friends of Oregon have objected because the County has not provided adequate protection to a natural area known as Russel Creek Basin. This objection is described in more detail in Part II of this Goal 5 Report.

Response to Objections

1. Flora and Fauna Policy 16, which requires Lane County to evaluate the (1B) rare and endangered plant species list in two years does not refer to any particular sites containing these species, nor have objectors provided a list of sites which they believe should have been placed in a (1C) rather that a (1B) category. If sites are not known at this time, then a (1B) classification is appropriate, including policy commitment to address them in the future.

2. Objectors are correct that protection and/or conflict resolution measures have not been applied to the Russel Creek Basin natural area, in spite of an ESEE consequences analysis and recommendations regarding protection of the site in the Metro Working Paper. This issue is addressed in greater detail in the Part II section of this Goal 5 report.

Comments

1. Lane County Landowners Association has pointed out that the County's list of rare and endangered plants is simply a list of species and does not address any specific or general sites. Commentors believe, therefore, the Goal 5 Rule does not apply to these species until sites are identified. (Flora and Fauna Policy 16 indicates that certain plants are considered significant and shall be placed in a (1B) category and evaluated with two years).

2. Lane County Landowners Association also comments that, contrary to Flora and Fauna Policy 7, wetland resources cannot be considered "significant" while placed in a (1B) category.

Response to Comments

1. Commentors are correct that Policy 16 refers only to a list of species, and does not address any sites. Therefore, the Goal 5 Rule will apply if and when sites containing these species are identified.

2. Contrary to the commentor's statements, wetlands--as a resource category--can be (and generally are) considered "significant," even through individual sites may be in a (1B) category because of lack of site-specific inventory information.

Conclusion -- Natural Areas

Lane County has identified 62 natural areas, 56 of which it has classified as (1C) sites. The County has provided sufficient justification for the (1B) classification of the other six sites. Most of the 56 (1C) sites are on federal land, within the Coastal Planning area, or the Willamette Greenway. Therefore, the County has found that the sites are either not within its jurisdiction to regulate, or implementing measures have been applied which provide adequate protection.

Four state parks contain natural area values. The County indicates that because of their zoning (Parks and Recreation), they are adequately protected. However, an examination of that zone reveals that a number of uses are allowed in that zone which could conflict with the natural values present. State ownership in and of itself does not guarantee protection of these values, unless the agency has an adopted park managment plan, which requires protection. As noted in Goal 2, state agencies are also subject to Goal compliance and acknowledged plans. This is an issue which should be further explored through State Agency Coordination agreements.

The County has not applied the Goal 5 Administrative Rule to a Goal 5 Darlingtonia bog located east of the City of Florence that is not covered by the Coastal Goals.

Outstanding Scenic Views and Sites

Inventory

The County's scenic views and sites inventory information is contained in the Recreational Resources Working Paper (pp. 5-13). This consists of a discussion of several inventories and rating systems used by other public entities (e.g., Bureau of Land Management, U.S. Forest Service, State Department of Transportation, former Coastal Conservation and Development Commission, several parks and open space plans of Lane County and the City of Eugene) (p. 6). However, the Working Paper contains no location, quality or quantity information for any specific sites, nor are any of the aforementioned inventories adopted by reference. Instead, the County has decided that, given the time and resources available as well as the difficulty, it cannot conduct site-specific inventory (p. 7). The County suggests that this be undertaken before the first plan review/revision

occurs (p. 7). The County describes in some detail how such an inventory could be conducted, including defining the objective, determining what areas or types of scenic types are "critical", establishing an evaluating or rating system, applying a rating system, and implementing decisions made regarding such areas (pp. 6-14).

The County's Exception for the Big Creek area recognizes scenic values on he property, and on surrounding federal lands (Exhibit E--Renaghan Amendment, p. 53).

Conflicting Uses/ESEE Consequences Analyses

Because the County has not conducted an inventory of outstanding scenic reviews and sites, it has not identified conflicting uses with specifies sites or ESEE consequences of those conflicting uses.

Policies

Lane County's policy regarding scenic resources is as follows (Open Space and Scenic Areas Policy 3, Plan, p. 17):

> Initiate a program to identify areas of outstanding scenic value, identify and resolve conflicts after consideration of social, economic, energy and environmental consequences and protect sites for which conflict resolution indicates protection is desirable. This program will be initiated prior to the next scheduled Plan update (five years from adoption of revised Plan). The County is encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this policy.

Implementing Measures

Because Lane County has decided to put off the application of the Goal 5 process for this resource category until a later date, no implementing measures regarding the protection and/or resolution of conflicts with scenic views sites have been adopted or applied.

The scenic values of the Big Creek Exception Area are to be maintained through a combination of measures, including keeping 87 percent of the property in open space; placing development away from Big Creek and east of Highway 101 (so it is not visible from the north and will not interfere with the most viewed coastal areas); designating the site Conservation/Recreation/Open Space; and by imposing site review requirements. The site will be zoned NR, as well (Exhibit E--Renaghan Amendment, p. 56).

Objection

Friends of the Oregon Coast object because they believe the proposed development in the Big Creek Exception Area will not enhance the outstanding scenic view associated with the site, and would, in fact, destroy the "picture-book" setting.

Response to Objection

Objectors have not provided specific information as to why the combination of plan and zone designations for the site, site review and the requirement for 87 percent open space is not sufficient to protect scenic resources associated with the site.

Determining what is sufficient to protect scenic views and sites is more difficult and more subjective than for other Goal 5 resource categories. However, in the absence of more specific information from objectors, the objection cannot be sustained.

Conclusion--Scenic Views and Sites

Lane County has not inventoried outstanding scenic views or sites, nor has it identified conflicting uses and ESEE consequences of conflicting uses. No implementing measures addressing this resource category have been adopted or applied on the ground. Instead, the County has a policy to initiate a program to address this resource category prior to the next plan update (five years from adoption of the revised plan).

Lane County should be commended for the serious thought and consideration it has given to this subject, and for its commitment to initiate a comprehensive program to identify and protect outstanding scenic resources. Understandably, such a program can be complex and time-consuming, particularly as it is outlined in the County's Working Paper. However, the Goal 5 Rule requires counties to develop programs prior to acknowledgment, based on information that is currently available. According to the County's own Working Paper, several inventories already exist. For example, the County recognizes that there are several state scenic highways, sites recognized in its own Parks and Open Space Master Plan, as well as sites within federal wilderness areas or on other federal lands. It should be noted that, in the 1981 denial order for Lane County, there were in-order-to-comply requirements directing the County to inventory scenic resources and to apply Goal 5 to those sites.

Neither the Goal nor the planning process itself requires that new information be generated or that information be perfect before planning decisions are made. If this were to case, nearly all planning decisions would be put off until the post-acknowledgment period. It is recommended that Lane County embark on a comprehensive scenic resources program during post-acknowledgment, as called for in its plan. However, prior to

acknowledgment, the County must, at a minimum, inventory known sites, and complete the Goal 5 process for those sites. This work may be refined during post-acknowledgment as part of the County's more detailed, comprehensive scenic resources program work.

Water Areas, Wetlands, Watersheds and Groundwater Resources

Inventory

Lane County has developed a separate document, Water Resources Working Paper, which contains inventory information, and conflicting uses/ESEE consequences analyses for this Goal 5 topic.

Watersheds: A map showing the locations of Lane County's water basins is contained in the Appendix to the Working Paper (Map 2). The County does not provide quality or quantity information for each individual basin, but rather indicates that quality and size vary (p. 5). The County does note, however, that the Upper Middle Fork Willamette, Mosby Creek, and the entire Siuslaw River have severe sedimentation problems. The remainder of the Willamette and the tributary streams to the Willamette and the Siuslaw have moderate sedimentation problems. According to DEQ, the Siuslaw River basin is a "regional hot spot," (i.e., a considerable portion has a severe problem but is not as important as compared to other hot spots, statewide). DEQ has indicated that 410 miles of streams in Lane County have streambank erosion problems, 67 of them having severe erosion. This is particularly true in the Siuslaw Basin, and in tributary streams to the Willamette and short reaches of the Willamette River itself (p. 4).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's wetlands inventory.

Surface Waters: Lane County streams are shown on Map 2 in the Appendix to the Water Resources Working Paper. More complete mapping of surface water is available in the Planning Department office, however (p. 7). Based on a 1974 Water Quality Report and its 1981 update, the County reports that the quality of water in Lane County is generally quite high (p. 7) However, the Mowhawk, Long Tom, and portions of the Coast Fork and Main Stem of the Willamette have slow, meandering reaches and are affected by extensive development (p. 7). Specific problems along these rivers are discussed briefly (pp. 7-8). The Water Resources Working Paper contains a brief discussion of minimum stream flows, particularly those on the Willamette which are regulated by reservoir releases determined by the Corps of Engineers (pp. 8-9).

The Flora and Fauna Working Paper (p. 16) indicates that all lakes and reservoirs have been mapped and are available in the County Planning Department offices. There are about 300 Alpine Cascade Lakes in the County, varying in size from Waldo Lake (6,420 acres) to Mouse Lake (.05 acres) (Water Resource Working Paper, p. 8).

Groundwater: The principal aquifiers which yield moderate to high volumes of water are located on the coast near Florence in dunal sands, along the lower McKenzie Valley, the lower Middle Fork Willamette Valley, the Lower Coast Fork Willamette Valley, and on the valley floor north of Eugene along the Willamette River (p. 10). Map 3 in the Working Paper shows the quantity of groundwater in Lane County; groundwater quality is depicted on Map 3.

Conflicting Uses/ESEE Consequences Analyses

Watersheds: The County states that the only conflict that is specifically a watershed conflict, and not a surface or groundwater conflict, is contamination or possible contamination of surface water supplies used for domestic purposes. Timber propagation and harvesting activities, particularly herbicide use and erosion caused by ground disturbance can affect municipal water sources (p. 5) Residential development and road construction also cause erosion problems (p. 5). The County notes that resolution of timber harvesting conflicts is beyond its regulatory scope. It also points out that several watersheds used for domestic water supplies are "substantially within federal owernship." The County notes that the watershed for the City of Cottage Grove is almost entirely within federal ownership. The Umpqua National Forest and the U.S. EPA have adopted a plan to address problems, yet these problems continue (p. 5). The County indicates that the potential for similar problems exist for domestic suppies from federally-owned watersheds such as Mapleton, Tide, London Springs, and Eugene's supply, the McKenzie River (p. 5).

The County has not conducted an ESEE consequences analysis because the problem is outside its jurisdiction to resolve. However, the County supports adoption of policies or amendments to state and federal laws (including the FPA) which provide greater levels of protection for watershed (p. 6).

Development -- which is regulated by the County -- could impact the Clear Lake watershed. This watershed serves the Heceta Water District and provides a portion of the water for the City of Florence (p. 6). The County discusses the possibility of designating a "protected watershed" but has decided to take no action until sufficient information is gathered on the sources of pollutants. (p. 6). An intensive study is presently underway in response to a temporary DEQ rule (p. 6).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's conflicting uses/ESEE consequences analysis for wetlands.

Surface Waters: A number of conflicts exist for surface waters of the County, but the County asserts they are not consequences of County actions. Rather, it believes they are the result of federal agency management programs (e.g., reservoirs have certain congressioally authorized uses, but these often do not include some uses that are of importance of the County, such as waste dilution, fish and wildlife and recreation). The Corps of Engineers is in the process of reviewing authorized uses on six reservoirs, and could propose reauthorization (p. 9).

Similarly, certain streams such as the Coast Fork Willamette, Coyote Creek, Long Tom River and Lost Creek, appear to have been overallocated. The County recognizes that the State Water Resources Department (WRD) has responsibility for establishing minimum streamflows. The County believes WRD should initiate adjudication, including establishing minimum streamflows for major waterways (p. 9).

Erosion from forest lands is also a conflict with water quality, but the County points out that it is regulated by the FPA or federal regulations. (p. 9). Agriculturally caused water quality problems are being addressed by DEQ and soil and water conservation districts, although three SWDs in the County have not yet adopted model Best Management Practices by DEQ (p. 9). Outside UGBs, urban runoff is primarily from industrial facilities, especially hazardous materials stored at this sites (p. 9-10). This is also regulated by DEQ.

Groundwater: Two conflicts have been identified for groundwater resources -- development in quantity-limited aquifers, and development in areas where groundwater quality may be polluted. Separate ESEE consequences analyses are presented for these two types of conflicts. The County has concluded that:

1. For a quality-limited aquifer, otherwise acceptable development should be allowed if there is an adequate showing that water will be available for a forseeable period in the future, and that the additional withdrawal will not negatively impact surrounding water users. A number of specific code revisions are recommended to carry out these requirements (p. 12).

2. For groundwater quality problem areas, the County has determined that resolution of conflicts should be different for different types of contaminants (p. 14). These include:

    a. For development in aquifers contaminated by natural means, there should be a system to inform people of potential problems, and to suggest that well drilling and testing take place prior to construcion. Areas of quality limitation could be placed on a computerized land file, and could be checked when a building permit application is reviewed. Similarly, notification would be a matter of public record and would be available to future parties interested in these properties as well.

b. Old and smaller solid waste sites in the County are mapped, but not enough is known about specific leachate problems or groundwater characteristics to designate hazard notification areas around them. The Working Paper recommends inventorying each site, including period of operation, type of wastes deposited, and groundwater characteristics. Based on the information, a hazard notification system should be established (p. 14).

c. Two sensitive aquifers are currently subject to DEQ rules for sewage system installation -- the River Road/Santa Clara area, and the North Florence area. For other developed areas located on sensitive aquifers and which have known or suspected contamination problems (Mapleton, Noti, Elmira, Crow, Coburg, Goshen, Creswell urbanizing area, Saginaw, Marcola, Dexter, Cedar Flats, Walterville, Leaburg, Vida, Blue River, and McKenzie Bridge), current County policy calls for a minimum parcel size of one acre if community water is available, or two acres if individual wells are used. The County points out that this policy does not correct the existing situation, but should prevent aggravation of the situation (p. 15). These quality-limited aquifier areas will be placed on the County computer file, and applicants for building permits involving new wells will be informed of possible sewage contamination in the groundwater.

Policies

The following policies address water resource issues in Lane County (Water Resources Policies, Plan, pp. 17-18):

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and establish priorities among the varous beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

4. The primary means of evaluating groundwater resources for land use planning purposes shall be through the land division review process. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

Additional policies regarding water resources, including wetlands, are discussed in the Fish and Wildlife section of this report, as well as in the Goal 6 and 11 sections.

Implementing Measures

As noted in the Fish and Wildlife section of this report, the County has adopted riparian setback and vegetation maintenance standards in a number of zoning districts.

A Natural Resources Zone has been applied to several wetlands (confirmed by Mike Copely, County Planner, personal communication, July 16, 1984).

Section 13.050(13) of the Lane Code addresses the provision of water in the County. This section requires lots and parcels to be served by an approved public, community, or individual water system. Aquifer and quality tests are required for public and community systems, and may be required for individual water sytems. These tests are as follows (Section 13.050(13)):

> (c) Aquifer and quality tests or geological evaluation may be required by Lane County for any lot or parcel. These requirements may include, but need not be limited to, evaluation of existing well logs and preparation of a geological report on the area, and evaluation of the site by a professional geologist, or engineering geologist or full scale aquifer tests as required. In determining the detail of analysis required, the following apply:
>
> (i) Areas designated by Board order as having problems in the quantity or quality of available water as adopted, documented in Lane Manual and filed in the office of the Department shall meet

the following requirements for all parcesl less than 20 acres in size. The applicant must affirmatively demonstrate, in a manner acceptable to Lane County, that the proposed subdivision/partition is capable of sustaining the devlopment anticipated with sufficient potable water. This demonstration must include, but need not be limited to, aquifer tests. More specifically, the aquifer test shall show coefficient of transmissivity, permeabiltiy, storage and the specific yield. The bacteriology/ chemical tests shall show compliance with standards set by the Oregon State Health Division and Lane County. The test procedure shall utilize standard acceptable practices for aquifer tests using pumped and observation wells and records of static water level, date, clock, elapsed time (in min.), depth of water, drawdown and recovery. Analysis using the non-equilibrium method (or other methods where appropriate) must be performed by a licensed geologist or engineer. A copy of all field notes and test results shall be submitted with the report, together with summary statements which indicate whether the proposed use of the aquifer could adversely impact the neighboring wells or properties or deplete the aquifer and the general impact of the proposed use.

(d) For all areas not designated as problem areas by the procedures documented in LC 13.050(13)(a) above, a pump test report or a well log report shall be supplied, unless determined by Lane County to be not necessary.

Pump test and well log reports shall be prepared according to criteria in the ordinance.

Conclusion -- Water Resources

The County has done a good job of inventorying its water resources and problems associated with those resources. The County has analyzed the ESEE consequences of conflicting uses, and has adopted some excellent implementing measures to help resolve conflicts, particularly riparian setback and vegetation maintenance standards and aquifer and quality requirements.

Wilderness Areas

Inventory

Lane County's inventory of designated wilderness areas is contained in its Recreational Resources Working Paper on a map entitled, Recreational Resources. The locations of three wilderness areas are depicted--Mt. Washington Wilderness, Three Sisters Wilderness, and Diamond Park Wilderness.

Page 4 of the Working Paper describes in general the County's role in managing such areas.

It should be noted that recently, new wilderness legislation was passed by the U.S. Congress, establishing a number of new wilderness areas in Oregon. Several of these are within Lane County. These include Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake.

Because of the fact that Congressional action occurred so recently (after Lane County submitted its plan), it is suggested--but not required until first plan update--that the plan be amended to inventory these new areas.

Conflicting Uses/ESEE Consequences Analyses

Because of their federal ownership, remote locations and federal protection for wilderness values, the County indicates that wilderness areas are "free from County-generated conflicts" (p. 4).

Policies

Lane County has one policy addressing wilderness areas (Open Space and Scenic Areas Policy 2; Plan, p. 17):

> Lane County will recommend that no new wilderness areas be designated in the County without a complete analysis of the revenue and employment impacts to Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvest on other public lands.

Implementing Measures

Forest resource zoning has been applied to wilderness areas. The County explains in its Recreational Resources Working Paper (p. 4) that this zoning "will pay homage to the concept of County 'protection' of them, but in practical fact they are simply out of the relm of County authority."

Conclusion--Wilderness Areas

Lane County has inventoried the three wilderness areas within its boundaries and has adopted a plan policy recommending that no new wilderness areas be designated without an analysis of revenue and employment impacts. The areas have been given forest resource zoning. It is recommended that, by first plan update, the County amend its plan to inventory the recently designated new wilderness areas.

Historic and Cultural Resources

Inventory

The Working Paper identifies each of the approximately 500 sites identified in Lane County on a preliminary inventory and survey of historic and archaeological resources. Each is identified by site number or name, by location (township, range, section) and by map symbol. Each appears on a quad map included in that document. A map symbol for each site indicates whether it is an archaeological site, a transportation site or route, a settlement feature, an agricultural site, a mining site, a logging site, a marine site, an historical site, or a natural feature.

Lane County has adopted an Historical Resources Working Paper which explains the process and criteria used in evaluating the "significance" of the 500 sites identified in the County (Addendum to the Working Paper, pp. 1-2). All sites on the National Register of Historic Places are considered significant and are in the (1C) category of the Goal 5 Rule. All sites or structures still in existence contained in the Statewide Inventory are also considered significant, and where sufficient information is available to carry out a conflicting uses analysis, a (1C) label has been given. Archaeological sites are considered (1B) sites, but the County indicates they should be given special interim protection until a data and a protective program for them are developed. All other sites identified are (1A) sites (pp. 1-2).

In all, the County determined there are 63 (1C) sites. These are listed on pages 3 and 4 of the Working Paper Addendum, along with their locations and map numbers. These sites are mapped on quadrangle maps that are included in the Working Paper. Each site has been given a map code which specifies the "theme" of the site (i.e., archaeological, transportation, settlement features, cemetery, century farm, grange hall, old barn, mining, logging, marine industry, historical site, natural landmark, and hot springs). Further information about each (1C) site that is also on the Statewide Inventory is appended to the addendum to the Working Paper. The Addendum to the Working Paper also summarizes the quality and quantity of these (1C) sites (pp. 5-9).

It should be noted that the County has indicated that several (1C) sites on the historic sites inventory in the Working Paper Addendum (pp. 3-4) were deleted by the Board of Commissioners during final plan adoption, including sites # 32, 34, 39, and 42 (Mike Copely, County Planner, personal communication, June 15, 1984). There is no indication of this in any of the resubmittal materials. Site 34 is within the Creswell UGB. However, there are no reasons presented supporting deletion of sites # 32, 39, or 42 (the Andrew Keeney House, the Paschelke House, and Fall Creek Christian Church, respectively).

Conflicting Uses/ESEE Consequences Analyses

Pages 5-9 of the Addendum to the Working Paper contain the County's conflicting uses identification and ESEE consequences analyses for the (1C) sites. These analyses are presented by category for the following categories: Transportation Sites (bridges), Settlement Features, Barns, Marine Sites, Historical Sites/Landmarks, and Archaeological Sites.

In its Working Paper, the County recognizes destruction of the structural sites as a conflict, but fails to recognize major exterior alteration as a conflicting activity. However, it is clear in the County's zoning ordinance that the County considers major exterior alteration as an activity which could conflict with historic resources. For archaeological sites, the County identifies any land use or activity which damages the integrity of the site as a conflict.

Policies

Lane County has adopted a number of plan policies which address historic and archaeological resources (Plan, pp. 12-13). These include the following:

1. A group known as the "Lane County Historic Resource Committee" is to be established and given permanent status by the Board of County Commissioners. The Committee shall represent a wide array of historical interests and the interest of property owners. Its tasks shall include: general concern with historical matters in the County; to monitor conditions affecting such resources; to devise criteria and methods for the selection of newly-designated historical resources; to advise the staff and officials of the County on proposed new historical sites and structures; to oversee the administration of the Historic Structures or Sites ordinance; and other related tasks and duties. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

2. The County shall administer the "Historic Structures or Sites" section of Lane Code Chapter 10 as a means of protecting historic resources. These regulations shall be applied to all sites contained in [the] list of "Historic Structures or Sites" referenced by the ordinance, which are sites deemed significant by the County, and therefore meriting protection from conflicting uses by a limitation of such conflicting uses.

3. The Goal 5 conflict resolution process (OAR 660-16-000 through 660-16-025) which has been applied in the selection of historical sites and structures contained in the General Plan and implemented through the "Historic Structures or

Sites" ordinance, shall continue to be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or change in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historic sites and resources. A long-term objective shall be in the inclusion of historical sites in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

9. The County shall work with concern local, state and federal agencies to coordinate efforts to identify and protect historical resources.

10. Archeological sites identified in the Historical Resources Working Paper and Addendum to the Historic Resources Working Paper shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. These significant sites shall be incorporated into the Lane County General Plan Policies document as Historical Resources Exhibit A.

Note: Policy 2, above, incorrectly refers to Lane Code Chapter 10, rather than Chapter 16 as its implementing measure for historic sites.

Implementing Measures

Section 16.233 of the Lane County Development Code is the Historic Structures of Sites Combining Zone (/H-RCP), the stated purpose of which is to allow the County to review building and demolition permits to

ensure historic resources are preserved. The Code specifies that "no person may alter or demolish any Historic Structure or Site" unless a permit to do so has been issued. Upon receipt of an application for such a permit, the Planning Director shall notify the Lane County Museum Director and the State Historic Preservation Officer.

A demolition permit shall be approved only if evidence is submitted demonstrating that "every reasonable effort shall be made to maintain the Historic Structure by acquisition, protection, stabilization, rehabilitation, restoration or reconstruction project (a demonstrated lack of private and public funding for maintenance of a structure is sufficient cause to allow demolition)." A permit to alter an historic site or structure shall be approved only upon submission of evidence that (a) any use or change "should be compatible with the historical nature of the property," and (2) only the minimum alteration of the structure or site and its environment necessary to achieve the intended use shall be allowed. Consideration shall be given to four alteration guidelines in satisfying the second criteria, above. These guidelines are as follows:

(1) Only the minimum alteration of the designated historic building, structure or site and its environment necessary to achieve the intended use shall be allowed.

(2) The distinguishing original qualities or character of a designated building, structure or site and its environment should not be destroyed. The removal or alteration of any historical material or distinctive architectural features should be avoided.

(3) All designated buildings, structures and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance should be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected.

It must be noted that the zoning maps do not show that the combining zone has been applied to all 63 inventoried (1C) sites as intended. Specifically, the maps do not show that the combining zone is applied to (1C) sites 1-20, 24, 35, 38, 44, 45, 46, 48, 55, 57, 59 or 61. The ordinance also does not indicate which sites fall within that zone designation. This is also contrary to Historic Policy 2, which states that the zone shall be applied to all sites on a list referenced in the ordinance.

Objections

1. The Oregon Department of Transportation (ODOT) has objected because of a conflict between the historic resources working papers and the ordinance. Specifically, ODOT finds that the historic ordinance applies only to sites and structures on the National Register of Historic Places, and does not cover other (1C) sites identified in the working papers.

2. Friends of the Oregon Coast object because of the failure of Lane County to address cultural and archaeological resources of the Big Creek Exception Area. Specifically, objectors indicate that Goal 5 requires such resources to be inventoried. Yet, according to objectors, the Exception does not address this topic "in any way." Objectors provide information indicating that such resources are common at the mouths of coastal rivers. Due to the probability of Indian graves and/or a significant archeological site at the mouth of Big Creek, and the fact that, based on the County's own definition of conflicting uses, road building, building construction and land clearing for a destination resort are considered conflicting uses, objectors believe that "the new zoning of the Renaghan property is in violation of Goal 5 until an intenstive cultural resources inventory has been conducted and this portion of Goal 5 addressed."

Response to Objections

1. ODOT has misread the Lane Code with regarding to the County's Historic Structures of Sites Combining Zone. ODOT has apparently reviewed the County ordinance which applies inside UGBs. That zone does limit the zone's application to National Register sites. However, ODOT has failed to note that the ordinance which applies outside UGB's (in rural Lane County) is somewhat different. Specifically, the rural zone does not contain language that limits application to National Register sites. Therefore, the objection is not sustained.

2. Objectors are correct that the exception for the Renaghan property does not address historic or cultural resources. However, as pointed out by the objectors themselves, the State Historic Preservation Office knows of no site on the property, nor do anthropoligists at Oregon State University. County's are required, under Goal 5, to rely on whatever information is available in producing comprehensive plans. They are not required to conduct extensive archaeological surveys. Therefore, the County's exception does not violate Goal 5 for cultural or archeological resources. If, in the event, such resources are discovered during site development, the Goal 5 Rule would have to be applied by the County, including possible plan amendments.

Conclusion--Historic Resources

Lane County has adopted an inventory of historic resources and has analyzed conflicts and ESEE consequences of conflicts with these resources. The County has a combining zone which is intended to be applied to historic sites.

The zone provides procedures and criteria for resolving conflicts with inventoried sites, particularly major exterior alterations and demolitions. However, the County has not applied the zone to all 63 (1C) sites identified in its plan, as intended.

Oregon Recreation Trails

Inventory

Lane County's inventory of Oregon Recreation Trails is included in its Recreational Resources Working Paper (p. 15, Recreational Resources Map).

The County describes these trails as follows:

1. Coast Range Trail--not developed. Funding limitations and the desire of the state not to condemn private land for trail development suggests that it will be some time before it is completed. Mapped route is general in nature.

2. TransAmerica Bike Trail--fully signed and marked, with route maps published by the state.

3. Eugene to Pacific Crest Trail--a few portions are developed with work now underway by a local chapter of the Sierra Club. Uses bikeways in Eugene Area.

4. High Divide Trail--proposal only, same as #1 above.

5. Coast Trail--Lane County developed portions occur in Cape Perpetua and Heceta Head recreational areas, with preparations being made for inclusion of Oregon Dunes National Recreation Area lands. No private lands involved at this point.

6. Coast Bicycle Trail--designated, signed and mapped.

7. Pacific Crest Trail--fully developed. No private lands involved in Lane County. Located in Willamette National Forest.

These descriptions are basically accurate. It should be noted that, according to Jack Remington, State Trails Coordinator, ODOT has proposed general routes for the unbuilt portions of the Eugene to Pacific Crest Trail and the Coast Trail. Portions of the High Divide Trail already exist since they follow several other developed trails. However, only general routes have been proposed for the unbuilt portions of the High Divide Trail (personal communication, June 20, 1984).

The general location of each of the seven trails is depicted on the County's Recreational Resources Map in the Working Paper. No specific locations have been provided in either the text or on the map, however, for existing trails. Specific routes for the Pacific Crest Trail, the TransAmerica Bike Trail, the Coast Bike Route, and portions of the High Divide Trail and the Eugene to Pacific Crest Trail are known, since these trails are developed.

Conflicting Uses/ESEE Consequences Analyses

The County has not identified specific conflicting uses with the seven proposed or existing Oregon Recreation Trails.

However, the Coast Bicycle Trail, TransAmerica Bike Trail and the Pacific Crest Trail are fully developed and are either on federal or other public lands or on public rights-of-way, as are portions of Eugene to Pacific Crest Trail and portions of the Coast Trail. Therefore, the County concludes that they are likely to experience few conflicts.

No specific routes for the Coast Range Trail or the unbuilt segments of the Coast Trail, the Eugene to Pacific Crest Trail, or the High Divide Trail have been determined by ODOT. Although most of these proposed trails would cross public lands, segments of these trails are proposed to cross private lands, and conflicts could occur. However, since their locations are only generally known at this time, specific conflicts cannot be determined.

Policies

Lane County's recreational trails policy (Open Space and Scenic Areas Policy 4, Plan, p. 17) is:

> The County shall acknowledge recreational trails which are developed by the Oregon Parks Outdoor Recreation Plan and shall display the routes on its Plan documents.

Lane County lacks a policy to cooperate with ODOT in the protection of existing trails. The County also lacks a policy to coordinate with the Oregon Department of Transportation in applying the steps of the Goal 5 Rule during any future identification or establishment of proposed trails or trail segments.

Implementing Measures

No specific implementing measures have been adopted by Lane County for the protection and/or resolution of conflicts with existing or proposed trails.

Conclusion--Recreation Trails

Lane County has identified the seven existing or potential state recreation trails in its Recreational Resources Working Paper, but has not provided a description or map of the specific locations of existing trails. It has, however, recognized the fact that ODOT has maps of these trails. The County lacks a plan policy to coordinate with ODOT in applying the Goal 5 Rule if and when any of the unbuilt trail segments are identified or proposed for construction or designation. The County also lacks a policy to cooperate with ODOT in the protection of existing trails.

No conflicts exist with developed trails and trail segments, and therefore, special implementing measures are not necessary in those areas. Implementing measures have not been adopted for the protection and/or resolution of conflicts with the proposed trails and trail segments, nor are any appropriate at this time since their specific locations are not yet known.

Potential and Approved Scenic Rivers and Waterways

Inventory

The County's Recreational Resources Working Paper briefly describes both the State Scenic Waterways Program and the Federal Wild and Scenic Rivers Program (p. 16). The County correctly notes that there are no designated federal rivers in Lane County at this time. However, the County fails to note that during the 1983 Legislative Session, a bill was passed (HB 2435) designating Waldo Lake and the North Fork of the Middle Fork of the Willamette River (from Waldo Lake to about one mile upstream from Westfir) as a State Scenic Waterway. The County's working paper incorrectly indicates there are no state designated waterways.

The Working Paper correctly recognizes that five river stretches are on the U.S. Interior Department's inventory of potential scenic rivers (p. 17):

1. Upper McKenzie (from Tamolitch Falls to McKenzie Bridge);

2. Steamboat Creek (from its source to its confluence with the Umpqua River);

3. Alsea (entire length; only a small upper portion in Lane County);

4. Siuslaw (from its source to Lake Creek confluence); and

5. Willamette (from Eugene to Corvallis).

All five of these river segments are shown in a general fashion on the Recreational Resources Map contained in the County's Recreational Resources Working Paper.

The County correctly notes that the Upper McKenzie (from Tamolitch Falls to McKenzie Bridge) is also on the state potential scenic waterways list. However, the County fails to mention that Steamboat Creek and Alsea River (the same stretches as on the federal potential list) are also on the state potential list.

The County recognizes that the area affected along each of the inventoried rivers is one-quarter mile on each side measured from ordinary high water (p. 16).

Policies

The following policy has been adopted regarding wild and scenic rivers (Open Space and Scenic Areas Policy 5, Plan, p. 17):

> The County shall cooperate with appropriate state and federal agencies in the selection of scenic and wild rivers.

This policy does not commit the County to coordinate with those agencies in applying the Goal 5 Rule process in studying rivers for possible state or federal designation and in making such selections.

Conflicting Uses/ESEE Consequences Analyses

Lane County suggests that conflicting uses and ESEE/consequences should be identified at the time a river is studied for designation (pp. 17-18). The County also suggests that resource zoning should provide protection for such rivers (p. 17).

Implementing Measures

Waldo Lake and the stretch of the North Fork of the Middle Fork of the Willamette River that is designated as a State Scenic Waterway are located entirely on federal land (confirmed by Jim Payne, State Rivers Program Coordinator, personal communication, June 14, 1984). The portion of the Alsea River that is on the state and federal potential lists is also in federal ownership. The Willamette River is within the Willamette River Greenway, to which the County has applied a Greenway Development ordinance (see the Goal 15 section of this report for details).

Portions of the McKenzie River, Steamboat Creek, and the Siuslaw River flow through federally-owned lands. However, some stretches are in non-federal, private ownership. Developed and committed exceptions have been taken along all of these stretches of the McKenzie and Siuslaw Rivers and Steamboat Creek, most of which have been found to be valid under the Goal 2 analysis in this report. However, as noted in that report section, exceptions in plats 23, 204, 230 (Siuslaw River), 627, 628, 629, 630 and 631 (McKenzie River) have not been justified. No needs exceptions have been taken along the McKenzie River, Steamboat Creek, or the Siuslaw River. It has been the practice of the Commission to require jurisdictions to analyze the ESEE consequences of taking needs exceptions along potential federal or state scenic rivers and waterways, but not to require such an analysis for built and committed exceptions.

Conclusion--Scenic Rivers and Waterways

Lane County has inventoried five federal potential scenic rivers and one state potential scenic waterway (the McKenzie River) but has failed to note that, besides the McKenzie River, two of the federal potential rivers are also potential state waterways (i.e., the Alsea River and Steamboat Creek). The County has also failed to mention that Waldo Lake and the North Fork of the Middle Fork of the Willamette River are designated State Scenic Waterways.

The County lacks a policy commitment to coordinate with appropriate state and federal agencies in applying the Goal 5 Rule process in studying rivers for possible designation as well as in the actual selection of rivers for designation.

Built and committed exceptions have been taken along all nonfederal lands along state and federal potential scenic rivers, some of which have not been found to be valid under Goal 2. The County needs to either not take these exceptions, or justify them as being built or committed.

PART II--EUGENE/SPRINGFIELD METROPOLITAN AREA OUTSIDE THE METRO UGB

In August, 1982, the Commission reviewed and acknowledged the Eugene/Springfield Metro Area Plan and implementing measures for lands within the Metro UGB. However, the cities of Eugene and Springfield as well as Lane County were granted a continuance for lands outside the UGB but within the Metro Planning Area Boundary in order to comply with Goal 5, (as well as several other Goals). The following section of this report analyzes Lane County's responses to the "in-order-to-comply" requirements contained in the August, 1982 staff report, adopted by the Commission.

Requirement

1. Amend the Metro Plan to include a separate evaluation of the "ESEE" consequences of allowing conflicting uses for those sites which are the subject of a Goal 5 objection filed pursuant to OAR 660-116-00 (i.e., Sites 4, 5, 7, 12, 19, 21 and 28 shown on Figure D-3). For specific direction on individual sites see underscored portions of Comments and Objections subsection, preceeding.

Response

The following sites were to be addressed under this requirement:

Site	Name
4	Bertelsen Slough
5	Willow Creek Wetlands
7	Confluence Heronry
12	Gillespie Butte
19	Spencer Butte Ridgetop
21	Russel Creek Basin
28	Pudding Creek Heronry

Sites 4, 5, 12 and 19 are located within the Metro UGB and have been acknowledged by the Commission (see the August 19, 1982 Commission action, pp. 10-11). Therefore, they are not addressed in this report.

The Confluence Heronry, Pudding Creek Heronry and Russel Creek Basin are outside the Metro UGB and inside the Metro Planning Area Boundary and were therefore addressed in this plan submittal. Specific Goal 5 analyses for each of the three sites are presented separately below.

Confluence (Big Island) Heronry: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Maps and Metro Area of Influence document (January 1984) contains a 1982 working paper entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas." Part V of that working paper addresses a site known as the Confluence Heronry, or the Big Island Heronry. This working paper supplements Lane Council of Governments' (L-COG's) inventory in the Natural Assets and Constraints working papers of April 1978.

As explained in the 1982 working papers, p. V-1, the 235-acre island is located in the Willamette River near the confluence with the McKenzie River. The County has specifically mapped the location of the island as well as a large Great Blue Heron rookery located on the island. The heronry has been determined to be of local and statewide significance, and is on the State Natural Heritage Inventory. The island's other resources (e.g., agricultural land, vegetation, wildlife and wildlife habitats, sand and gravel resources, scenery and water are described (pp. V-1 through V-5). The island is within the Willamette Greenway and is a potential Greenway acquisition site in the ODOT Greenway Plan (Working Paper, p. V-7).

L-COG has reassessed the significance of the resources on the island and has provided more detailed locational information about the heronry and its significances, statewide, based on information on other heronries (p. V-8). More refined information has also been adopted regarding vegetation, soils, agricultural values, and sand and gravel resources (pp. V-8, V-11 through V-17).

Conflicting uses are identified (pp. V-8 through V-10) as recreation, sand and gravel extraction, timber harvest, agricultural practices, wildlife and wildlife habitat, scenic assets and public improvements. Each of these uses is described, particularly as it could affect the heronry. Pages V-11 through V-17 contain L-COG's ESEE consequences analysis.

The analysis concludes that the heronry and vegetative fringe of the island are significant resources that should be protected. However, not allowing sand and gravel extraction on the island would result in negative impacts on property owners and the public. Extraction can be conducted in a manner that is compatible with the heronry (p. V-18). Recommendations regarding the island are made on page V-18. Among these are recommendations to:

1. Designate the heronry and buffer area as "natural resource" and designate the fringe of the island as "park and open space." The interior of the island should be designated "sand and gravel."

2. Exchange land (between property owners and the state) so that the heronry and buffer are in perpetual public ownership.

3. Protect the riparian habitat on the island periphery by maintaining an adequate Willamette River Greenway vegetative fringe.

4. Develop controls on sand and gravel extraction between the operator and ODFW in order to protect the heronry.

5. Rely on state and County permits for addressing the details of sand and gravel operations.

See also the Goal 15 section of this report.

Pudding Creek Heronry: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Maps and Metro Area of Influence document (January 1984) contains a 1982 working paper entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas." Part VI of that working paper as well as 1984 Addendum to Part VI addresses a site known as the Pudding Creek Heronry. These working appears supplement L-COG's inventory in the Natural Assets and Constraints working papers of April 1978.

The heronry is one of the largest in Western Oregon (about 54 nests) and continues to be productive (Addendum, p. 1). The heronry is currently designated and zoned "sand and gravel," and potential mining operations

could conflict with the heronry. The site is on the Middle Fork of the Willamette River (Working Paper, p. VI-5). The Addendum indicates that the site is also within the Willamette Greenway.

The 1982 Working Paper summarizes in greater detail the resource values of the site (pp. VI-1 through VI-5), as well as the nature of the potential conflicts (pp. VI-6 though VI-7). Inasmuch as the heronry is in the middle of the potential extraction operation, and the owner has an operating permit from the Oregon Department of Geology and Mineral Industries, this appears to be the greatest conflict. Timber harvest and vegetative clearing, which normally precede extraction, would also conflict with the heronry (pp. VI-5, V-6).

Pages VI-7 through VI-12 analyze the ESEE consequences of the various competing uses for the site, and conflict-resolution alternatives ranging from no protection for the heronry to full protection of the heronry through public acquisition or land trade are analyzed (pp. VI-13 and VI-14).

The Working Paper recommends interim protection for the heronry, plus possible land exchange or transfer of mining rights. It also recommends that ODFW cooperate with the landowner to develop a management plan for the site (should no land exchange take place).

The 1984 Addendum to the 1982 Working Paper reassesses the significance of the heronry, updates the inventory, and summarizes the results of negotiations which have taken place between Lane County, ODFW and the landowner (Wildish Land Company).

The 1984 Addendum to the Working Paper contains a discussion of the conflict-resolution process that took place in 1983 (pp. 1-2). ODFW drafted a trade agreement for an exchange of land and mineral rights of like value between State Parks Division, Lane County, and the Wildish Land Company (pp. 1-2). Such a trade would result in protection of the heronry and protection of the landowner's ability to extract aggregate (p. 3). Based on the analysis of conflicts, ESEE consequences, and the possibility of a land exchange, the Addendum contains the following updated recommendations (p. 4):

1. Change the plan designation for the heronry and surrounding buffer area from "sand and gravel" and "park and open space" to "natural resources."

2. Change the plan designation for an equal value land within Buford Park from "parks and open space" to "sand and gravel."

3. Lane County should rezone each area to correspond to these plan designations.

4. The potential land exchange area should be contiguous to existing Wildish holdings to avoid creating noncontiguous park boundaries.

See also the Goal 15 section of this report.

Russel Creek Basin: The Lane County Rural Comprehensive Plan, Plan Diagram Zoning Map and Metro Area of Influence document (January 1984) contains a working paper which is entitled, "Metropolitan Plan Update, Natural Resource Areas: Conflict Resolution For Potential Significant Areas--Russel Creek Basin Addendum." This working paper supplements Lane Council of Governments' inventory in the Natural Assets and Constraints working appers of 1978 and the 1982 Natural Assets: Conflict Resolution for Significant Areas.

The 1984 working paper provides a history of the treatment of Russel Creek in the Metro Plan update process (pp. 1-5), and notes that LCDC's 1981 review of the plan required an ESEE consequences analysis of the site (p. 4). The working paper describes the natural features of the five subbasins comprising Russel Creek Basin as well as the specific ownerships and conflicting uses present (pp. 5-10). Maps are also provides showing the specific location of the basin, its subbasins, and vaious natural features. Species lists--both plant and animal--are appended to the working paper as well. The site is a significant natural area and, among other things, contains at least one threatened plan species, and several other species of special significance. Major conflicting uses on the 410-acre site include timber harvesting, agriculture, and certain types of recreation (p. 10).

The ESEE consequences of these conflicting uses are presented on pages 11-12 of the working paper, and, based on this analysis, the following recommendations are made (p. 14):

1. Lane County should adopt interim protective measures that prohibit grazing, logging and any other activity that may adversely affect future protection of the proposed natural area.

2. Conflict resolution and resulting plan amendments required for preserving Russel Creek should occur in conjunction with the Metropolitan Plan mid-period review.

3. Russel Creek property owners should be contacted, and negotiations should commence regarding conflict resolution for the proposed natural area.

4. The options of acquisition, donation or long-term lease should be explored along with the possibility of a joint program of interest among identified groups and governments.

Conclusion: Requirement 1 has been satisfied.

The Metro Plan has been amended to include separate evaluations of ESEE consequences of allowing conflicting uses for sites within the Metro Planning Area Boundary but outside the Metro UGB, namely, Confluence Heronry, Pudding Creek Heronry, and Russel Creek Basin.

Requirement

2. Amend the Metro Plan to include mandatory policy language requiring local governments to adopt resource protection/conflict resolution measures consistent with the plan's adopted text and findings.

Response

The Metro Plan was amended to include mandatory policy language requiring local governments to adopt implementing measures consistent with the plan's text and findings. These amendments were made and acknowledged by the Commission in August 1982 as part of the review of Metro Area (see Commission action, p. 12). Since these policies also apply outside the Metro UGB and inside the Metro Planning Area Boundary, this requirement has been satisfied.

Conclusion: Requirement 2 has been satisfied.

The Metro Plan has been amended as required, and acknowledged in August 1982.

Requirement

3. Eugene, Springfield and Lane County must amend their implementing measures to clarify the meaning of Policy 12 in habitat/scenic areas, as applied in the "Forest" and "Parks and Open Space" plan designation outside the UGB.

Response

Policy 12 referred to in this IOTC is on page III-C-8 of the 1980 Metro Plan. It reads:

> When evaluating the desirability of harvesting commercial timber on forest lands within the jurisdictional boundary but outside the urban growth boundary, great emphasis shall be placed on preserving scenic and water quality, as well as protection of wildlife, open space, and recreational potential.

In its most recent submittal, Lane County has not amended its implementing measures to clarify how this policy will be carried out in habitat or scenic areas that are designated "Forest" or "Parks and Open Space."

The meaning of Policy 12 is further confused by the more recent adoption by Lane County of Forest Lands Policy 17 (Plan, p. 10) which states:

> Lane County recognizes the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest trees species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict

resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

As noted in Part I of the Goal 5 section of this report, the County has not indicated which sites are "more important" based on a Goal 5 ESEE consequences analysis, nor has it adopted implementing measures to protect such sites through the regulation of forest management activities, or to otherwise resolve such conflicts, per Policy 12.

The Cities of Eugene and Springfield have adopted "tree-cutting" ordinances in response to this IOTC and have been acknowledged by the Commission.

Conclusion: Requirement 3 has not been satisfied.

Lane County has not amended its implementing measures to clarify how Policy 12 is to be carried out in habitat and scenic areas designated "Forest" and "Parks and Open Space."

Requirement

4. Eugene, Springfield and Lane County must ensure that Metro Area Plan policies are implemented in all natural resource areas as mapped in accordance with compliance requirements outlined above.

Response

As noted earlier, the plans for lands within the cities of Springfield and Eugene and lands within the Metro UGB have been acknowledged as being in compliance with Goal 5. Implementing measures that are adequate for protection and/or conflict resolution for the resource sites outside the Metro UGB but inside the Metro Planning Area Boundary (i.e., Russel Creek Basin, Confluence Heronry, Pudding Heronry) have not been adopted. The Russel Creek site is designated and zoned for forestry and residential use. Recommendations contained in the Working Paper of the Metro Plan Update document have not been carried out. Implementing measures for Pudding Creek and Confluence Heronries are addressed in the Goal 15 section of this report, since they are located within the Willamette River Greenway, and Goal 15 implementation requirements are more stringent than--and therefore supercede--those for Goal 5. As explained in the Goal 15 section of this report, adequate implementing measures for these two Greenway sites have not yet been adopted.

Objections

1. 1000 Friends of Oregon and Lane County Audubon Society have objected to the fact that Russel Creek Basin has been designated "Forest" and has been zoned for forest and residential uses. Specifically, objectors point out that in its 1981 review of the Metro Plan, LCDC found that the County identified this 410-acre site as a significant Goal 5 resource (because of its diversity, wetland, riparian

vegetation, unique species, wildlife, and climax ecosystems, including old growth). LCDC also found, however, that the County needed to analyze the ESEE consequences of conflicting uses with the site, and to complete the Goal 5 process. Objectors contend that although the County's resubmittal indicates that continued logging and future grazing may destroy these values, and the site is designated "forest" in the Metro Plan, and zoned for forest and residential uses. This would allow timber harvest, grazing and development which could adversely affect the resource. Objectors indicate the County has not taken steps to resolve these conflicts in accordance with the Goal 5 Rule, or with recommendations in the plan itself. Objectors also indicate that the County's "conflict resolution" document simply postpones the resolution of conflicts by recommending a negotiation phase and because interim protection (which is also recommended) has not been implemented.

2. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

3. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willametter Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in th Goal 15 section of this report.

Response to Objections

1. Objectors are correct that Lane County has taken no action to resolve conflicting uses for Russel Creek Basin, based on its own ESEE consequences analysis.

2. The response to the objections regarding the Pudding Creek Heronry is presented in the Goal 15 section of this report.

3. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

Conclusion: Requirement 4 has not been satisfied.

Adequate implementing measures have not yet been adopted for the Confluence Heronry, Pudding Creek Heronry, or Russel Creek Basin.

Conclusion - Goal 5

Lane County does not comply with Goal 5.

Lane County has compiled inventory information for most Goal 5 resource categories and has made (1A), (1B) and (1C) decisions, based on this information. Conflicting uses for most categories have been analyzed. Based upon this work, the County has made protection/nonprotection decisions and has adopted plan policies and applied several implementing measures to many Goal 5 sites. Most noteworthy of these implementing measures are the County's riparian setback and vegetation maintenance standards, its groundwater protection provisions, and its Natural Resource zone. However, there are a number of deficiencies in the County's Goal 5 element which must be corrected before acknowledgement can be granted. These deficiencies have been summarized in the previous sections of this report.

In order to comply with Goal 5, Lane County and the Cities of Springfield and Eugene must:

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SG which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

2. Fish and Wildlife Habitats:

   a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

   b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation maintenance standards, or (2) incorporate by reference another section of the Lane Code which contains such standards.

   c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.

   e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.(*)

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

i. Carry out Forest Lands Policy 17 (Plan, p. 10) by identifying sites that are considered more important than commercial timber management activities, based on a Goal 5 ESEE consequences analysis, and adopt appropriate implementing measures to protect and/or resolve timber management conflicts with those sites, consistent with that policy.

4. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.(*)

5. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

6. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

7. Oregon Recreation Trails:

   a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

8. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.(*)

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.(*)

9. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflict-resolution recommendations contained in the Metro Plan Update Working Paper.

Note: Those IOTC's which pertain only to Lane County are followed by an asterisk (*).

Suggestions for Plan and Implementing Measures Improvement

It is suggested that on or before the first plan update, Lane County:

1. Amend the plan to inventory the recently designated wilderness areas (Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake).

2. Amend page 28 of the Flora and Fauna Working Paper to indicate that not all sites on federal land are necessarily protected (i.e., there may be conflicts with sites unless they are formally protected by the federal resource agency).

3. Amend Flora and Fauna Policy 7 to indicate that in evaluating (1B) wetland sites for possible inclusion on its (1C) inventory, information sources besides the National Wetlands Inventory will be used.

4. Adopt implementing measures to carry out Flora and Fauna Policy 9 (requiring residential building permits in Big Game Range areas to include a note indicating that the site is in Big Game Range and conflicts may occur).

GOAL 15: WILLAMETTE RIVER GREENWAY

This Goal 15 report is divided into two major parts. The first part is the review for all areas within the Willamette Greenway Boundary in Lane County outside the Metro Plan Boundary. The second part is for those Greenway areas inside the Metro Plan Boundary, but outside the Metro UGB.

PART I--GREENWAY AREAS
OUTSIDE THE METRO PLAN BOUNDARY

Inventory

Lane County has adopted a Willamette Greenway Working Paper which states (p. 7) that inventories of various Greenway resources are contained in the Greenway Plan. This Greenway Plan is incorporated into the Working Paper by reference (p. 7). As noted in the 1981 review of the Lane County plan and ordinances, the County's Greenway inventories are contained in its Greenway Technical Report, and are summarized in its Greenway Plan. This information was determined to adequately address the fifteen resource topics listed in Section B of Goal 15.

Greenway Boundary

Lane County has displayed the LCDC-approved Greenway Boundary on both its plan maps and its zoning maps, as required under sections E.1 and F.1 of the Goal. The boundary is clearly labeled and, for the most part, its location is accurately drawn. However, there are several minor inconsistencies on map Nos. 304, 304A, 305, 347, 437, and 528. The boundary is not shown on map Nos. 330, 332, 396, 411, 417, 418, 425, 440, 448, 471, 1005, 1006, 1008, 1010, 1011, 1012, and 1013.

The recently adopted Willamette Greenway Working Paper (p. 8) states that the Greenway Boundary is correctly displayed in the County's Greenway Plan and in the Eugene-Springfield Metro Area General Plan (which supercedes the 1990 Plan).

The County notes that the separate subarea plans and diagrams are being replaced by single documents for Coastal and Inland Regions. The Greenway is in the Inland Region (p. 8). The County indicates that in future documents, the LCDC-approved Greenway Boundary maps will be referenced and the Boundary will be shown on the Plan Diagram (p. 8).

Section 16.254(1)(j) of the Lane Code (the Greenway Development Ordinance) states that the boundaries for the Willamette River Greenway are those adopted by the Land Conservation and Development Commission in 1977, together with any changes when and as approved by LCDC.

Policies

Lane County has adopted 37 policies address the Willamette Greenway (Plan, pp. 33-35). These policies address all Use Management Considerations of Goal 15 (Section C.3.). Among these policies are the following:

1. Maintain and support continuation of existing uses within the Greenway Boundary.

2. Intensification and change of use of lands within the Greenway Boundary shall remain compatible with the protection, conservation and enhancement of the natural, scenic, historic, agricultural, economic and recreational qualities of the Willamette River Greenway Program.

3. Recognize that the Greenway consists of a multitude of resources and due to continued growth, 100 percent protection to all resources will never be realized.

4. Protect, conserve and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands and timber within the Greenway.

5. Maintain sufficient water flows to support water uses such as municipal, agricultural, industrial, natural resources (i.e., fish, aquatic life, wildlife) and recreation within the Greenway.

6. Prioritize water quality management controls along the Coast Fork and the Main Stem, especially in the Metropolitan area.

7. Acquisitions for Greenway purposes must be consistent with noninterference or interruption of farm uses.

8. Recognize that DOT cannot condemn for a scenic or use easements of lands devoted to farm use; however, easements may be given by owners of lands being used for farm purposes.

9. Protect water rights and access to the river for irrigation purposes.

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, is not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occuring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

19. The County shall require to the maximum feasible extent the protection of the vegetative fringe within the Greenway, and shall require the re-establishment of vegetative cover where it has been significantly removed during the land development process.

20. Conserve the rural character of the river bank as a primary objective within the Greenway.

21. Encourage a river-related mixture of industrial, commercial, residential and public land uses where appropriate in the Greenway.

22. In instances where a public agency has acquired productive farmlands or other resource lands as long-range reserve for recreational use, if possible, such property should be leased back for agricultural or other resource use until it is required for public purposes.

23. Provide and encourage use of public lands within the Greenway.

24. Accommodate public access to the river and to public lands within the Greenway by:
    a. Controlled, clearly designated, access points;
    b. Establishment of an integrated system of safe river lands, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
    c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

25. Provide appropriate levels of police protection in those areas subject to public use.

26. Encourage additional police security for private and publicly owned lands within the Greenway.

27. Protect, conserve or preserve the scenic and recreational qualities of the land within the Greenway Boundary.

28. Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.

29. The sensitivity of lands within the Greenway shall determine the level of human activity.

30. Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.

31. Consider and minimize the possibility that public recreation use might disturb adjacent private property owners.

32. Scenic easements shall not be acquired through the exercise of the power of eminent domain on lands in farm use.

33. Control vehicle access to the river.

34. Consider and adopt policies that would not hinder the physically handicapped from using public recreation facilities within the Greenway Boundary.

35. Emphasize public access to the river in the metropolitan area and other urban areas which discouraging upland access in rural areas.

36. Measures should be taken to minimize disturbance to private property, including the implementation of programs to eliminate trespass and vandalism on private lands and destruction of ecological fragile areas.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Mineral and Aggregate Policy 11 also addresses mineral and aggregate sites within the Greenway:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise, and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

As discussed in the Goal 5 section of this report, the policy fails to reference Section C.3.d. of Goal 15 regarding the protection of significant fish and wildlife habitats. Therefore, the policy is inconsistent with Goal 15 as well as with the County's Greenway Policy 37.

Plan Designations

In the 1981 review of Lane County's Greenway element, the Commission determined that plan designations in subarea plans, the 1990 Plan, and the County Greenway Plan were inconsistent in several locations. The new Greenway Working Paper explains that subarea plans in the Greenway are

being replaced by the Inland Region document, whose Plan Diagram will show land use designation "in a manner consistent with other County and metro area plan documents" (p. 8). See the Goal 2 section of this report for further discussion regarding the County's plan designations.

Implementing Measures

Included in the Lane Code are Greenway Development Permit procedures for the review of certain land use activities in the Willamette River Greenway (Lane Code, Section 16.254). A Greenway Development Permit is required for any new intensification, change of use or development, including public improvements and partitions and subdivisions. The County's ordinance defines the terms "intensification," "change of use," and "development" consistent with definitions contained in Goal 15.

Section 16.254(2) of the Lane Code lists those uses and activities that do not require a Greenway Development Permit. All are consistent with Goal 15 except subsections (a) and (k). Subsection (a) exempts uses "where the location is within areas designated as 'urban' on Greenway maps adopted by the Oregon Land Conservation and Development Commission and is beyond 150 feet of the ordinary low waterline." As noted in the 1981 denial order for Lane County, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15, and as designated in the ODOT Greenway Plan, is subject to local Greenway review. (Note: The term, "urban" as used in the context of Goal 15 is not the same as that used in Goal 14. In this case, "urban" refers to designations in the ODOT Greenway Plan). However, as noted in the 1981 review of the County's ordinance, there was only one area where this provision applies--just outside of the Cottage Grove UGB. The County has not requested that LCDC change the designation of this area from "urban" to "rural" nor has it deleted Section 16.254(2)(a).

Subsection 16.254(2)(k) exempts the propagation of timber or the cutting of timber for public safety or personal noncommercial use or where the harvest is consistent with an approved permit under the FPA "(i) for a farm woodlot of less than 20 acres, or (ii) consistent with recommendations made by" ODOT to the Department of Forestry, designed to address Goal 15, Sections c-h. It is acceptable to exempt timber propagation and harvest for public safety or personal noncommercial use, under Goal 15. However, subsection (i) in the second part of subsection (k) appears to be based on language in the Greenway Interim Order. Such language was eliminated in the adoption of Goal 15. Subsection (ii) of subsection (k) has no procedure for implementation, since, according to the Department of Forestry's directive for operations in the Greenway, it can make recommendations to operations regarding Greenway concerns, but cannot enforce them.

A decision to approve a Greenway Development Permit--where one is required by the Code--requires findings that the proposed intensification, change of use or development conforms to certain criteria, guidelines and setback requirements set forth in Sections 16.254(3)(a), (b), and (c), respectively. Specifically, the "criteria" in subsection (a) include the following:

(i) The development protects or enhances the existing vegetative fringe between the activity and the river. Where such protective action is shown to be impractical under the circumstances, the maximum landscaped area or open space shall be provided between the activity and the river and the development provides for the re-establishment of vegetative cover where it will be significantly removed during the process of land development.

(ii) Public access to and along the river either is not necessary or the necessary access will be provided by appropriate legal means.

(iii) A development which is mining or a mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway.

Affirmative findings of compatibility with the Willamette River Greenway "based on due consideration and the relative importance" of guidelines must also be made. These "Guidelines" under subsection (b) are as follows:

(i) Preservation and maintenance of land designated "agricultural" in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas.
(iii) Protection, preservation, rehabilitation, reconstruction or restoration of significant historic and archeological resouces.
(iv) Preserve areas of annual flooding, floodplains and wetlands.
(v) Protection, conservation or preservation of areas along the alluvial bottomlands and lands with severe soil limitations from intensive development.
(vi) Consideration of the impacts from consumptive uses of water (i.e., domestic, agriculture, industrial) and nonconsumptive uses (i.e., recreation and natural resources) in efforts of maintaining sufficient flows to support water users.
(vii) Sustenance and enhancement of water quality by managing or controlling sources of water pollution from uses such as: domestic and industrial wastes, agricultural and timber runoff, septic tank seepage, gravel operations and other intermittent sources.
(viii) Maintenance and sustenance of natural riparian vegetation found upon the lower alluvial bottomlands and upper terrances bordering the river for the following reasons: provide habitat, food and shade for wildlife; protect natural areas; anchor river bank soils and protect agricultural land from seasonal erosion; ensure scenic quality and screening of uses from the river; control trespass; and to control pollution sources to the river.

(ix) Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved or restored and otherwise result in only the partial harvest of timber beyond the vegetative fringe.
(x) Minimize vandalism and trespass.
(xi) Location of nonwater dependent and nonwater related development away from the river.
(xii) Compatibility with the site and surrounding area.
(xiv) Protection of significant fish, wildlife habitat and natural areas.
(xv) Protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan.

It must be noted that compliance with these "Guidelines" is to be judged based on their "relative importance." However, there is no clear guidance as to how "relative importance" will be determined. This is particularly a problem where Goal 15 requires certain types of resources to be protected, regardless of other completing values (e.g., significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints) (Goal 15, Sections C.3.d., a., and e.). To the extent that the County's "Guidelines" do not require protection of such areas, the County's Greenway ordinance does not comply with Goal 15.

Section 16.254(c) requires new intensifications, developments and changes of use to be set back 100 feet from ordinary high waterline of the river "except for those in conjunction with a water related or water dependent use" (emphasis added). Exceptions to this requirement shall be allowed when affirmative findings are made to satisfy two criteria:

(i) The proposal would provide better protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway than would occur by observance of the setback requirment; or
(ii) The protection, maintenance, preservation and enhancement of the natural, scenic, historic and recreational qualities of the Willamette River Greenway are not applicable to the proposal.

It should be noted that, according to the Goal, only water-dependent and water-related intensifications, developments, or changes of use themselves are exempt from Greenway setback requirements. However, Lane County also exempts uses in conjunction with water-related and water-dependent uses. As noted in a number of other reviews, this is inconsistent with the Goal, since it would allow a number of uses to be exempt from the setback which are not envisioned by the Goal. The County's ordinances also identify two ways in which exceptions to the 100-foot setback are permitted. One of these is if a proposal would provide better protection of Greenway values, and the other is if such protection is not applicable to the proposal. The Goal does not permit exceptions to the setback, except for water-dependent and water-related uses, even if a proposal might enhance Greenway values. This is because the intent of the Goal is to keep structures separated from the river and

to protect areas immediately adjacent to the river for water-dependent and water-related uses. For example, a restaurant, including landscaping and other amenities may, in the opinion of a Hearings Officer, enhance Greenway values. However, it is not, by definition, a water-related or water-dependent use and therefore is not permitted within the established Greenway setback.

The Commission amended its administrative rule on exceptions to set forth standards for taking exceptions to the Greenway setback. These standards apply to urban areas only. The Commission did not adopt standards for taking exceptions to the setback requirement in rural areas. It should be pointed out that juridictions may structure their Greenway ordinances to permit establishment of a setback on a case-by-case basis, as long as it meets the requirements of Section C.3.k. of the Goal. Alternatively, jurisdictions may adjust established setback standards through the plan amendment process.

Conditions may be imposed in conjunction with a Greenway Development Permit, as necessary (Section 16.254(4).

Section 16.254(5) sets forth the application and review procedure by a Hearings Officer for Greenway Development Permits.

Section 16.254(6) requires the County to notify the Department of Transportation when an application is made. The ordinance does not require the County to also notify that agency of actions taken on an application. This is required by Goal 15 (Section G).

As noted in the Goal 7 section of this report, Lane County has adopted adequate flood hazard provisions.

Objections

1. The Oregon Department of Transportation (ODOT), Parks and Recreation Division, has objected to an inconsistency between the inventoried aggregate sites within the Greenway, and those which are shown on plan maps and designated Sand/Gravel. ODOT states there are a number of aggregate sites in the ODOT Greenway Plan which are not included in the County's inventory. Further, the County's plan maps show a Sand/Gravel designation for some areas which are not in the County's aggregate sites inventory, according to objectors.

2. ODOT objects because of the lack of an inventory of sites for potential acquisition within the Greenway. ODOT points out that this is required by Section E.3. of the Goal, and that the ODOT Greenway Plan identifies such areas.

3. ODOT objects because Plan Policy 7 conflicts with Goal 15. Policy 7 states that acquisitions for Greenway purposes must be consistent with non-interference or interruption of farm uses. ODOT points out that Goal 15 is intended to protect farm uses, but does not prohibit farmland acquisition for public Greenway purposes. Objectors believe Policy 7 also conflicts with Policy 24 (which encourages development of a system of river access points).

4. ODOT objects because Policy 8 and Policy 32 are inconsistent with ORS 390.334, which allows condemnation of scenic easements on farmland. Objectors recommend that the policies be deleted or amended to be consistent with that statute.

5. ODOT objects to the County's inadequate compatibility review provisions for commercial timber harvest. Objectors indicate adequate provisions are a requirement of Goal 15. Further, ODOT believes the zoning ordinance fails to carry out Policy 12.

6. ODOT objects because Policy 13 is inconsistent with Policies 2, 4, 18, 20, 21, 23, 24, 27, 29 and 37. ODOT indicates that Policy 13 appears to give the highest use protection to sites designated and zoned for sand and gravel. However, objectors state that Policy 13 does not consider Greenway river processes and values.

7. ODOT objects to Policies 28, 30 and 35 because they conflict with Policy 24. Specifically, Policies 28, 30, and 35 call for a Greenway public access program aimed at serving urban residents in urban areas, and discouraging access to the river in the more attractive rural settings with greater recreational amenities. Policy 24 calls for a system of access points and trails, which is inconsistent with Policies 28, 30 and 35, according to ODOT.

8. ODOT objects to the lack of an inventory of "significant natural and scenic areas and vegetative cover," as required in Section B, Subsection 6 of the Goal. Without such an inventory, ODOT believes Policies 2, 4, 11, 12, 18 an 27 an the zoning ordinance "cannot be carried out with consistency.

9. ODOT objects to Section 16.254(2) (Exemptions from Permits) of the County's zoning ordinance. Objectors believe it should be deleted. Specifically, subsection (k) exempts certain timber harvest operations from Greenway Development Permit requirements. ODOT believes all commercial timber harvest activities must obtain such a permit. Objectors point out that the Forest Practices Act (FPA) notification does not cover scenic, recreational or historical impacts of harvesting. The Comprehensive Plan requires ODOT to make recommendations to the Department of Forestry (DOF). However, objectors point out that DOF is not required to act on ODOT's recommendations. Objectors feel this establishes a complex and misleading enforcement process.

10. ODOT objects to the County's Greenway setback provisions because it does not believe exceptions to the 100-foot requirement should be allowed unless criteria in LCDC's Exception Rule for the Greenway are met.

Response to Objections

1. Goal 15 (Section B.2) requires Greenway jurisdictions to inventory "all current aggregate excavation and processing sites, and all known extractable aggregate sources." The Goal also requires local

plans to be consistent with the ODOT Greenway Plan, which shows the location of such sites. ODOT has not specified which aggregate sites have been omitted from the County's inventory which are included in the ODOT Greenway Plan. In the 1981 review of Lane County's plan, the Commission found the County's inventory of Greenway sites to be adequate. The County has adopted this inventory by reference as part of its new Working Paper for the Greenway. ODOT is correct that a number of sites which are not included on the County's inventory of aggregate sites have been given a sand and gravel plan and zone designation, however. As indicated in the Goal 5 section of this report, the County has not justified such designations. This is more of a Goal 5 than a Goal 15 concern, however.

2. Aquisition sites were inventoried by Lane County in its 1981 Greenway Plan. In its 1981 review of that plan, the Commission found that inventory to be in compliance with Goal 15. The County has adopted its Greenway Plan by reference as part of its new Greenway Working Paper. Therefore, the objection is not sustained.

3. ODOT is correct that the Goal does not prohibit acquisition of farmland for public Greenway purposes. However, Section C.4.b. of the Goal indicates that areas to be acquired must "to the maximum extent practicable, be consistent with non-interference or non-interruption of farm uses as defined in ORS Chapter 215.203(2)." Policy 7 indicates such acquisitions must be consistent with non-interference or non-interruption of farm uses. While Policy 7 certainly carries out the intent of Section C.4.b. of the Goal, ODOT is apparently concerned that neither the County nor ODOT would be able to acquire farmland for Greenway purposes in the future unless Policy 7 is modified to use the term "should," rather than "shall." ODOT is also concerned that because Policy 7 is so restrictive, Policy 24 cannot be carried out, since it calls for providing public access to the river and public lands through access points, establishment of river lands, hiking and cycle paths, and public roads. There is no Goal violation in County Policy 7 being more restrictive and protective of farmland than the Goal, unless this restrictiveness prevents the County from meeting other Goal requirements or carrying out other policies. While Policy 7 certainly limits the County's options (as well as ODOT's options) in implementing Greenway programs, there are other means available, short of acquiring land which results in interfering with, or interrupting farm uses. The County is therefore urged, but not directed, to modify Policy 7 to use the term, "should," rather than "shall."

4. ODOT is incorrect in its interpretation of ORS 390.334. That provision (particularly subsection (2)) expressly prohibits the use of condemnation for acquiring scenic easements on farmland in the Greenway. Therefore, County Greenway Policy 32 is consistent with ORS 390.334. The objection is not sustained.

5. Lane County's Greenway Policy 12 states:

> The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or if not covered by the FPA, then with an approved plan under the Greenway compatibility review provisons. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

This above policy language repeats language in Goal 15, Section C.3.1. Section 16.254(3)(ix) of the Lane Code specifies that affirmative findings must be made, including "Harvesting of timber in a manner that wildlife habitat, riparian and other significant vegetation and the natural scenic qualities of the Greenway will be preserved, conserved, or restored and otherwise result in only the partial harvest of timber beyond the vegative fringe." This is consistent with Goal 15. However, Section 16.254(2)(k) of the ordinance specifically exempts certain harvest activities, not consistent with the Goal. These problems are addressed in the response to ODOT's objection 9.

6. Greenway Policy 13 states:

> Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resources.

Policies 2, 4, 18, 20, 21, 23, 24, 27, 29, and 37 are aimed at preserving other values in the Greenway (e.g., vegetation, fish and wildlife habitat, scenic qualities, recreational opportunities), and where appropriate, balancing such uses with the need for sand and gravel resources. Policy 13 in and of itself would not preclude protection of other Greenway values present. Presumably, the County's Greenway ordinance should ensure that extraction will not occur unless adequate safeguards for other resources are provided. Policy 13 simply indicates that uses that are incompatible with extraction activities will not be permitted on sites that are either active, zoned, or designated for aggregate extraction or processing. This policy presumes that the plan and zone designations for aggregate extraction and processing have been applied appropriately. However, even if the plan and zone designations are applied correctly, the policy does seem to ignore the fact that such operations can be allowed only if they are conducted in a manner consistent with the Goal's intent of protecting natural, scenic, historic, and recreational values. Other plan policies for the Greenway do express this, however (e.g., Policies 2, 3, 4, 15, 16, and 37). Therefore, the objection is not sustained. However, it is recommended that the policy be clarified to indicate that such operations are still subject to local Greenway Permit review or must be conducted in a manner consistent with the protection of other Greenway values.

7. Policy 24 states:

> Accommodate public access to the river and to public lands within the Greenway by:
> a. Controlled, clearly designated, access points;
> b. Establishment of an integrated system of safe river landings, hiking and cycle paths, and public roads leading in and out of the Greenway at strategic locations;
> c. Use of a limited number of access points, each with improved facilities, good roads and high-visibility connectors.

Policies 28, 30, and 35 are:

> Public recreation use areas shall be located in or near the more populated urban areas and shall emphasize access to the river.
>
> Recreation development shall include a variety of river-oriented opportunities in urban areas but shall be limited in rural areas to those river-oriented recreation uses that are compatible with the sensitive character of the river and other important resources.
>
> Emphasize public access to the river in the metropolitan area and other urban areas while discouraging upland access in rural areas.

Section C.3.b. of Goal 15 indicates that recreational needs must be provided for, but must be consistent with the carrying capacity of the land, must not substantially interfere with the long-term capacity of the land for farm use, and must minimize disturbance to adjacent property. Section C.3.c. of Goal 15 indicates that adequate public access to the river shall be provided for, with emphasis on urban and urbanizable uses. County Policies 24, 28, 30, and 35 are consistent with these Goal directives. The objection is not sustained.

8. As indicated earlier, the County's inventory of Greenway values and resources is the same as the one submitted and reviewed in 1981. The Commission found the inventory to be adequate.

9. ODOT is in error in requesting that the entirety of Section 16.254(2) be deleted from the Greenway ordinance. The Goal 15 definitions of "intensification," "change of use" and "development" specify certain uses and activities that may be exempt from local Greenway permit review. Most of Lane County's exemptions are consistent with the Goal and are similar to those exempted by other Greenway jurisdictions whose plans and ordinances have been acknowledged by the Commission.

ODOT is correct, however, that subsection (k), which exempts certain kinds of timber harvest activities, is inappropriate. That subsection is consistent with the Greenway Interim Order, but the Goal itself does not exempt such activities from local Greenway review. It has been the Commission's practice to allow propagation of timber or cutting of timber for public safety or personal non-commercial use to be exempt from local Greenway permit review. To that extent, the first part of subsection (k) is acceptable. However, the second part (which exempts harvest activities if consistent with an approved permit under the FPA, for a farm woodlot less than 20 acres, or if consistent with recommendations of ODOT to DOF), is not. Therefore the objection is only partly sustained.

10. ODOT is correct that the County's Greenway setback exceptions are not consistent with the Goal. However, ODOT is not correct in suggesting that the LCDC Exception Rule be followed to allow such exceptions. This is because the Commission's Exception Rule contains criteria for taking exceptions to the Greenway setback requirement in urban areas only. Therefore, they do not apply to most of the Lane County planning area.

PART II--EUGENE/SPRINGFIELD METROPOLITAN AREA OUTSIDE THE METRO UGB

In August 1982, the Commission reviewed and acknowledged the Eugene/Springfield Metro Area Plan for lands within the Metro UGB. However, the cities of Eugene and Springfield as well as Lane County were granted a continuance for lands within the UGB but within the Metro Planning Area Boundary in order to comply with Goal 15 (as well as several other Goals).

The following section of this report analyzes Lane County's responses to the Goal 15 'in-order-to-comply" requirements contained in the August 1982 staff report, adopted by the Commission.

Requirement

1. Ensure that the LCDC-approved Greenway Boundary is shown or referenced in the appropriate subarea plans.

Response

As noted in Part I of this report, the County is replacing subarea plans with two documents--one for the Coastal region and one for the Inland Region. The Greenway is within the Inland Region. The County indicates in its Greenway Working Paper (p. 8) that the LCDC-approved Greenway boundary will be referenced in that document and the Boundary will be shown on the Plan Diagram. Please refer to Part I of this Goal 15 report for a discussion of the County's plan and zone maps and the extent to which they correctly display the Greenway Boundary.

Mining and processing activities in the Greenway must comply with provisions in the County's Greenway ordinance, including the following:

> A development which is mining or mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway (Section 16.254(3)(a)(iii)).

In addition, affirmative findings of compatibility must be made with regard to a number of "Guidelines," including those addressing the protection of scenic and historic resources, areas of flooding and wetlands, the protection and enhancement of water quality, maintenance of natural riparian vegetation, erosion, protection of significant fish and wildlife habitat and natural areas, and compatibility with the site and the surrounding area (Section 16.254(3)(b)).

At the same time, Guideline (xv) calls for protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan. However, Section 16.254(3)(b)(i) through (xv) are "Guidelines" and compliance with them is to be judged according to their "relative importance." To this intent, the County does not have a clear procedure for assuring protection of significant fish and wildlife habitat areas within the Greenway on sites that also have sand and gravel resources. This is most evident in two particular areas--the Confluence Heronry and the Pudding Creek Heronry. Both have unquestionably significant wildlife resources present, and both contain significant aggregate resources. Application of plan policies, the Greenway ordinance, and various other zones does not result in clear policy direction for these sites. In that respect, the conflicts between these various resource uses have not been resolved.

Conclusion

Requirement 8 has not been satisfied.

Lane County has not adopted satisfactory procedures for carrying out Requirements C.3.d. and C.3.i. of Goal 15.

Requirement

9. Amend the Metro Area General Plan or the Lane County Willamette Greenway Plan to assure that land use designations are consistent.

Response

A new Metro Area General Plan Map was submitted as part of the 1982 Metro Plan review. It corrects the inconsistencies identified in 1981.

Response

The County has adopted the following Greenway policies regarding sand and gravel extraction and significant fish and wildlife habitats (Plan, pp. 33-35):

4. Protect, conserve, and preserve important economic uses such as, but not limited to agriculture, sand and gravel, tourism and recreation, fish and wildlife, urban lands, and timber within the Greenway.

13. Active, zoned, or designated aggregate extraction and/or processing sites shall be protected from noncompatible uses which would preclude future utilization of the resource.

14. Where feasible, point bar removal shall be accommodated by temporary access points.

15. In assessing the impact which an extraction and/or processing operation has on the natural and cultural attributes of the Greenway, the County shall require (within its realm of authority) mining methods which reduce or mitigate adverse impacts, as well as considering the economic and other benefits which will accrue in both short and long terms.

16. Aggregate operations occurring within the Greenway shall comply with the provisions of applicable state statutes and local zoning ordinances in regard to safety, operational standards, public review, reclamation and protection of Greenway values.

17. The relationship between the demand for the resource and the amount and location of land available for aggregate extraction and/or processing shall be closely monitored, so as to ensure the future availability of aggregate material in close proximity to urban areas and other points of use. Such monitoring shall be conducted in conjunction with the industry and state and local efforts.

18. Protect vegetation resources which are identified as having unique recreational, aesthetic, scientific or wildlife habitat values. Encourage acquisition of these areas or obtain a protective scenic easement.

37. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with sections C.3.d. and C.d.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Conclusion

Requirement 4 has been satisfied.

Lane County has adopted "shall" policies regarding sand and gravel extraction and significant fish and wildlife habitats in the Greenway. However, as noted in Part I of the Goal 15 section of this report, as well as in several of the following sections, not all of them have been implemented consistent with Goal 15.

Requirement

5. Adopt policies that address Sections C.3.h., j., and k. of Goal 15 (regarding timber resources, development away from the river, and Greenway setback).

Response

The following Greenway policies have been adopted by Lane County (Plan, pp. 33-35):

10. Development shall be directed away from the river, to the greatest degree possible.

11. A setback line shall be established in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Greenway.

12. The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, it not covered by the FPA, then with an approved plan under the Greenway compatibility review provisions. Such a plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent feasible or restored within a brief period of time.

Conclusion

Requirement 5 has been satisfied.

Lane County has adopted Greenway policies that adequately address Sections C.3.h., j., and k. of the Goal.

Requirement

6. Amend Section 10.322 of the Lane Code to require either:

a. Greenway permits in areas designated "urban" beyond 150 feet of ordinary low water.

b. Some other mechanism which ensures protection of Greenway values in "urban" areas beyond 150 feet of ordinary low water.

This could also be accomplished by LCDC amendment of the DOT Greenway Plan to change the designation of the area south of the Cottage Grove UGB from "urban" to "rural."

Response

As indicated in the 1981 denial of the County's Greenway ordinance, any intensification, change of use or development in "urban" Greenway areas, as defined in Goal 15 and designated in the ODOT Greenway Plan, must either be reviewed locally according to Greenway Permit review procedurs or must comply with other measures designed to ensure protection of Greenway values. (Note: The term "urban" as used in the context of Goal 15 is not equivalent to "urban" as used in Goal 14, or to areas within UGB's. In this case, "urban" refers to designations in the ODOT Greenway Plan. In Lane County, there is land outside the Cottage Grove UGB which has an "urban" designation in the ODOT Greenway Plan.)

The County's Greenway Working Paper recommends requesting that the "urban"/"rural" boundary line be relocated to coincide with the adopted UGB of Cottage Grove (p. 10). However, neither the County nor ODOT have reguested LCDC change this designation.

As noted in the Metro Area Acknowledgment Report, approved by LCDC in August 1982, Section 10.322-15(1)(b) of the Lane Code was amended so that it no longer distinguishes between "rural" and "urban" areas.

Conclusion

Requirement 6 has been satisfied.

The Greenway Ordinance has been amended to require Greenway permits or other measures in "urban" areas beyond 150 feet of ordinary low water.

Requirement

7. Apply EFU zoning to all agricultural lands in the Greenway (see also the Goal 3 section of this report).

Response

The County has not applied EFU zoning to 85 acres of agricultural lands on the "Confluence Island." Instead, the majority of this land is zoned "sand and gravel." All other agricultural lands in the Greenway have been zoned EFU.

Conclusion

Requirement 7 has not been satisfied.

Requirement

8. Adopt a procedure for minimizing the impacts of sand and gravel extraction on significant fish and wildlife so that the Goal's requirements (Section C.3.d. and C.3.i.) are met.

Response

Section C.3.d. of Goal 15 states: "Significant fish and wildlife habitats shall be protected."

Section C.3.i. states that aggregate extraction:

> . . . may be permitted when compatible with the purposes of the Willamette River Greenway, and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety, and to guarantee necessary reclamation.

Lane County has adopted several plan policies which address this issue. The first set of policies address Section C.3.d. They include the following:

> Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with Sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose (Greenway Policy 37).

As noted earlier (in the Mineral and Aggregate portion of the Goal 5, and the previous section of the Goal 15 sections of this report), Mineral and Aggregate Policy 11 is similar, except that it refers only to Section C.3.i. of Goal 15 for the protection of significant fish and wildife habitat areas. Section C.3.d. is the appropriate section of this Goal regarding significant habitat areas, whereas Section C.3.i. covers other less significant habitat areas and is less protective than Section C.3.d. (i.e., it requires only that the impacts of mining are minimized). Section C.3.d., on the other hand, requires that all significant habitat areas to be protected. The County needs to amend Mineral and Aggregate Policy 11 to be consistent with Goal 15 as well as with Greenway Policy 37.

The second set of Greenway policies address Section C.3.i. of the Goal, since they are aimed at minimizing the impact of any intensification, change of use, or development on Greenway values (e.g., Policies 2, 5, 15, 16, 18, 19, 27, 29).

Mining and processing activities in the Greenway must comply with provisions in the County's Greenway ordinance, including the following:

> A development which is mining or mineral extraction and/or processing operation must include mining or extraction and/or processing methods which reduce or mitigate adverse impacts to the natural and cultural attributes of the Greenway (Section 16.254(3)(a)(iii)).

In addition, affirmative findings of compatibility must be made with regard to a number of "Guidelines," including those addressing the protection of scenic and historic resources, areas of flooding and wetlands, the protection and enhancement of water quality, maintenance of natural riparian vegetation, erosion, protection of significant fish and wildlife habitat and natural areas, and compatibility with the site and the surrounding area (Section 16.254(3)(b)).

At the same time, Guideline (xv) calls for protection and conservation of lands designated aggregate resources within the adopted Willamette Greenway Plan. However, Section 16.254(3)(b)(i) through (xv) are "Guidelines" and compliance with them is to be judged according to their "relative importance." To this intent, the County does not have a clear procedure for assuring protection of significant fish and wildlife habitat areas within the Greenway on sites that also have sand and gravel resources. This is most evident in two particular areas--the Confluence Heronry and the Pudding Creek Heronry. Both have unquestionably significant wildlife resources present, and both contain significant aggregate resources. Application of plan policies, the Greenway ordinance, and various other zones does not result in clear policy direction for these sites. In that respect, the conflicts between these various resource uses have not been resolved.

Conclusion

Requirement 8 has not been satisfied.

Lane County has not adopted satisfactory procedures for carrying out Requirements C.3.d. and C.3.i. of Goal 15.

Requirement

9. Amend the Metro Area General Plan or the Lane County Willamette Greenway Plan to assure that land use designations are consistent.

Response

A new Metro Area General Plan Map was submitted as part of the 1982 Metro Plan review. It corrects the inconsistencies identified in 1981.

Conclusion

Requirement 9 has been satisfied.

Requirement

10. Amend the Lane County Greenway ordinance to ensure that the only erosion control activities that are exempt from Greenway review are those for emergency situations, safety, and protection of property.

Response

Lane County's Greenway ordinance has been amended so that the only erosion control activities that are exempt from Greenway Permit review are those "erosion control operations required in emergency situations for the safety and protection of property" (Lane Code, Section 16.254(2)(f)).

Conclusion

Requirement 10 has been satisfied.

Objections

1. A number of objections have been received regarding the County's treatment of the 300-acre area known as "Big Island" or "Confluence Island" at the confluence of the McKenzie and Willamette Rivers. Specifically, 1000 Friends of Oregon, League of Women Voters of Central Lane County (LWV), Harold Chapman, and Lane County Audubon Society have objected because the County has failed to provide adequate protection for the great blue heron rookery on the island. The heronry is one of the largest in the Willamette River Basin (about 55 nests) and is identified in the State Natural Heritage Inventory. Objectors point out that the County has zoned the site for sand and gravel use except for the heronry itself and an unspecified buffer area. Objectors feel this is not only inadequate, but also fails to carry out specific in-order-to-comply requirements adopted by the Commission. Specifically:

    a. Objectors note that Goal 15 (Section C.3.a.) requires that agricultural land in the Greenway be protected. Further, the denial order of Lane County's plan issued in 1981 as well as the 1982 continuance order for the Eugene/Springfield Metro Area specified that EFU zoning had to be applied to all agricultural lands in the Greenway. Several objectors have provided information demonstrating that a large portion of the island contains soils which are SCS Class II and IV. The area has been farmed historically, and about 85 acres are currently farmed. The County has not applied EFU zoning to all these areas. Some areas with these soils are zoned Natural Resource, but the majority are not. Instead, they have been zoned for sand and gravel.

b. Objectors believe that the County has not demonstrated that a minimum 300-foot buffer around the rookery will be adequate to protect the rookery. Objectors point out that Section C.3.d. of Goal 15 requires protection of all significant habitats in the Greenway. Objectors state that the compromise reached and which was adopted by the County was based on incorrect information about the location of the rookery, and therefore a larger area is needed for protection of the site itself. Objectors further point out that, on many occasions, the Commission has indicated that fish and wildlife areas and habitats include nest sites as well as other areas important to the species, including impact areas. Evidence submitted by objectors suggests that buffers of even 450 feet are inadequate and would result in abandonment of the site. Herons react to disturbances up to about 700 feet, according to research submitted by objectors.

c. Objectors also indicate that the County has failed to recognize the importance of providing adequate future habitat (available nest trees) in the event that existing nest trees (which are older and more susceptible to windthrow) are lost. Objectors point out that such habitat is being lost at a rapid rate along the Willamette River system. Objectors note that it is "absolutely necessary to preserve as many of the inland big trees as possible "because the island is eroding on the east side and water is undercutting nest existing trees, and because there are few places for the herons to relocate. The north end of the island (which is to be protected) is subject to windthrow.

d. Objectors indicate that the County has not adopted any implementing measures to minimize the impacts of sand and gravel extraction on this significant habitat area, so that Sections C.3.d. and C.3.i. of Goal 15 are met as specified in the 1981 denial order for Lane County and the 1982 continuance order for the Metro plan. Specifically, objectors point out that Section C.3.i. requires measures designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise safety, and to guarantee necessary reclamation. Policy 11 contains this language but the Greenway Development permit criteria requires only that extraction reduce or mitigate adverse impacts to the natural attributes of the Greenway. Objectors indicate that the County's Sand and Gravel Zone also does not contain criteria which address the specific concerns listed in Section C.3.i. of Goal 15.

e. In the 1982 continuance order for the Metro Plan, LCDC specified that the ESEE consequences of designating the island for sand and gravel had to be evaluated in the context of regional aggregate supply and demand. Objectors contend that this has not been done, and (based on data in the County's own plan), they provide information demonstrating that in the Metro Area, supply is 10 to 20 times the demand for aggregate to the

year 2000. In the island alone, there is about five to ten times the total Metro Area demand to the year 2000. Therefore, objectors contend that the County cannot demonstrate the need to zone Big Island for sand and gravel extraction.

f. Objectors indicate that the entire island is within the floodway as determined by FEMA. County adoption of the current zoning for the island was based on a misunderstanding that the island was in the floodway fringe. Objectors indicate that a sand and gravel operation on the island will require dikes and other protective construction projects. FEMA standards do not normally permit dikes or other above-grade type development to be constructed in a floodway. Objectors also point out that Goal 7, Guideline 2 indicates that uses that do not require protection through dams, dikes and levies should be given preference over uses requiring such protection.

g. Objectors contend that the noise from a sand and gravel operation on the island would not be compatible with the purpose of the Greenway relative to a County park on the opposite bank. This is the only site with public access to the river in a natural state in the River Road-Santa Clara area.

2. A number of objections have been received regarding the County's treatment of the Pudding Creek Heronry on the Middle Fork of the Willamette River, within the Willamette Greenway. Specifically, Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County (LWV), and Lane County Audubon Society have objected to the Sand and Gravel Zone designation applied to the site.

Objectors point out that this great blue heron rookery is one of the largest in the Greenway and in Western Oregon (54 nests in 31 trees), and is on the State Natural Heritage Inventory. The site is within the Metro Planning area but outside the UGB. Objectors note that the heronry is recognized by the Lane Council of Governments (LCOG) as a significant wildlife resource. Objectors state that, during 1983, extensive negotiations occurred between Lane County, ODFW and the Wildish Land Company regarding the site, and that a land trade agreement was drafted in order to protect the heronry. Objectors point out that the Metro Plan Update Addendum indicates that a "Natural Resource" plan designation is to be applied to the site and buffer area and that land exchange is to be the means to resolve sand and gravel use conflicts. However, objectors indicate that Lane County has not zoned the rookery for natural resource protection and instead has applied Sand and Gravel zoning.

Several objectors note the similarity between the Pudding Creek Heronry and the Big Island Heronry (i.e., both are in the Greenway, and both have sand and gravel operation conflicts). Objectors note Goal 15 requirements regarding protection of significant fish and wildlife habitats and conditions which must be satisfied in order to allow mining activities.

Several objectors note that the County's failure to evaluate the Pudding Creek Heronry site in terms of the Goal 5 Administrative Rule process also violates Goal 5 as well as LC 10.205-05 and Ordinance 16.217 (Sand, Gravel and Rock Products Zone, SG-RCP). The Code states that the SG-RCP Zone shall only apply to sites which have been evaluated consistently with the Statewide Planning Goal 5 Administrative Rule conflict resolution process.

Response to Objections

1. Many of the objections regarding the Big Island Confluence Heronry are valid. Specifically,

   a. Objectors are correct that EFU zoning has not been applied to the 85 acres of agricultural lands on Big Island. Goal 15 (Section C.3.a.) requires this to be done.

   b. There is no evidence in the County's policies or implementing measures that a 300 foot buffer around the heron rookery was adopted, although such a buffer was proposed in the Metro Plan update document. Objectors are correct, however, that there is not sufficient information in that document as to why a 300 foot buffer--as opposed to a 400 foot or 700 foot buffer (for example) is adequate to protect the heronry. This is particularly true if, as objectors point out, such a proposed buffer was based upon incorrect information about the location of the rookery.

      On the other hand, objectors have indicated what buffer distances would not be acceptable, but have not recommnded a specific buffer in this case. In light of these facts, the objection is sustained in part. If sand and gravel extraction is to be permitted on the island, the County needs to reexamine what would constitute an adequate buffer for protection of the rookery, based on accurate locational information, and based on advice from objectors as well as ODFW biologists. Based on this re-examination, the County needs to adopt justification for an appropriate buffer, and must adopt such a buffer in plan policies and implementing measures for the site (see, however, response (e) below).

   c. Objectors are correct that the County has not discussed the importance of providing future habitat, such as trees in the inland portion of the island, although the County does recognize that the entire island has habitat value. The County needs to address this when developing a program to protect the site.

   d. Objectors are correct that neither the SG Zone nor the County's Greenway ordinance clearly require protection for significant wildlife habitats, such as the Confluence Heronry. Objectors are correct in saying that the Greenway ordinance does not contain provisions for carrying out Section C.3.i. of Goal 15, inasmuch as it is unclear that extraction will be allowed to occur only if certain conditions are met (these are spelled out

in Section C.3.i. of the Goal). The ordinance refers to most of the topics in Section C.3.i. in its "Guidelines" but does not relate these guidelines to aggregate extraction activities per se. It only requires that findings of compatibility be made based on the "relative importance" of individual Guidelines in any given case. This is not sufficient to ensure that Sections C.3.d. and C.3.i. of Goal 15 will be achieved. Objectors are not correct that Mineral and Aggregate Policy 11 contains adequate assurance, since it fails to reference Section C.3.d. of Goal 15.

e. Objectors are correct that the ESEE consequences analysis for designation of the island did not take into account the regional aggregate supply and demand, although the County's analysis does indicate that "from 3-7 times the amount of land needed for urban aggregate consumption during the planning period has been allocated for this use" (p. V-7). Objectors are correct that the County has not demonstrated a need to zone the island for sand and gravel extraction.

f. Objectors are correct that the entire island is within the floodway. However, this is not a Goal 15 compliance issue, per se, since Goal 15 simply requires floodplain zoning of all areas subject to flooding. As noted in the Goal 7 section of this report, this has been accomplished. Such zoning, plus FEMA regulations will limit activities that can take place on the island.

g. The County has not assessed the impact of noise from a sand and gravel operation in the County park on the opposite bank. However, this would be required according to Sections 16.254(3)(a)(iii) and (3)(b)(xiii) of the Greenway ordinance.

2. Goal 15 (Section C.3.d.) states: "Significant fish and wildlife habitats shall be protected" (emphasis added). Section C.3.i. of the Goal addresses aggregate extraction, and indicates that it "may be permitted when compatible with the purposes of the Willamette River Greenway, and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation."

Although the heronry is a significant Goal 5 resource as well as a significant Goal 15 resource, the requirements of Goal 15 are stricter than those for Goal 5 and the Goal 5 Administrative Rule. Goal 15 requires protection of significant fish and wildlife habitats; it does not allow the "balancing" that is permitted under Goal 5, based on specific circumstances and ESEE consequences of conflicting uses. Extraction in the Greenway may occur only when certain criteria are satisfied. In no instance can it occur if it results in non-protection of a significant habitat area.

There is apparently some confusion as to the actual zoning of the Pudding Creek Heronry, based on the comments and objections received, the various plan and zoning maps submitted for review, and information from the Planning Department itself. This is probably due to the fact that the zoning of the site has changed several times. The plot maps submitted indicate that part of the Pudding Creek Heronry site has been zoned for sand and gravel extraction, and part has been zoned NR. However, the Planning Department indicates that the entire site is zoned SG (Jim Mann, personal communication, July 17, 1984). Criteria in the County's Sand and Gravel Zone and Greenway ordinance do not ensure that the requirement of Section C.3.i. of Goal 15 will be satisfied for reasons discussed earlier. The adopted background materials which analyze the conflicts and ESEE consequences for the site call for protection of the heronry. There is no basis for SG zoning of the entire site, not is there any basis for the current configuration of NR zoning and SR zoning shown on the plot maps. There is no assurance that this configuration would be adequate to protect the heronry. The objections are sustained.

It should be noted that in 1983, extensive negotiations took place between the landowner, Lane County, ODOT, and ODFW for resolution of these conflicts. A proposal for a land exchange (involving land in a nearby state park being rezoned for sand and gravel, and the rookery to be zoned for protection) was drafted, but never executed. The draft proposal was not submitted as part of this current review, but a review of the proposal submitted informally to DLCD by LCOG indicates that, if adopted, it would satisfy Goal 5 and 15 concerns. Other implementing strategies and measures may also be available which would satisfy these Goals as well.

Comment

Wildish Land Company supports the County's plan and zone designations for the Pudding Creek Heronry, as submitted. Wildish (the property owner) indicates that, although the LCOG Working Paper, "Natural Resource Areas: Conflict Resolution for Significant Areas," recommends a land exchange or transfer of mining rights in order to resolve conflicts, redsignation and rezoning proposals were part of a preliminary draft and unadopted addendum to the Working Paper. To date, there has been no land exchange or rezoning. Wildish indicates that Policy 32 of the Environmental Resources Element of the Metro Plan simply requires further study of this issue. Wildish indicates that such a study has been completed and a decision made. The Mineral and Aggregate Resources Element of the County Plan specifies that the Goal 5 Rule will be followed (Policy 1, p. 13). Wildish indicates that LC10.205-10 of the Sand, Gravel and Rock Products Zone implements this policy.

Response

As noted earlier, while the Pudding Creek Heronry is a significant Goal 5 resource, it is also a significant Goal 15 habitat area. As such, the more restrictive standards of Goal 15 must be applied (i.e., the rookery

must be protected). Mining can occur only if the rookery is protected and other Goal 15 criteria are met. Contrary to the Wildish Land Company's statement in its letter, the County must be directed to amend its plan and implementing measures to protect the site.

Conclusion - Goal 15

Lane County does not comply with Goal 15.

Lane County has made many improvements to its Greenway element, in terms of both policies and implementing measures. However, there remain several deficiencies which must be corrected in both the rural plan element and in the Metro Planning Area outside the Metro UGB, in order to fully satisfy Goal 15. Summaries of these deficiencies have been presented in the previous subsections of this report.

In order to comply with Goal 15, Lane County and the Cities of Eugene and Springfield must:

1. Amend zoning maps 304, 304A, 305, 330, 332, 347, 396, 411, 417, 418, 425, 437, 440, 448, 471, 528, 1005, 1006, 1008, 1010, 1011, 1012, and 1013 to display the correct LCDC-approved Greenway Boundary.

2. Amend the Greenway ordinance to clearly require protection of significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints, per Sections C.3.d., a., and e. of the Goal.

3. Amend Section 16.254(2)(k) of the Greenway Ordinance to eliminate all language following the phrase, "or personal noncommercial use."

4. Amend Section 16.254(c) of the Lane Code to ensure that only water-dependent and water-related uses themselves are exempt from the 100-foot Greenway setback requirement.

5. Amend Section 16.254(6) of the Lane Code to require notification of ODOT of actions taken on applications for intensification, change of use or development in the Willamette Greenway.

6. Amend Section 16.254(2)(a) of the Greenway Ordinance to require either:

   a. Greenway permits in areas designated "urban" beyond 150 feet of the ordinary low water line, or

   b. Some other mechanism which ensures protection of Greenway values in these areas.

   (Note: This could also be accomplished by LCDC amendment of the ODOT Greenway Plan by changing the designation of the area south of the Cottage Grove UGB from "urban" to "rural.")

7. Adopt implementing measures that protect the Pudding Creek Heronry.

8. Adopt implementing measures that protect the Confluence Heronry.

In order to comply with Goal 15, Lane County must:

Modify Mineral and Aggregate Resources Policy 11 to also reference Section C.3.d. of Goal 15 to ensure protection of significant fish and wildlife habitats in the Willamette Greenway.

Suggestions for Plan and Implementing Measures Improvement

It is suggested that, by the first plan update, Lane County:

Amend Greenway Policy 13 to indicate that such operations are subject to local Greenway Permit review, or (alternatively) they must be conducted in a manner consistent with protection of other Greenway values.

CP:MJR:11t
9472B:168A; 9279B/9168B:167A

Lane County's Nonresource Lands Process (Part II)

In the Lane County Acknowledgment Review of June 29, 1984, Lane County's Nonresource/Nonexception Lands designation process is reviewed. Information presented in the June 29 review includes (1) the County's plan policies for designating lands as nonresource/nonexception and applying residential densities to these lands (Policies 16(a) and 17, respectively, Plan, p. 4) and (2) the "general criteria" for determining nonresource lands contained in the County's marginal lands working paper (Marginal Lands Working Paper, pp. 7-9).

The County's process for determining that Goals 3 and 4 do not apply was found to be consistent with applicable Goal requirements. The information regarding Lane County's nonresource/nonexception lands contained on pages 47 through 50 of the June 29 review is considered Part I of a two part review of the issue. Part II of the review consists of an evaluation of six site specific areas for which information has been adopted indicating that these six areas qualify for the nonresource/nonexception designations.

The County's findings and record regarding these six areas were submitted for review in two parts. Part I was submitted with the rest of Lane County's plan on May 24, 1984. On June 25, 1984, Part II of the County's record regarding nonresource/nonexception lands was received by the Department. The information received on June 25, 1984, was adopted by the Lane County Commissioners without proper notification of objectors as required by OAR 660-03-032(1) (Expedited Review Requirements).

Therefore, Lane County must satisfy the requirements of OAR 660-03-032, before the Commission can formally accept relevant findings contained in materials submitted for review on June 25, 1984.

Evaluation of the Six Site Specific Areas Found to Qualify as Nonresource by the County

Lane County indicates that (1) Agate Creek Planned Unit Development (Wolf), (2) McKenzie Ridge (Thurmond), (3) Addition to Dillard and Highlands (Hemmenway), (4) Second Addition to Dillard Highlands (Hemmenway), (5) Meltebeke's on Van Duyn Road, and (6) Cerro Gordo (Canfield) qualify as nonresource lands. In assessing whether these six areas do qualify as lands for which Goals 3 and 4 do not apply, the Department found that in some cases, a determination could be made based on the information submitted in May of 1984. In other cases, the information submitted on June 25 was necessary to complete the record. The Department also found that adequate justification to support the County's "nonresource" claim for a couple of the areas in question was lacking despite the additional June 25 information. The following matrix will assist in clarifying this issue discussed above:

	Original Submittal (5-24-84)		Supplemental Findings (6-25-84)	
	Adequate	Deficient	Adequate	Deficient
1. Agate Creek PUD		X	X	
2. McKenzie Ridge	X			
3. Addition to Dillard Highlands		X	X	
4. Second addition to Dillard Highlands	No information submitted			X
5. Meltebeke's on Van Duyn Road	X			
6. Cerro Gordo	X			

Agate Creek Planned Unit Development (PUD)

This proposal is for 16 lots to be developed in two stages. Findings for this designated nonresource site consist of two pages of supplementary findings, the official public hearing notice and a memorandum to the Lane County Hearings Official from staff member George Currin regarding the PUD (5/5/83). Contained in the "original submittal" (5-24-84) is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. A statement that the "majority of soils on the subject property possess no woodland suitability." (NOTE: reference is made to an "Attachment A"--LCPC staff report PZC-82-190. This attachment was not furnished as part of the original submittal.)

2. Statements are provided indicating that 1) no site characteristics are present which make this site desirable for open space, 2) no mineral or energy resources are present, 3) no known ecological or scientifically significant natural areas are identified, 4) designation of this land for non-resource will not affect management of the land for wildlife habitat, 5) this site does not contain or impact scenic areas, 6) the site is not part of a water area, wilderness, wetland, groundwater resource area, or watershed, or 7) this site is not part of a known historical area or a potential or approved recreation trail or scenic waterway. (Supplementary Findings);

Contained in the "supplemental findings" of June 25, 1984, is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. Lane County Planning Commission Staff Report of November 9, 1982, which indicates the following:

   a. Lane County staff agrees that SCS Class I-IV Soils are not predominantly found on this property.

   b. This land is identified by the Lane County Wildlife Habitat Inventory as "sensitive" big game habitat.

   c. The applicant is in error that the suggested big game habitat density is one dwelling per 40 acres. It is one dwelling per 80 acres in sensitive big game areas.

2. LCDC Goal Requirement Report (Attachment A-November 9, 1982)

   a. The subject property is 53 percent nonagricultural soils. Attachment A to this LCDC Goal Compliance Report, which is referenced, indicates that of the 78 acres in question, 41 acres are SCS Class VI, 25 acres Class IV and 12 acres Class III (p. 1).

   b. A perched water table, poor soils, and steep slopes are given as reasons why this land is not "other land" suitable for farm use. SCS Soils OR-1 sheets are provided for each soil which generally support the County's position (p. 1).

   c. The County indicates that this land is not other lands necessary to permit farm practices to be undertaken on adjacent or nearby lands because none of the adjacent or nearby lands are engaged in farm use as defined by the ORS (p. 2).

   d. Regarding Goal 4, the County indicates that the land in question is composed of 59 percent (48 acres) of soils that have no woodland suitability for commercial forest uses. Only Dixonville Soil, which is cubic foot site Class 4, is capable of supporting commercial forest species.

   e. The County states that the parcel is not "other forested" lands needed for other resource uses listed in the Goal 4 definition. Specifically, the property has not been identified as needed for any of the other uses except big game habitat (p. 3). The issue of whether this land is forested land needed for big game habitat is addressed under a Goal 5 statement on page 4; the following statement is provided:

      > While the subject property is not shown on the Lane County Comprehensive Plan Inventory as significant fish or wildlife habitat or habitat for any endangered or threatened species, the Department of Fish and Wildlife has noted that this property is located in habitat for black-tail deer. The concerns of the Department of Fish and Wildlife can be addressed in

	Original Submittal (5-24-84)		Supplemental Findings (6-25-84)	
	Adequate	Deficient	Adequate	Deficient
1. Agate Creek PUD		X	X	
2. McKenzie Ridge	X			
3. Addition to Dillard Highlands		X	X	
4. Second addition to Dillard Highlands	No information submitted			X
5. Meltebeke's on Van Duyn Road	X			
6. Cerro Gordo	X			

Agate Creek Planned Unit Development (PUD)

This proposal is for 16 lots to be developed in two stages. Findings for this designated nonresource site consist of two pages of supplementary findings, the official public hearing notice and a memorandum to the Lane County Hearings Official from staff member George Currin regarding the PUD (5/5/83). Contained in the "original submittal" (5-24-84) is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. A statement that the "majority of soils on the subject property possess no woodland suitability." (NOTE: reference is made to an "Attachment A"--LCPC staff report PZC-82-190. This attachment was not furnished as part of the original submittal.)

2. Statements are provided indicating that 1) no site characteristics are present which make this site desirable for open space, 2) no mineral or energy resources are present, 3) no known ecological or scientifically significant natural areas are identified, 4) designation of this land for non-resource will not affect management of the land for wildlife habitat, 5) this site does not contain or impact scenic areas, 6) the site is not part of a water area, wilderness, wetland, groundwater resource area, or watershed, or 7) this site is not part of a known historical area or a potential or approved recreation trail or scenic waterway. (Supplementary Findings);

Contained in the "supplemental findings" of June 25, 1984, is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. Lane County Planning Commission Staff Report of November 9, 1982, which indicates the following:

   a. Lane County staff agrees that SCS Class I-IV Soils are not predominantly found on this property.

   b. This land is identified by the Lane County Wildlife Habitat Inventory as "sensitive" big game habitat.

   c. The applicant is in error that the suggested big game habitat density is one dwelling per 40 acres. It is one dwelling per 80 acres in sensitive big game areas.

2. LCDC Goal Requirement Report (Attachment A-November 9, 1982)

   a. The subject property is 53 percent nonagricultural soils. Attachment A to this LCDC Goal Compliance Report, which is referenced, indicates that of the 78 acres in question, 41 acres are SCS Class VI, 25 acres Class IV and 12 acres Class III (p. 1).

   b. A perched water table, poor soils, and steep slopes are given as reasons why this land is not "other land" suitable for farm use. SCS Soils OR-1 sheets are provided for each soil which generally support the County's position (p. 1).

   c. The County indicates that this land is not other lands necessary to permit farm practices to be undertaken on adjacent or nearby lands because none of the adjacent or nearby lands are engaged in farm use as defined by the ORS (p. 2).

   d. Regarding Goal 4, the County indicates that the land in question is composed of 59 percent (48 acres) of soils that have no woodland suitability for commercial forest uses. Only Dixonville Soil, which is cubic foot site Class 4, is capable of supporting commercial forest species.

   e. The County states that the parcel is not "other forested" lands needed for other resource uses listed in the Goal 4 definition. Specifically, the property has not been identified as needed for any of the other uses except big game habitat (p. 3). The issue of whether this land is forested land needed for big game habitat is addressed under a Goal 5 statement on page 4; the following statement is provided:

      > While the subject property is not shown on the Lane County Comprehensive Plan Inventory as significant fish or wildlife habitat or habitat for any endangered or threatened species, the Department of Fish and Wildlife has noted that this property is located in habitat for black-tail deer. The concerns of the Department of Fish and Wildlife can be addressed in

that a clustering of dwelling through a Planned Unit Development will significantly minimize the impact on black-tail deer habitat. Such a development will offer better protection to the habitat than scattering dwellings on the acreage which could occur under current land divisions. The dwelling density allowed under this proposal will not exceed the overall dwelling to acre ratio of 1-40 recommended by the State Fish and Wildlife Department for this type of black-tail deer habitat. The overall dwelling to acre ratio will not be exceeded in that the habitat in question is only a part of the total black-tail deer habitat in this area. Adjacent habitat areas will be maintained due to other prime forest land qualities. It is preferable to accommodate dwellings in this location given the poor resource soils and impact of surrounding development than on surrounding lands which are not impacted or of marginal capability.

With regard to the Fish and Wildlife Department's concern about deer damage to gardens and shrubs and the state's obligation to respond to complaints, the applicant will include deed provisions with all sales of property that black-tail deer inhabit the area and that the associated risks should be recognized.

Objection

1000 Friends of Oregon objects to the claim that Goals 3 and 4 do not apply to the Agate Creek PUD because the findings submitted on March 15, 1984, fail to address Goal 3. Regarding Goal 4, 1000 Friends objects to the conclusion that "the majority of soils on the subject property possess no woodland suitability" without specific soils and specific acreages as supportive evidence.

In addition, specific referenced attachments were not included in the County's original submittal of May 24, 1984.

Response to Objection

This objection is partially sustained. 1000 Friends' objection is generally correct with respect to the information contained in the original May 24, 1984, submittal. However, objectors will find that their specific objection is addressed by the Supplemental Findings submitted for review on June 25, 1984.

Conclusion for Agate Creek PUD

The claim that Goals 3 and 4 do not apply is not sustained.

Substantial evidence is provided in the record supporting the claim that Goals 3 and 4 do not apply to the property in question and that Goal 5 big game habitat value will be protected through clustering provisions.

McKenzie Ridge (also known as Camp Creek Ridge)

This PUD proposal would establish 79 dwellings on 385 acres of land north of Springfield.

Information in the record includes: (1) an affidavit by the applicant, Robert E. Thurmond, detailing the history of and expenses incurred for this development; and (2) a statement of findings, reasons and conditions. This latter statement includes findings addressing all applicable Statewide Planning Goals as well as applicable County requirement and conditions of approval.

This particular claim that Goals 3 and 4 do not apply to this property has been previously before LUBA and the Commission in Osborne v. Lane County [LUBA No. 81.107].

In their March 18, 1982 decision, LUBA found and the Commission affirmed, that the land in question is not subject to Goal 3 because it is not agricultural land be definition. Also, LUBA found that this land is not subject to Goal 4 primarily because the land is not predominantly forested nor suitable for commercial forest use.

Objection

1000 Friends objects to the McKenzie Ridge PUD because the assumptions regarding the interpretation of soils information are correct. The County has relied totally on SCS soils maps even though such maps can be incorrect.

Response to Objection

This objection is not sustained.

Objectors do not present any specific information regarding the property in question to justify invalidating the Commission's earlier decision in Osborne v. Lane County.

Conclusion for McKenzie Ridge

The County's decision indicating that Goals 3 and 4 do not apply to the 385 acres in question is sustained (see Osborne v. Lane County [LUBA No. 81.107]) and the County's finding contained in the May 24, 1984, submittal.

Dillard Highlands Addition

This subdivision is located approximately two miles south of the Eugene city limits. Phase 1 of Dillard Highlands consists of 14 parcels on 100 acres and is "committed" to non-resource use. The second phase of this development consists of 24 parcels.

Findings from the "original" May 24, 1984, submittal supporting this

nonresource/nonexception claim consist of a five-page statement (prepared by David Pedersen and Associates for applicant David Hemenway) titled "Application For Addition to Dillard Highlands Subdivision."

Information from the "original" submittal (5-24-84) relevant to the requirements for substantiating that Goals 3 and 4 do not apply are as follows:

1. A statement indicating "that the predominant soils on the property consist of:

   Dixonville-Philomath Hazelair complex (SCS Class VIe); Philomath SC (SCS Class VIs; Panther CL (SCS Class VIw) and Witzel CL (SCS Class VIs). These non-agricultural soils comprise approximately 92% of the subject property. A small patch (about 10 acres) of Hazelair soils is located on 20-30% slopes on the northern edge of the proposed division. These soils have SCS Classes IVe, subject to severe erosion (Pederson Statement, p. 3).

   Reference is made to an attached soils map which was not forwarded as part of the original submittal (May 24, 1984).

2. Regarding the "other land suitable for farm use" and "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands," the following statement is provided:

   > This land does not meet the second definition of agricultural land. That is, it cannot be used for farm use (the current employment of land for the primary purpose of obtaining a profit) nor is it related to the continuation of agricultural activities on adjacent or nearby lands. Other lands in this area are either developed as rural residential or have physical characteristics similar to the subject proprty: gently rolling to steep terrain, a predominance of SCS Class VI soils and little if any potential "farm use". In addition, there is very little physical connection between the subject property and surrounding lands because of the variation in topography. Thus, even if farm use were possible on nearby lands, this proposal would not impact on or adversely affect such activities.
   >
   > In summary, the subject property is not agricultural land either in terms of its soil classification or its relationship to other surrounding lands. The surrounding lands are also not agricultural lands as defined by Goal 3 (Pedersen Statement, p. 4).

3. In response to Goal 4 requirements, statements are made that (1) the subject property has no timber site class ratings; (2) that it is predominantly open land; (3) that adjacent lands are similar in character and not used for commercial forest purposes; (4) that other forest uses (i.e., watershed protection, wildlife and fisheries

habitat, recreation, extreme conditions of climate, forested lands in urban and agricultural areas) are not applicable or present on the subject property.

In support of the above statement, the following is provided:

The general area slopes south and east towards Dillard Road and Camas Swale. It contains no rivers or creeks and only a small water natural drainage channel flows southeast towards Dillard Road and into Camas Swale. This drainage basin has no watershed value, nor would the proposed subdivision at the low densities proposed impact on any watershed if one were present. The subject property lies in a low, open area surrounded by steep hillsides. The Significant Vegetation and Wildlife Areas working paper indicates that the vegetation on the property is not unique and contains no elements which contribute to making it a signicant Wildlife Area.

4. Additional statements are provided indicating that (1) the subject property has not been considered for nor does it have recreational value; (2) no extreme climatic conditions exist; (3) this land is not needed for open space, wind breaks; and (4) no scenic values are present on the property.

Contained in the "supplementary findings" submittal of June 25, 1984, are (1) a chart titled "Soil Types on Dillard Highlands, 1st Addition," (2) a SCS Soils map for the subject property, and (3) a soils investigation report apparently prepared by Lane County including soils maps. The chart is relevant to the review of this proposed nonresource site summarized as follows:

1. The chart indicates that of the approximately 107 acres of the Dillard Highlands, 1st Addition, (a) 31.5 acres consists of the Dixonville-Philomath-Hazelaire Complex which has no woodland suitability and has SCS Class IVe agricultural soils; (b) 27 acres consists of Panther Silty Clay Loam which has no woodland suitability and has SCS Class VIw agricultural soils; and (c) 22.4 acres consists of Hazelaire Silty Clay Loam which has not woodland suitability and has SCS Class IVe agricultural soils.

   Of the approximate 107 acres, only 2.6 acres have a woodland suitability while only 22.4 acres are SCS agricultural suitability Class IV.

Objections

1000 Friends of Oregon objects because the findings presented are actually conclusionary statements for which supporting factual information is lacking.

Response to Objection

This objection is not sustained. Additional soils information contained in the supplementary findings submitted for review on June 25, 1984 supports the statements presented by the County in their original submittal indicating that Goals 3 and 4 do not apply. (Also see conclusion)

Conclusion for Dillard Highlands Addition

The claim that Goals 3 and 4 do not apply is sustained. Findings contained in the original submittal of May 24, 1984, are supported by information contained in the "supplemental findings" submitted for review on June 25, 1984, of particular significance is the information indicating that only 22.4 acres of the soils present on this property are SCS Class IV with no SCS Class I-III soils and that only 2.6 acres of the 107 acres in question have any woodland suitability rating at all.

Dillard Highlands, 2nd Addition

This proposal involves approximately 154 acres consisting of 29 five acre lots. It is located approximately one third of a mile southeast of the Eugene city limits and the UGB (application for the Second Addition to the Dillard Highlands Subdivision, p. 3).

Findings addressing this proposal were submitted for review on June 25, 1984 (supplementary findings). Included within the County's record for Dillard Highlands 2nd Addition review as lands for which Goals 3 and 4 do not apply is (1) a document titled "Application for the Second Addition to the Dillard Highlands Subdivision," (2) a list of soils with marginal woodland potential, and (3) a soils investigation report (apparently prepared by Lane County) which includes "forest" and "Ag" soils mapping.

Findings indicating why Goal 3 does not apply to the subject property are as follows:

1. Based on SCS soils mapping, the subject property is composed of 53 percent "nonagricultural soils"--Classes V-VIII--Exhibits A, B, and D are referenced.

2. Table 1 on page 11 indicates that 64% of the property is Class I-IV soils.

3. The soils investigation and accompanying "Ag" soils maps appear to indicate that the majority of the property in question is in fact composed of SCS Class I-IV soils. Also, handwritten statements on the "soils investigation report" indicate that "the application is general concerning soils if there are several more than mentioned" (Request for Soils Investigation, pp. 1 and 2).

4. The subject property is not "other lands" suitable for grazing "because of a combination of problems affecting the growth of pasture and the adverse effects of erosion which would accompany the grazing cattle." The County continues its assesssment of agricultural capabilities by stating the following:

The various limitations on grazing described upon the applicable SCS soil sheets include low fertility, strong acidity, seasonal high water table, clayey topsoil susceptible to compaction when wet, summer droughtiness, slow permeability, and susceptibility to erosion. Climatic conditions of winter rainfall and summer drought lead to the aforementioned soils problems and do not lead to favorable grazing conditions. The soils can become very dry in the summer, and given the high cost of drilling wells and the restricted grazing time, the prospect of irrigation for this purpose is rendered infeasible now and in the future. Existing rural residential land use patterns within the area and the subject property's proximity to the Metropolitan area make it most valuable for rural residential development. The technological and energy inputs required to farm the subject property due to the combination of soils and slope render it not farmable by a reasonable and prudent farmer for the primary purpose of obtaining a profit in money. Even if there were accepted farming practices which made grazing profitable on this site, the erosion potential of this activity makes this property unsuitable for grazing (Application for Dillard Highlands 2nd Addition, pp. 10 and 12--hereby referenced on Application).

5. The subject property is not lands in other classes necessary to permit farm practices to be undertaken on adjacent or nearby lands "as none of the adjacent lands are engaged in farming practices" (Application, p. 12).

Findings indicating why Goal 4 does not apply to the subject property are as follows:

1. In assessing whether this land is lands composed of existing and potential forest lands which are suitable for commercial forest uses the County indicates that of the 154 acrs, 57 acres is composed of Site Class III (site index 140), 31 acres is composed of Site Class IV (site index 110), 43 acres is composed of noncommercial forest lands, 18 acres is used for utility easements, and 5 acres is "deemed" as necessary lands for management (Application, p. 14). The County indicates that for this discussion, Site Class 125 (borrowed from Douglas County) was used to assess commercial forest land suitability (Application, p. 16).

   The County concludes that "only 57 acres, or 37 percent of the subject property has any commercial forest potential" (Application, p. 16).

2. The soils investigation and accompanying "Forest" soils maps indicate that additional soils not discussed by the County exist on the subject property (Request for Soils Investigation, pp. 1 and 2).

3. The County's "Exhibit F" presents from Forester Bob Hohenhaus an evaluation economic returns from commercial forest production. The County concludes that at the land's purchase price of $2,395,302, the net return from commercial forest production of the Site III and IV land is $217 per acre (Exhibit F, p. 2).

4. The County indicates that subject property is not "other lands" used for watershed protection, wildlife and fisheries habitat, and recreation because (a) no inventories identify it as needed for watershed protection; (b) the area is identified as the "impacted" and thus, not needed for big game habitat as well as not identified as significant habitat for fish or other wildlife species; (c) the subject property has not been identified as needed for recreation (Application, pp. 24-26).

5. In addressing the other aspects of the "Forest Lands" definition, the County indicates (a) that any soil conditions requiring maintenance of vegetative cover will be protected through conditions attached to development approvals, and (b) because the property is not within a UGB or in agricultural land, the "other forested "lands" definition does not apply (Application, pp. 26-27).

Conclusion for Dillard Highlands 2nd Addition

The claim that Goals 3 and 4 do not apply to the subject property is not sustained.

First, evidence is provided indicating that the subject property is predominantly SCS Class I-IV soils and thus subject to Goal 3. (Table 1-p.11, and soils investigation reports). Second, substantial evidence is not provided indicating that Goal 4 does not apply. The County's claim that forest site index 125 can be used to assess the commercial viability of this property is in consistent with its own definition for commercial forest lands. Also, the County's standards for determining income (under the F-2 Zone's woodland suitability test) seems to indicate that the land is potential commercial forest land. The basis for the County's position that this land is not capable of economic forest management (net return of $217 per acre) appears to be based entirely on the land cost (at residential values rather than at forest land value.)

Meltebeke's on Van Duyn Road

This proposal involves the rezoning of 258 acres from a forest zone to GR-10 based on the claim that Goals 3 and 4 do not apply. Buidling sites for 24 dwellings are proposed. This land is part of a larger 598-acre parcel owned by the applicant. Also, a portion of this 258-acre parcel is platted as County View Estates, lots 1 through 5.

Information contained in the original May 24, 1984, submittal includes:

1. A statement titled "Findings Supporting nonresource Designation for Certain Lands of Bob Meltebeke on Van Duyn Road" (with a map Exhibit A, attached).

2. Exhibit B is a copy of the Lane county Planning Commission's findings in support of this zone change.

3. Exhibit C is a map of the subject property depicting its soil types.

4. Exhibit D is a list of the soil types along with each soil's SCS classification and percentage of occurance on the subject property.

5. Lane County Planning Commission--Addendum to Staff Report (8/23/83).

6. Area map depicting the property to be rezoned.

7. Applicant's supplemental statement to the Lane County Planning Commission.

Contained in this "original" submittal is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. That the land is not SCS Class I-IV agricultural lands. Lane County Exhibit B--Lane County Planning Commission (LCPC), Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

> A detailed soils investigation of the subject property was undertaken for the applicant by Consulting Environmental Sanitarians, Ltd. (See June 21, 1983, transmittal letter from Terry M. Rahe of CES, Ltd. to Bob Meltebeke.) The results of the soils analysis are summarized in the Applicants' Statement at 5-7.)
>
> Only 5.9% of the 258 acres proposed for rezoning are SCS Class I-IV soils.
>
> When the entire Meltebeke ownership of 598 acres is considered together, ony 27.1% has an SCS Class of IV or better (LCPC, p. 2).

2. That the land is not other lands suitable for farm uses . . . suitable for grazing . . . some finding addressing this issue are as follows:

> Almost all of the Bashaw Clay and Conser Silty Clay Loam (Class III and IV soils) occupy the flat field in the northwest portion of the property that is not to be rezoned. These soils have drainage and overflow problems, based upon SCS data. They are subject to winter flooding and are very droughty in summer. (SCS soils tables.)
>
> The Dixonville/Philomath/Hazelaire complex and Panther Silty Clays (Class VI soils) are the predominate soil types. They occupy 33.7 percent of the entire ownership

and 42 percent of the area propoed to be rezoned. These soils have low permeability, low available water capacity, moderate erosion potential, high plasticity, thin and rocky soils, and droughty conditions. They are poorly suited for production of conifers, which tend to suffer from root rot and windthrow. (SCS soils tables.)

The present lessee of the Meltebeke property raises cattle on this and several other tracts in the vicinity. The property is suitable for grazing less than six months a year due to wetness in winter (which causes cattle to destroy the pasture) and dryness in summer (which inhibits growth of grass). (Letter from DuWayne Penfold, July 10, 1983).

The entire Meltebeke property is not a viable economic unit as a farm. It is incapable of producing a cash crop, including grazing of animals, that would be sufficient to cover operating expenses and retire indebtedness on the land. (See letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.) (LCPC, p. 3).

On page 9 of "Attachment 2," Meletebeke supplemental zoning App. Statement, the County provides the following assessment of this property's agricultural suitability:

In addition, Floyd Holbrook, Agricultural Management Specialist, has submitted a report stating that, while the property can be grazed, it would be necessary to do intensive clearing and planting, with a resulting production level that would not support an income adequate to retire the debt on the property, based on current farmland values in the area:

"The major problem with improving the property for grazing is that the acreage can not support enough animals in either beef or sheep in order to pay operating expenses and retire the land debt. The main reason for not being able t (sic) support adequate livestock is due to the moisture availability and the shallow soil depth. The soil types are such that fertilizers are restrictedby (sic) chemical bonds and do not allow for maximum pasture production."

"These figures [see letter] clearly show that the subject property will not support an economic unit." August 4 Holbrook letter.

3. That the land is not "lands in other classes . . . necessary to permit farm practices to be undertaken on adjacent or nearby lands. Some findings regarding this issue are as follows:

No adjacent or nearby farmer has voiced opposition to this rezoning proposal.

Dr. Penfold leases Meltebeke land to the northwest of the area to be rezoned. It is a hayfield on which he raises cattle. Dr. Penfold also raises cattle on several other tracts near the Coburg/I-5 interchange.

The Meltebeke property leased by Penfold has little value for grazing, and the proposed rezoning will have little impact on the productivity of the Penfold farm. (Letter of DuWayne Penfold, July 10, 1983.)

The area to the north of the subject property is scrub hillside and part of the Coglietti ranch. The immediately abutting area is not cultivated and receives limited grazing use.

All other agricultural lands are isolated from the subject property by the ridge to the east and south, and the residential land to the west.

A Wildlife Management Plan has been submitted by the Applicant and is a condition on zoning approval. Under this management plan there will be protective corridors running the length of the property which will buffer residential and farm uses. Under the plan animals will be restrained through fencing and deed restrictions.

Purchase of the subject property by adjacent farmers might increase their total income but reduce their return per acre. (Letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.)

4. That the land is not inventoried as forest land, not predominantly forested, and is not suitable for commercial forest production. County Exhibit B--Lane County Planning Commission (LCPC)--Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

   Neither the 258 acres to be rezoned nor the entire 598 acres is inventoried as forest land.

   Neither the 258 acres nor the 598 acres is presently "forested" in the meaning of the goal. A majority of neither acreage is covered with a commercial stand of conifers. Neither is a greater portion of either acreage covered with oak or similar noncommercial species.

   The vast majority of both the 258 acres and the 598 acres has no forest site class at all.

Only 54 acres or 21 percent of the 258 acres to be rezoned has soil with commercial forest potential, and this acreage is in four scattered locations. (Letter from Robert Hoenhaus, Consulting Forester, June 28, 1983.)

5. That the land is not forested land based on the following findings:

The upland areas between the subject property and the crest of the Coburg Hills, which contains the most densely wooded area, will be left in forest use, and will be managed under a management plan submitted by the applicnt's consulting forester.

Wildlife corridors provided in the wildlife management plan will provide protection for wildlife resources. (See Goal 3 findings above.)

The proposed 24 units will be clustered. Clustering will minimize impacts on wildlife and will permit protection of vegetative cover.

Development density will be more than 10 acres per unit on the property to be rezoned, about 30 acres per unit for all the Meltebeke property, and far more than 40 acres per unit in the surrounding area.

Grazing on the dry slopes of the subject property is a use that presently conflicts with goals of protecting vegetative cover and preventing soil erosion.

Conversion of the property to low density, clustered residential use with extensive wildlife corridors under the wildlife management plan will displace grazing, a use that conflicts with vegetation, soil, watershed and wildlife protection, with a use that will improve forest land, open space, wildlife values that the site does possess.

County General Plan Policy 5C13 requires application of Goal 5 conflict-resolution procedures and administrative (OAR 660-16-000) when, as here, the proposed development density is below that recommended by the Oregon Department of Fish and Wildlife for big game (LCPC, Exhibit B, pp. 5-6).

Some information contained in the record, contlicts with the findings adopted by the County. No specific discussion is contained in the "original submittal" clarifying the relationship of this information to that used by the County in making its decision is provided. (However, information contained in the supplemental findings--letter from Rober A. Holenhaus--indicates that the revised proposal of 258 acres excludes the majority forest soils discussed on page two of the "LCPC Addendum."

Relevant information regarding the "Nonresource" claim included in the "supplementary findings" submitted on June 25, 1984, are:

1. An area map showing the proposed 258 acres;

2. An aerial photo and a series of overlays which consists of a soils map, a colored overlay showing "Ag and forest soils" and the development area;

3. A sheet listing specific soils and acreages;

4. A large scale soils map prepared by Terrance Rahe;

5. Another aerial map containing soil lines;

6. A letter from R. Holenhaus, professional forester;

7. A letter from T. Rahe, soil scientist, describing the soils found on the property; and

8. A letter from J. Lockard, SCS District Conservationist, discussing the soil known as the Dixonville-Philomath-Hazelaire complex.

With the exception of a statement indicating that only 54 scattered acres are suitable for commercial forest use (Hoenhaus) specific findings or conclusions were contained in the supplemental findings. This information apparently was supplied to corroborate the statements contained in the "original submittal."

Objection:

1000 Friends of Oregon objects because information in the record contradicts findings that Goal 4 does not apply. Also, the County relies on soils mapping for this determination.

Response to Objection

This objection is partially sustained.

The objectors are correct that information in the record (page 2 of the "Lane County Planning Commission Addendum to Staff Report") indicates that Goal 4 does apply to this land or a portion of the property in question. However, information contained in the supplementary findings of June 25, 1984, addresses this issue (letter from R. Hohenhaus and also personal communication from J. Mann, Lane County Planning Department, 7/16/84).

Regarding the County's reliance on soils mapping, this objection is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable

on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Meltebecke's on Van Duyn Road

When considering both the original submittal of "May 24, 1984" and the "supplementary findings" of June 25, 1984, substantial evidence is provided to sustain the claim that Goals 3 and 4 do not apply to the 258 acres in question.

Cerro Gordo

This proposal is for 60 residential lots and one common area lot on 604 acres on Dorena Reservoir in southern Lane County. Findings for this designated nonresource site were submitted with the County's original submittal of March 15, 1984, as well as with the supplemental findings submitted on June 25, 1984.

The "original" submittal for Cerro Gordo consists of a number of exhibits which are as follows:

1. A map of the property displaying (a) the nonforest soils, forest soils, and committed lands; (b) ridge lines, Row River Road, and Dorena Lake; and (c) adjacent ownerships and the area zoned RR-10 for which the nonresource claim is made.

2. Findings and conclusions in support of nonresource designation for Cerro Gordo Ranch--CPR Application No. 1102.

This statement consists of 173 pages including a 44 page wildlife management plan, a forest lands assessment by Woodland Management, Inc., an appraisal by Terrance Rahe (registered sanitarian) of the area's suitability for subsurface sewage disposal, and a detailed discussion addressing each Statewide Planning Goal as well as numerous letters generally in support of the proposed development.

The "supplemental findings" (June 25, 1984) for Cerro Gordo consists of (1) a five page document labeled "Incorporation of Applicant's Findings and Conclusions," (2) the "Cerro Gordo Preliminary Cluster Subdivision Plan," as well as (3) a number of letters addressing a range of issues, some of which not directly associated with the Goal 3 and 4 applicability question while others are duplicate information contained in the original submittal.

Contained in the "original" submittal (3-15-84) is the following information addressing the Commission's requirement for substantiating that Goals 3 and 4 do not apply:

1. In addressing Goal 3, the County indicates that 76 acres of the 604 acres consists of soils with SCS agricultural suitability Classes III-IV (12 percent). The dominant soil type (302.6 acres) is the Dixonville-Philomath-Hazelaire Complex (Findings and Conclusions . . ., p. 12).

2. Regarding the other aspects of the Goal 3 defintion, the County indicates:

   a. That there is no evidence of recent agricultural activity;

   b. Due to the lack of rainfall in the summer, the southern exposure of this site and no source for water for irrigation agricultural productivity is limited;

   c. The Dixonville-Philomath-Hazelaire Complex is rated three to six AUMs per acre for grazing and no suitability for crop production while the soils;

   d. Ninety percent of the property products less than ten AUMs of pasture per acre;

   e. Two hundred ten acres (35 percent) of the property is situated on Cerro Gordo Mountain which rises 1,200 feet above the lowest elevation point.

   Based on the preceding findings, the County concluded that the property as a whole would not be an economic farming unit (nor would be purchased for agricultural use) under Goal 3's "other lands suitable for agricultural use . . .definition (Findings and Conclusions . . ., pp. 12-14).

3. Regarding whether this site qualifies as "lands in other classes necessary to permit farm practice to be undertaken on adjacent or nearby lands," Lane County indicates that (a) there are no agricultural lands or agricultural uses in the imediate vicinity of the subject property, (b) Dorena Lake and the ridges of the mountain combine to surround the property, and (c) the nearest agricultural uses are approximately one mile from the property in question. Given the preceding facts, the County concludes that this site does not qualify as "lands in other classes necessary to permit farm practice on adjacent or nearby lands" (Findings and Conclusions . . ., p. 14).

4. Regarding whether the site is composed of existing and potential forest land suitable for commercial forest use, the County indicates that 507 acres of the 604 acres is composed of soils with no woodland suitability indicated by the U.S. Soil Conservation Service (Findings and Conclusions . . ., p. 16).

5. In addressing the other aspects of the Forest Lands definition, the County responds as follows:

   a. From aerial photographs, the forested and nonforested acreages were calculated. Douglas Fir is growing on 198 or 32.8 percent of this site. Oak is growing on 119 acres or 19.7 percent of this site while 287 acres or 47.5 percent remains nonforested. Fifty-two point five percent of the site is covered by trees. The County recites from LUBA's Osborne v. Lane County decision

(5 Or LUBA 172) that LUBA does "not view the fact that trees may be growing on the property in various places, as the record seems to indicate, to mean the land is forested within the meaning of Goal 4." The County indicates that the opinion implies that when considering species such as oak, not a simple majority, but rather " the far greater area" must be covered by trees to conclude that a property is forested (Findings and Conclusions . . ., p. 17). Thus, the County indicates that 52 percent forest cover alone does automatically qualify this land under the forest land definition. The County concludes by stating, "Considering the total extent of tree cover, the subject property is not forested within the meaning of Goal 4.

b. With regard to "lands where extreme conditions of climate, soil, and topography require vegetative cover irrespective of use," and "other forested lands in urban and agricultural areas which provide buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use, the County indicates the following:

(1) The property is not (a) identified as an important watershed, (b) an agricultural or urban area, (c) needed for recreation, (d) necessary to be maintained in its present condition to provide buffers, scenic corridors, livestock habitat, or windbreaks (Findings and Conclusions . . ., pp. 18-21).

(2) The conditions imposed during this development's approval will resolve any potential problems presented by extreme soil and slope conditions as well as conflicts with big game (Findings and Conclusions . . ., pp. 18-20).

Also, findings addressing other relevant Statewide Planning Goals were included. Of particular significance to the "nonresource" designation issue are findings addressing wildlife habitat and the "Goal 5 process." The following are findings contained within the "Findings and Conclusions" document presented in the County's original submittal (5-24-84):

1. On pages 123 and 123, a detailed statement of potential consequences on big game habitat from residential development is presented.

2. A series of recommendations for mitigating asdverse impacts from residential development on big game habitat are presented on pages 125-127.

3. A discussion of residential densities and deer habitat is presented on page 217. As stated, the recommended density for big game is one unit per 80 acres preferred; one unit per 40 acres is acceptable with clustering. The County states that, "The Cerro Gordo property is requesting a subdivision of 100 lots with clustering, thus maintaining an average lot size of 10 acres" (p. 217).

4. The County indicates that "residential development in rural areas rarely acts to exclude or reduce deer populations," "the contrary usually occurs (Jim Greer, 1983)." The main impact of development is the loss of hunting lands. Cerro Gordo prohibits hunting (p. 128).

5. On page 125, the County concludes its discussion of density as follows:

> The Cerro Gordo project, which calls for a density of one lot for every 10 acres, can be thought of in the larger ecological context of the drainage basin (approximately 2000 acres) as resulting in a density approaching one lot for 20 acres. Again considering the clustered design of the development this leaves considerable land for natural processes to occur.

6. On pages 129-131, the County discusses the wildlive habitat and the Goal 5 Rule requirements. These are excerpts from this discussion:

   a. In identifying conflictihg uses there has previously been discussion as to whether residential development actually negatively impacts wildlife. Experts tend to feel that deer populations usually are minimally affected by rural residential development and tend to adapt to people's presence quite rapidly (Jim Greer, ODF&W; Lane County Extension Service, 1983) (p. 130).

   b. The ESEE consequences on both wildlfe and rural residents have been fully detailed in the previous section--"Potential Impacts of Development in Wildlife." The primary consequence on wildife is loss of habitat (environmental) while the primary consequence on rural residents is damage to landscaping and gardens (economic) and ultimately not being allowed to live in a rural setting (social). The section on "Mitigation of Impacts" gives recommendations for resolving these issues.

      Therefore, in section 660-16-010 of LCDC's interpretive rules the way to resolve the conflict of uses is seen as (3) limiting conflicting uses (pp. 130-131).

7. On pages 133 through 147, present a detailed "wildlife and development plan" which was designed to satisfy OAR 660-16-010(3), "Limit Conflicting Uses."

   As indicated, Lane County also submitted information regarding this developmental in their "supplemental findings" received by the Department on June 25, 1984. The information regarding Cerro Gordo contained within the supplemental findings was a reiteration of the conclusions and findings already present in the original submittal of May 24, 1984.

Objection

1000 Friends objects to the designation of Cerro Gordo as "nonresource" because of the County's reliance on SCS soils mapping information. Objectors claim that this information is inappropriate to judge the capability of this land for commercial forest use.

Response to Objection

This objectin is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Cerro Gordo

The claim that Goals 3 and 4 do no apply is sustained; however, one unresolved Goal 3 issue as well as a Goal 14 issue (see Goal 2) remains substantial evidence is contained within the "original submittal" to indicate that this land is not agricultural land under the Goal 3 definition. The approximately 604 acres in question is not predominantly SCS Class I-IV soils nor do findings indicate that it is reasonable to conclude that this property is "other lands" suitable for farm use or "lands in other classes" necessary to permit farm practices to be undertaken or adjacent or nearby lands.

Substantial evidence is provided also indicating that the property in question is not (1) "lands composed of existing and potential forest lands which are suitable for commercial forest uses and (2) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock, scenic corridors, and recreational use.

Also, the County has adequately addressed through open space requirements and developmental conditions the issue raised regarding extreme conditions of soil and topography where maintenance of vegetative cover qualifies as forest lands.

The question of whether this property qualifies as "other forested lands needed for wildlife habitat" has also been addressed. Substantial evidence has been provided showing that this two part definition, ((1) other forested land and needed for wildlife habitat) does not apply as the County's findings adequately address OAR 660-16-000 requirements; thus, indicating tht this land is not needed for wildlife habitat.

However, one unresolved Goal 5 issue remains. The County needs to address the issue of how the "acceptable" density of one unit per 40 acres with clustering is satisfied by authorizing one dwelling per ten acres as zoned or 60 lots under a cluster provision allowing duplexes (or 120 units per 600 acres or one unit per five acre overall density.

In order to comply, Lane County must:

1. Amend the plan (a) to include additional fundings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the county chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

2. Amend the plan to justify the potential one dwelling unit per 5 acre density authorized for Cerro Gordo's 600 acres in view of ODFW's accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (see also Goal 2's cluster development issue)

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Department of Land Conservation and Development

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M E M O R A N D U M

August 17, 1984

TO: Land Conservation and Development Commission

FROM: James F. Ross, Director

SUBJECT: ITEM 7.1: LANE COUNTY ACKNOWLEDGMENT REVIEW

TOPICS: Response to Exceptions to the Lane County Acknowledgment Review and Proposed Amendments to the Lane County Acknowledgment Review for Goals 5, 15, and Goal 2 Nonresource Areas.

This memorandum is divided into two parts. Part I includes by Goal topic responses to exceptions filed by objectors to the Lane County Acknowledgment Review. Part II contains by Goal Topic the Department's recommended changes to the Lane County Continuance Report along with the reasons to support those changes.

I. Response to Exceptions

A. Goal 2--"Nonresource" Lands

1. David Hemenway and Paul Mehnert regarding Dillard Highlands Second Addition

Mr. Hemenway indicates that some errors are contained within the Department's Report discussing Dillard Highlands' Second Addition. We concur with Mr. Hemenway regarding objections 1 (page 112 of the Department's report), 2 (page 113), and 4 (page 115). Corrections to the Department's report for the objections discussed above are contained in Part II of this memorandum. We disagree with Mr. Hemenway regarding objections 3 and 5.

Objection 3 claims that the Department's report is incorrect because the "County's" soils investigation report, quoted by the Department, is inaccurate. The Department is unable to reconcile the factual inconsistencies contained within the County's findings for Dillard Highlands' Second Addition.

The two sets of soils data, provided as findings, present different conclusions about the characteristics of the site. The County must review this material to determine which soils data are accurate. We recommend that Mr. Hemenway be afforded the opportunity to be involved in this determination.

Objection 5 claims that the Department's recommendation for Dillard Highlands' Second Addition is in error. The record lacks substantial evidence indicating that Goals 3 and 4 do not apply to this land. Until the County clearly indicates from revised soils information, that Goal 3 is not applicable to this site, the County lacks substantial evidence supporting its claim regarding Goal 3. Additionally, reliance on a forester's economic analysis to support the conclusion that Goal 4 does not apply to this site, when the record indicates it is composed predominantly of soils with commercial forest capabilities (Site Class III and IV, County's Findings, p. 14) is inconsistent with Goal 4's requirements (see amended conclusion for Dillard Highlands' Second Addition).

2. Canfield and Associates on behalf of Cerro Gordo

Mr. Canfield's exceptions to the Department's report are only partially sustained. The issues regarding the proposed density of this development as discussed in the report remain. However, the Department concurs with Mr. Canfield that amendments to clarify the Department's position are necessary (see amendments to the report).

B. Goal 5

1. Lane County

Lane County filed an exception to in-order-to-comply requirements 2c, d, e, f, and i. All pertain to fish and wildlife habitat issues.

Response: On August 8, DLCD staff met with Lane County planners to discuss these issues. All were resolved. IOTC 2c, d, e, and f remain, but 2i should be eliminated (see amendments to staff report in the Part II of this memo).

2. Wildish Sand and Gravel Company

Wildish believes that several statements in the July 19, 1984, report are inaccurate. Specifically:

a. Wildish is concerned that DLCD is recommending that sites in Appendix D of the Mineral and Aggregate Working Paper (which is the County's (1C) inventory for rural lands) need to be reevaluated and SG Zoning be rejustified per Steps 2 and 3 of the Goal 5 Rule. Wildish indicates that Appendix J represents Steps 2 and 3 of the Goal 5 Rule.

   Response: The July 19, 1984, report recognizes Appendix J (p. 8) and does not recommend these sites be reevaluated per the Goal 5 Rule. However, SG Zoning was applied to other sites that were not on the (1C) list (Appendix D) nor the County's (1B) list (Appendix F). These are the sites which need to be reevaluated. No changes to the report are necessary.

b. Wildish is concerned that Appendix E of the Mineral and Aggregate Working Paper was identified by the County as the (1B) list for the Metro Area. Wildish points out that this list is essentially the (1C) inventory in the Metro Plan which has been acknowledged, with some inconsistencies.

   Response: DLCD staff discussed this with Lane County planners on August 8. The County indicated it recognizes the Metro Plan (1C) inventory, and that Appendix E should be deleted from the Working Paper, since it is out-of-date and is inconsistent with the Metro Plan inventory. Page 7 of the July 19, 1984, report should be modified as indicated in Part II of this memo.

3. Richard Gold

   Mr. Gold has filed an exception with regard to the Big Creek Exception (Renaghan Amendment), specifically with regard to Goals 2 and 17.

   Response: Inasmuch as the record is closed for Goals 2 and 17, no response to this exception is warranted. No changes to the Goal 5 section of the July 19, 1984, report are necessary as a result of the exception.

4. James W. Spickerman

   Mr. Spickerman disagrees with the July 19, 1984, report's statement that County's Appendix D is a valid (1C) inventory of mineral and aggregate sites. Mr. Spickerman indicates that the inventory is inaccurate and that only one of the 30 sites contains existing extraction, contrary to statements in the County's Working Paper and the July 19, 1984, report. Mr. Spickerman asserts that all but one are

in agriculatural use. Mr. Spickerman points out that, because of the belief that all are active sites, DLCD staff has incorrectly concluded that the sites are no longer available for agricultural use and that no conflicts exist.

Response: The County has indicated (Mike Copely, County Planner, personal communication, August 8, 1984) that there are some minor inaccuracies in Appendix D and that they will be corrected in responding to Goal 5 IOTC No. 1 (see July 19, 1984, report, p. 75).

According to the County, Mr. Spickerman is not correct in stating that only one of the 30 sites has extraction activities. The County has re-checked the sites in Appendix D and indicates that all 30 sites have active permits or have been actively mined in the past. Therefore, no changes to the July 19, 1984, report are necessary.

C. Goal 15

1. Lane County

Lane County filed exceptions to Goal 15 in-order-to-comply requirements 7-9.

Response: On August 8, 1984, DLCD staff met with Lane County and representatives of Lane Council of Governments and the City of Eugene to discuss these IOTC requirements. It was agreed that IOTC 7 and 9 should remain, but that IOTC 8 (regarding the Big Island Confluence Heronry) should be amended to provide the jurisdiction with the option of justifying (through an amended ESEE consequences analysis and Working Paper) the current NR Zone designation as providing adequate protection for the heronry. The specific IOTC amendments are contained in Part II of this memo.

2. Robert E. Moulton

Robert Moulton has filed an exception relating to the Big Island Confluence Heronry. Specifically:

a. Mr. Moulton contends that the County should not have to designate all agricultural land in the Greenway as EFU. Mr. Moulton reasons that, since aggregate resources are also Goal 5 resources, the Goal 5 process gives the County the option of not applying EFU zoning. Mr. Moulton also provides information suggesting that the County's figure of 85 acres of agricultural land on the island is incorrect, and that there are only about 30 acres of SCS class II and IV land.

Response: The Greenway Goal clearly requires EFU zoning be applied to all agricultural lands in and adjacent to the Greenway. Sections C.3.a. and F.2.a. of Goal 15 state:

> "The agricultural lands identified in the inventory shall be preserved and maintained as provided in Goal 3 as an effective means to carry out the purposes of the Greenway including those agricultural lands near the Greenway."
>
> "Measures for managing uses within the Greenway shall include at least ... exclusive farm use zoning of all agricultural land withing and adjacent to the Greenway..."

Because Goal 15 contains more prescriptive requirements than does Goal 5, the requirements of Goal 15 supercede.

There appear to be conflicting data regarding the amount of agricultural land on Big Island. The County should look into this matter during the continuance and zone all agricultural land EFU, as appropriate, whether 30 or 85 acres. However, where Goal 15 resources that are required to be protected by Goal 15 are located on agricultural land (e.g., significant wildlife habitats such as heron rookeries), measures that are more protective than EFU zoning must be adopted. It was the intent of Goal 15 IOTC 2 and 8 (pages 104 and 105 of the July 19, 1984 report) to include EFU zoning of all agricultural land on Big Island, except where Goal 15 requires stronger protection measures for resources such as the heronry. However, if the Commission believes it will assist in the resolution of this issue, the following additional IOTC could be adopted (page 105 of the July 19, 1984 report):

> 9. Apply EFU zoning to all SCS Class I-IV soils on Big Island, except where Goal 15 requires stronger protection measures for Greenway resources (e.g., significant wildlife habitats)."

However, no changes to the July 19, 1984, report are recommended.

b. Mr. Moulton disagrees with the July 19, 1984, report's IOTC for the Big Island, indicating that current NR Zoning is adequate.

Response: The current NR Zone designation may be adequate for the protection of the rookery, as Mr. Moulton contends. However, the County's Working

Paper contained contradictory information which did not support the NR Zone designation as adopted. The July 19, 1984, report should be amended to provide the County the opportunity to better justify its NR Zone of the rookery. These report amendments are presented in Part II of this memo.

c. Mr. Moulton challenges the County's contention that aggregate supplies are three to seven times the amount needed to the year 2000. He maintains that there is only 25 percent more than the amount needed, and has submitted an analysis which supports this new figure.

Response: In re-evaluating the zoning for Big Island, the County should consider Mr. Moulton's figures. However, Goal 15 requires protection of the heron rookery and EFU zoning of all agricultural land on the island. Aggregate extraction may be allowed under a Greenway conditional use permit if certain conditions are met. Neither Goal 5 nor Goal 15 requires SG Zoning of all aggregate sites, nor do these Goals prevent SG Zoning from being applied to sites that contain aggregate supplies not necessarily needed within the planning period. However, this is one of many factors that needs to be considered when determining appropriate zone designations. The July 19, 1984, report should be amended to make this clear. Specific proposed amendments are presented in Part II of this memo.

II. Amendments to the Report

A. Goal 5

1. Page 7--The fourth line from the bottom of the page should be amended as follows:

> "Appendix E is [the (1B)] an inventory for lands inside the Metro Area. However, it is inconsistent with the (1C) inventory contained in the Metro Plan. The County has indicated it recognizes the Metro Plan inventory and will be deleting Appendix E (confirmed by Mike Copely, Lane County Planner, personal communication, August 8, 1984)."

Reason: This amendment is needed to clarify an error in the July 19, 1984, report.

2. Page 34--Add the following at the end of the paragraph immediately preceding the heading, "Objections:"

"However, this is because the County knows of no such sites at this time. The County has indicated that this is a policy which will be applied in the future, as appropriate" (Roy Burns, Planning Director, personal communication, August 8, 1984).

Reason: This statement is needed to clarify why the County has not carried out Policy 17.

3. Page 76--Eliminate "in-order-to-comply" requirement 2i.

Reason: In light of the explanation provided in the previous amendment, this in-order-to-comply is no longer valid.

4. Page 40--Amend the first paragraph as follows:

"4. Objectors are correct that Goal 5 has not been applied by the County in the process of designating marginal lands. ORS 197.247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5. The ML Zone itself also does not include language which assures compliance with Policy 11."

"Objectors are not correct that the Goal 5 process was not addressed in the process of designating nonresource lands. However, the Goal 5 conflicting uses/ESEE consequences analysis for one of the nonresource areas--Cerro Gordo--does not justify the residential densities proposed. Specifically, the site is located within major as well as peripheral big game habitat. Conflicts with big game habitat are recognized, but the applicant asserts that the RR-5 designation 'clearly and precisely limits the densities and uses allowed on the property to a level which will assure good deer habitat . . .' However, the ESEE consequences analysis does not support this statement. The applicant summarizes the negative environmental consequences of development in deer habitat as loss of habitat, disturbance of wildlife, interference with wildlife movement,

increased deer populations due to decreased hunting pressure, wildlife damage, imbalance of species diversity, pollution of water sources, wildlife injuries, and ODFW complaints. The only positive impact identified is improvement to the habitat due to possible native plantings and water impoundments and education of residents about the needs of wildlife. The economic consequences are identified as damage to landscaping and gardens. The social impacts are described as 'ultimately not being allowed to live in a rural setting.'

The applicant has proposed a wildlife management plan which calls for clustering buildings and maintaining wildlife corridors. Although the proposed clustering and wildlife corridor measures will help resolve some of the conflicts identified, the overall density of development (with clustering) is one unit per five acres. ODFW recommendations are one per 80 acres (or one per 40 acres with clustering) in major big game habitat, and one per 40 acres (or one per 20 acres with clustering in peripheral habitat. According to the County's own plan (Policy 11), such densities cannot be exceeded without being justified through an ESEE consequences analysis. As indicated above, the applicant's ESEE consequences analysis does not support development at densities which exceed ODFW's recommendations, nor does the analysis provide justification for that level of development, in light of the negative impacts such development would have on habitat values. The County's findings in support of nonresource designation for Cerro Gordo indicate that approval is conditioned upon the fact that residential development will be clustered, and that provisions of the wildlife management plan 'in substantially its present form subject to modifications' will be followed. However, it is unclear what the word "substantially" means, and

what modifications would be made. Also, the degree of clustering is unclear in the wildlife management plan. The plan proposes 10 to 20 clusters of 1 to 30 lots each. The ultimate number and configuration of these clusters is not specific. There is a significant difference between 10 clusters of 2 lots and 20 clusters of 30 lots each. It should be pointed out that the wildlife management plan was prepared for a 1,000 acre proposal. According to the applicants, this proposal has been reduced to 600 acres (Chris Canfield, personal communication, August 14, 1984). This adjustment has not been reflected in the submittal materials, however.

The mitigation measures proposed will help lessen the conflicts between deer and the development. However, even with the implementation of such measures, negative impacts will occur. The County has decided to allow such impacts to occur, but has not justified such a decision through an ESEE consequences analysis. This is not to say that no development would be possible at the Cerro Gordo site. However, the County must clearly specify what level of development and density and clustering provisions are anticipated, and must either justify (through an ESEE consequences analysis) allowing such impacts to occur, or modify the density and/or configuration of units so that the impacts are acceptable. Whatever decision is made must be supported by adequate reasons, according to the Goal 5 Rule." See the Goal 2 section of this report for further information.

Reason: These amendments are necessary since this issue was not addressed in the July 19, 1984, report, in response to objections received. It is also needed in response to exceptions to the July 19 report which were filed by Canfield and Associates on behalf of Cerro Gordo.

B. Goal 15

1. Page 102--Add the following at the end of paragraph "e:"

> "This is not to say, however, that lands that are not needed for sand and gravel cannot be designated and zoned SG. However, supply and demand data should be factored into any ESEE consequences analysis for Big Island, and be considered when deciding what implementing measures are appropriate. In this case, there is a greater burden placed on the County to protect the heronry and agricultural land because of Goal 15 requirements and no shortage of aggregate supplies."

Reason: This statement should be added to the report to address concerns expressed in several letters of exception. Specifically, parties were concerned that the staff report implied that only sites demonstrated to be needed in the future (based on a supply/demand study) could be zoned SG.

2. Page 105--Amend "in-order-to-comply" Requirement 8 as follows:

> "8. Either adopt findings which explain how the current zone designations for Big Island protect the Confluence Heronry, or adopt other implementing measures that protect the Confluence Heronry."

Reason: The in-order-comply statement needs to be broadened to provide the County with more flexibility in addressing issues for Big Island.

C. Goal 2

1. Page 109--Under "Conclusion for Agate Creek PUD," delete the word "not" from the first sentence. It should read as follows:

> "The claim that Goals 3 and 4 do not apply is [not] sustained."

2. Page 112--Under the "Supplemental Findings" discussion (located in the middle of the page) within the fourth sentence of quoted item No. "1," replace SCS Class "IVe" with Class "VIe."

3. Page 113--Under Dillard Highlands, 2nd Addition finding No. "2," replace "64 percent" with "47 percent."

4. Page 115--Amend the last line of the County's finding No. 3 (at the top of the page) to indicate that $217 figure for the net return is actually "-" (minus) 217 dollars.

5. Page 115--Replace the conclusion for Dillard Highlands 2nd Addition with the following:

> "First, evidence is provided indicating that the subject property is predominantly SCS Class I-IV soils and thus subject to Goal 3 (soils investigation reports). Second, substantial evidence is not provided indicating that Goal 4 does not apply. The County's claim that forest site index 125 can be used to assess the commercial viability of this property is inconsistent with the County's definition of commercial forest lands. Also, the County's standards for determining income (under the F-2 Zone's woodland suitability test) seems to indicate that the land is potential commercial forest land."
>
> "The County's conclusion that Goal 4's forest lands definition ('lands composed of existing and potential forest lands which are suitable for commercial forest uses') does not apply to Dillard Highlands' Second Addition, because the current rate of return is negative for managing this land as commercial forest land is invalid. As is the case under Goal 3 (Goal 3 must be applied to lands with SCS Classes I-IV soils), the Commission requires counties to apply Goal 4 to lands with cubic foot site classes suitable for commercial forest managment as reasonably defined and inventoried by the County or the County maust take an exception to Goal 4. The requirement to apply Goal 4 in the manner stated above is consistent with the 1983 Legislature's marginal lands requirements which indicate that lands capable of producing 50 cubic feet of merchantable timber per acre per year can not be considered as marginal lands unless extensive parcelization exists within the area (see ORS 197.247(1)(b))."

6. Page 125--Under the Conclusion for Cerro Gordo, amend the following:

   a. In the second line replace Goal ["3"] with Goal "5."

   b. Place a period after "remains" in the second sentence. Begin a new sentence with "Substantial" on line three.

   c. Replace paragraphs 4 and 5, beginning with the second sentence in paragraph 4 with the following:

> [Substantial evidence has been provided ... indicating that the land is not needed for wildlife habitat.]
>
> "With appropriate density limitations, Goal 5's requirements for big game habitat under OAR 660-16-010(3) (limit conflicting uses) could be met. Thus, the County has satisfactorily addressed the 'other forested lands needed for wildlife habitat' issue and justified their claim that Goal 4 does not apply."
>
> "However, one unresolved Goal 5 issue remains. [The County needs to ... or one unit per five acre overall density.] The Oregon Department of Fish and Wildlife (ODFW) indicates (within their objection regarding big game habitat--see Goal 5 section, p. 35) that provisions authorizing a doubling of densities in big game habitat areas is a measure satisfying OAR 660-16-010(3) when a clustering of dwellings occurs."
>
> "Because the density authorized by Lane County for Cerro Gordo exceeds ODFW's accepted densities mitigation strategy under the "3C" approach (OAR 660-16-010(3)), one of three options remains open to the County to resolve this issue. These options are as follows:
>
> 1. Provide additional ESEE consequences analysis justifying the decision to 'allow the conflicting uses fully' (OAR 660-16-010(2)) at a density exceeding a threshold acceptable to ODFW; or

2. Limit the density in the Cerro Gordo development to ODFW's recommended density with clustering consistent with (OAR 660-16-010(3)); or

3. Cooperate with ODFW to design a mitigation strategy which combines (a) the current wildlife management plan for Cerro Gordo; (b) additional ESEE consequence analysis supporting the decision to allow a density which exceeds ODFW's recommended density with clustering; and (c) other mitigation measures deemed necessary by ODFW. Also, the Department suggests that the Goal 2 density issue be considered and resolved in conjunction with the Goal 5 density question."

CP:MJR:nkf
0341D

EXHIBIT D.15 5.0

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

M E M O R A N D U M

July 16, 1984

TO: Land Conservation and Development Commission

FROM: Citizen Involvement Advisory Committee

SUBJECT: LANE COUNTY--GOAL 1 COMPLIANCE

At its June 29, 1984, meeting, the State Citizen Involvement Advisory Committee reviewed Lane County's compliance with Statewide Planning Goal 1 and its LCDC-approved citizen involvement program. This review was conducted under the authority invested in the Committee by ORS 197.160. The review was confined to the County's citizen involvement efforts since initial submittal of the comprehensive plan for acknowledgment review in January 1981. Due to the large number of objections to Goal 1 compliance and the recent controversy regarding the County's citizen involvement efforts, CIAC has devoted considerable time and effort to this analysis and to establishment of a record for our recommendation on Goal 1 compliance.

Previous Actions

CIAC has previously been involved in review of the County's citizen involvement program. In January 1981, the Committee recommended against Goal 1 compliance, primarily because planning information was neither readily available for public review nor available in a simplified, understandable format, and because the County's approved citizen involvement program was not adhered to throughout the planning process.

In January 1984, the Committee recommended that the County's submittal date be extended for the purpose of providing additional citizen involvement in the revision of the County's plan to bring it into compliance with the Statewide Planning Goals. That recommendation, which was approved by the Commission, also stated that (1) the County must comply with its approved citizen involvement program during all phases of plan development; (2) the County should provide the widest possible public notice of plan revision and adoption hearings and have materials available for public review prior to such hearings; and (3) the County must provide a timely response to public input received.

In May 1984, CIAC recommended denial of the County's request to designate its two planning commissions as the Committee for Citizen Involvement. The Commission subsequently approved that request.

Testimony Received

CIAC devoted two and one-half hours of its June 29 meeting to public testimony on the County's compliance with Goal 1. Fourteen persons testified and a voluminous amount of material was received. A listing of those persons testifying and a summary of their positions on Goal 1 compliance is attached as Attachment A. A listing of all written materials received and reviewed by CIAC is included in Attachment B.

Findings

CIAC is most impressed by the concern for citizen involvement in Lane County, both by those who believe that the County has not complied with Goal 1 and by those who believe that the County has made special efforts to involve its citizens. The concern of the governing body with Goal 1 compliance is exceptional and commendable. Those persons in western Lane County who have actively participated in the plan development process and who have raised substantive concerns about the County's citizen involvement efforts are also to be commended. The quality of the objections submitted to Goal 1 compliance is the highest seen by CIAC. Donna Shelton, Al Wysong, et al. have prepared a most comprehensive and well documented objection to Goal 1 compliance. Their sincerity and concern with citizen involvement should be acknowledged and their continued participation in the County's planning process encouraged.

CIAC finds little evidence of a lack of opportunity to participate in the County's planning process. Rather, the opportunity to participate is evidenced by the significant participation in the County's plan development hearings and in the compliance review process. There appears to be an exceptionally high level of awareness of both the County and state decision-making processes.

The County's CPR process should be acknowledged as a unique and commendable citizen involvement technique. The filing of over 1,800 CPR requests indicates a high level of awareness and participation in the County's planning process. The CPR process represents an exceptional effort to involve the County's citizenry in land use decision-making.

The comprehensive plan currently being reviewed is a very significant improvement over that submitted in 1981 in terms of readability and coordination of supporting documents. Whereas the 1981 plan was simply incomprehensible, the current plan is fairly well organized into a Policies/Legislative Findings document supported by a number of Working Papers.

The majority of objections to Goal 1 compliance relate to the County's citizen involvement efforts during amendment of the plan from October 1983 through June 1984. It is clear that the County's citizen

involvement efforts during this period were less than those provided during the development of subarea plans. Due to the time constraints of meeting a submittal deadline and to budget constraints reducing staff levels, the County has expedited its citizen involvement process, resulting in a large number of Goal 1 complaints. While the County's planning efforts have always been controversial, the conscious choice to develop an acknowledgeable comprehensive plan at the eleventh hour of the planning process has naturally created a high degree of tension and frustration among the County's citizenry. Quite simply, the County has created its own problems by waiting until the last minute to comply with state law. The current governing body should not be held wholly accountable for this situation, however, as the decisions to stall the development of an acknowledgeable plan were made some time in the past.

The dilemma for CIAC is whether, given the necessary time and budget constraints, the County's abbreviated citizen involvement program continues to meet the requirements of Goal 1. It is obvious that there has been a general problem of availability of materials for public review both at and prior to public hearings. The adequacy of notice of public hearings is also questionable. A public hearing process has been substituted for a citizen involvement program which establishes greater opportunities for involvement in plan development and for response to input received. Complaints have been raised over revisions made to the plan at the last minute, as a result of negotiations between DLCD and the County's planning staff. If these revisions are, in any part, substantive, there should be an opportunity for public review prior to adoption by the County. Significant deficiencies in the County's citizen involvement program have obviously arisen due to the eleventh-hour rush.

Many of the objections to Goal 1 compliance, however, are really criticisms of the County's decisions on particular zoning issues. Some persons are objecting to Goal 1 because the County did not give them what they wanted in terms of zoning. Much of the current dissatisfaction appears to stem from the rejection of the West Lane Subarea Plan, which was widely supported. Goal 4 is also at the center of much of the controversy. At the same time, CIAC finds fault with the County for its efforts to involve the citizenry of western Lane County in its decision-making process. There is an acknowledged communication gap with the western part of the County, which could be readily corrected through a renewed effort to conduct hearings and to make planning materials more available in western Lane County. The County submitted a detailed response to objections raised by some of the western Lane County citizens during CIAC's deliberations, without providing it to those persons ahead of time. The disillusionment and frustration of the western Lane County representatives could be reduced if the County communicated its concerns and needs in a more forthright fashion and if it made greater efforts to involve its citizenry throughout the decision-making process.

CIAC concludes that Lane County has made a good faith effort to meet the requirements of Statewide Goal 1 and its LCDC-approved citizen involvement program. Opportunities for participation in the planning process have been provided, although there have been deficiencies in

terms of notification of hearings, availability of materials, and response to input received. The quality and quantity of the County's citizen involvement efforts is adequate to meet the Goal, but not up to the level of efforts made during development of subarea plans. The County is challenged to improve its citizen involvement efforts during revision and updating of its comprehensive plan.

Recommendations

1. By unanimous motion, CIAC recommends that the Commission Chairman limit testimony regarding Goal 1 compliance during the July 19-20 acknowledgment review hearing to a maximum of five (5) minutes per person.

   CIAC has received and reviewed two and one-half hours of testimony and the largest volume of materials received to date regarding a jurisdiction's compliance with Goal 1. That testimony has been made a part of the record of the Commission's proceedings.

2. Also by unanimous motion, CIAC concurs with DLCD's analysis of Goal 1 compliance and recommends that the Commission find Lane County to be in compliance with Goal 1, subject to the following conditions for improvements to the County's citizen involvement efforts in the future:

   a. The County improve its efforts to involve the citizens of western Lane County in the planning process. Planning materials must be made readily available, and hearings should be more regularly conducted in western Lane County;

   b. The County improve its citizen involvement efforts generally during refinement and update of the comprehensive plan and during the development of implementing measures; and

   c. Should the County's request for acknowledgment be continued, the County must fully comply with its LCDC-approved citizen involvement program during the continuance period.

JO:llt
9587B/3B

Attachments

cc: Bob Rindy and Glen Hale, DLCD
Lane County Board of Commissioners
Jim Mann, Lane County
Donna Shelton, Al Wysong, et al.
Oran Brown
League of Women Voters
John Radsliff
Mike Evans
Richard Miller
Gene James
Greg Bolt, Siuslaw News
Roy Burns, Lane County

ATTACHMENT A

Lane County: Goal 1 Compliance Review
Oral Testimony Received by CIAC on June 29, 1984

1. Lane County Representatives: Jim Mann, Senior Planner; Peter DeFazio, Chairman, Board of Commissioners; Commissioner Scott Liuellen.

   - Detailed presentation on County's compliance with Goal 1.

2. Donna Shelton, Al Wysong, et al.

   - Detailed presentation on how County has not complied with Goal 1. Not provided opportunity to review County's response to their objections.

3. Oran Brown, representing the Small Rural Landowners.

   - Unintelligible attack on the legality of the County's planning process and the Statewide Planning Program.

4. Dorothy Anderson, representing the League of Women Voters.

   - County did the best it could under constraints of submittal deadline and budget. Current plan a vast improvement over previous plan.

5. John Radsliff.

   - CPR process fatally flawed. Work sessions were closed to the public. LCDC should be abolished.

6. Mike Evans.

   - County complied with Goal 1. The state process is not allowing for full citizen input.

7. Richard Miller.

   - County made above-normal efforts to inform its citizen. Supported compliance with Goal 1.

8. Gene James, Chairman, Lane County Planning Commission.

   - Supported compliance. Hopes that people objecting will get involved in updating of the plan. Time to get on with the planning process.

9. Bob Rindy, Glen Hale, DLCD.

   - County has adequately complied with Goal 1.

JO:llt
9587B/3B

ATTACHMENT B

Lane County: Goal 1 Compliance Review
Written Testimony Received by CIAC

- Donna Shelton, Al Wysong, et al.: 12/7/83 Request for CIAC review of County's citizen involvement process.
  1/19/84 Objection, entitled "Goal 1," 10 pages with numerous attachments.
  3/2/84 Supplement to 1/19/84 Objection, 9 pages with numerous attachments.

- Oran Brown, representing Lane County Small Rural Landowners and Small Rural Landowners of Oregon: 1/11/84 Objections and request for extension of submittal deadline, with numerous attachments.
  3/7/84 County plan should be returned as unacceptable, 1 packet of 69 Exhibits filed on behalf of Lane County Small Rural Landowners; 1 packet of 32 Exhibits filed on behalf of Small Rural Landowners of Oregon.
  4/25/84 Letter to Jim Ross, requesting DLCD to return County plan to Board of Commissioners.
  6/14/84 Letter to Lane County Sheriff et al. requesting investigation of missing planning documents, with a number of exhibits.
  6/22/84 "Protest Number 5."
  6/29/84 Request to Attorney General to investigate County's request for Goal 1 compliance, 48 Exhibits.

- Petitions requesting that the western Lane County plan be rejected because Goal 1 has been violated: 3/6/84, 11 signatures
  3/7/84, 6 signatures
  3/29/84, 16 signatures
  4/6/84, 19 signatures
  5/29/84, 16 signatures

- J. & B. Romig: 3/6/84 Request that the western Lane County plan be rejected because Goal 1 has been violated.

- Paul J. Mehnert Associates: 5/23/84 Letter in support of Goal 1 compliance.

- Georgia Garrett: 2/29/84 Letter objecting to Goal 1 compliance.

- League of Women Voters of Central Lane County: 6/29/84 Letter in support of Goal 1 compliance.

- John Radsliff: 5/20/84 Objection to Goal 1 compliance, notebook with large number of enclosures, document relating to Tax Lot 302, cassette relating to Tax Lot 302.

- Lane County: 3/12/84 Peter DeFazio letter requesting designation of Planning Commission as Committee for Citizen Involvement, with accompanying information.
5/18/84 Handouts at CIAC meeting relating to planning commission appointment process and Committee for Citizen Involvement.
Lane County Rural Comprehensive Plan: Policies and Legislative Findings.
Lane County Rural Comprehensive Plan: Working Papers.
5/17/84 Peter DeFazio letter inviting CIAC to meet in Lane County.
6/28/84 Memorandum regarding County's compliance with Goal 1.

- DLCD: 6/29/84 Analysis of Goal 1 compliance.

JO:llt
9587B/3B

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE
Lane County
(Rural Portion, Excluding Eugene Metro Area)
Supplement to Staff Reports of June 29, 1984 and July 19, 1984 as Amended

DATE RECEIVED:
August 16, 1984 through September 13, 1984

DATE OF COMMISSION ACTION:
September 13, 1984

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission acknowledge the rural portion of Lane County's plan and land use regulations to be in compliance with Statewide Planning Goals 1-14, 17.

FIELD REPRESENTATIVES: Bob Rindy, Glen Hale
Phone: 378-4095

LEAD REVIEWER: Doug White, Mike Rupp, Claire Puchy
Phone: 378-4926

PLANNING DIRECTOR: Roy Burns
Phone: 687-3958

Date of Supplemental Report: September 12, 1984

III. BACKGROUND INFORMATION

On June 29, 1984, the Department issued a staff recommendation for Goals 1-4, 6-14, in response to Lane County's request for acknowledgment. The Commission took testimony but did not take final action on the request at the July 19, 1984 meeting. Also, on July 19, 1984, the Department issued a staff recommendation regarding Goals 5 and 15, and Goal 2 nonresource lands. At their August 17, 1984 meeting, the Commission again postponed final action on the June 29, 1984 report, and on the July 19, 1984 report, except for the portions pertaining to the rural areas in the Eugene/Springfield Metro Plan. These areas were granted a continuance to October 11, 1984.

In the period following the issuance of the Department recommendations, Lane County has made numerous revisions to their comprehensive plan and implementing ordinances in response to the Department's recommended in-order-to-comply requirements. These amendments were made under the provisions of the Expedited Notice Procedure for Acknowledgment (OAR 660-03-033). According to County Notices (July 19, 1984 and August 23, 1984), commentors and objectors were notified and provided opportunities for review and comment on these amendments prior to County adoption.

Section IV below summarizes the DLCD proposed requirements from the June 29 and July 19 reports and summarizes the County's response to each requirement. These are intended as supplemental findings, rather than as amendments to the previous DLCD recommendations.

Submitted Documents

Document	Ordinance	Adoption
Revisions to Development Code (Chapter 16)	9-84; 11-84	8-9-84; 9-12-84
Amendments to Plan Policies and Comprehensive Plan	889; 892	8-9-84; 9-12-84
Revisions to Development Code (Chapters 13 and 14)	10-84	8-9-84
Amendments to Comprehensive Plan	888	9-12-84
Supplemental Findings for Exceptions, Maringal Lands and Non-Resource Areas	84-9-11-22 (Order) 84-9-11-23 (Order)	9-12-84 9-12-84
Revised Comprehensive Plan Map and Zoning Map	891; PA 884	9-12-84

IV. FINDINGS

GOAL 2: LAND USE PLANNING

Requirement

1. Provide legible maps for all rural lands showing adopted plan categories.

Response

Lane County adopted a set of revised plan maps (ORD. No. 884). These plan maps replace previously submitted plan maps. The plan designations are site specific following legally identifed boundaries. Each plan designation is identified by a specific code symbol and defined in the County's plan.

Conclusion

The requirement has been met.

Requirement

2. Clearly define which zones are intended to implement each plan category.

Response

The County's plan was amended (ORD. 889) to include the following plan policy (Goal 2, Policy 26):

"Each of the land use designations applied to the Plan Diagram shall be implemented by one or more zoning districts as follows:

Plan Designation(s)*	Zone Classification
Forest land	Nonimpacted Forest Lands
Forest Land	Impacted Forest Lands
Agriculture Land	Exclusive Farm Use
Natural Resource	Natural Resource
Marginal Land	Marginal Lands
Park and Recreation	Park and Recreation
Natural Resource	Quarry and Mining Operations Combining
Natural Resource	Sand, Gravel and Rock Products
Natural Resource	Sand, Gravel and Rock Products Processing
Public Facility, Community	Public Facility
Commercial, Community	Limited Commercial
Comercial, Community	Neighborhood Commercial
Commercial, Community	Commercial
Rural Commercial	Rural Commercial
Industrial, Community	Limited Industrial

Industrial, Community	Light Industrial
Industrial, Community	Heavy Industrial
Rural, Community	Suburban Residential
Rural, Community	Garden Apartment Residential
Rural, Community	Rural Residential
Destination Resort	Destination Resort
Historical Structure/Site	Historic Structures or Sites Combining
Natural Estuary	Natural Estuary
Conservation Estuary	Conservation Estuary
Development Estuary	Development Estuary
Sign. Natural Shorelands	Significant Natural Shorelands Combining
Prime Wildlife	Prime Wildlife Shorelands Combining
Natural Resources Consv.	Natural Resources Conservation Combining
Residential Development	Residential Development Shorelands Combining
Shorelands Mixed Develop.	Shorelands Mixed Development Combining
Dredge Material/Mitigation	Dredge Material/Mitigation Site Combining
Beaches & Dunes	Beaches and Dunes Combining
	Floodplain Combining
Airport	Commercial Airport Safety District
Airport	Airport Safety District
Airport	Airport Operation
Nonresource	Rural Residential

* Note: The 'Community' Plan Designation is implemented by various zoning districts as indicated, zones which also implement specific Plan designations other than 'Community'."

Conclusion

The requirement has been met.

Requirement

3. Delete the provision in Sections 16.015 and 16.252 which permit legislative zone amendments to be adopted by order rather than by ordinance.

Response

Lane County's Development Code (Section 16.015) was amended (Ord. 9-84) to require that only quasi-judicial zone amendments be adopted by order. The section in the County Code which permits adoption by order applies to the County Board, Planning Commission and Hearings Official. An adoption by Ordinance is required for all legislative amendments.

Conclusion

The requirement has been met.

Requirement

4. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone these lands identified in the Goal 2 Exception with the appropriate resource zone.

Response

Early in the review of the County's built and committed exceptions areas, Department staff identified certain areas that were not justified. In response to these noted deficiencies, the County adopted the first set of supplemental findings prior to issuance of the DLCD June 29, 1984 report (Order No. 84-6-19-16). These findings were reviewed in that report and found to address most of the deficiencies identified by Department staff. However, the Commission did not accept and approve these findings at their July 19, 1984 meeting because the County had not complied with the Expedited Notice Procedures for Acknowledgment (OAR 660-04-033) (See Lane County Acknowledgment Report, June 29, 1984, p. 26). To correct the oversight, the County followed the Expedited Notice Procedures leading up to the adoption of the second set of supplemental findings and provided oportunities for commentors and objectors to review the first set of supplemental findings. As a result of compliance with OAR 660-03-033, the first set of supplemental findings (Order No. 84-6-19-16) along with the other revisions can be affirmed.

In response to IOTC (4), Lane County redesignated 870 acres to an appropriate resource desigation (ORD. No. 891). For the remaining areas, the County adopted the second set of supplemental findings (Order No. 84-9-11-23) to justify the areas as committed. These findings provide additional information on recent partitions and subdivision activities along with information on more recent development. This information was not provided in the earlier submittal because of outdated maps and ownership listings. Address maps showing location of dwellings, mobile homes and recent road development provide most of the information addressing the deficiencies noted earlier. In addition, specific findings provide reasons why it is impracticable to apply a resource goal to areas that are not built upon but are irrevocably committed to nonresource uses.

Conclusion

The requirement has been met.

Based on the information contained in the County's original exception document and supplemental findings (Order No. 84-6-19-16 and Order No. 84-9-11-23), the County has provided substantial evidence consistent with OAR 660-04-025 and OAR 660-04-028 to support the conclusion that all areas, for which the County has taken a Goal 2 exception are no longer available for resource use and are irrevocably committed in their entirety.

Requirement

5. Amend the plan to clearly identify areas zoned PR which are within built and committed exception areas. For those areas within an exception area, provide for information addressing OAR 660-04-025 requirements or exclude those lands from areas designated as a built and committed exception area.

Response

The plan was amended (Ord. No.889) to include a list of tax lots zoned PR that are within built and committed exception areas. This action satisfies the first part of the above requirement. Information addressing the exception criteria can be found in the County's original exception document (Ord. No. 884) and the two sets of supplemental findings (Order No. 84-6-19-16 and Order No. 84-8-11-23). The adequacy of these findings is discussed under Goal 2 requirement 4 of this report.

Conclusion

The requirement has been met.

Requirement

6. Amend the PR-RCP Zone to include standards for uses permitted outright (consistent with ORS 215.213(2)). Note: These should not include review of minor betterment activities as described in ODOT's State Agency Coordination Program.

Response

The PR-RCP Zone was amended (ORD. 9-84) to require that uses authorized under ORS 215.213(2)(G) be subject to Director approval consistent with ORS 215.213(2)(LC 16.215(3)). Minor betterments and general improvement of existing parks or recreational facilities are permitted outright (LC 16.215(2)(d)).

Conclusion

The requirement has been met.

Requirement

7. Amend the zoning code to exempt maintenance and improvments in Jennie B. Harris State Park and Squaw Creek State Wayside from conditional use procedures. This is most easily accomplished by zoning all of these parks to PR.

Response

The County plan and zoning maps were amended (Ord. No. 898) redesignating Jennie B. Harris State Park and Squaw Creek State Wayside as Park and Recreation (PR).

Conclusion

The requirement has been met.

Requirement

8. In conjunction with compliance requirements under Goal 11 of this report, the County must (1) clearly define uses, densities, unit quantity, and levels of service appropriate to rural "cluster" subdivisions, and (2) adopt appropriate ordinance amendments implementing these standards. Densities exceeding those appropriate for rural areas shall additionally require a Goal 14 exception.

Response

The County has amended the plan to contain a policy which insures that urban levels of development will not occur in rural areas under the Cluster Subdivision Standards. The policy contains language parallel to the Commission's administrative rule on establishing new urban uses in rural areas (OAR 660-14-040). Prior to approving a cluster subdivision, with more than 20 units and which includes any lots less than 5 acres, the County must make findings similar to those required for an exception under Goal 14. These amended requirements are as follows (Ordinance PA 889):

> "Cluster subdivisions shall be deemed appropriate to a rural area when the following criteria are satisfied:
> 1. Consistent with the intent and requirements of OAR 660-14-040(2) and (3), a showing must be made that the development will not represent an urban population or demand an urban level of facilities and services. For purposes of meeting this standard, affirmative findings must be made addressing the following:
> a. The level of development represented by the development cannot be reasonably accommodated through the expansion of an existing urban growth boundary or by intensification oif development at an existing rural center.
> b. The long-term environmental, economic, social and energy consequences resulting from the development, considering measures designed to mitigate negative impacts, are appropriate to the rural area. Factors to be considered include whether the size of the development is appropriate to the proposed rural area and whether the air, water, energy and land resources of the surrounding area are adequate to serve and not adversely affected by the development.
> c. The proposed development is compatible with or can be made compatible with adjacent uses considering:

(1) Whether the development detracts from the ability of existing cities and service districts to provide services, and
(2) Whether the potential for continued resource management of the land at present levels surrounding and nearby the development is assured.

d. An appropriate level of rural facilities and services are available or can be provided in a timely and efficient manner.
e. The approval of the development is coordinated with affected jurisdictions and is consistent with the comprehensive plans of the affected jurisdictions and the Lane County Rural Comprehensive Plan.

2. The development will not:
   a. Generate traffic which will exceed the carrying capacity, as defined by Lane Code Chapter 15, of adjacent public and private roads.
   b. necessitate a higher level of police service than presently provided to the surrounding area.
   c. Occur within one mile of an existing urban growth boundary and/or share any urban service provided within a neighboring urban growth boundary.
   d. On the whole require an urban level of service.
3. Reasonable assurances must be provided that the cluster shall not generate students in excess of the capacity of affected facilities within the appropriate school district.
4. The development represents a concentration of people who generally reside and work in the area.
5. Deed restrictions which ensure that commucnity water and sewer systems shall remain viable and under private ownership shall be required. Cluster subdivisions which propose to form or use a public water or sewer system shall not be allowed.
6. Cluster subdivsions shall be limited to residential use. No commercial or industrial uses will be allowed within existing or proposed cluster subdivisions.
7. All cluster subdiviions must be within an existing Rural Fire Protection District.
8. No other identifiablke substantial increase of a public service shall be necessitated by the approval of a cluster subdivision."

The cluster development standards also contain provisions to assure their application to a series of small cluster developments (i.e., less than 20 units and therefore, exempt from standards 1 through 8 above).

Conclusion

The requirement has been met.

The Lane County cluster development standards contain the same standards as OAR 660-014-040. These standards assure that urban development will not occur in rural areas except where OAR 660-14-040 criterion are met.

Requirement

9. Amend Lane Code Chapter 16 to correct inconsistencies in the cross-referencing system, where subsections are referred to within the same section of the ordinance.

Response

The County Rural Zoning Ordinance (Chapter 16) has been codified eliminating cross referencing from the older Zoning Ordinance (Chapter 10). As a result, all inconsistencies previously identified have been corrected.

Conclusion

The requirement has been met.

Requirement

10. Amend the plan (a) to include additional findings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the County chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

Response

Lane County amended its nonresource findings for Dillard Highland's Second Addition to include additional findings supporting the claim that Goals 3 and 4 do not apply as well as information indicating that the Goal 5 wildlife habitat issue has been resolved. The contents of the County's supplementary findings includes the following information: (1) amended soils information, introduced by soil scientist Joel A Norgren, PHD, which concludes that (a) 99.5 acres (65 percent) of the 154-acre parcel consists of SCS agricultural capability classes VI, and (b) 85.5 acres (56 percent of the 154-acre parcel consist of soils with no woodland site class; and (2) findings indicating why it is impractical to apply Goals 3 and 4 to this property. Reasons supporting these findings include the following:

"a) The Dillard Highlands is located on the east side of Dillard Road and the south hills ridgeline approximately one-third of a mile southeast of the Eugene city limits and the urban growth boundary.

It is within an area of very poor soils as indicated by the Soil Conservation Service maps. It is surrounded by a sloping terrain and a 'Developed and committed' area to the west, a 'developed and committed' area and a major BPA powerline to the north, a 'developed and committed' 260 feet power line and natural gas easement to the east, and an approved 'Non-Resource' area to the south. Although man-created boiundaries, they make it impracticable to apply the resource goals to he subject property (Dillard Highland's 2nd Addition; Supplemental Findings, August 24, 1984, pp. 15, 16).

b) Dillard Highland's status as a significant wildlife habitat has already experienced significant impacts because of existing urban and rural residential development in the area. Areas with 'built and committed' exceptions and this level of existing conflict are defined as 'Impacted Big Game Range' by Lane County's Flora & Fauna working paper (March 1982). These are areas 'that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity...the subject property is already impacted as big game habtat..." (Dillard Highlands, 2nd Addition, Supplemental Findings, August 24, 1984, pp. 18-19).

Conclusion for Dillard Highland's Second Addition

The claim that Goals 3 and 4 do not apply to Dillard Highland's Second Addition is sustained.

Substantial evidence has been provided by the County indicating that the 154 acres of Dillard Highland's Second Addition is not composed of predominantly SCS Class I-IV agricultural soils or soils with a cubic foot site index capable of producing commercial forest species.

In addition, the County indicates that the property is considered "impacted" big game habitat because of surrounding development activities and that, issues regarding Goals 4 and 5's habitat requirements are therefore resolved.

The supplemental findings of August 24, 1984, when combined with the findings previously discussed in the Departments' July 19, 1984 (addressing the "other lands" tests contained in Goal 3's definition and the remaining aspects of Goal 4's definition) are adequate to support the position that Goals 3 and 4 do not apply.

Requirement

11. Amend the plan to justify the potential one dwelling unit per 5-acre density authorized for Cerro Gordo's 600 acres in view of ODFW's

accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (See also Goal 2's cluster development issue.)

Response

The County's policy is to abide by ODFW's density recommendations unless the entire Goal 5 process is applied and a decision to exceed these recommendations is justified. Lane County has adopted supplementary findings (Order No. 84-9-11-23) and has revised its ESEE consequences analysis and wildlife habitat management plan for Cerro Gordo to justify development in a recognized big game habitat area, in excess of ODFW's recommended density standards. A meeting was held on August 14, 1984, with ODFW, Cerro Gordo and DLCD representatives to discuss this issue. It was determined that, in this case, ODFW density recommendations do not have as much bearing on the acceptability of the development as do other factors. These factors include the overall number and location of dwellings and roads, as well as mitigating measures incorporated into the development. The following factors in the revised Cerro Gordo proposal are particularly relevant (Order No. 84-9-11-23):

1. There is an overall "cap" on the number of lots which could be developed (i.e., 60 lots).

2. No more than one-third of the residences will be located north of the BLM road (the habitat area considered more sensitive to human disturbances).

3. Wildlife corridors from 600 to 1800 feet in width shall be provided along streams.

4. Residential development will be confined to a band 2,400 feet in width along an existing BLM road.

5. Residences must be clustered.

6. Goal 2 cluster subdivision requirements shall apply (see the Goal 2 section of this report for details).

7. Cerro Gordo is either adjacent to or near large tracts of federal and private forest land.

8. Lane County will provide ODFW with the opportunity to review and comment on the preliminary subdivision application to assure mitigation measures are achieved through proper clustering.

9. Road development will be minimized and private roads within forested areas will be closed to vehicular use except for emergencies, maintenance, and forest management activities.

10. A Cerro Gordo Design Committee as well as the Cerro Gordo Cooperative itself shall review and monitor actions and changes in wildlife conditions on an ongoing basis.

11. Pets shall be limited.

Because of these and other factors addressed in the County's amended findings, the impacts on big game range are thought to be acceptable by ODFW. Allowing such conflicts to occur, but with restrictions outlined above, is a (3C) decision under the Goal 5 Administrative Rule. The County has justified this decision.

Conclusion

The requirement has been met.

Requirement

12. Remove the AO zoning from all privately owned parcels within the Mahlon Sweet Airport Exception Area consistent with Transportation Policy 11 and apply an appropriate resource zone to these lands.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

13. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone TL 1600 in the Royal Avenue Exception area with the appropriate resource zone.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

14. Amend the zoning code to exempt maintenance and improvements in Armitage State Park from conditional use procedures. This is most easily accomplished by zoning all of this park to PR.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 2

Lane County complies with Goal 2 for the rural portions of the County, excluding the Metro Plan area.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 2.

GOAL 3: AGRICULTURAL LANDS

Requirement

1. Amend the EFU Zone to require disqualification from farm tax deferral of parcels prior to final building permit approval for nonfarm dwellings pursuant to ORS 197.236.

Response

Lane County's Development Code was amended (ORD. 9-84) to include a provisions requiring compliance with ORS 215.236 regarding the establishment of nonfarm dwellings in the EFU Zone (LC 16.215(4)(j)(IV)).

Conclusion

The requirement has been met.

Requirement

2. Adopt a plan policy requiring a plan amendment to the County Plan when designating land as Marginal Lands.

Response

The County plan was amended (ORD 889) to include the following plan policy (Goal 2, Policy 25):

> "Outside of designated 'Community' areas, all changes to Plan Diagram designations shall be evaluated through the County's Plan Amendment procedure (LC 16.400) and approval based upon fulfillment of criteria therein."

Conclusion

The requirement has been met.

Although this policy might imply that plan amendments are not necessary to change designations in community aras, in fact there is only one category--"community"--that can be applied to community areas. The policy should be clarified in the future to indicate that it is zoning within community areas that maybe changed without a plan amendment.

Requirement

3. Amend the plan to include adequate findings and reasons for applying the marginal lands zone to the Merz/603, Harrison, Peters, Hledik, G.E. Credit Corp., and KVAL properties and provide the required information to determine compliance with ORS 197.247. If the information provided shows that the land does not qualify as marginal land under ORS 197.247, plan and rezone the properties with appropriate resource designations and implementing zones.

Response

The County's plan was amended (Order No. 84-9-11-23) to include additional findings and reasons for applying marginal lands to the Merz/602, Harrison, Mathers and G.E. Credit Corp. properties. The County has also amended the plan and adopted an additional marginal land area known as the Moshofsky property (Order No. 84-19-11-22). The Peters, Hledix, and KVAL properties have been redesignated an appropriate resource designation (Ord. No. 898).

Information regarding the five marginal land areas is described below (Source: Order No. 84-9-11-22 and 84-9-11-23 (Moshofsky)):

Merz/603 - 70 acres

57.3 acres - SCS Class VIII (Dune Land)
12.7 acres - SCS Class III/Forest Site Class 3

Harrison - 45 acres

13.5 acres - SCS Class III
7. acres - SCS Class IV
49.5 acres - SCS Class VI
No woodland suitability

Mathers - 111 acres

4.7 acres - SCS Class III/Forest Site Class 3
13.7 acres - SCS Class IV/Forest Site Class 3
92.6 acres - SCS Class VI

G.E. CREdit - 20 acres

20 acres - SCS Class VI
No woodland suitability

Moshofsky - 68 acres

14.5 acres - SCS Class III
8.7 acres - SCS Class IV
42.6 acres - SCS Class VI
2.1 acres - SCS Class VII

MOSHOFSKY SOIL CALCULATIONS
AS PER F-2 WOODLAND SITE CLASS STANDARDS

Woodland Site Class	Acreage Needed Disqualification	Acreage Found Moshofsky	Percentage Of Standard
2	17	8.7	51.1%
3	24	0	0%
4	34	14.5	42.6%
5	43	2.1	4.8%
None		42.65	

Percentage Total = 98.5%

Conclusion

The requirement has been met.

The previous findings found lacking for these properties have now been corrected as is required under ORS 197.247.

Based on the evidence submitted, and along with the findings in the previous staff recommendations, the following areas qualify as marginal lands under ORS 197.247:

Mertz/603
Harrison
Mathers
G.E. Credit Corp
Moshofsky

Requirement

4. Amend the Plan Map and Zoning Map for the Cuddeback and Rodman properties to an appropriate resource designation and implementing zone.

Response

The Cuddeback and the Rodman properties have been redesignated Impacted Forest Lands (Ord. No. 898).

Conclusion

The requirement has been met.

Conclusion - Goal 3

Lane County complies with Goal 3.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 3.

GOAL 4: FOREST LANDS

Requirement

1. Amend the Forest Working Paper and addendum to:

   a. Provide justification for the F-1 Zone's 40 acre minimum.

   b. (1) include information on the pattern of contiguous ownerships (either map or statistical) in support of a decision to retain current F-2 zoning. Such information must show that the minimum lot size is representative of the ownership pattern of the area

and that the zone actually limits further opportunity for development; or (2) include information justifying an alternative approach consistent with Goal 4 taken to resolve issues raised regarding the F-2 Zone.

c. Amend the Forest Working Paper Appendix 1--Lane County Forest Soils--to include "all commercial forest soils" in a manner consistent with an appropriate definition of commercial forest lands.

Response

1. a. Lane County has adopted additional information supporting its decision for assigning a 40-acre minimum lot size in the F-1 Zone. Specifically, the County has included as findings, two letters from Carl Ehlen (Lane County Landowners Assoc. and Rex Timber Co.) regarding the viability of a 40-acre parcel to be commercially managed as a forest parcel and Exhibit "D" from Ordinance No. PA 889 which cites the following findings:

"1) In support of the proposed Comprehensive Plan developed in 1982 the Lane County Landowners Association provided written testimony that the minimum land division size of 40 acres in the F-1 Zone represented an acreage that could be an operationally and economically manageable unit within the industry. At that time, the F-1 Zone proposal allowed dwellings on parcels down to the minimum size. (See attached letter dated November 23, 1982)

2) The Addendum to the Forest Lands Working Paper dated November 1983, justifies the 40 acre minimum land division from the data which show a significant number of parcels and amount of acreage that represent that size class within the industrial forest land ownership.

The following excerpt is from Suggestion Policy XI. 1) of the Addendum to the Forest Lands Working Paper:

'92% of the Industrial forest land acreage that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to 80 acres, with approximately 25% of that area occuring at the 40 acre parcel size category.'

'75% of the number of parcels in the Industrial owned forest land that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to

80 acres, with approximately 28% of the number of parcels occuring within that range at the 40 acre parcel size category.'

3) The letter received June 21, 1984, from the Lane County Landowners Association reiterates their former position in support of the 40 acre minimum land division standard noting that under the current proposal the F-1 Zone excludes residences. (See copy attached.)

4) In addition, preliminary data from the computerized zoning file of the current F-1 proposal indicates that of the parcels zoned F-1 that are between 40 and 80 acres in size, 27% of the acreage occurs on parcels of the 40 acre size class which represents 39% of the number of parcels between 40 and 80 acres in size."

The County has indicated further that the County's decision establishing the 40-acre minimum lot size in the F-1 Zone is supported because:

"Commercial forest representatives in Lane County requested 40 acres as a minimum lot size in the F-1 Zone based upon 40 acres being a commonly acquired, managed and exchanged unit of commercial forest land in Lane County."

Because Lane County's F-1 Zone does not allow dwellings, the price of forest land will reflect forest land values instead of rural residential values and conflicts with forest management activities will be minimal. Thus, a small minimum lot size conducive to commercial forest management, such as the F-1's 40-acre minimum is appropriate.

b. Lane County has rezoned approximately 56,080 acres of land from F-2 to F-1 and EFU in accordance with requirement "1.b(1)." Lands for which the F-2 zone was retained generally exhibit one or more of the characteristics for impacted forest lands presented in the response to requirement "2a." In addition, the County's revised Goal 4 Policy 12 provision (discussed under Goal 4 Response 3 of this report) presents additional limitations on divisions of resource land by establishing a 80-acre minimum lot size for all forest parcels which are (1) 160 acres in size, (2) zoned F-2, and (3) adjacent to F-1 zoned lands.

c. Lane County has amended, through Ordinance No. PA 889 (p. 6), their definition of commercial forest land to be 50 cubic feet per acre per year. By adopting a single commercial forest lands definition in its forest lands working paper rather than relying

on inconsistent references to 20 cubic feet, 50 cubic feet or the list of forest soils contained in Appendix 1, a consistent standard for inventorying forest lands and evaluating nonresource lands is established.

Conclusion

Lane County satisfies this requirement.

Requirement

2. Amend the comprehensive plan to:

   a. Include a Forest Policy which establishes precise criteria for applying the F-1 and F-2 Zones. (At a minimum, criteria for applying the F-1 Zone must include ownerships of a size capable of being managed as commercial forest lands.)

   b. Amend the four characteristics discussed under the Goal 4 conclusion for policies to establish criteria which apply only to lands appropriately zoned F-2 as per the examples discussed under "application;" or

   c. Include a policy which requires a plan amendment to rezone lands from F-1 to F-2.

   d. Delete the following from Forest Policy 11(a) "if adjacent to other nonimpacted forest lands.

Response

2a. In response to the above requirement, Lane County revised the criteria for applying the Non-Inpacted (F-1) and Impacted (F-2) Zone designations to eliminate the specific "vague" criteria discussed in the June 29, 1984 review. The revised criteria can be used to more specifically determine the proper zone designation. Ordinance No. P. 899 (p. 5, Item 10) adds Goal 4, Policy 19 which reads as follows:

"Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

'a. A conclusion that characteristics of the land correspond more closely to the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

'b. Non-imoacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantely ownerships not developed by residences or nonforest uses.
'ii. Predominantely contiguous ownerships of 80 acres or larger in size.
'iii. Predominantely ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.
'iv. Accessed by arterial roads or roads intended primarily under commercial forest management.

'c Impacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantly ownerships developed by residences or nonforest uses.
'ii. Predominantely ownerships 80 acres or less in size.
'iii. Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.
'iv. Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences."

In addition, nonforest uses authorized under the F-1 Zone (LC 16.2104) can not be used as the basis for supporting a zone change from F-1 to F-2; the criteria established in LC 16.210(5) require as a condition of approval that findsigs be provided indicating such uses do not significantly impact forest uses. Thus, establishment of such nonforest uses in an F-1 Zone can not be the basis for a zone change to F-2 under the "impacted" criteria adopted by Lane County.

2b. or c.

Lane County revised its plan to delete the four vague characteristics used in applying the F-1 and F-2 zones. As indicated in the conclusion to "2a," the revised criteria successfully address the issue.

2d. On page 4 of Lane County Ordinance "No. PA 889, #8," the County states: "Goal No. 4, Policy No. 11a--delete if adjacent to other nonimpacted forest lands."

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend the County zoning map by rezoning private non-industrial ownerships capable of commercial forest management (including forested portions of commercial farm-forest operations) currently zoned F-2 with an appropriate resource zone. An acceptable forest zone is the F-1 Zone or forest zone containing a minimum lot size of

at least 80 acres as justified by the County's "Forest Working Paper Addendum."

Also, where the County can justify such a decision, the County may apply the marginal lands zone or rural residential zones to "committed" or nonresource lands.

Response

Lane County has rezoned 24,075 acres of land from F-2 to F-1 and rezoned 32,005 acres from F-2 to EFU. Generally, ownerships greater than 120 acres in size capable of being managed as a farm unit were rezoned to EFU. Ownerships of 160 acres or greater capable of being managed as commercial forest lands were rezoned to F-1. Some large ownerships were zoned with more than one zone depending on adjacent land uses and impacts. Also, the F-2 zone was retained on a few large ownerships, where soils information indicated that non-commercial forest soils predominate.

In order to reduce potential conflicts between authorized land uses in the F-2 Zone and commercial forest management activities occuring on F-1 lands, Lane County adopted a new version of Goal 4 Policy 12 (Ordinance No. PA 889, p. 4, Item 9) which contains the following provision:

> "(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:
> '(i) zoned F-2
> '(ii) containing at least 160 acres
> '(iii) for the creation of lots or parcels adjacent to F-1, RCP zoned lands."

Conclusion

Lane County has satisfied this requirement.

The County has amended its zoning map, through the rezoning of some lands previously zoned F-2, in a manner consistent with this requirement. With the elimination of 56,080 acres from the F-2 Zone, the County's current application of the F-2 Zone is more representative of the ownership patterns within areas where non-commercial forest management and other non-resource activities occur.

Requirement

4. Amend LC 16.210(4)(i) of the F-1 Zone and LC 16.211(5)(ii) to require that "lodges" be evaluated against the "generally unsuitable test" in addition to the other review standards already applied to this specific use.

Response

Lane County through the adoption of Ordinance No. 9-84 amended LC 16.210(4)(i) and LC 16.211(5)(ii) to require under LC 16.210(4)(i) and LC 16.211(5)(r) that in addition to other review criteria, lodges will be required to locate on land generally unsuitable for forest uses in the F-1 and F-2 Zones or an exception to Goal 4 would be necessary.

The County also adopted Plan Policy No. 27 which requires an exception to resource Goals for transmission lines with right-of-way widths in excess of 50 feet (Ord. No. PA 889, p. 4). In addition, the County has limited farm equipment maintenance to that "incidental to a forest repair" (Ord. No. 9-84, p. 16-29).

Conclusion

Lane County satisfies this requirement.

Requirement

5. Amend the F-2 zoning provisions as follows:

   a. In 16.211(3)(b), adopt informational requirements for the "detailed forest management plan." At a minimum, such provisions must require sufficient information to establish adequate findings that a proposed "forest" dwelling is "necessary" and "incidental and subordinate to" the primary forest management activities described in the forest management plan.

   b. Include in LC 16.211(3)(b) a "floor" or minimum parcel size requiring parcels below 10 acres to be assessed against the nonforest dwelling or lot of record provisions.

   c. Amend 16.211(7)(b) to apply to all commercial forest grazing operations zoned F-2 the larger size (120 acres) for extensive animal grazing as required by LC 16.212(6)(d).

Response

5a. Lane County has amended LC 16.211(3)(b), through the adoption of Ordinance NO.9-84, to include specific requirements for preparing an acceptable forest management plan. Included within the revised LC 16.211(3)(b) is the following additional requirement:

> "(iii) The forest management plan shall specify how the following practices, when applicable, are to be addressed: road and fire trail construction and maintenance, site preparation, reforestation, stand conversion, planting of nonstocked openings, competition reduction/release, precommercial thinning, harvest scheduling/rotation and special site treatments for topography and other concerns."

Because active forest management is required to retain forest land taxation rates and failure to implement the forest management plan is a violation of LC 15.211(3)(b). The combination of the above requirements for forest related dwellings in the F-2 Zone assures that active forest management must occur on forest lands in order to establish a forest related dwelling; thus, satisfying the accessory and necessary test. These requirements for approving a forest related dwellings in Lane County's F-2 Zone are similar to the provisions contained in Benton County's acknowledged secondary forest zone.

5b. Through the adoption of Ordinance No. 9-84, Lane County amended LC 16.211(3)(b) of the F-2 Zone to include a "10 acre" floor which will be used for assessing "forest" dwelling applications. Applications for dwellings on parcels zoned F-2 which are less than 10 acres will be reviewed as nonforest dwellings.

5c. Upon further review of LC 16.211(7)(c) regarding the F-2 zone's minimum lot size requirements for farm unit size requirements for commercial grazing operations, it was determined that this provision's 40-acre minimum "farm unit size" requirement is identical to the County's EFU Zone minimum farm unit size requirement. For specific uses, such as dwellings, LC 16.212(2)(f) of the EFU Zone must be satisfied before approval can be granted.

Conclusion

The County satisfies this requirement.

Conclusion - Goal 4

Lane County complies with Goal 4.

Lane County's approach to conserving forest lands contains some plan policy and ordinance provisions unique to Lane County. The strength of their forest lands conservation program is the F-1 Zone which prohibits the siting of all dwellings (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.

The County's F-2 Zone is applied to 145,356 acres of privately owned lands which consist generally of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands. Lands zoned F-2 are generally located adjacent to or near developed urban or rural areas and well travelled transportation routes; all of which have an impact on the commercial management of forest lands.

In the F-2 Zone, the County requires that before a permanent dwelling is sited on forest land, assurances are obtained that forest production on the lot will be enhanced by active forest management. The requirements associated with the siting of dwellings in the F-2 Zone are similar to those provisions approved by the Commission in Benton County's acknowledgment with recent changes to the County's forest policies and

ordinance provisions. The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 4.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

Requirement

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SC which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

Response

In responding to this IOTC, Lane County discovered that not only were there sites zoned SG which were not on its (1C) inventory, but that there were other errors on its inventory. Therefore, the County revised its (1C) inventory as well as its (1B) inventory. Supplemental findings to Ord. No. PA 892 state:

> "The IOTC to correct the zoning citations was the stimulus for a complete review of sites listed in Appendix D vs. zoned sites. Several of those in the original Appendix D have been deleted--none of which carried SG or QM zoning. No "unzoning" will be necessary. Most of those deleted are also reflected in Appendix F of the Working Paper, which is the "pool" for later evaluation under the Goal 5 Rule "1B" option. Thus, any sites deleted in this effort are not lost from consideration, merely set aside for more detailed examination later on. All but one of the sites of Appendix D correspond with on-the-ground zoning of SG or QM."

The one site referred to in the last sentence of the previous quote (site #21) is an active site. The County completed all steps of the Goal 5 Administrative Rule for the site, and subsequently zoned it QM (Ord. No. PA 891). These findings are now part of the County's Mineral and Aggregate Resources Working Paper.

The County's three Mineral and Aggregate Resources inventories--Appendices D, E, and J--have been revised as follows: Appendix D has been reorganized to read more clearly, the Conflict Analysis (Appendix J) expanded to deal with new sites per the IOTC, and a third map (Appendix E) created to display the sites on new Appendix D. The original Appendix E--a listing of sites in the Metro Area--has been deleted since it was inconsistent with the list contained in the Metro Plan.

Conclusion

Requirement 1 has been met.

Requirement

2. Fish and Wildlife:

a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

Response

Lane County has amended its Natural Resource Zone to include riparian setback and vegetation maintenance standards similar to those in other resource zones (Ord. No. 11-84).

Conclusion

Requirement 2a has been met.

Requirement

2. Fish and Wildlife Habitats:

b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation and maintenance standards, or (2) incorporate by reference anothr section of the Lane Code which contains such standards.

Response

Lane County has amended the above zoning districts to include appropriate riparian setback and vegetation maintenance standards as required (Ord. No. 9-84).

Conclusion

Requirement 2b has been met.

Requirement

2. Fish and Wildlife Habitats:

c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(l)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

Department which sufficiently identify the location, nature and scope of the proposed use or activity.

(c) Referral. Upon receipt of the plan identified in LC 16.005(4)(b) above, the Department shall refer a copy of the plans to the Oregon Department of Fish and Wildlife (ODFW).

(d) ODFW Review. Upon receipt of the plans identified in LC 16.005(4)(b) above, the ODFW shall review the proposed use or activity and make a determination of whether or not the use or activity would affect a sensitive bird habitat. In making this review and determination, the ODFW shall consult with the affected landowner(s) and appropriate state agencies, and shall address the standards in LC 16.005(4)(d)(i) and (ii) below. The basis for the determination shall be stated in writing, completed within seven working days of receipt, and then submitted to the Department (Lane County).

(i) A sensitive bird habitat will be considered affected by a use or activity if the use or activity is located within 660 feet of an eagle or osprey site or within 300 feet of a heron rookery or pigeon mineral spring.

(ii) A sensitive bird habitat may also be considered affected by a use or activity if the use or activity is located a greater distance than specified in LC 16.005(4)(d)(i) above, considering unique conditions of topography to the individual habitats of the bird(s).

(e) No Affects Determined. If the ODFW determines that the senstive habitat area will not be affected, then the ODFW will give the Department written notice of its determination, and Lane County may proceed with authorization o the use or activity, or with the processing of any other required applications.

(f) Affects Determined and Protection Plan. If the ODFW determines that the sensitive habitat area will be affected, the ODFW shall work with the affected landowner(s) in the development of a site specific habitat protection plan. The plan shall consider the proposed use or activity and its interrelationship to and affects upon nesting trees, perch trees, critical nesting period roosting sites and/or buffers for wind, vision and noise. The plan must contain a statement of reasons, supported by facts, explaining why the sensitive bird habitat would not be adversely affected by the proposed use or activity. The plan shall then be submitted to the Department.

(g) Director Approval. The proposed uses or activities identified in the habitat protection plan shall be reviewed by the Director pursuant to LC 14.100 and shall be allowed if in conformance with the following approval criteria:

(i) The proposed use or activity would not adversely impact a sensitive wildlife habitat.

(ii) Conditions placed upon the approval of the habitat protection plan would avoid or eliminate any adverse impacts upon a sensitive wildlife habitat. Conditions may include setbacks, limitations upon the time period for the operation of the use or activity and/or prohibition of conflicting uses.

(h) LC 16.005(4)(a)-(g) do not apply to the protection of sensitive bird habitat from forest practices as regulated by the Forest Practices Act and as regulated by the COOPERATIVE AGREEMENT BETWEEN OREGON STATE BOARD OF FORESTRY AND OREGON STATE FISH AND WILDLIFE COMMISSION as adopted by Lane County in Rural Comprehensive Plan Goal 5 Flora and Fauna Policy 17."

The following new Policy 17 has been adopted to replace old Flora and Fauna Policy 15 (Ord. No. PA 892):

"The Cooperative Agreement between Oregon State Board of Forestry and Oregon State Fish and Wildlife Commission shall constitute Lane County's means of protecting sensitive bird habitat sites from conflicts which may result from forest practices as regulated by the Forest Pracices Act. Within two years of the date of acknowledgment of the Rural Comprehensive Plan, Lane County shall evaluate the effectiveness of the use of this agreement in providing actual protection to sensitive bird habitat sites, and if necessary, shall consider the adoption of more effective means of protecting sensitive bird habitat sites. This agreement is incorporated into the Lane County General Plan Policies as Flora and Fauna, Exhibit 'A'."

The following new Flora and Fauna policy has also been adopted (Ord. No. PA 892):

"18. Owners of property designated as a sensitive bird habitat and as identified in Lane Manual 11.400 shall be encouraged to develop a management plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any development which may adversely affect the habitat. Such management plans shall consider nesting trees, perch trees, critical nesting period, roosting sites and buffer zones, and shall demonstrate how the proposed development will not adversely affect the sensitive bird habitat site. The policy shall not apply to forest practices covered by the above Flora and Fauna Policy 17."

Conclusion

Requirement 2e has been met.

Requirement

2. Fish and Wildlife Habitats:

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

Response

Lane County has replaced its definition of "wetland" with the following definition (Ord. No. PA 892):

> "For purposes of County management, wetlands should be defined as land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands."

This new definition is consistent with that contained in the Statewide Planning Goals.

The Working Paper has also been amended to contain the following explanation:

> "For purposes of County management, principal concern shall be given to wetlands of an acre or greater in size, to exclude small 'backyard' areas, unless the future County evaluation of the National Wetlands Inventory and/or information from ODFW indicate that specified wetlands smaller than one acre in size require the same level of protection as their larger counterparts."

Conclusion

Requirement 2f has been met.

Requirement

2. Fish and Wildlife Habitats:

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.

Response

The County examined this site ("Blueberry Acres") and documented its location, quality and quantity. Conflicting uses were identified, and an ESEE consequences analysis was performed by the County. Based on this analysis, the County determined that the wetland required additional protection. It, therefore, has applied its Natural Resource Zone to the site. The Addendum to the Flora and Fauna Working Paper has been amended to contain background information and findings regarding application of the Goal 5 process to "Blueberry Acres" (Ord. No. PA 892).

Conclusion

Requirement 2g has been met.

Requirement

2. Fish and Wildlife Habitats:

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

Response

Section 13.050(1) of the Lane Code requires conformity with the Comprehensive Plan (including all plan policies) when considering partition or subdivision plans.

Also, Policy 14 (Goal 3) has been amended so as to require compliance with Goal 5 policies 11 and 12 in the future application of the ML Zone. Policy 11 requires conformance to ODFW density recommendations, unless justified through a separate Goal 5 analysis. Policy 12 requires a Goal 5 analysis if conflicting uses are identified that were not contemplated in the Plan.

Findings have been added to the Flora and Fauna Working Paper Addendum (p. 14) which discuss application of current ML zoning in Goal 5 resource areas. Goal 5 conflicts with many of these sites are primarily with big game habitat. The County has analyzed the ESEE consequences of conflicting uses for these areas and has decided to apply the ML Zone in spite of the conflicts.

Conclusion

Requirement 2h has been met.

Requirement

3. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.

Response

Supplementary Findings to Ordinance No. PA 892 adopted by Lane County provide the following explanation:

> "This site is shown on the Coastal Resources Inventory maps as being located east of North Fork Road, near the Chief Drew historical site. It was field-checked by County and ODFW staff. Neigher effort could locate Darlingtonia, although a small bog existed in the approximate area of the site. A larger bog to the north (within the Florence UGB) may be the one referred to in the Inventory, but has been partially filled by structures and is not within the concern of the Rural Comprehensive Plan--the Florence plan having been acknowledged in 1983. It too was found to contain no Darlingtonia.
>
> Thus, it appears that no rezoning action will be necessary to preserve the reported bog."

Page 27 of the Flora and Fauna Working Paper has been amended to include the following new paragraph:

> "1A Category
>
> One site--identified on the Coastal Resources Inventory as a significant natural area--has been placed in the '1A' category because it was either erroneously identified in the Inventory or because conditions have changed since the Inventory was done which have destroyed the feature that first caused its inclusion. This area is noted as "unique Darlingtonia habitat" east of North Fork Road in 18-12-24. Because DLCD raised the issue of preservation of this resource under Goal 5 Rule requirements, field checks were conducted by both County staff and staff of the Oregon Fish & Wildlife Department. Neither effort could locate any Darlingtonia. A bog north of the one shown on the inventory map (excerpt attached) may have been the one referred to, but that particular bog has been partially filled and is also located within the UGB of Florence

which has an acknowledged Plan. Even assuming the Plan should be changed, that northern bog (at the intersection of Munsel Lake and North Fork Roads) is not significant enough Darlingtonia area to merit further action by the City/County. In sum, the area should be deleted from the Plan inventory as a '1A' site, with no further action required on it."

Conclusion

Requirement 3 has been met.

Requirement

4. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

Response

Lane County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892) which contains an inventory of scenic resources in the County, including the coastal strip, the Willamette River Greenway, Coburg Ridge, McKenzie River Valley, Willamette Highway/Salt Creek Valley Corridor, and ODOT-identified scenic areas. Each is described and location, quality and quantity documented. Each is evaluated in terms of conflicting uses and ESEE consequences. Based on these analyses, the County has determined that existing coastal zoning is sufficient protection for the coastal zone, and that the County Greenway Plan and Permit process should be the implementing measure in the Willamette Greenway. No conflicts were identified with ODOT scenic areas. Coburg Ridge is essentially undeveloped and partly in BLM ownership or in ranchland. Slopes exceed 100 percent in many places. Therefore, conflicts appear to be limited primarily to forestry activities, which are regulated by the FPA. Most of the McKenzie Valley and the Willamette Highway/Salt Creek Corridor is within the Willamette National Forest.

Conclusion

Requirement 4 has been met.

Requirement

5. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

Response

The County has ensured that all (1C) sites appear on zoning maps with the "/H" symbol, except for 20 covered bridge sites (Supplementary Findings to Ord. No. PA 892). The County indicates that these are not on maps because they are bridges and are not keyed to tax lot citations. This prevents the digitized Plan Diagram maps from properly displaying them. However, all are publicly-owned, and are covered by the /H Combining Zone (Ord. No. 892).

Lane County has added a definition of "Historic Structure or Site" to the definition section of its ordinance. This definition specifically includes property which had been identified by Lane County in its adopted Rural Comprehensive Plan findings as historically significant. (This list includes the 20 covered bridges as well as all other (1C) sites.)

Conclusion

Requirement 5a has been met.

Requirement

5. Historic Sites:

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

Response

Lane County has deleted sites 34 and 57 as well as sites 32, 39 and 42 from its historic sites inventory, and has amended the Addendum to its Historical Resources Working Paper as follows:

> "From the above list, five sites have been deleted by County action: sites 32, 34, 49, 42 & 57. Sites 34 and 57 are not within the purview of the Rural Comprehensive Plan and thus are the responsibility of other planning efforts. Site 32 (Keeney House) is no longer considered historically significant because the structure has been relocated on its site and has been remodeled both inside and outside. Site 39 (Paschelke House) is incorrectly represented in the State Inventory and has been extensively remodeled. Site 42 (Fall Creek Christian Church) has been remodeled several times from its original use as a school building, and is being expanded. These sites should be exempted from the Historical Combining District which is being applied to the other sites on the above list."

Conclusion

Requirement 5b has been met.

Requirement

6. Oregon Recreation Trails:

a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

Response

Lane County has amended the Recreational Resources Working Paper (p. 15) by inserting a new paragraph indicating that ODOT has supplied the County with detailed maps of trail segments. Such information is included as Appendix A to the Working Paper (Ord. No. PA 892).

Conclusion

Requirement 6a has been met.

Requirement

6. Oregon Recreation Trails:

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

Response

Goal 5 (Policy 4) has been replaced with the following new policy (Ord. No. PA 892):

"The County shall recognize and acknowledge existing and potential recreational trails designated by the Oregon Parks Outdoor Recreation Plan, shall cooperate with the Oregon Department of Transportation in the identification of specific routes for potential trails, and in the completion of applicable steps of OAR 660-160-000/025. Existing developed trails shall be displayed on the County's planning documents."

Conclusion

Requirement 6b has been met.

Requirement

7. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.

Response

The County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892). This addendum recognizes Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir as within the State Scenic Waterway system (p. 8). It also recognizes portions of the Alsea River and Steamboat Creek that are on the federal and state potential lists (p. 9).

Conclusion

Requirement 7a has been met.

Requirement

7. Scenic Rivers and Waterways:

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.

Response

Policy 5 has been replaced with the following policy language:

"The County shall cooperate with appropriate state and federal agencies in the selection of wild and scenic rivers, and will cooperate with these agencies in the completion of applicable steps of OAR 660-16-00/025 in making such selections" (Ord. No. PA 892).

Conclusion

Requirement 7b has been met.

Requirement

8. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflicting-resolution recommendations contained in the Metro Plan Update Working Paper.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 5

Lane County complies with Goal 5.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

Requirement

1. Amend the Development Code to require review of any proposed development within known geologic hazard areas.

Response

Lane County Development Code was amended (ORD. 9-84) to include the following provision (LC 16.005):

> "(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of an application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose."

Conclusion

The requirement has been met.

The County Development Code has been amended to require a review of any proposed development that is found to present a threat to life and property.

Requirement

2. Adopt standards which will be applied to development in known geologic hazardous areas.

Response

Lane County Development Code was amended (Ord. 9-84) to include the following standards pursuant to LC 16.005(2) cited previously under Goal 7, Requirement 1 (LC 16.005):

> "(3) Conditions. The following conditions may be imposed at the time of approval of a development for which a permit or application is required and for which a finding has been made as required in LC 16.005(2) above in order to ensure site and area stability:
>
> (a) Maintain vegetation and eliminate widespread destruction of vegetation.
>
> (b) Carefully design new roads and buildings with respect to:
>
> (i) Placement of roads and structures on the surface topography.
>
> (ii) Surface drainage on and around the site.
>
> (iii) Drainage from buildings and road surfaces.
>
> (iv) Placement of septic tank disposal fields.
>
> (c) Careful construction of roads and buildings:
>
> (i) Avoid cutting toeslopes of slump blocks.
>
> (ii) Careful grading around the site, especially avoiding oversteepened cut banks.

(iii) Revegetating distubed areas as soon as possible.

(d) Certification by a geologist or engineer that the above conditions have been complied with and/or that a hazard does not exist."

Conclusion

The requirement has been met.

Lane County has adopted appropriate standards which will be applied to development in geologic hazard areas.

Conclusion - Goal 7

Lane County complies with Goal 7.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 7.

GOAL 11: PUBLIC FACILITIES AND SERVICES

Requirement

1. Adopt a plan policy which specifies the appropriate levels of service for rural areas, including unincorporated minor development centers and rural service centers. Note: This IOTC can be satisfied by adopting a policy identifying land classifications and service levels similar to those contained in the Public Facilities and Service Working Paper--Appendix B. If Appendix B is used, the classification titles must be amended to correspond with "current" classification titles (Example: Forest Lands I is now called Non-Impacted).

Response

Through the adoption of Ordinance No. PA 889 (Item 13), Lane County deleted Goal 11 Policies 1 and 2 and replaced them with the following:

"Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category, either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category."

The County also adopted Policy No. 6 which references descriptions of their plan designations and service levels which are as follows:

Forest Land

Nonimpacted (F-1):

> "Service Level: No minimum level of services is established for this category as it is intended primarily for resource management and not for habitation."

Impacted (F-2):

> "Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur space population patterns are expected."

Agricultural Land

Exclusive Farm Use:

> "Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur, sparce population patterns are expected."

Natural Resource

Mineral:

> "Service Level: No minimum level of services is established. Category is intended for resource management and not habitation."

Rural Residential:

> "Service Level: Schools, on-site sewage disposal, individual water supply systems, electrical service, telephone service, rural level fire and police protection, reasonable access to solid waste disposal facility."

Community:

> "Service Level: Schools, on-site or community sewage disposal, individual or community water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility."

Rural Commercial:

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Industrial (outside community designation):

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Park or Recreation:

"Service Level: No minimum level of services is established for Park or Recreation areas outside committed areas. Service level for Park or Recreation areas inside committed areas shall be consistent with that level required for the Community or committed area outside of a Community."

Marginal Lands:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation."

Nonresource:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation. The service level for cluster subdivisions of nonresource shall be consistent with Goal 2 policy 24."

Conclusion

Lane County satisfies this requirement.

Requirement

2. a. By policy or zoning provisions, limit development (in a manner consistent with Goal 11 (and the County's decisions regarding rural sewage systems) within unincorporated rural communities with known or suspected sewerage problem (Chesire, Elmira, Heceta, Goshen, Mapleton, Marcola and Vaughn); or

   b. Provide additional information which justifies in a manner consistent with the discussion under Goal 11, the county's decisions regarding development in rural communities with known or suspected sewerage problems.

Response

With the adoption of Ordinance 9-84, Lane County amended Chapter 16.004(5) of their Development Code to address IOTC 2a by including the following:

> "Prior to the zoning or rezoning of land under this Chapter, for lands situated within the designated community areas listed below, an affirmative conclusion stating the reasoning and facts relied upon, must be made that densities allowed by the proposed rezoning are low enough to provide reasonable assurance that any existing sewage problems will not be further aggrevated by development of the subject property:
>
> (a) Cheshire
> (b) Elmira
> (c) Goshen
> (d) Heceta
> (e) Mapleton
> (f) Marcola
> (g) Vaughn"

In addition, LC 13.050(12)(b), which established the County's requirements for obtaining individual sewage disposal systems, requires "reasonable proof that each prosposed parcel or lot can accommodate an individual sewage disposal system and at least one acceptable replacement area which meets the criteria established by OAR Chs.340-71-005 to 45." The above requirement provides adequate assurance that additional development in the seven referenced communities with existing or potential sewage problems will not aggrevate the sewerage situation.

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend Sections 13.050(12) and 13.050(13) to indicate that the establishment of rural sewage or water systems must be consistent with the appropriate of levels of service policies required by Goal 11, IOTC 1.

Response

Ordinance 10-84 amends Chapter 13.010(12) and (13) of Lane County's Development Code to require that the establishment of rural sewerage facilities and water systems shall be consistent with RCP Goal 2 Policy 24 and RCP Goal 11 Policies, including level of service definitions. Lane County also indicates the following:

> "With this ordinance, Land County has amended Sections 13.050(12) and (13) to provide that the

establishment of rural sewerage and water facilities must be consistent with RCP Goal 2 Policy #24, provision of services to cluster subdivisions in the rural area, and RCP Goal 11 policies. By requiring consistency between the proviion of services in the rural areas and the above-mentioned policies, Lane County is ensuring the 'timely, orderly and efficient provision of services' to new development approved within the rural areas. Sections 13.050(12) and 13.050(13) now require community sewer or community water systems be established only in a manner consistent with public facility and service policies (including appropriate levels of service for rural areas)" (Ordinance 10-84, Exhibit A, p. 2).

Conclusion

Lane County satisfies this requirement.

Conclusion - Goal 11

Lane County complies with Goal 11. Lane County's Public Facilities Working Paper, Goal 11 Plan Policies and Development Code requirements as well as specific amendments which include: (1) level of service definitions for each plan designation, (2) a requirement to examine proposed zone changes in suspected rural "sewerage" problem areas to insure that any existing problems will not be aggrevated through an intensification of density, and (3) policy and ordinance requirments that rural development consistent with the specified rural level of service definitions, all contribute to the orderly provision of public facilities and services in rural Lane County.

GOAL 15: WILLAMETTE RIVER GREENWAY

Requirement

1. Amend zoning maps 304, 304A, 305, 330, 332, 347, 396, 411, 417, 418, 425, 437, 440, 448, 471, 528, 1005, 1006, 1008, 1010, 1011, 1012, and 1013 to display the correct LCDC-approved Greenway Boundary.

Response

The County has amended the zoning maps listed above that apply to areas outside the Eugene/Springfield Metro Area so as to display the correct LCDC-approved Greenway Boundary. Changes to maps 347, 396, 411, 437, 528, 1005, 1006, 1008 and 1012 will be corrected in conjunction with the Eugene/Springfield Metro Area continuance.

Conclusion

The requirement has been met.

Requirement

2. Amend the Greenway ordinance to clearly require protection of significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints, per Sections C.3.d., a., and c. of the Goal.

Response

Lane County has eliminated the term "guidelines" from the Greenway Development Permit Approval section of its Greenway Ordinance (Section 16.254(4)) and has added the following as criteria for permit approval:

> "(i) Preservation and maintenance of land inventoried as 'agriculture' in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.
>
> (ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas...
>
> (xiv) Protection of significant fish, wildlife habitat and natural areas."

A decision to approve a Greenway Development Permit must require findings that the proposed intensification, change of use or development conforms to these (as well as other) criteria, according to Section 16.254(4) of the Greenway Ordinance.

Conclusion

The requirement has been met.

Requirement

3. Amend Section 16.254(2)(k) of the Greenway Ordinance to eliminate all language following the phrase, "or personal noncommercial use."

Response

Section 16.254(2)(k) of the Greenway Ordinance has been amended to eliminate all language following the phrase, "or personal noncommercial use." This was done so that only the propagation or cutting of timber for public safety or personal noncommercial use is exempt from local Greenway Permit review, consistent with Goal 15.

Conclusion

The requirement has been met.

Requirement

4. Amend Section 16.254(c) of the Lane Code to ensure that only water-dependent and water-related uses themselves are exempt from the 100-foot Greenway setback requirement.

Response

Section 16.254(b) has been amended (Ord. No. 11-84) so as to eliminate the phrase "those in conjunction with." Therefore, the Code exempts only water-dependent and water-related uses themselves from the Greenway setback requirement.

Conclusion

The requirement has been met.

Requirement

5. Amend Section 16.254(6) of the Lane Code to require notification of ODOT of actions taken on applications for intensification, change of use or development in the Willamette Greenway.

Response

Section 16.254(6) of the Code has been amended to require notification of ODOT of actions taken on applications for a Greenway Permit, as required.

Conclusion

The requirement has been met.

Requirement

6. Amend Section 16.254(2)(a) of the Greenway Ordinance to require either:

   a. Greenway permits in areas designated "urban" beyond 150 feet of the ordinary low water line, or

   b. Some other mechanism which ensures protection of Greenway values in these areas.

(Note: This could also be accomplished by LCDC amendment of the ODOT Greenway Plan by changing the designation of the area south of the Cottage Grove UGB from "urban" to "rural.")

Response

Section 16.254(2)(a) has been deleted from the Greenway Ordinance. This has the effect of requiring Greenway permits in areas designated "urban" beyond the 150-foot line.

Conclusion

The requirement has been met.

Requirement

7. Adopt implementing measures that protect the Pudding Creek Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan, which has been segmented and continued until October 11, 1984.

Requirement

8. Either adopt findings which explain how the current zone designations for Big Island protect the Confluence Heronry, or adopt other implementing measures that protect the Confluence Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Requirement

9. Modify Mineral and Aggregate Resources Policy 11 to also reference Section C.3.d. of Goal 15 to ensure protection and significant fish and wildlife habitats in the Willamette Greenway.

Response

Lane County has amended Mineral and Aggregate Policy 11 to also reference Section C.3.d. of Goal 15 (Ord. No. PA 892).

Conclusion

This requirement has been met.

Conclusion - Goal 15

Lane County complies with Goal 15.

The findings contained in this supplemental report and those contained in the Department's July 19, 1984 review support the decision that Lane County complies with Goal 15.

DW/MJR/CP:mg
0559D/517A

ADAMS Shawna L

From:	ADAMS Shawna L
Sent:	Thursday, March 18, 2021 7:06 PM
To:	lsv1953@gmail.com; 'Kimberly O'Dea'; DAVIES Anne C; 'Sean Malone'; Michael E. Farthing; Jim McLaughlin; Jeremy Keepers
Cc:	BELL Amber R; EICHNER Lindsey A; BAUDER Jared W
Subject:	RE: O'Dea 17 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066
Attachments:	FW: King: Open Record letter for PA 20-05066 and PA 20-05064

Attached is email 17 of 17 with the applicant's open record period #1 submittals for the King appeals. This is the final submittal for Open Record Period #1. All other submittals have been emailed under separate cover.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 7:04 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 16 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 16 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 7:03 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 15 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 15 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 7:01 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 14 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 14 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 7:00 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim

McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 13 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 13 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:59 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 12 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 12 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:56 PM
To: lsv1953@gmail.com; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; DAVIES Anne C <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; Michael E. Farthing <mefarthing@yahoo.com>; Jim McLaughlin <cewmjtm@gmail.com>; Jeremy Keepers <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 11 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 11 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:50 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 10 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 10 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:45 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 9 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 9 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:44 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 8 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 8 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:44 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 7 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 7 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:43 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 6 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 6 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:41 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 5 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 5 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:40 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim

McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 4 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 4 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:39 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 3 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 3 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 6:37 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: O'Dea 2 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached is email 2 of 17 with the applicant's open record period #1 submittals for the King appeals.

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 5:49 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: O'Dea 1 of 17 Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 4:55 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim

McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: LWLC Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Attached are LandWatch Lane County's open record period #1 submittals for the King appeals.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 4:44 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: RE: Staff Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Please disregard previous PDF as it did not include the correct document version. Please see Corrected staff submission, that matches the hard copy in the record.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: ADAMS Shawna L
Sent: Thursday, March 18, 2021 4:05 PM
To: 'lsv1953@gmail.com' <lsv1953@gmail.com>; 'Kimberly O'Dea' <kimodea@landuseoregon.com>; 'DAVIES Anne C' <ADAVIES@Lcog.org>; 'Sean Malone' <seanmalone8@hotmail.com>; 'Michael E. Farthing' <mefarthing@yahoo.com>; 'Jim McLaughlin' <cewmjtm@gmail.com>; 'Jeremy Keepers' <jjk.timber@gmail.com>
Cc: BELL Amber R <amber.bell@lanecountyor.gov>; EICHNER Lindsey A <lindsey.eichner@lanecountyor.gov>; BAUDER Jared W <jared.bauder@lanecountyor.gov>
Subject: Staff Open Record #1 3/18/21 Hearing Submittal for 509-PA20-05064 & 509-PA20-05066

Good afternoon Hearings Official and interested parties,

Attached is staff's open record period #1 submission for the King appeals. Many more emails are to follow with submittals from the applicant and LandWatch Lane County- assuming email box capacity on the receiving side.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408

Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

Additional Information Submitted

Date Stamp
REC
MAR 19 2021
hard copy

Submitted By: Kim O'Dea
Phone Number: 541-954-0095
Email Address: kimodea@landuseoregon.com
Project Address:

LANE COUNTY OREGON

Permit Number (BP, PA, SP, SI): PA 20-05064
Submittal Description: March 18, 2021 email submitted
Material Submitted:
Please Route to Shawna Adams

Type of Submittal:

☒ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other:

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to:
Amount Due:
☐ Approved
☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swm 12/26/2018

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.0095
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM

March 18, 2021
OPEN RECORD LETTER

Anne Davies
Lane County Hearings Official
c/o Shawna Adams
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: King and EJK Inv.; Reissue Expired Director's Decision for Template Dwellings; PA 20-05066 and PA 20-05064, Map 21-35-07-30, TL 2800 and 2900

Ms. Davies:

As reflected in the Policy 11 of the RCP and its supporting working paper, the analysis must be based on an "overall density." I suspect we will be arguing about what that means.

The term "overall" must go beyond the subject property. Webster's Third defines, "overall" as, "all over," "including everything between," "taking all *** into account," and "viewed as a whole." Some guidance is potentially provided in the original Goal 5 working paper,

> *"The county will be divided into regions convenient for planning purposes. These have not yet been determined, but will probably result in 10-20 regions in the county."*

Working Paper, Exhibit J, page 25. This discussion of regions "convenient for planning purposes" supports an interpretation that "overall" must mean something more than the subject property. It also provides guidance as to how many regions might occur. It must be noted that the "regions" include all Big Game, meaning that there will be regions for Major, Peripheral and Impacted. A total number of all regions would be "10-20."

Ultimately, this language was not adopted. Thus, "overall" may still simply mean, "over the entire Major Big Game Range."

I. Major Big Game: One big region or two regions divided by a break in connectivity

In our hearing submission, the applicant provided two regions for Major Big Game, based on connectivity. LCOG Report dated March 2, 2021, Map 2 and Map 3. Exhibit D and Exhibit E show potential, logical regions for Peripheral Big Game and Impacted Big Game. All total, this results in roughly 15-18 Big Game regions, consistent with the RCP guideline of "10-20." This

supports our division of Major Big Game into two regions, with the total number of Big Game regions totaling 15 to 18.

II. Major Big Game: Five regions divided by major highway corridors

Even if the County is divided into regions based on major highway corridors, which makes sense from a planning perspective, the proposed template dwelling does not result in an overall density less than ODFW recommendations. The subject property is located north of Highway 58 near Oakridge, which places it in Region E (the east region). Based on the attached LCOG report dated March 17 ("Major Big Game Range in Lane County RCP by Highway Region"), the density for Region E is 1 dwelling per 1,979 acres. Exhibit F. The addition of two more dwellings does not change the overall density. Density is well below ODFW recommendations.

III. Major Big Game divided by watershed regions

Even if the County is divided into regions based on watershed, as was anticipated prior to LCDC acknowledgment[1], the proposed template dwellings do not result in an overall density less than ODFW recommendations. The subject property is located north of Highway 58 near Oakridge, placing it in Unit 5. Exhibit G and Exhibit H. Based on the attached LCOG report dated March 17 ("Major Big Game Range in Lane County RCP by Subarea"), the density for Unit 5 is 1 dwelling per 7,370 acres. Exhibit I. The addition of two more dwellings does not change the overall density. Density is well below ODFW recommendations.

IV. Summary

"Overall density" is not defined in the RCP. Webster's Third defines "overall" as "including everything" or "viewed as a whole." As such, one region for each type of Big Game is supported by the plain language. The applicant has provided data for overall Major Big Game density under this analysis as part of its hearing submission.

Another method is to divide Lane County into regions, with an overall density for each region. The applicant has provided three scenarios for this: 2 Major Big Game regions based on connectivity; 5 Major Big Game regions based on major corridors; and 12 Major Big Game regions based on watershed. All are convenient for planning purposes.

Under any of these methods, the subject template dwelling does not result in a Major Big Game density that exceeds 1 unit per 80 acres.

V. Focus on subject property under *Nimpkish*

It is true that the *Nimpkish* decision uses the word, "subject property" in places. However, the question before LUBA was whether Policy 11 applied directly. What Policy 11 meant, and how

[1] This was a preliminary attempt to comply with Goal 5. The attempt was ultimately rejected by LCDC because each region had its own criteria. LCDC did not consider that approach "comprehensive."

it should be applied, was not before LUBA. Flippant comments in the LUBA decision relating to "subject property" are mere dicta. Any reliance on them would be an attempt to skirt real legal analysis based on the language of Policy 11. Neither LUBA nor Landwatch can wish away the term "overall." It must be given weight. In fact, ODFW comments relating to "clustering" of dwellings further show that "overall" means something more than the subject property.

VI. Policy 11 does not apply directly because the required ESEE analysis was done as part of the County acknowledgment process.

In *Nimpkish*, the property owner was represented by Mike Farthing. For the reasons set for in Mr. Evans briefs, any required ESEE analysis has already been done. The County took a "zoning" approach. The arguments set forth in the attached briefs (Exhibit K1 and K2) are incorporated herein and adopted as my own, as are any of Mr. Farthings's arguments contained within the LUBA record. Exhibit K3.

Sincerely,
/s/ *Kimberly JR O'Dea*
Kimberly J.R. O'Dea

Exhibits:

D: Map of Peripheral Big Game Regions
E: Map of Impacted Big Game Regions
F: 3/17/21 LCOG Report (Hwys)
G: Watershed Region map
H: Ord 741 (Middle Fork Watershed)
I: 3/17/21 LCOG Report (Subareas)
J: Flora and Fauna Working Paper and Adendum
K: Nimpkish brief and record

Lane County RCP Peripheral Big Game Range

LEGEND

outline of potential regions within which areas of Peripheral Big Game Range are found; the areas are roughly based upon watershed boundaries for planning purposes

Peripheral Big Game Range

scale 1" = 7000'

0 1750 3500 7000 Feet

N

Base Informaiton Source: Lane County GIS

EXHIBIT D

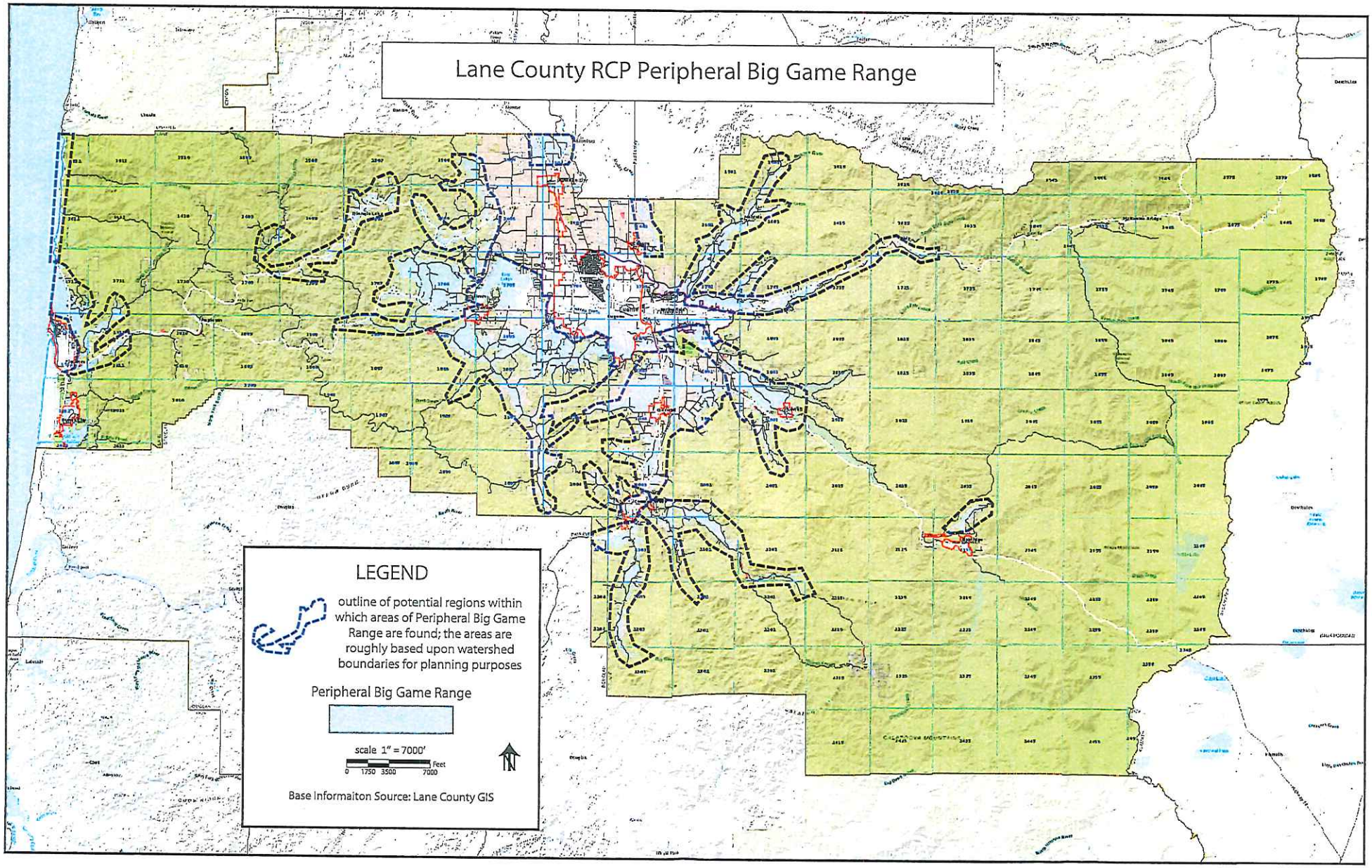

Lane County RCP Peripheral Big Game Range
LEGEND
outline of potential regions within which areas of Peripheral Big Game Range are found; the areas are roughly based upon watershed boundaries for planning purposes
Peripheral Big Game Range
scale 1" = 7000'
0 1750 3500 7000 Feet
N
Base Informaiton Source: Lane County GIS

EXHIBIT D

Waldport
Lincoln
Benton
William Finley Nat'l Wildlife Ref
Pacific Hwy
Harrisburg
Junction City
COBURG
Triangle Lake
Coburg
Veneta
Eugene
Springfield
Mapleton
Creswell
Lowell
Cottage Grove
Oakridge
Sweet Home
Linn
Foster Lake
Marcola
Vida
McKenzie Bridge
Jefferson
Deschutes
Lava Lake
Cultus Lake
Klamath
Douglas
Drain
Yoncalla
COASTAL RANGES
Coos

Legend

Impacted Big Game Range

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Lane County GIS

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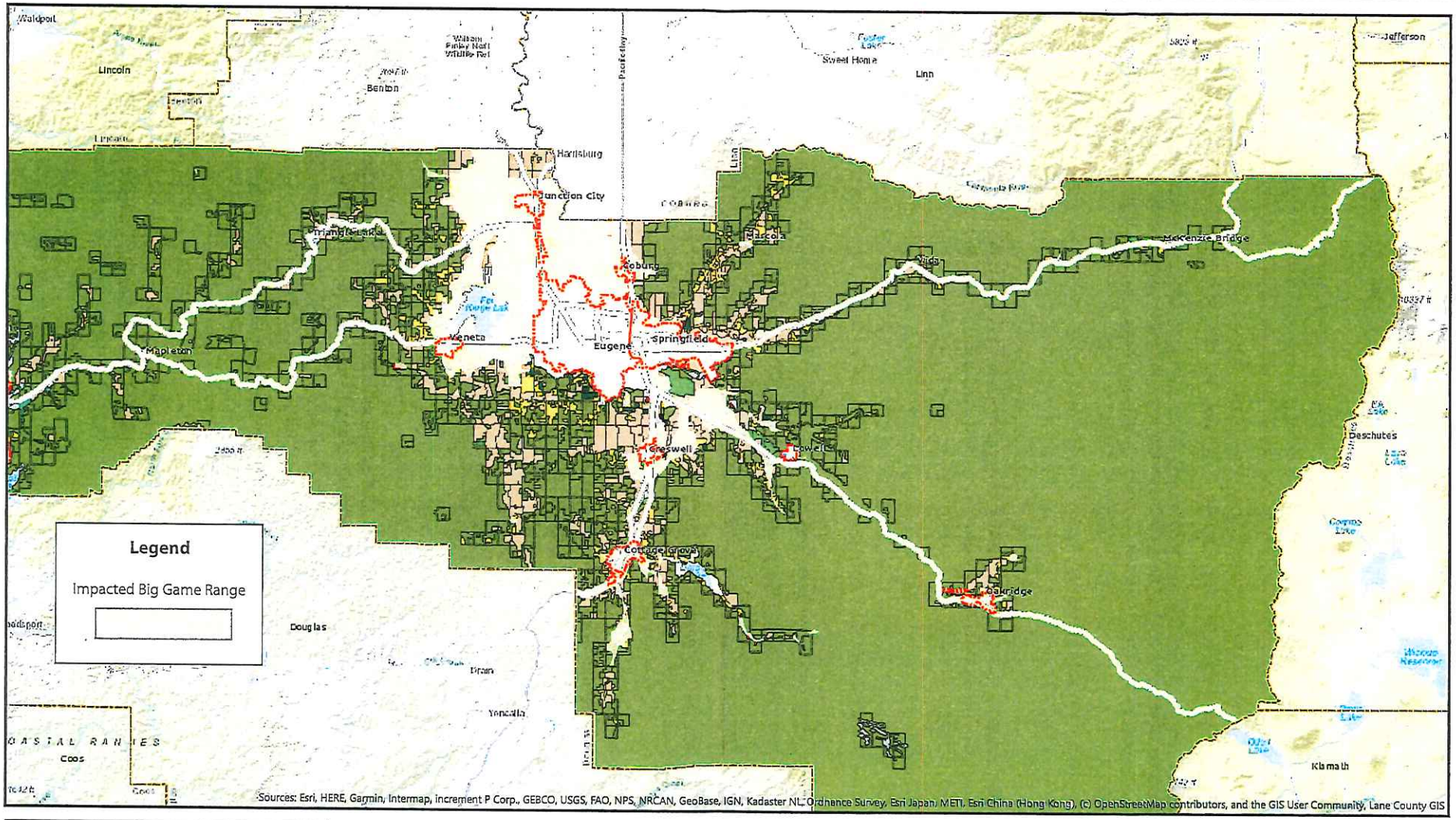
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0 25,000 50,000 100,000 Feet

Impacted Big Game Range

Lane County, Oregon

EXHIBIT E



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Impacted Big Game Range

Lane County, Oregon

EXHIBIT E

March 17, 2021

Major Big Game Range in Lane County RCP by Highway Region

I. OBJECTIVES AND PROCESS

There were three objectives for the analysis:

1. Using the Highway Region Map provided by the client, identify Highway Region E using I-5, Highway 126 and Highway 58 as boundaries.
2. Determine the acreage of the Major Big Game Range within Lane County's Rural Comprehensive Plan outside of Metro Plan, UGB's and Developed and Committed Areas within Highway Region E.
3. Identify the number of dwellings that fall within that amount of acreage for Highway Region E.
4. Determine the overall density of dwellings per acre for Highway Region E.

ESRI GIS software and geoprocessing tools in combination with various data (see sources below) was used to perform the analysis, which included filtering specific data both spatially and tabularly.

The acreage within the study area was calculated from the digitized boundary layer of the Major Big Game Range. This acreage was then refined by subtracting acreage that was found to be within the Metro Plan, UGB's and Developed and Committed Areas. An analysis was performed for the area between Hwy 126 & Hwy 58, from I-5 to the County line, known as "Highway Region E".

Spatial and tabular filters were applied to the Lane County's Rural Plan Designation layer, specifically, those designated Residential, Commercial, or Industrial. All lands that have a plan designation of R, C or I that are outside of UGB's and the Metro Plan boundary by necessity must be within a Developed and Committed Lands Exception (D&C) Area to receive that Plan designation. All areas within a D&C Area are considered Impacted Big Game Range (per Lane County RCP Goal 5 Flora and Fauna Policy #10) and not Major Big Game Range. Therefore, any of the D&C areas that lie within the digitized boundary layer of the Major Big Game Range were excluded from the total acreage calculation. Since there is no specific digitized layer for D&C areas outside of the Metro Plan, the only way to identify and exclude these lands was to utilize the Rural Plan Designation layer.

Tabular filters were also applied to the regional address layer to determine residential dwellings outside of exclusion areas. Specifically, only addresses with a HUD/BPR residential use code (D,K,M,N,S,Q) were used. The official reference for the HUD/BPR codes (also commonly known as the SLUCM codes) is the Standard Land Use Code Manual from the Urban Renewal Administration, Bureau of Public Roads

EXHIBIT F

published in 1965. The coding scheme has been modified in its details to meet the local needs of Lane County. Address points are almost always located where the structure/dwelling exists, and there may be instances where a portion of a given parcel or property is within an exclusion area, while the dwelling is not.

II. ANALYSIS

The client has identified five Highway Regions: Region A, Region B, Region C, Region D and Region E, as mapped on Map 1. A detailed analysis has been done for Region E only.

Background Analysis Results (acreage values are as mapped):
Total Acres (land & water) in Lane County = 2,955,953
Major Big Game Range in Lane County (outside of exclusion areas) = 2,596,120 acres

Map 2:
Region E (Between Hwy 126 & Hwy 58, from I-5 to the County line)
Major Big Game Range in Lane County- (Region "E") outside of exclusion areas = 856,956 acres
Residential Addresses (dwellings) outside of exclusion areas and within Region "E" = 433
Overall Density = 1 dwelling / 1,979 acres

III. EXHIBITS

Map 1: Map of Highway Regions (provided by client)
Map 2: Map of Major Big Game Range within Region E

IV. DATA SOURCES

Lane County-
- Major Big Game Range Habitat Area
- Rural Plan Designations

Lane Council of Governments (LCOG)-
- Addresses
- Eugene/Springfield Metro Plan Boundary
- Lane County Boundary

State of Oregon-
- Urban Growth Boundaries
- PLSS Township/Range

National Hydrography Dataset (NHD)-
- Water Features

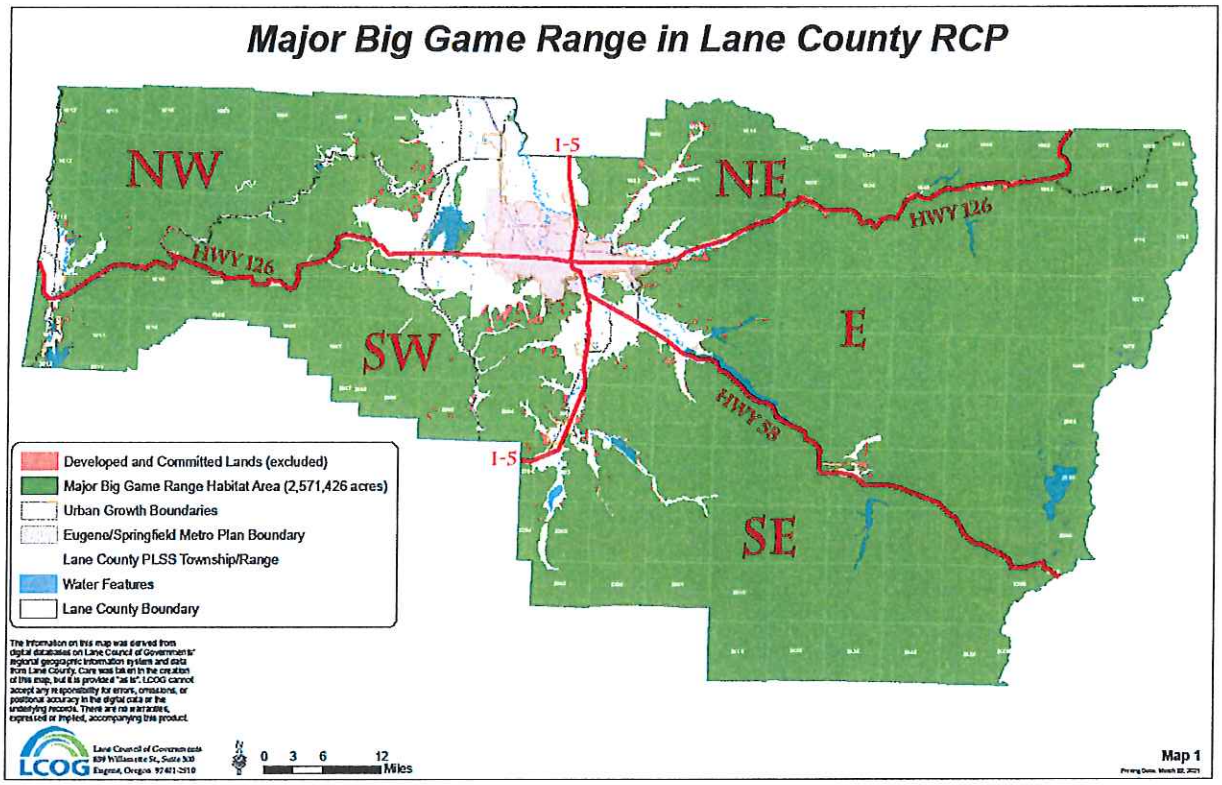
---All data except for the analysis output can be verified here:
https://lcmaps.lanecounty.org/LaneCountyMaps/ZoneAndPlanMapsApp/index.html

Created on 03/17/2021 by: Kyle Overstake – GIS Associate, Lane Council of Governments

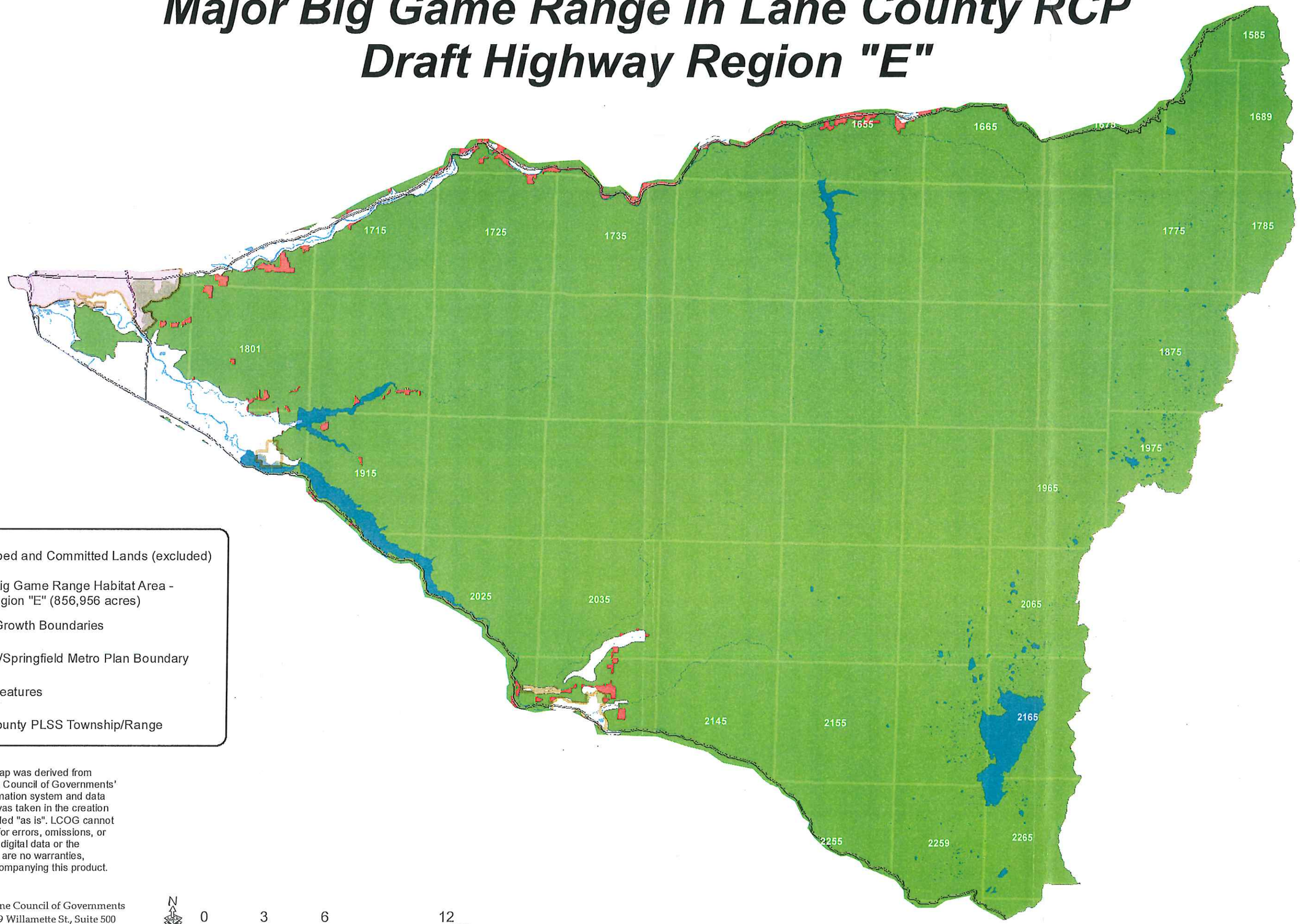
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Exhibits:

Map 1



Major Big Game Range in Lane County RCP
Draft Highway Region "E"



- Developed and Committed Lands (excluded)
- Major Big Game Range Habitat Area - Hwy Region "E" (856,956 acres)
- Urban Growth Boundaries
- Eugene/Springfield Metro Plan Boundary
- Water Features
- Lane County PLSS Township/Range

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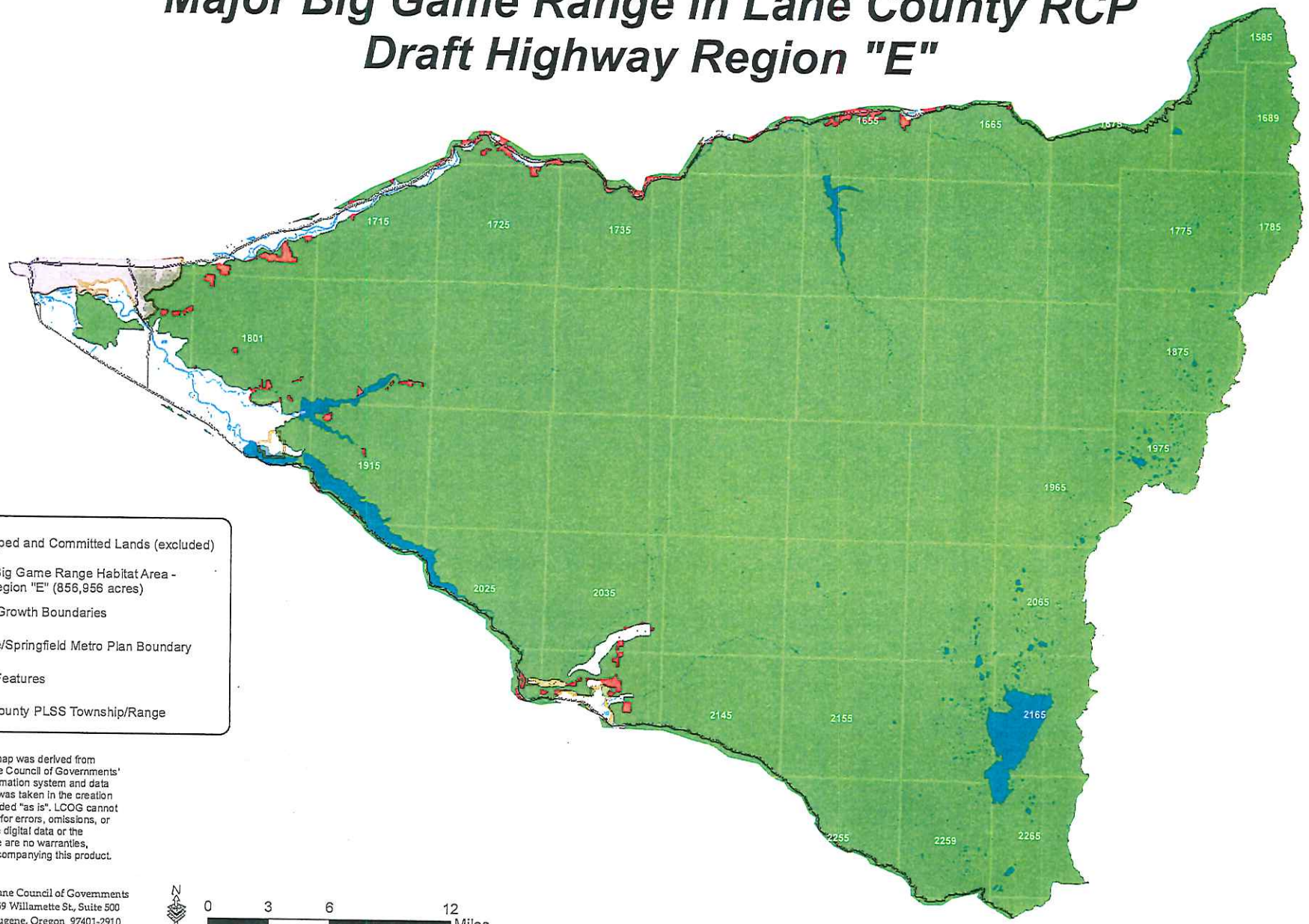
0 3 6 12 Miles

Map #2

Printing Date: March 12, 2021

OF EXHIBIT F

Major Big Game Range in Lane County RCP
Draft Highway Region "E"



- Developed and Committed Lands (excluded)
- Major Big Game Range Habitat Area - Hwy Region "E" (856,956 acres)
- Urban Growth Boundaries
- Eugene/Springfield Metro Plan Boundary
- Water Features
- Lane County PLSS Township/Range

The information on this map was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the creation of this map, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, expressed or implied, accompanying this product.

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0 3 6 12 Miles

Map #2

Printing Date: March 12, 2021

SUBAREA Plan - Overall map

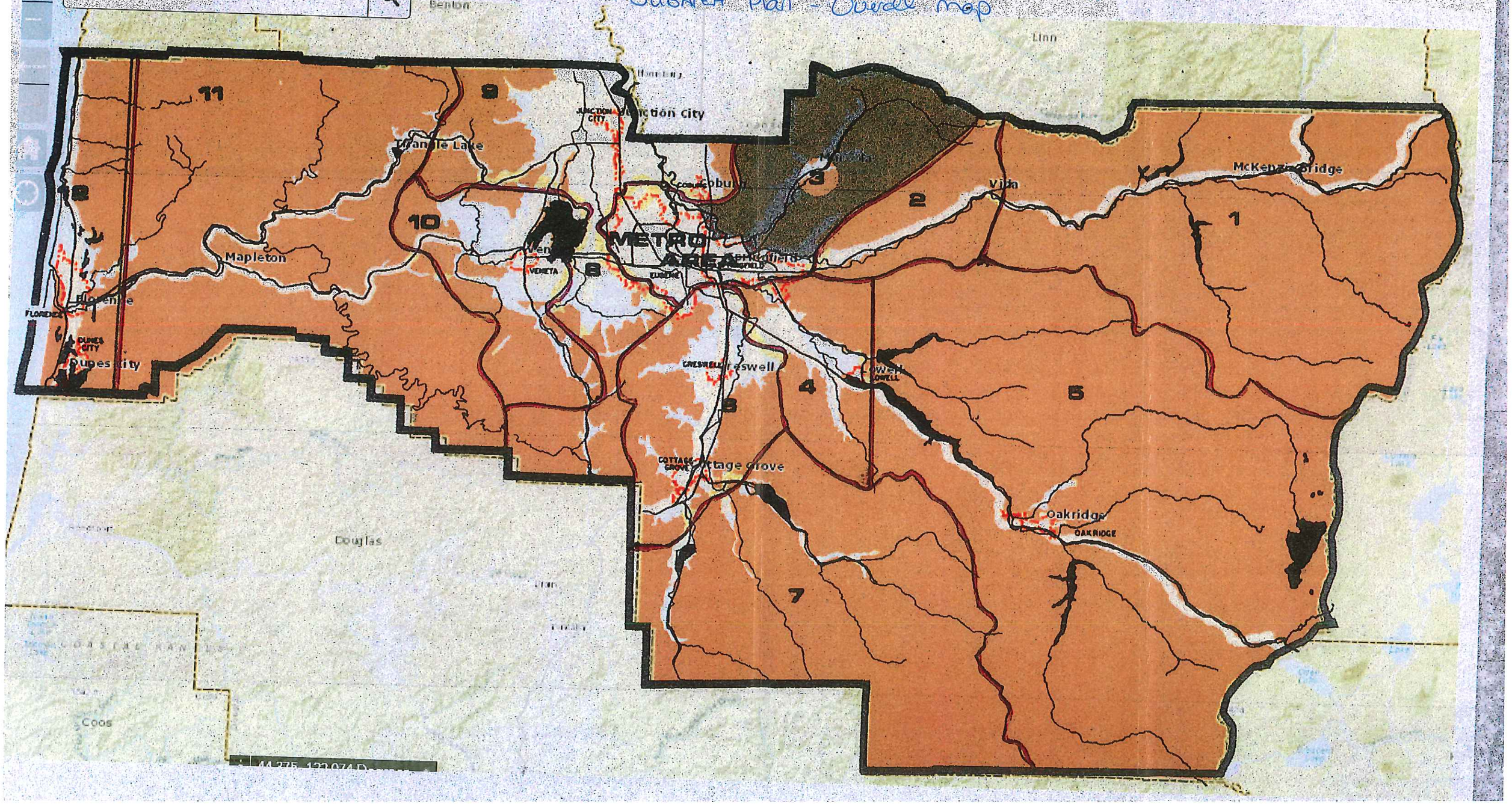


EXHIBIT G

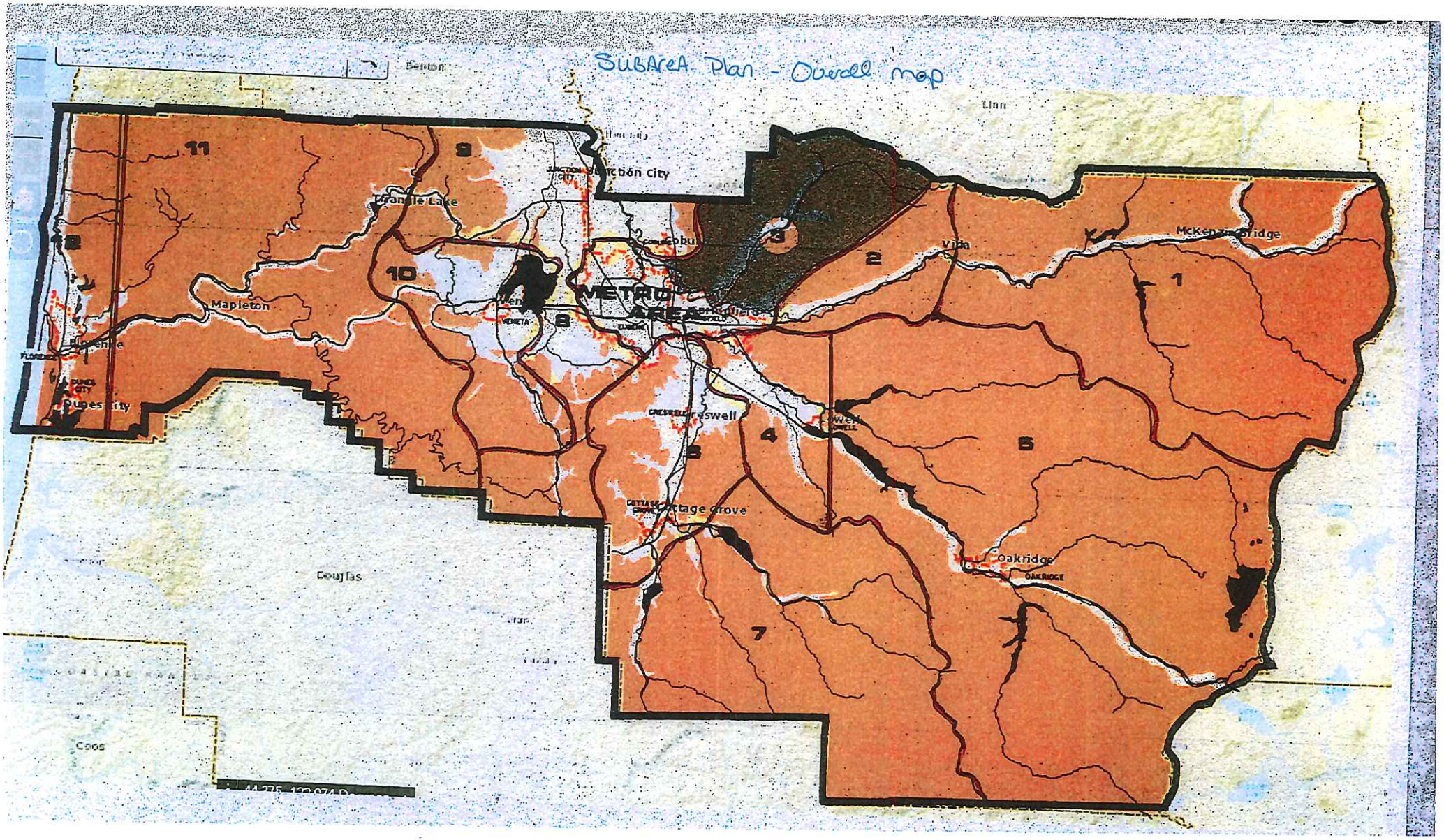

Subarea Plan - Overall map
11
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12
10
8
3
2
1
4
5
6
7
Junction City
Mapleton
Florence
Eugene
Springfield
Coburg
Veneta
Creswell
Cottage Grove
Oakridge
McKenzie Bridge
Vida
Linn
Douglas
Coos

EXHIBIT G

Fidelity National Title

Includes
Plan Diagrams

EXHIBIT H

PRELIM W/ CHANGES
INCLUDES MAPS

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 741

) IN THE MATTER OF ADOPTING THE
) UPPER MIDDLE FORK SUBAREA PLAN
) AS A COMPONENT OF THE COUNTY
) GENERAL PLAN, AN ELEMENT OF THE
) COMPREHENSIVE PLAN FOR LANE COUNTY

WHEREAS the Board of County Commissioners has received from the Lane County Planning Commission a resolution dated April 17, 1979, of record herein, recommending approval of the plan known as the Upper Middle Fork Subarea Plan; and

WHEREAS the Board of County Commissioners has received and considered the Upper Middle Fork Subarea Plan, Second Draft, dated April 1979, public testimony and correspondence relating thereto; and

WHEREAS, the Board of County Commissioners has performed its public hearing and other duties in accordance with applicable law, now therefore

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS: That the Upper Middle Fork Subarea Plan, Part I, Second Draft, dated April 1979 (copy attached hereto and indicated as appendix A), as modified by changes indicated in the Staff Report to the Board of County Commissioners, dated August 22, 1979 (copy attached hereto and indicated as appendix B), and as modified by the Board of County Commissioners (copy attached hereto and indicated as appendix C), and including certain "Exceptions to Statewide Planning Goal #3: Agricultural Lands" (copy attached hereto and indicated as appendix D), be ADOPTED.

INTENDED that the "Upper Middle Fork Subarea Plan, Part II, Technical Report", be recognized as supportive information used in the preparation of the Plan;

ENACTED this day of , 1979.

8-22-79

Chairman,
Lane County Board of Commissioners

APPROVED AS TO FORM
DATE lane county
OFFICE OF LEGAL COUNSEL

Recording Secretary
for this Meeting of the Board

ORDINANCE NO. 741

In the matter of adopting the Upper Middle Fork Subarea Plan as a component of the County General Plan, an element of the Comprehensive Plan for Lane County.

Appendix ~~EXHIBIT~~ A

2nd Draft

COMPREHENSIVE LAND USE PLAN

for

THE UPPER MIDDLE FORK SUBAREA

As modified by action of
Lane County Planning Commission
on April 17, 1979

PART I

PLAN REPORT

Lane County, Oregon
December 1978

Department of Environmental Management, Division of Planning

LANE COUNTY BOARD OF COMMISSIONERS

Jerry Rust, Chairperson
Bob Wood
Archie Weinstein

LANE COUNTY DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Rich Owings, Director
Lee Miller, Director, Planning Division
Michael Copely, Senior Planner, Regional Planning
Bebe Crouse, Subarea Planner

Report prepared with assistance of: Lane Council of Governments

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I. FOREWORD: THE LANE COUNTY GENERAL PLAN

WHY A COUNTY PLAN?

The objective of planning is twofold--first, to identify and recommend solutions to problems relating to the physical, social and economic character of the County. Because of their complexity, problems such as the incompatible mixture of land uses, depletion and misuse of natural resources, transportation hazards and traffic congestion, inadequate public facilities and utilities, and limited housing and employment opportunities, require planning analyses and solutions.

Secondly, planning is intended to identify the nature and character of change and growth in the County and provide a basis for coordinated public and private action to plan for and guide this change and growth. Planning should insure that change and growth provides for the wise conservation and use of our natural resources, protects the natural environment, provides a balanced transportation system, strengthens the County's economy and, in general, improves housing and social opportunity for all County residents.

A plan serves as a guide and a basis for decision-making to public officials and private interests. As a public process, planning identifies problems, and points the way toward their resolution before social and economic costs are beyond local capability. In this way, planning "preempts" potential crisis situations.

POPULATION AND THE QUESTION OF GROWTH

By 1995, Lane County is expected to have a population of approximately 350,000, of which 102,000 people are expected to live outside the Eugene-Springfield metropolitan area. This "rural" population is expected to increase by nearly 35,000 additional people from the present 67,000. Almost 80,000 of the rural population is expected to be living within the central part of the County, within a half hour's commuting time from the Eugene-Springfield metropolitan area. Elsewhere, there are expected to be nearly 10,000 year-round residents in the coastal area (compared to some 6,000 today), almost 5,500 in the Oakridge

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area and some 7,000 people scattered in the more remote valleys (Upper McKenzie, Lake Creek, Row River and Coast Fork of the Willamette).

Increasingly many people are questioning the desirability of a continuation of present levels of growth. This plan does not attempt to establish what the absolute level of growth should be. Instead, it seeks to identify and deal with the growth which now seems likely.

WHAT IS THE COUNTY PLAN?

The County General Plan is comprised of four main parts:

1) The Goals and Policies Statement - This basic document sets general policies which serve as guidelines for specific recommendations of the other plan documents.

2) Community Plans - These 13 plans provide an analysis of several rural communities in Lane County with recommendations regarding land use, parks and recreation, transportation, and services and utilities.

3) Special Reports - Various technical reports, including the Water Quality Report and County Atlas.

4) Subarea Plans - The County has been divided into 12 subareas, based primarily on drainage patterns, in order to evaluate each area's natural and social characteristics in detail.

THE SUBAREA PLAN

Subarea Land Use Plans consist of two parts:

I. Plan Proposal - This portion of the plan contains a listing of major findings and recommendations about the subarea which are supported by the technical report.

II. Technical Report - This portion contains detailed information on the area's social and natural characteristics. It serves as the data base upon which the findings and recommendations of the Plan Proposal are based.

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The land use plan for the Upper Middle Fork Subarea follows. The information contained therein should be used as a guide for land use decisions in this Subarea.

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II. PLAN ADOPTION

THE REVIEW PROCESS

Initial Public Review

Based upon the data assembled in the Technical Report, a draft Plan Report is written. This proposal is then presented to the Subarea residents for their review and comment.

Besides informing residents of planned land use recommendations, the purpose of this review is to assure that the plan complies with local goals, verify the report's information with residents usually more familiar with the area than the planner and resolve any conflicting issues that may arise as a result of plan recommendations.

The plan may then be modified, if such action is warranted as a result of this public review, and passed on to the Planning Commission.

Planning Commission Action

The Planning Commission reviews the modified plan draft, hears public testimony regarding the plan, revises the document if they feel it necessary and makes a recommendation to the Board of County Commissioners with regard to plan adoption.

Board of County Commissioners Adoption

The final step to plan adoption is review by the Board of County Commissioners. Upon consideration of the Planning Commission recommendation and additional public testimony, the Board takes the final action, adoption of the Plan as an official ordinance, which brings legal status to the document.

ADOPTION ALTERNATIVES

As noted in the beginning, the Upper Middle Fork Subarea Plan is published in two reports: a Plan Report (Part I) and a Technical Report (Part II). The question can legitimately be

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raised as to which report, or what parts of either, should become the adopted plan for the Subarea.

Based on the experiences of many local governments in the United States, two alternatives become evident:

1. The entire planning study and plan proper (represented here by the Plan Diagram and associated findings and recommendations) can be adopted as a single unit. This accomplishes the task of making all background information a part of the Plan. It does not necessarily endorse that information, but a commitment is made to work with it and improve it as time goes by. Because the information is a part of the adopted plan, it can easily be used as the rationale for planning decisions, in case of a conflict or difficult decision.

2. The summary of the study, containing the "meat" of it, can be adopted. Generally, this consists of those findings, recommendations, and proposed land use designations (Plan Diagram and narrative) which emerge from the planning study. This was the procedure used in the metropolitan area's 1990 Plan. Background information is used to support the adopted statements, usually by reference, but is not actually adopted along with them. This accomplishes the end of permitting a relatively brief, succinct document to be adopted and used, without there having to be adoption of the more lengthy (and sometimes controversial) technical studies which back up the Plan. Of course, that information does not then have the status that adoption would otherwise have given it.

In the case of the Upper Middle Fork Subarea Plan, the first alternative would involve the adoption of both reports--Part I and Part II--after thorough public discussion and review. The second alternative would involve the adoption of the major portion (or all) of Part I only. Chapters V and VII of the report are the minimum that would have to be adopted, and the addition of Chapters IV and VI would be beneficial. Adoption of Part I in its entirety would allow the use of a complete, internally consistent report as the plan.

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The decision on what to adopt has to be made by the County's elected officials, advised by those whom they appoint to assist them in reviewing planning work. This cannot be done until public review and hearings have been completed; the review and hearing process may be helpful in making this decision.

THE ROLE OF ADOPTION

When a number of people, represented by their elected and appointed government officials, adopt a plan and/or planning study, they are in a very real sense making a commitment to attempt the achievement of what the plan proposes. This, of course, assumes that by the time of adoption (as will be the case in Lane County), thorough public review and hearings will have been carried out and the plan will be acceptable to the public. Adoption brings with it a legal status; the public has gone on record, before all citizens, that it intends to make use of the plan as a guide to decision-making.

In addition to this, when the plan is adopted, it is considered by other government units*--including the courts--to be a statement of policy by the adopting government. Therefore, decisions which are made by those other units (court decisions on land use questions, for example), often refer to the plan as their supporting reasons. The adopting government thus has the responsibility to use the plan as best it can, and improve on it through the planning process over the years.

Adoption also brings with it a distribution of planning information to the public. A plan report, available to any citizen, contains data, suggestions and recommendations that the public, through its government, has decided to make use of. The best way to make use of it is to enlist the support--through education--of all citizens. When the plan is adopted it becomes a part of the public's store of information, and the public is invited to support it, to use it, and to improve on it.

*The State of Oregon is among the governments which use the County Plan and, in fact, (through Senate Bill 100) requires that a plan be developed, adopted and used by local governments.

III. INTRODUCTION

The Upper Middle Fork Subarea comprises approximately 1170 square miles in the southeastern portion of Lane County. It forms the upper part of the Middle Fork Willamette River watershed. The subarea is primarily forest land, the majority of which is federally owned.

The main center of residential development is within, and adjacent to, the City of Oakridge, an incorporated community of approximately 4,000 people. Other residential activity occurs along the Fall Creek and Lookout Point Reservoirs.

Development pressures have not been strong in recent years, a situation that is not expected to change significantly within the planning period. However, because of a number of natural constraints, development potential in the subarea is limited. For this reason, and to insure protection of the timber and limited agricultural resource, even a relatively small amount of growth must be carefully guided.

Intensive development in the subarea should be strongly limited. Controlled infilling of the existing residential nodes can be allowed, although most of the subarea should remain undeveloped.

Because much of the subarea is National Forest land, its economy is strongly oriented to maintenance, harvesting and processing of the timber resources. Some diversification of the wood products industry may result in response to current local efforts toward economic self-sufficiency. The success of these efforts is not expected to have a significant growth-inducing impact on the area.

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IV. CITIZEN GOALS & INVOLVEMENT

Planning for People Program

During 1970 and 1971, several "Planning for People" meetings were held in the Subarea. Each meeting was conducted by a local citizen who was assisted by an agent of the Lane County Extension Service and a staff member of the County Planning Division. The purpose of these meetings was to establish local goals and concerns within the Upper Middle Fork Subarea. Some of the needs expressed during the meetings have been answered (e.g., family planning services and city-sponsored recreation programs). The issues that are still of concern to residents are as follows:

* Need for medical services, recreational facilities and jobs
* Improvement of educational system (vocational training, better course work and teachers)
* Funding for public services (fire protection, streets and curbs, public restrooms)
* Housing--particularly low-income
* Preservation of the area's natural, rural character

Although some of these concerns are beyond the scope of the Subarea Plan, they are included in order to better define the nature and desires of the community.

Plan Development Workbook

More recently, an attempt was made by the Planning Division Staff to directly involve Subarea residents in the development of the land-use plan for their area. A four-part "Plan Development Workbook" was distributed with the intent that, upon completion, a citizen-authored plan would result. A series of public meetings was held to assist in this effort. However, because of a lack of citizen time, interest and/or understanding, meeting attendance dwindled, workbook sections were not completed, and this approach to Plan development was abandoned in favor of the more traditional staff-prepared Plan

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Proposal. It should be noted that this action was by choice of the citizenry.

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V. FINDINGS AND RECOMMENDATIONS

Introduction

The Technical Report (Part II) discusses in detail the various physical or social components of the Subarea. This section of the Plan Report summarizes the findings and implications of the Technical Report and makes recommendations with regard to this information. The purpose of this method is to better facilitate decision-making and public understanding by allowing quick reference to the major areas of concern within the Subarea.

To obtain more detailed information about a particular topic, or to ascertain the basis for a particular recommendation, the Technical Report should be consulted.

Summary

The following is a compilation of recommendations that recur throughout the report. By listing them, a number of general concerns become apparent that will hopefully serve as an aid and guide to decision-makers.

1) The rural character of the Subarea should be maintained.

2) Forest resource lands should be protected for continued timber production.

3) The Subarea's economic base should be expanded and diversified to lessen its great dependency on the wood products industry and bolster local economic self-sufficiency.

4) Major developments within the Subarea should be limited and all proposals closely reviewed for impacts on the community.

5) Regulations with regard to construction on slopes over 15%, protection of riparian corridors, and erosion control should be instituted by the appropriate County agencies.

6) Further study of groundwater supply/safe yield, flood-plains, soils, and geology should be undertaken.

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A. SOCIAL AND ECONOMIC ENVIRONMENT+

Findings

1. The area's population is primarily centered in the Oakridge-High Prairie area. Other residential activity is found along Lookout Point Reservoir, Winberry Creek and scattered along the major roadways.

2. Many of the area's residents have chosen to live in the area because of its rural character and easy accessibility to natural recreation land.

3. Overall growth within the Subarea has been very slight over the past ten years, with the population actually declining in some portions.

4. Presently available projections indicate that the Subarea will experience minimal population growth over the next 25 years.* Consequently, demands for public services should not increase significantly during this time.

5. There has been an increase in the number of retirees locating within the Subarea.

6. Most of the Subarea's current population is working-age adults and their children. This trend is expected to continue in the future.

7. Two-thirds of the area's residents live in their own homes.

8. Approximately 10% of the housing units were considered overcrowded in the 1970 census.

+For this section only, findings & recommendations have been combined. Other sections more closely parallel the Technical Report.

*This projection is intended as an educated guess. Significant changes in such factors as employment opportunities or the timber industry could greatly alter this projection.

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9. Average annual family income is somewhat below that of the rest of Lane County and the Oakridge/Westfir area has been designated "economically lagging" by the State Department of Economic Development.

10. The majority of the area's work force is employed within the Subarea, primarily in timber harvest/wood products-related occupations. Thus, the area's economy is largely and probably overly dependent upon the future fortune of this industry.

11. The recently funded study of potential new businesses feasible for the Oakridge/Westfir area[1] identified three different industries for community consideration. These enterprises are (1) the manufacturing of hot tub components; (2) production of furniture, furnishings and cabinets and (3) design, production, and sale of quality handcrafted items. Although this study emphasized diversification in the wood products industry, diversification in other industries should also be encouraged, particularly those related to tourism and recreation.

12. Health care services in the subarea are minimal.

Recommendations

1. Further study should be undertaken to adequately assess the social, economic and housing conditions of the Subarea in order to more precisely predict and plan for future growth trends.

2. ~~The County should facilitate efforts to establish local economic self-sufficiency, such as the recently formed community development corporation, by providing available staff expertise and assistance with obtaining funding from the appropriate public and private sources.~~

2 ~~3~~. Small scale, "cottage" industry should be supported and encouraged in this area.

[1] The Potential for Alternative Business in Oakridge/Westfir, Economics Research Associates, February 17, 1978.

000346

4. New employment opportunities, particularly those not dependent upon the timber industry, should be sought for the area residents.

5. Future growth in the area should be guided in a manner that will preserve its natural, rural character.

6. Policies and programs to ensure an adequate and sustained timber supply on the region's public and private lands should be of high priority. The County must join with the state and federal governments as well as private industry in the long-range management of this essential resource.

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B. THE NATURAL ENVIRONMENT

Topography

1. The inaccessibility and expense of developing the Subarea's rough and mountainous terrain has focused most development into the narrow river and stream valleys.

2. Because of this concentration, careful planning is necessary to avoid inappropriate or conflicting use of land.

3. Erosion and the subsequent environmental degradation is a problem in the Subarea, particularly when the natural drainage patterns are altered.

Recommendations

1. Land use proposals should also be reviewed to insure that drainage and/or hydraulic flow patterns are not adversely affected and that proper erosion control measures are employed.

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Slope

Findings

1. With the exception of some valley terraces, plateaus, and ridgetops (including High Prairie), slopes in the Subarea generally exceed 15%.

2. It has been generally found that intensive development of slopes in excess of 15% are avoided in rural areas because of the significant cost and potential environmental and public safety problems involved.

Recommendations

1. ~~The County office of Environmental Management should adopt a slope density ordinance, or other appropriate measures for the Countywide regulation of hillside development (for adoption by the Board of County Commissioners).~~

1 X. Intensive development, such as large subdivisions, may be permitted on slopes over 15% after a slope stability analysis (performed by the appropriate professional under County guidelines) determines such development would not result in a negative environmental impact or significant public cost.

2 X. Isolated, single-family homes on large parcels should be permitted provided no obvious environmental problems would result.

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Geology

Findings

1. The presently available geologic data is not adequate for the detailed evaluation of specific sites.

2. Based upon available data, the rock formations in the western two-thirds of the Subarea are generally expected to yield considerably less groundwater than those in the eastern portion. Groundwater in this western portion is also expected to contain dangerous concentrations of naturally occurring arsenic.

Recommendations

1. Prior to approval of any major development, a detailed geologic report should be required and the project undertaken in accordance with its analysis. Guidelines and a procedure for review of reports by a qualified professional should be formulated by the Planning Division.

000350

Soils

Findings

1. Soils capability is a prime determinant of appropriate land use.

2. The Subarea is dominated by soils of development suitability ratings 3 and 4. One of the constraints of these soils is their lack of capability for adequate subsurface sewage disposal.

3. Soils within much of the Subarea are generally suited for the growing of timber.

4. Public concern has been expressed in favor of preserving agricultural land and state law has been written to reflect this desire.

5. The soils in the stream valley floors individually pose the fewest problems for development. However, these soils are not only often in areas subject to flooding, but are also the best suited for agriculture.

Recommendations

1. Soils information for the Subarea, particularly those portions presently lacking such data, should be continually gathered, refined and considered as fundamental criteria in land use decisions.

2. Most lands with soil suitable for agriculture should be so utilized in order to preserve this important resource.

3. State and local tax policies, zoning regulations and various financial incentives should be designed to promote agricultural land preservation while assuring an equitable fiscal impact on the individual farmer.

4. Most of the soils suitable for timber production should continue in that use.

5. Intensive development should be greatly restricted on soils of DSR 4 and considered on soils of DSR 3 only after a careful analysis of site specific conditions indicates suitability.

6. Erosion control regulations for commercial and residential development, as well as other land uses with erosion potential, should be developed by the Department of Environmental Management. Particular attention should be given to measures for control of erosion during construction activity.

7. Development may be allowed on soils which are unsuitable for traditional subsurface sewage disposal systems provided acceptable alternative systems are available.

Groundwater

Findings

1. There is not sufficient information on groundwater supplies throughout the Subarea; consequently, predictions of local supplies are speculative and highly variable.

2. Although groundwater data for the area is quite general, available groundwater appears limited in the western two-thirds of the Subarea except for the Oakridge vicinity. In the eastern one-third, subsurface water is generally plentiful. These predictions are based primarily on geologic factors.

3. The alluvial deposits associated with the Middle Fork of the Willamette and Salmon Creek show yields of 50-200 GPM.

4. Arsenic contamination of groundwater may occur in the western portion of the Subarea.

5. Adequate information does not exist on safe yield in the area; consequently, caution is necessary to avoid problems of groundwater overdraft.

6. As most residents of the unincorporated areas of the Subarea rely on subsurface water for domestic use, the availability of this resource will be a substantial constraint to development.

Recommendations

1. Further study of the area's groundwater supplies should be undertaken. Included in such a study should be the location and amount of potable groundwater, sources of contamination, and projected safe yields. From this information, appropriate residential densities (for homes dependent on subsurface water) can be designated.

2. Aquifer recharge areas should be identified and protected from detrimental land use.

3. All proposed development should be required to provide reasonable evidence of sufficient water availability prior to permit issuance.

4. Major development proposals in the western portion of the subarea should be required to demonstrate not only an adequate, continuing supply of potable water, ~~but that the use of which will not deplete the supply for existing users.~~

5. Groundwater supplies in the western portion of the Subarea should be monitored for possible arsenic contamination.

Surface Water

Findings

1. Surface water supplies for the Subarea are presently adequate.

2. Surface water resources provide essential fish and wildlife habitat and are committed to human use for recreational, domestic, industrial and agricultural purposes.

3. Because of the area's topography and geology, the surface water resource is particularly susceptible to degradation from land uses that disturb natural drainage patterns.

4. Because of withdrawal of water from the North Fork of the Middle Fork Willamette for domestic needs by Westfir residents, close regulations of upstream land uses is necessary to prevent contamination.

Recommendations

1. All proposals for surface water withdrawal should be reviewed and the approved projects continuously monitored to assure that the water supply within both the Subarea and downstream is not depleted or otherwise negatively impacted.

2. Promote watershed management practices which protect and enhance water quantity and quality.

3. ~~Countywide regulations for protection of riparian corridors should be promptly adopted and closely enforced.~~

000355

Water Quality

Findings

1. With the exception of Kitson and McCredie Springs, the known groundwater quality of the Subarea is generally satisfactory.

2. Further study and/or development may result in the detection of high arsenic concentrations in groundwater, particularly in the western portion of the Subarea.

3. Although not a serious problem at the present time, some of the septic systems located near water bodies are not functioning properly.

4. The major surface water quality problem is turbidity, with occasional high bacterial loads and enrichment in parts of the Subarea.

5. The County's Water Quality Report & Water Quality Management Plan provide the framework and tools for prevention and mitigation of water quality problems. Land use policies and decisions can and should both support and supplement the measures suggested in the above documents.

Recommendations

1. The water quality management recommendations outlined in the Water Quality Management Plan and Report, should be closely followed.

2. An ongoing well monitoring program should be instituted by the County in areas of known water quality problems to ensure that groundwater supplies are safe for human consumption.

3. Industrial and timber harvest practices should continue to be carefully regulated and monitored to prevent surface water degradation.

4. In addition to current regulations regarding subsurface sewage disposal, other measures for protection of waterways, such as setbacks for

000356

maintenance of riparian corridors and the control of streambank erosion, should be established.

5. Malfunctioning septic systems should be repaired or relocated if possible.

6. All development proposals should be reviewed to assure that projected water use and waste disposal will not negatively impact water quality.

000357

Flood Hazard

Findings

1. Detailed flood hazard information is presently unavailable for streams within the Subarea.

2. Estimates of the 100-year floodplain have been made for sections of the Willamette River. (See Map #9A).

3. A number of private residences lie within this designated inundation area.

4. Some portions of the Willamette River floodplain inundate agricultural soils, a further development constraint.

Recommendations

1. Studies to determine the precise location of floodplains in ~~both~~ the Subarea ~~and the rest of the flood-prone areas of the County~~ should be undertaken.

2. Floodplain zoning and development standards should be developed and applied to those hazard areas designated by the above study. In the interim, no further development, and especially no septic systems, should be permitted in documented flood hazard areas unless special "floodproofing" occurs.

Air Quality

Findings

1. Because air quality within the Subarea is primarily influenced by local events, the area is relatively free from pollution at the present time.

2. The Subarea is, however, part of a large airshed encompassing the entire Willamette Valley. Because of this airshed's high potential for air pollution, it is important that each area within it carefully control emission of even small amounts of contaminants.

Recommendations

1. Local land use regulations should recognize and support the Regional Air Pollution Authority policies.

2. Both the short term and cumulative air quality impacts of new development, particularly industrial, should be considered prior to project approval.

~~3.~~ Data necessary for the evaluation of air pollution potential (e.g., prevailing winds) should be assembled for the ~~entire~~ County.

3 ~~4.~~ Alternatives to burning of slash should be developed and implemented to eliminate this source of contamination.

000359

Plant and Animal Habitat

Findings

1. Although the two primary habitat types, the douglas fir-trailing blackberry and the fir-alpine, comprise most of the Subarea, several critical habitat types also exist here and are essential to the survival of a number of species.

2. Removal of natural vegetation and various other human land use activities often result in habitat degradation (e.g., destruction of protective ground cover, topsoil erosion, streambank instability, and reduction of water quality). These types of disturbances lower carrying capacity and, hence, reduce wildlife population.

3. While no official "endangered species" permanently inhabit the Subarea, it serves as a brief resting or feeding stop to such species during their seasonal migration. The spotted owl (classified as "unique"), the northern bald eagle (which is classified as "threatened" in Oregon and endangered in several states) and a variety of other species are permanent residents.

4. Construction of the dams at Dexter and Lookout Point created a block to salmon spawning in this section of the Willamette River.

Recommendations

1. ~~The monitoring of wildlife population~~ patterns and changes should be ~~encouraged~~ on a Countywide basis to more fully understand and prevent the negative effects of ~~human~~ activity upon this resource.

2. Major development must be closely regulated to reduce impact, both short term and cumulative, on the County's wildlife population. Any such intensive development should not be approved without prior analysis of habitats to be affected and a specific program for sensitive management.

2. Presently identified habitat types which are important for wildlife survival (e.g., winter range, nesting sites, mineral springs, etc.) should be conserved by appropriate measures (e.g., influence zones of uncut timber, a riparian corridor protection ordinance, a shoreline management plan, etc.).

000361

Resources

1) Forests

Findings

1. Most of the land within the Subarea is forest land, primarily in large holdings (both public and private).

2. The wood products industry is the primary industry of both the Subarea and the State.

3. Careful management of this resource is essential for both preservation of the raw materials supply and maximization of forest productivity. Diversification of the industry (with the subsequent increase in jobs and income) can occur without increasing the available resource, provided intensive management measures are instituted.

4. Forest lands, in addition to industrial raw materials, also provide recreational potential, valuable watershed and wildlife habitat and an aesthetic quality for both the Subarea and the County.

5. Measures must be instituted to prevent conflicts between preservation of the forest and other multiple land use activities.

6. Removal of the forest cover can have a highly detrimental environmental impact if proper harvest and reforestation techniques are not practiced. The most significant of these impacts is on water quality. Removal of riparian vegetation and excessive cutting close to major streams, without adequate erosion control measures, will eventually result in the loss of critical spawning and rearing areas for native fisheries and the adjacent wildlife habitat.

7. ~~Overcutting of private forest lands puts additional pressures for similar action on the publicly~~ owned lands.

000362

Recommendations

1. The County's Forest Management Zone should be applied to timber lands in order to preserve, protect, and ensure the sustained yield of this valuable resource.

~~2. Timber harvesting practices should be closely regulated to ensure the minimum environmental degradation (erosion, destruction of riparian, vegetation, etc.) and the best long-term use of the resource.~~

3 2. The most sound and effective reforestation technology should be applied to harvested areas.

3 4. The County should encourage private industry, the Department of Agriculture and the Bureau of Land Management to determine the appropriate combination of intensive management, roading, and rotation that will ensure maximum production, sustained yield and minimal environmental degradation for all forest lands in the County.

~~5. Tax programs should be sponsored in the state legislature that encourage sound long range management and immediate reforestation of privately owned forest lands.~~

4 6. Programs for diversification of the wood products industry should be encouraged. Particular attention should be given to the utilization of waste, which is often burned on the site due to lack of markets.

000363

Resources (continued)

2) Minerals

Findings

1. Although several mineral resources exist in the Subarea, current economic restraints (e.g., distance from major markets and difficulties in extraction) have preempted the development of this industry, except on a very limited scale.

2. Some minor extraction of sand and gravel occurs in the Subarea, but at a scale limited to use for local road building and maintenance.

3. Recently, concern has been expressed over the potentially usable copper resources in the area. At present, no possible sites have been identified, although exploration is underway statewide.

4. Should currently dormant mineral deposits be mined commercially in the future, the Subarea is likely to experience a number of environmental and economic effects.

Recommendations:

1. Mineral resources should be conserved for the future through the control of land uses that would be in conflict with mineral extraction.

2. Should commercially valuable mineral resources be discovered, careful analysis of all environmental impacts (both physical and social) must be carefully evaluated before extraction permits are considered.

~~3. If extraction is allowed, it should be performed under all federal, state and local regulations to minimize negative environmental effects.~~

000364

Resources (continued)

3) Energy

Findings

1. A long-range comprehensive plan for energy procurement, use and conservation does not presently exist for Lane County.

2. Several potential energy resources exist in the Subarea, including: wood and wood by-products, geothermal sources and hydroelectric capability. Solar and wind may also be viable energy sources in this area.

3. Further study is necessary to determine the capability of these resources (particularly geothermal) and the potential negative environmental impacts associated with their development.

4. Present energy sources in the area include electric power but not natural gas.

Recommendations

~~1.~~ Lane County should ~~develop and implement~~ long-range ~~goals and policies~~ for the management, ~~recycling~~ development and ~~conservation~~ of its ~~energy~~ resources.

~~2. Existing energy resources should be protected for future needs.~~

X. Low-head hydro projects and additional turbines on existing dams should be encouraged.

000365

C. LAND USE AND PUBLIC NEEDS

Land Use

Findings

1. Ninety percent of the land in the Subarea is federally owned forest land at various levels of production. Another eight percent is large acreage owned by private timber companies.

2. This public ownership pattern, combined with topographic constraints, has directed most residential development into the river and stream valleys. The City of Oakridge will contain most of the Subarea's residential development, although residential development has also occurred in Westfir and along major roadways.

3. Residential densities are of an almost suburban nature in parts of the Subarea (particularly near Oakridge), although development activity has been slow in the past few years.

4. Some agricultural land use, mainly pasture and grazing, occurs in the High Prairie area and near Fall Creek Reservoir.

5. Unguided development, especially at higher densities, could threaten the remaining agricultural lands, cause a public safety problem from direct access onto main roads, and result in conflicts with timber harvest activities.

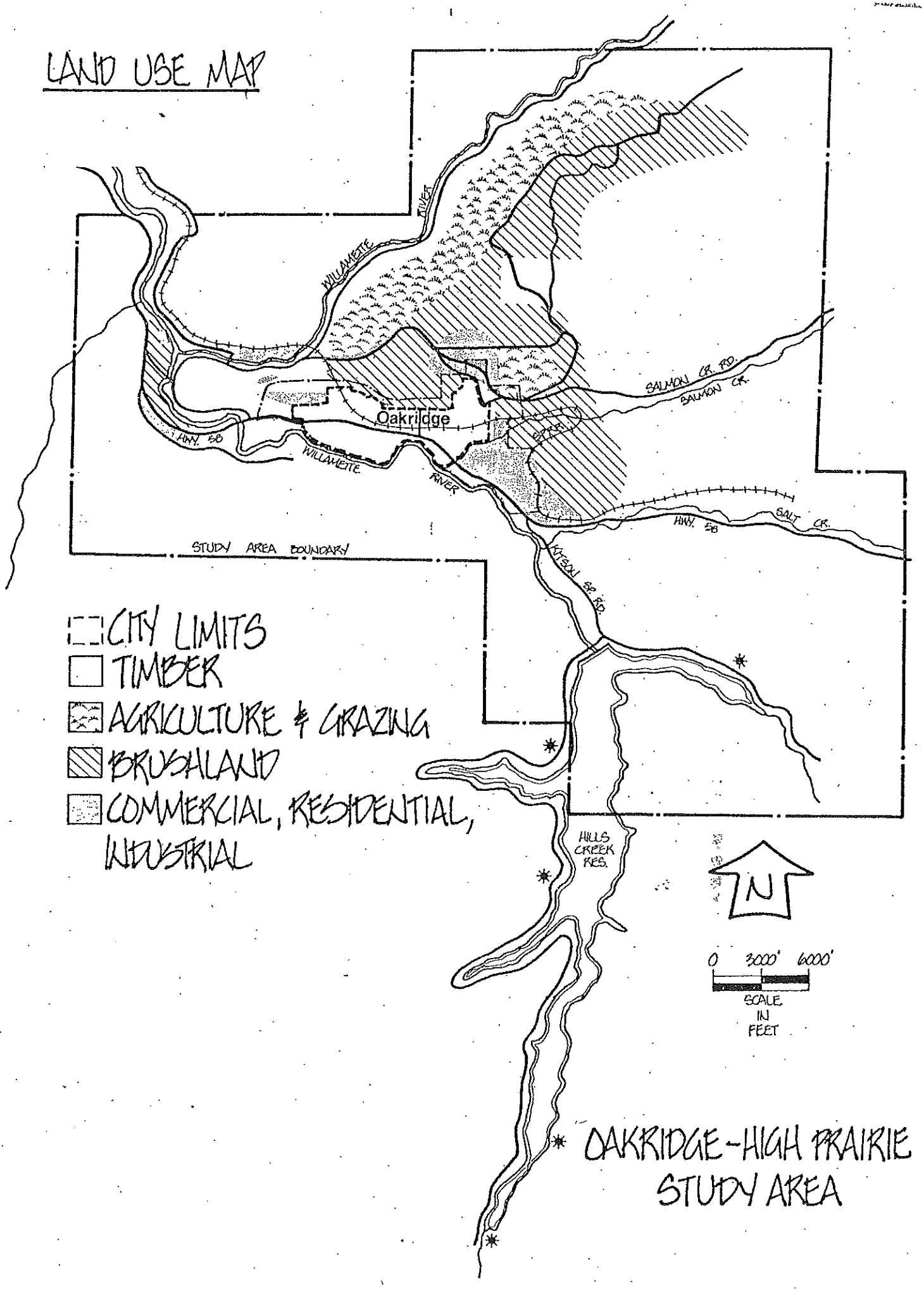
6. Commercial activity is currently confined to the City of Oakridge, where most of the area's residents orient for the provision of goods, services and cultural activity. A small grocery is located in Westfir.

7. Limited industrial development has occurred, mainly comprised of wood processing plants, mills and storage.

8. Generally, Subarea citizens desire to preserve the rural character and timber resource base of the area by guiding development.

000366

LAND USE MAP



OAKRIDGE-HIGH PRAIRIE STUDY AREA

Recommendations

1. Timber production should continue as the primary land use; however, other land uses (e.g., recreation, small-scale industry, agriculture, etc.) that will expand the local economic base, without adversely impacting the forest resource, should be actively pursued. Development should be guided to protect agricultural and timber resource lands and to prevent expansion into areas of natural environmental constraints.

2. Agricultural and timber uses should be further protected by respective zone designations of "exclusive farm use" and "forest management."

~~3. State and local tax policies and other financial incentives which enable a more equitable fiscal impact on the individual farmer should be studied and adopted by the County Commissioners and/or officially proposed to the legislature.~~

3 ~~4~~. Rural residential land use should be confined to areas of present development concentration.

4 ~~5~~. Further commercial and industrial activity should occur where such land use designations exist. Small-scale, rural industry should be encouraged.

5 ~~6~~. Small-scale "country store" commercial development should be permitted relative to needs of the population and recreational potential of the area.

000368

Transportation

Findings

1. The primary mode of transportation within the Subarea is the automobile.

2. Conditions and capacity of the roads are generally adequate and, with proper maintenance, should remain so if present growth trends continue.

3. Major road improvements could have a growth-inducing impact on the Subarea.

4. The City of Oakridge is served by the Greyhound bus, Southern Pacific Railroad (freight only) and a general aviation airport. No service by Lane Transit District is presently available or planned for the future within the Subarea.

5. Similarly, major new development, significant increase in recreational use and/or drastic changes in the price and supply of fuel could alter the transportation needs of the Subarea.

6. Highway 58 carries a lot of truck traffic as it serves as a primary truck route to Reno and northeastern California. The state has no current plans for improvement of this road.

Recommendations

1. Since planning decisions for the Willamette National Forest regarding recreational use and timber harvest activity will affect future use of the road system, close coordination with this agency and the County should be maintained.

2. Road capacities, improvement needs and potential access problems should be continuously assessed by both the state and County.

3. Emphasis should be on the maintenance and improvement of the existing road system as needed to ensure public safety rather than the construction of new routes.

000369

4. All major/intensive development should be evaluated for impacts on transportation facilities and required to subsidize necessary improvements related to the proposal.

5. All improvement plans should be evaluated for consistency with the County land use and environmental protection policies.

6. Land use proposals affecting the airport should be reviewed to ensure compatibility.

7. Efforts should be made to establish economically sound transportation alternatives to the individual automobile (e.g., bicycle paths, public transit buses, car pools, rail, etc.).

8. Provide cooperative assistance through the County's transportation planning function to work with the City of Oakridge to design an arterial road plan to serve the area north of the city limits and inside the potential urban service area.

000370

Recreation

Findings

1. The Subarea offers a variety of recreational settings, including: large holdings of publicly-owned forestlands, four large lakes, many smaller lakes and streams, the Upper Middle Fork itself and three mineral hot springs.

2. Recreational facilities are provided throughout the Subarea to support such activities as swimming, boating, camping, fishing, hiking, etc.

3. Present policies of the Willamette National Forest, the agency with the major impact on recreational use in the Subarea, emphasize an increase in dispersed recreation (i.e., activities outside of developed recreational areas, such as backpacking). These policies also encourage private investment and development.

4. The increase may result in conflicts with regard to timber harvest activities and alternate use of the reservoirs. Similarly, increased use will place an extra burden on the Subarea's roads and existing facilities, may affect local environmental quality and the quality of the recreational experience, and may add pressure for use of currently undeveloped areas.

5. The increase could provide needed economic opportunities for the local community, particularly in light of the National Forest policy in this regard.

Recommendations

1. Existing recreational facilities should be continually maintained and preserved. The establishment of new facilities should be encouraged.

2. Major new developments should be required to assist in the provision of recreational facilities necessary to serve the population they will draw to the area.

000371

3. The Willamette National Forest Administration should work closely with the County and the local citizens in the planning of future facilities in the area.

4. Recreational resources should be carefully managed so that other uses, such as timber harvesting and multiple use of reservoirs, will not be preempted. Accordingly, recreational development proposals should be reviewed for potential impacts on environmental quality, local character and community services.

5. Tourist activity in the Subarea should be promoted.

6. Modification of existing recreational facilities and government policies affecting those resources could help to increase their use. Specific improvements include:

   - increasing the amount of free parking along Highway 58;

   - construction of more boat docks on the reservoirs, and

   - consistent maintenance of reservoir water levels. Specifically, levels should be kept high for a greater length of time each year.

000372

Public Services and Facilities

Utilities

Findings

1. Except for the City of Oakridge and a portion of Westfir, the Subarea residents are dependent upon individual private wells and subsurface sewage disposal.

2. Soils and other natural features limit some of the area's suitability for subsurface sewage disposal, further indicating the appropriateness of low density development.

3. Expansion of water and sewer service could be growth-inducing.

4. Given the area's tax base and dispersed, rural character, a centralized sewer and water system for all residences is currently impractical. However, the existing sewage treatment facility in Westfir could service 350-400 households (almost twice its present capacity) provided the infiltration problem is corrected.[2]

5. Presently, Lane County has no official policy for the regulation of "private" utilities; consequently, it is difficult to ensure that such systems will be satisfactorily maintained over the years.

6. Water consumption for the Westfir area is very high. This is due to either leaks in the system or individual home use (or a combination of both).

Recommendations

1. Development in areas dependent upon private wells and subsurface sewage disposal should be low-density in nature. Higher density development

[2] Westfir Utility Study, Westfir, Oregon, CH2M Hill, March 1978.

should only be approved if soil and other natural features allow.

2. Any proposals for centralized water and/or sewer service should be carefully evaluated for all potential impacts on the Subarea and any affected areas.

3. Existing and future septic system failures should be promptly corrected.

4. Steps should be taken to identify the cause of the very high rate of water consumption in the area and corrective measures then instituted.

5. The County should develop criteria for the regulation of private utilities.

6. The County should continue to work with the community of Westfir in determining the best method for maintenance, and possible expansion, of services in that area, particularly with regard to the existing sewage treatment facility.

7. Research and development of alternative sewage disposal systems should be supported by the County.

8. Should the growth rate increase significantly, hook-up to such a system may be warranted in currently unserviced areas and should be instituted before the situation reaches a critical stage.

Schools

Findings

1. The majority of children in the Subarea attend school in Oakridge District 76, with some students enrolled in Lowell District 71.

2. Schools within District 76 presently have enrollments under capacity, although the recent closure of the Willamette City School has reduced the capacities stated in the technical report from approximately 1500 to 1250. As well as can be projected at this time,* school capacities should be adequate for the planning period.

3. Gymnasium and playground facilities in Lowell District 71 will be overextended if enrollment increases as projected.

Recommendations

1. All land use decisions should consider potential impacts on schools to ensure that appropriate measures are instituted to mitigate any negative impacts.

2. Local government and public school officials should coordinate their activities to ensure that local schools do not become overburdened.

*School enrollment projections are highly variable and dependent on the same external influences as population projections.

Fire Protection

Findings

1. The State Forestry Department and National Forest Service provide fire protection for both public forest lands and private timber within the National Forest.

2. Formal protection for structural fires is limited to the City of Oakridge, Westridge Jr. High School, Circle Bar Golf Course and those buildings owned by the Pope & Talbot, Mitchell & Blacketor Mills and the Forest Service.

3. Even though most of the unincorporated rural residential portions of the Subarea lack fire protection, a recent ballot measure to establish a rural fire district failed.

Recommendations

1. Major developments should not be approved unless fire protection is available. Accordingly, such developments must include provisions for assuming their share of the financial burden of extending existing facilities in proportion to their impact on those services.

2. Because of its increase to the forest fire risk, development unrelated to timber production and harvesting should be prohibited within forest resource areas. Recreational and other multiple use activities should also be controlled during periods of high fire risk.

Police Protection

Findings

1. The Sheriff's Department presently has one deputy assigned to the Oakridge area on a permanent basis. Two additional deputies reside in the Oakridge area and work for the US Forest Service on a contractual basis. These deputies are not normally available for general law enforcement service to the residents of the subarea.

2. The Sheriff's Department currently considers the Oakridge deputy to be working at maximum efficiency. Additional increase in population in the subarea will ultimately decrease this deputy's efficiency and ability to effectively respond to the public safety needs of subarea residents.

3. State police out of the Oakridge office routinely patrol Highway 58 and occasionally drive other roads in the area.

4. The size and physical character of the Subarea make law enforcement difficult.

Recommendations

1. ~~The Sheriff's Department would~~ recommend that staff in the ~~Oakridge area be increased one~~ deputy for every ~~additional~~ 500 residents of the subarea.

X. Possible coordination with the City of Oakridge for police services should be encouraged.

000377

Solid Waste

Findings

1. The County Solid Waste Management Plan has established the policies for future disposal.

2. As part of the Countywide plan, a modified sanitary landfill is located southeast of Oakridge, with approximately three years of use remaining.

3. Presently, garbage collection service is only available in the Oakridge vicinity.

Recommendations

1. The policies established by the County Solid Waste Management Plan should be supported and implemented.

2. Particular emphasis should be placed on development of an areawide system of solid waste transfer, source separation and resource recovery when economically and technically feasible.

VI. LAND USE CONSTRAINTS

Introduction

The following is a brief summary of the full Land Use Constraints chapter presented in the Technical Report. It provides additional background for the Plan Diagram, which is detailed in the following chapter.

Constraints in the Subarea

Land use or development constraints are those apsects of the natural environment that generally preclude or severely limit the land's potential to support development. They reflect the intrinsic ability of the landscape to withstand human alteration and indicate where development could be damaged or destroyed by natural processes. The Development Constraints Map graphically portrays these natural limitations and, hence, is a useful guide for the determination of land use.

It must be noted that the Constraints Map is very general. It provides some indication of land use limitations, particularly to large-scale developments; however, individual homesites may be less affected by specific constraints. Site-specific evaluations should be made for all proposed development.

The Upper Middle Fork Development Constraints Maps (#9, 9A, 9B) display the following:

1) Soils with a Development Suitability Rating of 4 (generally unsuitable for any development activity). Appendix B of the Technical Report is an explanation of the rating system.

2) Slopes of 15% or greater.

3) Areas subject to periodic flooding or ponding.

4) Areas of high groundwater supply potential.

This map should be continuously updated as additional and more detailed information becomes available. The Plan Diagram, for which this map serves as a general guide, should also be modified accordingly.

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VII. THE PLAN DIAGRAM

INTRODUCTION

The Plan Diagram is a graphic portrayal of how land use in the Subarea would appear if all of this Plan's recommendations were implemented by 1995. It represents what is felt to be the best pattern for the future, based upon land use considerations alone. For this reason, it is one of the most important components of the Subarea Plan and, in essence, a recommendation on its own.

The Plan Diagram represents only one--although it seeks to be the optimum--display of future land use. Should future planning efforts result in modification of the planning study itself, the Plan Diagram should be adjusted accordingly.

THE COMPREHENSIVE PLAN AND THE PLAN DIAGRAM

Once adopted, the combined Comprehensive Plan and Plan Diagram serve as the official public policy statement guiding decisions with regard to future land use in the Subarea. Although primarily concerned with physical development, the Plan and Plan Diagram also incorporate social and economic considerations in order to interrelate all functional and natural systems and activities affecting land use in the Subarea. Developed to promote public health, safety and welfare, both of these elements should be considered "general" in nature. They summarize policies and recommendations in broad categories, not indicating specific locations of land use or regulations which may govern them.

ZONING AND THE PLAN DIAGRAM

The Plan Diagram, while serving as a guide to zoning is not a zoning map. Zoning ordinances and maps are specific pieces of legislation which are intended to implement the proposals of the Comprehensive Plan and its Plan Diagram.

A zoning ordinance is basically a public law which, in detail, regulates and restricts the use of land in the public's interest. It deals with three major areas: (1) the use of land, water and structures; (2) the height, size, shape and placement of structures; and (3) the density of development in given areas. Requirements concerning these matters are written into law, and are enforced as law.

000380

The Comprehensive Plan, and Plan Diagram, serve as sources of information for the application of zoning. Zoning uses this information, along with other sources, in the form of a special study in which every property owner has full input. Zoning will be undertaken following the review of the Comprehensive Planning Study and Plan Diagram.

COMPONENTS OF THE PLAN DIAGRAM

A. General Land Use Categories

Several land use categories have been assigned to the Upper Middle Fork Subarea. These categories are shown on the Plan Diagram as the primary land use designation, defined on Pages 52 through 54 of this report and further outlined in Table 1.

B. Table 1. - Summary of Land Use Designation Factors

This table outlines the intent and purpose of each land use category and lists physical features (e.g., slope, soil, water supply, etc.) characteristic of the category, which serve as criteria for future designations.

C. Table 2.- The Plan Conformity Chart (Matrix)

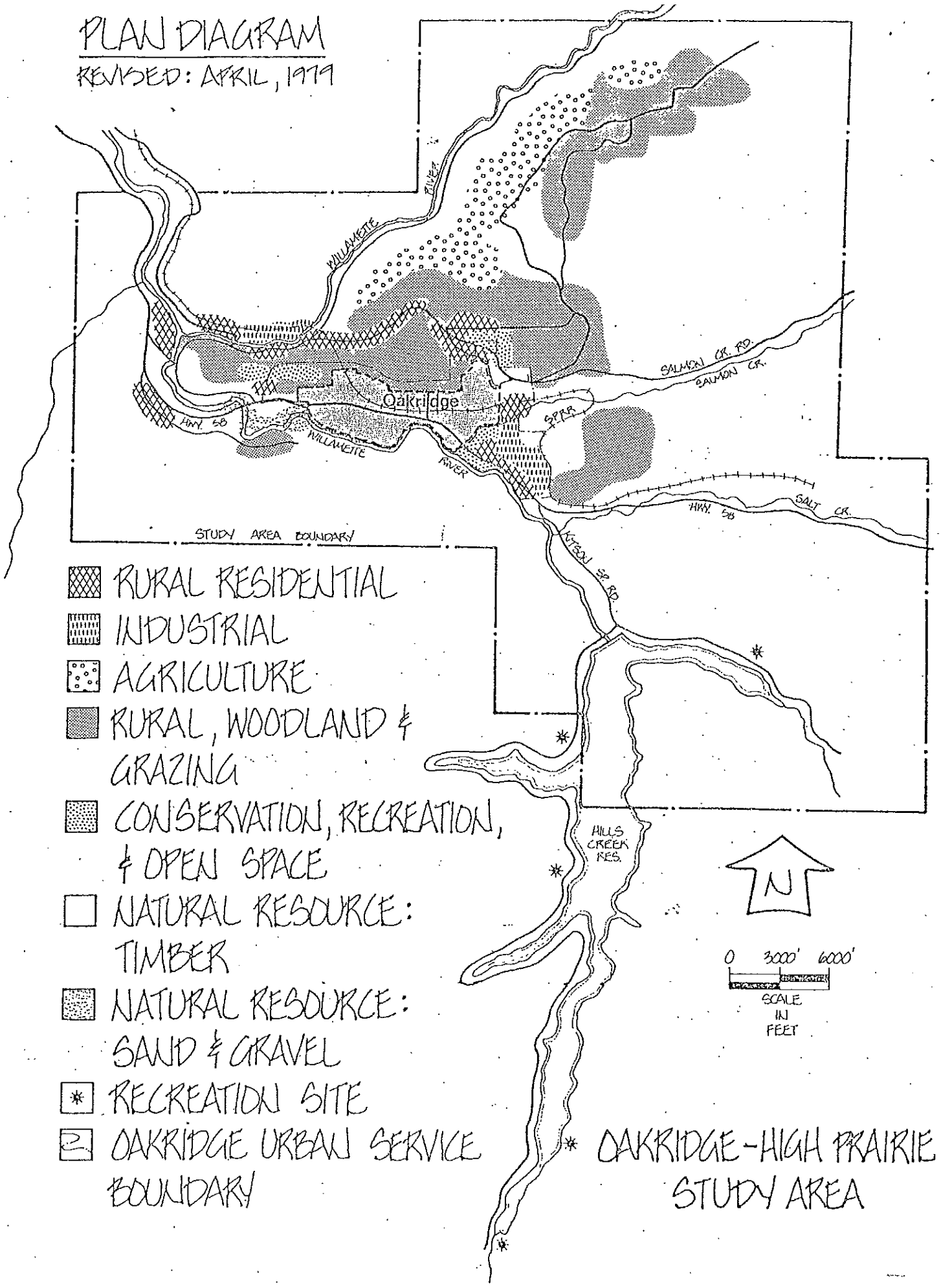
Although the categories shown on the Plan Diagram Map represent the "Primary" land uses recommended in the subarea, it is recognized that other uses may be appropriate and desirable on a particular site. Hence, a system has been devised to introduce a degree of flexibility into the application of land use categories by allowing for "secondary" land uses within designated "primary" categories.

The system allows for unique or unusual circumstances or conditions which could accommodate a secondary use, without violating the intent and purpose of the primary category or requiring a general plan amendment. The key to this flexibility lies in the establishment of specific criteria which enable the determination of proposed uses consistent with the spirit intent and purpose of the plan. There are four degrees of plan conformity which are described and graphically portrayed on the Matrix in Table 2. The following is a brief summary of these designations:

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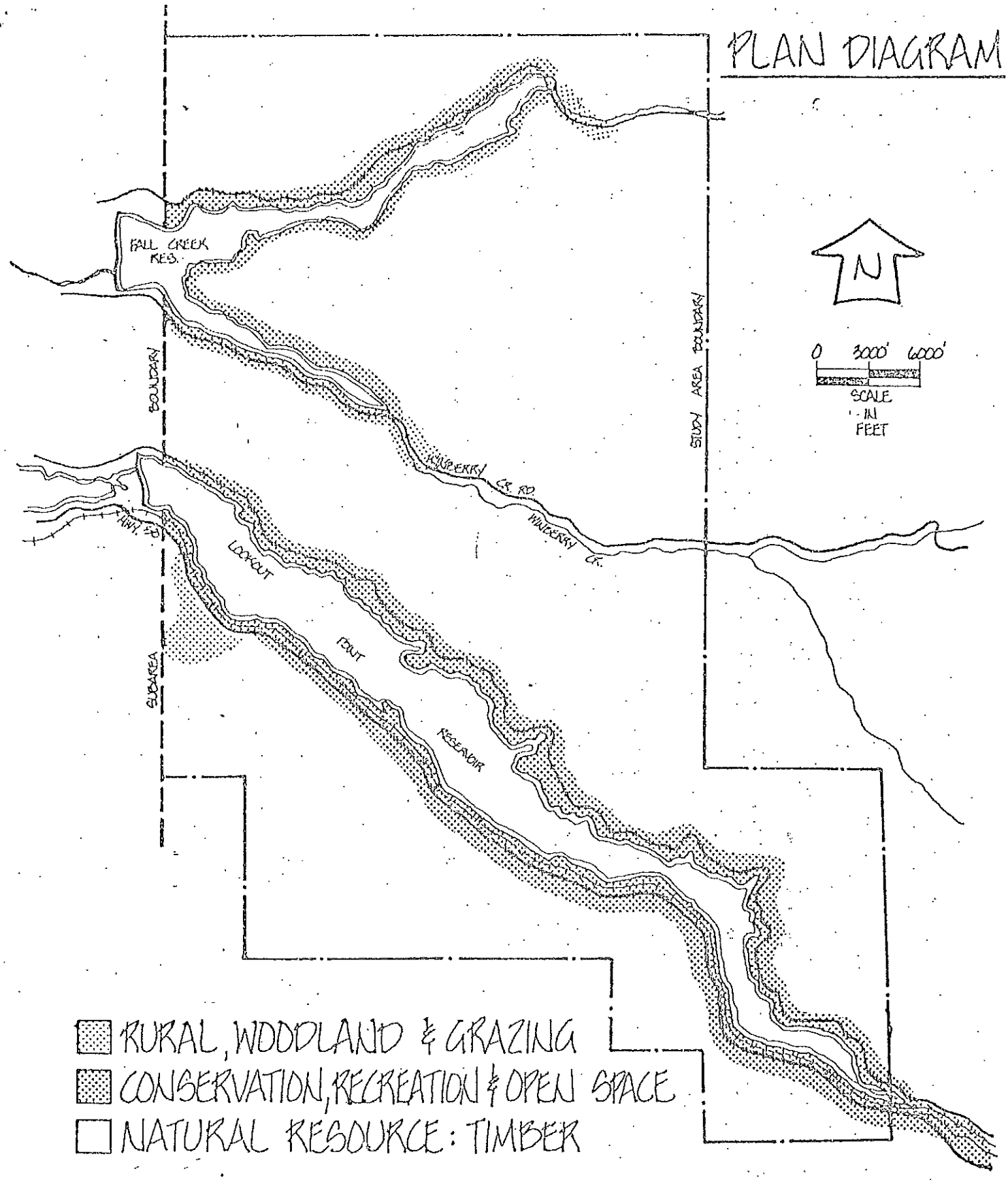
PLAN DIAGRAM

REVISED: APRIL, 1979



- RURAL RESIDENTIAL
- INDUSTRIAL
- AGRICULTURE
- RURAL, WOODLAND & GRAZING
- CONSERVATION, RECREATION, & OPEN SPACE
- NATURAL RESOURCE: TIMBER
- NATURAL RESOURCE: SAND & GRAVEL
- RECREATION SITE
- OAKRIDGE URBAN SERVICE BOUNDARY

OAKRIDGE-HIGH PRAIRIE STUDY AREA


PLAN DIAGRAM
FALL CREEK RES.
BOUNDARY
STUDY AREA BOUNDARY
N
0 3000' 6000'
SCALE IN FEET
HUNTER CK RD
HUNTER CK.
HUNT. RD
LOOKOUT
POINT
RESERVOIR
SUBAREA
RURAL, WOODLAND & GRAZING
CONSERVATION, RECREATION & OPEN SPACE
NATURAL RESOURCE: TIMBER
LOOKOUT POINT - FALL CREEK STUDY AREA

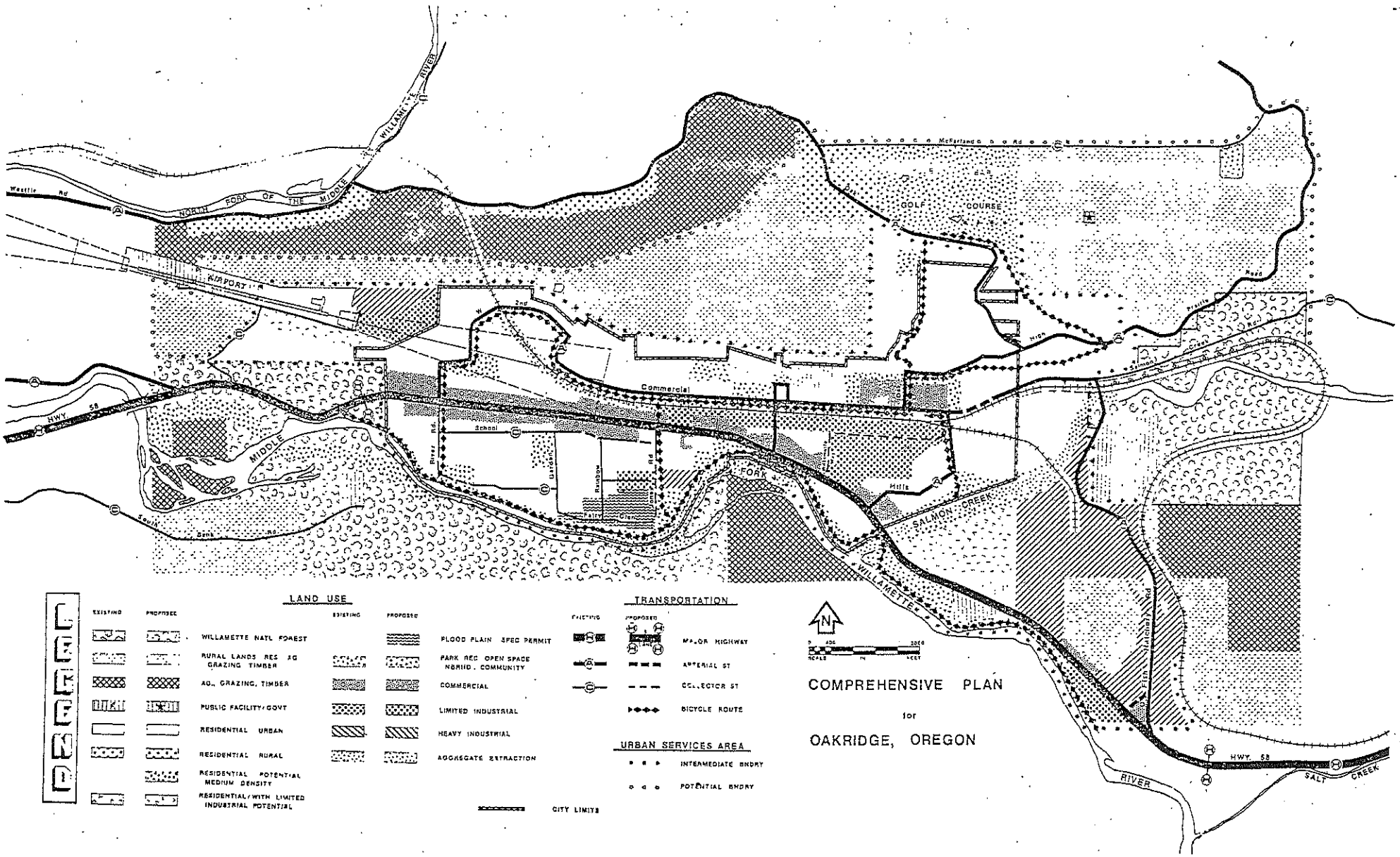

WILLAMETTE RIVER
Westfir Rd
NORTH FORK OF THE MIDDLE
AIRPORT
McFarland Rd
GOLF COURSE
Commercial
School
HWY 58
MIDDLE FORK
SALMON CREEK
South Bank Rd
Hills Creek Rd
WILLAMETTE RIVER
HWY. 58
SALT CREEK
LAND USE
EXISTING
PROPOSED
WILLAMETTE NATL FOREST
RURAL LANDS RES AG GRAZING TIMBER
AG., GRAZING, TIMBER
PUBLIC FACILITY/GOVT
RESIDENTIAL URBAN
RESIDENTIAL RURAL
RESIDENTIAL POTENTIAL MEDIUM DENSITY
RESIDENTIAL/WITH LIMITED INDUSTRIAL POTENTIAL
FLOOD PLAIN SPEC PERMIT
PARK REC OPEN SPACE NBRHD. COMMUNITY
COMMERCIAL
LIMITED INDUSTRIAL
HEAVY INDUSTRIAL
AGGREGATE EXTRACTION
CITY LIMITS
TRANSPORTATION
MAJOR HIGHWAY
ARTERIAL ST
COLLECTOR ST
BICYCLE ROUTE
URBAN SERVICES AREA
INTERMEDIATE BNDRY
POTENTIAL BNDRY
N
SCALE
COMPREHENSIVE PLAN
for
OAKRIDGE, OREGON

TABLE 1 - SUMMARY OF LAND USE DESIGNATION FACTORS[1]

LAND USE CATEGORY	INTENT & PURPOSE	KEY DESIGNATION FACTORS[1] SOILS	SLOPE	FLOOD HAZARD CONSIDERATION	WATER SUPPLY	MINIMUM PARCEL SIZE	OTHER DEVELOPMENT STDS.
AGRICULTURE	*Recognizes agricultural land as a valuable resource. *Prime consideration is to recognize the inherent capacity of the land for agricultural productivity and to protect this capability for present and future generations. *Intended to preserve, those lands for agricultural productivity whether or not being actively farmed. *Agricultural productivity also includes dairying and livestock raising.	Soil Conservation Service Agricultural Capability Classification I, II, III, or IV.	Generally less than 15%.	No flood hazard limit for farming. Dwellings and structures located out of flood hazard areas or where only a 1% probability of flooding exists should be floodproofed and not block drainage channels.	Amount sufficient to conduct farming activities and maintain an adequate domestic supply.	Generally 20 acres or greater.	
NATURAL RESOURCES	*Lands having an economically exploitable resource, particularly petroleum mineral, and other sand and gravel deposits, timber and other energy sources. *Purpose is to ensure the continued supply of raw resources for the economic well-being of the Subarea and the County.	--NO---- ----SPECIFIC-----REQUIREMENTS--				Generally 40 acres or greater for timber harvesting. Variable with other resources depending on particular extraction requirements.	Extraction and harvesting should be conducted so as to not cause environmental degradation. Land should be reclaimed for other purposes after removal of resources.
RURAL WOODLAND & GRAZING	*Applied to those areas exhibiting one or more of the following characteristics: (1) characterized by severe environmental constraints and thus is of marginal suitability for development and lacks a predominance of agricultural soils; (2) is relatively isolated from developed areas and/or from the services and facilities necessary to support more intensive development; and (3) is suitable for pasture, grazing and dairying which are significant to the County's economy and therefore, require preservation. *Such areas provide opportunities for living in rural and undeveloped areas and to conduct agricultural activities.	Generally of marginal suitability for development due to environmental constraints. Not a predominance of agricultural soils.	No limit. However, development should be located so as not to create any soil erosion hazards.	No flood hazard limit for woodland, pasture or grazing activities. Dwellings and structures located out of flood hazard areas or where only a 1% probability of flooding exists should be floodproofed and not block drainage channels.	Limited quantity & quality of groundwater and surface water available. Need amount sufficient to maintain an adequate domestic supply.	Relatively large parcels or a combination of large and small parcels which previously existed. Parcel sizes generally recommended to be 20 acres or more.[3]	Continued preservation of "Rural atmosphere" of area.
RURAL RESIDENTIAL	*Provide opportunities for living in rural residential or rural neighborhood settings; located within or adjacent to communities designated or with the character of rural service centers, minor or major development centers. * Accommodate some expansion due to close proximity to necessary public facilities and services if located in an area with moderate development constraints. Some infilling may be appropriate in existing areas not otherwise appropriate for expansion.	Development Suitability Rating of 1, 2, or 3.	Generally less than 15% Development on slopes in excess of 15% should be carefully analyzed to ensure that there is minimal environmental risk and/or public and private costs.	Completely out of flood hazard areas.	Generally good ground water supplies. Development proposal must demonstrate that additional development will not deplete the water supplies for existing uses; will not preempt establishing other primary designated land uses in the future, or exceed the capacity to provide adequate water to the proposed development	In or adjacent to a rural service, minor or major development center with moderate development constraints, parcel sizes must be a minimum of 2 acres. May be reduced to 1 acre with an acceptable community water supply system and if not detrimental to the natural environment or significant burden on other community facilities. In the more isolated portions of the County, parcel sizes must be a minimum of 5 acres.[2]	Development should preferably be located within a fire district.

[1] This Table, and Key Designation Factors, are based upon technical information contained in the Technical Report, which is separate from the Plan Report, and copies of which are on file at Planning Division offices and which are available for public reference.

[2] Policies and regulations may be revised to establish equivalent densities if the purpose, intent and character of the Rural Residential Designation is not changed.

[3] Minimum parcel sizes may be ~~10~~ 5 acres in those areas where:
~~a. The general area consists predominantly of parcels of comparable size or smaller, and the establishment of 10-acre parcels would not be incompatible with the character of the general area; and~~
a. ~~Ten~~ 5-acre minimum parcel sizes would not significantly deplete or otherwise prove incompatible with the protection, conservation, use and/or harvesting of important natural resources, particularly timber, sand and gravel, and important agricultural land; and
b. ~~Ten~~ 5-acre minimum parcel sizes would be commensurate with the environmental limitations of the area.

LAND USE CATEGORY	INTENT AND PURPOSE	KEY DESIGNATION FACTORS					
		SOILS	SLOPE	FLOOD HAZARD CONSIDERATION	WATER SUPPLY	MINIMUM PARCEL SIZE	OTHER DEVELOPMENT STDS.
NEIGHBORHOOD COMMERCIAL	*Provide convenience goods and services needed by neighborhood residents on a daily basis. *Located in areas easily accessible to the residents they serve. *Not specifically reflected on the Plan Diagram. *Should be provided as the local need arises.	Development Suitability Rating of 1, 2, or 3.	Generally less than 8%	Buildings should be completely out of flood hazard areas. Other structures which by their nature must be located within flood hazard areas should not adversely affect drainage or stream flow patterns.	Generally good groundwater supplies. Proposals must demonstrate that additional development will not deplete the water supplies for existing uses; will not preempt establishing other primary land uses in the future or exceed the capacity to provide adequate water to the proposed development.	No minimum parcel sizes --will vary depending on the nature and scope of the commercial service environmental constraints and other development standards.*	Activities should be located centrally within the trade area at intersection of major roads. Community and tourist commercial activities should be grouped not scattered. Will not cause unreasonable burden on existing or future community facilities or ability of local government to provide public services.
COMMUNITY COMMERCIAL	*Located in designated rural service, minor development, and major development centers. *Intended to provide convenience goods, personal services and commercial goods needed to support the local economy and provide tourist commercial services.						
TOURIST COMMERCIAL	*Provide accommodations, goods and services for tourists, the motoring public and other transient clientele. *Likely to occur adjacent to or nearby recreational facilities and/or major travel routes in "community commercial" areas. *Located, designed and screened to the degree necessary to maintain harmony and compatibility with the surrounding area. *Will not result in substantial adverse effect on existing land use activities.						
INDUSTRIAL	*Provide locations where processing, manufacturing, and assembling of products and supporting activities can occur. *Preferably in groups within or adjacent to minor or major development centers and existing industrial areas and some rural service centers. *Does not apply to extraction of mineral resources nor harvesting of timber resources.	Development Suitability Rating of 1, 2 or 3.	Generally less than 8%	Buildings should be completely out of flood hazard areas. Other structures which by their nature must be located within flood hazard areas should not adversely affect drainage or stream flow patterns.	Same as Commercial.	No minimum Parcel sizes will vary depending on the nature and scope of the industrial service, environmental constraints and other development standards.	Provide adequate space for employee parking and shipping needs. Located in or near main transportation routes and will not cause unreasonable road congestion or unsafe conditions. Will not place unreasonable burden on existing or future community facilities or ability of local government to provide public services.
CONSERVATION/RECREATION/OPEN SPACE	*Recognizes areas having a high value for public use or preservation in the natural state. *Includes public parks, greenways, recreational sites, scenic open space or corridors, and wildlife preserves and other areas of unique wildlife habitat. *Some extraction of natural resources may be appropriate although areas designated C/R/OS should be permanently maintained for the primary purpose. *Extractive activities should be related to reclamation and rehabilitation for C/R/OS purposes. *Use of many C/R/OS areas for agricultural, limited timber growing, and other open space uses is consistent with this purpose and intent.	No specific site factors are listed since the C/R/OS designation applies to a wide variety of activities. The principal common feature is a recognized value to the public whether for direct use or passive preservation.					

TABLE 2

PLAN CONFORMITY BY LAND USE CATEGORY

PRIMARY LAND USE CATEGORIES SHOWN ON PLAN DIAGRAM	SECONDARY LAND USE CATEGORIES: AGRICULTURE	NATURAL RESOURCES; TIMBER	NATURAL RESOURCES; GEOTHERMAL	RURAL, WOODLAND & GRAZING	CONSERVATION/OPEN SPACE/RECREATION	RURAL RESIDENTIAL	NEIGHBORHOOD COMMERCIAL	COMMUNITY COMMERCIAL	TOURIST COMMERCIAL	INDUSTRIAL
AGRICULTURE	⊠	⊠	◐	○	○	◐	○	◉	◉	◉
NATURAL RESOURCES; TIMBER	⊠	⊠	○	○	○	◐	○	◉	○	◐
NATURAL RESOURCES; GEOTHERMAL	○	○	⊠	○	○	◉	○	◉	○	○
RURAL, WOODLAND & GRAZING	⊠	⊠	○	⊠	⊠	○	○	◉	◐	◐
CONSER./OPEN SPACE/RECREATION	⊠	⊠	◐	○	⊠	◐	◉	◉	○	◐
RURAL RESIDENTIAL	○	◐	◐	○	○	⊠	○	◉	◐	◉
NEIGHBORHOOD COMMERCIAL	NA	NA	NA	NA	NA	NA	⊠	NA	NA	NA
COMMUNITY COMMERCIAL	NA	NA	NA	NA	NA	NA	NA	⊠	NA	NA
TOURIST COMMERCIAL	NA	NA	NA	NA	NA	NA	NA	NA	⊠	NA
INDUSTRIAL	◐	○	○	◐	○	◐	○	◉	◐	⊠

Legend

⊠ Plan Conformity. The Land Use Category conforms to the Plan if consistent with the Key Designation factors of that Land Use Category. (Table 1).

○ Potential Plan Conformity. May conform to Plan. Requires following affirmative findings for any such Land Use Category:

1. Non-conflict with the Goals and Policies of the Countywide "Policies Document" and with the Findings and Recommendations of the Subarea Plan;
2. Non conflict with the intent and purpose of the Primary Land Use Category into which the Secondary Land Use Category is proposed to be introduced (Table 1);
3. Consistency with the Key Designation Factors of the proposed Secondary Land Use Category (Table 1);
4. Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity, taking into consideration, among other things, the anticipated density, bulk and noise level of the use or activity;
5. Will not have an unduly adverse affect on the management of resources, especially as relates to the Agriculture, Natural Resource, and Rural, Woodland and Grazing Land Use Categories. In making this determination, consideration may be given to the following, among other considerations: potential damage to crops or livestock on surrounding lands, creation of properties too small for efficient resource management, depletion of the supply of the natural resource base, and property taxation.

◐ Low Potential Plan Conformity. May conform to Plan. Requires following affirmative findings for any such Land Use Category:

1-5. (Same as for "Potential Plan Conformity")

6. Will support and complement intent and purpose of Primary Land Use Category or provide an essential service to the development center, Subarea or County which would not otherwise be provided in as appropriate a manner; or
7. Unique circumstances are such that neither the Primary nor the allowable Potential Plan Conformity Secondary Land Use Categories are practical or reasonable.

◉ Plan Nonconformity. The Land Use Category does not conform to the Plan. Plan Amendment is needed if conformance is to be achieved.

NA Not Applicable. This primary land use category is not graphically portrayed on the Plan Diagram.

a) Plan Conformity: Some secondary land uses have automatic plan conformity. For example, Forestry is an acceptable secondary land use under the primary category, RURAL WOODLAND AND GRAZING.

b) Potential Plan Conformity: This includes land uses that could be in conformity, provided a list of criteria are met.

c) Low Potential Plan Conformity: Some secondary land uses would only be acceptable under very limited circumstances. A rather rigid list of criteria must be met before these secondary uses can be found in conformity.

d) Plan Nonconformity: Secondary categories so designated do not conform to the plan.

The permission of a secondary land use would depend upon the determination of its level of conformity, based on the criteria in Table 2. Ultimate responsibility for this determination belongs to the Board of County Commissioners, aided by recommendations from the Planning Commission.

HOW THE PLAN DIAGRAM SYSTEM IS USED

The Plan Diagram system will be used by the County in regulating land use. It is used in two ways:

1) Evaluating major land use applications for individual properties.

This primarily involves requests for changing or "rezoning" property. Other major applications include certain conditional use permits, unzoned area permits and any other major land use permits the County may require in the future.

Upon determining that a major permit is required, the owner (or other party with a legal interest in the property) follows this procedure:

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Step 1. Determine how the particular application conforms to the Plan. This is accomplished by:

1) Finding the property's "Primary Land Use Category" designation from the Plan Diagram.

2) Determine the proposal's plan conformity rating on the chart in Table 2.* For example, suppose the area is designated RURAL, WOODLAND AND GRAZING on the Plan Diagram. This is the site's primary land use category which should then be located on the left-hand side of the chart in Table 2. Reading across the chart, the ratings for a site's secondary land use category may be seen. The secondary land use ratings for the RURAL, WOODLAND AND GRAZING primary category are as follows:

   a. If the request is for a NATURAL RESOURCE (Timber) or CONSERVATION-OPEN SPACE-RECREATIONAL application, it is considered to have a "Plan Conformity" rating.

   b. If the request is for a NEIGHBORHOOD COMMERCIAL application, it is considered to have a "Potential Plan Conformity" rating.

   c. If the request is for an INDUSTRIAL application, it is considered to have a "Low Potential Plan Conformity" rating.

   d. If the request is for a COMMUNITY COMMERCIAL application (or for any other major land use category not provided in the Subarea Plan), it is considered to have a "Plan Nonconformity" rating.

*In most cases the determination of how the particular application would be rated will be obvious. Where there is uncertainty, the determination of the rating will be part of the public hearing process explained in Step 2. The County may need to establish by separate policy which zoning districts and major permits are included within the definition of each land use category used in the Plan.

Step 2. Should the owner decide to proceed with a formal application, the County's decision for approval or disapproval will be based upon the proposal's compliance with the requirements listed under the applicable plan conformity rating.

An application with a "Plan Nonconformity" rating could not be approved as being in conformance with the Plan.

At the present time, the County's decisions are made either by the Planning Commission or the Board of Commissioners, depending upon the type of application. If it is a Planning Commission decision, it is made after the holding of a public hearing. The Planning Commission's decision can be appealed to the Board of Commissioners. If the decision is by the Board of Commissioners, it is also after the holding of a public hearing. In this case, the Planning Commission will have earlier held a public hearing and made a recommendation to the Board of Commissioners.

Step 3. The owner proceeds according to the final decision on the application:

a. If the decision is approval, the owner may then receive approval of building and other necessary construction permits for the requested land use.

b. If the decision is disapproval, the owner must continue to use the property as allowed by the existing requirements or may choose to request approval of a different application.

2) Initial Zoning And The Rezoning Of Large Areas:

The zoning and rezoning of large areas will primarily be based upon (1) the Primary Land Use Designations as shown on the Plan Diagram, and (2) the predominant character of the use of the land. When the predominant character of a small area is different than the general designation for the larger area, as shown on the Plan Diagram, and when other modifications are considered for certain properties, the decision process for these smaller areas will be

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similar to the process for individual property requests as explained above.

The key to providing this flexibility in the Plan lies in establishing criteria to serve as a basis for determining whether or not a proposed secondary land use category is consistent with the spirit, intent and purpose of the Plan. There are four degrees of Plan conformity which are described and graphically illustrated in the Chart in Table 2.

The appropriateness of a secondary land use category would be established by comparing its plan conformity level, indicated on the Plan Conformity Chart, with the plan conformity criteria listed below the chart. Responsibility for determining whether or not a secondary land use category meets the Plan Conformity criteria lies with the Board of County Commissioners, with recommendations from the Planning Commission.

LAND USE CATEGORIES

AGRICULTURE

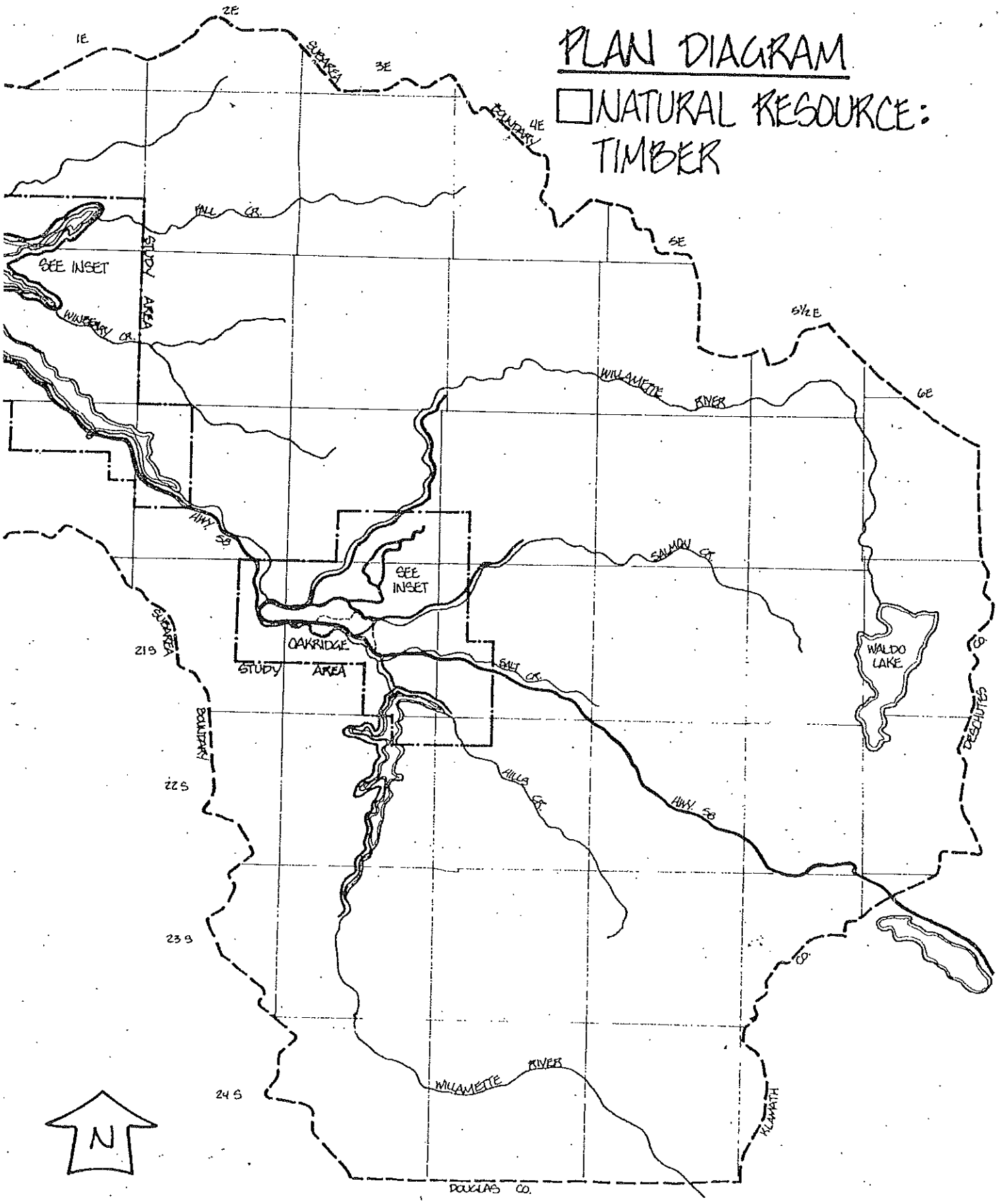
The intent of this designation is to recognize and preserve agriculturally capable land, whether or not it is currently being farmed.

The agricultural category is applied mainly in the High Prairie portion of the Subarea. Most of this land falls within the Soil Conservation Service agricultural capability rating, Classes II and III. Much of this land is currently in agricultural production (mostly grazing land) and the plan recommends maintenance of this use.

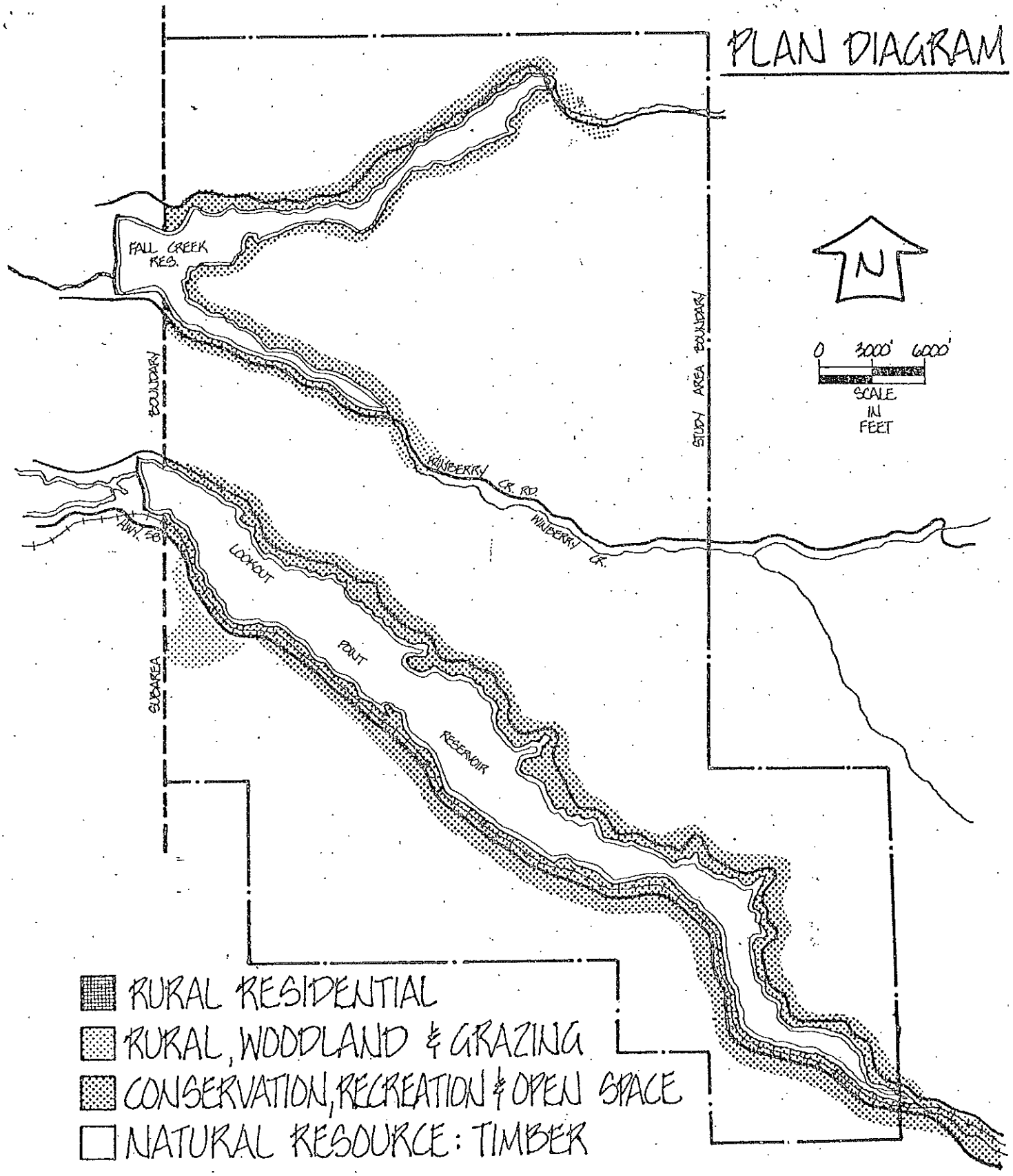
NATURAL RESOURCES (Timber or Sand & Gravel)

The intent of this category is to protect the forest resource, which is essential to both the local and state economy. Most of the forested uplands within the Subarea (approximately 95% of the land area) are within this category, as are the area's known geothermal resource areas.

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UPPER MIDDLE FORK SUBAREA



LOOKOUT POINT - FALL CREEK STUDY AREA

Sand and gravel is another, though minor, natural resource in the Subarea. The plan designation is intended only as an indicator of resource availability and should not be construed as a recommendation to proceed with extraction.

Detailed study of specific sites with evaluation of all potential impacts of extraction must be undertaken prior to permission of extraction activities.

RURAL RESIDENTIAL

The primary purpose of this designation is the recognition of existing residential development. Although the existing residential portions of Westfir are acknowledged, focusing of most residential development within the City of Oakridge Urban Services Boundary is encouraged. Because of environmental constraints (e.g., development suitability of soils, floodplain, etc.), residential expansion is somewhat restricted. It is not the intent of this plan designation to allow for conversion of large acreages, particularly that with timber or agricultural capability, into rural subdivisions but, rather, to recognize existing development and the normal infilling of small, vacant parcels.

Because of this area's historically slow rate of growth, most new residential development can occur as infilling of existing small parcels and within the Oakridge urban services boundary.

As the need for more residential development occurs, and services become available, expansion of the existing residential areas may be appropriate.

COMMERCIAL

The Neighborhood Commercial Category is in recognition of the need for businesses such as the existing small market in Westfir. Although the business is currently closed, this plan will allow for continued commercial use of the structure. The need for other small commercial enterprises may occur in the future.

Tourist Commercial use should be similarly accommodated as the need arises in areas central or adjacent to recreational facilities.

Community Commercial uses are not currently appropriate outside of the City of Oakridge. The city plan adequately provides for this use.

RURAL, WOODLAND, AND GRAZING

Because of environmental constraints, several areas are somewhat marginal for intensive development, but they are not prime timber or agricultural lands. This land use category recognizes the land's natural limitations by providing for a wider range of uses, while maintaining existing agricultural and woodland activities and the rural atmosphere.

INDUSTRIAL

This category is applied to the existing industrial activity center in Westfir. Furthermore, the Oakridge Plan provides for additional industrial expansion and future industry should be centered within this area.

CITY OF OAKRIDGE

Oakridge, the only incorporated city within the Upper Middle Fork Subarea, is designated a Major Development Center by the County General Plan. Unlike some of the other major development centers throughout the County which function somewhat as satellites to the Eugene-Springfield area, Oakridge was so designated largely because of its relative isolation. Oakridge will support most of the residential, commercial and industrial development within the Subarea. Accordingly, its assurance of a sound economic base and provision of adequate public and commercial services is of great importance.

The Oakridge area was recently classified as "economically lagging" by the Economic Development Commission. It is hoped that the various incentives associated with this designation will induce businesses to locate within the area, thus stimulating employment and the local economy.

The Oakridge Comprehensive Plan is currently under consideration by the City Council. The plan shows two urban services boundaries: (1) the "intermediate" boundary, based on the programmed capacity for wastewater treatment and (2) the "potential" boundary, which shows potential for urban growth and service beyond the planning period. The Upper Middle Fork Plan

Diagram recognizes both of these boundaries, and is in general conformance with the designations therein.

However, because of the uncertainty of the "Potential" Urban Services Boundary, it is felt best not to assume the provision of services to these areas. For this reason, there is a slight difference between the County and Oakridge plans. The NE 1/4 of the SW 1/4 of Section 9 (West Oak Road, adjacent to the Circle Bar Golf Course) is designated RESIDENTIAL-RURAL in the city's plan. The County Plan Diagram shows part of this area as RURAL, WOODLAND AND GRAZING. The intent of this designation is not to preclude future development but, rather, to guide its growth in conformance with the city's desire and ability to provide the necessary services. Because, at the present time, the city is unable to project a feasibility date for provision of services to this area, the RURAL, WOODLAND AND GRAZING classification will prevent random land division into parcels so small that future provision of services is uneconomical.

The City plan should be referred to for detailed information about lands within its jurisdiction.

COMMUNITY OF WESTFIR

Although not an official Major or Minor Development or Rural Service Center, Westfir is a distinct community in its own right.

Most of the Subarea plan's RURAL RESIDENTIAL designation, outside Oakridge, occurs in Westfir. This designation is in recognition of the existing residential use in Westfir.

Future growth and development in Westfir will be largely dependent upon local economic conditions and availability of public services and utilities.

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VIII. PLAN IMPLEMENTATION

The development and adoption of a land use plan is only the first step in the overall planning process. If a plan is to serve as a guide for accommodating growth and change, it must also (1) be implemented through the application of regulatory ordinances (such as zoning and subdivision ordinances, building and sanitation codes), (2) be reviewed and revised periodically, and (3) be used as a policy guide by public decision-makers.

THE PLAN AS A GUIDE

The development, adoption, implementation and revision of a land use plan constitutes the "planning process." The purpose of this process is to develop guidelines to be used by both the public and private interests in making decisions relative to land use. Land use plans can be used as guides in the following ways:

1. General guide for public decision-making

   Land use plans provide public governing bodies (city councils, Board of County Commissioners, and governmental agencies) with the basis for making decisions regarding the allocation of land uses, population densities, and development standards.

   Without such a guide, it is difficult, if not impossible, to make land use decisions which are economically and environmentally sound, provide compatibility among different activities and in general provide orderly change and growth.

2. General guide for private decision-making.

   Private individuals and businesses can effectively use a land use plan to determine the best locations for carrying out their activities. The individual seeking a single homesite, business seeking a new commercial market, and the developer seeking the most appropriate location for a housing tract can all use the plan as a basic reference document. Since the plan represents public policy, private decisions in accordance with it are encouraged by the public.

   Aside from being a locational guide for private decisions, the plan provides private decision-makers with a store of basic information about socioeconomic conditions, land use patterns, environmental concerns and public service requirements. Use

of this information will help private decision-makers to understand and support public actions based on the same information. It will also alert them to the problems and needs of the County, and will provide directions through which private decisions can assist in solving the problems and meeting the needs. In these ways, the "public sector" and the "private sector" can work together to achieve common ends.

3. Guide for providing public services.

   Being able to anticipate where, in what form (residential commercial, industrial) and at what intensities land will be developed and used, provides public bodies with the ability to anticipate and plan for demands on public services.

   By indicating the direction and nature of growth and change, public bodies can program for capital improvements such as schools, roads, sewers, water, parks and recreation facilities, etc., in order to obtain maximum efficiency and utilization of these services.

4. Guide for future studies.

   In the process of gathering data and information for a land use plan (i.e., information on population, natural resources, economics), it sometimes becomes apparent that detailed studies in specific areas are needed. In the Upper and Lower McKenzie Subareas, for example, recommendations are made for a detailed flood hazard study to supplement available information.

Additionally, a land use plan is the first step in the development of performance standards for future land use proposals. Having identified the nature and character of an area and established policies for land use, performance standards can be used to relate particular development proposals to the natural and environmental limitations of a particular site.

Land use planning, then, serves to identify where an area needs additional refined studies which, in turn, can strengthen future planning efforts.

PLAN IMPLEMENTATION

A land use plan has value only if it is implemented. Plan implementation occurs primarily through the application of regulatory ordinances. At the present time, Countywide regulations are in effect regarding subdivisions, building construction and sanitation facilities. Zoning divides land into districts or zones such as residential, commercial, industrial and agricultural. Each zone allows certain types of land uses while prohibiting others which would be incompatible with the permitted use. When areas are zoned, the districts should reflect the recommended land uses indicated in the land use plan. Therefore, upon completion of the land use plan for the Upper Middle Fork Subarea, a zoning program will be developed.

PLAN REVIEW AND REFINEMENT

This initial land use plan attempts to anticipate and guide change in a manner which reflects the goals of the area's citizens, County policies and environmental constraints. However, it is impossible to predict the nature and scope of all changes in an area, the types of pressures to which an area will be subjected, and the direction growth will always take.

New information on population growth, residential development trends, economic changes, etc., must be reviewed in light of the adopted plan, discrepancies and inconsistencies eliminated, and additional goals and guidelines adopted. The Upper Middle Fork Subarea plan, like all subarea plans in the County, will undergo periodic revisions in the future.

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APPENDIX A

DEFINITION OF PLANNING TERMS USED IN THIS STUDY

To aid the reader in understanding some of the terminology (especially those words which seem to have more than one meaning) used in this planning study, the following definitions have been prepared. It should be remembered that these terms are defined for this report only, and do not necessarily parallel those used in County ordinances, etc.

AGRICULTURAL LAND CAPABILITY CLASSIFICATION -- System used by the US Soil Conservation Service to categorize lands according to their ability to support various crops, vegetation, etc. Ratings go from I to VIII, with I referring to the best possible agricultural land.

DEVELOPMENT -- Any conversion of land from a less intensive use to a more intensive use, such as the building of a dwelling unit on land formerly used for pasture or crops.

DEVELOPMENT, MAJOR -- A conversion of land to a more intensive use which significantly alters the physical or social character of the site and/or surrounding area.

DEVELOPMENT SUITABILITY RATING -- Used in connection with the Soils analysis; based on a system of evaluating soils for development purposes (dwelling units, roads, etc.), which considers the ability of the soil to support septic tank drainfields, foundations, etc. Ratings go from 1 to 4, with 1 being most suitable for development and 4 least suitable.

FINDING -- Same as "implication," except it also refers to the conclusions drawn from evaluation of a set of data.

GOAL -- A statement of a desired condition or circumstance to be achieved at some point in the future.

IMPLICATION -- A projected impact of a condition or circumstance on other conditions; for example, a large number of dwelling units in an area has the implication of increased traffic loads on the street and highway system.

INTENSIVE -- As used in "less intensive"; refers to the magnitude of use of a given acre of land, or impact placed on that land. For example, open pastureland is being used less intensively than developed land upon which dwelling units are located. Land values generally reflect this factor in that more intensively used parcels are valued higher for property tax purposes.

POLICY -- A statement of method or approach used to achieve a goal, or move toward it; implies making decisions in line with the policy.

RECOMMENDATION -- A suggested course of action intended to carry out a policy, resolve problems, improve on good situations, etc.

URBAN DENSITY -- Refers to the proximity of several dwelling units, or the number of them within a given area. As used in this report, "urban density" generally refers to densities of one dwelling unit per acre or greater. "Rural," of course, would be lesser densities.

APPENDIX B

EXCEPTIONS TO THE LCDC AGRICULTURAL LANDS GOAL

INTRODUCTION

The Agricultural Lands Goal, Goal #3 of the Statewide Planning Goals and Guidelines, requires that land of predominantly Class I-IV soils shall be ~~designated with an AGRICULTURE land use category in comprehensive plans unless a governing body chooses to take an exception to the Goal.~~ preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215."

Any governmental unit taking an exception to the Agricultural Lands Goal--in either the planning or zoning process--must address four criteria for goal exceptions outlined in the Land Use Planning Goal (Goal 2). Specifically, the exception language is as follows:

> When, during the application of the statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of public hearing. The notices of public hearing shall summarize the issues in an understandable and meaningful manner. If the exception to the goal is adopted, then the compelling reasons and the facts for that conclusion shall be completely set forth in the plan and shall include:
>
> a. Why these other uses should be provided for;
>
> b. What alternative locations within the area could be used for the proposed uses;
>
> c. What are the long-term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
>
> d. A finding that the proposed uses will be compatible with other adjacent uses.

In addition, ORS 215.215(2) permits non-EFU zoning of one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the nonfarm use prior to the establishment of the exclusive farm use zone."

EXCEPTIONS IN THE UPPER MIDDLE FORK SUBAREA

In some locations in the Upper Middle Fork Subarea there exist land uses or topographic/physiographic features on Class II-IV soils which effectively preclude the operation of viable agricultural activities. In these locations where the County is taking an exception to the Agricultural Lands Goal, land use categories other than AGRICULTURE are depicted on the Plan Diagram. A verbal description of areas where exceptions are taken, and the "compelling reasons and facts" for the exceptions are described on the following pages.

EXCEPTION #1

The following areas are designated NATURAL RESOURCE: TIMBER on the Plan Diagram, although the soils are identified as SCS Class II, III and IV

(1) Parts of the Fall Creek and Winberry Creek upper valleys.

(2) Several areas around Oakridge and Westfir.

(3) Many other isolated areas in the narrow valley floors throughout the subarea, not all of which have soil data available.

A. Because of the timber industry's importance to both the local and state economies, preservation of the timber resource is a major concern. The LCDC Goal #4, as well as Lane County's Goals and Policies, reflects this concern. Hence, although these areas include some soils that could be classed as Agricultural, it is felt that the land is best suited to continued timber production. We have, therefore, substituted the Forest Lands Goal for the Agricultural.

B. The subject areas are well suited for production of commercial timber. Other forest lands exist in the subarea and are so designated. Likewise, even though some of the nonforested land could be planted in timber, these lands are better suited to other types of use.

C. The continuation of this land use would be beneficial both socially and economically (as discussed in "A" above). Conversion of this land to traditional agricultural use could have significant environmental, energy and economic impacts related to clearing, fertilization, etc. The long-term energy and environmental impacts of continuing timber management will depend upon industry diversification and future state and federal policies. Projection of these impacts at this time would be difficult and generally speculative.

D. As these areas are adjacent to other forest, mixed woodland and grazing lands, their preservation in timber should not have a negative impact on neighborhoring uses.

EXCEPTION #2

The following areas are shown as RURAL RESIDENTIAL and INDUSTRIAL on the Plan Diagram:

(1) Westridge and Hemlock subdivisions
(2) Residential areas along West Oak, McFarland, LaDuke Rds, and Hwy. 58.
(3) The mill sites in Westfir and southeast of Oakridge.

A. The subject areas are sites of existing residential and industrial development. Although some Class II and III soils are involved, the area is fully committed to the aforementioned uses.

B. Because this exception covers only fully developed land, this question is not particularly applicable. The original location of homes and the industrial facility was probably due in part to soil conditions favorable to such development. Soil conditions and topography adjacent to the subject areas limit the vicinity's development suitability and will act as a constraint to further growth of the area.

C. Because this exception is "after the fact," there really are no avoidable long-term impacts. The loss of this land to agricultural production has already occurred. However, use of the land for housing and industry (jobs) has had a positive social and economic impact on the Oakridge-Westfir area.

D. Again, this question is no longer particularly applicable, since the uses already exist. Because of the area's expansive timber resource, development of a mill in the vicinity of the raw materials was inevitable. Residential development was a natural successor to the new industrial facility. Additionally, the subject areas are very close to the City of Oakridge and, to some extent, were a predictable result of that city's growth.

These areas would also appear to fall under the exception allowed by ORS 215.215(2).

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EXCEPTION #3

An area adjacent to McFarland Road, and the Circle Bar Golf Course, is shown as RURAL, WOODLAND AND GRAZING on the Plan Diagram.

A. Although a narrow strip of land along McFarland Road includes some ~~from~~ Class III soils, existing development and topographic features preclude its intensive agricultural use. The subject area has been divided and developed into a number of rural homesites (two to eight acres in size) where some small-scale farm activity occurs. Furthermore, a good portion of this area lies within the City of Oakridge Urban Services area. Designation of these properties as AGRICULTURAL (with the EFU zone designation which follows) would not be reflective of the present commitment of this land. The RURAL, WOODLAND AND GRAZING category will preserve these areas for small-scale agricultural activity as currently exists, but will allow greater flexibility in terms of permitted uses.

B. Other AGRICULTURAL areas are designated by this plan, as are other RURAL, WOODLAND AND GRAZING areas. Because we are dealing with land already committed to the use described above, the question of alternative locations is not applicable. The proposed designation will not provide for further land divisions in the subject area.

C. There will be no significant impacts involved in this proposed action. The RURAL, WOODLAND AND GRAZING designation (somewhat less restrictive than the AGRICULTURAL) is more reflective of the type of land use existing in the subject area.

D. The proposed designation is compatible both with existing land use (grazing, mixed woodland and the golf course) as well as the Plan's long-term land use designation of adjacent land; that is, RURAL, WOODLAND AND GRAZING, AGRICULTURE, and CONSERVATION, RECREATION, AND OPEN SPACE.

EXCEPTION #4

The Alpine Acreage Estates subdivision is shown as RURAL WOODLAND and GRAZING on the Plan Diagram.

A. This is an existing rural subdivision with lot size averaging about two acres. Because this land has already been committed to residential use, it is no longer appropriate to consider it an agricultural resource.

B. Because this exception is requested for a committed use, the question of alternate location does not apply.

C. No long-term impacts will result from this exception. Any impacts are already implicit due to the existence of the subdivision.

D. Again, this is not a "proposed" use, but rather one already in existence. There is some residential use in the vicinity as well as low-intensity agriculture.

EXCEPTION #5

Several areas around Oakridge, although identified as having SCS Class II, III or IV soils, are shown as RURAL, WOODLAND and GRAZING on the Plan Diagram. These are areas of mixed grazing, residential and forest uses, partially divided into lots as small as 1 acre and supporting diverse farm and non-farm uses.

A. These other uses should be provided for because they are already well-established and contributing to the economic and agricultural well-being of the Oakridge area.

B. There are only a few other locations in the Oakridge area where such mixed uses could be accomodated; by and large, these other locations are devoted to other pre-existing uses (small-lot residential, industrial, forestry).

C. The long-term environmental, economic and social consequences of permitting the present uses to continue would appear to be positive to the area and the region. The energy consequences are more speculative: by making present uses nonconforming to the Plan or subsequent zoning, present residential uses <u>may</u> in time be encouraged to relocate closer to town; allowing them to remain, therefore, may be energy-consumptive in terms of fuel use for commuting to Oakridge.

D. Present uses do not appear to be incompatible with other adjacent uses (forestry, grazing, industrial).

APPENDIX B

STAFF REPORT

August 22, 1979

BACKGROUND:

Work on this plan was begun in early 1977. Initially, the citizens were encouraged to draft their own plan using a series of plan formation workbooks. Unfortunately, public participation was minimal and the idea was abandoned. Residents of the subarea requested the Planning staff to draft a plan and submit it to them for detailed review. The draft was completed in July, 1978 and citizen review began in August.

At the same time, the decision was made to carry through with the zoning of the subarea, concurrent with the Plan, in order to streamline the process. This has been done and a separate staff report prepared for the proposed zoning.

THE REVIEW PROCESS:

The Upper Middle Fork Plan was reviewed by the area residents in a series of eight informal meetings at Oakridge between August and December, 1978. Each section of the text was gone over in detail and many revisions were made. After the first eight meetings, a second version of the Plan Diagram was drafted to represent more directly the wishes of the people. Proposed zoning maps were then prepared to reflect each of the Plan Diagrams and existing uses. The zoning maps and Plan Diagrams were hung in Oakridge City Hall just before Christmas, 1978, and the final draft of the Comprehensive Plan became available in early January, 1979.

During January and February, 1979, three drop-in meetings were held at Oakridge to enable area residents to discuss the final Plan Diagrams and zoning maps. As a result, several substantial changes were made to the proposed zoning to reflect new data, requests of landowners and existing development patterns.

The Lane County Planning Commission held two hearings during March and April, 1979, followed by three County Commissioner hearings during June, July and August. Throughout this process, a continuing dialogue was maintained with subarea residents and the cities of Oakridge and Westfir.

THE PLAN DIAGRAM:

The subarea Comprehensive Plan here presented includes the Plan Diagram recommended by the Planning Commission. Up to the Planning Commission's hearing on April 12, 1979, two versions of the Plan Diagram were published; one recommended by staff, the other proposed by area residents. At the hearing, both plans were explained, all areas of disagreement were discussed, and the Planning Commission accommodated many citizen requests. The Plan Diagram which resulted was felt to be a reasonable compromise between the wishes of the area residents, the Comprehensive Plan of the City of Oakridge and sound planning principles.

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After Planning Commission action on the plan, requests were received from the cities of Oakridge and Westfir to incorporate their input to the plan. Accordingly, final Board action was held up to permit the city councils to meet with staff and make recommendations regarding the areas around the cities. This has resulted in the presentation of three sequential plan diagrams:

1. The Planning Commission recommendation.
2. The staff recommendation, incorporating the Oakridge Comprehensive Plan for all areas within their "Intermediate Urban Services Boundary".
3. The Plan Diagram adopted by the Board of County Commissioners, incorporating all the above and responding to requests of area landowners and the cities of Westfir and Oakridge.

OAKRIDGE

The City of Oakridge Comprehensive Plan was completed and adopted prior to the review stage of the Upper Middle Fork Subarea Plan. The Oakridge Plan established two Urban Services Boundaries: an Intermediate one for the near future and a Potential one for the expected ultimate growth of the city. Although the plan designations outside the city limits are ultimately the responsibility of the County, many of these areas will eventually annex to the city. Accordingly, the city's plan designations have been used within the "Intermediate Urban Services Boundary". In addition, many of the Oakridge City Council's recommendations were incorporated in the final Land Use Plan.

WESTFIR

The new city of Westfir, incorporated earlier this year, does not yet have a Planning Commission, comprehensive plan or zoning. Until the city takes action to assume the planning and zoning function within the city, the County plan and zoning remain in effect (ORS 215.130(2)(a)). The Westfir City Council, however, were consulted and made a recommendation as to the plan designations and zoning within the city. Those recommendations are incorporated in the approved documents.

APPENDIX C

STAFF REPORT

August 22, 1979

THE ADOPTED COMPREHENSIVE LAND USE PLAN:

The plan adopted by the Lane County Board of Commissioners includes the following:

1. The "2nd Draft: Comprehensive Land Use Plan for the Upper Middle Fork Subarea, Part I: Plan Report", dated December, 1978, "as modified by action of the Lane County Planning Commission on April 17, 1979", plus the following alterations incorporated by the Board of County Commissioners, August 22, 1979.

2. The Plan Diagram for the Oakridge area has been altered to agree fully with the "Comprehensive Plan for Oakridge, Oregon" for all of the area between the city limits and the "Intermediate Urban Services Area Boundary".

3. The following statement has been inserted in place of the third paragraph on page 58 of the "2nd Draft, Comprehensive Land Use Plan for the Upper Middle Fork Subarea, Part I, Plan Report, December, 1978, as modified by action of Lane County Planning Commission on April 17, 1979".

   "Lane County will administer land use and other controls within the intermediate UGB*, in areas under County jurisdiction, until these areas are annexed to the City. Urban-level development within the Intermediate UGB will not be supported without annexation to the City of Oakridge. The City Plan will be used as the first but not necessarily the only, guide toward the administration of County regulations, development controls, public facilities, improvements, etc. The County recognizes the Oakridge City Plan as the principle decision guide for lands within the Intermediate UGB, although should conflicts arise between the City Plan and the County Plan (or related policies or regulations), the County reserves the right to apply measures which may not be contained in the City Plan until the conflict is resolved. Within the Potential UGB, but outside the Intermediate UGB, the provisions of the County Plan shall prevail, although the County will attempt to honor the City Plan's provisions to the extent practicable without conflict with the County Plan. At such a time as the City Plan or either of its UGB's is revised, or the County Plan is revised, the County will seek close cooperation with the City in jointly deriving new Plan provisions. Questions of interpretation of the City Plan should be first referred to City officials."

4. The following changes to the Plan Diagram:

   (a) Two areas west of Oakridge designated RURAL RESIDENTIAL have been somewhat enlarged.
   (b) An area south of Oakridge which is presently a gravel pit has been changed from NATURAL RESOURCE: TIMBER to NATURAL RESOURCE; SAND & GRAVEL.

*Urban Growth Boundary

(c) An area on the north side of Hills Creek Reservoir adjacent to existing development has been changed from NATURAL RESOURCE: TIMBER to RURAL, WOODLAND & GRAZING.

(d) An area above Fall Creek Reservoir has been changed from NATURAL RESOURCE: TIMBER to RURAL, WOODLAND & GRAZING.

Fidelity National Title

ADOPTED 8-22-79
NO DIAGRAMS
INCLUDED

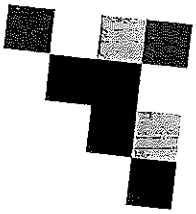


EXHIBIT H 2

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. 741

) IN THE MATTER OF ADOPTING THE
) UPPER MIDDLE FORK SUBAREA PLAN
) AS A COMPONENT OF THE COUNTY
) GENERAL PLAN, AN ELEMENT OF THE
) COMPREHENSIVE PLAN FOR LANE COUNTY

WHEREAS the Board of County Commissioners has received from the Lane County Planning Commission a resolution dated April 17, 1979, of record herein, recommending approval of the plan known as the Upper Middle Fork Subarea Plan; and

WHEREAS the Board of County Commissioners has received and considered the Upper Middle Fork Subarea Plan, Second Draft, dated April 1979, public testimony and correspondence relating thereto; and

WHEREAS, the Board of County Commissioners has performed its public hearing and other duties in accordance with applicable law, now therefore

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS: That the Upper Middle Fork Subarea Plan, Part I, Second Draft, dated April 1979 (copy attached hereto and indicated as appendix A), as modified by changes indicated in the Staff Report to the Board of County Commissioners, dated August 22, 1979 (copy attached hereto and indicated as appendix B), and as modified by the Board of County Commissioners (copy attached hereto and indicated as appendix C), and including certain "Exceptions to Statewide Planning Goal #3: Agricultural Lands" (copy attached hereto and indicated as appendix D), be ADOPTED.

INTENDED that the "Upper Middle Fork Subarea Plan, Part II, Technical Report", be recognized as supportive information used in the preparation of the Plan;

ENACTED this day of , 1979.

Chairman,
Lane County Board of Commissioners

APPROVED AS TO FORM
DATE lane county
OFFICE OF LEGAL COUNSEL

Recording Secretary
for this Meeting of the Board

ORDINANCE NO. 741

In the matter of adopting the Upper Middle Fork Subarea Plan as a component of the County General Plan, an element of the Comprehensive Plan for Lane County.

APPENDIX A

2nd Draft

COMPREHENSIVE LAND USE PLAN

for

THE UPPER MIDDLE FOR SUBAREA

As modified by action of
Lane County Planning Commission
on April 17, 1979

PART I

PLAN REPORT

Lane County, Oregon
December 1978

Department of Environmental Management, Division of Planning

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LANE COUNTY BOARD OF COMMISSIONERS

Vance Freeman, Chairperson
Jerry Rust
Harold Rutherford
Otto t'Hooft
Archie Weinstein

LANE COUNTY DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Rich Owings, Director
Lee Miller, Director, Planning Division
Michael Copely, Senior Planner, Regional Planning
Pete Watson, Subarea Planner

Report prepared with assistance of: Lane Council of Governments

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PREFACE

The Upper Middle Fork Subarea planning study has been divided into two separate reports, for the convenience of the reader. The two reports each contain pertinent information to the Subarea, and together form a complete study. If need be, however, the Plan Report alone (Part I) can be consulted by the reader who desires to know the major goals, findings and recommendations of the study. Contents of the two reports are as follows:

A. PLAN REPORT (Part I)

1. Foreword
2. Plan Adoption
3. Introduction
4. Citizen Goals and Involvement
5. Findings and Recommendations
6. Land Use Constraints Summary
7. Plan Diagram
8. Plan Implementation

B. TECHNICAL REPORT (Part II)

1. Introduction
2. Social and Economic Environment
3. Natural Environment
4. Manmade Physical Environment
5. Public Services and Facilities
6. Land Use Constraints

The role of Part I is to present the findings and recommendations of the technical analysis without requiring the reader to go through the technical analysis itself. Part II presents that technical analysis for the reader who wishes to know how certain findings and recommendations came to be.

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I. FOREWORD: THE LANE COUNTY GENERAL PLAN

WHY A COUNTY PLAN?

The objective of planning is twofold--first, to identify and recommend solutions to problems relating to the physical, social and economic character of the County. Because of their complexity, problems such as the incompatible mixture of land uses, depletion and misuse of natural resources, transportation hazards and traffic congestion, inadequate public facilities and utilities, and limited housing and employment opportunities, require planning analyses and solutions.

Secondly, planning is intended to identify the nature and character of change and growth in the County and provide a basis for coordinated public and private action to plan for and guide this change and growth. Planning should insure that change and growth provides for the wise conservation and use of our natural resources, protects the natural environment, provides a balanced transportation system, strengthens the County's economy and, in general, improves housing and social opportunity for all County residents.

A plan serves as a guide and a basis for decision-making to public officials and private interests. As a public process, planning identifies problems, and points the way toward their resolution before social and economic costs are beyond local capability. In this way, planning "preempts" potential crisis situations.

POPULATION AND THE QUESTION OF GROWTH

By 1995, Lane County is expected to have a population of approximately 350,000, of which 102,000 people are expected to live outside the Eugene-Springfield metropolitan area. This "rural" population is expected to increase by nearly 35,000 additional people from the present 67,000. Almost 80,000 of the rural population is expected to be living within the central part of the County, within a half hour's commuting time from the Eugene-Springfield metropolitan area. Elsewhere, there are expected to be nearly 10,000 year-round residents in the coastal area (compared to some 6,000 today), almost 5,500 in the Oakridge

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area and some 7,000 people scattered in the more remote valleys (Upper McKenzie, Lake Creek, Row River and Coast Fork of the Willamette).

Increasingly many people are questioning the desirability of a continuation of present levels of growth. This plan does not attempt to establish what the absolute level of growth should be. Instead, it seeks to identify and deal with the growth which now seems likely.

WHAT IS THE COUNTY PLAN?

The County General Plan is comprised of four main parts:

1) The Goals and Policies Statement - This basic document sets general policies which serve as guidelines for specific recommendations of the other plan documents.

2) Community Plans - These 13 plans provide an analysis of several rural communities in Lane County with recommendations regarding land use, parks and recreation, transportation, and services and utilities.

3) Special Reports - Various technical reports, including the Water Quality Report and County Atlas.

4) Subarea Plans - The County has been divided into 12 subareas, based primarily on drainage patterns, in order to evaluate each area's natural and social characteristics in detail.

THE SUBAREA PLAN

Subarea Land Use Plans consist of two parts:

I. Plan Proposal - This portion of the plan contains a listing of major findings and recommendations about the subarea which are supported by the technical report.

II. Technical Report - This portion contains detailed information on the area's social and natural characteristics. It serves as the data base upon which the findings and recommendations of the Plan Proposal are based.

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The land use plan for the Upper Middle Fork Subarea follows. The information contained therein should be used as a guide for land use decisions in this Subarea.

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II. PLAN ADOPTION

THE REVIEW PROCESS

Initial Public Review

Based upon the data assembled in the Technical Report, a draft Plan Report is written. This proposal is then presented to the Subarea residents for their review and comment.

Besides informing residents of planned land use recommendations, the purpose of this review is to assure that the plan complies with local goals, verify the report's information with residents usually more familiar with the area than the planner and resolve any conflicting issues that may arise as a result of plan recommendations.

The plan may then be modified, if such action is warranted as a result of this public review, and passed on to the Planning Commission.

Planning Commission Action

The Planning Commission reviews the modified plan draft, hears public testimony regarding the plan, revises the document if they feel it necessary and makes a recommendation to the Board of County Commissioners with regard to plan adoption.

Board of County Commissioners Adoption

The final step to plan adoption is review by the Board of County Commissioners. Upon consideration of the Planning Commission recommendation and additional public testimony, the Board takes the final action, adoption of the Plan as an official ordinance, which brings legal status to the document.

ADOPTION ALTERNATIVES

As noted in the beginning, the Upper Middle Fork Subarea Plan is published in two reports: a Plan Report (Part I) and a Technical Report (Part II). The question can legitimately be

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raised as to which report, or what parts of either, should become the adopted plan for the Subarea.

Based on the experiences of many local governments in the United States, two alternatives become evident:

1. The entire planning study and plan proper (represented here by the Plan Diagram and associated findings and recommendations) can be adopted as a single unit. This accomplishes the task of making all background information a part of the Plan. It does not necessarily endorse that information, but a commitment is made to work with it and improve it as time goes by. Because the information is a part of the adopted plan, it can easily be used as the rationale for planning decisions, in case of a conflict or difficult decision.

2. The summary of the study, containing the "meat" of it, can be adopted. Generally, this consists of those findings, recommendations, and proposed land use designations (Plan Diagram and narrative) which emerge from the planning study. This was the procedure used in the metropolitan area's 1990 Plan. Background information is used to support the adopted statements, usually by reference, but is not actually adopted along with them. This accomplishes the end of permitting a relatively brief, succinct document to be adopted and used, without there having to be adoption of the more lengthy (and sometimes controversial) technical studies which back up the Plan. Of course, that information does not then have the status that adoption would otherwise have given it.

In the case of the Upper Middle Fork Subarea Plan, the first alternative would involve the adoption of both reports--Part I and Part II--after thorough public discussion and review. The second alternative would involve the adoption of the major portion (or all) of Part I only. Chapters V and VII of the report are the minimum that would have to be adopted, and the addition of Chapters IV and VI would be beneficial. Adoption of Part I in its entirety would allow the use of a complete, internally consistent report as the plan.

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The decision on what to adopt has to be made by the County's elected officials, advised by those whom they appoint to assist them in reviewing planning work. This cannot be done until public review and hearings have been completed; the review and hearing process may be helpful in making this decision.

THE ROLE OF ADOPTION

When a number of people, represented by their elected and appointed government officials, adopt a plan and/or planning study, they are in a very real sense making a commitment to attempt the achievement of what the plan proposes. This, of course, assumes that by the time of adoption (as will be the case in Lane County), thorough public review and hearings will have been carried out and the plan will be acceptable to the public. Adoption brings with it a legal status; the public has gone on record, before all citizens, that it intends to make use of the plan as a guide to decision-making.

In addition to this, when the plan is adopted, it is considered by other government units*--including the courts--to be a statement of policy by the adopting government. Therefore, decisions which are made by those other units (court decisions on land use questions, for example), often refer to the plan as their supporting reasons. The adopting government thus has the responsibility to use the plan as best it can, and improve on it through the planning process over the years.

Adoption also brings with it a distribution of planning information to the public. A plan report, available to any citizen, contains data, suggestions and recommendations that the public, through its government, has decided to make use of. The best way to make use of it is to enlist the support--through education--of all citizens. When the plan is adopted it becomes a part of the public's store of information, and the public is invited to support it, to use it, and to improve on it.

*The State of Oregon is among the governments which use the County Plan and, in fact, (through Senate Bill 100) requires that a plan be developed, adopted and used by local governments.

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III. INTRODUCTION

The Upper Middle Fork Subarea comprises approximately 1170 square miles in the southeastern portion of Lane County. It forms the upper part of the Middle Fork Willamette River watershed. The subarea is primarily forest land, the majority of which is federally owned.

The main center of residential development is within, and adjacent to, the City of Oakridge, an incorporated community of approximately 4,000 people. Other residential activity occurs along the Fall Creek and Lookout Point Reservoirs.

Development pressures have not been strong in recent years, a situation that is not expected to change significantly within the planning period. However, because of a number of natural constraints, development potential in the subarea is limited. For this reason, and to insure protection of the timber and limited agricultural resource, even a relatively small amount of growth must be carefully guided.

Intensive development in the subarea should be strongly limited. Controlled infilling of the existing residential nodes can be allowed, although most of the subarea should remain undeveloped.

Because much of the subarea is National Forest land, its economy is strongly oriented to maintenance, harvesting and processing of the timber resources. Some diversification of the wood products industry may result in response to current local efforts toward economic self-sufficiency. The success of these efforts is not expected to have a significant growth-inducing impact on the area.

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IV. CITIZEN GOALS & INVOLVEMENT

Planning for People Program

During 1970 and 1971, several "Planning for People" meetings were held in the Subarea. Each meeting was conducted by a local citizen who was assisted by an agent of the Lane County Extension Service and a staff member of the County Planning Division. The purpose of these meetings was to establish local goals and concerns within the Upper Middle Fork Subarea. Some of the needs expressed during the meetings have been answered (e.g., family planning services and city-sponsored recreation programs). The issues that are still of concern to residents are as follows:

* Need for medical services, recreational facilities and jobs
* Improvement of educational system (vocational training, better course work and teachers)
* Funding for public services (fire protection, streets and curbs, public restrooms)
* Housing--particularly low-income
* Preservation of the area's natural, rural character

Although some of these concerns are beyond the scope of the Subarea Plan, they are included in order to better define the nature and desires of the community.

Plan Development Workbook

More recently, an attempt was made by the Planning Division Staff to directly involve Subarea residents in the development of the land-use plan for their area. A four-part "Plan Development Workbook" was distributed with the intent that, upon completion, a citizen-authored plan would result. A series of public meetings was held to assist in this effort. However, because of a lack of citizen time, interest and/or understanding, meeting attendance dwindled, workbook sections were not completed, and this approach to Plan development was abandoned in favor of the more traditional staff-prepared Plan

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Proposal. It should be noted that this action was by choice of the citizenry.

V. FINDINGS AND RECOMMENDATIONS

Introduction

The Technical Report (Part II) discusses in detail the various physical or social components of the Subarea. This section of the Plan Report summarizes the findings and implications of the Technical Report and makes recommendations with regard to this information. The purpose of this method is to better facilitate decision-making and public understanding by allowing quick reference to the major areas of concern within the Subarea.

To obtain more detailed information about a particular topic, or to ascertain the basis for a particular recommendation, the Technical Report should be consulted.

Summary

The following is a compilation of recommendations that recur throughout the report. By listing them, a number of general concerns become apparent that will hopefully serve as an aid and guide to decision-makers.

1) The rural character of the Subarea should be maintained.

2) Forest resource lands should be protected for continued timber production.

3) The Subarea's economic base should be expanded and diversified to lessen its great dependency on the wood products industry and bolster local economic self-sufficiency.

4) Major developments within the Subarea should be limited and all proposals closely reviewed for impacts on the community.

5) Regulations with regard to construction on slopes over 15%, protection of riparian corridors, and erosion control should be instituted by the appropriate County agencies.

6) Further study of groundwater supply/safe yield, flood-plains, soils, and geology should be undertaken.

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A. SOCIAL AND ECONOMIC ENVIRONMENT+

Findings

1. The area's population is primarily centered in the Oakridge-High Prairie area. Other residential activity is found along Lookout Point Reservoir, Winberry Creek and scattered along the major roadways.

2. Many of the area's residents have chosen to live in the area because of its rural character and easy accessibility to natural recreation land.

3. Overall growth within the Subarea has been very slight over the past ten years, with the population actually declining in some portions.

4. Presently available projections indicate that the Subarea will experience minimal population growth over the next 25 years.* Consequently, demands for public services should not increase significantly during this time.

5. There has been an increase in the number of retirees locating within the Subarea.

6. Most of the Subarea's current population is working-age adults and their children. This trend is expected to continue in the future.

7. Two-thirds of the area's residents live in their own homes.

8. Approximately 10% of the housing units were considered overcrowded in the 1970 census.

+For this section only, findings & recommendations have been combined. Other sections more closely parallel the Technical Report.

*This projection is intended as an educated guess. Significant changes in such factors as employment opportunities or the timber industry could greatly alter this projection.

000430

9. Average annual family income is somewhat below that of the rest of Lane County and the Oakridge/Westfir area has been designated "economically lagging" by the State Department of Economic Development.

10. The majority of the area's work force is employed within the Subarea, primarily in timber harvest/wood products-related occupations. Thus, the area's economy is largely and probably overly dependent upon the future fortune of this industry.

11. The recently funded study of potential new businesses feasible for the Oakridge/Westfir area[1] identified three different industries for community consideration. These enterprises are (1) the manufacturing of hot tub components; (2) production of furniture, furnishings and cabinets and (3) design, production, and sale of quality handcrafted items. Although this study emphasized diversification in the wood products industry, diversification in other industries should also be encouraged, particularly those related to tourism and recreation.

12. Health care services in the subarea are minimal.

Recommendations

1. Further study should be undertaken to adequately assess the social, economic and housing conditions of the Subarea in order to more precisely predict and plan for future growth trends.

2. Small scale, "cottage" industry should be supported and encouraged in this area.

3. New employment opportunities, particularly those not dependent upon the timber industry, should be sought for the area residents.

4. Future growth in the area should be guided in a manner that will preserve its natural, rural character.

[1]The Potential for Alternative Business in Oakridge/Westfir, Economics Research Associates, February 17, 1978.

000431

5. Policies and programs to ensure an adequate and sustained timber supply on the region's public and private lands should be of high priority. The County must join with the state and federal governments as well as private industry in the long-range management of this essential resource.

000432

B. THE NATURAL ENVIRONMENT

Topography

1. The inaccessibility and expense of developing the Subarea's rough and mountainous terrain has focused most development into the narrow river and stream valleys.

2. Because of this concentration, careful planning is necessary to avoid inappropriate or conflicting use of land.

3. Erosion and the subsequent environmental degradation is a problem in the Subarea, particularly when the natural drainage patterns are altered.

Recommendations

1. Land use proposals should also be reviewed to insure that drainage and/or hydraulic flow patterns are not adversely affected and that proper erosion control measures are employed.

000433

Slope

Findings

1. With the exception of some valley terraces, plateaus, and ridgetops (including High Prairie), slopes in the Subarea generally exceed 15%.

2. It has been generally found that intensive development of slopes in excess of 15% are avoided in rural areas because of the significant cost and potential environmental and public safety problems involved.

Recommendations

1. Intensive development, such as large subdivisions, may be permitted on slopes over 15% after a slope stability analysis (performed by the appropriate professional under County guidelines) determines such development would not result in a negative environmental impact or significant public cost.

2. Isolated, single-family homes on large parcels should be permitted provided no obvious environmental problems would result.

000434

Geology

Findings

1. The presently available geologic data is not adequate for the detailed evaluation of specific sites.

2. Based upon available data, the rock formations in the western two-thirds of the Subarea are generally expected to yield considerably less groundwater than those in the eastern portion. Groundwater in this western portion is also expected to contain dangerous concentrations of naturally occurring arsenic.

000435

Soils

Findings

1. Soils capability is a prime determinant of appropriate land use.

2. The Subarea is dominated by soils of development suitability ratings 3 and 4. One of the constraints of these soils is their lack of capability for adequate subsurface sewage disposal.

3. Soils within much of the Subarea are generally suited for the growing of timber.

4. Public concern has been expressed in favor of preserving agricultural land and state law has been written to reflect this desire.

5. The soils in the stream valley floors individually pose the fewest problems for development. However, these soils are not only often in areas subject to flooding, but are also the best suited for agriculture.

Recommendations

1. Soils information for the Subarea, particularly those portions presently lacking such data, should be continually gathered, refined and considered as fundamental criteria in land use decisions.

2. Most lands with soil suitable for agriculture should be so utilized in order to preserve this important resource.

3. State and local tax policies, zoning regulations and various financial incentives should be designed to promote agricultural land preservation while assuring an equitable fiscal impact on the individual farmer.

4. Most of the soils suitable for timber production should continue in that use.

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5. Intensive development should be greatly restricted on soils of DSR 4 and considered on soils of DSR 3 only after a careful analysis of site specific conditions indicates suitability.

6. Erosion control regulations for commercial and residential development, as well as other land uses with erosion potential, should be developed by the Department of Environmental Management. Particular attention should be given to measures for control of erosion during construction activity.

7. Development may be allowed on soils which are unsuitable for traditional subsurface sewage disposal systems provided acceptable alternative systems are available.

000437

Groundwater

Findings

1. There is not sufficient information on groundwater supplies throughout the Subarea; consequently, predictions of local supplies are speculative and highly variable.

2. Although groundwater data for the area is quite general, available groundwater appears limited in the western two-thirds of the Subarea except for the Oakridge vicinity. In the eastern one-third, subsurface water is generally plentiful. These predictions are based primarily on geologic factors.

3. The alluvial deposits associated with the Middle Fork of the Willamette and Salmon Creek show yields of 50-200 GPM.

4. Arsenic contamination of groundwater may occur in the western portion of the Subarea.

5. Adequate information does not exist on safe yield in the area; consequently, caution is necessary to avoid problems of groundwater overdraft.

6. As most residents of the unincorporated areas of the Subarea rely on subsurface water for domestic use, the availability of this resource will be a substantial constraint to development.

Recommendations

1. Further study of the area's groundwater supplies should be undertaken. Included in such a study should be the location and amount of potable groundwater, sources of contamination, and projected safe yields. From this information, appropriate residential densities (for homes dependent on subsurface water) can be designated.

2. Aquifer recharge areas should be identified and protected from detrimental land use.

000438

3. All proposed development should be required to provide reasonable evidence of sufficient water availability prior to permit issuance.

4. Major development proposals in the western portion of the subarea should be required to demonstrate an adequate, continuing supply of potable water.

5. Groundwater supplies in the western portion of the Subarea should be monitored for possible arsenic contamination.

000439

Surface Water

Findings

1. Surface water supplies for the Subarea are presently adequate.

2. Surface water resources provide essential fish and wildlife habitat and are committed to human use for recreational, domestic, industrial and agricultural purposes.

3. Because of the area's topography and geology, the surface water resource is particularly susceptible to degradation from land uses that disturb natural drainage patterns.

4. Because of withdrawal of water from the North Fork of the Middle Fork Willamette for domestic needs by Westfir residents, close regulations of upstream land uses is necessary to prevent contamination.

Recommendations

1. All proposals for surface water withdrawal should be reviewed and the approved projects continuously monitored to assure that the water supply within both the Subarea and downstream is not depleted or otherwise negatively impacted.

2. Promote watershed management practices which protect and enhance water quantity and quality.

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Water Quality

Findings

1. With the exception of Kitson and McCredie Springs, the known groundwater quality of the Subarea is generally satisfactory.

2. Further study and/or development may result in the detection of high arsenic concentrations in groundwater, particularly in the western portion of the Subarea.

3. Although not a serious problem at the present time, some of the septic systems located near water bodies are not functioning properly.

4. The major surface water quality problem is turbidity, with occasional high bacterial loads and enrichment in parts of the Subarea.

5. The County's Water Quality Report & Water Quality Management Plan provide the framework and tools for prevention and mitigation of water quality problems. Land use policies and decisions can and should both support and supplement the measures suggested in the above documents.

Recommendations

1. The water quality management recommendations outlined in the Water Quality Management Plan and Report, should be closely followed.

2. An ongoing well monitoring program should be instituted by the County in areas of known water quality problems to ensure that groundwater supplies are safe for human consumption.

3. Industrial and timber harvest practices should continue to be carefully regulated and monitored to prevent surface water degradation.

4. In addition to current regulations regarding subsurface sewage disposal, other measures for protection of waterways, such as setbacks for

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maintenance of riparian corridors and the control of streambank erosion, should be established.

5. Malfunctioning septic systems should be repaired or relocated if possible.

6. All development proposals should be reviewed to assure that projected water use and waste disposal will not negatively impact water quality.

000442

Flood Hazard

Findings

1. Detailed flood hazard information is presently unavailable for streams within the Subarea.

2. Estimates of the 100-year floodplain have been made for sections of the Willamette River. (See Map #9A).

3. A number of private residences lie within this designated inundation area.

4. Some portions of the Willamette River floodplain inundate agricultural soils, a further development constraint.

Recommendations

1. Studies to determine the precise location of floodplains in the Subarea should be undertaken.

2. Floodplain zoning and development standards should be developed and applied to those hazard areas designated by the above study. In the interim, no further development, and especially no septic systems, should be permitted in documented flood hazard areas unless special "floodproofing" occurs.

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Air Quality

Findings

1. Because air quality within the Subarea is primarily influenced by local events, the area is relatively free from pollution at the present time.

2. The Subarea is, however, part of a large airshed encompassing the entire Willamette Valley. Because of this airshed's high potential for air pollution, it is important that each area within it carefully control emission of even small amounts of contaminants.

Recommendations

1. Local land use regulations should recognize and support the Regional Air Pollution Authority policies.

2. Both the short term and cumulative air quality impacts of new development, particularly industrial, should be considered prior to project approval.

3. Alternatives to burning of slash should be developed and implemented to eliminate this source of contamination.

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Plant and Animal Habitat

Findings

1. Although the two primary habitat types, the douglas fir-trailing blackberry and the fir-alpine, comprise most of the Subarea, several critical habitat types also exist here and are essential to the survival of a number of species.

2. Removal of natural vegetation and various other human land use activities often result in habitat degradation (e.g., destruction of protective ground cover, topsoil erosion, streambank instability, and reduction of water quality). These types of disturbances lower carrying capacity and, hence, reduce wildlife population.

3. While no official "endangered species" permanently inhabit the Subarea, it serves as a brief resting or feeding stop to such species during their seasonal migration. The spotted owl (classified as "unique"), the northern bald eagle (which is classified as "threatened" in Oregon and endangered in several states) and a variety of other species are permanent residents.

4. Construction of the dams at Dexter and Lookout Point created a block to salmon spawning in this section of the Willamette River.

Recommendations

1. Major development must be closely regulated to reduce impact, both short term and cumulative, on the County's wildlife population. Any such intensive development should not be approved without prior analysis of habitats to be affected and a specific program for sensitive management.

2. Presently identified habitat types which are important for wildlife survival (e.g., winter range, nesting sites, mineral springs, etc.) should be conserved by appropriate measures (e.g., influence zones of uncut timber, a riparian corridor protection ordinance, a shoreline management plan, etc.).

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Resources

1) Forests

Findings

1. Most of the land within the Subarea is forest land, primarily in large holdings (both public and private).

2. The wood products industry is the primary industry of both the Subarea and the State.

3. Careful management of this resource is essential for both preservation of the raw materials supply and maximization of forest productivity. Diversification of the industry (with the subsequent increase in jobs and income) can occur without increasing the available resource, provided intensive management measures are instituted.

4. Forest lands, in addition to industrial raw materials, also provide recreational potential, valuable watershed and wildlife habitat and an aesthetic quality for both the Subarea and the County.

5. Measures must be instituted to prevent conflicts between preservation of the forest and other multiple land use activities.

6. Removal of the forest cover can have a highly detrimental environmental impact if proper harvest and reforestation techniques are not practiced. The most significant of these impacts is on water quality. Removal of riparian vegetation and excessive cutting close to major streams, without adequate erosion control measures, will eventually result in the loss of critical spawning and rearing areas for native fisheries and the adjacent wildlife habitat.

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Recommendations

1. The County's Forest Management Zone should be applied to timber lands in order to preserve, protect, and ensure the sustained yield of this valuable resource.

2. The most sound and effective reforestation technology should be applied to harvested areas.

3. The County should encourage private industry, the Department of Agriculture and the Bureau of Land Management to determine the appropriate combination of intensive management, roading, and rotation that will ensure maximum production, sustained yield and minimal environmental degradation for all forest lands in the County.

4. Programs for diversification of the wood products industry should be encouraged. Particular attention should be given to the utilization of waste, which is often burned on the site due to lack of markets.

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Resources (continued)

2) Minerals

Findings

1. Although several mineral resources exist in the Subarea, current economic restraints (e.g., distance from major markets and difficulties in extraction) have preempted the development of this industry, except on a very limited scale.

2. Some minor extraction of sand and gravel occurs in the Subarea, but at a scale limited to use for local road building and maintenance.

3. Recently, concern has been expressed over the potentially usable copper resources in the area. At present, no possible sites have been identified, although exploration is underway statewide.

4. Should currently dormant mineral deposits be mined commercially in the future, the Subarea is likely to experience a number of environmental and economic effects.

Recommendations:

1. Mineral resources should be conserved for the future through the control of land uses that would be in conflict with mineral extraction.

2. Should commercially valuable mineral resources be discovered, careful analysis of all environmental impacts (both physical and social) must be carefully evaluated before extraction permits are considered.

000448

Resources (continued)

3) Energy

Findings

1. A long-range comprehensive plan for energy procurement, use and conservation does not presently exist for Lane County.

2. Several potential energy resources exist in the Subarea, including: wood and wood by-products, geothermal sources and hydroelectric capability. Solar and wind may also be viable energy sources in this area.

3. Further study is necessary to determine the capability of these resources (particularly geothermal) and the potential negative environmental impacts associated with their development.

4. Present energy sources in the area include electric power but not natural gas.

Recommendations

1. Low-head hydro projects and additional turbines on existing dams should be encouraged.

000449

C. LAND USE AND PUBLIC NEEDS

Land Use

Findings

1. Ninety percent of the land in the Subarea is federally owned forest land at various levels of production. Another eight percent is large acreage owned by private timber companies.

2. This public ownership pattern, combined with topographic constraints, has directed most residential development into the river and stream valleys. The City of Oakridge will contain most of the Subarea's residential development, although residential development has also occurred in Westfir and along major roadways.

3. Residential densities are of an almost suburban nature in parts of the Subarea (particularly near Oakridge), although development activity has been slow in the past few years.

4. Some agricultural land use, mainly pasture and grazing, occurs in the High Prairie area and near Fall Creek Reservoir.

5. Unguided development, especially at higher densities, could threaten the remaining agricultural lands, cause a public safety problem from direct access onto main roads, and result in conflicts with timber harvest activities.

6. Commercial activity is currently confined to the City of Oakridge, where most of the area's residents orient for the provision of goods, services and cultural activity. A small grocery is located in Westfir.

7. Limited industrial development has occurred, mainly comprised of wood processing plants, mills and storage.

8. Generally, Subarea citizens desire to preserve the rural character and timber resource base of the area by guiding development.

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Recommendations

1. Timber production should continue as the primary land use; however, other land uses (e.g., recreation, small-scale industry, agriculture, etc.) that will expand the local economic base, without adversely impacting the forest resource, should be actively pursued. Development should be guided to protect agricultural and timber resource lands and to prevent expansion into areas of natural environmental constraints.

2. Agricultural and timber uses should be further protected by respective zone designations of "exclusive farm use" and "forest management."

3. Rural residential land use should be confined to areas of present development concentration.

4. Further commercial and industrial activity should occur where such land use designations exist. Small-scale, rural industry should be encouraged.

5. Small-scale "country store" commercial development should be permitted relative to needs of the population and recreational potential of the area.

000451

Transportation

Findings

1. The primary mode of transportation within the Subarea is the automobile.

2. Conditions and capacity of the roads are generally adequate and, with proper maintenance, should remain so if present growth trends continue.

3. Major road improvements could have a growth-inducing impact on the Subarea.

4. The City of Oakridge is served by the Greyhound bus, Southern Pacific Railroad (freight only) and a general aviation airport. No service by Lane Transit District is presently available or planned for the future within the Subarea.

5. Similarly, major new development, significant increase in recreational use and/or drastic changes in the price and supply of fuel could alter the transportation needs of the Subarea.

6. Highway 58 carries a lot of truck traffic as it serves as a primary truck route to Reno and northeastern California. The state has no current plans for improvement of this road.

Recommendations

1. Since planning decisions for the Willamette National Forest regarding recreational use and timber harvest activity will affect future use of the road system, close coordination with this agency and the County should be maintained.

2. Road capacities, improvement needs and potential access problems should be continuously assessed by both the state and County.

3. Emphasis should be on the maintenance and improvement of the existing road system as needed to ensure public safety rather than the construction of new routes.

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4. All major/intensive development should be evaluated for impacts on transportation facilities and required to subsidize necessary improvements related to the proposal.

5. All improvement plans should be evaluated for consistency with the County land use and environmental protection policies.

6. Land use proposals affecting the airport should be reviewed to ensure compatibility.

7. Efforts should be made to establish economically sound transportation alternatives to the individual automobile (e.g., bicycle paths, public transit buses, car pools, rail, etc.).

8. Provide cooperative assistance through the County's transportation planning function to work with the City of Oakridge to design an arterial road plan to serve the area north of the city limits and inside the potential urban service area.

000453

Recreation

Findings

1. The Subarea offers a variety of recreational settings, including: large holdings of publicly-owned forestlands, four large lakes, many smaller lakes and streams, the Upper Middle Fork itself and three mineral hot springs.

2. Recreational facilities are provided throughout the Subarea to support such activities as swimming, boating, camping, fishing, hiking, etc.

3. Present policies of the Willamette National Forest, the agency with the major impact on recreational use in the Subarea, emphasize an increase in dispersed recreation (i.e., activities outside of developed recreational areas, such as backpacking). These policies also encourage private investment and development.

4. The increase may result in conflicts with regard to timber harvest activities and alternate use of the reservoirs. Similarly, increased use will place an extra burden on the Subarea's roads and existing facilities, may affect local environmental quality and the quality of the recreational experience, and may add pressure for use of currently undeveloped areas.

5. The increase could provide needed economic opportunities for the local community, particularly in light of the National Forest policy in this regard.

Recommendations

1. Existing recreational facilities should be continually maintained and preserved. The establishment of new facilities should be encouraged.

2. Major new developments should be required to assist in the provision of recreational facilities necessary to serve the population they will draw to the area.

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3. The Willamette National Forest Administration should work closely with the County and the local citizens in the planning of future facilities in the area.

4. Recreational resources should be carefully managed so that other uses, such as timber harvesting and multiple use of reservoirs, will not be preempted. Accordingly, recreational development proposals should be reviewed for potential impacts on environmental quality, local character and community services.

5. Tourist activity in the Subarea should be promoted.

6. Modification of existing recreational facilities and government policies affecting those resources could help to increase their use. Specific improvements include:

   - increasing the amount of free parking along Highway 58;

   - construction of more boat docks on the reservoirs, and

   - consistent maintenance of reservoir water levels. Specifically, levels should be kept high for a greater length of time each year.

000455

Public Services and Facilities

Utilities

Findings

1. Except for the City of Oakridge and a portion of Westfir, the Subarea residents are dependent upon individual private wells and subsurface sewage disposal.

2. Soils and other natural features limit some of the area's suitability for subsurface sewage disposal, further indicating the appropriateness of low density development.

3. Expansion of water and sewer service could be growth-inducing.

4. Given the area's tax base and dispersed, rural character, a centralized sewer and water system for all residences is currently impractical. However, the existing sewage treatment facility in Westfir could service 350-400 households (almost twice its present capacity) provided the infiltration problem is corrected.[2]

5. Presently, Lane County has no official policy for the regulation of "private" utilities; consequently, it is difficult to ensure that such systems will be satisfactorily maintained over the years.

6. Water consumption for the Westfir area is very high. This is due to either leaks in the system or individual home use (or a combination of both).

Recommendations

1. Development in areas dependent upon private wells and subsurface sewage disposal should be low-density in nature. Higher density development

[2]Westfir Utility Study, Westfir, Oregon, CH2M Hill, March 1978.

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should only be approved if soil and other natural features allow.

2. Any proposals for centralized water and/or sewer service should be carefully evaluated for all potential impacts on the Subarea and any affected areas.

3. Existing and future septic system failures should be promptly corrected.

4. Steps should be taken to identify the cause of the very high rate of water consumption in the area and corrective measures then instituted.

5. The County should develop criteria for the regulation of private utilities.

6. The County should continue to work with the community of Westfir in determining the best method for maintenance, and possible expansion, of services in that area, particularly with regard to the existing sewage treatment facility.

7. Research and development of alternative sewage disposal systems should be supported by the County.

8. Should the growth rate increase significantly, hook-up to such a system may be warranted in currently unserviced areas and should be instituted before the situation reaches a critical stage.

000457

Schools

Findings

1. The majority of children in the Subarea attend school in Oakridge District 76, with some students enrolled in Lowell District 71.

2. Schools within District 76 presently have enrollments under capacity, although the recent closure of the Willamette City School has reduced the capacities stated in the technical report from approximately 1500 to 1250. As well as can be projected at this time,* school capacities should be adequate for the planning period.

3. Gymnasium and playground facilities in Lowell District 71 will be overextended if enrollment increases as projected.

Recommendations

1. All land use decisions should consider potential impacts on schools to ensure that appropriate measures are instituted to mitigate any negative impacts.

2. Local government and public school officials should coordinate their activities to ensure that local schools do not become overburdened.

*School enrollment projections are highly variable and dependent on the same external influences as population projections.

000458

Fire Protection

Findings

1. The State Forestry Department and National Forest Service provide fire protection for both public forest lands and private timber within the National Forest.

2. Formal protection for structural fires is limited to the City of Oakridge, Westridge Jr. High School, Circle Bar Golf Course and those buildings owned by the Pope & Talbot, Mitchell & Blacketor Mills and the Forest Service.

3. Even though most of the unincorporated rural residential portions of the Subarea lack fire protection, a recent ballot measure to establish a rural fire district failed.

Recommendations

1. Major developments should not be approved unless fire protection is available. Accordingly, such developments must include provisions for assuming their share of the financial burden of extending existing facilities in proportion to their impact on those services.

2. Because of its increase to the forest fire risk, development unrelated to timber production and harvesting should be prohibited within forest resource areas. Recreational and other multiple use activities should also be controlled during periods of high fire risk.

000459

Police Protection

Findings

1. The Sheriff's Department presently has one deputy assigned to the Oakridge area on a permanent basis. Two additional deputies reside in the Oakridge area and work for the US Forest Service on a contractual basis. These deputies are not normally available for general law enforcement service to the residents of the subarea.

2. The Sheriff's Department currently considers the Oakridge deputy to be working at maximum efficiency. Additional increase in population in the subarea will ultimately decrease this deputy's efficiency and ability to effectively respond to the public safety needs of subarea residents.

3. State police out of the Oakridge office routinely patrol Highway 58 and occasionally drive other roads in the area.

4. The size and physical character of the Subarea make law enforcement difficult.

Recommendations

1. Possible coordination with the City of Oakridge for police services should be encouraged.

000460

Solid Waste

Findings

1. The County Solid Waste Management Plan has established the policies for future disposal.

2. As part of the Countywide plan, a modified sanitary landfill is located southeast of Oakridge, with approximately three years of use remaining.

3. Presently, garbage collection service is only available in the Oakridge vicinity.

Recommendations

1. The policies established by the County Solid Waste Management Plan should be supported and implemented.

2. Particular emphasis should be placed on development of an areawide system of solid waste transfer, source separation and resource recovery when economically and technically feasible.

VI. LAND USE CONSTRAINTS

Introduction

The following is a brief summary of the full Land Use Constraints chapter presented in the Technical Report. It provides additional background for the Plan Diagram, which is detailed in the following chapter.

Constraints in the Subarea

Land use or development constraints are those apsects of the natural environment that generally preclude or severely limit the land's potential to support development. They reflect the intrinsic ability of the landscape to withstand human alteration and indicate where development could be damaged or destroyed by natural processes. The Development Constraints Map graphically portrays these natural limitations and, hence, is a useful guide for the determination of land use.

It must be noted that the Constraints Map is very general. It provides some indication of land use limitations, particularly to large-scale developments; however, individual homesites may be less affected by specific constraints. Site-specific evaluations should be made for all proposed development.

The Upper Middle Fork Development Constraints Maps (#9, 9A, 9B) display the following:

1) Soils with a Development Suitability Rating of 4 (generally unsuitable for any development activity). Appendix B of the Technical Report is an explanation of the rating system.

2) Slopes of 15% or greater.

3) Areas subject to periodic flooding or ponding.

4) Areas of high groundwater supply potential.

This map should be continuously updated as additional and more detailed information becomes available. The Plan Diagram, for which this map serves as a general guide, should also be modified accordingly.

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VII. THE PLAN DIAGRAM

INTRODUCTION

The Plan Diagram is a graphic portrayal of how land use in the Subarea would appear if all of this Plan's recommendations were implemented by 1995. It represents what is felt to be the best pattern for the future, based upon land use considerations alone. For this reason, it is one of the most important components of the Subarea Plan and, in essence, a recommendation on its own.

The Plan Diagram represents only one--although it seeks to be the optimum--display of future land use. Should future planning efforts result in modification of the planning study itself, the Plan Diagram should be adjusted accordingly.

THE COMPREHENSIVE PLAN AND THE PLAN DIAGRAM

Once adopted, the combined Comprehensive Plan and Plan Diagram serve as the official public policy statement guiding decisions with regard to future land use in the Subarea. Although primarily concerned with physical development, the Plan and Plan Diagram also incorporate social and economic considerations in order to interrelate all functional and natural systems and activities affecting land use in the Subarea. Developed to promote public health, safety and welfare, both of these elements should be considered "general" in nature. They summarize policies and recommendations in broad categories, not indicating specific locations of land use or regulations which may govern them.

ZONING AND THE PLAN DIAGRAM

The Plan Diagram, while serving as a guide to zoning is <u>not</u> a zoning map. Zoning ordinances and maps are specific pieces of legislation which are intended to implement the proposals of the Comprehensive Plan and its Plan Diagram.

A zoning ordinance is basically a public law which, in detail, regulates and restricts the use of land in the public's interest. It deals with three major areas: (1) the use of land, water and structures; (2) the height, size, shape and placement of structures; and (3) the density of development in given areas. Requirements concerning these matters are written into law, and are enforced as law.

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The Comprehensive Plan, and Plan Diagram, serve as sources of information for the application of zoning. Zoning uses this information, along with other sources, in the form of a special study in which every property owner has full input. Zoning will be undertaken following the review of the Comprehensive Planning Study and Plan Diagram.

COMPONENTS OF THE PLAN DIAGRAM

A. General Land Use Categories

Several land use categories have been assigned to the Upper Middle Fork Subarea. These categories are shown on the Plan Diagram as the primary land use designation, defined on Pages 52 through 54 of this report and further outlined in Table 1.

B. Table 1. - Summary of Land Use Designation Factors

This table outlines the intent and purpose of each land use category and lists physical features (e.g., slope, soil, water supply, etc.) characteristic of the category, which serve as criteria for future designations.

C. Table 2.- The Plan Conformity Chart (Matrix)

Although the categories shown on the Plan Diagram Map represent the "Primary" land uses recommended in the subarea, it is recognized that other uses may be appropriate and desirable on a particular site. Hence, a system has been devised to introduce a degree of flexibility into the application of land use categories by allowing for "secondary" land uses within designated "primary" categories.

The system allows for unique or unusual circumstances or conditions which could accommodate a secondary use, without violating the intent and purpose of the primary category or requiring a general plan amendment. The key to this flexibility lies in the establishment of specific criteria which enable the determination of proposed uses consistent with the spirit intent and purpose of the plan. There are four degrees of plan conformity which are described and graphically portrayed on the Matrix in Table 2. The following is a brief summary of these designations:

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a) Plan Conformity: Some secondary land uses have automatic plan conformity. For example, Forestry is an acceptable secondary land use under the primary category, RURAL WOODLAND AND GRAZING.

b) Potential Plan Conformity: This includes land uses that could be in conformity, provided a list of criteria are met.

c) Low Potential Plan Conformity: Some secondary land uses would only be acceptable under very limited circumstances. A rather rigid list of criteria must be met before these secondary uses can be found in conformity.

d) Plan Nonconformity: Secondary categories so designated do not conform to the plan.

The permission of a secondary land use would depend upon the determination of its level of conformity, based on the criteria in Table 2. Ultimate responsibility for this determination belongs to the Board of County Commissioners, aided by recommendations from the Planning Commission.

HOW THE PLAN DIAGRAM SYSTEM IS USED

The Plan Diagram system will be used by the County in regulating land use. It is used in two ways:

1) Evaluating major land use applications for individual properties.

   This primarily involves requests for changing or "rezoning" property. Other major applications include certain conditional use permits, unzoned area permits and any other major land use permits the County may require in the future.

   Upon determining that a major permit is required, the owner (or other party with a legal interest in the property) follows this procedure:

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Step 1. Determine how the particular application conforms to the Plan. This is accomplished by:

1) Finding the property's "Primary Land Use Category" designation from the Plan Diagram.

2) Determine the proposal's plan conformity rating on the chart in Table 2.* For example, suppose the area is designated RURAL, WOODLAND AND GRAZING on the Plan Diagram. This is the site's primary land use category which should then be located on the left-hand side of the chart in Table 2. Reading across the chart, the ratings for a site's secondary land use category may be seen. The secondary land use ratings for the RURAL, WOODLAND AND GRAZING primary category are as follows:

   a. If the request is for a NATURAL RESOURCE (Timber) or CONSERVATION-OPEN SPACE-RECREATIONAL application, it is considered to have a "Plan Conformity" rating.

   b. If the request is for a NEIGHBORHOOD COMMERCIAL application, it is considered to have a "Potential Plan Conformity" rating.

   c. If the request is for an INDUSTRIAL application, it is considered to have a "Low Potential Plan Conformity" rating.

   d. If the request is for a COMMUNITY COMMERCIAL application (or for any other major land use category not provided in the Subarea Plan), it is considered to have a "Plan Nonconformity" rating.

*In most cases the determination of how the particular application would be rated will be obvious. Where there is uncertainty, the determination of the rating will be part of the public hearing process explained in Step 2. The County may need to establish by separate policy which zoning districts and major permits are included within the definition of each land use category used in the Plan.

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Step 2. Should the owner decide to proceed with a formal application, the County's decision for approval or disapproval will be based upon the proposal's compliance with the requirements listed under the applicable plan conformity rating.

An application with a "Plan Nonconformity" rating could not be approved as being in conformance with the Plan.

At the present time, the County's decisions are made either by the Planning Commission or the Board of Commissioners, depending upon the type of application. If it is a Planning Commission decision, it is made after the holding of a public hearing. The Planning Commission's decision can be appealed to the Board of Commissioners. If the decision is by the Board of Commissioners, it is also after the holding of a public hearing. In this case, the Planning Commission will have earlier held a public hearing and made a recommendation to the Board of Commissioners.

Step 3. The owner proceeds according to the final decision on the application:

a. If the decision is approval, the owner may then receive approval of building and other necessary construction permits for the requested land use.

b. If the decision is disapproval, the owner must continue to use the property as allowed by the existing requirements or may choose to request approval of a different application.

2) Initial Zoning And The Rezoning Of Large Areas:

The zoning and rezoning of large areas will primarily be based upon (1) the Primary Land Use Designations as shown on the Plan Diagram, and (2) the predominant character of the use of the land. When the predominant character of a small area is different than the general designation for the larger area, as shown on the Plan Diagram, and when other modifications are considered for certain properties, the decision process for these smaller areas will be

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similar to the process for individual property requests as explained above.

The key to providing this flexibility in the Plan lies in establishing criteria to serve as a basis for determining whether or not a proposed secondary land use category is consistent with the spirit, intent and purpose of the Plan. There are four degrees of Plan conformity which are described and graphically illustrated in the Chart in Table 2.

The appropriateness of a secondary land use category would be established by comparing its plan conformity level, indicated on the Plan Conformity Chart, with the plan conformity criteria listed below the chart. Responsibility for determining whether or not a secondary land use category meets the Plan Conformity criteria lies with the Board of County Commissioners, with recommendations from the Planning Commission.

LAND USE CATEGORIES

AGRICULTURE

The intent of this designation is to recognize and preserve agriculturally capable land, whether or not it is currently being farmed.

The agricultural category is applied mainly in the High Prairie portion of the Subarea. Most of this land falls within the Soil Conservation Service agricultural capability rating, Classes II and III. Much of this land is currently in agricultural production (mostly grazing land) and the plan recommends maintenance of this use.

NATURAL RESOURCES (Timber or Sand & Gravel)

The intent of this category is to protect the forest resource, which is essential to both the local and state economy. Most of the forested uplands within the Subarea (approximately 95% of the land area) are within this category, as are the area's known geothermal resource areas.

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Sand and gravel is another, though minor, natural resource in the Subarea. The plan designation is intended only as an indicator of resource availability and should not be construed as a recommendation to proceed with extraction.

Detailed study of specific sites with evaluation of all potential impacts of extraction must be undertaken prior to permission of extraction activities.

RURAL RESIDENTIAL

The primary purpose of this designation is the recognition of existing residential development. Although the existing residential portions of Westfir are acknowledged, focusing of most residential development within the City of Oakridge Urban Services Boundary is encouraged. Because of environmental constraints (e.g., development suitability of soils, floodplain, etc.), residential expansion is somewhat restricted. It is not the intent of this plan designation to allow for conversion of large acreages, particularly that with timber or agricultural capability, into rural subdivisions but, rather, to recognize existing development and the normal infilling of small, vacant parcels.

Because of this area's historically slow rate of growth, most new residential development can occur as infilling of existing small parcels and within the Oakridge urban services boundary.

As the need for more residential development occurs, and services become available, expansion of the existing residential areas may be appropriate.

COMMERCIAL

The Neighborhood Commercial Category is in recognition of the need for businesses such as the existing small market in Westfir. Although the business is currently closed, this plan will allow for continued commercial use of the structure. The need for other small commercial enterprises may occur in the future.

Tourist Commercial use should be similarly accommodated as the need arises in areas central or adjacent to recreational facilities.

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Community Commercial uses are not currently appropriate outside of the City of Oakridge. The city plan adequately provides for this use.

RURAL, WOODLAND, AND GRAZING

Because of environmental constraints, several areas are somewhat marginal for intensive development, but they are not prime timber or agricultural lands. This land use category recognizes the land's natural limitations by providing for a wider range of uses, while maintaining existing agricultural and woodland activities and the rural atmosphere.

INDUSTRIAL

This category is applied to the existing industrial activity center in Westfir. Furthermore, the Oakridge Plan provides for additional industrial expansion and future industry should be centered within this area.

CITY OF OAKRIDGE

Oakridge, the only incorporated city within the Upper Middle Fork Subarea, is designated a Major Development Center by the County General Plan. Unlike some of the other major development centers throughout the County which function somewhat as satellites to the Eugene-Springfield area, Oakridge was so designated largely because of its relative isolation. Oakridge will support most of the residential, commercial and industrial development within the Subarea. Accordingly, its assurance of a sound economic base and provision of adequate public and commercial services is of great importance.

The Oakridge area was recently classified as "economically lagging" by the Economic Development Commission. It is hoped that the various incentives associated with this designation will induce businesses to locate within the area, thus stimulating employment and the local economy.

The Oakridge Comprehensive Plan is currently under consideration by the City Council. The plan shows two urban services boundaries: (1) the "intermediate" boundary, based on the programmed capacity for wastewater treatment and (2) the "potential" boundary, which shows potential for urban growth and service beyond the planning period. The Upper Middle Fork Plan

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Diagram recognizes both of these boundaries, and is in general conformance with the designations therein.

However, because of the uncertainty of the "Potential" Urban Services Boundary, it is felt best not to assume the provision of services to these areas. For this reason, there is a slight difference between the County and Oakridge plans. The NE 1/4 of the SW 1/4 of Section 9 (West Oak Road, adjacent to the Circle Bar Golf Course) is designated RESIDENTIAL-RURAL in the city's plan. The County Plan Diagram shows part of this area as RURAL, WOODLAND AND GRAZING. The intent of this designation is not to preclude future development but, rather, to guide its growth in conformance with the city's desire and ability to provide the necessary services. Because, at the present time, the city is unable to project a feasibility date for provision of services to this area, the RURAL, WOODLAND AND GRAZING classification will prevent random land division into parcels so small that future provision of services is uneconomical.

The City plan should be referred to for detailed information about lands within its jurisdiction.

COMMUNITY OF WESTFIR

Although not an official Major or Minor Development or Rural Service Center, Westfir is a distinct community in its own right.

Most of the Subarea plan's RURAL RESIDENTIAL designation, outside Oakridge, occurs in Westfir. This designation is in recognition of the existing residential use in Westfir.

Future growth and development in Westfir will be largely dependent upon local economic conditions and availability of public services and utilities.

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VIII. PLAN IMPLEMENTATION

The development and adoption of a land use plan is only the first step in the overall planning process. If a plan is to serve as a guide for accommodating growth and change, it must also (1) be implemented through the application of regulatory ordinances (such as zoning and subdivision ordinances, building and sanitation codes), (2) be reviewed and revised periodically, and (3) be used as a policy guide by public decision-makers.

THE PLAN AS A GUIDE

The development, adoption, implementation and revision of a land use plan constitutes the "planning process." The purpose of this process is to develop guidelines to be used by both the public and private interests in making decisions relative to land use. Land use plans can be used as guides in the following ways:

1. General guide for public decision-making

   Land use plans provide public governing bodies (city councils, Board of County Commissioners, and governmental agencies) with the basis for making decisions regarding the allocation of land uses, population densities, and development standards.

   Without such a guide, it is difficult, if not impossible, to make land use decisions which are economically and environmentally sound, provide compatibility among different activities and in general provide orderly change and growth.

2. General guide for private decision-making.

   Private individuals and businesses can effectively use a land use plan to determine the best locations for carrying out their activities. The individual seeking a single homesite, business seeking a new commercial market, and the developer seeking the most appropriate location for a housing tract can all use the plan as a basic reference document. Since the plan represents public policy, private decisions in accordance with it are encouraged by the public.

   Aside from being a locational guide for private decisions, the plan provides private decision-makers with a store of basic information about socioeconomic conditions, land use patterns, environmental concerns and public service requirements. Use

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of this information will help private decision-makers to understand and support public actions based on the same information. It will also alert them to the problems and needs of the County, and will provide directions through which private decisions can assist in solving the problems and meeting the needs. In these ways, the "public sector" and the "private sector" can work together to achieve common ends.

3. Guide for providing public services.

   Being able to anticipate where, in what form (residential commercial, industrial) and at what intensities land will be developed and used, provides public bodies with the ability to anticipate and plan for demands on public services.

   By indicating the direction and nature of growth and change, public bodies can program for capital improvements such as schools, roads, sewers, water, parks and recreation facilities, etc., in order to obtain maximum efficiency and utilization of these services.

4. Guide for future studies.

   In the process of gathering data and information for a land use plan (i.e., information on population, natural resources, economics), it sometimes becomes apparent that detailed studies in specific areas are needed. In the Upper and Lower McKenzie Subareas, for example, recommendations are made for a detailed flood hazard study to supplement available information.

Additionally, a land use plan is the first step in the development of performance standards for future land use proposals. Having identified the nature and character of an area and established policies for land use, performance standards can be used to relate particular development proposals to the natural and environmental limitations of a particular site.

Land use planning, then, serves to identify where an area needs additional refined studies which, in turn, can strengthen future planning efforts.

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PLAN IMPLEMENTATION

A land use plan has value only if it is implemented. Plan implementation occurs primarily through the application of regulatory ordinances. At the present time, Countywide regulations are in effect regarding subdivisions, building construction and sanitation facilities. Zoning divides land into districts or zones such as residential, commercial, industrial and agricultural. Each zone allows certain types of land uses while prohibiting others which would be incompatible with the permitted use. When areas are zoned, the districts should reflect the recommended land uses indicated in the land use plan. Therefore, upon completion of the land use plan for the Upper Middle Fork Subarea, a zoning program will be developed.

PLAN REVIEW AND REFINEMENT

This initial land use plan attempts to anticipate and guide change in a manner which reflects the goals of the area's citizens, County policies and environmental constraints. However, it is impossible to predict the nature and scope of all changes in an area, the types of pressures to which an area will be subjected, and the direction growth will always take.

New information on population growth, residential development trends, economic changes, etc., must be reviewed in light of the adopted plan, discrepancies and inconsistencies eliminated, and additional goals and guidelines adopted. The Upper Middle Fork Subarea plan, like all subarea plans in the County, will undergo periodic revisions in the future.

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APPENDIX A

DEFINITION OF PLANNING TERMS USED IN THIS STUDY

To aid the reader in understanding some of the terminology (especially those words which seem to have more than one meaning) used in this planning study, the following definitions have been prepared. It should be remembered that these terms are defined for this report only, and do not necessarily parallel those used in County ordinances, etc.

AGRICULTURAL LAND CAPABILITY CLASSIFICATION -- System used by the US Soil Conservation Service to categorize lands according to their ability to support various crops, vegetation, etc. Ratings go from I to VIII, with I referring to the best possible agricultural land.

DEVELOPMENT -- Any conversion of land from a less intensive use to a more intensive use, such as the building of a dwelling unit on land formerly used for pasture or crops.

DEVELOPMENT, MAJOR -- A conversion of land to a more intensive use which significantly alters the physical or social character of the site and/or surrounding area.

DEVELOPMENT SUITABILITY RATING -- Used in connection with the Soils analysis; based on a system of evaluating soils for development purposes (dwelling units, roads, etc.), which considers the ability of the soil to support septic tank drainfields, foundations, etc. Ratings go from 1 to 4, with 1 being most suitable for development and 4 least suitable.

FINDING -- Same as "implication," except it also refers to the conclusions drawn from evaluation of a set of data.

GOAL -- A statement of a desired condition or circumstance to be achieved at some point in the future.

IMPLICATION -- A projected impact of a condition or circumstance on other conditions; for example, a large number of dwelling units in an area has the implication of increased traffic loads on the street and highway system.

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INTENSIVE -- As used in "less intensive", refers to the magnitude of use of a given acre of land, or impact placed on that land. For example, open pastureland is being used less intensively than developed land upon which dwelling units are located. Land values generally reflect this factor in that more intensively used parcels are valued higher for property tax purposes.

POLICY -- A statement of method or approach used to achieve a goal, or move toward it; implies making decisions in line with the policy.

RECOMMENDATION -- A suggested course of action intended to carry out a policy, resolve problems, improve on good situations, etc.

URBAN DENSITY -- Refers to the proximity of several dwelling units, or the number of them within a given area. As used in this report, "urban density" generally refers to densities of one dwelling unit per acre or greater. "Rural," of course, would be lesser densities.

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APPENDIX B

EXCEPTIONS TO THE LCDC AGRICULTURAL LANDS GOAL

INTRODUCTION

The Agricultural Lands Goal, Goal #3 of the Statewide Planning Goals and Guidelines, requires that land of predominantly Class I-IV soils shall be "preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215."

Any governmental unit taking an exception to the Agricultural Lands Goal--in either the planning or zoning process--must address four criteria for goal exceptions outlined in the Land Use Planning Goal (Goal 2). Specifically, the exception language is as follows:

> When, during the application of the statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of public hearing. The notices of public hearing shall summarize the issues in an understandable and meaningful manner. If the exception to the goal is adopted, then the compelling reasons and the facts for that conclusion shall be completely set forth in the plan and shall include:
>
> a. Why these other uses should be provided for;
>
> b. What alternative locations within the area could be used for the proposed uses;
>
> c. What are the long-term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
>
> d. A finding that the proposed uses will be compatible with other adjacent uses.

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In addition, ORS 215.215(2) permits non-EFU zoning for one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the nonfarm use prior to the establishment of the exclusive farm use zone.

EXCEPTIONS IN THE UPPER MIDDLE FORK SUBAREA

In some locations in the Upper Middle Fork Subarea there exist land uses or topographic/physiographic features on Class I-IV soils which effectively preclude the operation of viable agricultural activities. In these locations where the County is taking an exception to the Agricultural Lands Goal, land use categories other than AGRICULTURE are depicted on the Plan Diagram. A verbal description of areas where exceptions are taken, and the "compelling reasons and facts" for the exceptions are described on the following pages.

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EXCEPTION #1

The following areas are designated NATURAL RESOURCE: TIMBER on the Plan Diagram, although the soils are identified as SCS Class II, III and IV:

(1) Parts of the Fall Creek and Winberry Creek upper valleys.

(2) Several areas around Oakridge and Westfir.

(3) Many other isolated areas in the narrow valley floors throughout the subarea, not all of which have soil data available.

A. Because of the timber industry's importance to both the local and state economies, preservation of the timber resource is a major concern. The LCDC Goal #4, as well as Lane County's Goals and Policies, reflects this concern. Hence, although these areas include some soils that could be classed as Agricultural, it is felt that the land is best suited to continued timber production. We have, therefore, substituted the Forest Lands Goal for the Agricultural.

B. The subject areas are well suited for production of commercial timber. Other forest lands exist in the subarea and are so designated. Likewise, even though some of the nonforested land could be planted in timber, these lands are better suited to other types of use.

C. The continuation of this land use would be beneficial both socially and economically (as discussed in "A" above). Conversion of this land to traditional agricultural use could have significant environmental, energy and economic impacts related to clearing, fertilization, etc. The long-term energy and environmental impacts of continuing timber management will depend upon industry diversification and future state and federal policies. Projection of these impacts at this time would be difficult and generally speculative.

D. As these areas are adjacent to other forest, mixed woodland and grazing lands, their preservation in timber should not have a negative impact on neighborhoring uses.

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EXCEPTION #2

The following areas are shown as RURAL RESIDENTIAL and INDUSTRIAL on the Plan Diagram:

(1) Westridge and Hemlock subdivisions.

(2) Residential areas along West Oak, McFarland, La Duke Roads and Highway 58.

(3) The mill sites in Westfir and southeast of Oakridge.

A. The subject areas are sites of existing residential and industrial development. Although some Class II and III soils are involved, the area is fully committed to the aforementioned uses.

B. Because this exception covers only fully developed land, this question is not particularly applicable. The original location of homes and the industrial facility was probably due in part to soil conditions favorable to such development. Soil conditions and topography adjacent to the subject areas limit the vicinity's development suitability and will act as a constraint to further growth of the area.

C. Because this exception is "after the fact," there really are no avoidable long-term impacts. The loss of this land to agricultural production has already occurred. However, use of the land for housing and industry (jobs) has had a positive social and economic impact on the Oakridge-Westfir area.

D. Again, this question is no longer particularly applicable, since the uses already exist. Because of the area's expansive timber resource, development of a mill in the vicinity of the raw materials was inevitable. Residential development was a natural successor to the new industrial facility. Additionally, the subject areas are very close to the City of Oakridge and, to some extent, were a predictable result of that city's growth.

These areas would also appear to fall under the exception allowed by ORS 215.215(2).

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EXCEPTION #3

An area adjacent to McFarland Road, and the Circle Bar Golf Course, is shown as RURAL, WOODLAND AND GRAZING on the Plan Diagram.

A. Although a narrow strip of land along McFarland Road includes some Class III soils, existing development and topographic features preclude its intensive agricultural use. The subject area has been divided and developed into a number of rural homesites (two to eight acres in size) where some small-scale farm activity occurs. Furthermore, a good portion of this area lies within the City of Oakridge Urban Services area. Designation of these properties as AGRICULTURAL (with the EFU zone designation which follows) would not be reflective of the present commitment of this land. The RURAL, WOODLAND AND GRAZING category will preserve these areas for small-scale agricultural activity as currently exists, but will allow greater flexibility in terms of permitted uses.

B. Other AGRICULTURAL areas are designated by this plan, as are other RURAL, WOODLAND AND GRAZING areas. Because we are dealing with land already committed to the use described above, the question of alternative locations is not applicable. The proposed designation will not provide for further land divisions in the subject area.

C. There will be no significant impacts involved in this proposed action. The RURAL, WOODLAND AND GRAZING designation (somewhat less restrictive than the AGRICULTURAL) is more reflective of the type of land use existing in the subject area.

D. The proposed designation is compatible both with existing land use (grazing, mixed woodland and the golf course) as well as the Plan's long-term land use designation of adjacent land; that is, RURAL, WOODLAND AND GRAZING, AGRICULTURE, and CONSERVATION, RECREATION, AND OPEN SPACE.

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EXCEPTION #4

The Alpine Acreage Estates subdivision is shown as RURAL WOODLAND and GRAZING on the Plan Diagram.

A. This is an existing rural subdivision with lot size averaging about two acres. Because this land has already been committed to residential use, it is no longer appropriate to consider it an agricultural resource.

B. Because this exception is requested for a committed use, the question of alternate location does not apply.

C. No long-term impacts will result from this exception. Any impacts are already implicit due to the existence of the subdivision.

D. Again, this is not a "proposed" use, but rather one already in existence. There is some residential use in the vicinity as well as low-intensity agriculture.

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EXCEPTION #5

Several areas around Oakridge, although identified as having SCS Class II, III or IV soils, are shown as RURAL, WOODLAND and GRAZING on the Plan Diagram. These are areas of mixed grazing, residential and forest uses, partially divided into lots as small as one acre and supporting diverse farm and nonfarm uses.

A. These other uses should be provided for because they are already well-established and contributing to the economic and agricultural well-being of the Oakridge area.

B. There are only a few other locations in the Oakridge area where such mixed uses could be accomodated; by and large, these other locations are devoted to other pre-existing uses (small-lot residential, industrial, forestry).

C. The long-term environmental, economic and social consequences of permitting the present uses to continue would appear to be positive to the area and the region. The energy consequences are more speculative: by making present uses nonconforming to the Plan or subsequent zoning, present residential uses may in time be encouraged to relocate closer to town; allowing them to remain, therefore, may be energy-consumptive in terms of fuel use for commuting to Oakridge.

D. Present uses to do not appear to be incompatible with other adjacent uses (forestry, grazing, industrial).

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APPENDIX B

STAFF REPORT

August 22, 1979

BACKGROUND:

Work on this plan was begun in early 1977. Initially, the citizens were encouraged to draft their own plan using a series of plan formation workbooks. Unfortunately, public participation was minimal and the idea was abandoned. Residents of the subarea requested the Planning staff to draft a plan and submit it to them for detailed review. The draft was completed in July, 1978 and citizen review began in August.

At the same time, the decision was made to carry through with the zoning of the subarea, concurrent with the Plan, in order to streamline the process. This has been done and a separate staff report prepared for the proposed zoning.

THE REVIEW PROCESS:

The Upper Middle Fork Plan was reviewed by the area residents in a series of eight informal meetings at Oakridge between August and December, 1978. Each section of the text was gone over in detail and many revisions were made. After the first eight meetings, a second version of the Plan Diagram was drafted to represent more directly the wishes of the people. Proposed zoning maps were then prepared to reflect each of the Plan Diagrams and existing uses. The zoning maps and Plan Diagrams were hung in Oakridge City Hall just before Christmas, 1978, and the final draft of the Comprehensive Plan became available in early January, 1979.

During January and February, 1979, three drop-in meetings were held at Oakridge to enable area residents to discuss the final Plan Diagrams and zoning maps. As a result, several substantial changes were made to the proposed zoning to reflect new data, requests of landowners and existing development patterns.

The Lane County Planning Commission held two hearings during March and April, 1979, followed by three County Commissioner hearings during June, July and August. Throughout this process, a continuing dialogue was maintained with subarea residents and the cities of Oakridge and Westfir.

THE PLAN DIAGRAM:

The subarea Comprehensive Plan here presented includes the Plan Diagram recommended by the Planning Commission. Up to the Planning Commission's hearing on April 12, 1979, two versions of the Plan Diagram were published; one recommended by staff, the other proposed by area residents. At the hearing, both plans were explained, all areas of disagreement were discussed, and the Planning Commission accommodated many citizen requests. The Plan Diagram which resulted was felt to be a reasonable compromise between the wishes of the area residents, the Comprehensive Plan of the City of Oakridge and sound planning principles.

After Planning Commission action on the plan, requests were received from the cities of Oakridge and Westfir to incorporate their input to the plan. Accordingly, final Board action was held up to permit the city councils to meet with staff and make recommendations regarding the areas around the cities. This has resulted in the presentation of three sequential plan diagrams:

1. The Planning Commission recommendation.
2. The staff recommendation, incorporating the Oakridge Comprehensive Plan for all areas within their "Intermediate Urban Services Boundary".
3. The Plan Diagram adopted by the Board of County Commissioners, incorporating all the above and responding to requests of area landowners and the cities of Westfir and Oakridge.

OAKRIDGE

The City of Oakridge Comprehensive Plan was completed and adopted prior to the review stage of the Upper Middle Fork Subarea Plan. The Oakridge Plan established two Urban Services Boundaries; an Intermediate one for the near future and a Potential one for the expected ultimate growth of the city. Although the plan designations outside the city limits are ultimately the responsibility of the County, many of these areas will eventually annex to the city. Accordingly, the city's plan designations have been used within the "Intermediate Urban Services Boundary". In addition, many of the Oakridge City Council's recommendations were incorporated in the final Land Use Plan.

WESTFIR

The new city of Westfir, incorporated earlier this year, does not yet have a Planning Commission, comprehensive plan or zoning. Until the city takes action to assume the planning and zoning function within the city, the County plan and zoning remain in effect (ORS 215.130(2)(a)). The Westfir City Council, however, were consulted and made a recommendation as to the plan designations and zoning within the city. Those recommendations are incorporated in the approved documents.

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APPENDIX C

STAFF REPORT

August 22, 1979

THE ADOPTED COMPREHENSIVE LAND USE PLAN:

The plan adopted by the Lane County Board of Commissioners includes the following:

1. The "2nd Draft: Comprehensive Land Use Plan for the Upper Middle Fork Subarea, Part I: Plan Report", dated December, 1978, "as modified by action of the Lane County Planning Commission on April 17, 1979", plus the following alterations incorporated by the Board of County Commissioners, August 22, 1979.

2. The Plan Diagram for the Oakridge area has been altered to agree fully with the "Comprehensive Plan for Oakridge, Oregon" for all of the area between the city limits and the "Intermediate Urban Services Area Boundary".

3. The following statement has been inserted in place of the third paragraph on page 58 of the "2nd Draft, Comprehensive Land Use Plan for the Upper Middle Fork Subarea, Part I, Plan Report, December, 1978, as modified by action of Lane County Planning Commission on April 17, 1979".

   "Lane County will administer land use and other controls within the intermediate UGB*, in areas under County jurisdiction, until these areas are annexed to the City. Urban-level development within the Intermediate UGB will not be supported without annexation to the City of Oakridge. The City Plan will be used as the first but not necessarily the only, guide toward the administration of County regulations, development controls, public facilities, improvements, etc. The County recognizes the Oakridge City Plan as the principle decision guide for lands within the Intermediate UGB, although should conflicts arise between the City Plan and the County Plan (or related policies or regulations), the County reserves the right to apply measures which may not be contained in the City Plan until the conflict is resolved. Within the Potential UGB, but outside the Intermediate UGB, the provisions of the County Plan shall prevail, although the County will attempt to honor the City Plan's provisions to the extent practicable without conflict with the County Plan. At such a time as the City Plan or either of its UGB's is revised, or the County Plan is revised, the County will seek close cooperation with the City in jointly deriving new Plan provisions. Questions of interpretation of the City Plan should be first referred to City officials."

4. The following changes to the Plan Diagram:

   (a) Two areas west of Oakridge designated RURAL RESIDENTIAL have been somewhat enlarged.
   (b) An area south of Oakridge which is presently a gravel pit has been changed from NATURAL RESOURCE: TIMBER to NATURAL RESOURCE: SAND & GRAVEL.

*Urban Growth Boundary

(c) An area on the north side of Hills Creek Reservoir adjacent to existing development has been changed from NATURAL RESOURCE: TIMBER to RURAL, WOODLAND & GRAZING.

(d) An area above Fall Creek Reservoir has been changed from NATURAL RESOURCE: TIMBER to RURAL, WOODLAND & GRAZING.

EXHIBIT D

STAFF REPORT

EXCEPTIONS TO STATEWIDE PLANNING GOAL 3: "AGRICULTURAL LANDS":

1. West Oak-McFarland-High Prairie Roads Area (Hines, Garris, Davis properties):

Soils: Nekia and Dupee silty clay loams, all SCS Capability Class III.

Present Uses; Pasture (100 acres), farming (52 acres).

Proposed Plan and Zoning: On the Plan Diagram: RURAL WOODLAND & GRAZING; AGT-5 zoning (permitted in the RWG designated area under footnote 3 of Table 1 of the Comprehensive Plan).

REASONS FOR LCDC GOAL EXCEPTIONS:

(a) Landowners have testified that the steep and rocky soils cannot support long term farm uses.

(b) The entire area is within the Potential Urban Services Boundary of the City of Oakridge.

(c) The area is logical for large lot residential development, located as it is between Oakridge and an area of existing 5 - 15 acre lots and adjacent to the City and existing 2 - 8 acre developments.

(d) Five-acre minimum parcel sizes will not significantly deplete or otherwise prove incompatible with the protection, conservation, use and/or harvesting of important natural resources, particularly timber, sand and gravel and important agricultural land.

(e) Five-acre minimum parcel sizes will be commensurate with the environmental limitations of the area.

(f) There is a need to provide areas around Oakridge which may be developed into 2 - 5 acre lots.

(g) Alternative locations for large lot subdivisions include the airport area, the Highway 58 area southeast of the city and areas adjacent to existing residential developments on LaDuke Road and at Westridge and Hemlock.

(h) The long-term environmental, economic, social and energy consequences will be either positive or minimally negative.

(i) Five acre developments will be compatible with other adjacent uses.

2. Airport-Hemlock Areas (Roberts and Mitchell-Blacketor properties):

Soils: Jory and Nekia silty clay loams, Sifton loam and Ritner cobbly silty clay loam, 2 - 50%, SCS Capability Class II, III, IV and VII.

Present Uses: Forest, pasture, vacant.

Proposed Plan and Zoning:

Roberts property:

(a) 40 acres south of airport; RURAL RESIDENTIAL on the Land Use Plan; RR-2 zoning.

(b) 20 acres east of airport - LIMITED INDUSTRIAL as per Oakridge Comprehensive Plan; AGT-5 zoning.

Mitchell-Blacketor property:

(a) 30 acres (approximately) along Westfir Rd. between the Hemlock bridge and the rock bluff about 3000 feet west: RURAL RESIDENTIAL on the Plan; RR-2 zoning.

(b) Remaining 170 acres (approximately): RURAL, WOODLAND & GRAZING on the Plan; AGT-5 zoning.

REASONS FOR LCDC GOAL EXCEPTIONS

(a) The soils and terrain north and east of the airport will not support farm or forestry uses; the area is best suited to large lot residential development (5 acres or larger).

(b) All of the areas of higher density zoning around the airport are within the Potential Urban Services Boundary of the City of Oakridge.

(c) Alternative locations for large lot subdivisions in the Oakridge area include the McFarland-West Oak Roads area, Highway 58 southeast of town and areas along LaDuke Rd. and near Westridge and Hemlock subdivisions.

(d) Five acre minimum parcel sizes will not significantly deplete or otherwise prove incompatible with the protection, conservation, use and/or harvesting of important natural resources, particularly timber, sand and gravel and important agricultural land.

(e) Five acre minimum parcel sizes will be commensurate with the environmental limitations of the area.

(f) The area south of the airport zoned RR-2 is boxed in by an existing development to the west, the airport to the north, the Willamette National Forest to the south and the City of Oakridge to the east; the terrain is part gently rolling open land and part steep and rocky hillside. It is unsuited to farm or forest uses and is best developed into 2-acre or larger residential lots.

(g) The area along Westfir Rd. between the bluff and the North Fork of the Middle Fork Willamette River is adjacent to the densely developed Hemlock subdivision; it is an isolated area unsuited to economic farm or forest uses and is best developed in 2-acre or larger homesites.

(h) The long term environmental, economic, social and energy consequences will be either positive or minimally negative.

(i) 2 - 5 acre development in these areas will be compatible with other adjacent uses.

3. Westridge-LaDuke Road areas (Hall/Surmac properties):

Soils: Unknown.

Present Uses: Forest, gravel extraction.

Proposed Plan and Zoning:

(a) NATURAL RESOURCE: TIMBER on the Land Use Plan; Farm Forestry-20/Recreation (FF-20/R) zoning.

(b) RURAL RESIDENTIAL on the Land Use Plan; RR-2 zoning.

REASONS FOR LCDC GOAL EXCEPTIONS

(a) None of the areas is large enough to support a long term economic forestry program.

(b) The area of RR-2 zoning is adjacent to an existing residential development.

(c) Alternative locations for 2-acre residential lots in the Oakridge area include the Hemlock area, the Westfir-West Oak Rd. area, the West Oak-McFarland Road area, the Highway 58 area southeast of the city and the Oakridge airport area.

(d) The isolated parcel between the Middle Fork Willamette River, the Old Willamette Highway and the Willamette National Forest is presently a gravel mining area; it is well suited to camping or outdoor recreation activities after reclamation because of its location, elevation and present use.

(e) 2-acre zoning is compatible with present adjacent uses.

(f) The long term environmental, economic, social and energy consequences will be either positive or minimally negative.

(g) The minimum parcel sizes do not significantly deplete or otherwise prove incompatible with the protection, conservation, use and/or harvesting of important natural resources, particularly timber, sand and gravel and important agricultural land.

(h) The minimum parcel sizes are commensurate with the environmental limitations of the area.

4. Brock and Dunning Road Areas (Aguilar, Holst, Kjornes properties):

Soils: Nekia and Hazelair silty clay loams, all SCS Capability Class III, except for a small patch of Class VII on Brock Rd.

Present Uses: Pasture, forestland.

Proposed Plan and Zoning: RURAL, WOODLAND & GRAZING on the Land Use Plan; AGT-5 zoning.

REASONS FOR LCDC GOAL EXCEPTIONS

(a) Landowners have testified that the clayey, shallow soils cannot support long term farm or forest uses.

(b) There is a need for 5-acre homesites in the Oakridge area,

(c) Alternate locations for 5-acre homesites in the Oakridge area include the airport vicinity, the Brock-High Prairie Roads area and the north end of Brock Road.

(d) Five-acre minimum parcel sizes will not significantly deplete or otherwise prove incompatible with the protection, conservation, use and/or harvesting of important natural resources, particularly timber, sand and gravel and important agricultural land.

(e) Five-acre minimum parcel sizes will be commensurate with the environmental limitations of the area.

(f) The long term environmental, economic, social and energy consequences will be either positive or minimally negative.

(g) 5-acre developments will be compatible with other adjacent uses.

5. North Brock Road, Upper High Prairie Areas (Tendick, Walker, others):

Soils: Mostly Nekia silty clay loam, SCS Capability Class III, with some Klickitat cobbly clay loam (SCS Class VI & VII) and a small patch of Jory silty clay loam (SCS Class II).

Present Uses: farming, forestry, grazing, residential.

Proposed Plan and Zoning: RURAL RESIDENTIAL and RURAL, WOODLAND & GRAZING on the Land Use Plan; zoning: AGT-5 for the two Tendick properties, for the poor soil areas on the Walker property, and for the existing small-lot areas along Brock Road; RR-2 for the northernmost 7.8 acres of the Davidson property; FF-20 for the good soil areas on the Walker property.

REASONS FOR LCDC GOAL EXCEPTIONS

(a) All of the proposed 2 and 5-acre areas are already developed into small lots or are adjacent to such areas.

(b) Alternate locations for 2 and 5-acre homesites in the Oakridge area include the airport vicinity, the Highway 58 corridor southeast of town, the Westridge and Westfir areas, along West Oak and McFarland Roads and along lower High Prairie Road.

(c) The long-term environmental, economic, social and energy consequences will be either positive or minimally negative.

(d) 2 - 5 acre developments will be compatible with other adjacent uses.

(e) Five-acre minimum parcel sizes will not significantly deplete or otherwise prove incompatible with the protection, conservation, use and/or harvesting of important natural resources, particularly timber, sand and gravel and important agricultural land.

(f) Five-acre minimum parcel sizes will be commensurate with the environmental limitations of the area.

6. Other Areas of 2 - 5 Acre Zoning (North, West and Southeast of Oakridge):

Soils: Mostly Nekia and Dupee silty clay loams, with some McAlpin and Jory silty clay loam and smaller areas of Camas gravelly sandy loam, Newberg sandy loam, Salem gravelly silt loam and Klickitat cobbly clay loam. SCS Soil Capability Classes range from Class II through VI, with most of the soils in Class III and IV.

Present Uses: Forest, pasture, residential.

Proposed Plan and Zoning: RURAL RESIDENTIAL and RURAL, WOODLAND & GRAZING on the Land Use Plan; RR-2 and AGT-5 zoning.

REASONS FOR LCDC GOAL EXCEPTIONS

(a) All of these areas are already cut up into lots of 2-10 acres with a few larger parcels interspersed; they are, thus, already committed to small-to-medium size rural residential homesites.

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(b) The long term environmental, economic, social and energy consequences will be either positive or minimally negative.

(c) 2 - 5 acre developments will be compatible with other adjacent uses.

(d) Two and five acre minimum parcel sizes will not significantly deplete or otherwise prove incompatible with the protection, conservation, use and/or harvesting of important natural resources, particularly timber, sand and gravel and important agricultural lands.

(e) Two and five acre minimum parcel sizes will be commensurate with the environmental limitations of the area.

March 17, 2021

Major Big Game Range in Lane County RCP by Subarea

I. OBJECTIVES AND PROCESS

There were three objectives for the analysis:

1. Using the Subarea Map provided by the client, identify the Upper Middle Fork Subarea.
2. Determine the acreage of the Major Big Game Range within Lane County's Rural Comprehensive Plan outside of Metro Plan, UGB's and Developed and Committed Areas within the Upper Middle Fork Subarea.
3. Identify the number of dwellings that fall within that amount of acreage for the Upper Middle Fork Subarea.
4. Determine the overall density of dwellings per acre for the Upper Middle Fork Subarea.

ESRI GIS software and geoprocessing tools in combination with various data (see sources below) was used to perform the analysis, which included filtering specific data both spatially and tabularly.

The acreage within the study area was calculated from the digitized boundary layer of the Major Big Game Range. This acreage was then refined by subtracting acreage that was found to be within the Metro Plan, UGB's and Developed and Committed Areas. An analysis was performed for the area within the boundaries of the Upper Middle Fork Subarea (UMFS).

Spatial and tabular filters were applied to the Lane County's Rural Plan Designation layer, specifically, those designated Residential, Commercial, or Industrial. All lands that have a plan designation of R, C or I that are outside of UGB's and the Metro Plan boundary by necessity must be within a Developed and Committed Lands Exception (D&C) Area to receive that Plan designation. All areas within a D&C Area are considered Impacted Big Game Range (per Lane County RCP Goal 5 Flora and Fauna Policy #10) and not Major Big Game Range. Therefore, any of the D&C areas that lie within the digitized boundary layer of the Major Big Game Range were excluded from the total acreage calculation. Since there is no specific digitized layer for D&C areas outside of the Metro Plan, the only way to identify and exclude these lands was to utilize the Rural Plan Designation layer.

Tabular filters were also applied to the regional address layer to determine residential dwellings outside of exclusion areas. Specifically, only addresses with a HUD/BPR residential use code (D,K,M,N,S,Q) were used. The official reference for the HUD/BPR codes (also commonly known as the SLUCM codes) is the

EXHIBIT I

Standard Land Use Code Manual from the Urban Renewal Administration, Bureau of Public Roads published in 1965. The coding scheme has been modified in its details to meet the local needs of Lane County. Address points are almost always located where the structure/dwelling exists, and there may be instances where a portion of a given parcel or property is within an exclusion area, while the dwelling is not.

II. ANALYSIS

The above analysis was performed for the area within the boundaries of the Upper Middle Fork Subarea, as mapped on Map 1.

Background Analysis Results (acreage values are as mapped):
Total Acres (land & water) in Lane County = 2,955,953
Major Big Game Range in Lane County (outside of exclusion areas) = 2,596,120 acres

Map 2:
Major Big Game Range in Lane County-
Upper Middle Fork Subarea (UMFS) outside of exclusion areas = 751,762 acres
Residential Addresses (dwellings) outside of exclusion areas and within UMFS = 102
Overall Density = 1 dwelling / 7,370 acres

III. EXHIBITS

Map 1: Map of the Upper Middle Fork Subarea (provided by client)

Map 2: Map of the Major Big Game Range within the Upper Middle Fork Subarea

IV. DATA SOURCES

Lane County-
- Major Big Game Range Habitat Area
- Rural Plan Designations

Lane Council of Governments (LCOG)-
- Addresses
- Eugene/Springfield Metro Plan Boundary
- Lane County Boundary

State of Oregon-
- Urban Growth Boundaries
- PLSS Township/Range

National Hydrography Dataset (NHD)-
- Water Features

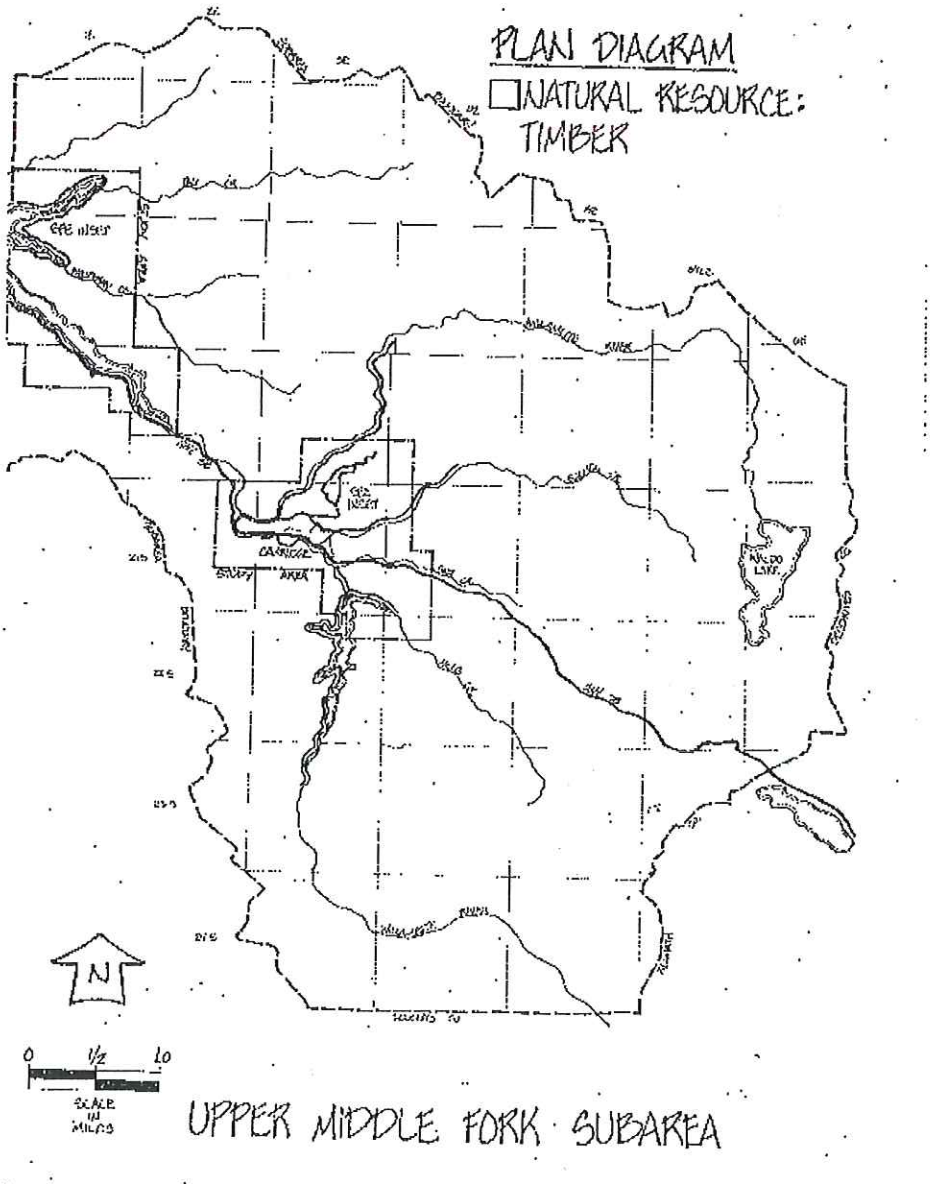
---All data except for the analysis output can be verified here:
https://lcmaps.lanecounty.org/LaneCountyMaps/ZoneAndPlanMapsApp/index.html

Created on 03/17/2021 by: Kyle Overstake – GIS Associate, Lane Council of Governments

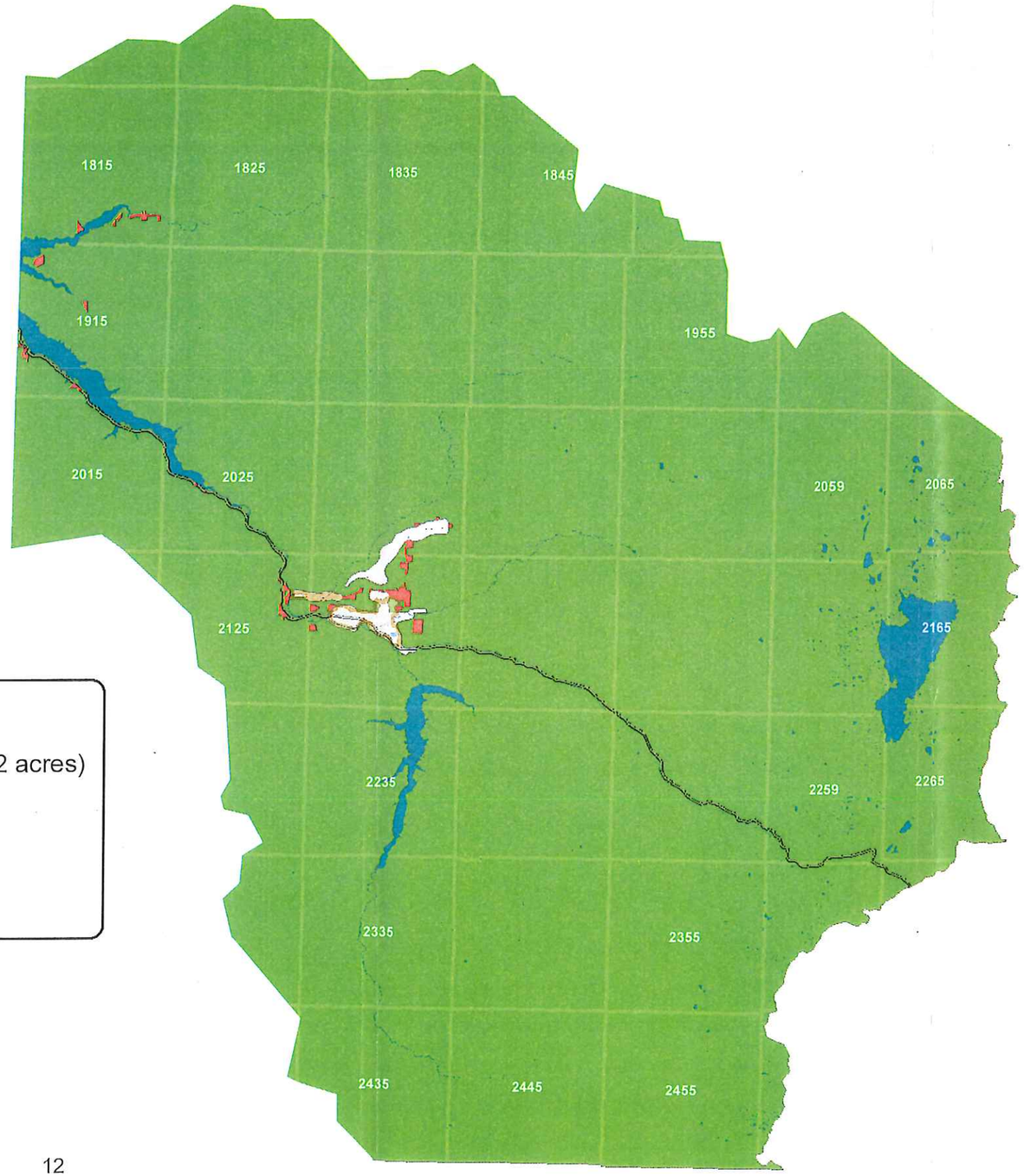
The information in this report was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the analysis and creation of the report, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions in results and/or underlying records. There are no warranties, expressed or implied, accompanying this product.

Exhibits:

Map 1



Major Big Game Range in Lane County RCP
Upper Middle Fork Subarea (UMFS)



- Developed and Committed Lands (excluded)
- Major Big Game Range Habitat Area - UMFS (751,762 acres)
- Urban Growth Boundaries
- Water Features
- Lane County PLSS Township/Range

The information on this map was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the creation of this map, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, expressed or implied, accompanying this product.

Lane Council of Governments
859 Willamette St., Suite 500
Eugene, Oregon 97401-2910

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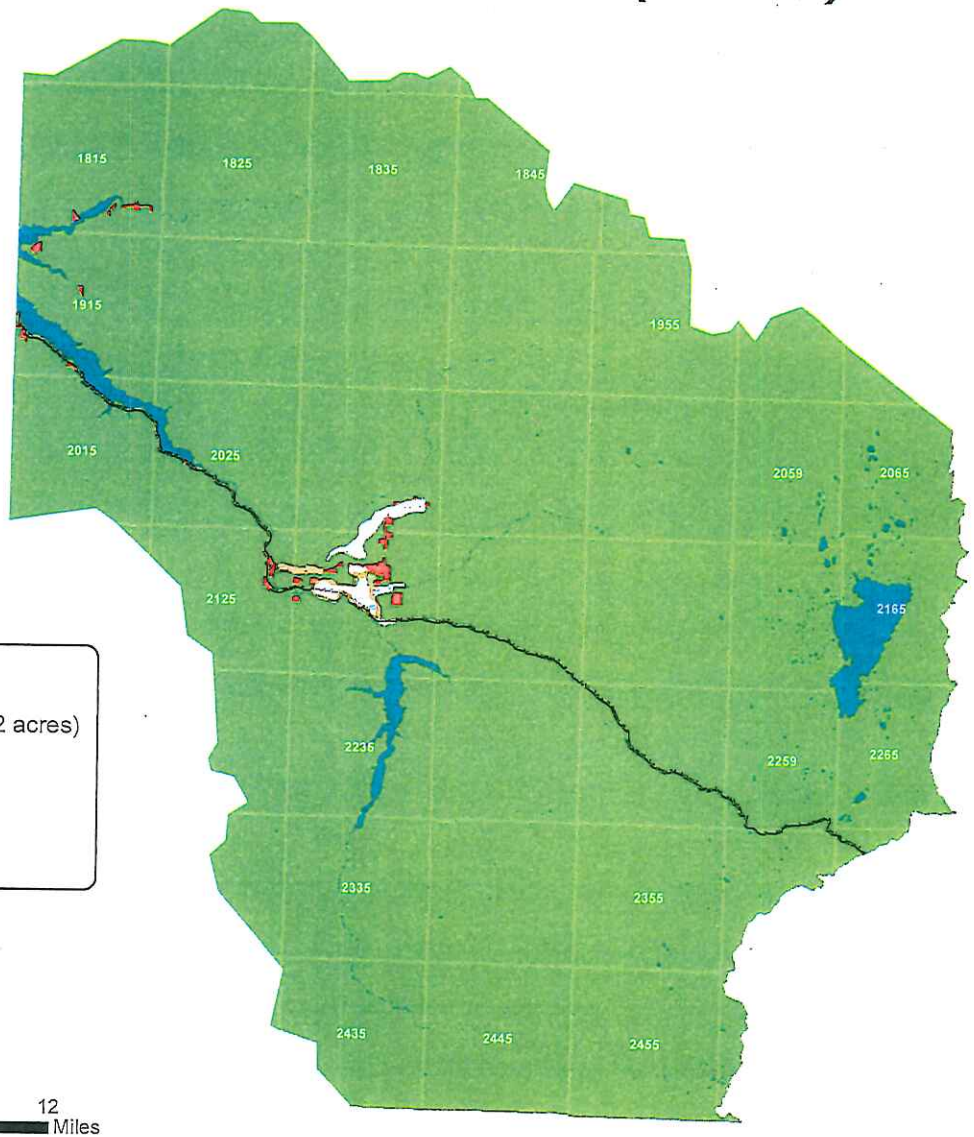
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(OF Exhibit I)

Map 52

Printing Date: March 15, 2021

Major Big Game Range in Lane County RCP
Upper Middle Fork Subarea (UMFS)



- Developed and Committed Lands (excluded)
- Major Big Game Range Habitat Area - UMFS (751,762 acres)
- Urban Growth Boundaries
- Water Features
- Lane County PLSS Township/Range

The information on this map was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the creation of this map, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. There are no warranties, expressed or implied, accompanying this product.

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Lane Council of Governments
859 Willamette St., Suite 500
Eugene, Oregon 97401-2910

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0 3 6 12 Miles

(OF Exhibit I)
Map 02

WORKING PAPER:

Flora & Fauna

DRAFT

MAR ~ 1982

COMPREHENSIVE PLAN REVISION

LANE COUNTY, OREGON

EXHIBIT J

FLORA AND FAUNA WORKING PAPER

INTRODUCTION

Oregon's wildlife and fish resources are varied and abundant. Lane County alone with its large land area and highly diverse landscape from snow level to sea level provides numerous specialized habitat areas for more than 290 species of birds, 70 mammal, 13 reptile, 17 amphibian and over 50 fish species. This diversity also is apparent in the vegetation of the County from coastal salt spray meadows inland to the treeless crests of the Cascade range.

Inventories of fish and wildlife species were compiled from Oregon Department of Fish and Wildlife information, various environmental assessment or impact statements and the Eugene-Springfield Metropolitan Area Wildlife Study. These lists are presented in the appendix to this report.

Inventories of habitat types are presented on USGS maps at a scale of one inch equaling one mile (15-minute series). This shows unique, endangered or threatened sites such as eagle nests, snowy plover sites, heron rookeries, band-tailed pigeon mineral springs, osprey snags and northern spotted owl sites. Further, major and Peripheral Big Game Range and general riparian vegetation around Class I streams are shown on these maps. Noncoastal wetlands and Sensitive Fish and Waterfowl areas are depicted on other maps.

The USGS maps also show general locations of Nature Conservancy sites and sites inventoried by the Oregon Natural Area Preserves Advisory Committee (NAPAC) which are in Lane County's Inventory.

Statewide Planning Goal #5 - Open Spaces, Scenic and Historic Areas, and Natural Resources - requires consideration of numerous resources, among them fish and wildlife habitat, ecologically and scientifically significant natural areas and wetlands.

Wetlands are considered here as fish and wildlife habitat. Although they have many valuable functions, their habitat value is a primary one. The original list of ecologically and scientifically significant areas included 86 sites from the Nature Conservancy Inventory and 12 sites from the Natural Area Preserves Advisory Committee. These are further refined in this paper.

Several deficiencies in Lane County's treatment of fish and wildlife habitats and natural areas were noted by LCDC. These were:

1. Updated inventory information required for sensitive fish and waterfowl areas and noncoastal wetlands.

2. Provide more specific information on Nature Conservancy Inventory sites.

3. Adopt mandatory policies regarding the protection of natural areas and noncoastal wetlands and clarify this with existing policies that encourage drainage projects.

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4. Adopt implementing measures for the protection and/or resolution of conflicts with noncoastal wetlands, natural areas and the following types of fish and wildlife habitat: big game range, riparian areas and sensitive fish and waterfowl areas.

After these orders to comply were written, LCDC adopted administrative rule 660-16-00 which gives very specific procedures for evaluating Goal 5 resources. The administrative rule applied to Lane County due to the continuance status of the County. Therefore, this paper addresses the items set out in the orders to comply and does so in the format of OAR 660-16-00. Specifically, this rule requires that when conflicts to Goal 5 resources can be anticipated in the plan, the economic, social, environmental and energy (ESEE) consequences of the conflict are analyzed and resolution to the conflict proposed. In cases where a resource is considered significant but conflicts cannot be anticipated, procedures are established to analyze conflicts as they are identified.

The contents of this paper are as follows:

A. General Findings. Concise statements summarizing facts on Lane County's flora and fauna resource and potential impacts of certain land use activities.

B. Habitat Types. A description of the 12 habitat types found in Lane County.

C. Endangered or Threatened and Special Concern Species. A listing of the threatened or endangered species found in the County and special habitat requirements for some of them.

D. Habitats of Particular Concern. Location, quality and quantity information and conflict analysis for the following types of habitat:

Riparian vegetation
Noncoastal wetlands
Sensitive fish and waterfowl
Big game range

E. Natural Areas. Location, quality and quantity of the sites on the Nature Conservancy and NAPAC lists determined to be significant, including conflict analysis.

F. Policy Recommendations.

G. Appendices. Includes lists of species.

FINDINGS

1. Lane County's fish and wildlife resource is highly varied. Diverse habitats, ranging from coastal to alpine, support nearly 400 vertebrate species. Status of individual species extends from common to endangered.

2. Four physiographic provinces - coast, coast range, western interior valleys and western Cascades - are found in Lane County. Each province represents differences in climate, substrate, topography and other physical

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and chemical variables. Each is distinct and represents a unique diversity, supporting flora and fauna which are adapted to the region.

3. Twelve distinct wildlife habitats are found in Lane County: estuary and bay (includes subtypes coastal salt marsh, tidelands and eelgrass), inland marsh, lakes and reservoirs, wet meadows, annual and perennial grasslands, riparian vegetation, coastal shore pine/spruce, Douglas fir/trailing blackberry, true fir/alpine, deciduous hardwoods, agricultural lands and cities.

4. Lane County's fish and wildlife resource provides substantial social, economic and ecological values.

5. A diversity of habitats is required to maintain Lane County's fish and wildlife fauna. Distribution of many species is limited by specialized habitat requirements.

6. Coordination between Lane County and state and federal agencies is necessary to properly harmonize wildlife needs and other resource values.

7. There will be a continuing need to review and update fish and wildlife inventory information.

8. Numerous land use activities have the potential to diminish the quality and quantity of fish and wildlife habitat. Habitat losses for a broad spectrum of fish and wildlife continue to occur. Sound resource management is necessary to minimize this loss.

9. Lack of biological information for many species handicaps the development of management procedures such as habitat guidelines.

10. Species not presently endangered or threatened may become so if their habitats are not adequately protected.

11. Examples of habitats of special value to fish and wildlife include high quality riparian and wetlands areas, estuaries, Major and Peripheral Big Game Ranges and other sensitive, fragile or unique areas.

12. Protecting water quality and quantity is vital to fish and wildlife resources.

13. A majority of certain habitat types and major watersheds lie within federal ownerships in Lane County. Therefore, public land managers have prime responsibility for protection of these habitats and watersheds. Where private lands support certain habitats, County land use planning needs to take into consideration wildlife needs, Statewide Planning Goal objectives and the rights and management objectives of the private landowner.

14. Land use activities which could negatively impact fish and wildlife habitat if uncontrolled include:

    a. Conversion of agricultural and forest lands to other uses;

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b. Division of large tracts of farm and forest lands to small parcels;

c. Field burning, fencerow clearing, wetland drainage and certain other agricultural practices;

d. Careless or unplanned road construction;

e. Gravel extraction from streambeds.

f. Logging and road building activities which do not conform strictly to the Oregon Forest Practices Act.

15. Designated natural areas in Lane County provide examples of unique or outstanding habitat or species assemblages.

WILDLIFE HABITATS

The following descriptive information on Lane County habitat types is derived primarily from Oregon Department of Fish and Wildlife materials. This material is not considered an inventory and is not accompanied by maps. It is intended merely as background information.

1. Estuary and Bay (includes salt marsh, tidelands and eelgrass)

   a. Description

      That area from the mouth of a bay or river inland to the mean high tide line. Within this type will occur coastal salt marsh, tideland, eelgrass and open water. Includes all salt, brackish and freshwater area below the mean high tideline. Climate basically mild winters and cool summers. Precipitation is heavy, about 40 inches.

   b. Value to Wildlife

      A very important type to wildlife species. Estuaries and bays support thousands of waterfowl, waterbirds and shorebirds. The shallow tidal areas are critical feeding areas for many species because of the abundance of small food organisms. Eelgrass beds in certain coastal bays are the most important black brant feeding areas. Coastal salt marsh is valuable feeding and nesting area for waterfowl, snipe, yellowlegs, plover, godwits, rails, etc. Mud flats, in addition to being important for many shorebirds, waterfowl and water birds may also serve as haul-out grounds for seals. Raccoons are common foragers in this type. Band-tailed pigeons use the tide flats and salt marsh channels in specific areas for drinking and often concentrate in large numbers at these places.

   c. Location

      Siuslaw River and minor estuaries.

2. Inland Marsh

   a. Description

      This type is a shallow water area, not including coastal bay marsh, with water remaining year-around. Usually vegetated throughout or with patches of open water. Tules and cattails are common indicator plants of this type. Further discussion of this important habitat is found in the Riparian and Wetlands section of this report and under Sensitive Fish and Waterfowl Areas.

   b. Value to Wildlife

      Contains some of the most important waterfowl and waterbird nesting and wintering areas. This is critical habitat because of the limited acreage of this type in Lane County. Muskrats are common mammals found

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in this type. Redwing and yellow-headed blackbirds use this type for nesting. Amphibians and reptiles such as frogs, toads, salamanders, turtles and certain snakes are found in this type.

c. Location

Fern Ridge Reservoir and numerous smaller sites.

3. Wet Meadows

a. Description

Boggy or damp areas with many small springs or bisected by slow-moving streams. Contain sedges, monkey flower, skunk cabbage, false hellebore, aspen, cone flowers or similar species. May be found throughout the County from low foothill areas to high elevations in the Cascade Mountains. These are generally seasonal wetlands. Further discussion of wetlands is found in the Riparian and Wetlands section of this report.

b. Value to Wildlife

A very important vegetation type. Provides summer, fall and sometimes winter forage to big game. Utilized as wallows by bear and elk. Important to amphibians such as toads and frogs. This type is usually important for watering area. Can be excellent beaver habitat. Beaver ponds and slow-moving streams in this type can be excellent fish-producing area also because of the abundant food supply.

c. Location

Numerous sites Countywide from low foothills to high Cascades.

4. Lakes and Reservoirs

a. Description

All open fresh-water areas in the County. Borders sometimes vegetated with water-tolerant forbs, shurbs and trees. There are 11 major reservoirs in Lane County. Lowland and coastal lakes total 10 and 27 respectively. High lakes are abundant in the Cascade Mountains with approximately 250 located in Lane County.

b. Value to Wildlife

The value of these areas varies with type and location. Most offer resting, nesting and limited feeding areas to waterfowl. Many of the large, deep reservoirs are of low value because of continuous water level fluctuation. Some of the wildlife species present in these bodies of water are: furbearing animals--otter, beaver, muskrat, nutria; waterfowl--ducks, geese, swans, coots, rails, grebes and loons; amphibians and reptiles--frogs, toads, snakes, turtles and salamanders.

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c. Location

Countywide.

5. Riparian Vegetation

a. Description

This type occurs along streams, rivers and slough banks. Vegetation is usually in a dense, narrow band. Species of plants identifying this type are those dependent on water such as willow, cottonwood, alder and aspen. Further discussion is found in the Riparian and Wetlands section and the Sensitive Fish and Waterfowl section of this report.

b. Value to Wildlife

An important wildlife habitat type. The riparian vegetation is a concentration point for a great variety of game and nongame species, providing food and cover. This vegetation renders the more open grassland and agricultural areas suitable for wildlife feeding areas by providing the necessary cover. The riparian strip also acts as a food supply for beaver and muskrat and can provide nesting cover, including snags for cavity-nesting birds. Valuable for maintaining good water quality for aquatic organisms.

c. Location

Countywide.

6. Annual and Perennial Grasslands

a. Description

This type contains the annual and perennial grassland areas of the County. Species of forbs and grasses differ with the geophysical area.

In Western Oregon the type may typically be found in small acreages but may be in large tracts of several hundred acres which are commonly called prairies. Many species of native and domestic grasses may be found in this type. In the Cascades and Coast Range this type occurs on shallow soils. Bracken fern may be a common plant on these sites also.

b. Value to Wildlife

A very important type for elk, deer, grouse, turkey, mountain quail, moles, gophers, ground squirrels, hawks and owls and many smaller species of wildlife. This type is heavily used on winter range and summer range by deer and elk. Grouse and quail use the prairies for feeding on insects which are a vital part of the young birds' diet in the summer.

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c. Location

Countywide.

7. Coastal Shore Pine/Spruce

a. Description

A narrow belt along the coast from the beach inland to the coastal foothills. Shore Pine and spruce are the main trees with salmonberry, red elderberry, salal, alder and thimbleberry being other species present. The coastal sand dunes and beach grass areas are also included in this type.

b. Value to Wildlife

Mature, dense stands of spruce and shore pine are of limited food value to big game species, but are necessary for the protection, shelter, travel lanes, etc., that they provide. Areas that have been burned, logged or otherwise disturbed produce good black-tailed deer, Roosevelt elk, black bear, blue and ruffed grouse and band-tailed pigeon habitat. Numerous species of small birds, shore birds and mammals are associated with this habitat type.

The coastal sand dunes near Florence provide an important area for whistling swans during the winter months.

c. Location

Narrow coastal strip.

8. Douglas Fir/Trailing Blackberry

a. Description

Trees are Douglas fir, western hemlock, red and Port Orford cedar, big-leafed and vine maple, red alder, trailing blackberry, salmonberry, salal and other similar species. Douglas fir and hemlock are the most abundant. Brush species are present in wildfire burn, logged and other disturbed sites. This is the largest habitat type in Lane County.

b. Value to Wildlife

Mature dense stands of Douglas fir are of limited food value to most species of big game; however, they are necessary for the shelter, protection, etc., that they afford. Many species of birds and mammals, however, spend their entire life dependent upon these mature stands of vegetation (ex. northern spotted owl, pileated woodpecker, flying squirrels). With logging and fires these timbered areas are opened to produce abundant foods in the form of berries, forbs, browse and grasses.

Big game species associated with this habitat type are the black-tailed deer, Roosevelt elk, black bear and mountain lion. Upland game species

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include the blue and ruffed grouse, mountain quail and the band-tailed pigeon.

Numerous species of small birds and mammals are associated with this habitat type, including several important furbearers.

c. Location

Valley foothills, coast range and Cascade range.

9. True Fir/Alpine

a. Description

This type occurs primarily in the Cascades above the Douglas fir-trailing blackberry area. Noble fir, Engelmann spruce, white fir, grand fir, mountain hemlock and mountain alder are the most common species. High elevation areas are densely covered with huckleberry, a preferred browse plant for many species of animals.

This habitat type contains numerous small lakes and meadow areas that are extremely important to wildlife.

b. Value to Wildlife

This habitat type is important summer range for black-tailed deer and Roosevelt elk. Some mule deer also spend the summer months in this area. This area contains the pine martin, fisher, wolverine, coyote and pikas. The black bear is also found in this habitat type.

Game bird species present are the blue grouse and occasionally band-tailed pigeon.

Many small birds and mammals are associated with this type.

This type contains numerous meadow and prairie areas that are very important to wildlife species and every effort must be made to preserve them. These meadows are important for resting, feeding, calving areas for elk and during most winters a place for animal survival. Many wet meadows remain open during deep snows and thus provide an important wintering area for animals.

c. Location

High elevations of Cascades - primarily in federal ownership.

10. Deciduous Hardwoods

a. Description

This forest type consists of white oak and black oak, with undergrowth of poison oak, ceanothus sp. and grasses. May also contain scattered or small clumps of Douglas fir or pines. Found primarily in the Willamette Valley and along the foothills.

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b. Value to Wildlife

This area is the year-around habitat of the black-tailed deer, black bear, bobcat, coyote and silver gray squirrel. Upland game species include the ruffed grouse, valley and mountain quail and in many areas the ring-necked pheasant. The mourning dove and band-tailed pigeon also use this habitat. Other species include many types of song birds, small mammals, hawks and owls.

This habitat type value varies with its location, but most of it offers resting, feeding and nesting for many species of wildlife.

Its location along the valley foothills provide cover for species that utilize the agricultural areas for food. Some of the best black-tailed deer habitat in Lane County is found in this habitat type.

c. Location

Numerous sites primarily on valley foothills.

11. Agricultural Lands

a. Description

Includes the irrigated and nonirrigated agricultural forage and croplands and dry land seeded pastures.

b. Value to Wildlife

This land type provides important upland game and waterfowl habitat. The black-tailed deer is also found using these areas, but mainly for food, as long as adjacent land types are available for cover.

Many furbearing species such as the beaver, muskrat, mink, etc., are found in the waterways associated with this land type.

Several hundred species of song birds, small and large mammals, hawks and owls are dependent upon this habitat type. The availability of food provided by this habitat type also attracts many species of wildlife from the adjacent habitats.

c. Location

Willamette Valley and assorted small valley floors.

12. Cities

Not applicable to rural Lane County.

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ENDANGERED, THREATENED AND SPECIAL CONCERN SPECIES

Both plant and animal species which have been identified by the state or federal government as endangered or threatened are present in Lane County. Some species not presently threatened or endangered may become so if their habitat is further altered by man's influence and present practices.

It is important to note that many of these species are found on public lands. Those management agencies have prime responsibility for conservation and protection of the species on their lands.

No deficiencies were noted by LCDC during compliance review for threatened and endangered species. Two policies regarding threatened, endangered, and special interest species are presently part of the Lane County Plan. These policies are:

- Recognize and support existing federal and state programs protecting threatened or endangered fish and wildlife species.

- Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

The following definitions apply:

Endangered Species - Those likely to become extinct if present trends continue.

Threatened Species - Those whose population trends indicate that endangerment is forthcoming if present trends continue.

Special Interest Species - Those rare and uncommon species because of numbers or trends. Designations tend to be rather subjective and are therefore generally unofficial.

Endangered Animals and Plants

Columbian white-tailed deer
California brown pelican
American peregrine falcon
Gray wolf
Oregon chub

Bradshaw's desert parsley
Meadow sidalcea
Wayside aster (suggested as endangered)
Pacific fleabane (suggested as endangered)
Howellia (suggested as endangered)

Threatened Animals and Plants

Sea otter
Wolverine
Western spotted frog
Northern spotted owl
Western snowy plover

Silver spotted butterfly
Northern bald eagle
Wapato, broadleaf arrowhead
Darlingtonia, California pitcher plant

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Special Interest or Protected Animal and Plant Species

Mary's Peak salamander
Sharp-tailed snake
Western rattlesnake
American osprey
Northern purple martin
Red tree vole
Cony (pika)
Short horned lizard
Oregon slender salamander
Tailed frog
Marine mammals

Allium amplectons
Aster hallii (curtus)
Cypripedium californicum
Draba aureola
Erigeron cascadensis
Eriogonum umbellatum
Gentiana newberryi
Ledum groenlandicum
Montia diffusa
Pellaea andromedaefolia
Phacelia verna
Phlox peckil (Phlox diffusa)
Pleuricospora fimbriolata
Scoliopus hallii
Sidalcea nelseniana
Silene douglasii var. monantha
Sinelowskia calycina
Sullivantia oregona
Vaccinium oxycoccus var. intermedium
Viola adunca var. bellidifolia

Specific Species Requirements

1. Northern spotted owl. Recent recommendations to an Interagency Spotted Owl Task Force from research in Oregon suggests maintaining 1,000 acres of old growth timber within 1-1/2 miles of the nesting tree of a pair of spotted owls. An Oregon Interagency Spotted Owl Management Plan has been drafted. This plan recommends a minimum nesting pair quota in Oregon of 400 pairs. Of these 400, 290 pairs should be located on US Forest Service land, 90 pairs on BLM land and the remaining 20 pairs on "other lands." Other lands include, but are not limited to state, county, national park, and private lands. Protection is not required on private lands by any state or federal laws.

   The major economic loss to a private landowner which would result from maintaining 1,000 acres of old growth timber for the purpose of one pair of spotted owls does not seem justified when 98 percent of the quota of owls is proposed for federal lands. A restriction on harvesting 1,000 acres of old growth from private property would be excessive and would very possibly constitute a "taking" under the law.

   No known spotted owl nests occur on private property in Lane County at this time. Because of the unreasonable burden protection of this species would place on a private landowner, no special provisions are recommended for any nests which may be found or constructed on private property.

   Maintaining a viable population of this species is recognized as an important goal by the County. As part of their multiple purpose mandate, the Forest Service and the Bureau of Land Management are encouraged in their efforts to protect this species on public lands in Oregon.

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2. Northern Bald Eagle. This nationally threatened species requires buffer areas around nest sites with restricted activities during nesting seasons. Federal land management policies provide protection for this bird on federal lands. No nests on private land are presently known in Lane County. If nest sites are identified on private land, an ESEE analysis should be done on conflicts which would either destroy the nest site or inhibit fledgling viability. The County should then work with the Oregon Department of Forestry to make them aware of the location of these areas and implementation methods adopted by the County for conflict resolution.

3. Wolverine. This threatened species requires remote, high elevation areas of the Cascades free of logging and intensive human activities. These areas are in federal ownership and therefore not under County jurisdiction.

4. Silverspot butterfly. This species is on the National list of Threatened and Endangered species. It requires undisturbed salt spray meadows and adjacent upland brush and treeline areas. It is only found along a small section of the Oregon coast. The Coastal Resources Management Plan of Lane County recognizes this species and applies a Prime Wildlife Management Unit to its habitat.

5. Western snowy plover. This species, threatened in Oregon, requires undisturbed areas of dry sand along the beach between the highest tide line and the vegetation line. The Oregon Department of Transportation, State Parks Division, regulates activities including vehicular use of this area. The Oregon Department of Fish and Wildlife is currently preparing a state management plan for the snowy plover. This plan will probably include recommendations for areas closed to vehicles either year round or seasonally to protect the habitat of this bird and other important shorebirds.

   Since the habitat is within state jurisdiction, Lane County proposes no direct action, but does support state activities to protect this species.

6. American osprey. This bird is a special interest species because its very specific nesting requirements in timber areas make it susceptible to population losses from habitat modification. The bird is neither threatened nor endangered and is found throughout the County, although not in great numbers. Some protection is already provided around coastal lakes and in the Willamette River Greenway. No special zoning provisions will be adopted by the County for osprey nesting sites. Nest sites are shown on the Wildlife Inventory maps. If these sites are confirmed by ODFW, their maintenance will be a consideration in land divisions and special use permits.

RIPARIAN AND WETLAND AREAS

LCDC Orders to Comply mandate updated inventory information on the location, quality and quantity of noncoastal wetlands and implementation measures for the protection and/or resolution of conflicts with these wetlands and with riparian habitat areas. The discussion in this section does not distinguish between coastal and noncoastal wetlands. Although many coastal wetlands are protected by Goal 17, many are not and should be considered along with wetlands on a Countwide basis.

Several areas within the County presently have regulations dealing with riparian vegetation. These are the Willamette River Greenway, the Siuslaw River Estuary, and coastal lakes. Also, lands zoned for timber production are regulated by the Oregon Forest Practices Act which considers buffer strips around streams. The County is not attempting to preempt state authority in forestry zoned areas. The discussion on conflicts and conflict resolution, therefore, does not apply to those areas.

It is difficult to separate discussions of wetlands and riparian (streamside) vegetation. Conditions which give rise to both are very similar and habitat values are similar. Riparian vegetation is that vegetation alongside streams and lakes which is structurally and physiologically adapted to living in saturated conditions.

Defining a wetland is more difficult and must be considered as a continuum of conditions not in direct relation to a lake or stream. There are many different definitions of wetlands - open water may or may not be present, the area may be seasonally or permanently wet, different vegetation types may occur. For purposes of this paper, a wetland is an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre. Vegetation types can range from grasslands to areas with mature, water-loving trees (Oregon white ash, cottonwood, alder and willow). The wetland must be large enough to be important for wildlife feeding and watering. The one-acre minimum size is intended to exclude small, backyard wet areas, and to give an indication of the type of areas intended to be covered by this definition of wetland. In a case of dispute over whether an area is important for wildlife and should be considered a wetland, the ODFW's recommendations will be relied upon.

For areas of the County covered by the National Wetland Inventory, that Inventory shall be considered the maximum number of sites which may possibly be considered wetlands. If sites occur there, though, which are streams or do not have open water present, they will not be considered a wetland by this definition.

These wetlands correspond to the Inland Marshes discussed in the Habitat Types section of this paper, rather than the Wet Meadows.

Riparian and wetland ecosystems are characterized by the combination of high species diversity, high species densities and high productivity. Continuous interactions occur between riparian and wetland ecosystems and adjacent uplands by transfer of energy, food and species.

Riparian habitats have been recognized as one of the most important and valuable land types in Oregon for several reasons: (1) they play an essential role in determining the quality of fish habitat; (2) they provide a vegetative buffer for streambank stability; (3) they offer seasonal and year-long habitat to the greatest numbers and diversity of terrestrial wildlife populations than any other habitat type; (4) they accommodate and attract important recreational activities such as hunting, fishing, boating, camping and hiking; (5) their aesthetic value is high because of the pleasing combination of land and water, attractive and unique vegetation types, and abundant animal life; (6) their ability to control pollution by filtration; and (7) their ability to assist in flood control by water containment.

Fishery habitat is directly related to the conditions in the surrounding watershed, especially the adjacent riparian zone. Riparian vegetation provides a number of important features to aquatic habitat: (1) streambank stabilization and erosion control which reduces sedimentation and helps maintain an oxygen supply to eggs and juvenile fish; (2) a natural filter to settle out sediments and reduce downstream siltation; (3) shade to maintain suitable water temperatures for aquatic life; (4) organic debris to feed aquatic insects which are essential to the diets of many fish; (5) bank stability to minimize stream damage from torrential floods; (6) overhanging bank cover from the roots of trees, shrubs, and other vegetation to provide fish with protective cover and terrestrial insects; and (7) groundwater recharge by its ability to absorb water. When a riparian zone is adversely affected by human activities, the quality and quantity of fish production will be affected.

Riparian vegetation likewise plays a vital role for wildlife. The habitat is a gradation between aquatic habitat of the stream and surrounding terrestrial habitat. The riparian zone usually provides all four basic habitat components: water, food, cover and space. The habitat is generally more diverse than upland plant communities, and therefore supports greater wildlife diversity and higher numbers of individuals. Certain fish and wildlife species are totally dependent on the riparian ecosystem, other species use the area as a travel corridor, or for feeding, roosting, nesting or watering. The significance of riparian habitat to game and nongame wildlife, both within and in the vicinity of the area, surpasses that of any other habitat type (American Fisheries Society, 1980).

Very similar statements can be made for wetland ecosystem species diversity and habitat importance as for riparian areas. Their variety of habitats, and often their inaccessibility, make them very important for many species. Wetlands which occur in agricultural or developed areas take on an even greater degree of significance as they are often a refuge for animals which have been displaced and can provide some of the only available living space for many forms of wildlife.

Administrative Rule 66-16-000 requires examination of the location, quality and quantity of Goal 5 resources, including wetlands and fish and wildlife habitat. Riparian vegetation, being an important habitat type, was distinguished in the Orders to Comply as needing better implementing procedures for protection or resolution of conflicts.

After examination of location, quality and quantity, a decision must be made whether the resource sites are significant. If so, conflicting uses must be

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identified. An analysis of ESEE consequences must be done, then a program developed for resolution of conflicts. The resolution can take three courses: a) preserve the resource site; b) allow the conflicting use fully; or c) specifically limit conflicting use.

Location

Although the total amount of riparian and wetland vegetation is much reduced from the amount prior to human habitation of Lane County, these habitat types still exist all around us. Unless the water regime which supports the area changes, areas which have been cleared will revert to riparian or wetland vegetation without constant upkeep.

All lakes, reservoirs and Class I streams in Lane County have been mapped. These maps are not included here for budgetary purposes, but are available in the Planning Department offices. Class I is a designation used by the Oregon Forestry Department and the Oregon Department of Fish and Wildlife to indicate streams important for fish life. Class I streams are those valuable for domestic use, important for angling or other recreation, and/or used by significant numbers of fish for spawning, rearing or migration routes. Stream flows may be either perennial or intermittent during parts of the year. Unless in a disturbed state, riparian vegetation will exist around all of these. Certain areas of stream and lake banks have been designated as "sensitive fish and waterfowl habitat," and will be discussed and analyzed later in this report. This section, then, deals only with riparian areas outside of the "sensitive" areas.

In the northwest quarter of the County, wetlands have been mapped by the US Fish and Wildlife Service. The maps, called the National Wetland Inventory, are very detailed and use an intricate classification system to show types of wetland vegetation. Most of the mapping is done at a scale of 1" = one mile, with the area close to Eugene at a scale of 1" = 2000'. Neither of these scales work well for most site specific uses. They give general ideas about where within a section wetland vegetation occurs, but field examination would be necessary to determine exactly where the wetland occurs.

This mapping should eventually be completed for all of the County, but lack of federal funding may extend that effort. Mapping for the southwest quarter of the County should be released in draft form by summer, 1982. As mentioned earlier, where this Inventory exists, it will be considered the maximum number of sites which will be considered wetlands. Where this mapping is not yet completed, only the earlier definition of a wetland will be used to identify sites.

Quality

For the most part, quality of riparian and wetland areas is discussed as it relates to quality for fish and wildlife habitat, as this is considered one of their prime functions. The "sensitive fish and waterfowl" areas designated by the ODFW are a subunit of riparian and wetland areas. These areas, discussed in the next section, are the most important and highest quality riparian and wetland areas.

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The many other riparian and wetland areas in the County range from undisturbed, very diverse areas to fringe marshes and riparian zones in urban areas. Often the small marshes and riparian zones in agricultural and urban areas take on a greater degree of importance due to their scarcity. They may provide a refuge for species whose habitat has been destroyed elsewhere.

Quality can be degraded in different ways. Certainly, removal of vegetation most immediately destroys most habitat value of an area. This can be done either directly by tearing out plants or by draining away water so that wetland or riparian vegetation can no longer survive. Human presence can drive off some forms of wildlife, but if not in large numbers will not generally degrade habitat values too much. Intense activities, such as recreation sites, will have a greater effect on habitat values and should be closely examined in view of this prior to approval.

Another activity which can greatly damage riparian and wetland areas, but which is only a minor problem in Lane County, is livestock grazing. The continual disturbance of streambanks can retard vegetation and can cause severe erosion.

Quantity

No good inventory exists on the quantity of riparian habitat in Lane County. Mapping of riparian habitat around Class I streams gives only a general indication of its location, but no figures on depth of the zone from the waterbody or cleared areas. The Willamette River Greenway and coastal lakes and rivers have the best mapping of riparian vegetation, often by aerial photography on large-scale maps, but these areas already have mechanisms to protect riparian vegetation.

The National Wetland Inventory maps will shortly cover about one-half of the County. General location of wetlands is given but no quantification of acreage by wetland type (and no indication of wetland quality). This mapping system, prepared by US Fish and Wildlife Service, will eventually cover the entire County.

Conflicting Uses

Two major activities conflict with preservation of riparian and wetland habitat areas:

1. Destruction of vegetation for any purpose; forestry, agriculture, construction, recreation, aggregate extraction, etc.; and

2. Draining surface or subsurface water which then changes the vegetative structure and generally the habitat value.

The end result of both of these activities is reduction in habitat value, flood control, water pollution control, and stability along streambanks for riparian vegetation.

An ESEE analysis for loss of riparian and wetland areas from either direct destruction or drainage follows.

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ESEE Analysis

Economic Consequences

1. Since wetland and riparian vegetation decrease water velocity and damage from floods, removal of this vegetation could increase economic damage from flooding.

2. Merchantable timber removed from riparian and wetland areas is a source of employment, income and revenue in Lane County, although most species growing there have low economic value compared to some other species of timber.

3. Lands cleared for agricultural use could increase economic activity from that source.

4. Lands disturbed for aggregate extraction could increase economic activity from that source.

5. Removal of riparian and wetland vegetation could result in a loss of revenue from hunting which could result from a decrease in game species of fish and wildlife.

Social Consequences

1. Decline in wildlife diversity can be an important factor for many persons who enjoy living in proximity to watchable wildlife.

2. Regulations aimed at maintaining riparian and wetland vegetation, not just requiring building setbacks from those areas, would result in a much greater degree of governmental restrictions on most lands than presently exist. The sort of enforcement effort it would require to regulate vegetation removal in riparian and wetland areas Countywide would be truly massive. The payoff from this sort of effort must be particularly questioned since a majority of the County is timberland which is regulated by the State Forest Practices Act, not County regulations for riparian and wetland areas.

3. The question of aesthetics varies greatly with the viewer. Some persons prefer the look of natural vegetation along a water body, others find an artificial park-like setting preferable. A law requiring maintenance of riparian vegetation would force one perspective on a landowner.

4. The greater erosion potential when riparian and wetland vegetation is removed could result in more turbid water. This could have an effect on downstream recreational uses.

Environmental Consequences

1. Removal of riparian and wetland vegetation would result in decreased wildlife habitat, with a decrease in wildlife diversity.

2. Bank stability would be decreased with removal of vegetation. This causes more erosion, dirtier water and negative effects on aquatic life.

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3. Water holding capacity is decreased with removal of vegetation in wetlands and riparian areas.

4. Water purification through filtration is a function of riparian and wetland vegetation which would be missing if the vegetation were removed.

5. The values of floodwater retention and decrease in floodwater velocity would be missing with removal of riparian and wetland vegetation.

Energy Consequences

1. If riparian vegetation is removed, bank erosion can increase. This causes more turbid water which may be more expensive and require more energy to treat downstream.

Conflict Resolution

After examination of the conflicts to riparian and wetland vegetation, and the ESEE consequences of those conflicts, the decision must be made as to preserving the resource totally, allowing the conflicting use totally, or specifically limiting the conflicting use. The third option, specifically limiting the conflicting use, seems the only prudent course of action. To disregard the value of riparian and wetland vegetation and not even consider it in permit applications does not make sense, when the valuable functions of the areas are taken into account. On the opposite end of the spectrum, to have a program which requires the County to be involved in any activity, no matter how minor, in riparian and wetland areas, also does not make sense. A program which recognizes the value of wetlands and riparian areas by way of strong policy statements, requires reasonable setbacks from Class I streams and wetlands so construction will not occur in the wetland or riparian zone, requires a balancing of wetland and agricultural values before drainage projects are undertaken, and which carefully considers input from the Oregon Department of Fish and Wildlife prior to approval of Special Use Permits and land divisions will ensure that these important areas receive the evaluation and attention they deserve.

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SENSITIVE FISH AND WATERFOWL AREAS

LCDC Orders to Comply required implementation measures for the protection and/or resolution of conflicts for fish and wildlife habitats in general, and sensitive fish and waterfowl habitats in particular. Lane County's previous plan discussed riparian areas around all Class I streams. The Oregon Department of Fish and Wildlife (ODFW) objected to this being too broad brush. Correspondingly, LCDC required that the category of sensitive fish and waterfowl areas be called out.

This category is a subset of the riparian and wetland areas discussed above. Maps have been provided by ODFW showing important waterfowl nesting habitat and streams which receive high use by anglers and/or game fish. Streams which are consistently used by large numbers of anglers are considered to contain large numbers of game fish, even though creel censuses have not been done in each of the areas. These identified areas are considered the highest quality fish and waterfowl habitat in Lane County.

Location

Certain of the areas identified by ODFW already receive a high degree of protection for the surrounding riparian vegetation. These are the Willamette River within the Greenway and coastal lakes and marshes covered by management units under the Coastal Resources Management Plan.

Other of the areas fall under the jurisdiction of the Oregon Forest Practices Act. In areas zoned for the primary purpose of timber production, state rules take precedence over County regulations. Buffer strips and critical wildlife and aquatic habitat are considered by the Oregon Department of Forestry prior to approving harvest plans.

Still other of the areas identified by ODFW are within federal lands where the County has no jurisdiction.

Instead of providing a map in this text (at a scale which is difficult to interpret) a list of the areas involved will be provided. The map is available in the Planning Division office for review.

Portions of the following streams are sensitive fish habitats:

Tenmile Creek	McKenzie River
Big Creek	Gate Creek
Cape Creek	Blue River
Sutton Creek	South Fork McKenzie River
North Fork Siuslaw	Horse Creek
Siltcoos River	Lost Creek
Woahink Creek	Middle Fork Willamette
Maple Creek	Fall Creek
Fiddle Creek	Little Fall Creek
Sweet Creek	Winberry Creek
Siuslaw River above Mapleton	North Fork, Middle Fork Willamette
Lake Creek	Salmon Creek

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Indian Creek
Deadwood Creek
Whittaker Creek
Esmond Creek
Wildcat Creek
Wolf Creek
Long Tom River
Willamette River Main Stem
Mohawk River
Salt Creek
Hills Creek
Steamboat Creek
Coast Fork Willamette
Row River
Mosby Creek
Sharps Creek
Brice Creek
Layng Creek

All or portions of the following areas are considered sensitive waterfowl habitat:

Fern Ridge periphery exclusive of parks
Old Long-Tom channel below Fern Ridge
Main Long-Tom channel below Fern Ridge
Amazon Canal where not riprapped
North Fork Siuslaw Freshwater marsh
Maple Creek marsh
Siltcoos Lake/Westlake marsh

Quality

Since these are the areas identified as important, sensitive fish and waterfowl areas, they can all be considered high quality for that purpose.

Quantity

Most of the major rivers and creeks in the County are designated Sensitive Fish and Waterfowl areas, but not the many miles of smaller, less significant Class I streams.

Conflicts

Maintenance of natural vegetation in waterfowl nesting areas is of prime importance to those species. Maintaining riparian vegetation around sensitive fish areas is essential to water quality and aquatic life. Removal of riparian vegetation in these areas is considered a conflict, whatever the purpose.

ESEE Consequences

ESEE consequences for Sensitive Fish and Waterfowl areas is generally the same as for Riparian and Wetlands, with a few additions. Since the areas in this category are considered more valuable for fish and waterfowl habitat than others in the County, the effects of vegetation removal can be more significant.

Economic consequences

Same as for Riparian and Wetland areas.

Social consequences

Same as for Riparian and Wetland areas plus the following:

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1. Sensitive Fish and Waterfowl areas are important for recreational purposes, both private and public. They also influence nearby recreational values. For instance, severe erosion from one property can influence fishery values downstream.

Environmental consequences

Same as Riparian and Wetland areas plus the following:

1. Sensitive Waterfowl areas serve as important resting and feeding areas for migratory birds. Destruction of this habitat causes effects which reach far beyond Lane County.

Energy consequences

Same as Riparian and Wetland areas.

Conflict Resolution

To repeat the procedure, after examination of ESEE consequences of potential conflicts, a decision must be made to preserve the resource fully, allow the conflicting use fully, or to specifically limit the conflicting use. In this case, preserving the resource fully would be to completely protect riparian vegetation in the identified waterfowl nesting areas and adjacent to the identified streams. Allowing the conflicting use fully would mean that no implementation requirements would exist protecting that riparian vegetation. The third option is a compromise between the two.

The third option, limiting the conflicting use, is the most appropriate, with the limitation weighed in favor of maintenance of the vegetation. Since these areas are the most important fish and waterfowl areas in the County, the riparian vegetation should be maintained whenever possible. As with Riparian and Wetland areas, a 50-foot building setback from the high water mark of the waterway shall be required. But within these Sensitive areas a 30-foot strip of indigenous vegetation shall be left along the waterway. Exceptions to this requirement shall be very limited and will include areas necessary for water-dependent uses, and areas which are now unvegetated and developed.

Regulations for riparian vegetation maintenance will be similar to those currently existing in the coastal shoreland overlay zones. One example, from the Residential Development Combining District (LC 10.255-30(3)):

"Within the setback area . . . all indigenous vegetation except that removed to provide paths to the water body shall be retained within an area 30 feet in width measured at right angles from the mean high water line of the water body. For the remainder of the required setback area brush may be removed but trees shall be retained."

Policy statements pertaining to Riparian and Wetland areas are also applicable here.

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BIG GAME RANGE

LCDC Orders to Comply required implementing measures for the protection and/or resolution of conflicts with Big Game Range. The County must clarify the types of uses which conflict with big game habitat, and would therefore be reviewable by the County under any implementing measures developed. The primary conflicting use mentioned by LCDC is residential use at certain densities.

Location. The Oregon Department of Fish and Wildlife (ODFW) has divided big game range in Lane County into three categories as follows:

> Major Big Game Range - That portion of the County which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.
>
> Peripheral Big Game Range - Foothill areas of the County generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals in severe winters.
>
> Impacted Big Game Range - Those areas of the County that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

These areas are mapped on Lane County Wildlife Inventory maps. As a general depiction, Major Big Game Range occurs on federal lands, large timber company holdings, and some private lands which are sparsely developed. Peripheral Big Game Range encompasses primarily foothills and smaller valleys. Impacted Range includes cultivated fields and developed areas, often on valley floors.

Because of the large amount of undeveloped timberland in Lane County, the majority of the County is Major Big Game Range. But, due to scattered ownership patterns, many areas within the Major Range are small, private parcels. Peripheral Range often falls along small valley floors which are privately owned and often fairly extensively developed. For example, most of the Fall Creek, Mohawk and Lorane valleys are within Peripheral Range, as well as large tracts of land west of Elmira.

Wildlife Inventory maps have not been included in this Working Paper due to budget constraints, but are available for review in the Planning Department office.

Quality. The majority of big game use occurs on Major Range. This can be considered the highest quality habitat as man's intrusion with developments is the least. Peripheral Range is also important habitat, and can be particularly crucial in severe winters, but has enough development to limit big game use and management options. Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.

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One other category of lands should be mentioned here. Outside Urban Growth Boundaries, areas exist which are committed to nonresource use. Exceptions for these areas will be taken as "Built Upon and Committed Lands" and acknowledged by LCDC. These small pockets of development within Major or Peripheral Range are essentially Impacted areas due to their level of use by man. They were not large enough, generally to include on the Big Game maps as Impacted. These areas will be treated as Impacted areas for implementation purposes.

Quantity. Areas of of Major, Peripheral and Impacted Big Game Range have not been computed. Figures for acreage of some other categories of land may be useful, though, for illustrative purposes.

Total amount of land in Lane County	2,959,400 acres
Commercial forest land (primarily Major Range)	1,813,228 acres
Other public lands (primarily Major Range, some Peripheral Range)	735,112 acres
Farms (primarily Impacted Range)	255,712 acres

Over 61 percent of the County is considered commercial forest land, a category with essentially no residential development. Including other public lands, such as the Dunes National Recreation Area, Oregon State lands, Corps of Engineers lands and County parks, approximately 85 percent of the County is not available for residential use. A good portion of the remaining acreage is farmland, a category very difficult to justify as available for residential use, but also not prime big game habitat.

Conflict Identification

The clearing of natural vegetation for agricultural purposes decreases an area's habitat value for big game. But since important, existing agricultural lands are already considered Impacted Big Game Range, this is not an issue now. Impacted Range has essentially been "written off" for big game management.

Management of land for timber production does not conflict with big game habitat. With proper forest management techniques, big game habitat can be significantly enhanced. The forage provided to deer and elk in clear-cut areas is very important, but the combination of areas in various successional stages is probably the vital factor in enhancing numbers of deer and elk. Lands zoned for the primary purpose of timber production are subject to the requirements of the Oregon Forest Practices Act. For our purposes, timber harvesting activities do not constitute a conflict to Big Game Range.

The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.

The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning

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by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.

The County will be divided into regions convenient for planning purposes. These have not yet been determined, but will probably result in 10-20 regions in the County.

Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.

Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process.

As a final note regarding residences in Big Game Range, damage to landscaping and gardens is a common problem around these residences. For new residential building permits within Major and Peripheral Range, the applicant will be notified that compatibility problems with big game may exist.

Several recommendations in the Policies Section of this Working Paper relate to the method the County will use to protect Big Game Range.

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NATURAL AREAS

Lane County's original work on natural areas included just a listing of sites from the Oregon Natural Heritage Program (ONHP) and the Governor's Natural Area Preserves Advisory Committee (NAPAC). A very brief narrative was included with the NAPAC sites, but only site names for the 86 ONHP sites. LCDC's review mentions 12 NAPAC sites; in fact, there are only nine sites in this category.

In its review of Lane County's plan, LCDC noted that adequate quality, quantity and locational data existed for the NAPAC sites. The 86 sites from the Nature Conservancy Inventory, though, required more specific information on location, quality and quantity.

The Goal 5 Administrative Rule (66-16-000), adopted after LCDC's review of Lane County's plan, contains procedures for more detailed review of Goal 5 resources. Accordingly, both the ONHP and NAPAC sites are re-examined and divided into three categories as laid out in the rule:

1A: Available information on location, quality and quantity indicates resource site not important; not included on plan inventory.

1B: Some information available but inadequate to identify resource site; included on plan inventory with special status; plan statement to address resource site when information available.

1C: Information on location, quality and quantity indicate site is significant; conflicting uses, if any, identified; ESEE analysis of conflicting uses; conflict resolution proposed.

Criteria for Evaluation

For those sites with adequate information on location, quality and quantity, it was necessary to determine if the site was "significant." If so, it fell in an 1C category; if not, in a 1A category. This decision required criteria upon which to base that judgment. Six questions were answered for each site or group of similar sites. These were:

1. Uniqueness?
2. Number of examples limited?
3. Site unusual due to size?
4. Rare or endangered species present?
5. Site already protected by County zones?
6. Examples already protected on public lands?

In some cases final decisions were necessarily subjective and were judgment calls. In other cases, the decision was based on other plan policies. For instance, one of the sites determined not to be significant was the Noti Osprey nest. The portion of this Working Paper on Endangered, Threatened and Special Interest Species stated that no special zoning measures will be taken in Lane County for Osprey nests.

Sites placed in the 1B category had inadequate information on location, quality and quantity to allow use of these criteria. When information is available, the

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same method will be used to place them in either a 1A or 1C classification. Moving a site out of the 1B category will be considered a plan amendment.

1B Category

Six sites have been placed in this category. These are:

1. Booth Island/Siltcoos Lake
2. McKenzie River Island
3. South Fork Gate Creek
4. Swamp Creek
5. Marshall Island Heronry
6. Willamette Valley Quaking Aspen Grove

These sites are individually discussed below. No specific timetable is set for dealing with the first four sites. When information is presented to this department which will allow a determination of significance of the site, it will be analyzed and placed in either a 1A or 1C category, based on the criteria mentioned above. Site #5, Marshall Island Heronry, will be field inspected by ODFW later this year. Based on the results of their investigation, the site will be placed in a 1A or 1C category later this year. Site #6 will also be placed in a 1A or 1C category within 1982. Field inspection of the site by knowledgeable botanists is essential here.

a. Booth Island--Siltcoos Lake (ONHP #82). ODFW is unaware of a band-tailed pigeon mineral spring on this island.

b. McKenzie River Island (ONHP #52). ONHP Inventory states "Good riparian habitat and river island." No further data is available.

c. South Fork Gate Creek (NAPAC #12). No way to locate this site any more specifically. Defined only as "old Douglas fir, western hemlock and relatively steep slopes . . . patches of red alder and vine maple."

d. Swamp Creek (ONHP #49). This unsurveyed, unverified ONHP site is described in their Inventory only as "small stream, riparian vegetation."

e. Marshall Island Heronry (ONHP #113). This heronry is on a parcel divided by state and private ownership. Logging on large cottonwoods in the private ownership in 1980 may have destroyed the rookery. ODFW plans flights of the Willamette this spring to inspect heronrys, followed by field surveys later in the spring. If the heronry exists, this site will be placed in a 1C category; if not, in a 1A category. If in 1C, the nest trees and a buffer around them should be protected with a Natural Resource Zone. If the heronry turns out to exist on private property, the Parks Department or the Fish and Wildlife Department are urged to acquire this property.

f. Willamette Valley Quaking Aspen Grove (ONHP #2). This site is reported as a one-acre stand of Quaking Aspen located west of Elmira along Highway 126. The site is a remnant, native stand of trees. Conflicting directions to the site listed in the Nature Conservancy file have made it impossible to locate this site to date. Botanists from the Nature Conservancy and the University of Oregon are very interested in assisting the County to find this site, if it still exists.

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The ONHP report states: "Very rare, relict remnant stand of Quaking Aspen. Very rare in the WV [Willamette Valley] of extreme botanical interest due to long separation from the major Aspen gene pool and because of its novelty and rarity in the Willamette Valley."

If the trees still exist, the site will be placed in a 1C (significant) category. A full ESEE analysis will be done at that time, which will include information and recommendations from botanists. The following items should be considered when and if a full ESEE analysis is prepared:

Under economic consequences, the possibility of reduction of income to the private property owner if the land cannot be converted to another use. Also the fact that the property owner may gain tax advantages if an NR zone is applied and an open space tax deferral approved.

Under social consequences, the loss of a rare site such as this is inherently displeasing to many persons, even though the site is on private property and not open to the public.

Under environment consequences, the fact that the tree is very abundant in other parts of the US. Also that the long separation from the major Aspen gene pool could result in valuable research opportunities.

No energy consequences can be anticipated at this time.

1C Category

Fifty-six sites fall within this category. These sites have been divided into four groups and will be discussed in this order:

1. Sites owned by USFS and BLM
2. Sites which are State Parks
3. Sites covered by the Coastal Resources Management Plan or the Willamette River Greenway
4. Others

- -

1. Sites Owned by USFS or BLM

No additional research has been done on these 29 sites. Available information from the Nature Conservancy on location, quality and quantity indicates these resource sites are significant, and therefore are placed in a 1C category. Because they are in US Forest Service and BLM ownership, however, no conflicts exist based on uses allowed in zoning districts. Lane County does not have jurisdiction on federal lands. Although, as a matter of policy, zoning districts are applied to federal lands in the County, these zones have no effect unless the land is converted to nonfederal ownership. Besides the issue of lack of jurisdiction, the Forest Service

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and BLM are required by federal law to consider natural areas as part of their multiple-use mandate.

Inventory of Resource Sites Owned by the US Forest Service

1. Bob Creek (ONHP #55) 15-11, 15-12
2. Buck Creek (ONHP #99) 18-45-4,5
3. Cox Rock (ONHP #16) 17-12-10
4. Diamond Peak Wilderness Area (ONHP #124) 24-55,65
5. Fossil Beds (ONHP #137) 21-1E-30
6. French Pete Wilderness Area (ONHP #140) 17,18-5E,6E
7. Gold Lake Bog RNA (ONHP #95) 22-6E-20,29
8. Hagan-Block Proposed Research Natural Area (ONHP #148) 16-4E,11-15
9. H. J. Andrews Experimental Forest (ONHP #105) 16-5E,6E
10. Karnowsky Creek Bald Eagle Nest (ONHP #119) 18-11-22
11. Lamb Butte Scenic Area (ONHP #126) 17-6E22
12. Lily Lake (ONHP #4) 17-12-15
13. Lost Creek Headwaters (ONHP #54) 16-6E-19, 17-6E-24
14. Lowder Mountain Geological Area (ONHP #127) 17-6E-19
15. Mount Washington Wilderness (ONHP #123) 15-7E
16. Olallie Ridge Research Natural Area (ONHP #96) 17-65
17. Parrot Rock (ONHP #115) 17-12-4
18. Quaking Aspen Swamp (ONHP #129) 17-6E-28
19. Rebel Rock Geological Area (ONHP #128) 18-6E-30
20. Siuslaw South Jetty Area (ONHP #68) 18-12-21
21. Three Sisters Wilderness (ONHP #122) 15-19-6E-9E
22. Torry Charlton Forest (ONHP #149) 20,21-6E
23. Yankee Mountain Scenic Area (ONHP #125) 17-5E-26

Inventory of Resource Sites Owned by BLM

1. Dorena Heronry (ONHP #111) 20-2-31
2. Eagle Rock (ONHP #1) 17-3E-10
3. Hula Creek Headland Forest (ONHP #101) 17-8-N1/2 NW1/4 6
4. Long Tom River (ONHP #6) 16-5
5. Poodle Creek Heronry (ONHP #112) 17-7-13
6. Shaw Creek Heronry (ONHP #110) 20-5-6

2. Sites Within State Parks

These sites, owned by the State of Oregon, are within the State Parks and Highways System. There is no question as to the significance of these sites, that is why they have been set aside as State Parks and Waysides. The sites are placed in a 1C category. No conflicts exist based on uses allowed in zoning districts. The sites are all zoned in Public Reserve Zones and are presently being managed by the State Parks Division and the Oregon Department of Transportation.

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a. Ben and Kay Dorris State Park (NAPAC #11) 16-2E-36. Douglas fir-alder vegetation. Existing recreational use does not negatively impact this vegetation.

b. Darlingtonia State Wayside (ONHP #109) 17-12-35. Unique plant protected in this wayside.

c. Dexter Island and Dexter Dam State Park (ONHP #108) 19-1-5,8,9. Riparian vegetation and heron rookery. The approved Master Plan for this park (now called Elijah Bristow State Park) indicates that the rookery and riparian vegetation areas will not be negatively affected.

d. Washburne Memorial State Park (ONHP #58) 16-12-22. Unique vegetation complexes, including an unusual sphagnum moss bogs, are protected in this park.

e. Washburne Wayside (ONHP #40 and NAPAC #4) 15-5-12. Douglas fir and white oak vegetation. Minimal development in this wayside.

3. Sites Within the Coastal Resources Management Plan or Willamette River Greenway Plan

Information on the location, quality and quantity of these sites indicates that they are all significant and are being placed in a 1C category. Two special purpose plans, the Coastal Resources Management Plan (CRMP) and the Willamette River Greenway Plan, have been adopted by the County. Different parts of these plans cover the 21 sites listed here.

Because of the degree of protection already afforded these sites, and the amount of planning which has already gone into them, no conflicts are determined to exist with use of these sites as they are presently zoned.

During development of Management Units within the Coastal Resources Management Plan, natural values of the area were a major factor. Those same values are the basis of the Greenway Plan. Detailed information on these plans, and the Management Units, is available in the Planning Division office.

a. Big Creek (ONHP #45) CRMP--Management Unit (MU) 45, Prime Wildlife Area.

b. Big Creek, Rock Creek and Tenmile Creek. Silverspot Butterfly sites (ONHP #5,56,130). CRMP--MUs 38,45, Prime Wildlife Area for this nationally threatened species.

c. Butterfly, Grass, Reed and Jernigan Islands (ONHP #83). CRMP--Siltcoos Lake MU 1, Significant Natural Area. The riparian vegetation on these islands provides excellent wildlife, particularly bird, habitat.

d. Camp Baker (Boy Scout Camp) (ONHP #46) CRMP--Siltcoos Lake MUs 5 and 6. A Prime Wildlife Area MU extends 150 feet inland from the shore of the lake to cover riparian vegetation and marshy areas; the remainder of the site is in a Natural Resources Conservation MU.

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e. Coast Fork Willamette River (ONHP #93). Greenway Plan. Riparian vegetation, the important value listed at this site, is protected by Greenway Development permit requirements.

f. Cox Island (ONHP #65) CRMP-MUTI, Natural. This island is owned and managed by the Nature Conservancy.

g. Duncan Slough and Marsh (ONHP #61) CRMP--MU N, Natural. A unique marsh complex and a band-tailed pigeon mineral spring are protected by this MU.

h. Heceta Beach Dunes (ONHP #37) CRMP--Beaches and Dunes section and Beaches and Dunes Combining District of the zoning ordinance guide development in dunal areas.

i. Heceta Head/Conical Rock (ONHP #53,114) CRMP--MU 48, Significant Natural Area. Conical Rock is part of the Oregon Islands National Wildlife Refuge. Heceta Head is an important bird nesting area, as well as being an outstanding scenic site.

j. McCarty Marsh Heronry (ONHP #62) CRMP--MU 25, Prime Wildlife Area. The private property owner has an agreement with ODFW to protect this rookery.

k. Mercer Lake (ONHP #145) CRMP--Mercer Lake MUs. Several MUs are used to surround the shoreline of this lake, protecting its natural values.

l. Middle Fork Willamette River (ONHP #91) Greenway Plan. The valuable riparian vegetation here is protected by the Greenway Plan and Development Permit.

m. Miller Arm/Maple Creek Marsh (ONHP #81) CRMP--Siltcoos Lake MU 4, Prime Wildlife Area. This MU protects an uncommon canary grass/tule marsh.

n. North Fork Siuslaw River Marsh (ONHP #60) CRMP--MU H, Natural. The proximity of four marsh types and the extent of the marshes make this site unusual. The Natural designation provides protection for this area.

o. Siboco Slough and South Inlet Pigeon Springs (ONHP #63,132) CRMP--MU I, Natural. These marsh areas and the mineral springs are protected by the Natural designation.

p. Siltcoos Lake (ONHP #85) CRMP--Siltcoos Lake MUs. The Lane County portion of Siltcoos Lake's shoreline is surrounded by MUs which recognize the importance of the riparian vegetation and the marshlands.

q. Siltcoos Lake Dunes (ONHP #84) CRMP--Beaches and Dunes Section. This section of the Plan, as well as a Beaches and Dunes Zoning District guide development in dunal areas and preserve the important values of the dunes.

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r. Siuslaw River Estuary (ONHP #67) CRMP. The entire estuary portion of the CRMP is designed to recognize and preserve the various values of the estuary and its shoreline.

s. Sutton Lake Marsh (ONHP #20) CRMP--Sutton Lake MU 4, Significant Natural Area. This MU covers an important willow, sedge and bullrush marsh.

t. Woahink Lake Bog (ONHP #14) CRMP--Woahink Lake MU 2, Prime Wildlife Area. An uncommon plant is protected by this MU.

4. Others

1. Upper Yachats Elk Pasture (ONHP #146). A portion of this site, previously in private ownership, has been purchased by ODFW. The remainder is in the Siuslaw National Forest. SNF and ODFW have an agreement concerning use of the site as an elk wintering area. The site is zoned FM - no conflicts exist.

2. Fern Ridge (ONHP #8). The reservoir itself is owned by the Corps of Engineers and operated under a management plan done in 1980. This plan recognizes the vital role of Fern Ridge to wildlife, particularly waterfowl. The ODFW manages wildlife in the area, including plots south of the reservoir being farmed for wildlife utilization only. The reservoir is considered "sensitive fish and waterfowl habitat," discussed earlier in this report. As such, riparian vegetation around the reservoir is protected. No conflicts exist.

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POLICY DISCUSSION

Several existing policies relate to flora and fauna. These are:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize and support existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies shall be encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall be encouraged to investigate and utilize fee acquistions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement these policies.

While these policies are adequate as far as they go, there are other areas discussed in this Working Paper for which policies have not been developed. The general areas with policy gaps will be mentioned and examples of possible policies given.

- Policy gap: Riparian and wetland vegetation. Examples of policies are:

    1. Riparian and wetland vegetation is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and wetlands, and consideration of the areas in other land use activities such as Special Use Permits and Zone Changes.

    2. Drainage of wetland areas will not be promoted by Lane County. Any drainage project over which Lane County has permit authority shall be approved only after analysis of the ESEE consequences of such an action.

- Policy gap: Sensitive Fish and Waterfowl areas. An example of a policy is:

    1. Sensitive Fish and Waterfowl areas are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

- Policy gap: Big Game Ranges. Some policy examples are:

    1. Residential building permits issued within Major or Peripheral Big Game Range shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

    2. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range.

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3. ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.

- Policy gap: Conflicts not anticipated or identified in the plan. Example of policy:

1. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-00 will be followed.

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APPENDIX A

WILDLIFE OF LANE COUNTY

1. Birds

Approximately 305 species are thought to occur in Lane County. Frequency of occurrence may range from common to rare or accidental; further, some occurrences are seasonal only. This inventory is as complete as current resources allow. Updating and further verification is anticipated, as populations are not static but dependent upon habitat, nesting occurrence, threatened or endangered species, etc.

Common Loon
Arctic Loon
Red-Throated Loon
Horned Grebe
Eared Grebe
Western Grebe
Pied-Billed Grebe
Red-Necked Grebe
Black-Footed Albatross
Fulmar
Pink-Footed Shearwater
Sooty Shearwater
Slender-Billed Shearwater
Leach's Storm Petrel
Fork-Tailed Petrel
White Pelican
Brown Pelican
Double-Crested Cormorant
Brandt's Cormorant
Pelagic Cormorant
Common Egret
Black-Crowned Night Heron
Great Blue Heron
Green Heron
Great Egret
Snowy Egret
American Bittern
Whistling Swan
Trumpeter Swan
Canada Goose
White-Fronted Goose
Snow Goose
Black Brandt
Mallard
Gadwall
Northern Pintail
Green-Winged Teal
Blue-Winged Teal
Cinnamon Teal
European Widgeon
Harlequin Duck
White-Winged Scoter
Red-Breasted Merganser
Surf Scoter
Ruddy Duck
Hooded Merganser
Turkey Vulture
White-Tailed Kite
Goshawk
Sharp-Shinned Hawk
Cooper's Hawk
Red-Tailed Hawk
Swainsen's Hawk
Rough-Legged Hawk
Ferruginous Hawk
Golden Eagle
Bald Eagle
Marsh Hawk
Osprey
Prairie Falcon
Peregrine Falcon
Pigeon Hawk
Merlin
American Kestrel (Sparrow Hawk)
Blue Grouse
Ruffed Grouse
California Quail
Mountain Quail
Ring-Necked Pheasant
Sandhill Crane
Virginia Rail
Sora
American Coot
Black Oystercatcher
Semipalmated Plover
Snowy Plover
Killdeer
American Golden Plover
Black-Bellied Plover
Surfbird

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American Widgeon
Northern Shoveler
Wood Duck
Redhead
Ring-Necked Duck
Canvasback
Greater Scaup
Lesser Scaup
Common Goldeneye
Bufflehead
Old Squaw
Knot
Pectoral Sandpiper
Baird's Sandpiper
Least Sandpiper
Dunlin
Short-Billed Dowitcher
Long-Billed Dowitcher
Stilt Sandpiper
Semipalmated Sandpiper
Western Sandpiper
Sanderling
American Avocet
Red Phalarope
Northern Phalarope
Pomarine Jaeger
Parasitic Jaeger
Long-Tailed Jaeger
Glaucous Gull
Western Gull
Herring Gull
Thayer's Gull
California Gull
Ring-Billed Gull
Mew Gull
Bonaparte's Gull
Heermann's Gull
Black-Legged Kittiwake
Sabine's Gull
Forster's Tern
Arctic Tern
Common Tern
Caspian Tern
Black Tern
Common Murre
Pigeon Guillemot
Marbled Murrelet
Ancient Murrelet
Cassin's Auklet
Parakeet Auklet
Rhinoceros Auklet
Horned Puffin
Tufted Puffin
Band-Tailed Pigeon
Ruddy Turnstone
Black Turnstone
Godwit
Spotted Sandpiper
Common Snipe
Long-Billed Curlew
Solitary Sandpiper
Wandering Tattler
Willet
Greater Yellowlegs
Lesser Yellowlegs
Long-Eared Owl
Short-Eared Owl
Saw-Whet Owl
Poor-Will
Common Nighthawk
Vaux's Swift
Anna's Hummingbird
Rufous Hummingbird
Calliope Hummingbird
Belted Kingfisher
Yellow-Shafted Flicker
Red-Shafted Flicker
Common Flicker
Pileated Woodpecker
Acorn Woodpecker
Lewis' Woodpecker
Yellow-Bellied Sapsucker
Hairy Woodpecker
Downy Woodpecker
Eastern Kingbird
Western Kingbird
Traill's Flycatcher
Hammond's Flycatcher
Ash-Throated Flycatcher
Say's Phoebe
Willow Flycatcher
Dusky Flycatcher
Western Flycatcher
Western Wood Pewee
Olive-Sided Flycatcher
Horned Lark
Violet Green Swallow
Tree Swallow
Bank Swallow
Rough-Winged Swallow
Barn Swallow
Cliff Swallow
Purple Martin
Steller's Jay
Gray Jay
Scrub Jay
Black-Billed Magpie
Common Raven

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Rock Dove
Mourning Dove
Barn Owl
Screech Owl
Great Horned Owl
Snowy Owl
Pygmy Owl
Burrowing Owl
Norther Spotted Owl
Great Gray Owl
House Wren
Winter Wren
Bewick's Wren
Long-Billed Marsh Wren
Rock Wren
Northern Mockingbird
Sage Thrasher
American Robin
Varied Thrush
Hermit Thrush
Swainsen's Thrush
Western Bluebird
Mountain Bluebird
Townsend's Solitaire
Golden-Crowned Kinglet
Ruby-Crowned Kinglet
Water Pipit
Bohemian Waxwing
Cedar Waxwing
Northern Shrike
Loggerhead Shrike
Common Starling
Hutton's Vireo
Solitary Vireo
Red-Eyed Vireo
Orange-Crowned Warbler
Yellow Warbler
Yellow-Rumped Warbler
Black-Throated Gray Warbler
Myrtle Warbler
Audubon's Warbler
Townsend's Warbler
Hermit Warbler
MacGillivray's Warbler
Yellow Throat
Yellow-Breasted Chat

Common Crow
Clark's Nutcracker
Black-Capped Chickadee
Mountain Chickadee
Common Bushtit
White-Breasted Nuthatch
Red-Breasted Nuthatch
Brown Creeper
Wrentit
Dipper
Wilsen's Warbler
House Sparrow
Western Meadowlark
Yellow-Headed Blackbird
Red-Winged Blackbird
Northern Oriole
Brewer's Blackbird
Brown-Headed Cowbird
Western Tanager
Black-Headed Grosbeak
Lazuli Bunting
Evening Grosbeak
Purple Finch
House Finch
Gray-Crowned Rosy Finch
Pine Siskin
American Goldfinch
Lesser Goldfinch
Red Crossbill
Rufous-Sided Towhee
Savannah Sparrow
Grasshopper Sparrow
Vesper Sparrow
Dark-Eyed Junco
Slate-Colored Junco
Oregon Junco
Chipping Sparrow
Harris' Sparrow
White-Crowned Sparrow
Golden-Crowned Sparrow
White-Throated Sparrow
Fox Sparrow
Lincoln's Sparrow
Swamp Sparrow
Song Sparrow
Chestnut-Collared Longspur

NOTE: Species list compiled from:

a. Environmental Assessment of Siuslaw-Umpqua-Smith Rivers, 1974 by Dames and Moore.

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b. Eugene-Springfield Metropolitan Area Inventory by Steve Gordon.

B. MAMMALS

Pacific Shrew
Vagrant Shrew
Marsh Shrew
Trowbridge Shrew
Pacific Mole
Shrew-Mole
Dusky-Shrew
Water Shrew

Little Brown Myotis
Fringed Myotis
California Myotis
Long-Legged Myotis
Long-Eared Myotis
Yunca Myotis
Hoary Bat
Silvery-Haired Bat
Big Brown Bat
Western Big-Eared Bat
Pika
Snowshoe Hare
Brush Rabbit

Mountain Beaver
Sierra Nevada Golden-Mantled Ground Squirrel
Beechey Ground Squirrel
California Ground Squirrel
Townsend Chipmunk
Northern Flying Squirrel
Yellow Pine Chipmunk
Western Gray Squirrel
Beaver
Douglas Squirrel
Northern Flying Squirrel
Mazama Pocket Gopher

Deer Mouse
Bushy-Tailed Woodrat
White-Footed Vole
Red Tree Mouse

California Red-Backed Vole
Townsend Vole
Longtail Vole
Oregon Vole
Muskrat
Western Red-Backed Mouse
Water Rat
Pacific Jumping Mouse
Porcupine
Yellow-Bellied Marmot
Gray Fox
Coyote
Red Fox
Cougar
Black-Bear

Raccoon
Nutria
Marten
Mink
Long-Tailed Weasel
Short-Tailed Weasel
Striped Skunk
Spotted Skunk
River Otter

Mountain Lion
Bobcat

Steller Sea Lion
California Sea Lion
Harbor Seal

Roosevelt Elk
Black-Tailed Deer
Mule Deer

3. AMPHIBIANS AND REPTILES

Northwestern Salamander
Pacific Giant Salamander
Olympic Salamander
Rough-Skinned Newt
Dunn's Salamander
Western Red-Backed Salamander
Oregon Slender Salamander

Northern Alligator Lizard
Rubber Boa
Northwestern Garter Snake
Common Garter Snake
Western Fence Lizard
Western Skink
Short-Horned Lizard

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Clouded Salamander
Ensatina
Western Toad
Pacific Tree Frog
Red-Legged Frog
Bullfrog
Yellow-Legged Frog
Tailed Frog
Cascade Frog
Western Pond Turtle

Western Ring-Necked Snake
Western Racer
Gopher Snake
Sharp-Tailed Snake
Common Kingsnake
Western Rattlesnake

4. FISH

Anadromous

Coho Salmon
Fall & Spring Chinook Salmon
Winter Run Steelhead
Sea Run Cutthroat Trout
Brown Trout
Cutthroat Trout
Dolly Varden Trout
Golden Trout
Brook Trout
Rainbow Trout

Warmwater, Rough and Other

Western Brook Lamprey
Pacific Lamprey
White Sturgeon
Green Sturgeon
American Shad
Pacific Herring
Kokanee
Mountain Whitefish
Chiselmouth
Goldfish
Carp
Oregon Chub
Peamouth
Northern Squawfish
Dace

Redside Shiner
Large-Scale Sucker
Mountain Sucker
Black Bullhead
Yellow Bullhead
Brown Bullhead
Channel Catfish
Three-Spined Stickleback
Mosquito Fish
Sand Roller
Warmouth
Pumpkinseed
Bluegill
Smallmouth Bass
Largemouth Bass
White Crappie
Black Crappie
Yellow Perch
Sculpins
Greenling and Ling Cod
Rock Fishes
Sole and Starry Flounder
Sea Perches
Striped Bass
Columbia River Smelt

000537

ADDENDUM TO WORKING PAPER:

FLORA & FAUNA

November, 1983

EXHIBIT J 2

MEMORANDUM

lane county

TO Interested Persons and Groups

FROM Land Management Division

SUBJECT Revision of General Plan Working Papers DATE November 1983

In order to fully comply with the requirements of Oregon statewide planning Goals as promulgated by the Oregon Land Conservation and development Commission, Lane County must revise certain elements of its rural General Plan. Following the revision action, the Plan must be submitted to LCDC for acknowledgement.

Part of the revision effort is directed toward improving the information base and Policy suggestions of the Working Papers. These documents were originally intended to serve as technical foundations (by pulling together information and in some cases indicating where it was already available) for Plan development. The actual Plan was to take the form of Policies and a Plan Diagram, both of which were completed and, in the case of the Policies, adopted. Working Papers were to serve as reference material.

To bring the Plan into better compliance with state Goals, all three elements -- Working Papers, Policies and Plan Diagram -- need some revision. Since the Policies are generated from information in the Working Papers, it follows that new Policy statements must be founded in the form of Working Paper revisions.

Attached for your review and comment are revisions to one of the existing Working Papers. It is the intention of the County to follow essentially the same process of public review that was followed when the Working Paper were originally published. Bear in mind that in some instances, revisions pre-empt or modify or add to material now in the Working Papers.

After action is completed on all Working Paper revisions, the Policy statements generated by this procedure will be compiled and brought before the public and County officials for adoption as amendments to the General Plan Policies document. When the Plan Diagram is made available for similiar action, it too will contain pertinent directives of this and the other Working Papers.

REVISIONS TO "FLORA AND FAUNA WORKING PAPER"

I. Introduction

The "Flora and Fauna Working Paper" was published by Lane County in March, 1982. It was brought before both County Planning Commissions in a public hearing format in March and April, with testimony taken and responses given. In May, 1982, both Planning Commissions issued formal reports to the Board of County Commissioners, recommending tentative Policies to be formulated from both the Working Paper and the testimony received about it. The tentative Policies were reviewed and adopted by the Board of County Commissioners in December 1982.

In early 1983, staff of the DLCD reviewed the Working Paper and identified some aspects of it that needed to be adjusted before it would comply with statewide planning Goal requirements. The purpose of this Revision report is to correct those deficiencies.

Changes to the "Flora and Fauna Working Paper" take the form of technical data additions, and of Policy statements. Only the Policy statements are intended to be formally adopted as part of the Plan.

II. Working Paper Revisions

A. ADD the following language to page 5 of the Working Paper, directly following the first (leading) paragraph of the section entitled, "Wildlife Habitats":

The description of a habitat type in the following section is intended to provide a setting for identification of more specific resource types and sites. Because several of the following habitat types are so prominent in the County (e.g., "Douglas Fir/Trailing Blackberry", "Deciduous Hardwoods"), mapping the information would be of little value. Likewise, it is not practical to make Plan designations of these types, thereby eliminating the need for the "Goal 5 Rule" application. It is assumed that existing land use regulations (such as forest land zoning) will properly protect these habitat types, allowing the County to focus its regulator efforts on specific types (such as riparian lands) discussed later in this Working Paper.

B. DELETE the list of "sensitive fish habitats" which appears on pages 20 and 21 of the Working Paper, and ADD the more detailed list below:

MIDDLE FORK WILLAMETTE BASIN	
Middle Fork Willamette	Dexter Reservoir to Confluence of Coast and Middle Forks Hills Creek Reservoir to Lookout Point Reservoir Staley Creek to Hills Creek
North Fork of Middle Fork Willamette	East Boundary of 19-65-26 to Middle Fork Willamette
Salmon Creek	Black Creek to Middle Fork Willamette
Salt Creek	East Boundary of 22-55-21 to Middle Fork Willamette
Hills Creek	Warfield Creek to Hills Creek Reservoir
Fall Creek	Fall Creek to Middle Fork Willamette Gold Creek to Fall Creek Reservoir
Little Fall Creek	West Boundary of 18-25-07 to Fall Creek
Winberry Creek	South Fork Winberry Creek to Fall Creek Reservoir
COAST FORK WILLAMETTE BASIN	
Coast Fork Willamette	Cottage Grove Reservoir to Confluence of Coast and Middle Fork Willamette
Big River	East Boundary of 23-25-17 to Cottage Grove Reservoir

SIUSLAW RIVER BASIN	
Siuslaw River	Confluence of North and South Forks Siuslaw to Coastal Resource Management Plan (CRMP) Management Units (MU's)
North Fork Siuslaw River	Hawley Creek to Siuslaw River
South Fork Siuslaw River	Tucker Creek to Siuslaw River
Esmond Creek	County Line to Siuslaw River
Wolf Creek	Panther Creek to Siuslaw River
Whitacker Creek	County Line to Siuslaw River
Wildcat Creek	South Line of 18-07-13 to Siuslaw River
Lake Creek	East Boundary of 15-07-15 to Triangle Lake Triangle Lake to Siuslaw River
Deadwood Creek	Panther Creek to Lake Creek
Indian Creek	North Fork Indian Creek to Lake Creek
Sweet Creek	South Boundary of 18-10-33 to CRMP MU's
North Fork Siuslaw	West Boundary of 16-10-30 to CRMP MU's
SILTCOOS BASIN	
Maple Creek	East Boundary of 19-11-12 to CRMP MU's
Fiddle Creek	East Line of 19-11-36 to County Line
Woahink Creek	Woahink Lake to Siltcoos Lake Exclusive of CRMP MU's
COASTAL DRAINAGES	
Tenmile Creek	Wildcat Creek to CRMP MU's
Big Creek	East Boundary of 16-11-21 to CRMP MU's
Cape Creek	East Boundary of 16-11-31 to Pacific Ocean
Sutton Creek	Sutton Lake to Pacific Ocean Exclusive of CRMP MU's Mercer Lake to Sutton Lake Exclusive of CRMP MU's

Row River	Dorena Reservoir to Coast Fork Willamette Layng Creek to Dorena Reservoir
Layng Creek	South Boundary of 21-15-24 to Row River
Brice Creek	South Boundary of 22-25-29 to Row River
Sharps Creek	Clark Creek to Row River
Mosby Creek	Tom Creek to Row River
MAIN STEM WILLAMETTE BASIN	
Springfield Mill Race	Middle Fork Willamette to Main Stem Willamette
Main Stem Willamette	Confluence of Coast and Middle Forks Willamette to County Line
MC KENZIE RIVER BASIN	
McKenzie River	County Line to Main Stem Willamette
Mohawk River	Drury Creek to McKenzie River
Gate Creek	Minney Creek to McKenzie River
Blue River	Blue River Reservoir to McKenzie River County Line to Blue River Reservoir
South Fork McKenzie River	Cougar Reservoir to McKenzie River Roaring River to Cougar Reservoir
West Fork Horse Creek	Horse Creek to McKenzie River
Horse Creek	Separation Creek to McKenzie River
Lost Creek	South Boundary of 16-65-13 to McKenzie River
UMPQUA BASIN	
Steamboat Creek	Horse Heaven Creek to County Line

C. DELETE the sixth paragraph on page 20 (concerning a map) and ADD the following:

A small-scale map of the streams identified below appears in this Working Paper. Streams listed have been called out by ODFW, and reaches noted by agency staff. A large-scale map is also available for review in County planning offices.

D. DELETE the text under "Quantity" (page 21), and ADD the following:

Several hundred miles of waterway are involved, all of it subject to the Riparian Lands setback requirements discussed in that section of the Working Paper. Since fish habitat is confined to the streams themselves, all such habitat is automatically included in riparian land designations. Waterfowl nesting areas extend beyond the water surface, normally in Wetland areas as identified in that section of the Working Paper.

Although occuring in all parts of the County, sensitive fish habitat has very similiar characteristics throughout -- it is highly dependant on the existence of riparian vegetation. Such vegetation is the subject of recommended protective measures (setback and vegetation management provisions) along Class I waterways.

Because of the vast quantity of waterway designated sensitive fish habitat, and the unifying requirement of riparian vegetation, it is not useful to attempt site-specific conflict analysis. Conflict analysis for waterfowl nesting areas coincides with that for wetlands.

E. DELETE the last three sentences in paragraph 2 of the section entitled "Conflict Resolution" on page 22 (beginning with, "As with Riparian...."). ADD the following language:

The Oregon Fish and Wildlife Department has recommended building setbacks of 50 to 100 feet (depending on zone, which in turn reflects location) along waterways designated as sensitive fish habitat, and the use of a NR zone for wetlands not falling into the riparian strip. These setbacks can be the same rules as have been proposed for Class I streams (see previous section of the Working Paper). Since sensitive fish habitat consists of specified portions of Class I waterways, the riparian land management program should effectively protect such habitat. The NR zone should be applied to wetlands not protected by Coastal zoning or federal ownership.

F. DELETE paragraph 5 on page 14 of the Working Paper (in section entitled, "Riparian and Wetland Areas"), and ADD the following:

For areas of the County covered by the National Wetland Inventory, wetlands shall be defined through a program of consultation with fish and wildlife experts of the Oregon Fish & Wildlife Department and its federal counterpart. For interim purposes of this section, streams and areas of open water shall not be considered wetlands.

G. DELETE the first two sentences of paragraph 1, page 16 of the Working Paper (under section entitled, "Location"), and ADD the following:

The Oregon Fish and Wildlife Department has assisted the County in providing maps of all Class I streams, as well as major significant wetland areas. Attached to this Working Paper is a summary map of those areas, and detailed maps are available for review in County offices.

H. DELETE last two paragraphs under section entitled "Location" on page 16 of the Working Paper, and ADD the following:

A vast array of wetland types has been identified from air photo analysis by the U.S. Fish and Wildlife Service. That agency's product, known as the National Wetland Inventory, includes wetland types from open water to small, seasonal marshes. The scale of the maps is at 1"=62,500 feet (scale of USGS quadrangles) and 1"=24,000 feet. Such a scale, although permitting total coverage of the County, requires much supplementary interpretation and field checking before specific Plan designations and regulations can be placed on the sites.

Presently, about half the County (from the Willamette Valley to the Coastal Zone) has been so mapped, and it is expected that the rest of the County will be completed within a year or two. Although it is not possible -- because of the interpretation requirements mentioned above and of incomplete County coverage -- to designate a large number of minor wetlands, the maps have been useful in identifying "major wetlands." These major wetlands are considered by ODFW staff as being sufficient in size and value to merit County identification. They are located in the following areas:

- Fern Ridge periphery exclusive of parkland;
- Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel.
- North Fork Siuslaw freshwater marsh;
- Maple Creek marsh;
- Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

Staff of the ODFW indicate that protection of the above major wetlands will enable the County to meet basic Goal 5 requirements, and the later interpretation and application of NWI mapped data will completely fulfill such requirements.

The areas listed above are mapped in detail on the County's Plan Diagram maps. Additionally, a small-scale map showing their general location is attached to this Working Paper. They are discussed in more detail in the "ESEE Analysis" section.

The County should take the Goal 5 Rule "1B" option on interpreting and applying the NWI data, within a timetable of one or two years (or when complete County coverage finally occurs).

I. DELETE both paragraphs of the section entitled, "Quantity" on page 17 of the Working Paper, and ADD the following:

The quantity of riparian and wetland areas is difficult to estimate in terms of acres or square miles. For purposes of this analysis, "quantity" of riparian lands is defined as all lands along both banks of Class 1 streams in Lane County, to a setback line 100 feet from ordinary high water. This area may or may not contain riparian vegetation; uses of it vary depending on location.

Major wetlands as previously defined vary in size from a few to several hundred acres. Each wetland is discussed individually in the "conflict analysis." The quantity of wetlands on the National Wetlands Inventory probably measures in hundreds of square miles; until a full analysis is done per the Goal 5 rule "1B" option, there is no way of knowing.

J. DELETE the section entitled, "ESEE Analysis" on pages 18 and 19 of the Working Paper. ADD the following material to replace it:

Riparian Lands

For purposes of conflict analysis, riparian lands are divided into the following categories:

- Resource Areas (forested and agricultural);
- Rural Lands (partially/sparsely developed);
- Developed & Committed areas (including communities).

The analysis is carried out for each category.

1. Resource Areas

a) Economic Impacts:

1) Merchantable timber removed from riparian areas is a source of employment and revenue in the County.

2) Use of riparian areas for farming purposes increases available land for farming; usually, riparian lands consist of soils types suitable for agriculture.

3) Riparian lands used for aggregate production increase the economic benefits of that resource.

4) Loss of riparian vegetation destroys fish and waterfowl habitat, increases flood risks, and destroys the river-bank itself, all of which produce net costs to the area.

b) Social Impacts:

1) Loss of income from reduced forest and farming activities adversely affects Land County residents, and could require relocation, etc.

2) Regulations to restrict activities in the riparian strip may conflict with the Forest Practices Act, and in any case will increase the burden on the landowner. Enforcement of such regulations in Resource Areas would be difficult.

3) The social consequences of reduced water quality, flooding, and fish/wildlife quantity, stemming from loss of riparian lands could be significant, especially for those oriented toward outdoor recreation and those living in flood-prone areas.

c) Environmental Impacts:

1) Loss of riparian vegetation would have a significant adverse impact on the riverine environment, as already discussed, and on the wildlife species dependent on that environment.

2) Reduced bank stability, more turbid water, flooding, etc., has generally negative impacts on downstream environments. Flood control would be more difficult to achieve, water purification would be necessary for jurisdictions using surface water for municipal supply, and the risk of health hazards from poorer water quality and/or flooding would increase.

d) Energy Impacts:

1) Reduction of agricultural or forestry production would require a greater investment of energy to more intensively manage unaffected areas and/or obtain the resource products from other areas.

2) Loss of riparian vegetation and a reduction in environmental quality could result in increased downstream energy costs (water treatment, greater travel in search of suitable outdoor recreational sites, flood cleanup)

2. Rural Lands

a) Economic Impacts:

1) Riparian land development restrictions can decrease the availability/usability of Rural Lands, thus increasing land costs.

2) In much the same manner as with Resource Areas, loss of riparian areas for noncommercial forestry, farming, etc., can increase landowner costs and reduce income.

3) Reduced riparian land quality can reduce property values and increase costs to landowners through flood risk, higher insurance costs, less wildlife, and poorer water quality.

b) Social Impacts:

1) Rural residents who desire high-quality riparian environments would be adversely impacted by loss of riparian land and associated consequences.

2) Restrictions on building and land use in the riparian strip would adversely impact landowners through reduction of their options for building siting, etc.

c) Environmental Impacts:

1) In rural areas, riparian environments often contrast to open lands used for pasture, or once covered with timber, or cleared for homesites. Loss of such lands would damage those environments andthus the quality of the overall community or area.

2) The quality of surface and groundwater, upon which rural landowners depend, would be adversely impacted.

d) Energy Impacts:

1) Energy costs to landowners would be higher if riparian restrictions forced them to live elsewhere. Costs would be lower if riparian restrictions preserved water quality, provided natural flood control, and so forth.

3. Developed and Committed Areas

a) Economic Impacts:

1) Especially on small parcels, the preservation of riparian vegetation through County use restrictions could have serious impacts on the owner.

2) Siting of structures, riparian land use, and vegetation management would all be affected by riparian regulations, possibly increasing costs to landowners.

3) Loss of riparian vegetation through no management would decrease the desirability of the local environment and adversely impact property values. Physical damage to the riverbank through loss of riparian vegetation could cause bank erosion which in turn would increase costs to the landowner to combat it, or because of damages to structures and other improvements.

b) Social Impacts:

1) Within developed areas, riverbanks are often valued for both public and private recreational purposes. Usually, riparian land has a higher social value than equivalent nonriparian land. Loss of that resource would be detrimental to such qualities.

2) The burden of riparian use restrictions on the landowner would amount to another layer of regulation, and could be difficult to enforce.

c) Environmental Impacts:

1) The adverse impacts of flooding, bank erosion, loss of wildlife and fish habitat, reduced water quality and increased runoff would be significant if riparian vegetation was not protected in some manner.

2) Excessive restrictions on riparian lands within developed and committed areas could result in an aesthetic environment which would displease those who prefer manicured, park-like community settings to more wild, natural settings.

d) Energy Impacts:

1) Restrictions on riparian land use could increase energy costs to those forced to find other land upon which to build.

2) Public service costs in areas not subject to flooding or other adverse impacts of destroyed riparian areas, including the energy costs of those services, would be controlled.

Conflict Resolution

Following the analysis of conflicts, a decision must be made whether to 1) preserve the resource totally, 2) allow unlimited conflicting uses, or 3) limit the conflicting uses. Such limitation should be in the form of regulations and similiar implementing measures.

Considering the value of riparian vegetation to the County's ecosystem, and the impacts of its loss, option 2) above is not prudent. On the other hand, a complete limitation of all activities-- option 1)-- in the 100-foot riparian area is equally unfeasible. As with most resources, a compromise is the most practical -- the third option.

In Goal 5 Rule language, a "3C" decision should be made. This should take the form of Policies and land use regulations which accomplish the following:

1. Requires building setbacks* from all Class 1 streams. (The actual setback should be 50 feet in rural development zones and 100 feet in rural resource zones. According to ODFW officials, these setbacks are justifiable, and have been used in other Oregon counties. Specific language should be introduced to each zoning district to this end.)

2. Provides for vegetation management within the riparian setback strip. (ODFW officials have provided the County with suggested vegetation management regulations, based in part on the County's Coastal Resources Management Plan shoreland provisions, to be applied within the riparian strip. The actual area of application should be 30 feet for the 50-foot strip, and 50 feet for the 100-foot strip. See the County's "Natural Resources Conservation" shoreland overlay for fuller justification and explanation.)

3. Provides for flexibility. (It must be recognized that situations will occur where the above regulations are overly burdensome. A provision for landowner appeal for a relaxation of the standards needs to be written into each zoning district along with the other standards suggested above. Upon such appeal, the vegetative

*for non-water dependent uses.

management area -- as well as the wider riparian setback area itself -- could be modified upon consultation with, and approval by, officials of the ODFW.)

4. Does not conflict with the provisions of the Forest Practices Act. (Presently, it has not yet been resolved in Oregon whether or not Goal 5 concerns take precedence over activities regulated by the FPA -- an example being timber cutting along a Class 1 stream. Until and if that issue is resolved in favor of Goal 5 concerns, County action to limit conflicting uses should not be applied to lands subject to FPA regulation.)

5. Uses existing regulations wherever practical. (Both the Willamette Greenway Permit and the Coastal Resources Zoning regulate activites in the riparian zones of respective waterways. There is no need for an additional layer of regulation on lands already subject to such regulation. In fact, those standards should be used as a basis for management of riparian lands in areas beyond WGP or CRZ jurisdiction.)

Wetlands

The Major Wetlands listed earlier can each be evaluated seperately for Goal 5 Rule conflict analysis.

1. Fern Ridge Reservoir

   a) Location: Marshy areas on perimeter of the Reservoir, including lands to southeast of Reservoir (see map).

   b) Quality: High. The major fresh water wetland of the County. Contains freshwater marsh, warm water game fish, submerged & emergent vegetation, fur bearers, and many species of waterfowl, shorebirds, song birds and small mammals.

   c) Quantity: Several hundred acres of land, most of it owned by the U.S. Army Corps of Engineers, some of which is managed by ODFW under an interagency agreement.

   d) Conflicting Uses: Any use which would result in destruction of vegetation or drainage of surface/subsurface water.

   e) ESEE Analysis:

      1) Economic: The principal value of the area is for its present use. Alternative uses, such as development, would require expensive land alteration. As a focal point for outdoor, water-related recreation in central Lane County, Fern Ridge Reservoir and its wetlands provide a significant economic benefit. Maintenence of the Reservoir also provides valuable flood control benefits to downstream landowners.

      2) Social: Social consequences of protecting the resource parallel the economic ones -- generally beneficial.

      3) Environmental: The site provides a highly valuable area for a variety of life-forms. Destruction of the wetlands would destroy the habitat values, and would probably degrade the quality of the Reservoir and adjacent lands for flood control and recreational purposes.

4) Energy: Destruction of the wetland resource could result in greater energy expenditures for those wishing to locate a more distant, and similiar, area for recreational purposes. Since wetlands act as sponges, flood control costs (including energy outlay) could also increase (more riprapping, etc.).

2. Lower Long Tom

a) Location: Immediately below the dam and ponds on the north side of the Reservoir, between the old river channel and the new one, and on the east side of the old channel.

b) Quality: High. A large, natural wetland containing many of the same attributes as the area to the south. "Representative" habitat.

c) Quantity: about 300 acres, owned by the Corps and by private individuals.

d) Conflicting Uses: See above entry.

e) Conflict Analysis: See above entry.

3. North Fork Siuslaw

a) Location: On the North Fork about two miles north of the main channel (18-11-19). See map.

b) Quality: High. An old salt water marsh converted to freshwater marsh by existence of a tidegate. Contains sedges, emergent vegetation, various waterfowl and furbearers.

c) Quantity: About 50 acres, in private ownership.

d) Conflicting Uses: See first entry, above.

e) Conflict Analysis:

1) Economic: Similiar to Fern Ridge Reservoir, although because of smaller size and non-flood control function, less significant.

2) Social: Impacts of destruction would eliminate a distinct habitat type from being available to persons in the area for wildlife study, etc. Maintainence would appear to have little additional impact since area is presently subject to major restrictions under Coastal Zoning overlay of "Significant Natural Shorelands Combining".

3) Environmental: This, like any major wetland, provides valuable habitat for fish and wildlife, and serves as a natural flood control facility. Impacts of destruction would be significant; impacts of maintenence, negligible, since it is now a natural system.

4) Energy: Possible flooding impacts.

4. Maple Creek Marsh

a) Location: Maple Creek where it meets northeast extent of Siltcoos Lake (19-11-30). See map,

b) Quality: High. One of the largest freshwater marshes in the area. Major use by water birds, beaver, furbearers, salmonids, shorebirds, emergent grasses, canary grass, sedges.

c) Quantity: About 30 acres, in private ownership.

d) Conflicting Uses. Same as entry #3.

e) Conflict Analysis: Same as entry #3. Also in a similiar manner, this site is under the protection of Coastal Resources zoning. The area is presently zoned with an overlay district of "Prime Wildlife," which is intended to maintain its existing character. A base zone of Exclusive Farm Use additionally restricts potentially conflicting uses.

5. Amazon Canal

a) Location: Amazon Canal for about the first ½-mile from its confluence with the waters of Fern Ridge Reservoir.

b) Quality: High. Part of the Fern Ridge wetland system, although more open water than marsh. Water level varies. Provides habitat for various bird and acquatic animal species.

c) Quantity: About 200 yards of water and banks. Owned by Corps.

d) Conflicting Uses: Same as entry #1.

e) Conflict Analysis: Same as entry #1, although site plays less of a sponge function and more of a flood control function.

Conflict Resolution

Conflict resolution for wetlands should be much the same as for riparian lands: limit the conflicting uses (the "3C" option). Those areas which are owned by the Corps of Engineers can be considered to have sufficient protection from conflicting uses without the futile effort of County regulation of federally-controlled resources. Areas presently under the jurisdiction of Coastal Resource Zoning can also be assumed to have adequate protection, since the fundamental purpose of the County's Coastal Zoning was to restrict activities that posed a threat to Coastal resources -- shorelands, estuarine areas, and beaches and dunes. Areas not in either of the above categories should be designated with a "Natural Resource" land use category and appropriately zoned. As with most zones, it should contain language permitting flexibility when merited -- without the violation of Goal 5 purposes.

J. DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place:

Although this is a useful index, officials of the ODFW stress the fact that a mere "numbers game" is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.

A prime example is that of "clustering" dwelling units in Peripheral or Major Range areas -- siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.

The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirments of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.

Within Developed and Committed areas, ODFW officials are examining the utility of continuing to designate some of these lands as either Peripheral or Major Range. Developed and Committed areas should be considered as Impacted, and conflicting uses permitted.

The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenence.

Policies concerning this issue are proposed in the concluding section of this Working Paper.

K. DELETE the first full paragraph on page 27 (following the list of "1B" sites) in "Natural Areas" section, and ADD the following:

The six sites are individually discussed below. Since proper evaluation of each of them requires field inspection and reporting by knowledgable experts (biologists, botanists, etc.), and such staff capability is not presently available to the County, the County should commit itself to a timetable of developing the necessary information to satisfy the Goal 5 Rule, for each of of these sites. It is proposed that they be fully evaluated, and placed in "1A" or "1C" categories, within two years of the adoption of the Plan Policies, or equivalent statements, proposed in this Working Paper.

L. DELETE item "a" at the top of page 30 (Ben & Kay Dorris State Park), and re-letter the following four items "a" through "d"; ADD the following statement in a paragraph to conclude the listing:

The State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen.

M. DELETE the third full sentence in item 6. on page 13 of the Working Paper ("American Osprey"), and ADD the following in place of it:

Through protection of the vegetative fringe along waterways, the habitat requirements of the osprey are protected by existing County regulations (e.g., Willamette Greenway Permit, Coastal Shoreland zoning overlays) and are expected to be further protected by new zoning restrictions intended to fulfill the County's responsibility for protection of riparian and wetland resources (see later sections of this Working Paper).

N. DELETE the material on pages 33 and 34 under "Policy Discussion." ADD the following in that location:

Following the publication of the first draft of this Working Paper, a number of Policies were adopted -- drawing in part on suggestions made in the Working Paper -- and placed in the General Plan Policies document (itself adopted December 1982). These Policies are duplicated at the conclusion of this section, for reader reference.

In order to comply with LCDC directives, and to implement proposed resource management programs discussed on the preceding pages, a few of the adopted Policies need to be revised, and some new ones added. These are proposed in the following paragraphs.

1. Revise existing Policy 3 as follows:

"3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification)."

2. Revise existing Policy 6 as follows:

"6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner. Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife."

3. Revise existing Policy 7 as follows:

"7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, the "Natural Resources" zone shall be applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction."

4. Revise existing Policy 8 as follows:

"8. The County shall not establish restrictions, based on Goal 5 objectives, on timber management activities subject to the Forest Practices Act which are more severe than the requirements of the Act itself. Goal 5 resources which are not dealt with by the Act shall be protected by the County per Goal 5 and OAR 660-16-000/025 requirements."

5. Revise existing Policy 9 as follows:

"9. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision to the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statements."

6. To existing Policies 10 and 11, add the following words (underlined):

   "...the 1982 Lane County Working Paper on Flora and Fauna, as revised and updated in 1983...."

7. Add to existing Policy 12 the following statement:

   "The County shall work with ODFW officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program."

8. Add a new Policy 14 as follows:

   "14. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met."

Existing (December 1982) Policies are duplicated on the following two pages of this document. They do not include the changes proposed above.

III. Conclusion and Necessary Action

The preceding pages of material is intended to meet LCDC requirements and thereby assist the County in complying with statewide planning Goal 5 requirements. It is recommended that the Planning Commissions and the Board of County Commissioners

- Receive the material and review it as technical supportive data,

- Consider the proposed Policy revisions in light of the new data,

- Carry the proposed Policy revisions -- or modified versions thereof -- forward to public hearings and adoption as amendments to the General Plan Policies document.

Ordinance language intended to implement the Policy proposals is now being prepared and will be brought before the Planning Commissons and Board as a part of the Lane Code revision effort. Changes to the Policies will possibly require parallel changes to the proposed ordinance language.

###

EXISTING FLORA AND FAUNA POLICIES from GENERAL PLAN POLICIES Document....

Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County is encouraged to investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and shall be a consideration in Special Use Permits and Zone Changes.

7. Because of the inadequate inventory in Lane County, freshwater wetlands are being placed in a 1B category (insufficient data existing, per Goal 5 requirements, to decide on preserving the resource or not). When National Wetland Inventory (or equivalent) maps are available for all private lands in the County, these wetlands will be evaluated for quality and quantity as per the Goal 5 administrative rule (OAR 660-16-000). If the wetlands are determined to be significant, they will be evaluated against the rule's standardized set of ESEE (Environmental-Special-Economic-Energy) factors and conflict resolution proposed. This action will take place within one plan update period after the maps are available.

8. Lane County shall rely on the Oregon Forest Practices Act for protection of wildlife habitats and areas on lands zoned for the primary use of commercial growing and harvesting of forest tree species. Such habitats and areas shall include sensitive fish and waterfowl areas, riparian vegetation, wetlands areas, and big game ranges.

9. Sensitive Fish and Waterfowl Areas, as identified in the 1982 Lane County Working Paper on Flora and Fauna, are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

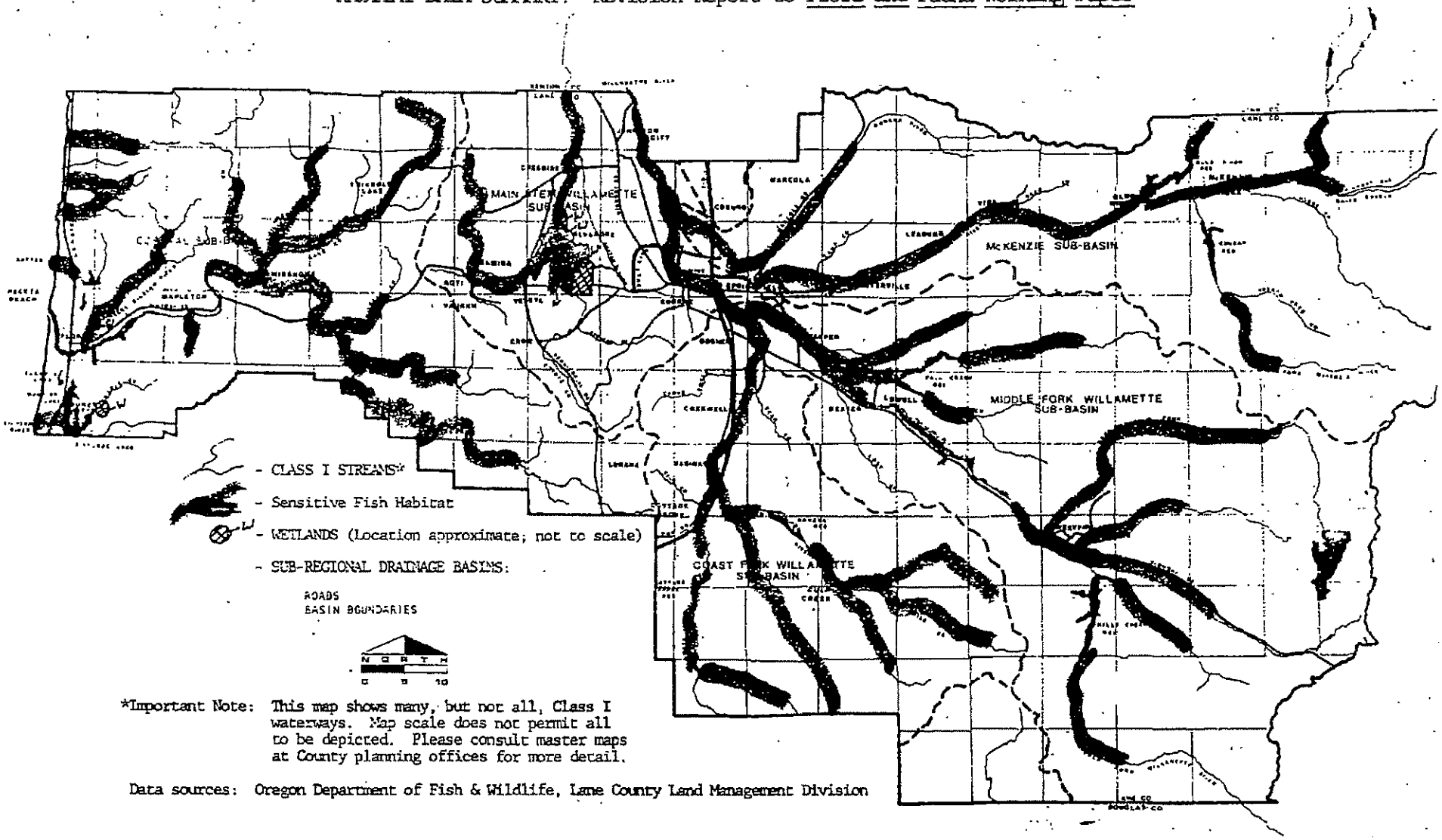
10. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

11. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna.

12. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.

13. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

HABITAT DATA SUMMARY: "Revision Report to Flora and Fauna Working Paper"



*Important Note: This map shows many, but not all, Class I waterways. Map scale does not permit all to be depicted. Please consult master maps at County planning offices for more detail.

Data sources: Oregon Department of Fish & Wildlife, Lane County Land Management Division

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LANDWATCH LANE COUNTY, **Petitioner,** **and** **1000 FRIENDS OF OREGON,** **Intervenor-Petitioner,** **v.** **LANE COUNTY,** **Respondent,** **and** **NIMPKISH, LLC,** **Intervenor-Respondent.**	**LUBA No. 2020-030**

INTERVENOR-RESPONDENT'S RESPONSE TO INTERVENOR-PETITIONER'S PETITION FOR REVIEW

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October, 2020

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CERTIFICATE OF FILING AND SERVICE

CERTIFICATE OF COMPLIANCE

I. RESPONSE TO STANDING

Intervenor-Respondent Nimpkish, LLC. ("Nimpkish") accepts Intervenor-Petitioner 1000 Friends' standing to appeal Respondent Lane County's approval of Nimpkish's application for a forest template dwelling.[1]

II. RESPONSE TO STATEMENT OF THE CASE

A. Response to Nature of the Land Use Decision and Relief Sought

1000 Friends and Petitioner seek to have an additional requirement added to the forest template dwelling criteria but only in Lane County.

B. RESPONSE TO SUMMARY OF ARGUMENTS

1. Response to First Assignment of Error

1000 Friends (and Petitioner) repeatedly make this argument without support of any kind in hopes that if they say it enough times, someone outside of Lane County might give it some attention. What is missing, however, is <u>any</u> evidence that what they claim to have happened thirty-six years ago actually occurred, rather than what really happened. In fact, the County adopted a grand bargain with LCDC at the last minute, that preserved more habitat than ODFW ever expected. Rec 764-765. In turn, ODFW readily embraced the clustering and

[1] As with Nimpkish's Response to Petitioner's Petition for Review, The Intervenors will be referred to hereafter by the real names, "Nimpkish" and "1000 Friends".

zoning method for preserving large areas of habitat. Rec 542-543, 573. Neither 1000 Friends or Petitioner have ever accepted that agreement and the reality of what Lane County accomplished with the acknowledgment of its comprehensive plan on September 13, 1984. Rec 625-669.

C. RESPONSE TO STATEMENT OF MATERIAL FACTS

1. Response to Subject Property and Application

Nimpkish accepts this statement.

2. Response to Local Proceedings and County Decision

Nimpkish accepts this statement.

III. RESPONSE TO JURISDICTION

Nimpkish accepts LUBA's jurisdiction for this appeal.

IV. RESPONSE TO ARGUMENT

A. RESPONSE TO FIRST ASSIGNMENT OF ERROR: The Hearings Official correctly concluded that approval of a forest template dwelling in Lane County does not require consideration of and a determination of consistency with Big Game residential density standards in the acknowledged comprehensive plan.

1. Response to Preservation of Assignment of Error

1000 Friends preserved its assignment of error.

2. Response to Standard of Review

Nimpkish incorporates its comments about standard of review that were

made in response to Petitioner's description of the standard of review. There are no State regulations or statutes that are substantively involved in this appeal. It is only Goal 5, Flora and Fauna, Policy 11 ("Policy 11") of the County's Rural Comprehensive Plan ("RCP") that is at issue. The Hearings Official concluded that Goal 5 does not apply to applications for forest template dwellings in the County's F-2 zone. Rec 10. That decision was based on thirty-six years of the County consistently and routinely not applying or ever considering applying Policy 11 as a criterion for individual dwelling applications of any kind. Policy 11 has never been a consideration when the County reviewed a dwelling application in Big Game Habitat.

This is the precedent that 1000 Friends and Petitioner have to address directly in order to sustain this assignment of error. The magnitude and length of the County's position should be given some weight. After all, it is the County's policy.

3. Response to Argument

At the outset, Nimpkish's entire argument set forth in its Response to Petitioner's First Assignment of Error is incorporated by this reference as part of its response to 1000 Friends' First Assignment of Error.

On pages 6-7 of its Petition, 1000 Friends methodically sets forth its

argument as to why the County's and Nimpkish's failure to address and comply with Policy 11 in its review of Nimpkish's forest template dwelling application, somehow violates the County's comprehensive plan, ESEE regulations and State statute all at the same time.

1000 Friends begins its argument with this statement:

> " The applicant's proposed dwelling exceeds the density standards for major big game habitat."

1000 Fr Br 6, Ins 14-15. This statement is not true beginning with the fact that there are no density standards for dwellings in Big Game Habitat. Policy 11 certainly did not establish "density standards" in 1984 when it was adopted as a Goal 5 policy by Lane County and acknowledged by LCDC to be fully in compliance with the Goals. As stated so eloquently in the Acknowledgment Order in assessing Lane County's response to DLCD's directive about implementing "the intent" of Policy 11:

> "Requirement 2d has been met."

Rec 29. That single act of acknowledgment by LCDC is never discussed or recognized by 1000 Friends. However, their entire argument is based on the continued vitality of Policy 11 after acknowledgment even though its "intent" had been found by DLCD to have "been met." Thereafter, Policy 11 has been inactive

for thirty-six years as a forest dwelling approval standard in the F-2 zone. 1000 Friends offer no explanation because there is none.

Hearings Official's Decision, Acknowledgment and *Cattoche*[2]

The next part of 1000 Friends's argument first discusses the Hearings Official's decision and particularly his conclusion that "density standards were integrated into the zoning classifications" (Rec 10) with a strong emphasis on "clustering" and only to be considered in rezoning and land division applications by which additional buildable lots might be created. Rec 10. Of course, we know the Hearings Official can provide a good recall of what happened when Policy 11 was acknowledged in 1984 because he was there, in the process, as "Coordinator" for Lane County. Rec 53.

Thus, while 1000 Friends goes on at length about its interpretation of what happened in 1984, the Hearings Official and two of his co-workers at the time (Rec 763-767) provide hands-on, eyewitnesses accounts of what really occurred. Even with all that, however, the Hearings Official could have been more explicit in pointing out the connection between Lane County's efforts to gain acknowledgment for its forest zones under Goal 4 and also address the Goal 5

---

[2] *Cattoche v Lane County*, __Or LUBA ___ (LUBA No. 2018-109, May 22, 2019)

objections from ODFW and DLCD staff.

The Final Acknowledgment Order contains extensive findings regarding Lane County's responses to address DLCD's requirements regarding Goal 4. Rec 639-647. The changes included clarifying "the precise criteria for applying the F-1 and F-2 zones" (Rec 642) which concurrently then rezoned 24,075 acres from F-2 to F-1. Rec 644. In concluding that the County "complies with Goal 4", DLCD relied on the following findings:

> "Conclusion - Goal 4
>
> Lane County complies with Goal 4.
>
> Lane County's approach to conserving forest lands contains some plan policy and ordinance provisions unique to Lane County. The strength of their forest lands conservation program is the F-1 Zone which prohibits the siting of all dwellings (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.
>
> The County's F-2 Zone is applied to 145, 356 acres of privately owned lands which consist generally of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands. Lands zoned F-2 are generally located adjacent to or near developed urban or rural areas and well traveled transportation routes; all of which have an impact on the commercial management of forest lands.
>
> In the F-2 Zone, the County requires that before a permanent dwelling is sited on forest land , assurances are obtained that forest production on the lot will be enhanced by active forest management. The requirements associated with the siting of dwellings in the F-2 Zone

> are similar to those provisions approved by the Commission in Benton County's acknowledgment with recent changes to the County's forest policies and ordinance provisions, The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 4."

(Emphasis supplied) In those findings DLCD first recognizes the "strength of their . . . program is the F-1 Zone which prohibits the siting of all dwellings . . ." and is "unique to Lane County.". 1000 Friends never discusses, addresses or even mentions Lane County's F-1 prohibition of residence even though DLCD says its "the strength of their program. . .".

Finally, 1000 Friends spends several pages (1000 Fr Br 13-15) identifying how LUBA's *Cattoche* decision (plan amendment triggers Goals review) somehow supports its theory about how Policy 11 is a forest template dwelling criterion in the County's F-2 zone. Again, Nimpkish has previously addressed the lack of relevance of the *Cattoche* case in its Response to Petitioner's similar assignment of error.

More Hearings Official misinterpretation and Legislative History

As if its previous discussion of the Hearings Official's alleged errors followed by Policy 11 "context" wasn't enough, 1000 Friends renews its discussion of these topics beginning at page 15. The next 4 pages (Rec 15-18)

contain restatements of the same mantra: a forest template dwelling proposed on a lot in the County's F-2 zone that is less than 40 or 80 (depends an habitat) acres in size is in conflict with minimum density standards in Policy 11 and therefore is in conflict with Goal 5 and therefore requires a successful ESEE analysis to proceed. 1000 Friends repeats this argument over and over again without ever addressing DLCD/LCDC's treatment of Policy 11 ("requirement has been met") during the 1984 Acknowledgment process. Without some kind of discussion of this foundational issue, 1000 Friends' "analysis" is superficial and void of support.

When 1000 Friends finally tries to address the real legislative history (Rec 18), it accuses the Hearings Official of "radically" rewriting Policy 11 in his reliance on his version of legislative history. Again, it bears repeating, the Hearings Official was present and participated in the 1984 Acknowledgment process as "Coordinator" for Lane County. Rec 53. The letters from Mr. Howe and Mr. Mann (Rec 763-767) provide further confirmation as to the accuracy and veracity of the Hearings Official's findings and conclusion on this matter because they were also there. Rec 9-10.

When 1000 Friends finally gets around to looking at what it calls legislative history, it points to a letter from Petitioner (Rec 50) and the June 29 and July 19, 1984 DLCD staff report (Rec 53-240). The letter refers to items in the same staff

report and 1000 Friends relies on these documents for their "legislative history". Such reliance is wrong and misleading. At best, these staff reports show the historical progression that resulted in LCDC's Final Order of Acknowledgment on September 13, 1984. Rec 625-669. The real legislative history is DLCD's Final Staff Report which contained Lane County's response to DLCD's requirement d which stated:

> "Requirement
>
> 2. Fish and Wildlife Habitats:
>
> d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas."

(Emphais supplied) Rec 28. Lane County responded (Rec 28-29) and the requirement was declared by DLCD to have "been met". Rec 29. The "intent of Flora and Fauna Policy 11" was the focus of the F-2 and EFU zone amendments. There was no parsing out of different sentences by this declaration. The amendments completely addressed the full "intent" of Policy 11 as determined by DLCD.

Again, 1000 Friends does not carefully examine or accept what actually

occurred. Instead, both it and Petitioner try to glean particular passages from a preliminary document to somehow demonstrate that the Hearings Official didn't properly analyze and apply the legislative history, in which he was an active participant. Such reliance on superceded documents clearly shows how inadequate 1000 Friends understanding of the legislative history really is.

The "intent" of Policy 11 has been met

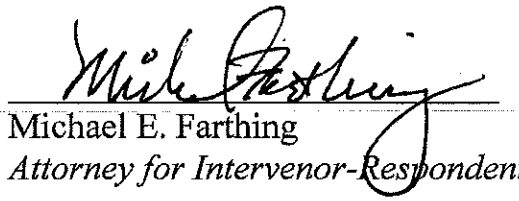
1000 Friends falls into the "establish regions" trap which was replaced with new policies that favored "clustering" as a means of reducing conflict. Rec 573. From that argument 1000 Friends renews Petitioner's claim that the first two sentences of Policy 11 are still active somehow. 1000 Fr Br 24, Ins 7-8. Actually, all of Policy 11 can be ignored in this context and has been for thirty-six years.

At the end, 1000 Friends continues to restate its basic argument without ever dealing with the real facts regarding the birth and life of Policy 11. Policy 11 still applies to plan amendment, zone changes and land divisions. All of those concern the creation of additional buildable lots. The present application does not involve new lots and therefore Policy 11 does not apply.

V. CONCLUSION

There's nothing more to be said about Policy 11. Based on the

overwhelming evidence in the record, Nimpkish requests LUBA deny 1000 Friends First Assignment of Error and dismiss its appeal.



Michael E. Farthing
Attorney for Intervenor-Respondent

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on October 27, 2020, I filed the original INTERVENOR-RESPONDENT'S RESPONSE TO INTERVENOR-PETITIONER'S PETITION FOR REVIEW and 4 copies with the Land Use Board of Appeals at the address given below, by certified return receipt mail, deposited in the United States Post Office at Eugene, Oregon, to:

Land Use Board of Appeals
DSL Building
775 Summer Street, NE, Suite 330
Salem, OR 97301-1283

I also certify that on October 27, 2020, I served one certified true copy of INTERVENOR-RESPONDENT'S RESPONSE TO INTERVENOR-PETITIONER'S PETITION FOR REVIEW upon each of the following persons at the addresses given below, by certified return receipt mail, deposited in the United States Post Office at Eugene, Oregon to:

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Dated: October 27, 2020

Michael E. Farthing, OSB #740919
Attorney for Intervenor-Respondent

CERTIFICATE OF COMPLIANCE

I certify that the foregoing INTERVENOR-RESPONDENT'S RESPONSE TO INTERVENOR-PETITIONER'S PETITION FOR REVIEW begins with a Table of Contents and Authorities, contains 2,109 words, does not exceed 14,000 words, has red front and back covers of at least 65 lb. weight paper, contains a caption with full title of the proceeding, is written in 14 point font, is double spaced, contains line number for each line of text, is printed on 8.5 by 11 inch paper, and has inside margin of 1.25 inches, outside margins of 1 ince, and top and bottom margins of .75 inch.

Dated: October 27, 2020

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October 27, 2020

Certificated Return Receipt Mail

Land Use Board of Appeals
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Salem, OR 97301-1283

Re: *LandWatch v Lane County*
LUBA No. 2020-030
Intervenor-Respondent's Responses to
Petitioner's and Intervenor's Petitions of Review

LUBA:

Enclosed are separate Responses to the briefs filed by Petitioner and Intervenor-Petitioner that I am filing on behalf of Intervenor-Respondent Nimpkish, LLC.

Sincerely,

Michael E. Farthing

Enclosure

cc H. Andrew Clark (by certified return receipt)
Sean Malone (by certified return receipt)
Andrew Mulkey (by certified return receipt)
Nimpkish, LLC.
Jim Belknap

EXHIBIT K2

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LANDWATCH LANE COUNTY, **Petitioner,** **and** **1000 FRIENDS OF OREGON,** **Intervenor-Petitioner,** **v.** **LANE COUNTY,** **Respondent,** **and** **NIMPKISH, LLC,** **Intervenor-Respondent.**	**LUBA No. 2020-030**

INTERVENOR-RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR REVIEW

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October, 2020

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CERTIFICATE OF FILING AND SERVICE

CERTIFICATE OF COMPLIANCE

I. PETITIONER'S STANDING

Intervenor-Respondent ("Nimpkish")[1] accepts Petitioner LandWatch Lane County's ("Petitioner") standing to file this appeal.

II. PETITIONER'S STATEMENT OF THE CASE

A. Nature of the Land Use Decision and Relief Sought

Nimpkish accepts Petitioner's description of the land use decision that has been appealed.

B. Summary of Arguments

Petitioner summarizes the argument for the three assignments of error, none of which are supported by legal precedent, legislative history or local recognition.

C. Summary of Material Facts

Petitioner's summary of facts provides a minimalist description of the thoroughness that this application reflects in the record including road and driveway details, letters from the fire district regarding emergency access, location of fuel breaks, water availability and, most importantly for a template dwelling, the detailed list of legal lots and residences that is the foundation of the template dwelling criteria. Rec 2-6, Rec 31-46, Rec 936-1036.

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[1] To avoid any confusion with the other intervenor in this appeal, Intervenor-Respondent, Nimpkish, LLC, will be referred to hereafter by its legal name.

The other "material facts" that Petitioner conveniently ignores is that in 1984, when Lane County's Rural Comprehensive Plan (the"RCP") was finally acknowledged by LCDC on September 13, 1984, Lane County applied F-1 zoning to 2,449,775 acres of identified forest lands which is 94.4% of all the forest lands in Lane County. Rec 646. Lane County prohibited all future residences in the F-1 zone. Rec 33, 646. Residences were allowed conditionally in the F-2 zone which applied to 145,356 acres which is 5.6% of the 2,595,131 acres of the County's forest land. That's the only place where residences are allowed and only then after addressing and satisfying the F-2 template dwelling clustering and siting requirements.

III. JURISDICTION

Nimpkish acknowledges LUBA's authority to review and decide this appeal.

IV. ARGUMENT

A. RESPONSE TO FIRST ASSIGNMENT OF ERROR: The Hearings Official correctly concluded that Goal 5, Flora and Fauna, Policy 11 regarding overall residential densities for protection of Big Game Habitat in the acknowledged comprehensive plan did not apply as criteria for a forest template dwelling.

1. Preservation of Assignment of Error and Standard of Review

Nimpkish acknowledges that Petitioner raised this issue repeatedly

before the Hearings Official. What is very much at issue for this assignment of error is the consideration to be given to the length and scope of the legislative history of Respondent Lane County's ("the County") treatment and consideration of Policy 11[2] since its adoption in 1984. Petitioner desparately clings to the vague text of that policy in order to construct its elaborate interpretation that requires future forest template applications in Lane County on properties that are less than 80 acres which, of course, most, if not all are in the F-2 zone, to conduct a Goal 5 ESEE analysis. These are parcels that could possibly satisfy the clustering criteria in the F-2 zone, for a template dwelling. An ESEE analysis of the impact of that residence on the surrounding Big Game Habitat is not authorized by Policy 11 even though that is what Petitioner says should now happen after 36 years of it not happening.

The policy that Petitioners are so desparately trying to breathe life into has been consistently and routinely ignored by land use decision makers in

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[2] RCP, Goal 5, Flora & Fauna Policy 11 states:

"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

Lane County (staff, hearings officials, planning commissioners and county commissioners) involved in reviewing and processing dwelling applications on F-2, Impacted Forest Lands for the last 36 years. The Board of Commissioners oversaw this interpretation and even participated by adopting a complete overhaul of the F-2 zone, which included template dwellings, in 2002, and which included findings of "consistency" with the identical OAR provisions. Rec 435-462. All these changes had to be approved by the Lane County Board of Commissioners and Department of Land Conservation and Development before they were ultimately acknowledged by LCDC. There is no mention of Policy 11 anywhere as an approval criterion in any of these amended versions of the F-2 zone that was approved and adopted by the County Commissioners. Certainly, the Board of Commissioners' involvement in all of the versions of the F-2 zone is entitled to some consideration, if not deference.

There is nothing in Petitioner's lengthy and artifical construction that specifically shows how this thirty-six year old Goal 5 Big Game policy can suddenly spring to life as a forest template dwelling criterion and that, as circumstances would occur, only is applicable in Lane County. The absurdity of Petitioner's basic argument is carefully cloaked in a simple template that construction of a dwelling in forest zone on less than 80 acres creates a Goal 5 conflict that triggers an ESEE analysis but just in Lane County because that's

the only part of Oregon where Policy 11 applies and even though it has been acknowledged for the last thirty-six years without being a template dwelling criterion.

This discussion of the Board of Commissioner's involvement in the adoption, administration, and amendment and application of forest dwelling zones and of plan policies to individual properties is appropriately raised under the topic of the appropriate standard of review. This is a unique situation that involves a policy that was drafted in 1982 as part of Lane County's attempt to gain acknowledgment of its comprehensive plan. Petitioner's assignment of error is focused solely on the policy and not the Goals. The policy is a Lane County creation. It was acknowledged as part of the RCP in 1984. It obviously must be considered whenever a plan amendment proposes a change in the number of allowed dwellings on a particular property. *See Cattoche v Lane County*, __Or LUBA ___ (LUBA No. 2018-109, May 22, 2019).

The totality of the County's refusal to give Policy 11 any consideration for quasi-judicial dwelling applications on forest land for the last thirty-six years should be given some weight.

2. Response to Petitioner's Argument

Petitioner finally begins its argument on page 9 and proceeds to page 20 laying out an elaborate interpretational framework for declaring RCP, Goal 5,

Flora and Fauna, Policy 11 to be an applicable decision criterion for forest template dwelling applications in Lane County on legal lots that contain less than 80 acres. After quoting Policy 11 (Pet Br 11), Petitioner summarizes its basic argument:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. * * * to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range * * * conflicts with habitat for big game."

Pet Br 11 A policy that uses "will" and "shall" is an obvious magnet for someone who is seeking to impose a more onerous requirement into a quasi-judicial process that is based on statute and rule. It does not matter that the policy was found to have been "met" in 1984 as part of the County's acknowledgment (Rec 29), nor does it matter that the policy was enacted thirty-six years ago and it has never been interpreted, applied, considered or even mentioned as a possible template dwelling criterion until Petitioner suggested doing it.

The fundamental and conclusively determinative reason that Policy 11 does not apply in these circumstances is because in 1984 LCDC acknowledged that it didn't apply. Policy 11 was acknowledged on September 13, 1984 based on the following finding and conclusion made by DLCD in the final staff

report, dated September 12, 1984, one day before LCDC's Acknowledgment Order:

> "Requirement
> 2. Fish and Wildlife Habitats:
> d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.
>
> Response
> Lane County has added the following new language to both the F-2 and EFU Zones:
>
> '(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes the F-2 [EFU] Zone.
>
> (i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:
>
> (aa) Near residences on other tracts.
> (bb) With minimal intrusion into forest areas undeveloped by nonforest uses.
> (cc) Where possible, when considering LC 16.211(B)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zones F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU.'
>
> Conclusion
> Requirement 2d has been met."

(Emphasis supplied) rec 649-650. That's it for Policy 11 at that time and on

through to the present, except, of course, a plan amendment, rezoning or land division could trigger consideration of Policy 11. Rec 650.

Beyond that, Policy 11 has never been applied to individual template dwelling applications or its predecessor in the F-2 zone in the thirty-six years since LCDC said the Policy 11 "[R]equirement . . . has been met." Rec 650.

This fact together with the testimonials from former County planners who were working on the acknowledgment process, James Mann (Rec 764-767, App 2-5) and Kent Howe (Rec 763, App 1). They described what happened in the waning days of the summer of 1984, when Lane County was facing increased pressure to respond to the complaints being raised by various groups, like ODFW, and make clear why the County finally decided to make it easier for everyone. Rather than dividing the County into ten to twenty regions with their own residential densities, the County decided to forego all of this countywide analysis to determine when a residence might be constructed. Instead, the County decided that residences would not be allowed on 94.4% of all designated forest land, which was all of its F-1 zoned land. Rec 646. Also cancelled was the regional approach to forestland zoning that had been previously proposed. Rec 542-543, 573. Instead, it was replaced with the adoption of the following policy in the Addendum to the Flora and Fauna Working Paper:

"J. DELETE text: beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place:

Although this is a useful index, officials of the ODFW stress the fact that a mere 'numbers game' is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.

A prime example is that of 'clustering' dwelling units in Peripheral or Major Range areas – siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.

The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirements of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.

Within Developed and Committed areas. ODFW officials are examining the utility of continuing to designate some of these lands as either Peripheral or Major Range. Developed and Committed areas should be considered as Impacted, and conflicting uses permitted.

The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner – including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenance.

> Policies concerning this issue are proposed in the concluding section of this Working Paper."

(Emphasis supplied) Rec 573 The first substituted paragraph refutes Petitioner's reliance on the so-called 80-acre minimum in the forest zone when ODFW says that "clustering" and "siting regulations" are the most appropriate way to protect Big Game Habitat. At that time ODFW was no doubt very supportive of the F-1 zone's ban on residences which automatically clusters all forest residences within the F-2 zone.

The "clustering" policy was further enhanced with the State's and then Lane County's subsequent adoption of the template dwelling provisions which have a basic tenent i.e. the template test, that requires a minimum number of residences and legal lots within the template. In fact, the template test assumes that those vacant lots within the template area could support a residence which again is part of the clustering policy that was adopted by Lane County in 1984. The template test assumes vacant lots in the template can and will support a residence.

Cattoche v. Lane County

Beginning on page 11 of its Petition, Petitioner begins a lengthy and carefully-edited quote from the previously-cited *Cattoche* case which ostensibly is to provide support for Petitioner's Policy 11 interpretation. While it is not clear what point Petitioner hopes to make by citing to the provision of

the Flora and Fauna Working Paper that states the "County will be divided into regions" (Rec 542-543) when we know those provisions of the Working Paper were replaced with the previously-quoted provision that said the "numbers game" is not the optimum way to deal with conflicts in the Big Game Range. Rec 573.

Overall, the *Cattoche* case has no relevance to this assignment of error other than to confirm that Policy 11, as well as all the other policies in the RCP, will be considered as part of any plan amendment application. That is what happened in the *Cattoche* case and LUBA remanded for more evidence and analysis of the ESEE analysis that was performed. It had nothing to do with Policy 11 and template dwelling criteria.

"Overall residential density"

So much of Petitioner's analysis requires ignoring plain language in Policy 11. Petitioner fails to recognize the policy refers to "overall" residential density as recommended by the Oregon Department of Fish and Wildlife (ODFW) and incorporated into the Flora and Fauna Working Paper of 40 acre parcels in Peripheral Big Game Habitat and 80 acre parcels in Major Big Game Habitat. Conspicuously, and precisely to its point of error, Petitioner has left out the word "overall" as it has been included in every discussion of density by ODFW.

The adoption of the F-1 zoning, and its prohibition of residences, applied to 94.4% of the forest zoned lands of Lane County. The F-2 zoning, where under strict limitations dwellings are allowed, is applied to 145,356 acres of the 2,595,131 acres of the county's forest zoned land, which is 5.6%. This describes exactly the concept of **Overall Density** as was being sought by ODFW and substantially exceeds the goals of the department.

It was LCDC's acknowledgment that the prohibition of dwellings in the F-1 zoning, unique in all of Oregon to Lane County, established conformance with the ODFW "overall residential density" standards for Big Game Habitat in the forest zoned lands of the County. Thus, the objectives of Policy 11 and the requirements of Goal 5 were satisfied, i.e. "met". Petitioner's refusal to acknowledge the definition of overall density is at the core of its failed argument.

Messrs. Howe, Mann and Darnielle

One major reason this assignment of error is so unique is because two of Lane County's planning staff in 1984 submitted current letters to the Hearings Official, Gary Darnielle, in which they described, specifically, how Policy 11 was developed and addressed during the 1984 Acknowledgment process for Lane County. Rec 763-767, App 1 -5. Mr. Howe, a planner with the County in 1984 but who later became Planning Director, describes the dual focus of the

County in trying to address Goal 4 forest policies and the Goal 5 residential limitations being advocated by ODFW and others. What ultimately resolved matters was the County's prohibition of residences in the F-1 zone. His final paragraph succinctly describes the grand bargain that was worked out by the County with DLCD staff, ODFW and even 1000 Friends:

> "Lane County limited residential development in Big Game Habitat areas by prohibiting new dwellings in 84% of Lane County (the F-1 zone). Lane County complied with the Goal 5 Rule and did not need to further restrict development in Big Game Habitat areas because so much land was preserved from development. Lane County's Big Game Habitat was not categorized as a significant Goal 5 resource. Based on this recognition, no analysis of residential densities is required in wildlife habitat areas in Lane County. Therefore, there are no development limitations on residential densities in Lane County's acknowledged comprehensive plan."

Rec 763, App 1. "So much land was preserved from development" is the reason Policy 11 does not provide any further limitation unless, of course, the Goals are directly in play because of a plan amendment.

Mr. Mann, also a planner for Lane County during the Acknowledgment process, provides more details about how and why the residential prohibition in the F-1 zone occurred "[A]t the 11th hour of the public hearings process" when the County drastically changed course and prohibited residences in the F-1 zone. Rec 764, App 2. Because of that unprecedented set aside of forest lands,

Mr. Mann noted the shift in emphasis to clustering:

> " The DLCD report expressly identified the clustering requirements in the F-2 zone. These requirements are substantially the same today. LCDC acknowledged these requirements as consistent with Flora and Policy 11 and as in compliance with Goal 5. It therefore appears that we are not required to do this again today."

Rec 765, App 3. DLCD's final staff report "expressly identified the clustering requirements in the F-2 zone" and that is what was acknowledged to be consistent with Goal 5 and Policy 11 in particular. Rec 765. Mr. Mann even includes copy of that report that concludes "[R]equirement 2d [Policy] has been met."

These are eyewitness accounts from two of Lane County's principal planners during the 1984 Acknowledgment process. They developed the F-1 residential prohibitions. They were in the middle of the negotiations with the DLCD and others, e.g. ODFW and 1000 Friends, and their conclusion is that the Policy 11 residential limits do not apply to individual dwelling applications in the F-2 zone. They did not apply in 1984 and they have not applied since.

Finally, as if the testimony of not one, but two eyewitnesses and participants in the 1984 County Acknowledgment process is not enough to establish the absurdity of Petitioner's argument, the Hearings Official for Lane County who authored the final decision that is the subject of this appeal, Gary

Darnielle, was the "Coordinator" for Lane County during the Acknowledgment process. Rec 53, App 6. He was there with Mr. Howe and Mr. Mann and he certainly knows what the final outcome for Policy 11 was as captured in the final order. Rec 53, App 6. Of course he knows what happened in those final months of acknowledgment and that the F-1 zone's prohibition of residences is what resulted in a final agreement. He was there and coordinated the settlement. He knows Mr. Howe and Mr.Mann and he knows they are accurate in their accounts of what happened.

Petitioner has nothing to dispute these statements. Petitioner has nothing to explain why Policy 11 was not applied to all forest dwelling applications for the last thirty-six years. The record is clear and uncontroverted as to the County's legislative history of Policy 11 ("Requirement 2d has been met") and how it has not been a criterion for forest dwelling applications since it was addressed and found to have "been met" in 1984.

Conclusion

Petitioner's interpretation of Policy 11 is completely and totally groundless based on the record at Lane County. It is a complete fabrication that seizes upon buzz words like "shall" and "will" and then joins them with a manufactured 80-acre minimum density standard to create instant blockage of template dwellings that would otherwise qualify, like the present application

would permit. It is a "gotcha" argument that Petitioners has been making in numerous local appeals. An earlier appeal based, in part, on Policy 11 was rejected by Mr. Darnielle for a nearby property. Rec 790-803. The same Policy 11 argument was also rejected by Anne Davies, Lane County's new Hearings Official (Rec 383-400, App 7-24). Ms. Davies reached a similar conclusion regarding Policy 11 and went even further into the legislative history in concluding that "Policy 11 is a general planning directive to County, not a mandatory approval criterion applicable to subject forest template dwelling application." Rec 392, App 16. Copy of her entire opinion is set forth in the Appendix and is corroboration of Mr. Darnielle's decision in the present appeal.

Finally, it should be noted that ODFW has not been present in any of these appeals where its own Policy 11 was being touted as a density gauge for residences in the F-2 zone. Where is ODFW? The simple answer is that agency got what it wanted and a whole lot more in 1984. An area somewhat smaller than the State of Connecticut was shut off from any future residential development in Lane County. That prohibition has been in effect for thirty-six years and, judging by ODFW's lack of endorsement of Petitioner's Policy 11 interpretation, ODFW appears to be satisfied with the way the County has been administering Policy 11 during that time. That should continue and this

assignment of error denied.

B. RESPONSE TO SECOND ASSIGNMENT OF ERROR: The Hearings Official correctly concluded that the RCP Goal 7 policies and related ordinance are not approval criteria for a forest template dwelling, but, in case they are later considered, the Hearings Official correctly concluded they could be addressed at the building permit stage.

1. Response to Preservation of Assignment of Error

Petitioner preserved the issue below.

2. Response to Standard of Review

Similar to the previous assignment of error, the three Goal 7 natural hazard policies and the ordinance alleged by Petitioner to be decision criteria for forest template dwellings have never been considered by anyone at Lane County or the general public to be something that must be addressed as part of a forest template dwelling application. In that regard, it should be noted at the outset of this response that the County staff's position has been that to the extent the Goal 7 policies are relevant, the land use decision and building permit processes fully address and satisfy these policies. Rec 613, 821, App 25-26.

3. Response to Petitioner's Argument

Petitioner alleges that three Goal 7 comprehensive plan natural hazard policies and a related zoning ordinance (Pet Br 21-22) apply as decision criteria

for forest template dwellings proposed to be located in identified high landslide areas. The Hearings Official concluded, like the Planning staff, that they did not apply but, to the extent they were determined to have some relevance, they would be appropriately addressed at the building permit stage. Rec 12.

Petitioner begins with a lengthy introduction that is primarily composed of selected quotes from the Hearings Official's discussion of this assignment of error and the three reports issued by Nimpkish's geotechnical engineer. Rec 283-290, App 27-34.

The final decision of the Hearings Official applies the holding in *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992) and finds that a Level II geotechnical report shall be performed on the proposed building site once a specific development plan is submittted with the building permit application. Condition 13c, quoted by the Petitioner (Pet Br 23-24), is the lynchpin for assuring the County staff, Petitioner and, most importantly, the person who applies for a building permit to place a residence in the identified homesite, will be protected.

This is the point in the development process where Petitioner believes they should be allowed a second opportunity to participate. After quoting the Hearings Official's conclusion of why the three Goal 7 policies and the ordinance (Lane Code 16.005(2)) are addressed at the building stage, Petitioner

alleges:

> " The rather conspicuous problem with the Hearings Official's decision and proposed condition is that it does not allow opponents to review and comment on that Level II geotechnical analysis, except if the building inspector finds issues with the Level II geotechnical analysis. In other words, not only will a county inspector make discretionary judgment calls about compliance with the policies and LC 16.005(2) after reviewing the Level II geotechnical analysis but opponents will not have the opportunity to review and comment on that Level II geotechnical analysis."

Pet Br 24. The "rather conspicuous problem" with Petitioner's claim that it is entitled to an "opportunity to review and comment on the Level II geotechnical analysis" is that, pursuant to the direction given in *Rhyne*, Petitioner is not entitled to those participatory rights at the building permit stage for this particular application. In making this claim, Petitioner identifies the proper law regarding use of conditions of approval which require that an application must demonstrate that compliance with all discretionary criteria is "feasible". *Meyer v. City of Portland*, 7 Or LUBA 184 1983), aff'd 67 Or App 274 (1984). This means that "substantial evidence supports findings that solutions to certain problems. . . are possible, likely and reasonably certain to succeed". *Meyer v. City of Portland*, 67 Or App 274, 280 n6, rev den 297 Or 82 (1984). This is precisely what occurred in these circumstances.

Nimpkish's "solutions" to the landslide hazard location issue involved

three separate reports from a licensed geotechnical engineer. Rec 283-290, App 27-34.

Nimpkish first provided a letter from Michael Remboldt, a licensed Professional Engineer and Geotechnical Engineer, and principal with K & A Engineering, dated October 31, 2019. Rec 289-290, App 33-34. Mr. Remboldt's letter followed his on-site evaluation of the property and other elements of review customarily entailed in what is referred to as a Level 1 geotechnical report. In that report Mr. Remboldt concludes:

> 'Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement.'

Rec 33. In other words, it is "feasible" to construct a dwelling on the identified homesite. In response to questions raised by LandWatch and Intervenor-Petitioner ("1000 Friends") about Mr. Remboldt's October 31, 2019 letter, Mr. Remboldt provided a letter dated December 2, 2019, discussing the erroneous assertions made by Mr. Malone and Mr. Mulkey. Rec 286-288, App 30-32. As a result of questions that arose in a different appeal for an adjacent site, Mr. Remboldt provided a third letter dated December 11, 2019, with specific comments relating to the stability of R. R. Baker Road, the private access road to Tax Lot 507, the subject of this application and appeal. Rec 283-285,

App 283-285.

Petitioner has objected in other correspondence to the use of the report stating somehow we are deferring "discretionary decision-making to a point in the future in violation of *Rhyne v Multnomah County*." The "discretion" to be applied at some future time in this case is in the actual issuance of a building permit, not in meeting the standards of approval for a Template Dwelling or other land use application. Mr. Belknap, Nimpkish's land use consultant, licensed realtor, small woodlot owner and rural residential siting expert, describes what happens when someone wants to build a residence on a rural site like the subject property:

> "At some future time an applicant is going to request a building permit from Lane County for the subject property and be required to submit specific information with regards to the size and weight of the building, how ground water and precipitation will be dispersed or disposed of, what kind of foundation has been designed, how close will the structure be to breaks in the physical relief of the land, etc.
>
> At the risk of being overly simplistic, this application process and review will vary widely on whether one is seeking to place a single wide mobile home or construct a three story 8,000 square foot house with a daylight basement. The building department officials will engage to request additional information at such time relating to a geotechnical report that examines the specific proposal for construction. At such time, as Mr. Remboldt points out in his December 11, 2019 letter, the likely requirement will be a Level 2 geotechnical analysis, but that decision will be based on the proposed structure and

> will result in requirements of construction for excavation, soil compaction, foundation design, size and component, and finally the issuance of a building permit that will meet the Oregon Structural Specialty Code, or the denial of such a permit.
>
> If the applicant for the building permit cannot meet the requirements of the county building department with regards to a sufficient geotechnical analysis no building permit will be issued. The issuance of the building permit is not a foregone conclusion with the meeting of the Template Test requirements for a Special Use Permit. Mr. Malone has jumped to the conclusion that relying upon the building officials to approve the design of the structure in accordance with building code and sound engineering is 'not accountable to the general public .... (and is) potentially in conflict with siting criteria and even the approved site plan.'

Rec 261-262. New Condition 13c will require the applicant to have a Level II geotechnical report conducted by a licensed geotechnical engineer to affirm the preliminary assessment made by Mr. Remboldt. Rec 7.

Considering all three of Mr. Remboldt's reports which includes his conclusion that:

> *"Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement."*

Rec 289, there is nothing left to do until there is a person who is ready to build.

Rhyne describes what can be adopted as conditions in the typical two-step conditional approval process:

> "Assuming a local government finds compliance, or feasibility of compliance, with all approval criteria during a first stage (where statutory notice and public hearing requirements are observed), it is entirely appropriate to impose conditions of approval to assure those criteria are met and defer responsibility for assuring compliance with those conditions to planning and engineering staff as part of a second stage. *See Meyer v. City of Portland, supra; Bartles v. City of Portland, supra.* In such circumstances neither notice to adjoining property owners nor additional public hearings are statutorily required during the second stage. These principles are relatively simple and straightforward in the abstract, but, as this case demonstrates, may prove more complex in the context of specific permit approval requests.
>
> Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available."

(Emphasis supplied) *Rhyne* at 447. Mr. Remboldt's Level I report establishes "feasibility" with a condition requiring a Level II geotechnical analysis once there is a specific design. Even then for this application a new Condition 13c has been imposed which states:

> "13c. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability an erosion control. The character of soils for fills and the characteristics of the subject property made usable by means of fill shall be suitable for

> the intended purpose. Prior to building approval, the Applicants shall submit a Level II geotechnical report to the County. If the building inspector finds problems that would require a restriction on mechanical grading and/or clearing, that issue shall be reviewed by the Hearings Official through a Type III Modification of Decision."

Rec 7. This is precisely what is described as acceptable in *Rhyne* because it is deferring to designated staff as well as a licensed geotechnical engineer the responsibility to determine if the proposed dwelling can be safely constructed. If the Level II investigation reveals potential problems that might require a modification, then notice and opportunity to comment directly to the Hearings Official shall be provided in a Type III process.

The initial call, however, is non-discretionary as to the Level II investigation and the staff review. This is what both of these individuals do for a profession and *Rhyne* approves. Here is where Petitioner missed a critical part of the *Rhyne* decision. *Rhyne* says when questions are raised about the feasibility of the action, then the three options to resolve those questions are available to the applicant and staff. However, that did not happen in this appeal because no questions were raised. Neither Petitioner or 1000 Friends had any questions about or objections to Mr. Remboldt's opinion regarding the lack of a landslide hazard at the site of the proposed homesite. That conclusion is undisputed and there is no need to consider the three options *Rhyne* offers

when questions do arise.

Beyond the basic distrust in Mr. Remboldt and the County's building staff that Petitioner's argument displays, especially when there is no question raised about the engineer's credentials or opinion, it is really unclear what Petitioner hopes to achieve, other than to slow down the process, if it was provided the opportunity to "review and comment" on the Level II report. What will Petitioner say at that time that it couldn't have said now? What information will it gain from "review and comment" opportunities? The Level II report will certainly be public and Petitioner can review it at any time.

Conclusion

Petitioner's allegations and reliance on the County's Goal 7 natural hazard policies is misplaced. There are well-defined procedures (App 25-26) in place that assure applicants and the public that landslide hazard areas are being addressed at both the tentative approval stage as well as the final stage of these forest template dwelling applications with carefully-crafted conditions. That is what the Hearings Official approved and this assignment should be denied.

C. RESPONSE TO THIRD ASSIGNMENT OF ERROR: The Hearings Official correctly concluded that the subject property was not adjacent to properties owned by Nimpkish and therefore was not part of a tract.

1. Response to Preservation of Assignment of Error.

Nimpkish acknowledges Petitioner preserved this assignment of error.

2. Response to Standard of Review.

Nimpkish accepts Petitioner's stated standard of review.

3. Response to Argument.

After quoting the Hearings Official's dismissal, Petitioner responds with a single paragraph:

> "Plainly, there has been an attempt to avoid the restrictions imposed by owning a "tract" by creating the perception of different entities while retaining all control (and essentially ownership) in the same individuals. Under the Hearings Official's theory, the requirement for a "tract" and the requirement contained in ORS 215.750(4)(c) has become entirely superfluous if it can be avoided, in order to increase the number of template dwellings. In other words, what the applicant has done here is contrary to the underlying policy of the template dwelling statute's prohibition on allowing more than one dwelling on a tract. *See* ORS 197.829(1)."

Petitioner does not make any legal analysis or assertion of error nor does it provide any evidence to support its "contrary to the underlying policy" argument. In fact, Petitioner does not disagree with the Hearings Official's legal conclusion that "Nimpkish, LLC" (Rec 721) is a different ownership from "Gray and Dorotea Goodman, Husband and Wife" (Rec 697).

Just to confirm the legal point, "Owner", for purposes of real property

law and without any additional qualifer, is the person or entity that received a deed for the dirt, i.e. fee simple title.[3] In this case, Nimpkish, LLC, was granted fee title to the subject property by a deed signed by Gray and Dorotea Goodman. In order for Nimpkish to convey fee title for the subject property, Nimpkish LLC would have to be the grantor, not Gray and Dorotea Goodman. The Goodmans, individually, cannot convey fee title to the subject property because they do not "own" the dirt. Instead, they "own" paper (articles of organization) that establishes they own a legal entity, Nimpkish, LLC, that does own fee title to the dirt in the subject property. ORS 63.239. It is personal property. Id.

Also, I want to reference the "Title Vesting" information sheet from a local title company that lists the methods for holding title to real property in Oregon. Rec 591, App 35. This is basic real property law and Petitioner simply wants a different result.

This assignment of error should be dismissed.

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[3] Chapter 16 does not define 'owner' or 'ownership' and in the absence of such, relies on *Webster's Third International Dictionary of the English Language*, Unabridged, Copyright 1981, Principal Copyright 1961. That dictionary defines 'owner', in part, as: 'One that owns: one that has the legal or rightful title whether the possessor or not' . . . 'ownership' is the noun and is 'the fact of being the 'owner'."

V. CONCLUSION

These assignment of error are not based on legal analysis or precedent. They are hyper-technical interpretations that no one follows, recognizes or finds to be rational. They should be dismissed.

Michael E. Farthing
Attorney for Intervenor-Respondent

October 14, 2019

Gary Darnielle,
Lane County Hearings Official
Subject: Wildlife Habitat

This is written to document the development of the Rural Comprehensive Plan in 1984 when I was a Planner working on the acknowledgement effort.

RCP Goal 5, Flora and Fauna Policies 9, 10 and 11 were developed in 1983 and 1984 in an effort by Lane County to address the concerns of the Oregon Department of Fish and Wildlife (ODFW) about the impacts of residential development on Big Game Habitat areas. The discussions in the 1982 Flora and Fauna Working Paper and the requirements in Policies 9, 10 and 11 are about limiting residential densities with specific siting requirements (still applicable in the resource zones) in order to minimize the impacts of new residential development on Big Game Habitat areas.

At the same time, Lane County was trying to comply with Goal 4 requirements for Forest Lands and Lane County adopted Goal 4, Policy 5 that prohibited new dwellings on Non-Impacted Forest Lands zoned F-1. This prohibition applied to 84% of Lane County and substantially addressed the concerns of residential impacts on Big Game Habitat raised under Goal 5 by the ODFW. As a result, Policies 9,10 and 11 of the 1982 Flora and Fauna Working Paper do not designate any Big Game Habitat areas as significant "1 C".

Lane County limited residential development in Big Game Habitat areas by prohibiting new dwellings in 84% of Lane County (the F-1 zone). Lane County complied with the Goal 5 Rule and did not need to further restrict development in Big Game Habitat areas because so much land was preserved from development. Lane County's Big Game Habitat was not categorized as a significant Goal 5 resource. Based on this recognition, no analysis of residential densities is required in wildlife habitat areas in Lane County. Therefore, there are no development limitations on residential densities in Lane County's acknowledged comprehensive plan.

Kent Howe
Former Lane County Planning Director

Attachment "A"

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James A. Mann LLC
Land Use Planning & Development Permit Services
P.O. Box 51081
Eugene, Oregon 97405-0902
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October 16, 2019

Gary Darnielle
Lane County Hearings Official

Re: Wildlife Densities for the F-1 and F-2 Zones

Mr. Darnielle:

This is written in response to assertions that additional protections are required for the approval of template dwellings in the F-2 zone, for the protection of wildlife and big game habitat arreas.

In 1983 and 1984, Lane County developed and adopted the Lane County Rural Comprehensive Plan policies and implementing ordinances in order to comply with the Statewide Planning Goals and to obtain acknowledgement from LCDC for these requirements. I was employed by Lane County during this time as a Principle Planner with the primary responsibility of overseeing this effort, working with other involved County planners, and drafting Lane Code Chapter 16 including the requirements for the F-1 zone in LC 16.210 and the F-2 zone in LC 16.211.

In the early stages of developing these requirements, dwellings were allowed as special uses in the draft F-1 and F-2 zones and LC 16. Therefore, the need for dwelling densities to protect wildlife and big game habitat areas was especially important and was discussed in the Flora and Fauna Working Papers. At the 11th hour of the public hearings process, Lane County decided to significantly change the forest policies and LC 16.210 by prohibiting new dwellings on Nonimpacted, F-1 zoned lands. F-1 zoned lands included approximately 84% of the designed forest lands. After the prohibition on new dwellings on nonimpacted forest lands and F-1 zoned lands was adopted, the need for parcel sizes and dwelling densities on F-1 zoned lands evaporated.

On the remaining 16% of Lane County's forest lands, Impacted forest lands zoned F-2, an acceptable alternative to imposing dwelling and land division densities to protect wildlife and big game habitat areas was developed and adopted by Lane County. This alternative consisted of dwelling clustering requirements. During the hearings process when this alternative was reviewed, a representative from the Oregon Department of Fish and Wildlife was present. e

Attached to this letter is an excerpt from pages 25 and 26 of the September 12, 1984 DLCD report to LCDC for the acknowledgement of the Rural Comprehensive Plan that specifically stated,

> *"Amend the F-2 and EFU zones too carry out the intent of the Flora and Fauna Policy II. Specifically, the zones must either require larger minimum parcel sizes*

Attachment "B"

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in the Big Game Habitat portions of these zones or containing clustering requirements in those areas."

The DLCD report expressly identified the clustering requirements in the F-2 zone. These requirements are substantially the same today. LCDC acknowledged these requirements as consistent with Flora and Policy II and as in compliance with Goal 5. It therefore appears that we are not required to do this again today.

Sincerely,

James A. Mann LLC

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(1)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:

I. REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission postpone Lane County's request until September 13-14, 1984 in order to allow the County time to amend its plan and ordinances to comply with Statewide Planning Goals. Provided the necessary amendments are made prior to the Commission's September meeting, the Department will revise its position to recommend acknowledgment under the expedited review procedures under OAR 660-03-033.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Doug White (Goals 2, 3, 6-10, 12-14)
Phone: 378-4926
Mike Rupp (Goals 2-Nonresource Lands, 4, 11)
Claire Puchy (Goals 5, 15)
Phil Quarterman (Goals 16-18)
Bob Rindy (Goals 1, 2)
Glen Hale (Destination Resort--Exception)

COORDINATOR: Gary Darnielle
Phone: 687-4283
Date of Report: June 29 and July 19, 1984

LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F-2 DISTRICT

Application Summary

On December 6, 2018, the applicant submitted a request to establish a dwelling in the Impacted Forest Lands (F-2) zone to Lane County Land Management Division. The application materials were reviewed by staff and the application was deemed incomplete on December 28, 2018. Additional information was received from the applicant on January 4, 2019, and on February 11, 2019, the application was deemed complete.

On March 29, 2019, referral responses were solicited from affected agencies, service providers and surrounding property owners. In order to allow time to obtain comments from the Oregon Department of Aviation, a Waiver of Statutory Timelines was provided on June 17, 2019. Referral comments from the Oregon Department of Aviation was received on July 3, 2019, and final processing this application commenced. On July 18, 2019, the Director issued a determination that the subject property complied with the applicable standards and criteria for the Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners, and on July 30, 2019, a timely appeal was submitted by LandWatch Lane County. The Director reviewed the appeal and elected to reconsider the decision, based mainly on the appellant's assertion that the wrong approval criteria had been applied.

A reconsidered decision approving the proposal was issued on August 2, 2019. On August 14, 2019, LandWatch Lane County again submitted a timely appeal of the Director's reconsidered decision.

Parties of Record

LandWatch Lane County	Connie and Charles Green
Don Nickell	Michael Farthing

Application History

Hearing Date: October 24, 2019

Decision Date: November 25, 2019

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(5)&(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 301, assessor's map 20-03-21, approximately one mile north of the City of Cottage Grove's Urban Growth Boundary and west of Highway 99 off of Abbott Lane.

   The subject property is approximately 10.28 acres in size and is currently vacant. Elevation of the property ranges from approximately 850 feet MSL in the southeast corner to 950 MSL in the northwest corner. County LiDAR resources show that slopes range from 5% to 30% with the most gentle slopes on the southern half of the subject property and steeper slopes on the northern half. Open pasture land makes up the southern one-third of the property with the northern two-thirds in timber.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2, RCP), consistent with that plan designation.

2. The property abuts Impacted Forest Lands (F-2) zoned properties to the north, east and south. The property to the west is zoned Exclusive Farm Use (E-40). The surrounding area can generally be characterized as a mix of forest, farm, and rural residential uses. The property does not contain floodplain, a Class 1 stream, or mapped wetlands, but does contain the Airport Safety Combining Zone for the Cottage Grove Airport.

3. Other dwellings are located some distance to the northeast and the southwest of the property.

4. The subject property is made up primarily of soils that are productive for forestry.

5. The property is crossed by a road running east/west approximately one third of the distance of the length of the property from the southern property line.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 18-05913) BY CONNIE GREEN FOR A TEMPLATE FOREST DWELLING ON TAX LOT 301, ASSESSOR'S MAP 20-03-21 IS AFFIRMED.

Justification for the Decision

The subject property is zoned F-2 Impacted Forest Land. The applicant is requesting approval to construct a single-family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160-acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case, the applicant has chosen to request approval under Lane Code 16.211(5)(c)(iii), which is the most rigorous of the three tests, applicable to lots or parcels that are predominantly composed of soils capable of producing 85 cubic feet per acre per year of wood fiber. That test requires a showing that all or part of at least 11 other lots or parcels that existed prior to January 1, 1993, lie within a 160-acre square centered on the subject property (tract). It also requires that at least three dwellings existed on January 1, 1993, and continues to exist, on those other lots or parcels.

The allegations of error raised by the Appellant in its appeal are as follows:

1. ***The Planning Director erred in applying the wrong version of LC 16.211.***

The appellant is correct that the wrong approval criteria were initially applied to the application. The application was submitted on December 6, 2018, prior to the adoption of Ordinance No. 18-08, which amended Lane Code Chapter 16 resource zones. Therefore, Lane Code Chapter 16.211(5) and (6) apply to the application instead of the newly adopted and now remanded Lane Code 16.211(3)(c), (q), and (r), and subsections (5) and (6). This wrong approval criteria were evaluated in the initial Director's decision and the reconsidered decision. Therefore, staff subsequently evaluated the correct approval criteria and provided those findings for the Hearing's Official.

This allegation of error is moot.

2. ***The Planning Director erred in relying on evidence from unrelated planning actions, for a different tax lot, that is not part of the record.***

In its initial appeal, appellant raised the issue of non-compliant access to the subject property. In response, staff introduced into the record two Verification of Condition applications for template dwelling approvals on adjacent lots. They are department file No. 509-PA02-05797 and 509-PA03-05055. Staff was aware of information that contradicted appellant's assertion, and it was not error for that information to be introduced to demonstrate to the decision maker that it is feasible that the access can meet the applicable road standards of Lane Code 16.211(8)(e), given that the same access has already been inspected twice for compliance with the same standard.

This allegation of error is denied.

3. *The applicant failed to provide evidence regarding slope, and the Planning Director erred in processing a reconsideration as a means of providing that evidence.*

Staff had access to contour and LiDAR information that was relevant to an issue raised in appellant's initial appeal. This information was provided as exhibits of the Planning Director's decision. It was the Planning Director's prerogative to reconsider the decision to bolster inadequate findings of the initial decision alleged in the initial appeal.

This allegation of error is denied.

4. *The applicant's site plan fails to indicate the boundaries of the subject property, setbacks from contiguous property boundaries, the development area in relation to the subject property, or the proposed turnouts and turnarounds.*

After the initial appeal was filed, it was determined that the application lacked certain evidence sufficient to satisfy all of the applicable approval criteria. The Planning Director reconsidered the decision following receipt of additional evidence, including a site plan that showed property boundaries and required setbacks. The Planning Director determined, based on past planning actions approving the same access for two template dwellings located south of the subject property, that it was feasible that the requirements regarding turnarounds and turnouts could be satisfied.

This allegation of error is denied.

5. *The dwelling site is not consistent with the requirements of LC 16.211(8) because it requires the applicant to unnecessarily intrude into forest lands.*

Dwelling Siting Requirements

LC 16.211(8) provides the siting standards for dwellings in the F-2 zone. Subsection (a) addresses setbacks, subsection (b) provides that forest lands used to site access roads, service corridors, and structures shall be minimized, subsection (c) provides fire siting standards for dwellings and structures, and subsection (e) provides fire siting standards for roads and driveways. The standards in subsections (a) and (b) are to be weighed together with the requirements in subsections (c) and (e) to identify the building site. Most of the requirements and standards or not absolutes, but the considerations must be weighed to arrive at a defensible siting location.

The appellant raises the following specific allegations of error related to the approval of the dwelling siting.

- *The proposed dwelling site requires the applicant to unnecessarily intrude into forest lands*

- *The proposed dwelling site is not sited near existing roads*
- *The proposed north/south driveway requires slopes greater than 20 percent*
- *It is unnecessary to extend the driveway through steep slopes and a forested area*

Appellant relies heavily on LC 16.211(8)(a)(i), which provides that dwellings *shall* be sited "[n]ear dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent." (emphasis added). As explained above, while subsection (8)(a)(i) uses the mandatory language "shall," the standards are not absolutes, and the siting of the dwelling must take into account all of the considerations, which are designed to make these non-forest uses "compatible with forest operations and agriculture" and to "conserve values found on forest lands."

Appellant asserts that the dwellings should be sited on the most level portion of the property south of the access road on the eastern portion of the property. The applicant explains that that portion of the property is planted pasture, is used for grazing cattle, and has been changed to farm deferral. LC 16.211(8) provides that the siting standards are to make proposed dwellings compatible with agriculture as well as forest operations, and to conserves values found on forest lands. The Hearings Official concludes that "values found on forest lands" are often farm values, not just forest values. Accordingly, the choice not to site the dwelling on land use for grazing is justified.

Appellants also assert that the dwelling should be sited adjacent to the existing access road, and should not be sited off of the roadway, thus requiring a driveway that necessitates removal of additional trees, and the use of higher rated soils. With regard to the quality of the soils, the applicant asserts that the site for the dwelling includes a bare section that has not historically been productive for the growth of trees. Appellant counters that assertion, relying on the soils mapping and eight aerial photographs of the property. All but one of those photographs depict, relatively clearly, a bare spot where the proposed dwelling site is to be located. While the soils map does not indicate any less productive soil at this location, the Hearings Official concludes that the aerial photographs support applicant's assertion that the proposed dwelling site is a less productive area than others on the property.

As to whether that spot is more or less level than others on the property, the record reflects that, if the spot is level, it is because the applicant played some role in leveling it. There is evidence in the record that a passage was recently cleared along the path of the proposed driveway in order to clear downed trees as a result of winter storms. The applicant then used that opportunity to clear and/or level the area. Whether such activity was permitted is not within the scope of this hearing. The Hearings Official's determination to approve this location is based largely on the photographic evidence supporting applicant's assertion that this location was determined based on the historic absence of growth of trees on this spot. The fact that the proposed location may not be

the most level spot on the property is outweighed by the fact that the proposed location will require a minimum amount of tree removal because it is already bare.

LC 16.211(8)(a)(i) favors locating dwelling near existing roads. Appellant asserts that, whether the proposed driveway is 100 feet or longer, siting the dwelling away from the existing road violates the siting standards. Appellant also asserts the dwelling should be located on the eastern side of the property, near existing dwellings. The Hearings Official determines that the obvious choice of this proposed location based on historic anemic growth patterns and preservation of farm uses to the south of the road is sufficient to outweigh the other factors, and is sufficient to support the proposed location.

Fuel Breaks

LC 16.211(8)(c)(i) requires primary and secondary fuel breaks for proposed dwellings. The primary fuel break must extend 30 feet in all directions around the dwelling. Where a dwelling is constructed on slopes, an additional primary fuel break downslope is required. The Planning Director determined that the downslope direction of the development site is from northwest to southeast at somewhere between 3% and 12% slope. The Planning Director thus determined that an additional 50 feet of primary fuel break was required in the downslope direction.

Appellant alleges that the Planning Director erred "in finding an additional 5' of primary fuel break [is] only required in the NE to SW direction." The Hearings Official disagrees that the Planning Director required an additional primary fuel break in the NE to SW direction. Rather, the Planning Director required an additional primary fuel break to the southeast of the development site, as depicted on the applicant's site plan. Condition of Approval #7 is consistent with this finding.

However, the site plan also shows the secondary fuel break (100 feet beyond the primary fuel break) beyond the western property boundary. LC 16.211(8)(c)(i) requires the secondary fuel break to be located on land owned or controlled by the owner. Accordingly, COA 7 is revised as follows:

"Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c). **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the additional 50 feet of Safety Zone Down Slope, as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner. Where the secondary fuel break required extends beyond the boundaries of the subject property, the applicant shall provide recorded documentation that she is authorized to maintain the fuel break on the adjacent property."

This allegation of error is denied.

6. The challenged decision fails to address LC Chapter 15 driveway spacing requirements.

Lane County Transportation Planning referral comments are included in the record. Based on those comments, the Planning Director imposed conditions of approval 4 and 5. The comments provide findings for the relevant Chapter 15 requirements, and those findings are adopted by reference in support of this decision. As conditioned, compliance with LC Chapter 15 is satisfied.

Appellant also addresses the LC Chapter 16 requirements for roads and driveways, which are discussed below.

The subject property is traversed by an east/west access easement that has been determined adequate in two prior land use proceedings. At the appeal hearing, the parties discussed the distinction between a road and a driveway. For purposes of LC 16.211(8)(e), the term "road" means "a way of access used for more than one use and accessory uses dwelling or manufactured dwelling." The term "driveway" means "a way of access used for only one dwelling or manufactured dwelling."

Turnarounds

LC 16.211(8)(e)(ii) requires turnarounds spaced not more than 500 feet apart for dead end roads over 200 feet in length. The record is not clear whether the road is a dead end road. However, appellant asserts that it is, and the applicant proposes turnarounds that comply with this requirement. The proposal would require turnarounds be constructed on the property to the east, tax lot 300. Any easement created or modified to provide access to the subject property would require language that includes the ability to provide these proposed turnarounds. Condition of Approval #4 is modified as follows to accommodate that requirement:

"Private access easements serving the subject property must comply with Lane Code 15.055 and specifically provide for required turnarounds."

Turnouts

Turnouts are the driveway's counterpart to turnarounds for roads. LC 16.211(8)(e)(vi) requires turnouts (20-foot long by 8-foot wide passage space; six inches gravel) for any driveway that exceeds 200 feet. The proposed driveway measures approximately 228 feet, and will include a turnout. The driveway slope is estimated to be approximately 8% grade at its steepest. However, LC 16.211(8)(e)(iv) allows grades up to 16% and up to 20% for up to 100 feet in certain circumstances. Any grades in excess of 8% require documentation from the applicable fire protection district or a licensed engineer.

The record includes a letter dated October 23, 2019 from South Lane County Fire & Rescue. It acknowledges that a portion of the driveway exceeds 10% grade, but that "we have driven it and if *road* is maintained at current condition we can access it." (Emphasis

added). Opponent again attempts to make the distinction between a road and driveway, and that the letter's use of the term "road," where italicized above, means that the fire district had not acknowledged the safety of the driveway. The Hearings Official agrees that the letter's use of the two terms is confusing. However, it appears clear that the fire district letter intended to acknowledge the safety of both the road and the driveway. Condition of Approval #6 ensures compliance with these requirements.

This allegation of error is denied.

7. ***The challenged decision violates RCP Goal 5, Flora and Fauna Policy 11.***

Appellant argues that the County's Flora and Fauna Working Paper and RCP Goal 5, Flora and Fauna Policy 11 require a Goal 5 analysis of the conflicts between dwellings and Big Game Habitat in the context of this forest template dwelling application.

Initially, appellant relies on OAR 660-006-0025(6) for its position that RCP policies addressing Goal 5 protections are applicable to this application. OAR 660-006-0025 is the administrative rule that provides the uses that are required to be allowed (subsection (2)), uses that may be allowed outright (subsection (3)), and uses that may be allowed conditionally (subsection (4)). OAR 660-006-0027 provides the requirements for dwellings in forest zones. OAR 660-006-0025(6) provides: "Nothing in this rule relieves governing bodies from complying with other requirements contained in comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands."

The Hearings Official agrees with appellant that, under OAR 660-006-0025(6) and other applicable rulings, relevant Goal 5 comprehensive plan policies, and relevant implementing ordinances, can supplement the specific forest template dwelling approval criteria set forth in LC 16.211(5). However, the Hearings Official disagrees with appellant that OAR 660-006-0025(6) can be used to bootstrap a Goal 5 analysis where it would otherwise be precluded.

As a general rule, the Statewide Planning Goals do not apply directly to the processing of a land use application where the comprehensive plan and implementing regulations are acknowledged. Specifically, "The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations." OAR 660-023-0250(1). Of course, relevant and applicable comprehensive plan policies that are written and intended to apply as mandatory approval criteria (see discussion below) are applicable.

Appellant relies on RCP Goal 5 Flora and Fauna Policy 11 in support of its legal theory. Policy 11 provides:

> "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that

limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

Relying on this language, and language from the Flora and Fauna Working Paper, appellants assert that the proposed residential density that would result from the approval of the subject forest template dwelling is a conflict with Big Game Habitat and either (1) requires the county to conduct an ESEE analysis or (2) requires denial of the application for failure to comply with Policy 11.

Appellants also rely on a recent LUBA case, *Cattoche v. Lane County*, ___ Or LUBA ___ (LUBA No. 2018-109, May 22, 2019), in support of its position. In that case, LUBA took a deep dive into Lane County's comprehensive plan policies and regulations regarding Big Game Habitat. Unlike the subject application in this case, which involves a request for approval of a forest template dwelling, the challenged decision in *Cattoche* was a request for a comprehensive plan designation amendment from Forest to Non-Resource and zone change Impacted Forest Land (F-2) to Rural Residential 5-acre Minimum (RR-5).

The *Cattoche* case correctly held that the Goal 5 analysis applied in that instance; i.e., a plan amendment / zone change application. It also correctly held that where the Goal 5 analysis applies, if a conflict with an inventoried Goal 5 resource is identified, the county must conduct a full blown Goal 5 ESEE analysis. LUBA held that a county errs in simply imposing a condition of approval limiting the number of dwellings allowed, without going through the Goal 5 ESEE analysis. It is at the point of determining mitigating factors to the conflicts in the context of the ESEE analysis that the county determines what condition is appropriate to mitigate the identified conflict.

The *Cattoche* case does not address the issue presented in this case; *i.e.*, whether RCP Goal 5 Flora and Fauna Policy 11 establishes a maximum residential density that applies in the context of a forest template dwelling application. Appellant's assertion that the RCP establishes residential density maximums that are applicable to this permit application is based on numerous flawed bases, as set forth below.

A. Working Papers not adopted

Appellant asserts that it is settled law that the RCP imposes a residential density standard borrowed from the ODFW recommendations of one dwelling unit per 80 acres for Major Big Game Habitat. *See* Malone letter dated October 31, 2019, page 5. The Hearings Official assumes this conclusion is taken from language in the *Cattoche* case.

It is the Flora and Fauna Working Paper that contains the alleged "Residential Density Standard" that is discussed at length in *Cattoche*. The Lane Rural Comprehensive Plan,

however, makes clear that the Working Papers are *not* adopted as policies: "The background information, including the Working Papers, is to be used to help interpret and understand General Plan approaches but is not itself designed to be adopted as legislative law."[1] It is only the adopted comprehensive plan policies themselves that are adopted "legislative law." Contrary to appellant's assertion, LUBA did not make a legal conclusion that the Working Papers, and thus the Residential Density Standard, was adopted approval criteria. Rather, LUBA relied on the parties' concession on that point. *See Cattoche*, slip op. 16 n.4 ("parties agree that the Flora and Fauna Working Paper policies provide applicable criteria in the designated Peripheral Big Game Range."). The concession was, quite simply, wrong, as it conflicts with the above quoted language in the comprehensive plan. The question, then, remains whether Goal 5 Flora and Fauna Policy 11 imposes a maximum residential density that applies directly to a forest template dwelling application.

B. Policy 11 is general planning directive to county, not mandatory approval criterion applicable to subject forest template dwelling application

Oregon's land use system is set up in such a way that local governments adopt local comprehensive plans and land use ordinances that implement the statewide planning Goals. Once those plans and regulations are acknowledged as in compliance with the statewide planning goals, the goals fall away and do not apply as relevant standards or approval criteria. Similarly, local ordinances are adopted to implement the acknowledged comprehensive plan. In many contexts, once the implementing ordinances are adopted to comply with the comprehensive plan and statewide planning goals, the comprehensive plan policies do not generally apply directly to a discrete land use application. See discussion above. The appellants in this case contend that Policy 11 applies as an approval criterion.

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[1] Part I.C. (HISTORY OF THE POLICIES DOCUMENT) provides, in full:

"The Policies contained in this document were developed during a period of more than a year, beginning in early 1983. A process was devised at the beginning of the period to utilize existing working papers and to prepare a series of new working papers which, along with other sources, were to serve as the technical data based for the Policies. The Working Papers were written and published from mid-1981 to early 1984. Each Working Paper contained information on a given topic or topics, and a number of them contained preliminary Policies which were drawn from the information in the Papers and which were presented for initial discussion purposes.

Hearings were held on the Papers as they were published. Each Planning Commission reported to the Board of County Commissioners containing its reaction to the Paper and draft Policies. Often the Policy statements drew on sources other than the Working Papers-existing County Plan information (such as special-purpose plans or technical studies), comments or testimony of individuals or groups appearing at the hearings, the judgment and views of Planning Commission members and so on-and so represented a broad array of perspectives and attitudes. Each Planning Commission Report cited information used in Policy development, in order to provide a firm basis for Policy use. The background information, including the Working Papers, is to be used to help interpret and understand General Plan approaches but is not itself designed to be adopted as legislative law. The Board formally adopted the Policies in February of 1984."

LUBA has had the opportunity to address this issue countless times:

> "[L]ocal and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. *McGowan v. City of Eugene*, 24 Or LUBA 540, 546 (1993); *Neuenschwander v. City of Ashland*, 20 Or LUBA 144, 154 (1990); *Bennett v. City of Dallas*, 17 Or LUBA 450, 456, *aff'd* 96 Or App 645, 773 P2d 1340 (1989). Local governments and this Board have frequently considered the text and context of cited parts of comprehensive plans and concluded that the alleged comprehensive plan standard was not an applicable approval standard. *Stewart v. City of Brookings*, 31 Or LUBA 325, 328 (1996); *Friends of Indian Ford v. Deschutes County*, 31 Or LUBA 248, 258 (1996); *Wissusik v. Yamhill County*, 20 Or LUBA 246, 254-55 (1990). Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. *Bennett v. City of Dallas*, 17 Or LUBA at 456." *Save our Skyline v. City of Bend*, 48 Or LUBA 192, 209-10 (2004) (footnote omitted).

RCP Goal 5 Flora and Fauna Policy 11 is not drafted as an approval criterion that would apply directly to the subject application. Rather, it directs the county how to determine "overall" residential densities in different regions of the County. It then directs the County to work with ODFW to prevent conflicts between residential development and Big Game Range Habitat "through land use regulation[s] in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program." Much like the policy reviewed in *Wissisik*, Policy 11 is a broad county goal which is intended, and indeed was, implemented through adoption of implementing land use regulations. *See Wissisuk, supra* (plan policies that contain aspirational language regarding goals to be implemented through adoption of land use regulations are not mandatory approval criteria for individual permit applications).

Lane County planning staff never did divide the County into regions, as anticipated by this policy. However, the Big Game Habitat was inventoried, and the County did eventually adopt that inventory, by adopting maps of the Major/Peripheral/and Impacted Big Game Habitat categories. *See Save TV Butte v. Lane County*, ___ Or LUBA ___ (LUBA No. 2017-031, January 8, 2018) slip op. 27 ("the county erroneously determined that its adopted inventory of big game habitat is not 'an acknowledged list of significant resources * * * for which the requirements of Goal 5 have been completed at the time the PAPA [in that case was] initiated,' within the meaning of OAR 660-023-0180(5)(b)(D)."). Lane County's regulations were subsequently acknowledged as in compliance with Goal 4 and Goal 5. As explained in LUBA's decision in *Save TV Butte, supra*, Lane County adopted an F-1 zone where dwellings were prohibited. LC 16.210. It also adopted a minimum parcel size of 80 acres in the F-2 zone. LC 16.211(10). Further, as discussed below, conditions to allowing additional dwellings included requirements to restrict future development. See LC 16.211(5)(e)[2]; OAR 660-006-0027(6)(c).[3]

[2] LC 16.211(5)(e) provides: "Prior to land use clearance of a building permit for the dwelling, when the lot or parcel on which the dwelling will be located is part of a tract, the remaining

For the reasons discussed above, Policy 11 does not apply directly as mandatory approval criteria to the subject forest template dwelling application.

C. OAR implementing Goal 4 supports interpretation

The Oregon Administrative Rules Implementing Goal 4 (OAR 660-006-000 et seq.) support the foregoing interpretation of RCP Policy 11 as well as the interpretation of the significance OAR 660-006-0025(6), set forth above. Goal 4 (Forest Lands) is designed to protect forest lands. However, the Goal recognizes the countering interests, and state statute, the Goal and implementing regulations provide for the allowance of dwellings on forest lands in some instances. OAR 660-006-0025 set forth uses authorized on forest lands generally. It begins with five general categories of uses that are allowed on forest lands. See OAR 660-006-0025(1)(a)-(e). Subsection (d) lists dwellings authorized by ORS 215.705 to 215.755 as authorized uses in the Forest zones. ORS 215.750 is the statute that authorizes counties to adopt regulations that allow for the approval of forest template dwellings on forest lands. OAR 660-006-0025, however, does not provide the criteria for approval of template dwellings. Those criteria are found in OAR 660-006-0027 (Dwellings in Forest Zones). Subsection (3) of that rule provides that a governing body or its designate "may" allow template dwellings under certain prescribed circumstances and subject to specific criteria set forth therein.

D. Legislative actions support interpretation of Policy 11

The 1993 legislature adopted HB 3661. That bill allowed several different types of dwellings on forest land, including lot of record dwellings, large tract dwellings, and template dwellings. The large tract dwellings, in western Oregon, could be allowed as

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portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(7), 'Exhibit A,' shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

(i) Shall be irrevocable, unless a statement of release is signed by the Director;
(ii) May be enforced by the Department of Land Conservation and Development or by Lane County;
(iii) Shall, together with a map or other record depicting any tract that does not qualify for a dwelling, be maintained in the Department records and be readily available to the public; and
(iv) The failure to follow the requirements of LC 16.211(5)(e) above shall not affect the validity of the transfer of property or the legal remedies available to the buyers of the property that is the subject of the covenants, conditions and restrictions required by LC 16.211(5)(e) above."

[3] OAR 660-006-0027(6)(c) provides: "A proposed 'template' dwelling under this rule is not allowed: (c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (7) of this rule for the other lots or parcels that make up the tract are met."

long as the subject "tract" was larger than 160 contiguous acres. ORS 215.740. The lot of record dwelling could be approved on a lot that had been in the same ownership since 1985. ORS 215.705. The template dwelling approval was based on the amount of development (dwellings and parcels) within a 160-acre square template. ORS 215.750. The minimum required amount of development for the template dwellings depended on the quality of the soils of the subject lot or parcel—the higher the quality of soils, the more parcels and dwellings were required to fall within the template.

Subsection (1)(f) of ORS 215.705 (lot of record dwelling) required the siting of a dwelling to consider the impact of the proposed dwelling on the density standards upon which the big game habitat acknowledged inventory was based.[4] The other newly authorized forest dwellings, including the template dwelling, did not require the same showing. If the legislature had intended to impost the same requirement for forest template dwellings, it would have done so. The Lane Code provisions allowing for template dwellings merely adopted virtually *ver batim*, the statute and OAR language. Those statutes and rules considered the impacts to Big Game and determined that Goal 4 was complied with.

The rationale of the template dwellings was to cluster dwellings in a way that would leave remaining lands vacant. To require that template dwellings comply with a 40 or 80 dwelling per acre standard is completely contradictory to that rationale.

This assignment of error is denied.

8. The challenged decision violates RCP Goal 7, Policy 2.

Appellant asserts that RCP Goal 7, Policies 1, 2, and 3.[5] Policy 2 requires that development be commensurate with the type and degree of any natural hazard present and that appropriate safeguards be assured. Appellant alleges that a portion of the property appears on a DOGAMI hazards map for high landslide susceptibility. The DOGAMI map shows only a small portion of the property in the northeast corner colored

[4] ORS 215.705(1)(f) requires the following demonstration: "When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based."

[5] RCP Goal 7, Policies 1, 2 and 3 provide:
"1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate.
2. Development shall be commensurate with the type and degree of any natural hazards(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to the sole means of safeguard against natural hazards.
3. When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact, (including financial and economic considerations) of such safeguards on the environment and the public shall be considered."

orange, with the remainder of the property colored yellow. The DOGAMI map submitted in the record does not contain a legend, so it is not clear what hazards the map intends to identify. If the orange mapping indicates a higher risk of landslide, the Hearings Official does not see that such evidence triggers the application of Policy 2. The colored area is in the northeast corner of the property, and based on contour evidence in the record, the proposed dwelling site in the opposite direction of where any landslide would occur. Further, appellants do not assert that the DOGAMI map has in any way been adopted by the County as a means of identifying natural hazards for purposes of RCP Goal 7.

RCP Goal 7, Policy 1 adopts a natural hazard inventory, as contained in the 1982 Natural Hazards Working Paper. Although that Working Paper was not submitted into the record, it was adopted by Policy 1, and therefore, the Hearings Official determines that she may take official notice of it. The development suitability maps and development constraint maps in the subarea plans constitute the natural hazard inventory for purposes of RCP Goal 7. See Natural Hazards Working Paper at 3-4. The Hearings Official concludes that the record does not support a conclusion that any natural hazards on the property, if any, present a risk to the proposed development that require the imposition of safeguards, as required by Policy 2.

This assignment of error is denied.

Conclusion

The conditions of approval attached to the Planning Director's reconsidered decision referenced some of the inapplicable code provisions. Accordingly, attached as Exhibit A to this appeal decision is a list of the conditions of approval, as modified herein.

The application complies with the applicable approval criteria in LC 16.211(5) and the siting standards set forth in LC 16.211(8).

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

EXHIBIT A

CONDITIONS OF APPROVAL

509-PA18-05913

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of **509-PA18-05913** is valid for a four-year period from the date of final approval unless an extension is granted in accordance with Lane Code Chapter 14 provisions.

   An extension may be granted if:

   a. An applicant makes a written request with the required fee and the request complies with LC 14.090(6) and (7);

   b. The request is submitted prior to the expiration of the approval period; and

   c. The request is submitted not sooner than six months before the expiration date.

Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

2. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* (Exhibit I) with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office).

3. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. The applicant shall provide a copy of the stocking survey to Land Management Division with evidence of receipt from the Assessor. Also see **Condition 19.**

4. Private access easements serving the subject property must comply with Lane Code 15.055 and specifically provide for required turnarounds.

5. Construct the access road and driveway to the minimum standards of Lane Code 16.211(8)(e) and the applicable standards of Lane Code Chapter 15. For roads greater than 8% slope, road and drainage plans shall be prepared by an engineer licensed by the State of Oregon or certified for compliance with the rural fire protection district providing fire protection to the subject property.

6. Submit written verification from South Lane County Fire & Rescue, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, private roads, private access easements, and driveways comply with the construction standards in Lane Code 16.211(8)(e) and fire district standards.

7. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c). These fuel breaks shall be maintained in perpetuity. The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the additional 50 feet of Safety Zone Down Slope, as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner.

8. The dwelling must be located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

9. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). This can be satisfied by providing a copy of the Well Log for the property. The well must comply with the groundwater appropriation standards of ORS 537.545(1)(d) and have a sustained yield of five gallons per minute for a duration of not less than five hours of continuous pumping as required by Lane Manual 9.160.

10. Upon completion of conditions #2 through #9, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. Attach to this form a copy of:

    - Signed, notarized, and recorded *Farm Use and Forest Management Agreement* and description of property, along with all required exhibits;
    - Forest stocking survey with evidence of receipt from the County Assessor;
    - Recorded access easement demonstrating legal access to the property consistent with Lane Code 15.055;
    - Well log or well constructor's report;
    - Verification letter from South Lane County Fire & Rescue, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route; and
    - Approved Site Development Plan, or a plot plan that conforms with the approved plans, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These final plans shall include the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(6)(c) and this approval.

11. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in conditions #5 and #7 have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(c) and (e) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the discretion of the Planning Director.

12. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

13. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the approved site development plan, unless modification is authorized by the Planning Director. Modification to the approved site plan may require an application for Modification of Conditions with the required processing fee, at the discretion of the Planning Director.

14. As per Oregon Department of Aviation Findings: Within five days after the structure reaches its greatest height, the proponent is required to file an FAA form 7460-2, Actual Construction notification, at the OE/AAA website (http://oeaaa.faa.gov). This actual construction notification will be the source document detailing the site location, site elevation, structure height, and date structure was built for the FAA to map the structure on aeronautical charts and update the national obstruction database.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

15. The proposed dwelling shall meet the following requirements, to be verified by the Lane County Building Official:

    a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.

    b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

    (Please contact a Lane County plans examiner at 541-682-4651 with questions about building code requirements).

16. The applicant shall provide documentation of Oregon Department of Aviation (ODA) concurrence for the proposed dwelling that is current as of the date of building permit issuance and current as of the date of final occupancy approval. A new letter of concurrence will be required if the proposed dwelling is not located as shown in Exhibit C, is taller than 30 feet, or if building permits or a certificate of occupancy is issued after the January 3, 2021 expiration for the July 3, 2019, determination. Except as otherwise addressed in the determination letter, all development must comply with the Airport Safety Combining Zone (/AS) provisions of LC 16.246 as applicable.

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

17. Areas of the subject property, according to DOGAMI, are designated as "High" landslide susceptibility. This designation may require a geotech report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 for more information.

18. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

19. The applicant is responsible for complying with any applicable local, state, and federal laws.

20. In accordance with Lane Manual 15.515, stormwater runoff from private property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by roadways themselves.

21. The approval is valid for four years as stated in condition one. An extension, if sought and granted in compliance with Lane Code Chapter 14, is limited to a single 2-year extension unless State law or Lane Code amendments allow otherwise.

22. The owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(e). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County).

23. The following is provided for informational purposes as an Advisory Notice: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

> "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.

MEMORANDUM

To: Gary Darnielle, Lane County Hearings Official

From : Rachel Sersiev, Planner

Date: November 7, 2019

Re: Appeal of Application File No. 509-PA19-05298

As staff expressed in their report to the Hearings Official (dated September 19, 2019), Rural Comprehensive Plan (RCP) Goal 7 does not apply directly to a template dwelling approval. Staff's understanding of the approval criteria is that Lane Code 16.211(5) and (8) apply to template dwelling approvals and these code sections do not explicitly require compliance with RCP Goal 7 policies.

According to the policies, a land use decision should use the Natural Hazards Working Paper as a *guide* and be based upon inventory and on-site or other evaluations of hazards. For the purpose of evaluation, the Oregon State Building Code can be the sole means of safeguard against natural hazards.[1]

To the extent that the RCP Goal 7 policies are relevant, it is staff's position that the land use decision process adequately addresses and satisfies these policies without them being explicit approval criteria of the land use decision. Staff did consult with County Counsel regarding this position and Counsel concurred that the Goal 7 policies should not be applied as approval criteria.

Specific to department file No. 509-PA19-05298, the land use decision considers Department of Oregon Geology and Mineral Industries (DOGAMI) inventory of landslide hazards. The applicant also provided a site specific survey completed by a Professional Registered Land Surveyor demonstrating the slopes of the subject property. Based on the inventory and the site specific survey, staff notified the applicant through an informational condition of approval that a geotechnical engineer's report may be necessary when a building permit for the structure is sought. At the time of building permit, the decision to require a geotechnical report is based on clear and objective standards regarding slopes that are located in the Oregon State Building Code.

The Oregon Structural Specialty Code (OSSC) provides the authority to assess the soils and slopes at the building site, and to require a geotechnical report if necessary. **Attachment 3** of staff's report to the Hearings Official provides guidance regarding when a geotechnical report is required in conjunction with building permit submittals.

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[1]Excerpt from the Lane County Rural Comprehensive Plan:

GOAL SEVEN: AREAS SUBJECT TO NATURAL DIASTERS AND HAZARDS

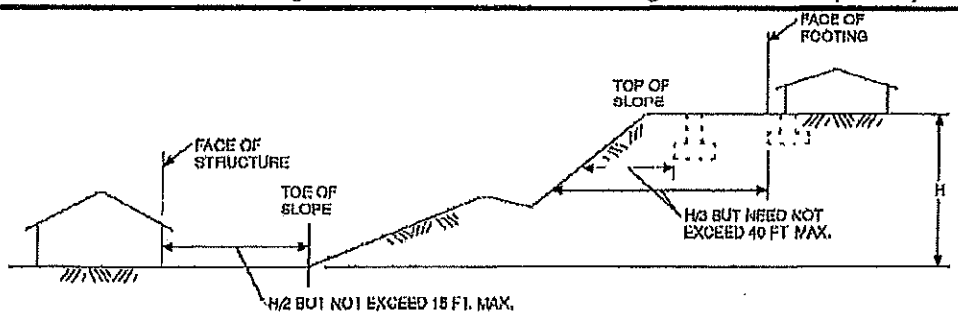
1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate.
2. Development shall be commensurate with the type and degree of any natural hazards(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to the sole means of safeguard against natural hazards.

NOTICE TO APPLICANT
Residential (1 & 2 Family Dwellings and Accessory Structures)

The Lane County Building Division will be reviewing residential structural permit applications to more closely assess geotechnical hazards. This is important to better protect the homes we build, helping the community to be more resilient to earthquakes.

A geotechnical or soils report (OSSC Section 1803.6) from a qualified design professional licensed in Oregon will be required if the site for the proposed development:

1. Has ascending or descending slopes that do NOT meet the foundation clearance of Section R403.1.9 and Figure R403.1.9.1 of the 2017 Oregon Residential Specialty Code;



oot = 304.8 mm.

FIGURE R403.1.9.1
FOUNDATION CLEARANCE FROM SLOPES

2. *Is within a soils hazard area: site soils are susceptible to liquefaction; or site prone to landslides. Below is an internet link that will connect to the DOGAMI website where one can find information on the specific site conditions:
   www.oregongeology.org/hazvu
   Landslide: High and Very High will require a geotechnical report.
   Liquefaction: Moderate or High will require a geotechnical report
3. *Has a building site with a 20% (2:10 or 11.3 degrees) or greater slope prior to excavation.
4. Or, Is required by Lane County Land Use Planning to have a special foundation system.

All site plans submitted will be required to show any known fill sites or landslide hazards areas.

The soil report shall address: soil bearing capacity, liquefaction, soil classification, stability for lateral (seismic) loading, slope stability, and recommendations for excavation, structural fill and foundation design.

*Items 2 & 3 above will not be applicable to residential accessory structures less than 1000 square feet and one story in height.

SWM/ 07-2018

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

December 11, 2019

Project: 19060

Mr. Jim Belknap
Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

PA19-05298
Exhibit 3 to
Reopened Record 12/18/19
Submission Of
Additional Materials

Subject: Response to Appellant Comments
Lane County PA19-05298
Nimpkish, LLC Template Test Dwelling Special Use Permit
Tax Lots 506, Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. Belknap,
At your request, I am writing to expand on our recommendations for the subject project site dated November 13, 2019. The scope of these supplemental recommendations is limited to issues regarding questions of landslide hazard.

Landslide Hazard Evaluation Process

The recommendations that K & A Engineering, Inc. provided for the subject parcel (dated November 13, 2019) summarize what is termed a "Level I" evaluation of slope stability for the project site(s).[1] Level I evaluations typically include:

- **Literature Search:** a review of available reports and maps available in the literature for the site describing geology and geologic hazards. We consulted geologic maps of the area, DOGAMI hazard maps, and aerial photography of the site and surrounding areas.
- **Site Review:** Level I evaluations include a visual site inspection. We visited the site and spent time looking for visual indicators that are always present in areas of active slope movement including tension cracks, fresh scarps, sloughing, depositional areas, and ponding. We also inspected road cuts to determine the general nature and depth of subsurface conditions in the area.
- **Preliminary Stability Evaluation:** Based on our field observations and available topographic data we made an evaluation of the general nature of slope stability of the area. There are other parameters that affect slope stability in addition ground slope, such as soil shear strength, soil depth, groundwater, root strength, just to name a few. Basing decisions of stability on ground slope gradient alone is bad science.

Recommendations for further investigation and a more detailed evaluation of slope stability are made based on the findings of the Level I evaluation. In this case, we recommended a Level II geotechnical investigation for the subject project site because of their location within or near the DOGAMI high-hazard mapping. The Level II investigation is a detailed study requiring geotechnical borings, laboratory

[1] The Level I analysis is in the context of a three-level approach to geotechnical evaluation which is current standard of practice. As an example, the Eugene city code requires such a process which is detailed in section 9.6710 "Geological and Geotechnical Analysis."

testing, calculation of factors of safety, etc. and will incorporate the specific nature of the proposed structure, roadway grading, and general site grading plans.

This methodology is a logical approach to ensure that the hazard is carefully and thoroughly understood in an efficient and cost-effective manner.

K & A Engineering, Inc. provided a first step in the process of a rational methodology that is accepted as the standard of care by qualified geotechnical engineers for similar projects. In the long run, following this process will result in a complete, detailed, and rational evaluation of slope stability that meets the needs of all parties involved.

Our level I review is appropriate for undeveloped areas and its use in the determination of the likely nature of slope stability in the current condition and if further study is needed for ground disturbing development. The whole point of the Level review was to determine if the proposed action would significantly heighten landslide hazard and require extreme measures for mitigation.

Road Access

Our understanding is that a question has arisen as to landslide hazards attributed or related to road access to the project site, including the primary access road, R. R. Baker Road, and the proposed driveway extending from R. R. Baker Road to the proposed building site.

R. R. Baker Road

As noted in our letter to the owners regarding tax lot 507 dated October 31, 2019, we observed areas of localized soil creep on the south side of the R. R. Baker Road which are most likely the result of over-steepened road cut embankments. This is a common condition observed for many low volume roads traversing sloped terrain and, in this case, slope movement impact is typically limited to the area from the road ditch to the top of the cut embankment. Furthermore, we note that mapping indicates that the R. R. Baker Road had existed at least since the 1950's and has not been the source of or impacted by large-scale deep-seated landslides or debris flows. *The instability noted is limited to the roadway cut embankment and the hazard is limited to routine road maintenance. There is no evidence that this localized creep presents a hazard that would impact areas outside of the road prism.*

Driveway to Proposed Building Site

Survey sketches for project site development indicate include the location of a proposed access driveway starting at R. R. Baker Road and trending northwest to the proposed building pad. The proposed driveway essentially falls "normal" to the slope – in other words the road does not parallel contours and therefore requires a minimum number of cuts and fills. Cut and fill heights are furthermore limited by the narrow, single-lane width of the driveway. *Based on our experience with the design and construction of low volume roads[2] it is our opinion that the proposed driveway location does not inherently present a significant landslide hazard.*

We recommend that a qualified geotechnical engineer provide quality assurance inspection of driveway access road construction to provide on-site recommendations for road construction.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

[2] (17) years of experience as a geotechnical engineer with the USDA Forest Service\dealing mainly with low volume road design, evaluation, and construction.

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

December 2, 2019 **Project: 19060**

Mr. Jim Belknap
Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

Subject: Response to Appellant Comments
Lane County PA19-05298
Nimpkish, LLC Template Test Dwelling Special Use Permit
Tax Lots 506 and 507, Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. Belknap,
At your request, we have reviewed comments from appellants in the subject matter and are providing a written response. These comments include those made by Mr. Sean Malone (representing LandWatch Lane County) dated November 21, 2019 and Mr. Andrew Mulkey (representing 1000 Friends of Oregon).

The scope of our review and response is limited to landslide hazard.

Response to Mr. Andrew Mulkey Comments
The recommendations that K & A Engineering, Inc. provided for the subject parcels (dated October 31, 2019 for tax lot 507 and November 13, 2019 for tax lot 506) summarize what is termed a "Level I" evaluation of slope stability for the project site(s). Level I evaluations typically include:

- **Literature Search:** a review of available reports and maps available in the literature for the site describing geology and geologic hazards. We consulted geologic maps of the area, DOGAMI hazard maps, and aerial photography of the site and surrounding areas.
- **Site Review:** Level I evaluations include a visual site inspection. We visited the site and spent time looking for visual indicators that are always present in areas of active slope movement including tension cracks, fresh scarps, sloughing, depositional areas, and ponding. We also inspected road cuts to determine the general nature and depth of subsurface conditions in the area.
- **Preliminary Stability Evaluation:** Based on our field observations and available topographic data we made an evaluation of the general nature of slope stability of the area. There are other parameters that affect slope stability in addition ground slope, such as soil shear strength, soil depth, groundwater, root strength, just to name a few. Basing decisions of stability on ground slope gradient alone is bad science.

Recommendations for further investigation and a more detailed evaluation of slope stability are made based on the findings of the Level I evaluation. In this case, we recommended a Level II geotechnical investigation for these parcels because of their location within or near the DOGAMI high-hazard mapping. The Level II investigation is a detailed study requiring geotechnical borings, laboratory testing, calculation of factors of safety, etc. and will incorporate the specific nature of the proposed structure and grading plans.

This methodology is a logical approach to ensure that the hazard is carefully and thoroughly understood in an efficient and cost-effective manner.

Thus, it is untrue that K & A Engineering, Inc. failed in the evaluation of slope stability. What we did was provide a first step in the process of a rational methodology that is accepted as the standard of care by qualified geotechnical engineers for similar projects. In the long run, following this process will result in a complete, detailed, and rational evaluation of slope stability that meets the needs of all parties involved.

Response to Mr. Sean Malone Comments

- **Substantial Evidence:** Malone, like many others, seems to believe that "substantial evidence" consists of volumes of written documentation. Substantial evidence can be and most often should be very simple and brief in scope.
- **Landslide Scarps:** Scarp sizes, slope gradients, and shapes can vary widely depending on the nature of the slope movement and the age of the slope movement. Steep scarps erode and weather over time, resulting in less-steep slopes and more rounded features. Very old scarps can indeed be difficult to define unless they include zones of harder rock that weather and degrade more slowly than surrounding unconsolidated soil deposits. There is nothing "equivocal" about stating that a location is within or near to a scarp because, as is the case here for very old slope movements, weathering and natural transport of materials downhill eventually result in reduced slope angles.
- **Recent or Ancient:** By recent we mean active landslides or landslides that occurred whereby fresh evidence of movement is visible.
- **"Near the Road:"** The actual proposed length is less than 200-feet, not 300-feet. "Near" is a subjective opinion. This is a convoluted and irrational paragraph that morphs from "near the road" to turnout construction, the land use code, and the feared "chimney effect" – none of which have much, if anything, to do with landslide hazard.
- **"Extensive or Drastic Safeguards:"** Mr. Malone's conclusion is that "it is irrelevant whether any extensive or drastic safeguards may or may not be called for because the issue is whether or not a geotechnical report/evaluation is needed..." The fact is that we are moving forward with a *rational process* of geotechnical evaluation and investigation, with more detailed studies of the impact of development (such as grading, drainage, and foundation loads) required as a result of our Level I evaluation. Making detailed studies at this point makes no sense and does a disservice to the process because it forces limiting assumptions that may or may not exist when the serious details of actual development are determined which usually include things like an actual grading plans, actual foundations (location, depth, type, loads, etc.), real changes to drainage patterns, etc.

  Our level I review is appropriate for undeveloped areas and its use in the determination of the likely nature of slope stability in the current condition and if further study is needed for ground

disturbing development. The whole point of the Level I review was to determine of the proposed action would significantly heighten landslide hazard and require extreme measures for mitigation. Mr. Malone obfuscates the analysis process.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

October 31, 2019 **Project: 19060**

Nimpkish, LLC
Gray and Dorotea Goodman
86690 R. R. Baker Road
Springfield, OR 97478

Subject: Geotechnical Summary of the Nature of Landslide Hazard
Proposed Residential Development
Tax Lot 507 (a.k.a. Parcel 2), Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. and Mrs. Goodman,
Our understanding is that a small portion of the project site, located at the southwest corner near the road, is proposed for development as a single-family residence. At your request, we have reviewed the subject project site for the purpose of making a preliminary determination of the nature of landslide hazard and to present practical recommendations for site development. Our services, to date, have included:

- A visual inspection of the subject 10-acre site,
- Review of landslide hazards mapped for the site by the Department of Geology and Minerals Industries and Geology,
- Review of mapped geology and faulting of the general area,
- Review of current and historic aerial photography of the area, and
- These recommendations.

To summarize our review:

- The project site is located within, or near, the south end of the upper scarp zone of a very large, ancient landslide that moved soils and rock to the west.
- There are no visible indications of recent slope movement on the subject project site or on undisturbed areas on adjacent properties. The DOGAMI mapping of landsliding in this area indicates the approximate extent of the ancient landslide but does not include mapping of any active landslide activity.
- Outside of the project site, we observed areas of localized soil creep on the south side of the R. R. Baker Road which are most likely the result of over-steepened road cut embankments.
- The ground surface gradient at the proposed area for homesite development is low, in the range of approximately 10 to 15-percent. Based on our extensive experience in geotechnical engineering for similar projects in similar areas, the existing or future hazard of landsliding is low and manageable for developments similar to what is being proposed in this geologic setting.

Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement.

To verify subsurface ground conditions, confirm the low probability of any slope movement in the proposed development area, and to ensure that development will be designed and constructed in a manner that will not induce any geotechnical hazards, *we recommend that a qualified professional geotechnical engineer make a geotechnical investigation of the home site prior to foundation design and construction*. This investigation should include:

- Geotechnical probing and/or borings which adequately characterize subsurface conditions,
- A written Report that summarizes site conditions and makes recommendations for:
  - The current nature of slope stability,
  - Suitable foundation types and load capacity,
  - Drainage, and
  - General earthwork and site construction methods.

This geotechnical investigation should be a requirement for obtaining a building permit to construct the proposed residence.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

CASCADE TITLE CO.

Title Vesting

Methods of Holding Title in Oregon

Tenancy by the Entirety

Tenancy by the entirety is a form of ownership recognized in Oregon that is available only to legally married husband and wife. The law sees the husband and wife as one person. Therefore, they do not own one-half interests in the property, but each own the entire property. When either spouse dies, the survivor doesn't inherit the decedent's interest, but continues to own the entire property. A tenant cannot will his interest in the property to someone else. If a married couple divorces, they would then automatically hold title as tenants in common, unless their divorce decree stated otherwise.

Tenancy in Common

A tenancy in common is created when two or more people each have an undivided interest in the same property. To have an undivided interest is to be a partial owner of the whole property, not the sole owner of a separate piece of the property. Co-owners have equal rights of possession, but might or might not have equal interests (percentages of ownership. Tenancy in common does not include rights of survivorship. Co-owners can sell or otherwise dispose of their share of the property without regard to the other co-owners.

Not as Tenants in Common, But With Rights of Survivorship

As the wording implies, this creates a survivorship between the vested owners. In the event of one owners death, the property vests in the surviving owner.

Trust*

A trust is an arrangement whereby legal title to the property is transferred by the grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called beneficiaries.

Partnership*

A partnership is an association of two or more persons who can carry on business for profit as co-owners, as governed by the Uniform Partnership Act. A partnership may hold title to real property in the name of the partnership.

Corporation*

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under law as having an existence and personality separate from such shareholders.

Assumed Business Name*

The term "assumed business name" means one or more words or numerals (or a combination of words or numerals) that a person uses to identify a business or conducts a business under, where the person does not conspicuously disclose the "real and true name" (surname and initials) or each person who is carrying on or conducting the business. If property is held in this manner it must state both the party doing business and the entity, ie, John Q. Smith dba Smith and Sons Realty.

Limited Liability Company (LLC)*

This form of ownership is a legal entity and is similar to both the corporation and the partnership. The operating agreement will determine how the LLC functions and is taxed. Like the corporation its existence is separate from its owners.

Remember: How title is vested has important legal consequences. You may wish to consult an attorney to determine the most advantageous form of ownership for your particular situation.

*In cases of corporate, partnership, LLC or trust ownership, required documents may include corporate articles and bylaws, partnership agreements, LLC operating agreement and trust agreements and/or certificates.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on October 27, 2020, I filed the original INTERVENOR-RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR REVIEW and 4 copies with the Land Use Board of Appeals at the address given below, by certified return receipt mail, deposited in the United States Post Office at Eugene, Oregon, to:

Land Use Board of Appeals
DSL Building
775 Summer Street, NE, Suite 330
Salem, OR 97301-1283

I also certify that on October 27, 2020, I served one certified true copy of INTERVENOR-RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR REVIEW upon each of the following persons at the addresses given below, by certified return receipt mail, deposited in the United States Post Office at Eugene, Oregon to:

Sean T. Malone, OSB #084060
259 E 5th Ave. Ste. 200-C
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seanmalone8@hotmail.com
Attorney for Petitioner

Andrew Mulkey, OSB #171237
1000 Friends of Oregon
133 SW 2nd Ave. Ste. 201
Portland, OR 97204
(503) 497-1000 x138
andrew@friends.org
Attorney for Intervenor-Petitioner

H. Andrew Clark, OSB #881818
Lane County Office of Legal Counsel
125 E 8th Ave.
Eugene, OR 97401
(541) 682-4442
andy.clark@lanecountyor.gov
Attorney for Respondent

Dated: October 27, 2020

Michael E. Farthing, OSB #740919
Attorney for Intervenor-Respondent

CERTIFICATE OF COMPLIANCE

I certify that the foregoing INTERVENOR-RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR REVIEW begins with a Table of Contents and Authorities, contains 6,422 words, does not exceed 14,000 words, has red front and back covers of at least 65 lb. weight paper, contains a caption with full title of the proceeding, is written in 14 point font, is double spaced, contains line number for each line of text, is printed on 8.5 by 11 inch paper, and has inside margin of 1.25 inches, outside margins of 1 inch, and top and bottom margins of .75 inch.

Dated: October 27, 2020

Michael E. Farthing, OSB #740919
Attorney at Law
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(541) 683-1950
Mefarthing@yahoo.com
Attorney for Intervenor-Respondent

LANE COUNTY OFFICE OF LEGAL COUNSEL

PUBLIC SERVICE BLDG. / 125 EAST 8TH AVE. / EUGENE, OR 97401 / 541-682-4442 / FAX 541-682-3803 / www.lanecounty.org

May 8, 2020

Land Use Board of Appeals
Department of State Lands Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: LandWatch Lane County v. Lane County, Nimpkish, LLC and 1000 Friends of Oregon
LUBA No. 2020-030 – Replacement Record

Dear Board Members:

Enclosed are three DVD-Rs of the electronic version of the original REPLACEMENT RECORD OF PROCEEDING UNDER REVIEW and the Hearings Official audio recording from September 26, 2019. A copy of the above is being mailed to Sean Malone, attorney for Petitioner, Michael Farthing, attorney for Respondent-Intervenor, and Andrew Mulkey, Intervenor-Petitioner, in a DVD-R format.

Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL

H. Andrew Clark
Assistant County Counsel
HAC: kls
Enclosures

cc: Sean Malone (w/enc.)
Michael Farthing (w/enc.)
Andrew Mulkey (w/enc.)

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EXHIBIT K 3

BEFORE THE LAND USE BOARD OF APPEALS OF THE STATE OF OREGON

LANDWATCH LANE COUNTY, **Petitioner,** **vs.** **LANE COUNTY,** **Respondent,** **and** **NIMPKISH LLC,** **Intervenor-Respondent** **And** **1000 FRIENDS OF OREGON,** **Intervenor-Petitioner.**	**LUBA No.: 2020-030**

REPLACEMENT RECORD OF PROCEEDING UNDER REVIEW

Lane County Board of Commissioners

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Lane County Office of Legal Counsel
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Eugene, OR 97440
Attorney for Intervenor-Respondent

Andrew Mulkey
133 SW 2nd Ave., Ste.201
Portland, OR 97204
Attorney for Intervenor-Petitioner

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vs.

LANE COUNTY, Respondent

and

Nimpkish LLC, Intervenor-Respondent

and

1000 FRIENDS OF OREGON, Intervenor-Petitioner

LUBA No. 2020-030
509-PA19-05298

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I, H. Andrew Clark, certify that the Items described above and included herein are true copies of the originals, although the filed Record may contain black-in-white or reduced copies of materials originally submitted in color or non-standard sizes.

DATED this 8th day of May, 2020.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. Andrew Clark, OSB #881818
Of Attorneys for Respondent Lane County

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May 8, 2020

Land Use Board of Appeals
Department of State Lands Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: LandWatch Lane County v. Lane County, Nimpkish, LLC and 1000 Friends of Oregon
LUBA No. 2020-030 – Replacement Record

Dear Board Members:

Enclosed are three DVD-Rs of the electronic version of the original REPLACEMENT RECORD OF PROCEEDING UNDER REVIEW and the Hearings Official audio recording from September 26, 2019. A copy of the above is being mailed to Sean Malone, attorney for Petitioner, Michael Farthing, attorney for Respondent-Intervenor, and Andrew Mulkey, Intervenor-Petitioner, in a DVD-R format.

Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL

H. Andrew Clark
Assistant County Counsel
HAC: kls
Enclosures

cc: Sean Malone (w/enc.)
Michael Farthing (w/enc.)
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BEFORE THE LAND USE BOARD OF APPEALS OF THE STATE OF OREGON

LANDWATCH LANE COUNTY, **Petitioner,** **vs.** **LANE COUNTY,** **Respondent,** **and** **NIMPKISH LLC,** **Intervenor-Respondent** **And** **1000 FRIENDS OF OREGON,** **Intervenor-Petitioner.**	**LUBA No.: 2020-030**

REPLACEMENT RECORD OF PROCEEDING UNDER REVIEW

Lane County Board of Commissioners

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LANDWATCH LANE COUNTY, Petitioner,

vs.

LANE COUNTY, Respondent

and

Nimpkish LLC, Intervenor-Respondent

and

1000 FRIENDS OF OREGON, Intervenor-Petitioner

LUBA No. 2020-030
509-PA19-05298

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	1. November 21, 2019, Letter to Darnielle re: Response statement in 509-PA19-05298, including Exhibits:	594-596
	Exhibit 1: Vicinity maps for subject property; Exhibit 2: Business entity filing records for Nimpkish, LLC; Exhibit 3: Tax lot records and deed for Goodman tract; Exhibit 4: Tax Map 18021100; Exhibit 5: Application and decision notices for dwellings on tax lots 506, 508, and 509; Exhibit 6: 1991 ODF Fire Siting Standards; Exhibit 7: Fuel break easements excerpts of dwelling approval conditions of approval. *(Exhibits not included, please see Item No. 24)*	
20	November 21, 2019, Additional Information Submitted by Farthing re: Applicant's Post-Hearings Responses, including attachment:	597
	1. November 21, 2019, Letter to Darnielle from Farthing re: 509-PA-05298 (Nimpkish LLC) Appeal of Director Approval of Template Dwelling in F-2 zone by LandWatch Lane Count Second Post Hearing Response Submission, including attachment:	598-603
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21	November 8, 2019, Additional Information Submitted by LandWatch of Lane County, including attachment:	606
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I, H. Andrew Clark, certify that the Items described above and included herein are true copies of the originals, although the filed Record may contain black-in-white or reduced copies of materials originally submitted in color or non-standard sizes.

DATED this 8th day of May, 2020.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. Andrew Clark, OSB #881818
Of Attorneys for Respondent Lane County

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May 8, 2020

Land Use Board of Appeals
Department of State Lands Building
775 Summer Street NE, Suite 330
Salem, OR 97301-1283

Re: LandWatch Lane County v. Lane County, Nimpkish, LLC and 1000 Friends of Oregon
LUBA No. 2020-030 – Replacement Record

Dear Board Members:

Enclosed are three DVD-Rs of the electronic version of the original REPLACEMENT RECORD OF PROCEEDING UNDER REVIEW and the Hearings Official audio recording from September 26, 2019. A copy of the above is being mailed to Sean Malone, attorney for Petitioner, Michael Farthing, attorney for Respondent-Intervenor, and Andrew Mulkey, Intervenor-Petitioner, in a DVD-R format.

Sincerely,

LANE COUNTY OFFICE OF LEGAL COUNSEL

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HAC: kls
Enclosures

cc: Sean Malone (w/enc.)
Michael Farthing (w/enc.)
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BEFORE THE LAND USE BOARD OF APPEALS OF THE STATE OF OREGON

LANDWATCH LANE COUNTY, **Petitioner,** **vs.** **LANE COUNTY,** **Respondent,** **and** **NIMPKISH LLC,** **Intervenor-Respondent** **And** **1000 FRIENDS OF OREGON,** **Intervenor-Petitioner.**	**LUBA No.: 2020-030**

REPLACEMENT RECORD OF PROCEEDING UNDER REVIEW

Lane County Board of Commissioners

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LANDWATCH LANE COUNTY, Petitioner,

vs.

LANE COUNTY, Respondent

and

Nimpkish LLC, Intervenor-Respondent

and

1000 FRIENDS OF OREGON, Intervenor-Petitioner

LUBA No. 2020-030
509-PA19-05298

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I, H. Andrew Clark, certify that the Items described above and included herein are true copies of the originals, although the filed Record may contain black-in-white or reduced copies of materials originally submitted in color or non-standard sizes.

DATED this 8th day of May, 2020.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. Andrew Clark, OSB #881818
Of Attorneys for Respondent Lane County

DO NOT SEPARATE PACKET

CERTIFICATE OF MAILING

509-PA19-05298
NIMKISH/BELKNAP
02/06/2020

This is to certify that I, Amber Wolles, mailed Notification of

NOTICE OF H.O. DECISION

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: FEB 06 2020

End of Comment Period:

Appeal Deadline: FEB 18 2020

Hearing Date:

AMBER WOLLES

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F–2 DISTRICT

Application Summary

On April 18, 2019, a request to establish a dwelling in the Impacted Forest Lands (F–2) zone was submitted to Lane County Land Management Division by James Belknap, an agent for Nimpkish, LLC. The application was deemed complete on May 17, 2017. On August 2, 2019, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On August 14, 2019, a timely appeal was submitted by LandWatch Lane County.

Parties of Record

Nimpkish LLC	LandWatch Lane County	Lauri Segel–Vaccher
James Belknap	Michael Farthing	Sean Malone
1000 Friends of Oregon	Andrew Mulkey	

Application History

Hearing Date: September 26, 2019
(Record Held Open Until January 23, 2020)

Decision Date: February 4, 2020

Appeal Deadline

An appeal must be to the Oregon Land Use Board of Appeals within 21 days from the date that this decision becomes final. [ORS 197.830(9)] This decision becomes final after 12 days from the mailing of the decision if no request for reconsideration is made. [LC 14.080(1)(b)]

Statement of Criteria

Lane Code 16.211(5) & (8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 507, assessor's map 18–02–11, approximately one–half mile east of the City of Springfield's Urban Growth Boundary. The property is about 10 acres in size, is vacant, and does not have an address. The

subject property is not a part of a tract as the property owner does not own any adjacent property.

The subject property is designated Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Land (F–2, RCP), consistent with that plan designation. The property abuts F–2 zoned properties on all sides. The surrounding area can generally be characterized as a mix of forest and low-density, rural residential uses. The property does not contain floodplain, a Class 1 stream, or mapped wetlands but is located within a Major Big Game Range.

2. The property slopes from the north-west corner to the east property boundary, from a mean sea level (MSL) of approximately 1060 feet to 1200 feet MSL determined with Lane County contour data. The County LiDAR data show that slopes range from less than 10% to 40% or more with steep slopes located in the north-west and north-central portion of the subject property. More gentle slopes on the subject property are located in the south-west corner. The property is primarily open pasture with some scattered, low-lying brush and Douglas Fir.

3. Soils data show that the property is composed of two soil types, 107C Philomath silty clay and 113G Ritner cobbly clay loam, which have forestland capability of an estimated 45 and 149 cubic feet per acre per year, respectively. Soil type 107C composes approximately 53% of the subject property. The proposed development site is located on the Philomath soils.

4. The Applicant has is required to apply the 3–parcel template test required by Lane Code 16.211(5)(c)(i)(aa). The following table documents seven parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(i)(aa).

Count	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	18-02-11	600	1982	Parcel 1 of M43-81
2*	18-02-11	601	1982	Parcel 2 of M43-81
3*	18-02-12	201	1909	Final Legal Lot Verification 509-PA14-05513
4	18-02-12	303	1992	Parcel 1 of 92-P0221
5	18-02-12	302	1992	Parcel 2 of 92-P0221
6*	18-02-11	100	1953	460/235
7	18-02-10	100	1941	222/81

5. Lane Code 16.211(5)(c)(i)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The Applicant has relied upon the following dwellings/tax lots:

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
1	18-02-12	201	1910; RLID
2	18-02-11	601	1982/1999; Verification of Replacement Rights 509-PA98-5159
3	18-02-11	100	1958/2001; Verification of Replacement Rights 509-PA01-05596

6. The properties surrounding the subject property to the north and west do not contain any dwellings; although some of those properties have conditional approval for dwellings. Tax Lot 501, to the east of the subject property, and Tax Lot 600, across R.R. Baker Road to the south, contain the nearest existing dwellings. These dwellings are approximately 460 and 880 feet from the proposed home site.

7. The nearest public road is Wallace Creek Road, located to the south of the subject property. The subject property is proposed to take access from R.R. Baker Road, a private road adjacent to the subject property. The proposed homesite is approximately 189 feet from R.R. Baker Road and will be accessed by an existing spur road that will be improved to serve as the dwelling's driveway.

   R.R. Baker Road currently serves more than one dwelling and thus the portion of this road from Wallace Creek Road to the subject property must meet County standards. The Applicant's access site plan shows R.R. Baker Road as having a easement width of 40 feet. The application indicates that the road has a travel width that varies between 16 and 18 feet. Further, the Applicant's site plan shows the proposed driveway from R.R. Baker Road to the homesites as having a 12–foot width. The Applicant has access to the road via a March 21, 2019 easement (#2019-010337).

   The portion of R.R. Baker Road from Wallace Creek to the subject property must have nine turnarounds given the standard of LC 16.211(8)(e)(ii) and the road's length. Photographs of the turnaround points as they are located on the Applicant's site plan, given the topography and width of the road, indicate that it is feasible that the road can be improved to meet the above standards. These improvements will be accomplished by Hendrickson Well Drilling, a 25–year old company that does road excavation, site preparation, land clearing, general contracting and well drilling. The owner of the company has reviewed the plans for the widening of R.R. Baker Road, its improved road surface, and the construction of the turnarounds and has stated that his company if prepared to complete the reconstruction of the road. The record includes photographs of the road construction equipment used by the company.

Slopes for the proposed driveway vary between zero and 14 percent. The driveway slopes are indicated on the Applicant's site plan and are stamped by a registered professional land surveyor, David J. Collier. The Applicant also provides a letter from the Pleasant Hill Goshen Fire and Rescue that provides preliminary verification of compliance regarding access to the subject property.

There are several existing culverts that provide drainage for R.R. Baker Road as presently constructed. Two new culverts are proposed, one where R.R. Baker Road meets the proposed driveway and another along the proposed driveway. These culverts must be constructed to meet the Road Fire Safety Design requirements of LC 16.211(8)(e).

8. Based upon contour maps, the homesite is located at least 30 feet from a ravine ridge or slope greater than 40%. The proposed homesite is located on the Philomath soil, which is the soil type with a lowest capability of the soils on the subject property. The homesite is located in an area already clear of timber and developed with a roadway that will be improved to meet driveway standards.

9. The record contains an index of well logs for the township, range, and section within which the subject property lies. The well log for tax lot 506 shows a capacity of eight gallons per minute; the well logs for two wells on tax lot 501 show capacity of 3 and 5 gallons per minute, respectively; and well lots for two wells on tax lot 404 show a capacity of 1.5 and 2.6 gallons per minute. The well log for tax lot 600 shows a capacity of 5 gallons per minute. This data is relevant to LC 16.211(8)(d).

10. The subject property is located within the boundaries of the Pleasant Hill Rural Fire Protection District. The Applicant provides a letter (d. 5/14/2019) from the Fire Protection District that confirms service to the R.R. Baker Road area. Specifically, the review pertains to Map 18–02–11 Tax Lots 501 and 506, which were the tax lot numbers associated with the land that is now Tax Lot 507, the subject property.

A letter in the record from the Pleasant Hill Rural Fire Protection District confirms that the subject property will be serviced by the District and a list of the fire–fighting equipment that the District has access to and would use to fight a fire on the property.[1] The Applicant also provides information regarding the nearest fire station at 36745 Jasper–Lowell Road, approximately 2.5 miles from the subject property. The way of access from the fire station to the subject property involves paved County roads and R.R. Baker Road. Fire Chief Andrew Smith, Pleasant Hill Goshen Fire and Rescue Department took a site view of R.R. Baker Road and the driveway of the subject property on December 6, 2019. Chief Smith had previously taken a site view of the road in regard to an earlier forest template dwelling application regarding tax lot 506. The Chief reviewed updated proposals

[1] Three Type 1Structure Firefighting Engines, three Type 1 Water Tenders, and one rescue vehicle.

for R.R. Baker Road improvements, which included nine turnarounds, and noted that the grade for the road and the proposed driveway was sufficient for Fire Department access. The Chief stated that the proposed defensible space around the proposed homesite, as depicted on the Applicant's site plan, would greatly reduce or eliminate the risk factors of chimney draw effect.

11. The proposed development site accounts for the required primary and secondary safety zones surrounding the dwelling. The primary safety zone is proposed as 30 feet on the east side of the home site. West of the home site, there is a 17% down slope which requires an additional 75 feet of primary safety zone down slope. This requirement is depicted on the applicant's site plan with an 80–foot primary fire break on the west side of the homesite. The primary safety zone with the additional down slope fit entirely within the boundaries of the subject property. Surrounding the primary safety zone will be a secondary safety zone of 100 feet in all directions on property owned or controlled by the owner. The secondary fuel break extends into tax lot 506, to the west. The Goodmans, owners of tax lot 506, have indicated that they would approve an easement for the extension of the secondary fuel break

12. The subject property is bordered on the south by tax lot 600, on the east by tax lot 501, on the west by tax lot 506, and on the north by tax lot 201; all within assessor's map 18–02–11. Tax lot 501, adjacent on the east, has a dwelling. The development site (as amended 5/21/19) is located in the lower one–third portion of the subject property. Tax lots 506, 501 and 508 are owned by Gray and Dorotea Goodman. Tax lots 507 and 509 are owned by Nimpkish LLC, whose registered agents are Gray Goodman and Dorotea Goodman. Tax lot 201 is owned by Betz/Evans Associates. Tax lot 600 is not owned by neither the Applicant nor Gray and Dorotea Goodman

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 19–05298) BY NIMPKISH, LLC FOR A TEMPLATE FOREST DWELLING ON TAX LOT 508, ASSESSOR'S MAP 18–02–11 IS AFFIRMED, with modifications to Condition of Approvals #6 and #13:

6. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(6)(c) and as depicted on the applicant's site plan. **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope, as identified on the Applicant's site plan. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner. For purposes of this approval, the Applicant is deemed to have control over adjacent tax lot 506.

13.c. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of the subject property made usable by means of fill shall be suitable for the intended purpose. Prior to building approval, the Applicants shall submit a Level II geotechnical report to the County. If the building inspector finds problems that would require a restriction on mechanical grading and/or clearing, that issue shall be reviewed by the Hearings Official through a Type III Modification of Decision.

Justification for the Decision (Conclusion)

The subject property is zoned F–2 Impacted Forest Land. The Applicant is requesting approval to construct a single–family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160–acre square template centered on the center of the subject property. In the present case, the Applicant has correctly centered the 160–acre rectangle, that is one mile long and a quarter mile wide, on the subject property. The abutting road is R.R. Baker Road, which is described on a 1982 survey, indicating that the road existed prior to January 1, 1993. The template appears to be aligned with the R.R. Baker Road to the maximum extent possible. Additionally, the placement of a dwelling on non–impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

The allegations of error raised by the Appellant in its appeal are as follows:

1. ***The dwelling on Tax Lot 601, Assessor's Map 18–02–11 did not exist in 1993 and cannot be used to find compliance with LC 16.211(c)(i)(aa)(B).***

The Appellant has argued that the Regional Land Information Database (RLID) does not show a dwelling on the subject property being on the tax rolls between 1993 and 1998.

County records include a mobile home placement permit BP 81–2367 that indicates the placement of a dwelling on the subject property in 1982. RLID actually shows an improvement value of zero from 1998 to 1999. This time frame aligns with the verification of a replacement rights planning action, which secured the replacement rights in 1998. A site–built structure was approved under PA 98–05159 and replaced the mobile home.

As a matter of policy, the Lane County Board of Commissioners has held that a replacement dwelling meets the standard of "continue to exist."[2] In addition, I would point to Multnomah County where this interpretation has been codified into the zoning ordinance.[3] Arguably, if either LUBA or the Oregon Court of

[2] Lane County Board of Commissioners Order No. 16–05–17–06, adopted May 17, 2016.
[3] *West v. Multnomah County*, 70 Or LUBA 235 (2014), 269 Or App 518 (2015)

Appeals would have taken exception to Multnomah County's explicit allowance of replacement dwellings they would have so stated.

Based upon adopted Lane County policy, I must conclude that a dwelling that lawfully replaced a dwelling that was lawfully established on January 1, 1993 meets the "*continues to exist*" standard of Lane Code 16.211(5)(c) and OAR 660–006–0027(3)(b).

This allegation of error is dismissed.

2. ***The Director's decision is not consistent with the protections afforded Major Big Game ranges in accordance with the Lane County Rural Comprehensive Plan.***

The subject property lies within an area designated as Major Big Game Habitat. The Appellant contends that the proposed template dwelling does not comply with the 80–acre minimum density requirement for Major Big Game Habitat mandated by OAR 660–006–0027(1)(d) and (f), and Goal 4, Policy 11 of the Rural Comprehensive Plan.

Lane County's Rural Comprehensive Plan and Chapter 16 of the Lane Code were acknowledged by LCDC in 1984. Big Game Habitat was recognized as a 1C significant Goal 5 resource[4] and the County incorporated some of the protections recommended in two Flora and Fauna Working Papers into the Rural Comprehensive Plan. Thus, Flora and Fauna Policy 11, of Goal 5 of the Rural Comprehensive Plan states that Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game were to be used to determine the allowable number of residential units within regions of the County. This policy stated that any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660–16–000.

The Appellant relies upon LUBA's decision in *Cattoche v. Lane County*[5] for the proposition that density in the Impacted Forest Lands District is determined by the Rural Comprehensive Plan's March 1992 Flora & Fauna Working Paper as it applies to Flora & Fauna Policy #11 of the Rural Comprehensive Plan. The Big Game Range section of the 1982 Flora & Fauna Working Paper[6] notes that the County was to be divided into regions convenient for planning purposes; probably between 10 to 20 regions. Within the regions, excluding the Impacted Big Game Ranges, a residential carrying capacity was to be determined. The ODFW

[4] *Save TV Butte v. Lane County*, LUBA No. 2017–031, Slip Op at 26 (1/18/2018)
[5] *Cattoche v. Lane County*, __LUBA __ (LUBA No. 2018–109, May 22, 2019).
[6] It should be noted that the working papers that support the Rural Comprehensive Plan were not "elements" of the plan and did not carry any authority in and by themselves. Not all of their recommendations were implemented by plan policies although they generally provided information and analysis that supported adopted policies.

recommended a density of one dwelling unit per 40 acres for peripheral big game range areas and one dwelling unit per 80 acres for major big game range areas. Lane County never divided the County into geographic Big Game Range regions and the Appellant has not alleged that its analysis encompasses one of those regions.

It is important to distinguish between the planning work Lane County did in preparation for acknowledgment of compliance and what was actually acknowledged by LCDC. As noted above, the Flora and Fauna Working Paper's strategy of dividing the County up into regions was never implemented.

The DLCD staff report of July 19, 1984 indicates a concern with the minimum lot sizes in the resource zones coupled with a lack of siting and clustering requirements. The minimum parcel size was the County's chosen method to comply with the ODFW recommended maximum densities. The recommended densities –one dwelling per 40 acres in the peripheral big game range –depended entirely on the size of the area being studied. When considering an 80–acre study area, the recommendation would only allow two dwellings. However, the recommendation was intended to apply at a much higher level; which is why the County originally anticipated dividing the County into regions. Ultimately, the County, with the blessing of DLCD and ODFW, decided to rely on minimum parcel sizes to implement the ODFW recommendations. This view is borne out in DLCD's staff report which stated: "*Without siting clustering requirements, the minimum lot sizes in the F–1, F–2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable.)*" At this time, Lane County's proposal was to have a minimum lot size of 40 acres for the F–1 Zone, minimum lot size of 20 acres in the F–2 Zone, minimum lot size of 40 acres in the EFU Zone, and no clustering or siting standards for dwellings.

DLCD staff issued a second acknowledge of compliance report regarding Lane County's Rural Comprehensive Plan and implementing ordinances on September 12, 1984. The recommendation in this report was:

"*Amend the F–2 and EFU zones to carry out the intent of the Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum parcel sizes in the Big Game Habitat portions of those zones, or contain clustering requirements in those areas.*"[7]

Kent Howe, former Lane County Planning Director, and Jim Mann, Former Principle Planner with Lane County, were working on the adoption of the Rural Comprehensive Plan in 1983 and 1984. Their recollection was that at the last hour, facing a negative DLCD staff review regarding compliance with Goal 5 issues dealing with wildlife and big game habitat, Lane County made significant

[7] Pages 24 and 25, September 12, 1984 DLCD supplemental staff report on the Acknowledgment of Compliance for Lane County and Rural Portion of Eugene/Springfield Metro Plan.

changes to how big game habitat was to be protected. Last minute changes included increasing the minimum lot size to 80 acres in the F–2 Zone and adopting siting and clustering requirements in that zone. Where Policy #11 states that "*any density above that limit shall be considered a conflict*" it was referring to when the density prescribed by the minimum parcel size was to be lessened through a land division or rezoning. At that point in time, an ESEE analysis, via a comprehensive plan amendment, would be required.

The template dwelling regulations were adopted by the Legislature in 1993 and subsequently incorporated into administrative rule. These regulations were adopted verbatim by Lane County through a post–acknowledgment plan amendment which was not challenged.

Ultimately, the acknowledged zoning ordinance did not apply the Big Game limitations except in certain circumstances, such as in the Exclusive Farm Use Zone.[8] And in that case only properties lying within a Major Big Game area were affected. No specific siting regulations for forest template dwellings located within a peripheral big game range were adopted by the acknowledged Chapter 16 zoning code. That is, the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations within the Impact Forest Lands Zone. The density recommendations were not applicable to existing parcels but were to be considered only in rezoning and land division applications. Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards.

This allegation of error is dismissed.

3. The Director's decision does not address Goal 7 policies of the Rural Comprehensive Plan addressing areas subject to natural hazards.

The Appellant asserts that the Planning Director has not made any findings regarding compliance with natural hazards policies of the Rural Comprehensive Plan. This is correct as there are no criteria in Lane Code 16.211(5) regarding compliance with these policies.

It is an open argument as to whether the natural hazards policies apply directly to land use applications. My assumption is that they do not but this decision will nevertheless address whether the present application is consistent with those policies. These policies are discussed below:

Goal 7, Policy #1: "*The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a*

[8] See, for instance, Lane Code 16.212(10)(a)(i).

guide for general land use decisions. Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate."

In regard to Policy #1, the 1982 Natural Hazards Working paper does not contain any maps but it does indicate that "*...steep slopes -- specifically those greater than 15 percent -- present severe limitations for development and therefore should normally be left in a natural state.*" Other information in the record includes topographic mapping of the subject property that identify some steep slopes and DOGAMI's landslide map that shows a very high landslide potential for the subject property.

Also included in the record is documentation of a site view of the subject property and R.R. Baker Road by Michael Remboldt, geotechnical engineer and principal with K & A Engineering, Inc. On November 13, 2019, Mr. Remboldt performed a Level I evaluation of slope study of the proposed development site and the road. A Level I evaluation includes a literature search about the geology and geologic hazards of a site, a visual inspection of the site for indicators of active slope movement, and a preliminary stability evaluation. A more detailed description of a level I evaluation was presented by Mr. Remboldt in a December 2, 2019 letter to Mr. Jim Belknap. Mr. Remboldt discussed the findings of his site view in a December 11, 2019 letter to Mr. Jim Belknap, Mr. Remboldt noted that the "*...proposed driveway location does not inherently present a significant landslide hazard.*" He also noted that there was no evidence the R.R. Baker road was the source or was impacted by large-scale deep-seated landslides or debris flow. Mr. Remboldt recommended that a Level II geotechnical investigation occur prior to development. This study would be used by the Lane County Building Inspector at the time a building permit was requested.

Goal 7, Policy #2: "*Development shall be commensurate with the type and degree of any natural hazards(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to the sole means of safeguard against natural hazards.*"

This policy is a little confusing since it states that the provisions of the building code were the sole means of safeguarding against natural hazards in the absence of any specific proposal. It is hard to imagine when the building code would be applied when there was no specific proposal against which to apply those standards. Further, it leaves open the door as to what other methods are required to safeguard against natural hazards when there is a specific proposal. Nevertheless, the policy makes it clear that development must be commensurate with the type of natural hazard present. Mr. Remboldt's recommendation that a Level II geotechnical evaluation occur prior to development is therefore significant and has been integrated into the conditions of approval.

Goal 7, Policy #3: "*When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact, (including financial and economic considerations) of such safeguards on the environment and the public shall be considered.*"

Consistent with Policy #3 is LC 16.005(2) which states:

"*Local governments shall require site-specific soil surveys and geologic studies where potential problems exist. When problems are identified, local governments shall require special design considerations and construction measures be taken to offset the soil and geologic constraints present, to protect life and property, public investments, and environmentally-sensitive areas.*"

In regard to Policy #3, the Level I geotechnical evaluation did not identify extensive or drastic safeguards that had to be employed in conjunction with the Applicants' development proposal. However, the location of the development within a very high landslide hazard area is an indication that potential development problems may exist. Thus, Mr. Remboldt wisely recommends that this evaluation be a prelude to a more comprehensive evaluation (Level II) when the actual development is proposed through the building permit process.

In a prior appeal of a template dwelling in the general area of the subject property[9], this Hearings Official addressed the implications of the *Rhyne* case[10] in regard to LC16.005(2). In its decision in the *Rhyne* case, LUBA noted that local government had the option of deferring its determination of compliance of a standard to a subsequent proceeding. Lane County has a process where an applicant may be compelled to apply for a Type III Modification of Decision[11] when a substantial change in an approved application is necessary. This review would be before the Hearings Official and would require notice to the Appellant.

Thus, the building inspector will review the Level II geotechnical report provided by the Applicants' engineer. Section 1803 of the Oregon Structural Specialty code gives the Building Official the authority to require and review geotechnical information. If the Building Official finds problems that would require a restriction on mechanical grading and/or clearing, that issue would be reviewed by the Hearings Official. Condition of Approval #13 has been modified to reflect this change.

This allegation of error is dismissed.

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[9] *Application of McDougal Bros. Investments*, Lane County Hearings Official decision in PA 19-05768 (11/12/2019)
[10] *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992).
[11] As authorized by LC 60.851(3).

4. The County cannot approve multiple forest template dwellings on a tract.

Lane Code 16.211(5)(a) states that a template dwelling may not be approved if it is part of a tract that already contains a dwelling. ORS 215.010(2) defines "tract" as one or more contiguous lots or parcels under the same ownership. The Appellant argues that tax lots 501, 506, 507, 508 and 509 are a tract.

The subject property is owned by Nimkish, LLC. It is bordered on the west by tax lot 506 and on the east by tax lot 501. Both properties are owned by Gray & Dorotea Goodman. On the north the subject property is bordered by tax lot 201, owned by Betz/Evans Associates. On the south it is bordered by tax lot 600, which is not owned by either Gray & Dorotea Goodman or the Applicant.

As explained in Finding of Fact #12 above, Gray and Dorotea Goodman, are the registered agents of Nimpkish, LLC. The Goodman's have a membership interest in the limited liability company which is personal property but do not have "ownership" of the property.

The term "ownership" must be distinguished from the term "control." The former has a very precise legal meaning. For example, two contiguous parcels, one owned by Mr. and Mrs. Smith, tenants in entirety, and one owned by Smith, LLC, whose members are Mr. and Mrs. Smith, would not be under the same legal ownership. In the former, legal liability would attach to the collective assets of Mr. and Mrs. Smith, while in the latter example liability will be limited to the assets "owned" by the LLC. Thus, in the present case, if Nimpkish, LLC is sued then tax lots 507 and 509 might be in jeopardy but normally tax lots 501, 506 and 508 would not.

This allegation of error is dismissed.

5. The application does is not consistent with the minimum fuel break standards of LC 16.211(8)(c).

The proposed development area is located in the southwest corner of the subject property. The secondary fuel break is contained within the subject property except on the west, where is encroaches into tax lot 506. This issue concerns whether the Applicant has control over tax lot 506 and therefore must receive an easement for the fuel break from the owners of that parcel; Gray & Dorotea Goodman. As addressed above under Allegation of Error #5, the term "control" is different from the term "ownership." In the present case, Gray & Dorotea Goodman are the only registered agents of Nimpkish, LLC and are the owners of tax lot 506. It is therefore evident that the Applicant, as it is constituted, has control over tax lot 506. Accordingly, Condition of Approval #6 has been modified to explicitly require that the secondary fuel break extend into tax lot 506.

This allegation of error is affirmed.

Summary

Based upon evidence in the record, and minor modifications to the Director's conditions of approval, I believe that this application for a template dwelling complies with LC 16.211(5)(c)(i)(aa) and LC 16.211(5)(c)(i)(bb) and otherwise complies with the applicable approval standards of LC 16.211(5)(c)(iii) and (8). I further believe that the application, as conditioned, is consistent with applicable policies of the Rural Comprehensive Plan. The Director's decision, with modifications, is therefore affirmed.

Respectfully Submitted,

Gary Darnielle
Lane County Hearings Official

LAND MANAGEMENT DIVISION

Date Received:

RECONSIDERATION REQUEST OF HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT *3050 NORTH DELTA HIGHWAY, EUGENE OR 97408*
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only. FILE # *FEE:*

Appellant: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____ Date: _____

LOCATION (subject property)

_____
Assessor's Map and Tax Lot

This form is required for request for reconsideration of a Type III Hearings Official decision or a Hearings Official decision on an appeal of a Type II Director decision. Please note that your appeal application requesting reconsideration will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). A notice of appeal must be filed with the Director prior to 4 p.m. Pacific Time 12 days after the date the notice of decision is mailed (see deadline specified on the decision).

1. A copy of the decision being appealed, with the Department file number: _____ and the date of the decision_____

2. The $1,216 appeal fee, payable to Lane County.

3. The appeal deadline, as stated in the Hearings Official's Decision: FEB 18 2020

4. Address each of the following:

   a. Check one of the items below demonstrating how the person filing the appeal is a party as that term is defined in LC 14.015(22) with the right to appeal the Hearings Official's decision:

      ☐ I am the applicant for the subject application;

      ☐ I am the owner or contract purchaser of the subject property;

Revised on 12/2019

☐ Prior to the decision, I provided testimony before the Hearings Official;

☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision and my appeal submittal identifies how I qualify as a party (provide written description).

b. Please provide a written statement explaining the reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

c. Please provide an explanation with detailed support specifying one or more of the following assignments of error, or request for reconsideration:

☐ The Hearings Official exceeded his or her authority;

☐ The Hearings Official failed to follow the procedure applicable to the matter;

☐ The Hearings Official rendered a decision that is unconstitutional;

☐ The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria; or

☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

d. Include any additional information in support of your appeal.

5. Per Lane Code 14.080(4)(a), if the applicant is requesting reconsideration, the applicant must first agree to extension of any statutory application timelines, and such extension must be in addition to any other extensions already given.

Notes:

- Lane County Ordinance No. 19-03, the adopting Ordinance for Lane Code Chapter 14 that regulates the Hearings Official decision and appeals process is under appeal to the Oregon Land Use Board of Appeals (LUBA). In the event that an appeal to LUBA results in a remand or reversal, the Ordinance will no longer be effective and the applicable version of Lane Code Chapter 14 will revert back to Lane County Ordinance No. 14-09 (December 2014).

- An appeal of a Hearings Official decision to the Lane County Board of County Commissioners is no longer allowed per the regulations of Lane Code Chapter 14 (Lane County Ordinance No. 19-03).

509-PA19-05298
NIMKISH/BELKNAP
02/06/2020

MIKE EVANS
475 OAKDALE AVE
SPRINGFIELD OR 97477

NIMPKISH LLC
86690 R R BAKER RD
SPRINGFIELD OR 97478

JAMES BELNAP
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COTTAGE GROVE OR 97424

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MICHAEL FARTHING
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SEAN MALONE
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MICHAEL REMBOLDT
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ANDREW MULKEY
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KEIR MILLER

AMBER BELL

LINDSEY EICHNER

Additional Information Submitted

Date Stamp
RECEIVED
JAN 2 3 2020

Submitted By: Michael E. Farthing
Phone Number: 541-683-1950
Email Address: Mefarthing@yahoo.com
Project Address:

Permit Number (BP, PA, SP, SI): **509-PA-05298 (Nimpkish LLC)**

Submittal Description:
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County / Applicant's (Nimpkish LLC) Second Final Rebuttal

Type of Submittal:

ATTEN: Rachel Serslev

☐ Additional Information ☐ Deferred Submittal
☐ Response to Plan Review Comments $_____ Value of deferred work:
☐ Revisions to Approved Plans
☐ Other:_____

Office Use Only: Route to:_____ Amount Due:_____
☐ Approved ☐ Applicant contacted
How will fees be paid? ☐ In person ☐ Online ☐ By phone

Web 12/6/2018

Michael E. Farthing

Attorney at Law

462 Kodiak Street
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email: mefarthing@yahoo.com

January 23, 2020

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **509-PA-05298 (Nimpkish LLC)**
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County
Applicant's (Nimpkish LLC) Second Final Rebuttal

Mr. Darnielle,

Please enter this letter into the record of the above-referenced appeal that I am submitting on behalf of the Applicant, Nimpkish LLC., and in support of the Director's decision and findings. It is the Applicant's Second Final Rebuttal and by this reference I incorporate the Applicant's First Rebuttal, my letter dated December 2, 2019, into this final statement.

The appellant, LandWatch, through its attorney, Sean Malone submitted a letter dated January 16, 2020, that was supposed to respond to the evidence that Mr. Belknap and I submitted on December 18, 2019, during the extended open record period. Instead, Mr. Malone's response, with some minor additions, is the same letter that he and LandWatch submitted as their final response in their appeal of the Director's approval of a template dwelling application for the parcel located west of and adjacent to the subject property (PA 19-05299, Goodman, "#299").

Due to the overlapping similarities of the two propert6ies as well as the fact that LandWatch doesn't really care about siting or template criteria at this point in the appeal, it is both efficient and appropriate for me to include in this appeal record, pages 1-3, of my response to Mr. Malone in #299, copy of which is

attached as Exhibit "A" and by this reference incorporated herein. Everything I said in the earlier letter applies equally to the present Response. I will provide further comment later in this letter.

Belknap Final Rebuttal

As he did in his #299 final rebuttal, Mr. Belknap has prepared a detailed and thorough response to the arguments and allegations that primarily LandWatch has raised during the course of this appeal. The topics range from site specific matters like neighboring well logs and site and driveway slopes to trying to discern the relevance of a 1993 letter directed at then HB 3661. Much of Mr. Belknap's letter is directed at a specific criterion or siting standard, e.g. location and spacing of turnarounds in RR Baker Road, the private access road, together with an evidentiary response.

For the aforementioned RR Baker Road, there is both the site plan showing the specifications of the road as required by County road standards as well as the recorded easement document that clearly allows the existing the Applicant to make the changes to road that are required as a condition of approval. Due to the shared use of the road with existing dwellings, these road upgrades will benefit all users of the road as well as improve access for fire fighting access..

The point is that we, Mr. Belknap in particular, have submitted substantial and relevant evidence addressing all of the applicable template dwelling criteria and siting standards and especially those highlighted by LandWatch. Since the September 26 hearing, LandWatch and 1000 Friends have not presented any conflicting or contrary evidence that challenged any of the site specific evidence that has been submitted by the Applicant especially since the initial open record period that ended on November 7, 2019. At that time LandWatch and 1000 Friends submitted a variety of documents including a Big Game working map, slopes map and landslide susceptibility map from Mr. Malone and a potpourri of documents, business records and maps that Mr. Mulkey placed into the record. It is fair to say that little of this information has any direct relevance to the template dwelling criteria and standards and, almost all of it seems to have no purpose other than to be in the record. After that, neither Mr. Malone or Mr. Mulkey have provided any kind of clear and relevant explanation as to what these documents are attempting to prove, disprove or whatever.

After these initial submittals to which we, and again, in particular, Mr. Belknap, responded with more evidence that included additional responses from Mr. Remboldt and Chief Smith. At that point, 1000 Friends dropped out of the appeal process and the Second Open Record period allowed Mr. Belknap and I to present more evidence which included Ms. Davies' *Green* decision. Also included was Exhibit "F" to my Decmber 18, 2019, Supplemental Evidentiary Submission, which was copy of Ordinance 5-02, adopted by the Lane County Board of Commissioners on August 28, 2002, and entitled "IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO MODIFY FARM AND FOREST ZONE CLASSIFICATIONS AND REGULATIONS (LC 16.080, LC 16.100, LC 16.211 AND LC 16.212) AND DECLARING AN EMERGENCY". As noted previously, this ordinance adopted the current F-2 zoning ordinance with the template provisions. Also, the reason why the County adopted these provisions was to make its F-2 zone "consistent" with State law and regulations. What other kind of acknowledgment is required when the County's zone is modified to be consistent with the Legislature's and LCDC's forest zoning provisions? LandWatch and Mr. Malone have no response.

With all that Mr. Belknap submitted that was directly responsive to initial allegations made by LandWatch and 1000 Friends regarding the actual criteria, it is important to note that neither Mr. Malone, Mr. Mulkey or Ms. Segal have submitted any response to that voluminous evidence regarding slopes, soils, road improvements and all the other items to which Mr. Belknap has summarized in his most recent final rebuttal. Together, Mr. Belknap's two final rebuttals highlight and summarize the evidence that has been submitted since the public hearing. LandWatch and 1000 Friends have not provided anything that refutes this evidence other than their continued pursuit of the Goal 5 windmill.

POLICY 11 AND LANE COUNTYS' ACKNOWLEDGMENT

Much has been written by all the parties in this appeal. Our position, as explained in Exhibit "A", is very simple. The Lane County Rural Comprehensive Plan was acknowledged by LCDC on September 13, 1984. *See* Exhibit "A", Belknap Letter (11-06-19). Goal 5, Policy 11 was acknowledged as part of that LCDC acknowledgment. As described in Mr. Mann's letter and more explicitly in the attached copy of LCDC's Acknowledgment Order, "the intent of Flora and Fauna Policy 11 was "met" by the County's adoption of new language for the F-2 and EFU zones that provided a balancing of "setback standards" . . . with the siting

requirements. Attached as Exhibit "B" is copy of LCDC's acknowledgment determination for Goal 5, Flora and Fauna Policy 11. The "requirement" has been met so declared the 1984 Acknowledgment Order. There was a direct link between Policy 11 and the F-2 zone that was created by LCDC's direction that the zone needed to be modified in order to "carry out the intent" of Policy 11.

Mr. Malone and LandWatch skip that part about the 1984 Acknowledgment and this simple conclusion by LCDC. Of course, to acknowledge (no pun intended) such, would mean that land use decisions made in accordance with the acknowledged plan does not have to address Policy 11 because its intent was carried out in LCDC's 1984 Acknowledgment Order. Policy 11 was acknowledged and so was the modified F-2 zone. ODFW density recommendations were addressed as part of this process.

Mr. Malone points to the March, 1984 staff report which preceded the final staff report and then the Acknowledgment Order.

Relying on something that was superceded in the process makes no sense. Further, what he quoted was irrelevant to the end result. However, based on those quotes from objectors, Mr. Malone creates the "explicit understanding" of how Policy 11, thirty-six years after it was acknowledged, should now be "implicated" in any template application that exceeds Policy 11's density requirements. You've got to be kidding! Mr. Malone, there is absolutely no evidence, law, ruling or anything that supports your claim that there was an "explicit understanding" in 1984 that the Commission had when it acknowledged Policy 11. The longer we go, the more absurd LandWatch becomes with its legal theories.

WHERE'S ODFW?

The elephant in the room for this appeal is really the obvious absence of ODFW from this and any other template dwelling application in Lane County over the last twenty-five years. LandWatch and Mr. Malone have placed Policy 11 at the center of their Goal 5 applicability argument and, of course, Policy 11 features ODFW "recommendations on overall residential density". These "recommendations" were made by ODFW in 1983-1984 leading to the September Acknowledgment Order. Mr. Malone's letter even quotes ODFW objections prior to the Final Acknowledgment in his letter. ODFW was an active participant in the public process before final acknowledgment.

With all that going on, including the "explicit understanding" of the Commission, the question now, thirty-six years later, is: Where is ODFW? If Policy 11 means that ODFW's density recommendations must be addressed for these and virtually all other F-2 template dwelling application in Lane County, then why isn't ODFW out-front with this argument? Why hasn't ODFW joined forces with LandWatch in what would be a major shift in County policy and consideration of future template dwelling applications? Where's ODFW?

The most obvious answer is that they have no standing or interest in this matter since their Policy 11 was addressed in 1984. Policy 11 possibly arises with a plan amendment application. Even then, specific circumstances will dictate the level of scrutiny that will be paid to Policy 11.

In this case, it is obvious that ODFW does not believe Policy 11 applies for all the reasons previously announced. That's why ODFW is not here in this appeal.

CONCLUSION

We urge you to affirm the Director's decision with conditions you deem appropriate. The record is complete and substantial and this template dwelling application should be approved together with its sidekick, PA 19-05298

Sincerely,

Michael E. Farthing

Enclosure

c: Gary Darnielle (via email)
Rachel Serslev (via email)
Nimpkish LLC (via email)
Jim Belknap (via email)
Sean Malone (via email)
Andrew Mulkey (via email)

Michael E. Farthing

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January 16, 2020

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Shawna Adams, Associate Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **PA 19-05299 (Gray and Dorotea Goodman)**
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County
Applicants' Final Rebuttal

Mr. Darnielle,

Please enter this Final Rebuttal into the record of the above-referenced appeal that I am submitting on behalf of the Applicants, Gray and Dorotea Goodman, and in support of the Director's decision and findings.

Malone Letter (01-09-20)

In his final response, Mr. Malone focuses solely on Goal 5 and why he claims it is "specific and mandatory". As support for this conclusion, Mr. Malone begins with a claim that Ms. Davies, in her *Green* decision, failed to grasp the subtleties of the *Cattoche* decision that rendered it "at odds" with Ms. Davies' Goal 5 analysis in *Green*. Mr. Malone doesn't say how those two decisions are "at odds" but only because he claimed that to be the case. He also claims the County never adopted minimum acreages even though when Lane County's Rural Comprehensive Plan ("the RCP") was adopted and acknowledged in 1984, the F-2 zone had variable parcel sizes depending on soil types and the F-1 zone didn't then and still does not allow residences. 80 acres has been the minimum parcel size in the F-2 zone since the adoption of HB 3661 in 1993.

Exhibit "A" - Page 1

The fatal flaw of Mr. Malone's analysis is he is relying on documents (June and July, 1984 staff reports) that were subsequently absorbed into LCDC's ultimate requirement that the F-2 and EFU zones must be amended "to carry out the intent of Flora and Fauna Policy 11". See Belknap Letter (12-11-19) Exhibit 11, p 25-26. Lane County responded and LCDC found this requirement had been satisfied. LCDC concluded that the "intent of Flora and Fauna Policy 11" had been carried out by Lane County. The County had fully addressed the "intent" of Policy 11 to the satisfaction of LCDC. Big Game Habitat was acknowledged to be protected by the forest zoning that was adopted at the same time. Goal 5, Policy 11 had no more relevance then nor does it have any now with respect to the approval of forest residences. The parcel sizes that were established in 1984, together with the residential prohibition in the F-1 zone, is what fully confirmed LCDC's acknowledgment of the County's protection of Big Game Habitat.

Despite Mr. Malone's attempt to "bootstrap" Policy 11 into the template dwelling criteria, the County's final response in 1984 to LCDC requiring that "the intent of Flora and Fauna Policy11" be carried out was all that was required. Unless there is some type of post-acknowledgment plan amendment ("PAPA") which, as in *Catttoche*, triggers consideration of the Goals, including Goal 5 and Policy 11, there simply is no vitality remaining in Policy 11 for application to individual land use applications of any sort. Mr. Malone cites to objections made by 1000 Friends and ODFW regarding Policy 11 earlier in 1984 all of which were folded into LCDC's Requirement 2d that "the intent of Flora and Fauna Policy 11" be carried out. That intent was carried out, the objections were addressed and Goal 5 was acknowledged. Mr. Malone, Mr. Mulkey and the rest of LandWatch have never accepted or explained why the 1984 Goal 5, Policy 11 acknowledgment, is not conclusive as to Policy 11's lack of relevance to forest dwelling applications.

Fortunately, after four pages of opinions, conclusions and speculative conjecture about the applicability of Policy 11 to forest template dwelling applications, Mr. Malone finally reveals at the end of his letter the real legal justification for why he and LandWatch believe Policy 11 applies in these circumstances:

> " The simple conclusion culled from the staff

> reports is that the Commission approved the acknowledgment order under the explicit understanding that Policy 11 would be implicated where proposals exceed the residential density recommendation. This is one such proposal because the residential density far exceeds ODFW's recommendations."

(Emphasis Supplied). Wow! I was not familiar, until now, with the "explicit understanding" form of law or regulation or whatever it is.

Of course, Mr. Malone does not explain or provide the details of this "explicit understanding" legal theory nor does he have a single piece of physical evidence to support this "understanding". Neither Mr. Howe or Mr. Mann were aware of this "understanding" even though they were present when this all occurred. Mr. Darnielle, since you were also there at ground zero when all this was happening, perhaps you could comment on Mr. Malone's claim that "the Commission" acknowledged Lane County's RCP with its "explicit understanding" that Policy 11 would be applied to individual applications after acknowledgment?

What makes this assertion even more ridiculous, if such is possible, is that Mr. Malone expects you and me to believe that this previously unknown "explicit understanding" by the Commission (LCDC) and its staff (DLCD) has lain dormant for thirty plus years, only now to be uncovered by LandWatch and its followers. Where has it been for all these years — the "explicit understanding" theory of Policy 11 applicability? Is it written down anywhere other than in your letters to the County's Hearings Officials? Are you seriously making this allegation about a thirty-four year old "explicit understanding"?

Enough said about this most recent Malone letter. It has reached a new level.

Final Rebuttal

During the course of preparing for and participating in the November 14 public hearing, Mr. Belknap and I identified certain criteria and related issues that we wanted to address with evidence in various forms and enter those items into the

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

Exhibit "B" - Page 1

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(1)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

Additional Information Submitted

Date Stamp
RECEIVED
JAN 21 2020

Submitted By: Jim Belknap
Phone Number: 541-954-2944
Email Address: jim.e.belknap@gmail.com
Project Address: _____

LANE COUNTY OREGON

Permit Number (BP, PA, SP, SI): PA 19-05298
Submittal Description: Final Rebuttal to Re-Opened Record

Type of Submittal:

☐ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other: _____

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: Rachel Serslev Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fees be paid? ☐ In person ☐ Online ☐ By phone

sivin 12/26/2018

0030

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

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E-Mail: jim.e.belknap@gmail.com

Gary Darnielle
Lane County Hearings Official
c/o Rachel Serslev, Planner
3050 North Delta Highway
Eugene, OR 97408

January 20, 2020 Personally Delivered
Copy by email to: Rachel.serslev@lanecountyor.gov

Re: PA19-05298, Final Rebuttal
Lane County Tax Lot 18-02-11-00-00507

Dear Mr. Darnielle:

Please enter these comments into the record in our final rebuttal of submissions having been tendered in the appeal of PA19-05298.

While I understand the appeal process allows virtually unfettered opportunity to offer comments on an application, the submissions by LandWatch Lane County and 1000 Friends of Oregon have created a vexatious process that strikes at the underpinnings of our county's land use system. It has been disheartening.

I would like to submit, in as brief a manner as possible, a summary of what has been presented to support the application of the owner of the subject property. The owner is a limited liability company registered as NIMPKISH, LLC. The application is for approval of a Special Use Permit allowing the placement of a dwelling under the Template Test provisions of the F2 zoning, Lane Code 16.211(5) and (8) on property known as Tax Lot 18-02-11-00-00507. In addition I will attempt to summarize the voluminous information we have presented to defend the decision of Lane County to approve that Special Use Permit and to request the dismissal of the appeal filed by LandWatch.

Gary Darnielle
PA19-05298
Final Rebuttal
January 20, 2020

The Appellants have presented a fallacious and error riddled argument that the application submitted by NIMPKISH, LLC fails to meet the standards of Lane County Code and Oregon Administrative Rules. The arguments of this appeal are the same as have been made in the appeals filed by LandWatch of other applications for a Template Dwelling Special Use Permit and dismissed. Notably, the August 8, 2018 dismissal of the appeal filed by LandWatch in PA17-05951, commonly referred to as the *Betz* decision, specifically went to the point: "...the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game density standards." Continuing: "...residential development was limited in Big Game Habitat areas and further restriction of development was not necessary to comply with Statewide Planning Goal 5." We provided a copy of the Betz decision as Item No. 8 in our presentation at the November 14, 2019 hearing.

Most recently was the decision made in PA 18-05913, commonly referred to as the *Green* decision. A copy of the *Green* decision was submitted into the record by the attorney for the Applicants, Michael Farthing, and mirrors the elements of consideration to be made in this case.

Of note, Sean Malone, attorney for the Appellants, states the Hearings Official in *Green* is wrong but then fails to provide case or statutory law to support his claim.

Mr. Malone has repeatedly attempted to rely upon a Land Use Board of Appeals decision in the *Cattoche* case, which is picked up and echoed by Andrew Mulkey representing 1000 Friends of Oregon. The position of Mr. Malone and Mr. Mulkey appears to be that somehow Lane County is derelict in not addressing Goal 5 and the Flora and Fauna Working Paper of 1982 in its discussion of Big Game Habitat. As we presented at the hearing, and as was confirmed by the Hearings Official in the *Green* case, *Catooche* dealt with an application for a Comprehensive Plan Amendment and Zone Change to re-zone a parcel of land from F2 forestland to Rural Residential, 5 acre minimum parcel size. In an application for an amendment to the Comprehensive Plan, such as in *Catooche,* it may be totally relevant to review the evidence that was relied upon in 1984 in obtaining the acknowledgment by LCDC of the Comprehensive Plan, but the matter of dwellings in the F2 zoned lands of the county was settled in 1984. The application in 2019 for a Template Test Dwelling is not subject to a re-evaluation of matters that were addressed and accepted at the time the Comprehensive Plan was acknowledged. The comparison of a Comprehensive Plan Amendment/Zone Change to a F2 Template Test Dwelling is apples and oranges.

Gary Darnielle
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Mr. Malone and Mr. Mulkey appear to be arguing that in any application for a Template Test Dwelling in the F2 zone if the parcel in question is smaller than 40 acres in Peripheral Big Game Habitat or 80 acres in Major Big Game Habitat then an Economic, Social, Environmental and Energy Analysis (ESEE analysis) is required. I would argue that the elimination of this need was precisely the point in the acknowledgment of the County's Comprehensive Plan in 1984.

The Appellants have repeatedly insisted that Lane County is in error in having failed to somehow obtain a "re-acknowledgment" of their Comprehensive Plan at the time the F2 zoning code was changed to provide for the Template Dwelling Test. What the Appellants have consistently refused to admit is the fact that the F2 zoning code, as it was re-written in 1993 under the mandates of House Bill 3661, and acknowledged by the Department of Land Conservation and Development, was fully in compliance with the Comprehensive Plan as it was acknowledged. No further action was needed on the part of Lane County or the State of Oregon, Goal 5 had been successfully addressed nine years earlier. This is at the heart of the *Green* decision.

Are we really to believe that Lane County has operated without an acknowledged Comprehensive Plan for 27 years?

The Appellants have stated the F2 Code fails to recognize the matter of "residential density" as recommended by the Oregon Department of Fish and Wildlife (ODFW) and incorporated into the Flora and Fauna Working Paper of 40 acre parcels in Peripheral Big Game Habitat and 80 acre parcels in Major Big Game Habitat. Conspicuously, and precisely to their point of error, the Appellants have left out the word "overall" as it has been included in every discussion of density by ODFW. Overall density.

The adoption of the F1 zoning, and its prohibition of residences, applied to 94.4% of the forest zoned lands of Lane County. The F2 zoning, where under strict limitations dwellings are allowed, is applied to 145,356 acres of the 2,595,131 acres of the county's forest zoned land, 5.6%. Contrary to Mr. Malone's claim that we have been unable to cite the source of this data, these numbers are taken directly from Page 22 of the September 13, 1984 Acknowledgment of Compliance from the Land Conservation and Development Commission of the Lane County Comprehensive Plan, a copy of which we provided as Exhibit 11 to my letter of December 11, 2019. This describes exactly the concept of **Overall Density** as was being sought by ODFW and substantially exceeds the goals of the department.

It was LCDC's acknowledgment that the prohibition of dwellings in the F1 zoning, unique in all of Oregon to Lane County, established the conformance with the ODFW overall residential density standards for Big Game Habitat in the forest zoned lands of the county. Thus the objectives of Policy 11 and the requirements of Goal 5 were met. The Appellant's refusal to acknowledge the definition of overall density is at the core of their failed argument.

Among the limitations placed on the approval of dwellings in the F2 zoned land are the siting standards specifically discussed in 1984 by LCDC in their acknowledgment of the County's Comprehensive Plan. See Pages 25 and 26 to Exhibit 11 of my December 11, 2019 letter. Those siting standards remain in effect today in the Template Test provisions of County Code and were adhered to in the application submitted by NIMPKISH, LLC.

The process of acknowledgment was described in its historical context in letters from James Mann, the retired Senior Planner for Lane County, and Kent Howe, the former Director of Land Management for Lane County, who were directly responsible for obtaining the acknowledgment of the County's Comprehensive Plan. Copies of Mr. Mann's and Mr. Howe's letters were included as Exhibits A and B, respectively, in Mr. Farthing's letter dated November 7, 2019.

Laurie Segel, writing on behalf of LandWatch, submitted an email dated December 29, 2019 attaching a copy of a letter from a Ms. Aileen Kaye submitted to the Oregon House Committee on Natural Resources regarding House Bill 3661 and placed into the Committee record on May 10, 1993. In her email Ms. Segel also bemoaned that the letters of Mr. Mann and Mr. Howe were not "signed in the presence of a notary." While Ms. Kaye's letter to the Oregon Legislature is a puzzlement to me as to how it possibly pertains to the issue of PA19-05298, regarding the question of Mr. Howe and Mr. Mann failing to have their letters signed before a notary I can only ask the question: So? Is it Ms. Segel's assertion that we have forged the signatures of Mr. Mann and Mr. Howe?

Ms. Segel offers a disingenuous claim of innocence in stating that LandWatch has not made a "personal jab at Mr. Howe..." She then goes on to state:

> "The fact is that Mr. Howe has never shied away from colluding with the developers and their agents, as the attached letter shows." (Apparently this is the letter from Aileen Kaye, referenced above.)

Gary Darnielle
PA19-05298
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For not having taken a personal jab at Kent Howe, this is a pretty good swipe and personally, I find it spurious. Ms. Segel's comments regarding these two public employees are beneath further discussion.

As I noted in my letter of January 14, 2020 Ms. Segel continues to confuse the difference between "legal lots" – lawfully established units of land, as defined in ORS 92.010(3) – and tax lots, an identifying account number for taxation purposes. The appellants have made the issue of "density" as part of their objection. Our point is since the adoption of the current F2 zoning in 1984 and the minimum lot size of 80 acres as mandated by House Bill 3661 in 1993, the creation of lots by partition or subdivision has become a virtually unknown event. The effect of this change has been to establish what is, by anyone's definition, a finite number of parcels within the F2 zone: those created "By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations." ORS 92.010(3)(a)(B)(ii).

The effect of this situation is the number of parcels that can be recognized as having been lawfully established, a Legal Lot, is what has existed for most of Lane County since March 26, 1975 (the date of adoption of planning, zoning and subdivision ordinances for the vast majority of the county and applicable to the subject property); that is a finite number. The number of lawfully created units of land taken in the context of the total land base, the definition of density, has remained unchanged by any measureable amount. We simply are not creating new parcels. The work of NIMPKISH, LLC, the owner of the subject property, has not resulted in the creation of a "new" parcel, as is asserted by Ms. Segel. There has been established a new tax lot for identification purposes of the Lane County Department of Assessment and Taxation, but not a new Legal Lot

As is discussed by the Lane County Land Management Division, tax lots are not necessarily Legal Lots, tax lots may have more than one Legal Lot within them. The Appellants simply do not get that and continue to file meritless appeals, as was previously filed, and dismissed, with the subject property.

Tax lots are assigned when a conveyance occurs. When a deed or other conveyance goes of public record the cartographer's office of the Department of Assessment and Taxation examines the instrument and if the legal description is different than that previously recorded for the tax lot in question a new tax lot is assigned. After all these years it is disappointing that the Appellants simply refuse to acknowledge this process.

Gary Darnielle
PA19-05298
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Contrary to Ms. Segel's assertion that this process was somehow "hatched by the developers and the agents in the mid-1980's, a practice that both Mr. Mann and Mr. Howe enabled" one can only say: they carried out the law that was passed by the Oregon Legislature. Period.

As to the letter authored by Aileen Kaye I am simply perplexed as to how this is relevant to the approval of a Template Dwelling in the F2 zone. Seriously? We are to expect that a copy of a letter submitted regarding House Bill 3661 in 1993 reporting on an eavesdropped conversation in a restaurant in Salem is to be considered as evidence in this appeal?

The Appellants have attempted to argue that the application submitted for Tax Lot 507 must be denied as the parcel is part of a "tract." The adjoining parcels are under completely different ownership from that of Tax Lot 507. Title to Tax Lots 501 and 506, the adjoining parcels, is vested in Gray and Dorotea Goodman as husband and wife. Mr. and Mrs. Goodman, as has been correctly noted by the Appellants, are the members of NIMPKISH, LLC. It is appropriate to note in discussing a limited liability company that ORS 68.239 sets forth:

> "Nature of membership interest. A membership interest is personal property. A member is not a co-owner and has no interest in specific limited liability company property."

This point was driven home by Michael Farthing, legal counsel for the Applicants, at the September 26, 2019 hearing of the appeal.

In Exhibit 14 of my December 11, 2019 letter I presented an informational handout from Cascade Title demonstrating the difference between individual ownership such as is held by NIMPKISH, LLC in Tax Lot 507 and that of the Mr. and Mrs. Goodman in the adjoining parcels.

I have previously commented, and stand by the comment, early on in their legal training Mr. Mulkey and Mr. Malone should have obtained an understanding of the differing vesting of title in the subject property and the adjoining properties.

In our application we presented an item by item discussion of the requirements of the Template Test standards set out in Lane Code.

1. The soils were reviewed and summarized, the 160 acre template test was applied to the subject property and the required minimum number of parcels and dwellings was identified.

At the appeal hearing on September 26, 2019 the Appellants filed a specious objection to the approval, asserting one of the dwellings included in our Template Test count, that located on Tax Lot 18-02-11-00-00601, was not established on or before the required date of January 1, 1993. This exact same challenge had been made in the *Betz* application and dismissed. We noted this at the hearing and also noted that the Staff Report showed a total of five dwellings as being located within the template, so the argument that the application failed to establish the requisite three dwellings was meritless. The Appellants remained undeterred.

2. We prepared maps depicting the proposed dwelling site with an overlay of contour lines on the site plan showing the outline of the footprint of the dwelling and the required primary and secondary fuel breaks as well as a map of the entire parcel showing the relative terrain of all of Tax Lot 507. The maps were prepared by Dave Collier, a Registered Surveyor in the State of Oregon, and showed the dwelling to be located on the most level portion of the property when the required minimum 100 foot setback from adjoining lots or parcels was considered. The adjoining property to the west is 111 feet away, to the south the adjoining property is approximately 180 feet. We also showed access provided by a driveway to be constructed that met the standards of Lane Code for grade, width and fire-fighting protection.

3. As was shown in the soils map with the application the parcel is split between higher value forestland soils and extremely low quality forestland soils; we showed the proposed building site to be located in the area of lowest quality forestland capability, Soil Type 107C, Philomath Silty Clay, at a 3-4% slope and having a forest capability estimated by the Oregon Department of Forestry at 45 cubic feet per acre per year. Notably, given the extremely low level of production, the NRCS chooses not to rate this as a forest soil type.

4. In our application we presented a letter from Chief Andrew Smith, fire chief for the Pleasant Hill-Goshen Fire and Rescue Department, summarizing his site review of the parcel and his opinion that the proposed access road, R. R. Baker Road, would meet the access requirements of his agency. We also had Chief Smith present another letter

summarizing the equipment available by his agency to respond to a fire. The reports from Chief Smith discussing his on-site review of the property were questioned at the hearing specifically to the point of his assessment of grade for R. R. Baker Road, the access road to the subject property, our proposal for turn-around points, the grade of the driveway proposed to the building site and the matter of "chimney draw effect."

Chief Smith conducted a second site inspection on December 6, 2019 and issued the letter dated December 9, 2019 which we attached as Exhibit 2 to my letter of December 18, 2019. In his letter Chief Smith reaffirmed that R. R. Baker Road and the proposed modifications in our application would meet their access requirements for fire-fighting equipment. Chief Smith also confirmed the proposed driveway would be acceptable and noted our proposed development would "greatly reduce or eliminate the risk factors of chimney draw effect."

In the conditional approval of the Special Use Permit it was noted by County Staff that the subject property is within an area of many hundreds of acres mapped by the Oregon Department of Geology and Mineral Industries, DOGAMI. In a broad stroke brush application, the subject property is shown as having a very high landslide susceptibility. The conditional approval then outlined the Lane County policy for such lands and the responsibility that would fall to an applicant for a building permit to address a geotechnical study satisfactory to the Building Department of Lane County for the actual dwelling to be constructed. This condition was identified among the elements of the appeal filed by LandWatch.

We retained the services of Michael Remboldt, a licensed Professional Engineer and Geotechnical Engineer in the State of Oregon and the principal of K&A Engineering, to complete an on-site review of the property and discuss the potential hazard of landslide as it might exist with the proposed dwelling site. Mr. Remboldt testified at the appeal hearing on September 26, 2019 and offered a very understandable discussion of the DOGAMI report concluding that he felt there was no significant landslide hazard at the building site. At the hearing it was recommended that Mr. Remboldt prepare a written summary of his comments for inclusion in the record.

Mr. Remboldt prepared a letter dated October 31, 2019 which we presented as Exhibit B to my letter of November 6, 2019. Mr. Remboldt's letter concludes:

> "Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic, safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement."

It must be noted that the Appellants objected to the conclusion offered by Mr. Remboldt stating:

> "The Natural Hazards Inventory, as contained in the 1983 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions(s). Specific land use decisions shall be **based upon inventory and upon on-site or other evaluation as appropriate."**

Continuing-

> "Here, because this is a specific land use decision, **the application must include on site or other evaluation as appropriate."**

My emphasis added.

How possibly can the Appellants look at the on-site inspection of the subject property by a licensed Professional Engineer and Geotechnical Engineer and conclude the Application has failed in any way to comply with this standard?

With regards to the landslide hazard the Appellants presented a letter dated November 21, 2019 from Andrew Mulkey representing 1000 Friends of Oregon. Mr. Mulkey introduces statements from "SLIDO," which, while not defined, is the Statewide Landslide Information Database for Oregon. Mr. Mulkey throws out emotionally charged statements referring to a report of 10,335 "deep landslides" that are mapped in Oregon, tying absolutely no relevance to the application under appeal or the subject property. We pointed out that Oregon is comprised of approximately 63,018,000 acres and perhaps some context should be given to the number of landslides and over how many hundreds (thousands ?) of years those landslides have occurred in the 63 million acres under consideration. How many, if any, of those landslides are near the subject property? How near? Where? The statistic is of zero relevance to the issue at hand, but certainly is emotionally fueled to turn heads.

Mr. Mulkey continued in his letter with a discussion of landslide hazard quoting the SLIDO report that 95% of the deep slope landslides occur on 10-45 **degree** slopes. At Exhibit 4 to my letter of November 27, 2019 we submitted a chart showing a graph of angles from 10 degrees to 45 degrees, pointing out that a 45 degree slope corresponded to a 100 percent grade, a 10 degree slope corresponded to a 17.6 percent grade. We then noted the area around the proposed building site was virtually at level grade, as shown by our surveyor, though the area to the west of the site was estimated at an 18% downslope grade, basically the lowest end of Mr. Mulkey's area of concern.

We also suggested that perhaps for consistency and credibility it would be best if our discussion of the proposal, and the references of those in objection, used percent grade of slope as opposed to degree of slope as it is percent that is used in statutory and administrative rules as well as county code. The two terms are distinctly different. Notably, the proposed dwelling site is not within 30 feet of a slope greater than 40 percent, conforming to ORS 215.730(1)(b)(B) and Lane Code 16.211(5)(a). The excerpts from the SLIDO report are nothing short of a Gee-Whiz, attention grabbing, emotional piece of irrelevance to the application under consideration.

At the heart of all of this discussion is the on-site evaluation made by Mr. Remboldt. To that point Mr. Mulkey and Mr. Malone offered an ill-schooled critique of the Remboldt letter of October 31, 2019. Mr. Remboldt responded with a letter dated December 11, 2019 offering a defense of his evaluation of the subject property and a somewhat scathing criticism of Mr. Mulkey's and Mr. Malone's characterization of a geotechnical evaluation. Specifically to Mr. Malone's comments, Mr. Remboldt says:

> "Malone, like many others, seems to believe that 'substantial evidence' consists of volumes of written documentation. Substantial evidence can be and most often should be very simple and brief in scope."

Hear, hear!

Mr. Remboldt's December 11, 2019 letter was attached at Exhibit 3 to my letter dated December 18, 2019. In his December 11, 2019 letter Mr. Remboldt reaffirmed his earlier evaluation of the proposed building site and also provided a discussion of R. R. Baker Road. Responding to a specific request regarding the landslide susceptibility of the driveway Mr. Remboldt offered the following:

> "Based on our experience with the design and construction of low volume roads it is our opinion the proposed driveway location does not inherently present a significant landslide hazard."

Mr. Mulkey's November 7, 2019 letter representing 1000 Friends of Oregon in support of the Appellants is, frankly, bizarre. As I pointed out in my letter of November 20, 2019, Mr. Mulkey, apparently has not read his Exhibit 7 to his letter. Page 5 of Exhibit 7 to Mr. Mulkey's letter is a Conditional Approval of a Template Test Special Use Permit in Lane County, PA 02-5377. Condition No. 4 states:

> "Physically establish the primary and secondary fuel breaks as depicted on the approved site development plan, Exhibit 'B-1'. These fuel breaks shall be maintained in perpetuity..... Please contact Don Nickell, 541/692-3989 with questions about fuel break requirements."

Given the years that Mr. Mulkey practiced in Lane County and his extensive interaction with Lane County Land Management, Mr. Mulkey knows Don Nickell, now retired, was on the staff of Lane County Land Management in 2002

Page 2 to Exhibit 7 of Mr. Mulkey's letter is also a recitation of the Conditions of Approval for a Template Test Special Use Permit in Lane County, PA 02-5486. Condition 6 states:

> "Physically establish the primary and secondary fuel breaks as depicted on the approved Detail Development Plan, Exhibit C, and as necessary on the adjoining property in accordance with recorded instrument 2002-031079. These fuel breaks shall be maintained in perpetuity. The minimum primary safety zone surrounding the proposed dwelling shall be 30 feet. The minimum secondary fuel breaks surrounding the primary safety zone shall be 100 feet. Please contact Don Nickell, 541/682-3989 with questions about the fuel break requirements."

In the left margin of Condition 6 is a handwritten notation, "Done PA03-5055." At the bottom of the page is a signature: "Donald"

Mr. Mulkey is fully aware that the conditions of approval specified in his attached Exhibit 7 were inspected by a planner with the Lane County Land Management Division, Don Nickell.

Gary Darnielle
PA19-05298
Final Rebuttal
January 20, 2020

As we pointed out in our November 20, 2019 letter, the conditions of approval of PA19-05298 are virtually identical to those of Mr. Mulkey's Exhibit 7. Condition No. 6 of PA19-05298 states:

> "Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(6)(c) as depicted on the applicant's site plan....."

At Condition No. 9 is the requirement of:

> "Upon completion of conditions #2 through #8, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee."

Mr. Mulkey goes on in his November 7, 2019 letter to weave an imaginary process of how Lane County reviews the conditions of approval of a Template Test Dwelling in stating:

> "The conditions of approval paraphrase the code, and give the ultimate discretion of how to establish the fuel breaks in compliance with those provisions to the building department. Applying the fuel break standards requires a degree of judgment and discretion. The county cannot defer the task of determining the fuel break distances to a future, non-public decision making process. *Eng v Wallowa* County (LUBA No.2018-085). "

Clearly no such event is occurring. Either Mr. Mulkey is exhibiting gross negligence in failing to read his own submitted exhibits and the actual conditions of approval or he is fabricating this account of events in creating what can only be described as a far flung tale in his effort to support this flawed appeal. In either event, it is shameful for a member of the Bar to display such arrogance to the law.

In responding to comments expressed at the November 14, 2019 hearing of the appeal of PA19-05299, an approval of a Template Test Dwelling in F2 zoned lands, we became aware of a number of points of interest being expressed with regards to such approvals, though the elements of concern are not expressed in Lane Code. Among those points of interest, and our responses which were also provided for the record in PA19-05298, were the following:

1. **Well Logs.** We provided copies of the summary pages from the Oregon Water Resources Department identifying wells located in Section 11, Township 18 South, Range 3 West. Notably, 53 wells were recorded by the State in Section 11 with flows varying from 0 (zero) gallons per minute (GPM) to 360 GPM. On adjoining and immediately nearby properties seven wells were identified having flows from 1.5 GPM

to 60 GPM. The summary report from the Oregon Water Resources Department was attached at Exhibit 1 to my letter of December 18, 2019.

2. **Easement for the use of R. R. Baker Road.** A copy of the easement recorded at Lane County Recorder's Reception Number 2019-010337 over the 40 foot wide strip of land within which R. R. Baker Road is constructed was provided in the initial application and found by County Staff to meet the standards of access required for approval of a Template Test Dwelling. At the November 14, 2019 hearing the question was posed if the easement allowed for reconstruction to meet the standards of the proposal as set forth in the application. We reviewed the easement document and provided an additional copy at Exhibit 5 to my December 11, 2019 letter, pointing out the specific provisions of the easement that allowed for the proposal being made by the Applicants:

   "Section 5.2. Maintenance/Repair. Any party may cause the easement, or any portion thereof, to be maintained, repaired or reconstructed."

3. **Proposed Road Contractor, Hendrickson Well Drilling.** Some concern, perhaps with justification, was voiced at the November 14, 2019 hearing over the company name of "Hendrickson Well Drilling" as to their capability to carry out the proposed road reconstruction. Jeff Hendrickson, owner of Hendrickson Well Drilling, had previously provided a letter detailing his on-site review of the subject property and his company's ability to complete the road proposal. Mr. Hendrickson provided a second letter detailing his company's nearly 40 year business history, how the company came to have its current name, the type of work his company performs and provided photographs of some of the equipment they have available for road construction.
4. **Objection to lack of rezoning or subdivision.** Mr. Malone objected at the November 14, 2019 hearing and emphasized in his letter of that date that the application submitted has been prepared "without process of rezoning, subdividing or any other action that would have required consideration of the Goals..." We noted the subject property was, at one time, part of an approximate 60 acre parcel, identified as a single tax lot by the Lane County Department of Assessment and Taxation, within which were recognized five "lawfully created units of land" – Legal Lots in Lane County parlance. The Legal Lots were verified by land use action, fully noticed by Lane County Land Management, and property line adjustments were carried out, again completely in compliance with State Statute and County Code. No rezoning was attempted or required, no subdividing occurred. In acknowledgment of the one factual statement Mr. Malone offered, no "action that would have required consideration of the Goals" took place.
5. **Road/Driveway Spacing Standards.** Mr. Malone asserts that the application fails to meet the Roadway and Driveway/Goal 4 standards, Referencing Lane Code 15.138. He then completely fails to read the provisions of LC15.138, the first sentence of which reads:

   "Requirements in this section shall apply to new driveway and road approach intersections with a County Road."

As we have repeatedly noted, R. R. Baker Road is not a county road, it is a privately owned and maintained road. The provisions of LC15.138 simply do not apply to this application.

6. **Road Frontage Standards.** While not noted in the appeal under consideration in this action, Mr. Malone asserts in his letter of November 14, 2019 for the adjoining property that the County failed to address the frontage requirements of LC15.120 in reviewing R. R. Baker Road. We attached at Exhibit 13 to our letter of December 11, 2019 a copy of the Lane County Assessment and Taxation Section Map for Section 11. Even the most cursory review of that map clearly shows each parcel fronting on R. R. Baker Road has substantially in excess of 30 feet of frontage. Mr. Malone's reference to this section of code and attempting to apply it to the subject property was simply a continuing effort at sowing confusion to the application.

In his letter of January 16, 2020 Mr. Malone submits a copy of the March 14, 1984 staff report from the Land Conservation and Development Commission Acknowledgment of Compliance by Lane County. Mr. Malone bases virtually all of his discussion in the January 16, 2020 letter on excerpts taken from this report. What Mr. Malone fails to do is acknowledge that the LCDC process of reviewing the Comprehensive Plan for Lane County was a continuing work in progress. In no way can the March 14, 1984 report be taken as the conclusion of the acknowledgment of the Comprehensive Plan. To the contrary, the March 14, 1984 report makes specific reference to work to be accomplished and considered in August of that year.

In our submission of December 18, 2019 we attached at Exhibit 6 the August 17, 1984 report from the Land Conservation and Development Commission Acknowledgment of Compliance for Lane County, which was a continuing discussion of elements of concern as the Comprehensive Plan was being drafted.

In our letter of November 6, 2019 we attached at Exhibit A the October 3, 1984 staff report by LCDC establishing the completion of the Acknowledgment of Compliance for Lane County. Mr. Malone's cherry picking of what is essentially a working paper in the March 14, 1984 Report is a failure to pay attention to detail, at the least, and at worst is a conscious effort to misrepresent what occurred in the acknowledgment of the County's Comprehensive Plan.

Secondary Fuel Break. One note of objection offered by the Appellants has "stuck" with the Applicants and as such has been addressed in my letter of November 20, 2019. The issue remains to be resolved by the Hearings Official. That note is the question of the Secondary Fuel Break as depicted in the Site Plan at Exhibit 3 to the original application. In the Site Plan the Secondary Fuel Break is shown extending to the western boundary of the subject property and, as it runs off of the land owned by the Applicant, it does not extend to the distance of an

additional 100 feet beyond the Primary Fuel Break. The Primary Fuel Break of 80 feet falls entirely within the subject property, the "shortcoming" of the Secondary Fuel Break is approximately 70 feet.

As noted in this letter, and tediously discussed by Mr. Mulkey, the adjoining property to the west, Tax Lot 506, is owned by Gray and Dorotea Goodman, who are also the members of NIMPKISH, LLC. The question arises as to the requirement to obtain an easement for fuel break purposes on adjoining land that is "owned or controlled" by the applicants for the Template Dwelling permit.

Mr. Mulkey asserts that the owners of a parcel for which a Template Dwelling approval is being sought, where the Secondary Fuel Break falls outside the subject property, are "required by law" to obtain an easement from the adjoining land owner(s) to establish the fuel break. Mr. Mulkey fails to provide any statutory provision, administrative rule or code reference to support his claim, but the issue has been a point of contention in other applications and appeals, with the hinge point being the definition of "controlled." Mr. Mulkey points to an approved Template Test Dwelling Special Use Permit, PA 02-5486, in its requirement by Lane County for the applicant to obtain an easement for fuel break purposes on an adjoining parcel of land with which the applicants have no ownership interest. That may well have been the standard in 2002, but it has long since been abandoned by Lane County as it is simply legally unsupportable. Again, Mr. Mulkey fails to show statute, rule or code that makes such a requirement.

The Applicant in PA 19-05298, NIMPKISH, LLC, stridently maintains, and ORS 68.239 clearly establishes, it is not the owners of the adjoining Tax Lot 506. That said, there is simply a time when any applicant in a land use application may have to "cry uncle." At what point do the expenses of defending a position become so outrageous that concessions must be made to accomplish the objective?

Accordingly, the owners of Tax Lot 506 (Goodmans) have agreed to grant an easement in favor of the Applicants (NIMPKISH, LLC) for establishment of a Secondary Fuel Break, <u>if such a provision becomes a condition of approval required by the Hearings Official.</u> A diagram prepared by the surveyor, Dave Collier, was presented as Attachment B to my letter of November 20, 2019 depicting the geographic area that the easement would encumber to allow for the full 100 foot Secondary Fuel Break beneficial to the Applicants in PA19-05298.

Gary Darnielle
PA19-05298
Final Rebuttal
January 20, 2020

In this rebuttal we wish to reaffirm, if the Hearings Official orders as a condition of approval that such an easement is required for the dismissal of the appeal, we will prepare the easement and submit it along with the other requirements to be met in completing the conditions of approval established by Lane County.

Mr. Darnielle, once again I thank you for your time and attention to a lengthy and detailed letter. We ask that the appeal of PA19-05298 be dismissed.

Sincerely,

Jim Belknap

Jim Belknap

Cc: NIMPKISH, LLC
Michael E. Farthing

Additional Information Submitted

Date Stamp
RECEIVED

Submitted By: LWLC

Phone Number: 541-517-4459

Email Address: fairhope@comcast.net

Project Address: N/A

Permit Number (BP, PA, SP, SI): PA 19 8529

Submittal Description: _____

Type of Submittal:

☑ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: Rachel Serbler Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

smm 12/26/2018

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000746

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-G
Eugene, OR 97401

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Fax (650) 471-7366
seanmalone8@hotmail.com

January 16, 20120

Via Hand Delivery

Lane County Hearings Official
c/o Lane County Planning Department
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-4065

Re: LandWatch testimony in opposition to Request for Template Dwelling in the F-2 zone, 509-PA19-05298 (Nimpkish).

On behalf of LandWatch Lane County, please accept this testimony in support of the appeal and in opposition to the application described above.

The applicant relies upon the *Green* decision from Hearings Official Davies. In *Green*, the Hearings Official agreed that the "relevant Goal 5 comprehensive plan policies, and relevant implementing ordinances, can supplement the specific forest template dwelling approval criteria set forth in LC 16.211(5)." However, the Hearings Official disagreed with appellant that OAR 660-006-0025(6) can be used "to bootstrap a Goal 5 analysis where it would otherwise be precluded." For the following reasons, appellant believes the Hearings Official is mistaken.

As it pertains to the Hearings Official's decision in *Green*, Appellant readily concedes that *Cattoche* entailed a plan amendment and zone change, whereas this case is a site-specific request for a forest template dwelling. The reason Appellant points to the *Cattoche* case is that LUBA's analysis of the Flora and Fauna working paper and the big game range requirements was at odds with the Hearings Official's prior decision on the applicability of the comprehensive plan policies and ODFW's residential density recommendations. *Cattoche* is also instructive in that it demonstrates that the County never actually adopted specific minimum acreages for residential development. At the time, as the June 29 and July 19, 1984, working papers[1]

[1] Appellant submits the staff reports from the June 29 and July 19, 1984 (Exhibit A) staff reports that provide the rationale for the Acknowledgment Order submitted by the applicant.

demonstrate, the County believed that a minimum development acreage standard of 40-acres would be consistent with ODFW's recommendation, but no 40-acre residential development standard was ever adopted. *See* Exhibit A, Page 149. The built-in alternative was that the residential densities recommended by ODFW that would govern residential development by triggering an ESEE analysis, pursuant to Policy 11. The June 29 and July 19, 1984, staff reports conclude that "[i]mplementing measures which carry out ODFW's development density recommendations in Major and Peripheral Big Game Range areas have not been adopted, particularly in the F-2, ML, and EFU zones." *Id.*, Page 166.

The Hearings Official in *Green* misses the mark by focusing on the fact that the working papers were not adopted. The crux of the issue is that policy 11 uses makes ODFW's recommendations to trigger an ESEE analysis[2]: if ODFW's residential density recommendations are exceeded, then a Goal 5 ESEE analysis is required according to Policy 11. The issue is not whether the working papers were adopted. The ODFW recommendation triggers an ESEE analysis as a result of a specific comprehensive plan policy, policy 11. The policy uniquely uses an ESEE analysis for its own means to regulate residential densities in Lane County. The issue here is no more complicated than that: state law requires comprehensive plan provisions be addressed for template dwelling proposals and flora and fauna policy 11 requires an ESEE analysis when ODFW residential density recommendations have been exceeded.

The Hearings Official is also incorrect to find that policy 11 does not contain approval criteria. The policy is essentially composed of two parts. The first part is specific and couched in mandatory terms: "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-016-000." The two sentences plainly require that an ESEE analysis be prepared if the ODFW recommendations are exceeded, short and simple. The next sentence, or the second part, contains general guidance that is not itself criteria: "The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program." The first two sentences are specific and mandatory, but the third sentence is generalized and not applicable to specific proposals.

---

[2] There does not appear to be any restriction on a County's attempt to use the framework provided by the ESEE analysis rules to carry out its own specific comprehensive plan policy. Thus, the Hearings Official's statement Appellant is attempting "to bootstrap a Goal 5 analysis where it would otherwise be precluded" is misplaced because nothing precludes the County from utilizing the framework provided by Goal 5's rules to resolve conflicts for site-specific proposals.

While the County subsequently adopted siting standards governing development in the F-2 zone, which appear to be the same as the siting criteria for goal 4 contained in OAR 660-006-0029 and -0035, it is important to dispose of the notions that the siting criteria are the only means of implementing policy 11 or that they implement policy 11 at all. For example, there is nothing to demonstrate that an ESEE analysis under policy 11 can be avoided simply because there may exist siting criteria. The siting criteria apply regardless of a conflict and it is the ESEE analysis that must be prepared in light of a conflict. Moreover, the plain language of the first two sentences requires a specific process (an ESEE analysis) when ODFW's residential density recommendations are exceeded, and the siting criteria are one of two means by which the County purported to regulate residential development. The other means was a minimum acreage for residential development or ODFW's density limitation. When the minimum acreage standard was not adopted, the siting criteria were left in place, as was policy 11. In other words, the siting criteria *and* the density recommendations (along with the ESEE requirement if density is exceeded) work to protect big game.

The June 29 and July 19 staff reports provide the following objections related to big game:

> "2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations 'if conflicts can be resolved in accordance with OAR 660-16-000.' Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.
>
> 3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out that the F-1 zones establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

Exhibit A, Page 157. The staff reports also provide the Commission's response to the objections, which specifically find that an ESEE analysis is a component of the policy that is used to find that the plan is acknowledged:

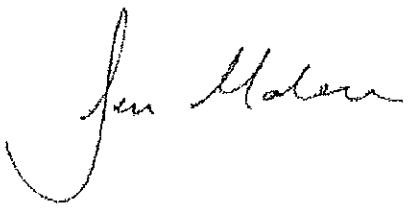
> "2. Policy 11 states:
>
> > 'Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.'
>
> Objectors are not correct that this policy violates Goal 5. *Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis.* However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.
>
> The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflcits between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.
>
> 3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone."

Exhibit A, Page 161 (emphasis added). The Commission specifically understood the conflicts from residential development failing to satisfy ODFW's recommendation to be resolved by the ESEE process. Moreover, the Commission specifically understood that policy 11 was essentially split into two parts, one specific and the other general. The Commission also understood that

siting and clustering requirements were "half" of what was recommended by ODFW, and the other half was the minimum lot sizes. No acreage standard for residential development, however, was adopted, which makes policy 11's requirement all the more important, and there is no minimum acreage requirement for forest template dwellings, such as this case.

The simple conclusion culled from the staff reports is that the Commission approved the acknowledgement order under the explicit understanding that Policy 11 would be implicated where proposals exceed the residential density recommendation. In such an instance, an ESEE analysis would be used to determine whether to allow the use. It is for that reason that the staff reports concluded that "Objectors are not correct that this policy violates Goal 5." This is one such proposal because the residential density far exceeds ODFW's recommendation.

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

Exhibit A, June 29 and July 19, 1984, Staff Reports

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:

I. REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission postpone Lane County's request until September 13-14, 1984 in order to allow the County time to amend its plan and ordinances to comply with Statewide Planning Goals. Provided the necessary amendments are made prior to the Commission's September meeting, the Department will revise its position to recommend acknowledgment under the expedited review procedures under OAR 660-03-033.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Doug White (Goals 2, 3, 6-10, 12-14)
Phone: 378-4926
Mike Rupp (Goals 2-Nonresource Lands, 4, 11)
Claire Puchy (Goals 5, 15)
Phil Quarterman (Goals 16-18)
Bob Rindy (Goals 1, 2)
Glen Hale (Destination Resort--Exception)

COORDINATOR: Gary Darnielle
Phone: 687-4283
Date of Report: June 29 and July 19, 1984

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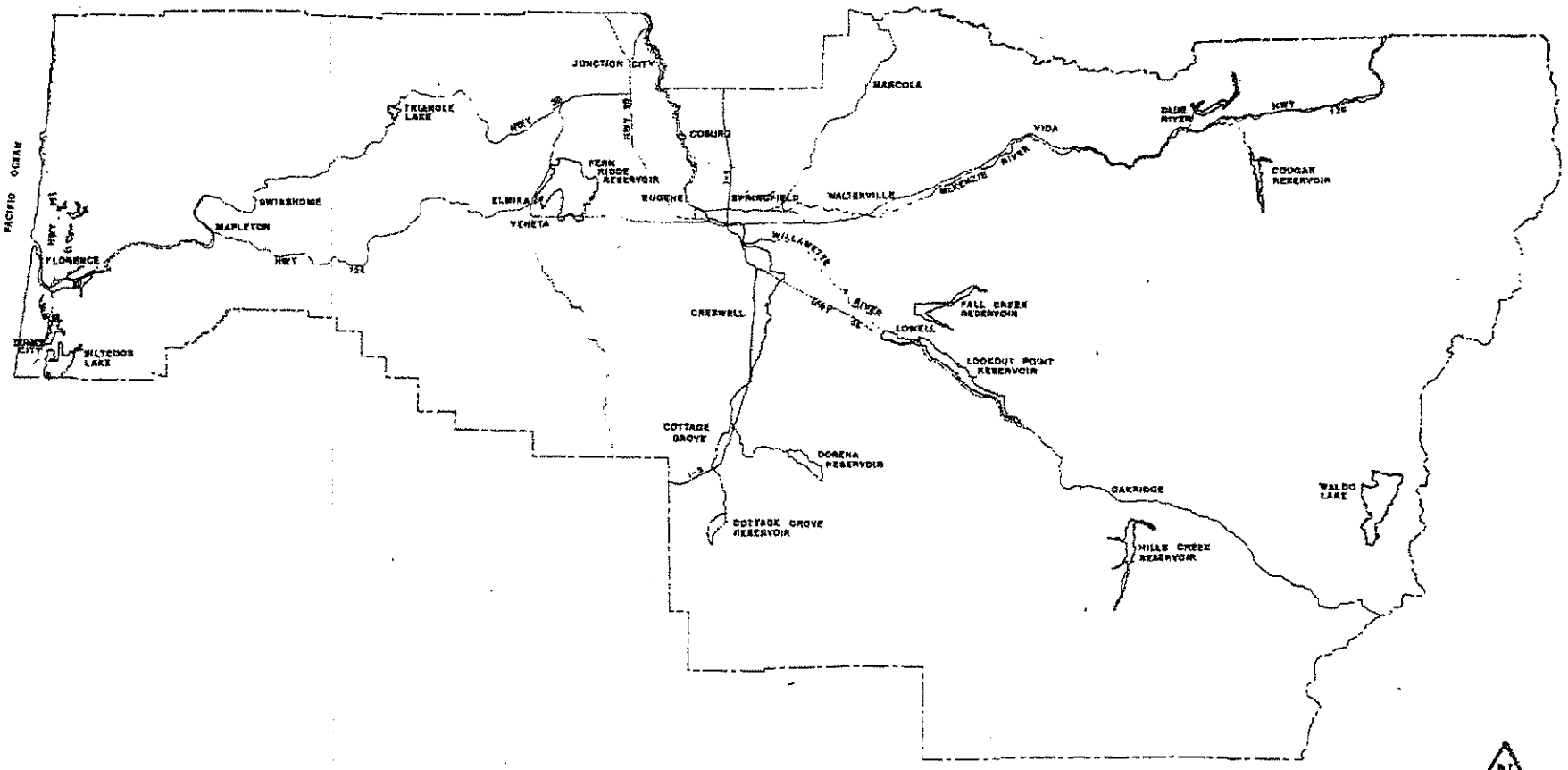
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June 29 and July 19, 1984

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Lane County

BASE MAP OF LANE COUNTY



MAP 1

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III. BACKGROUND INFORMATION

Geography

Lane County is located at the southern end of the Willamette Valley and extends from the crest of the Cascades to the Pacific Ocean.

Governing Body

The County is governed by a five-member Commission elected from separate districts.

Population

2000 - 377,500 (projection)
1980 - 273,266 (102,200 unincorporated)
1976 - 240,792
1970 - 215,401
1960 - 162,890
1950 - 125,776
1940 - 69,096

Grants

Lane Count has received grant funds for the rural plan totaling 485,279 since 1975.

Resubmittal Plan Material

Document	Adopted	Ordinance
Working Papers (Factual Base):	2/29/84	PA 884
County Planning Process		
Citizen Involvement		
Marginal Land		
Agricultural Resources (incl. Addendum)		
Forest Resources (incl. Addendum)		
Historic Resources (incl. Addendum)		
Natural Resources:		
Flora and Fauna (incl. Addendum)		
Public Facilities		
Recreation		
Transportation		
Urbanization		
Energy Resources (incl. Addendum)		
Environmental Quality		
Economy		
Population		
Natural Resources:		
Minerals and Aggregate (incl. Addendum)		

Resubmittal Plan Material cont.

Document	Adopted	Ordinance
Water Resources Natural Hazards Housing Willamette Greenway (incl. Addendum) Coastal Goal Compliance		
Policies and Legislative Findings:	2/29/84	PA 883
Development Code, Chapter 16:	2/29/84	1-84
Nonresource Lands Findings	2/29/84	PA 884
Marginal Lands:	2/29/84	PA 884
Exhibit E. Renaghan Amendment:	2/29/84	PA 884
Plan Diagram Zoning Map:	2/29/84	PA 884
Exceptions to Goals Built and Committed Lands:	2/29/84	PA 884
Metro Area		
Amendments to the 1982 Metro Area Plan:		PA 885/886
1982 Metro Area General Plan including Metro plan update for exceptions, agricultural lands, and forest lands (March 1982)		

General Overview

Lane County has a long history of land use planning. A General Plan was adopted in 1972. Between 1974 and 1977, the County developed separate plans for each of 13 "sub-areas." These were incorporated into a revised General Plan adopted in 1980. The Commission denied the Lane County submittal in February 1981, stating:

> Goal deficiencies are in many cases major and widespread. Goal 2 failures touch nearly every requirement of the Land Use Planning Goals . . ." (Denial Report).

As this report demonstrates, planning in Lane County has made a quantum leap since 1981. The County has moved from 13 subarea plans into a consolidated policy document. This document is based on "Working Papers"--each containing detailed inventory and analysis information suporting the County's land use decisions and implementing ordinances.

The County has recently completed "digitizing" information on all land in the County. This will allow sophisticated computer generated maps and other data analyses. Since this process was not completed until very recently, the submital contained poor maps.

This report finds compliance with Goals 1, 6, 8-10, 12-14 and 16-18. Also, a major portion of the County's "exceptions" areas are recommended for approval, along with a significant portion of the County's forest lands (F-1 areas). It is staff's opinion that the work remaining for the County, under the recommendations of this report, could be acommplished in a very short time period.

This report also addresses the Eugene/Springfield Metro Area General Plan. The "urban" portion of that plan is acknowledged (i.e., that area inside the urban growth boundary). However, the Commission should note that Metro plan jurisdiction applies to rural areas outside the UGB and these areas are not under the Lane County Plan. Also the rural Metro Plan is under a continuance rather than a denial. Most of these continuance requirements have been met. However, some Goal 2 and 4 issues remain, necessitating an additional continuance for the rural Metro Plan as well.

Due to time constraints in completing this review for the July Commission meeting, Goals 5 and 15 reviews for both plans are not contained in this report. These reviews will be completed and distributed prior to July 19, 1984. However, the Commission will not be able to complete Goal 5 and 15 testimony on those Goals at that time due to notice requirements requiring distribution of this material three weeks prior to Commission action. Staff recommends that the Commission hear these Goal 5 and 15 issues at a subsequent hearing (August).

The Department recommends that the County's request be continued (but with postponement of final action until August) based on the following issues:

GOAL 2: Inadequate plan maps, plan/zone consistency problems and inadequate findings justifying built and committed exceptions.4

GOAL 3: Lack of plan amendment policy and inadequate findings and reasons for most areas designated Marginal Lands.

GOAL 4: Justification of minimum lot sizes is inadequate. Misapplication of the County's "Impacted Area" (F-2) Zone plan policy deficiencies for applying the F-1 and F-2 zones ordinance deficiencies in both the F-1 and F-2 Zones.

GOAL 7: Lack of implementing measures for developments in Geologic Hazard Areas.

GOAL 11: Lack of policy establishing appropriate levels of service in rural areas. Lack of assurances that authorized development in areas where subsurface sewage problems exist will not further aggrevate this problem.

Applicable Goals

GOAL 1: CITIZEN INVOLVEMENT

The February 13, 1981, Commission action on Lane County (Denial) found Goal 1 in compliance. However, since Goal 1 concerns an ongoing process, this report will again examine this issue. The County has a long and active history of citizen involvement and has utilized five types of citizen involvement organizations: official planning commissions; single function advisory committees; advisory groups of which the County is a member; community organizations; and widespread public referral/notice procedures (Working Paper 2, p. 1).

Goal 1 requires jurisdictions to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process. Lane County's citizen involvement program (CIP) was initially approved by the Commission on April 23, 1976. The County has periodically amended this program, with the most recent amendment occurring in October, 1983. This amendment, which was approved by the Commission on May 31, 1984, changed the membership of the Citizen Involvement Program Committees (CIPC) to include only the East and West Lane Planning Commissions.

Lane County's CIP establishes a process for involving citizens in planning activities, technical information, feedback mechanisms, financial support, and selection of CIPC committee members. This approved process has not changed from that approved by the Commission in 1981, except as noted above.

The submittal shows that there were at least 61 public meetings and hearings conducted between October 1983 and the plan's adoption in February 1984 (Goal 1 Findings, Attachment "D"). Additional "ad hoc" meetings were held by the West Lane Planning Commission. The submittal also contains copies of newsletters, press releases (to 32 papers and broadcasters), letters, and a collection of the numerous newpaper articles covering the plan amendment process (Attachments "G"-"L"). The "Legislative Findings" show that Lane County undertook a "Comprehensive Plan Revision Public Assistance" program (CPR) from November 1983 through February 1984 (Attachment "E"). Under the CPR program, individual citizen comments and specific requests (concerning property, plan policies, zoning, etc.) were solicited and then tracked to insure responses from decision makers. The record shows 1109 "CPR" requests during the four month period ending in February 1984 (Working Paper 2 and Attachment "E"). This program was not required of the County in the approved CIP (i.e., it is an additional attempt by the County to assure adequate citizen participation).

Policies

The plan adopts six specific citizen involvement policies, including a policy for ongoing citizen involvement:

> Plan implementation shall include participation by the general public through a citizen involvement program in the development, adoption, and application of codes and ordinances needed to carry out the County general plan requirements (Lane County Policy Document, p. 1).

The plan also contains policies continuing communication with chartered community organizations, and designating the Planning Commissions as the primary advisory body on citizen involvement.

Objection

The Department has received numerous objections on Goal 1 from Lane County citizens. Responses to some of these objections are organized by issue rather than by author.

Issue: C. Robert Suess, et al., object that Goal 1 is violated because the County refused to take testimony on individual designations at an advertised February 8, 1984, meeting. Instead, the meeting was limited to testimony related to planning policies for the County.

Response: The objection is not valid. The objector has not shown that this County action violates Goal 1. The record shows that the County held 61 public meetings between October and adoption in March. It is not clear whether the agenda for this particular meeting was changed suddenly, or whether there was a misunderstanding of the public notice. In either case, this one incident would not bring about a recommendation of noncompliance under Goal 1, especially with 60 additional meetings available to permit testimony. Also, through the CPR process, the opportunity was available to the objector to submit written comments on particular properties. The objection states that such a CPR request was filed by the objector, and also that the objector submitted oral testimony at the February 8, 1984, hearing.

Issue: James and Jane Pittenger, E. B. Brassier, A. T. and S. E. Nordahl, J. Lavediere, D. A. Thomson, R. Jenning, E. J. Hale, Genevieve Brackebusch, Lester Nordahl, John Radsliff, and John Reaksecker have stated that Goal 1 is violated.

Response: These objections either do not state specific reasons for determining a Goal 1 violation, or else they report that the County Board did not ultimately accept individual property owner's requests for certain designations. These objections are not valid. Goal 1 requires that citizens have an opportunity to testify and participate in the planning process. Goal 1 does not require that such testimony be the only basis for land use decisions. Goal 1 is not automatically violated when a specific citizen, group, or the planning commission is overruled by the County Board. The Commission has no basis for evaluating those

objections which claim Goal 1 was violated, but which do not state reasons or evidence to support this claim. (Note: The John Radsliff objection contains hundreds of pages of computer generated lists, charts, graphs, and diagrams. Staff was unable to interpret this data and no information is included to show Goal 1 violations alleged. This objection will be available at the Commission hearing.)

Issue: The Lane County and the Oregon Small Rural Landowners associations (SRL) have submitted hundreds of pages of documents attached to a letter which claims, among other things, that Goal 1 is violated. However, the vast majority of this material consists of xeroxed newsclippings, editorials, letters, legal briefs, and other miscellaneous materials. There is no stated connection between these attachments and cover letters addressed to the Commission and Department, except the assertion that they are "self-explanatory." The SRL cover letters dated March 7, March 19, and March 31 request that the plan be returned to Lane County in violation of all Statewide Goals. No specific reasons for these violations are stated other than the accusation charging:

> . . . the OVERUSAGE OF THEIR PAID PLANNING STAFF, OF PERSONS WHO REPRESENTED THEMSELVES, in the PLANNING PROCESS, as experts on all phases of the PLANNING, and upon which MOST OF THE RULING OF THE PLANNING COMMISSIONS RELIED UPON IN THEIR DECISION MAKING (sic).

However, primary direction of these objections appears to be that the Commission should return the plan without review in order to allow more time for citizen involvement and other amendments, or else that Goal 1 compliance, "be ruled on immediately . . ." (i.e., as of the date of the letters).

Response: These objections are not valid. It is not clear that this request qualifies as an objection to be dealt with in the review process since the parties object to review rather than to acknowledgment. The Department responded to these requests when they were received showing why review was required to proceed.

If these are considered to be objections to acknowledgment, they are not valid. The assertion that the Lane County Board of Commissioners relied only on testimony of their staff has not been proven in the objection. The record indicates that the Board received an overwhelming amount of public testimony and structured the plan in response to that testimony (for example, the F-2 Zone land diviion and dwelling standards were for the most part, in response to citizens requests rather than staff proposals). The majority of the information in the SRL cover letters is either incomprehensible or is irrelevant to Goal 1. The SRL attachments are not "self-explanatory" and do not merit a response.

Issue: Donna Shelton, A. R. Wysong, et al. have submitted two detailed reports containing objections to Goal 1 compliance. The text of these reports total 19 pages, and numerous supporting documents have been referenced and attached. The objections attempt to show that "a policy

of limited public participation was begun" in April of 1981 and "has continued to date." Several pages of these objections concern Lane County's decisions affecting the role and duties of the West Lane Planning Commission (WLPC). The WLPC (objectors are members or former members) appears to raise four points in this regard:

1. The County Commissioner's actions--some proposed and some carried out--removed "most of the powers of the planning commissions",

2. Board backed "staff attempts to create more questionable plans without any consultation with the public and with very limited consultation with the planning commissions,"

3. The Board did not adopt the coastal plan recommended by the WLPC, and

4. The schedule for November through March, 1984, involved only joint meetings with the Board of Commissioners and the planning commissioners, depriving the planning commissioners of the opportunity to study matters, hear from constituants, or make recommendations ("They were pressured by the Board whose main emphasis was speed to make the deadline.")

Response: The first part of this issue, concerning planning commissioner authority, is not a concern of Goal 1. Under the Goal, Lane County is not required to give the County Planning Commissioners authority over day-to-day zoning requests. In Lane County, this authority is now carried by a hearings officer. The proposed actions eliminating the planning commission did not occur. The second part of this issue is unproven. The record indicates that a tremendous amount of citizen input occurred. The objection has not shown that staff advice was the only factor considered by the Lane County Board. The fact that a county staff recommendation prevails at the Board level, rather than a planning commission recommendation, does not indicate a Goal 1 violation. It is difficult to conclude that the Planning Commissioners were not consulted when many of the public hearings were joint hearings with both the Board and Planning Commissions. The objectors indicate that a high level of citizen involvement generated the coastal portion of the plan. It is inferred that Goal 1 was therefore violated when the Board rejected this plan. This is not the case. The Citizens Participation Goal does not strip decision makers of their authority to consider alternatives and their consequences. (Note: The Coastal Plan referred to here was one of 13 subarea plans denial by LCDC in 1981.) These objections are not valid.

Issue: The Shelton/Wysong et al., objection focuses on the period beginning late October 1983, and ending with intended plan adoption in February 1984. According to the objectors, this 90 day period was proposed for "a very ambitious program (of plan revision) that, to be properly done, would have required at least one year." According to objectors, during this process:

1. Material for the most part was not available to the public for study before or after some of these hearings.

2. No time was scheduled for discussion of citizen input or to make plan changes.

3. "The average property owner left each hearing totally confused and convinced his plea was in vain,"

4. One meeting place was changed at the last minute and the hearing room was too small.

5. On two occasions, "only one set of maps was available" at the hearing.

6. Two hearings and work sessions occurred (January 9 and 10, 1984) with no Board members attending.

7. Most hearings were held without any published legal notice and one with public notice given the same day.

8. Four work sessions were held with the staff where no public input was allowed.

9. The County did not take advantage of additional time for submittal granted by LCDC on February 4, 1984.

Response: Many of these assertions are contradicted by Lane County staff (see attached, June 1984, memo). These objections are not valid. The Lane County staff states that point 1 is only partially correct. According to Jim Mann, Senior Planner for the County, current materials were distributed at all meetings except where the most current versions were not yet printed. At some meetings, changes in the plan from a previous meeting were not yet printed. The plan was changing too fast for up-to-date printing of all current changes (these many changes occurring at each meeting were primarily in response to citizen input, and primarily concerned individual properties). Current materials were always available at the central Lane County offices through a self-service system, and were distributed at the 61 public hearings held since October, 1984, except where updated copies were not available.

The second point is also disputed by Lane County. Jim Mann states that discussion of citizen input and plan changes occurred at most of the scheduled meetings. In addition, the WLPC scheduled additional meetings for this purpose.

The third point above is an example of an allegation, without supporting evidence, found throughout the report. The Commission cannot evaluate the accuracy of this statement, and the objector has presented no evidence to show that it is a true statement.

The fourth and fifth points are examples of minor inconveniences to the public. This type of problem--the need to move a meeting or to use one large map rather than many distributed copies--does not bring the County out of compliance with Goal 1.

Point 6 raises the opposite position argued by the objector earlier, when it was stated that the presence of the Board stifled planning commission action. Here it is argued that the absence of Board members, (at 2 out of 61+ joint Planning Commission/Board hearings) also constitutes a Goal 1 violation.

Point number 7 is disputed by written records of published notice for each hearing, according to Lane County. These records will be available at the Commission hearing.

Regarding Point 8, the fact that at four work sessions (out of 61+ public hearings) public input was not invited is not a Goal 1 violation. The County has the authority to hold such work sessions, and these four sessions were "open", i.e., citizen spectators were permitted (personal communication, Jim Mann).

Point number 9 is not a Goal 1 violation. The County was not required to take the additional time granted by the Commission.

Issue: The Shelton/Wysong objection raises issues with respect to the CPR process:

1. The "change request form . . . used for public requests" would be impossible for anyone to fill out "without instructions and without prior knowledge of the proposed zoning,"

2. Instead of individual responses, the Board processed the 1845 seperate CPR requests in "batches."

Response: These objections are not valid. First, the CPR process was only one of several processes operating under which citizens comment was solicited in the plan amendment program taking place at this time. Secondly, this CPR process is innovative and exemplary in that it is an attempt to track and respond to all citizen input in writing. As it turned out, the volume of input and the time crunch necessitated short-cuts in the CPR process as originally proposed. Nevertheless, the information in the objection would indicate that the CPR process was successful: a number of requests were approved outright; a number of requests were recommended for denial by staff but were approved following review before the board; marginal land requests were denied but reasons were given (i.e., certain stated criterion were not met); a number of other requests were denied under stated reasons but with assurance of reconsideration at a later date. The County has a record of a written response to every CPR request (see submitted CPR summary sheet).

Issue: The Shelton/Wysong objection states that the County did not follow its approved Citizen Involvement Program (CIP). That program establishes procedures for citizen involvement in large-scale plan and zoning proposals. These procedures insure (1) distribution of materials and information, (2) informational meetings, (3) public hearing notices, (4) Planning Commission public hearings, and (5) Board of Commission public hearings with stated reasons for board action. The objectors state (1) distribution of material "was faulty," (2) no informational

meetings took place, (3) public hearing notice was "poorly done: ("the display ad was only six column inches"), (4) there were several months (in the summer of 1983) with no Planning Commission meetings, and (5) the Board action and stated reasons "have always been shaky."

Response: These objections are not valid. Each of these points has been addressed through response to other objections, above.

Conclusion: Lane County complies with Goal 1.

The County's amended Citizen Involvement Program, including changes in the membership of the CICP, continues to meet the requirements of Goal 1. The submittal demonstrates that the program, as amended, was adequately followed in amending the plan during the crucial October 1983 through March 1984 time period. It is clear that, due to necessary time constraints, the opportunities for citizen involvement were less than those provided during earlier planning phases. However, the County responded to this problem through increasing the number of meetings per month, through the CPR tracking process, and through the amended CICP membership. These amendments provided opportunities for citizen involvement consistent with Goal 1.

The objections for the most part reflect opposition to the substance of the most recent plan amendments (especially the F-2 zone and the nonresource land decision) rather than the CIP process. The Shelton/Wysong objection contains the most serious challenges to the citizen involvement process followed by the County. This objection greatly exaggerates the negative aspects of the County's process. On close examination, the events and facts forming the substance of this objection are either not sustained by the record, or are relatively minor infractions. Goal 1 compliance is not affected when citizen recommendations are not followed. Compliance is achieved when those comments are allowed and are given a response.

The CPR tracking process assured a written record of both citizen comments and responses by decision makers. That this process did not achieve all that was promised should not cloud the fact that this County went beyond the CIP requirements in establishing this procedure. It is normally not possible for a jurisdiction to answer specifically, with written findings, each concern raised by citizens during a plan adoption process of this magnitude. The Commission does not expect a concise statement in the form of written findings as to why a particular designation was chosen over another. Goal 1 requires a record which demonstrates that citizens concerns were heard and considered, and which shows why those concerns were or were not ultimately reflected in the comprehensive plan. Lane County's submittal has met this test.

GOAL 2: LAND USE PLANNING

Goal 2 requires a jurisdiction "to establish a land use planning process and policy framework as a basis for all decisions and actions related to land use." Plans must include inventories and other factual information and "ultimate policy choices." Implementing measures consistent with and adequate to carry out the plan must be adopted.

Plan Organization

The County plan applies to all areas outside City Urban Growth Boundaries and also outside the Eugene/Springfield Metropolitan Area jurisdictional boundary. The Metro area plan is discussed seperately, below. The revised Lane County plan consists of a technical information base, policy document, plan maps, and "functional plans" (housing, parks and open space, transportation, etc.).

The revised plan is designed around the Statewide Goals, i.e., working papers and policies are organized by Goal requirements and policies are stated in a goal-by-goal format.

The County has abandoned the "subarea" planning concept of the 1981 submittal and now divides the County into only two planning regions: Coastal and Inland. However, this regional distinction is made only with respect to the plan map and the jurisdiction of the two County Planning Commission. Plan policies have equal weight over the entire County.

The County has adopted the plans and the UGB's of all Lane County Cities. The "Planning Process" working paper states that:

> Land uses within UGB's are usually considered to be matters of City concern even though the territory outside the City limits is actually in County jurisdiction. By adopting the UGB's and the land uses within them the County indicates its agreement with City development intentions.

Where the previous subarea plans organized small communities into various levels of growth, the County now addresses these communities under the overall plan. The revised plan identifies small communities and indicates their boundaries. "Communities" are areas having "a mixture of uses," a "compact development pattern" and "an established community identity (including) places for community congregation" (Policy 10, Policy Document, p. 2.). The plan leaves open the possibility for further refinement of community plans (Policy document, policy 13, p. 3; see Goal 11).

Factual Base

There are 20 "working papers" forming the technical analysis and inventory basis for the plan. Each paper addresses a seperate topic (e.g., Agricultural lands, Forest Lands, Urbanization, Economy), and each contains written and mapped information, a list of issues suggested by the information, two or more lists of possible (not adopted) policies,

and a list of sources. Individual working papers are consistent with and support adopted policies, except as noted under Goal 4.

Population

The population working paper describes past growth rates in Lane County cities and rural areas. The working paper compares five different sets of population projections, and chooses the LCOG year 2000 projection of 377,500 persons. This projection "is presently used for all planning activities" (population, p. 8). The projection assumes that the growth rate for the County will decrease in the future, especially the rural areas. The working paper population projections for urban areas are based on the indivudual comprehensive plan projections.

Policies

Ordinance PA 883 adopts the Lane County Plan policies, revising the policy documents reviewed under the 1981 Denial. The policies are either described in the document as "advisory" "commitment," or "conformatory." Commitment policies primarily use mandatory wording, i.e., "shall", and are intended to guide future actions. Each Goal section in this report contains findings analyzing "commitment" policies against statewide goals. Advisory policies are primarily intended to advise or inform other agencies and are not discussed in this report. Plan conformity policies are "intended to guide designations" on plan maps and zoning maps. "Subsequent rezoning and/or plan diagram amendments must be in accord with these policies."

Planning/Zoning Consistency

The submitted "Plan Diagram Zoning Map" (reduced, two sections per page) is adopted by Ordinance PA 884. This document shows both the plan designation and zoning designation for each property in the County (outside UGB's and the Eugene/Springfield Metro Boundary). In many instances, the submitted maps are not able to be interpreted due to a variety of factors:

1. The original document was not copied in a manner that coastal overlay designations were readable.

2. The maps were not drawn so that important boundaries (i.e., community boundaries or exception area boundaries) could be clearly determined;

3. The maps do not reflect hundreds of last minute plan or zone changes.

These problems were noted during review and the County began correcting the maps. Larger scale, updated maps were made available midway through the comment period (this was indicated in the agency public notice to interested parties). However, the updated maps show zoning, but do not show plan designations. (Also, there is no indication that the revised maps are adopted.) Because readable plan maps are not available, plan/zone map consistency has not been evaluated.

The plan does not contain a list of plan catagories and a description of uses intended for each plan catagory. It appears that most plan catagories are implemented by more than one zoning district. However, the zoning ordinance does not contain detailed standards to guide decision makers in changing the zoning for specific areas. Thus, there is no set of standards to evaluate a proposed zone change (see Goal 4). Section 16.252(1) criteria for zone change only require that rezonings shall be consistent with "applicable comprehensive plan elements and components." Individual plan components do not generally contain information directing the speical application of many possible implementing zones. In addition, Section 16.252(1) of the Lane Code permits that, "Any zoning or rezoning may be effected by Ordinance or order . . ." ORS 215.503 states that counties must adopt by ordinance, all legislative acts relating to zoning. Any zone amendments adopted by order would not be binding on the County. There is a further question as to the County's ability to change an ordinance by an order.

Cluster Subdivisions

Lane County's Development Code provides for cluster subdivisions on lands zoned Rural Residential and Suburban Residential (LC 16.260(2)). The number of lots allowed in a cluster subdivision cannot exceed that computed under the minimum density established by the minimum lot size (LC 16.260(4)(a)(i)). The Suburban Residential Zone (which allows 10,000 square foot lots to be created when a community sewer and water system is provided (LC 16.229(6)(a)) is allowed only within designated communities (LC 16.229(1)(c)). However, the Rural Residential Zone is applied to rural areas and allows for the creation of cluster subdivisions to any density and size as long as the average density does not exceed one unit per acre (LC 16.231(6)(a)). A multifamily dwelling is allowed in each lot created within a cluster subdivision (LC 16.260(4)(b)(iii)(d)).

Park and Recreation Zone

Lane County has adopted a Park and Recreation Zone (PR-RCP) and has applied it to rural lands. Uses permitted outright are split into two categories: (1) uses permitted in all areas zoned PR; and (2) uses permitted only within an exception area.

Lane County has not taken an exception to Goal 3 or Goal 4 for any areas zoned PR (see discussion under built and committed exceptions). Therefore, Lane County is unable to approve any uses allowed within an exception area zoned PR until a valid exception has been taken and incorporated into the plan (LC 16.215(3) and (4)).

The following uses are permitted outright on resource lands zoned PR (LC 16.215(2)):

(a) General Recreation Parks including picnic areas, camping grounds, hiking trails, playfields, bathing beaches and other similar outdoor, manmade recreation facilities.

(b) Leisure and Ornamental Parks largely for scenic or ornamental purposes, including monuments, statutes, (sic) beaches and children's play facilities.
(c) Group or Organized Camps for children and adults which may include any of the above uses and activities and other uses and activities, such as swimming pools, meeting halls, sleeping shelters, cafeterias and shelters for indoor recreation.
(d) Recreation vehicle parking spaces in conjunction with any of the above three permitted uses.
(e) One residence on the subject property for a caretaker.
(f) Marine terminals and associated areas that are primarily for recreational marine craft, excluding sale or land storage of marine craft, but including any incidental sale of gas or minor repair.
(g) Forest Uses.
(h) Farm Uses.
(i) Nonresidential uses necessary and accessory to the uses listed above such as:
(i) Fire prevention, detection and suppression facilities.

(ii) Access roads and roads for management and safety.

(iii) Storage buildings.

(iv) A carport or garage in conjunction with #5 above.

(v) Restroom, washroom or shower facilities.

(vi) Offices.

Uses permitted outright on resource lands are generally the same type of uses allowed under ORS 215.213(2)(3), which are:

> Community centers owned and operated by a governmental agencies or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

Uses allowed outright in resource areas zoned PR are consistent with ORS 215.213(2)(e). However, there are no reasonable standards as required under ORS 215.213(2).

Eugene/Springfield Metro Plan

The Eugene/Springfield Metro Area plan jurisdiction boundary extends into rural areas beyond the Metro UGB. (Portions within the jurisdiction boundary, but outside the UGB were not acknowledged with Eugene/ Springfield in 1982.) The Lane County plan does not apply to these areas: they are governed by the Eugene/Springfield Metro Plan (introduction to Rural Plan, p. 1). The Metro plan includes supporting inventories and plan policies different from those in the rural plan. However, Lane County's zoning ordinance does apply within this area. The Commission's 1982 continuance report for the rural portion of the

Eugene/Springfield Metro Plan contained four requirements. One of these is addressed later in this section under "exceptions." The other requirements were as follows:

Requirement

1. The Cities and Lane County must review, and amend as necessary, their respective procedures governing amendments to rural areas outside the UGB, to ensure that the amendment process is coordinated and consistent with other elements of the Metro Area Plan.

Response

The Metro Plan has been amended to contain a "Procedure for Amendment of the General Plan." Under this procedure, amendments must be by concensus of all three jurisdictions.

Requirement

2. Lane County must amend the Willamette Long Tom Subarea Plan to designate the area known as the Industrial Triangle "Agriculture," and zone it consistent with Goal 3 and ORS Ch. 215.

Response

This area has been planned and zoned as Exclusive Farm Use.

Requirement

4. Lane County must amend its zoning code to exempt maintenance and improvements in Armitage Park from conditioal use procedures. This is most easily accomplished by zoning all of Armitage Park as Public Use (PR).

Response

The County has not zoned all of Armitage Park as PR. The portion of the Park between I-5 and Coburg Road is zoned EFU. Parks are allowed outright within this zone.

Objections

Several objections have referenced Goal 2. Objections on exceptions areas, marginal lands, and nonresource lands are addressed later in this section under those headings. Goal 2 issues not related to these topics are addressed below.

Issue: The City of Eugene objects to the AO zoning of two privately owned tracts of land near the City's Mahlon Sweet Airport outside the UGB. According to the plan, the undeveloped portion of the airport exception area is located on 19 parcels, 12 of which are publicly owned.

The City points out that these tracts are under the jurisdiction of the Metro Plan, which requires:

> Airport-related commercial and industrial development shall be accommodated on airport-owned property or on privately owned industrial or commercial property designated within the urban growth boundary.

The seven parcels within the exception area that are privately owned are not within the Eugene-Springfield urban growth boundary.

Response: The objection is valid. The County has zoned these properties in a manner which directly violates the above policy, a policy adopted by Lane County and the other jurisdictions under the Metro plan.

Issue: Douglass Lagenor has objected that lands to the east of Oakridge are zoned FF-2. According to the objector, "This is the only available land for urban growth and should be zoned rural residential."

Response: Oakridge has an acknowledged comprehensive plan designation with sufficient land to accommodate projected urban growth through the year 2000. The objector is referring to land outside the urban growth boundary and is asking that this land be made available for future growth in addition to the 20 year supply inside the UGB. The objection is not valid. The County has proceded properly in accordance with Goals 4 and 14.

Issue: The Department of Transportation objects to Section 13.010 of the Lane County Code. According to ODOT, property owners must initiate a minor partition before the state is able to acquire property on any project for which right-of-way acquisition is necessary. The minor partition cannot be initiated by the County or by the state, according to ODOT. Therefore, property owners, by not agreeing to apply for mining partition, "could severely hamper or completely block a (transportation) project." The objection states that the eminent domain process would also be affected by a property owner's refusal to partition, since unnecessary parts of a parcel would need purchase by the state.

Response: The Lane Code states that a partition is not necessary for:

> Any adjustment of a property line where an additional parcel of land is not created and where the existing tract of land reduced in size by the adjustment is not reduced below the minimum area requirements of the applicable zoning" (Section 13.010).

Thus, only with the creation of a new route or in circumstances wherein the adjustment to existing right-of-way the remaining parcel would be substandard, would the partition process be required. The County states that:

> When a parcel remainder is brought below the minimum lot size, it becomes at that point a nonconforming parcel. Future development and expansion may be affected by that status. In

> addition, careful review to confirm that safety setbacks are met needs to occur. When a new route is proposed, all elements of the comprehensive plan should be considered. In this process, a plan amendment would probably be necessary . . . and (review through partition process) is again appropriate as the impact of the alignment on the Statewide Goals, including the resource Goals, should be very carefully considered (June 22 letter to L. W. Rulien from W. A. Van Vactor, Lane County Counsel).

The Lane County Code, Section 14.015 states that any person with a legal interest in a property may apply for a partition. A legal interest may be obtained by adoption by a public condemnor of a "resolution or ordinance of necessity to acquire or condemn." The objection is not valid. Lane County has shown that the circumstances described by the objector need not occur, since the state could initiate the partitioning process. Those circumstances where partitioning would be required are limited to situations where careful parcel-by-parcel review would be appropriate.

Issue: The Oregon Community Land Trust objects to the Lane County Plan "because of its inflexibility in allowing small groups to situate in a rural setting according to their needs... The County's use of minimum parcel size and siting requirements do not allow these groups to work toward economic independence." The objector proposes two policy amendments to correct this situation. These amendments would permit "in-house" Cottage Industry, including "limited, medium, and medium/heavy Cottage Industries."

Response: The objector has not demonstrated that the Goals require that individual jurisdictions permit cottage industries outright. The decision permitting such industry belongs to the County, not the state.

Issue: The Parks Division of the Oregon Department of Transportation has objected to the zoning of Armitage Park within the Rural Portion of the E/S Metro Plan area, stating that the County has not fulfilled the requirements of the 1982 continuance order. Parks Division raises similar issues regarding Jennie B. Harris State Park and Squaw Creek State Wayside. Both these are zoned RR-5, where parks are a conditional use.

Response: This objection is valid and has been addressed in the Conclusion.

Exceptions

ORS 197.732 and OAR 660, Division 4 provides standards for determining an exception to a Goal. To justify an exception, conclusions supported by substantial evidence must demonstrate that these standards for an exception have been met. ORS 197.732(1) is quoted in its entirety below:

> A local government may adopt an exception to a goal when:
>
> (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals shall not apply;

(B) Areas which do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

To justify an exception under the committed lands process (Goal 2, Part II(a) and (b)), the exact nature and extent of the areas found to be physically developed or irrevocvably committed must be shown on a map or otherwise described and keyed to the appropriate finding of fact (OAR 660-04-025(2)). The findings of fact must include substantial evidence in the record addressing the following factors:

1. Existing adjacent uses;

2. Public facilities and services (water and sewer lines, etc.);

3. Parcel size and ownership patterns of the exception area and adjacent lands;

4. Neighborhhood and regional characterstics;

5. Natural boundaries or other buffers separating the exception area from adjacent resource land;

6. Physical development according to OAR 660-04-025; and

7. Other relevant factors.

OAR 660-04-028 further states that a conclusion that land is irrevocably committed to uses not allowed by the applicable goal shall be based on one or more of the factors listed above. The conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion that it is impracticable to apply the Goal to the particular situation or area.

General Overview to Exceptions

Information pertaining to the exception areas is found in two separate acknowledgment request submittals. Findings for the exception areas outside the Eugene/Springfield General Plan Boundary are included in plan documents submitted for this review. Findings for the exception areas inside the Eugene/Springfield General Plan Boundary but outside the Metro UGB were submitted along with the Countywide submittal and at the time the Commission reviewed the Eugene/Springfield Metro Area Plan on August 19, 1982. At that time, the Commission only reviewed the plan and implementing measures for lands within the Metro UGB and readopted the "In order to comply" requirements adopted previously (June 26, 1981) for lands within the General Plan Boundary and outside the Metro UGB. Therefore, the exception statement submitted for the August 19, 1982, Eugene/Springlield Metro Area Acknowledgment request is being reviewed here along with the County's most recent resubmittal. Plan documents containing information on the County's exceptions are as follows:

Built/Committed Exceptions (outside Metro General Plan Boundary)

1. "Working Paper-Developed and Committed Lands"

2. "Exception to Goals--Built upon/Committed Lands," Vol. 1 & 2 (evaluation sheets)

3. "Plan Diagram Zoning Map"

Need Exception (outside Metro General Plan Boundary)

1. "Exhibit E Renaghen Amendment"

Built/Committed Exceptions (inside Metro General Plan Boundary)

*1. "Metropolitan Plan Update Exceptions"

2. "Plan Diagram Zoning Map and Metro Area of Influence"

Need Exception (inside Metro General Plan Boundary)

*1. "Metropolitan Plan Update Exception," Mahlon Sweet Airport Exception Area.

*Submitted August 1982 (circa) as part of acknowledgment request for Eugene/Springfield Metro Area Plan.

Committed Exception Criteria

To determine which lands were built upon or irrevocably committed to nonresource uses, Lane County used an initial cut-off criterion in the plan. According to the criterion, an area under consideration for commitment must consist of at least four tracts which are contiguous to one another with the majority of the tracts built upon. The plan states that in most cases, all tracts must be 10 acres or less in size, unless other factors render larger tracts unsuitable for resource use and/or committ them to development (Working Paper, Developed and Committed Lands, p. 2).

The plan defines "tract" as follows (Working Paper, Developed and Committed Lands, p. 2):

> "Tract" refers to a lot within an approved and recorded subdivision plat, or a parcel within an approved and recorded partition map, or a parcel within an approved minor subdivision, or unsubdivided/unpartitioned land under the same ownership. Contiguous units of the last type shall be considered a single tract.

The plan also states that individual isolated commercial and industrial activities, regardless of the number of tracts involved, were also considered committed along with public facilities such as schools (Working Paper, Developed and Committed Lands, p. 2).

Application of Criteria

In evaluating potential committed areas, the County conducted an examination of each section of land not within public ownership (outside UGB's outside the Eugene-Springfield General Plan Boundary; Working Paper, Developed and Committed Lands, p. 2).

For each committed exception area identified (unless otherwise specified in this report), a separate report or evaluation sheet has been provided containing information on the general character of the exception area:

The information provided on each of the evaluation sheets or reports was done by filling in blanks or checking off the appropriate category. In most cases, this general information along with the aerial photos and ownership listings is adequate justification for an exception. However, in certain cases, more detailed, site-specific findings are needed to justify the exception.

The Working Paper on Developed and Committed Lands states that a property list is attached to each report (evaluation sheet), containing map and tax lot numbers, a four-digit land use code indicating property and structure class, land area of each parcel and ownership (p. 3). However, this information was submitted in a different format than described in the plan. The property listing was provided separately for all tax lots by plot number. Only one set was available for review. Zoning and plan maps ("Plan Diagram Zoning Map") and the evaluation sheets or reports

("Exceptions to Goals Built Upon/Com'td Land, Vol. 1 & 2) were submitted in a separate document. Another document applicable to the County exception is the "Charge Request Summary" or CPR Changes. This document contains a listing of all plan and zone changes and addendums to the evaluation sheets as a result of plan refinement and public review. These changes either modified or enlarged previously identified exception areas or created new exception areas. The plan diagram zoning maps provided do not reflect these changes. Large scale zoning maps (1" = 600') were also provided in addition to the small scale maps and reflect all amendments as a result of the CPR changes. These maps are a reproduction of the small scale maps and are much more "readable" than the small scale maps. However, because of the number of maps (over 750) and the cost of reproduction, only three sets were submitted. One set was available for review at the Portland Field Office and two sets were available for review at the central office in Salem. One set of aerial photos (flown 1982) for most of the plot areas was also submitted and available for review in Salem. Copies were also available at Lane County offices.

As part of agency notice required by OAR 660-03-015, an explanation of the submittal material and suggestions for reviewing Lane County's built and committed exceptions was also provided (DLCD Memorandum, Notice of Lane County's request for acknowledgment of Compliance, April 10, 1984).

Park and Recreation Zone Exception

Lane County's Park and Recreation zone is written to allow certain uses requiring an exception (i.e., motels, stadiums) only within designated built and committed exception areas and designated nonresource areas (Section 16.215(3) and (4)). Uses and activities that do not require an exception (i.e., farm use, RV Parks) are allowed in any of the PR-RCP Zones. The PR-RCP zoned areas, which the County considers committed or nonresource, were not identified or specifically mapped. According to Lane County Planning Department, none of the PR-RCP zoned areas are designated Nonresource or Marginal Lands (personal communication, Jim Mann, May 17, 1984). As a result, staff was unable to review these areas against the built and committed exception criteria of OAR 660-04-025 and OAR 660-04-028.

Objection

1000 Friends of Oregon objects to all built and committed exception areas because of improper and inadequate criteria and data base used to identify and designate exception areas. 1000 Friends contends that the material submitted for review does not address all criteria in the Administrative Rule and therefore does not yield an adequate factual base justifying the exceptions.

Response

The objection is partially sustained.

The objectors are correct in pointing out that the factual base information submitted by the County does not adequately explain why resource use is precluded for some areas, or why certain areas which are not physically developed but are considered committed by other factors. The objection is sustained on this point (see: Conclusion--Built and Committed Exception:--areas requiring additional findings). However, for most built and committed exception areas, substantial evidence was provided by the County. The objectors contend that the County made profitable use of aerial photographs in designating exception areas and that no aerials were submitted for review. However, as was stated in the Agency Notice of April 10, 1984, (which was sent to the objectors) aerial photos were available for review at the Central Office in Salem. In addition, a listing of ownerships and assessor maps were also available for review in Salem. This information (especially the aerials), along with the evaluation sheets and maps form the substantial evidence to justify the majority of the exception areas. 1000 Friends' objection also contends that the County failed to provide information on location of dwellings and parcel sizes. However, the ownership listingm which provided a property classification (i.e., vacant, improved) and parcel size for most tracts within an exception area, was available for review at the Central Office in Salem. In addition, a complete set of Zone Diagram Maps (Zoning Maps-2 sections per map at 1" = 600') was available for review at the Portland and Salem field offices, and in Eugene. Therefore, the objection regarding lack of substantial evidence to justify any of the "physically" developed areas is not sustained.

Additional Findings for Built and Committed Exceptions

Early in this review of the County's built and committed exceptions, Department staff identified certain deficiencies in the findings supporting some of the built and committed exceptions. These deficiencies varied from incomplete mapping to lack of findings supporting certain exception areas. These noted deficiencies were forwarded to the County and on June 19, 1984, Lane County adopted supplemental findings for most of these areas (Lane County, Order No. 84-6-19-16). However, Lane County did not provide notice of the local hearing adopting these supplemental findings to commentors and objectors pursuant to the Expedited Notice Procedure under OAR 660-03-033 (personal communication, Jim Mann, June 25, 1984). The supplemental findings submitted June 21, 1984, provide additional infomation on recent partitions and subdivision activities along with information on more recent development. This information was not provided in the earlier submittal because of outdated maps and ownership listings. Address maps showing location of dwellings, mobile homes and recent road developments provided most of the information addressing the deficiencies noted earlier.

Conclusion - Built and Committed Exception Areas

Based on the information contained in the evaluation sheets on the number of tracts, number of residences or other uses, and land area distribution, along with the maps, aerial photos and ownership listings, the County demonstated that all developed and committed exception areas not specifically listed anywhere below are no longer available for resource use and are irrevocably committed in their entirety.

Areas planned and zoned Park and Recreation which the County claims are built and committed are not identified or mapped consistent with OAR 660-04-025(2). Additional findings may be needed to justify the Park and Recreation areas the County considers built and committed.

Based on a review of the supplemental findings document (Ordinance No. 84-6-19-16), the following areas appear no longer available for resource use and are irrevocably committed in their entirety. However, the Commission cannot accept these findings and approve these exception areas until the County complies with the notice requirements under OAR 660-03-033. Therefore, the following areas have not been adequately justified, but would be satisfactory upon compliance with the provisions of 660-03-033:

015, 021-1, 021-2, 023-1, 026, 028-1, 028-2, 028-3, 099A, 117, 121, 134-1, 141, 162, 165-2, 166-1, 173-2, 175-1, 175-2, 182, 185-2, 188-2, 199-1, 199-2, 200, 201-1, 203-1, 203-2, 222-2, 229, 230, 236-2, 237, 252-1, 254-3, 255-2, 255-3, 256-2, 260-1, 260-2, 260-3, 264-5, 265-1, 270-2, 271-1, 280, 281-1, 281-2, 281-4, 282-1- 282-2, 286-1, 287, 294-1, 297-1, 298-1, 298-2, 306-1, 309-2, 311, 320, 325, 335, 347-1, 347-2, 367, 379, 385-4, 390-2, 391, 392-1, 393, 398-1, 398-2, 400-1, 400-2, 402-1, 403-2, 412, 413-1, 413-2, 417-2, 419-1, 419-3, 419-4, 424, 428-2, 429-2, 433-1, 433-2, 436-1, 437-1, 442-3, 449-1, 449-2, 456-1, 460-1, 461, 469-1, 471, 473-1, 478-1, 478-2, 481-1, 484-5, 485-1, 486-1, 488-1, 489-1, 490-1, 491-3, 492-1, 494-3, 495-1, 498-1, 501-2, 501-3, 511-1, 516-3, 517-1, 518-2, 521-1, 525A, 530, 531-2, 536-1, 536, 539, 541, 542A, 548, 555-1, 556, 559-2, 568-2, 569, 572-2, 591-2, 593, 597-1, 609, 610, 614, 619, 627-1, 627-2, 628-2, 629, 630 and 631.

Based upon a review of all information provided, including supplemental findings, the following list identifies those areas which have not been justified in their entirety:

Plot-Exception	Deficiency
006-1	No findings provided justify this exception.
007-4	No findings provided for TLs 100 & 200 These two parcels (20-acres, 97-acre) are not physically developed. The County has not provided substantial evidence explaining why it is impractical to apply a resource goal to this area.
035-2	Inadequate findings provided for the entire site. Only six of the 29 tracts have single-family dwellings.

042	TL 700 and 800 are not developed and designated as a Prime Wildlife Area
056	Inadequate findings provided for vacant parcels SE of road. The area is isolated by a stream and bounded on 3 sides by large resource parcels.
065-1	Inadequate findings provided for parcel west of SPRR. The parcel is completely isolated from main body of exception area by SPRR and Suislaw River and surrounded by resource parcels.
066	Inadequate findings provided for parcels south of road. No information provided on development or ownership. Area is bounded on two sides by resource parcel and separated by road from developed area.
069	Inadequate findings for parcels west of SPRR and Northwest of Bridge. No information on development or ownership. Bounded on two sides by resource parcels and appears to be vacant land in forest management.
157-1	Inadequate findings provided for TLs 101, 200, 201, and 202. Information provided does not justify TL 101 (50 ac.), TL 200 (40 ac.) and TL's 201 and TL 202 (both 10 ac.) as committed.
157-2	Inadequate findings for TLs 601, 700, and 701. These parcels are under predominant forest management.
164-2	The County does not explain how a PUD's common open space (TL 701) in timber management justify commitment.
204-1	More information is needed on ownership and location of development to justify entire site as committed.
204-2	Inadequate findings for the entire site. Ownership and location of development has not been provided.
206	More information is needed on ownership and location of development to justify entire site as committed.
209	Additional findings needed to justify TL 2301 as committed.
223	TL 400 is vacant and in agricultural use.
251	Additional findings needed to justify TL's 1300, 1600, 1500, and 1900 as committed.
255-1	More information is needed to justify TL's 500, 501, 800, 801 as committed. Area consists of large undeveloped parcel (TL 500 - 60 acres, TL 800 - 80 acres).
264-2	TL 2901 is not committed.
270-1	Additional findings needed to justify TL's 100, 200, 110, 1200, 1300, 1401, and 1700 as committed.
281-3	No findings provided for this area.
300-1	Inadequate findings provided for TL's 600, 700, and 800.
300-2	Only 2 of the 6 tracts are developed and the County has not provided adequate findings to justify this area as committed.
301	Only 2 of the 6 tracts are developed.
334-1	The County has not justified TL 1500 as committed.
334-3	Entire site consists of one 62-acre vacant tract surrounded by resource parcels.

356	TL 100 south of SPRR consists of a 10-acre vacant parcel, isolated from the main body of the exception area by SPRR and Hwy 99.
358-3	More information is needed on ownership and development location to justify commitment for this area.
363	TL 1500 is isolated from the main body of the exception area by County Road, surrounded on two sides by resource parcels and is in farm use.
369-1	TL 100 is an isolated parcel bounded on three sides by resource parcels.
378	TL 401 is not developed. No information has been provided explaining why this large parcel (approximately 100 acres) is committed.
382-1	More information is needed to justify TL 1800, 2000, and 2001 as committed.
383	TL 100 is not developed. No information has been provided explaining why this 125-acre parcel is committed.
385-3	No findings provided for this exception area.
400-3	More information is needed to justify TL 1600 and 1601 as committed. Ownership list says TL 1600 (17 acres) has been partitioned into 3 tracts and TL 1601 (21 acres) has been partitioned into 2 tracts. Area is bounded on three sides by EFU Zoning. Ownership information and development location has not been provided.
419-5	More information is needed to justify TL 126 & 104 as committed. TL 126 (approx. 100 acres) is not developed, surrounded on three sides by resource parcels and the County has not explained why a resource goal cannot be applied to this area.
426-1	TL 300 & 600 are vacant parcels surrounded by EFU.
434-1	Additional findings needed to justify TL 500 & M-3 areas north of stream
434-3	Ownership information and location of development not provided.
439	More information is needed to justify entire site as committed. 50-acre exception area consisting of 3 tracts with only 2 having single-family dwellings.
441-2	More information is needed to justify entire site as committed. One of the four tracts is 85 acres in size (TL 501).
447	TL 600, 700 and 1701 are vacant parcels surrounded predominantly by resource parcels.
479-2	TL 1802, 1903, 1901, 1904, 1905, and 1902 are recent partitions. Information on ownership and location of development not provided.
483-2	TL 1800 consists of 100 acres zoned M-3 and only the northern portion is committed. Southern portion has stand of timber and is within Greenway Boundary.
484-3	Additional findings needed to justify TL 1400, 1500 & 1700 as committed.

522	Additional findings needed to justify TL 201, 500 and 503 as committed.
531-1	TL 1300 is surrounded on all sides by large resource parcels.
555-2	Additional findings needed to justify portion of golf course as needed.
596	TL 100, 200 and 501 each 30 acres in size are adjacent to large resource areas (F-1) zoning.
597-2	Additional findings needed to justify TL 2000 as committed.
603	Inadequate findings provided to justify TL 2300 as committed.
604	No findings provided for this exception area.
617	TL 1300, 1200 and 200 require additional justification.
627-2	More information is needed to justify entire site as committed. No assessor or aerial maps provided. Some large parcels (40+ acres) are included in exception(TL 700 and 701).
628-1	More information is needed to justify entire site as committed. No assessor or aerial maps provided. Many vacant parcels and large parcels within this exception area.
INDEX-1	No map provided (outside plot area).
INDEX-2	Exception area not defined.
INDEX-3	No map provided (outside plot area).
INDEX-4	No map provided (outside plot area).

Metro Area Exceptions

The August, 1982 Continuance Order for the Eugene/Springfield Metro Area Plan adopted the following Goal 2 compliance requirement for exceptions:

3. Lane County, Eugene, and Springfield must amend the plan to provide findings consistent with established Commission policy which justify exceptions for all resource lands designated for nonresource uses. If justification cannot be prepared, resource lands must be planned and zoned consistent with Goal requirements.

Response

Lane County has taken an exception to Goal 3 and Goal 4 for 1,856 acres in 18 different areas within the Eugene-Springfield General Plan Boundary that are claimed to be physically developed and irrevocably committed to nonresources uses. These areas will be reviewed here against the requirements of OAR 660, Division 4.

The following table contains information on each of the Metro Area built and committed exception areas (source: "Metropolitan plan Update Exception" and "Plan Diagram Zoning Map and Metro Area of Influence"):

Site	Zone	Acres	Number of parcels Developed/Vacant Parcels
Clearwater Lane	RR-5	21.91	17/2
East Thurston	RR-2	133.11	39/17
North 74th Street	RR-5	7.71	8/0
Chapman Drive	RR-2	27.52	12/6
River Loop No. 1	RR-5	165.89	30/7
Willamette Valley Dog Kennel	CR	5	---
Royal Avenue	RR-5	96.11	18/5
Bonnie Heights	RR-5	4.18	9/2
Oak Hill Drive	RR-5	68.81	15/3
Willow Creek Road	RR-2	107.85	22/17
Gimpl Hill Road	RR-5	71.13	14/8
Bailey Hill Road	RR-5	48.42	6/2
Bloomberg Road	RR-1/RR-5	128.26	46/20
Mahlon Sweet Airport	AO/EFU	790	---
Lane Community College Campus	PF	159.59	---
Knight Trucking	NC [1]	11	---
Starwood Nursery	NC [1]	5	---
Bond Kennel	NC [1]	5	---
TOTAL		1,856.49[2]	

[1]Not clear what zone was applied.

[2]Does not include vacant acreages within Mahlon Sweet Airport exception area.

Information for exceptions within the Eugene-Springfield General Plan Boundary can be found in the "Metropolitan Plan Update-Exceptions" (November 1981) and the "Plan Diagram Zoning Map and Metro Area of Influence" (February 1984). For each exception findings are provided describing the general character of the exception, soil properties, services available and ownership characterstics. Maps are also provided for each exception showing boundary and tax lot numbers. A list of ownership, property class or land use, value of improvements and parcel sizes is also included. For the Lane County Community College Exception Area, additional infomation on enrollment, employment and classes has been provided, including an additional map showing campus facilities and land uses.

Conclusion: Metro Area Built/Committed Exceptions

Based on the evidence submitted by the County regarding acreage, parcel size, number of parcels, ownership, land use and maps substantial evidence exists consistent with OAR 660, Division 4, to support the County decision to irrevocably commit all built and committed exception areas within the Metro Area General Plan Boundary except Tax Lot 1600 in the Royal Avenue Area.

That portion of the Mahlon Sweet Airport Exception area which is identified in the plan as undeveloped will be reviewed as a "need" exception under ORS 197.732(1)(C) and OAR 660-04-02 and OAR 660-04-022 (see: Metro Area Need Exception of this report).

The Following statements indicate why the information provided by the County does not satisfy the committed lands requirements of ORS 197.732(1)(a) and (c) and OAR 600-04-025 and OAR 600-04-028):

Royal Avenue Area, Tax Lot 1600: Tax Lot 1600 is completely isolated from the main body of the Exception Area and is completely surrounded by resource land. One single-family dwelling on a 5.14 acre isolated parcel does not justify commitment and the County has not provided substantial evidence explaining why it is impractical to apply a resource designation to this parcel.

Metro Area Need Exception

Lane County has taken an exception to Goal 3 for 904 acres of land within the 1,694 acre Mahlon Sweet Airport area that is neither built upon or irrevocably committed, but that are stated to be needed for future airport uses or protection (Metropolitan Plan Update-Exceptions, p. 11-1). These areas will be reviewed here against the standards set forth in ORS 197.732(1)(C) and OAR 660-04-020 and OAR 660-04-022. As noted above, the remaining 790 acres is irrevocably committed to a nonresource use (see: Metro Area Exceptions of this report).

Reasons Why the State Policy Embodied in Goal 3 should Not Apply

OAR 660-04-020(2)(a) requires that the exception shall set forth the facts and assumptions used as the basis for determining that the state

policy embodied in Goal 3 should not apply to the specific property or situation and why the use requires a location on resource land.

Included in the plan is the following excerpts from a resolution (3308) adopted by the Eugene City Council on February 25, 1980, that documents the need for airport expansion based upon projected demand (Metropolitan Plan Update - Exception, p. 11-3):

> The ever growing air transportation needs of the metropolitan community require that the airport's capacity be increased. The revised Plan forecasts: (1) an increase in boarding passengers from 186,632 in 1977 to 568,000 in the year 2000; (2) an increase in takeoffs and landings from 170,779 in 1977 to 395,000 in the year 2000; and (3) an increase in freight and mail tons from 821.7 tons in 1977 to 2,400 tons in the year 2000. At this rate of projected growth, existing runways will reach capacity in about 1983. The need for increased capacity is supported by the Regional Airport Systems Study prepared for Lane County in January of 1978 in which it was concluded that Mahlon Sweet Airport would continue to be the only air-carrier served airport in Lane County. To respond to demand, only limited public land is available in the area of existing facilities west of Greenhill Road. Recognition of the need for a new general aviation runway and airport related facilities was expressed by the Council in its adoption of the Mahlon Sweet Master Plan in January, 1973.

Included in the plan is a list of projects expected to occur between 1981 and 2000 in order to meet projected demand. These include: a third runway; extension of the main runway; modification and relocation of the traffic control tower; additional parking and storage; relocation of Lane Community College Training Center; and expansion of the taxiway system, terminal building, sewage treatment plant and auto parking areas (short, long-term and rental areas).

Areas which do not require a new exception cannot reasonably accommodate the use.

To show why this site is justified and why other areas which do not require a new exception cannot accommodate the use, the county's exception statement references an airport needs study conducted in 1971 (Metropolitan Plan Update--Exceptions, p. 11-4). The other airports examined were the Cottage Grove State Airport, Creswell Airport, Florence Municipal Airport, Oakridge State Airport, Springfield Airport, and the McKenzie Bridge State Airport. The study concluded that the Mahlon Sweet Airport would likely continue as the principal general aviation and commercial airport in Lane County (p. 11-4). The report also recommended that "the Mahlon Sweet Field Master Plan" (1972) be developed which the plan says also strengthens the need for expanding the airport and accommodating larger aircrafts, expansion of the runways and air traffic control systems.

The plan discusses the amount of investment that has gone into the airport facility and reasoning why relocating the facilities would be prohibitively costly (p. 11-4). The Eugene City Council in Resolution 3308 stated (p. 11-5):

> The land and improvement value at the airport amounted to approximately $30 million in January, 1980. Many of the existing facilities can be used to support the new general aviation runway (parking areas, sewage treatment, hangers, control tower and the like), but only if it is adjacent to the present facility. It would not be fiscally responsible to purchase additional land elsewhere adjacent to the present airport to replace present holdings which were acquired and have long been planned for airport development. Nor would such a purchase result in preservation of additional agricultural land because all lands adjacent to the airport share similar agricultural characteristics.

Long-Term Environmental, Economic, Social, and Energy Consequences

The plan briefly explains the social and economic impact stating that the effect of the airport upon the metropolitan area is not only limited to payroll, but that the airport also provides opportunities for tourist trade, business trips and conventions, all of which provide input into the local economy (pp. 11-5).

The plan states that the long-term environmental consequences of the proposed airport improvements are analyzed in the 1972 Master Plan and were conducted in a method required by the National Environmental Policy Act of 1969 (NEPA). The study concluded that the airport expansion could be encouraged from an environmental standpoint (p. 11-5). The plan discusses the following factors in their environmenal analysis: noise, drainage, vegetation, wildlife, water quality, air quality, safety, and energy (pp. 11-5 through 11-8).

Compatibility with other Adjacent Uses

The plan states that the proposed airport expansion is adjacent to agricultural and vacant land (p. 11-8). The Eugene City Council Resolution 3308 provides the following statement:

> The major adjacent nonagricultural use is the existing airport facility to the west across Greenhill Road. The other adjacent areas are not heavily developed and are characterized by agricultural uses with limited industrial uses close to Highway 99. Reflecting existing uses, the 1990 Plan, and the Mahlon Sweet Field Master Plan, the adjacent areas are not zoned for residential development. Experience indicates that airports generate minimal problems for agricultural and similar open space uses, particularly when compared to residential uses, or commercial or industrial uses that are not complimentary to and dependent on the airport.

The plan also discusses compatibility with adjacent uses referencing the Airport Hazard Ordinance which provides safeguards for land uses near the airport (see: Goal 12 of this report for further information).

Objection

The City of Eugene objects to the Airport Operation Zone (AO-RCP) applied to two tracts (Drake and Kokkler properties) located within the Mahlon Sweet Airport Exception Area, stating that such zoning does not conform to the Metro Area General Plan.

Response

This objection is valid, and is addressed above under Goal 2--Plan/Zone Consistency.

Conclusion: Metro Area Need Exception - Mahlon Sweet Airport

Based upon the existing development, need for future expansion to meet projected Metro Area air transportation demand and the evidence submitted, there exists substantial evidence consistent with ORS 197.732(1)(C) and OAR 660-04-020 and OAR 660-04-022 to support the County's decision to zone these areas for future airport development. However, this zoning does no comply with Goal 2 (see previous discussion).

Need Exception--Big Creek

Lane County has taken an exception to Goal 4 for 26 acres known as the Big Creek property that is not built upon or irrevocably committed, but that is said to be needed for a destination resort facility. The property owners plan to develop a 40-unit lodge facility with 30 additional detached cabin units, 2 owner's residences, restaurant, trading post, and ancillary facilities. The property is located approximately 14 miles north of Florence on the east side of Highway 101 and North of Big Creek. This area will be reviewed here against the standards set forth in ORS 197.732(1)(c) and OAR 660-04-020 and OAR 660-04-022.

Findings

Lane County's exception for 26 acres of forest lands can be found in the submitted document entitled: "Exhibit E Renaghan Amendment." Included in this plan document are findings addressing plan policies and applicable Statewide Planning Goals that the County claims justify the exception.

Reasons why the state policy embodied in Goal 4 should not apply:

The plan contains 14 findings regarding tourist demands, employment opportunities, and tax base expansion. Among these findings are the following (Exhibit E Renaghan Amendment, p. 39-42):

(1) Tourism is the second largest industry in coastal Lane County.

(4) Coastal Lane County does not currently have a destination resort which takes advantage of the unique scenic resources of coastal Lane County and the recreational opportunities provided by State and Federal agencies in the Coastal Corridor from Sea Lion Caves to Yachats. State and Federal parks and campgrounds in this area (Sea Lion Caves to Yachats) receive over 650,000 visitors annually.

(8) Camping opportunities are provided in the coastal corridor between Yachats and Sea Lion Caves by State and Federal agencies. However, not all tourists and visitors are able or inclined to enjoy the recreational and scenic opportunities in this area through use of camping facilities due to disability, age, health, personal preference or place in life cycle. Destination resort facilities permit these people to appreciate the recreational amenities in this area more conveniently.

(13) The owners of tourism-related businesses on the coast testified as to the need for additional facilities due to strong demand which has kept existing facilities filled to capacity.

Other findings applicable to the "reasons" test are as follows (Exhibit E Renaghan Amendment):

(Finding 24, p. 17):

The highest concentration of state parks is along the Oregon Coast. The recent designation of Federal lands adjacent to the Property for scenic, recreation, wildlife habitat and roadless area will attract more people to this area of the Coast. The public facilities in this area are limited to campgrounds, day use areas, hiking trails and other similar facilities. The public areas do not provide lodging and restaurant facilities which must be provided by the public sector. The need for such private facilities to supplement public facilities has been acknowledged by State and Federal agencies that do not provide destination resort facilities, restaurants, stores and other facilities similar to those proposed by this application. Over 650,000 people visit and stop at one of the public facilities located between Devils' Elbow and Rock Creek.

(Finding 32g, p. 20):

Governmental agencies cannot provide all of the recreational facilities in this or any other area as indicated by the responses of the Siuslaw National Forest and the State Parks Division. Statewide Planning Goal 8 recognizes there is a need to provide private lodging and recreational facilities in suitable locations that will supplement the public facilities. It is likely public funds will become more and more limited, and

it will be necessary for private development to expand its offerings to coastal tourists.

(Finding 34b, p. 22):

The TOURIST COMMERCIAL designating will provide a small-scale tourist facility catering predominantly to vacationeers visiting the coast for some period of time. The TOURIST COMMERCIAL designation is adjacent to Highway 101 and Big Creek. Direct and safe access to the beach is available from the Property. This is a popular portion of the Lane County coast with a variety of public recreational facilities adjacent to the beach (e.g., - Washburne State Park, Ponsler Wayside, Rock Creek Campground and Roadless Area, and Ocean Beach Park). This facility will provide goods and services to visitors to these public facilities as well as lodging, accommodations for those who do no or cannot use campgrounds.

Areas which do not require a new exception cannot reasonably accommodate the use.

In evaluating alternative areas, the County used the following criteria (Exhibit E, Renaghan Amendment, pp. 42 and 43):

(a) View of the ocean and interface between land and sea. The scenic beauty of the Oregon coast is internationally acclaimed and as Wilsey and Ham's Coastal Resource Inventory indicates, these views are most spectacular in the portion of the Lane County coastal corridor between Gwynn Knoll in the north and Washburne State Park in the south.

(b) Safe ocean/beach access. A walk along the beach is an important part of a visit to the coast for many people. Hence, with a destination resort where travel elsewhere is minimized, access to the beach in close proximity to the site is an important factor. Since children will be using the facility, safety of access is also critical. A requirement to walk on and across the Highway could not be construed safe access.

(c) Natural setting. Although not all destination resorts are located in natural settings, many prosper on a clientele that is looking for a unique natural setting devoid of the more urban trappings of man.

(d) Developable area. Any site must have sufficient developable area. This would require an area free of topographic, geological or soil constraints upon which the resort facilities can be developed. The coastal upland areas are typically quite steep with slopes in excess of 35% with few bench areas.

(e) Access to Highway 101. Any development must have legally established access to the main coastal transportation route and must be in close proximity if not adjacent to the Highway.

The plan states that lands south of Florence were not considered because the land west of Highway 101 is within the Dunes National Recreation Area and few views of the ocean are afforded (Exhibit E, Renaghan Amendment, p. 43). The plan also states that lands between Lily Lake and the City of Florence has several constraints such as dune soils, few ocean views, and virtually all land within close proximity to the beach is within the Siuslaw National Forest. According to the plan, the only exception is land within the Heceta Beach area which is already developed to urban densities, constrained by dune soils, removed from Highway 101, and does not have the visual amenities which have been well documented north of Lily Lake (Exhibit E, Renaghan Amendment, pp. 43 and 44).

As a result of the above findings, the plan provides a more detailed alternative analysis for a 27 square mile area along the coast between the Sea Lion Caves and north to Yachats. This area was found by the County to provide the natural amenities, spectacular views, potential beach access, and numerous state and federal park facilities considered viable for a destination resort of this type.

Within the 27 square mile area, the County divided their discussion of alternative areas by ownership (federal, state, and private lands). Private lands were separated into four categories: (1) private corporate timberlands; (2) nontimbered parcels less than ten acres in size; (3) nontimbered parcels from 10-37 acres in size; and (4) three larger-timbered or partially timbered parcels (which includes the Big Creek Property) (Exhibit E Renaghan Amendment, pp. 44 and 45).

The table below summarizes the ownership of lands within the 27 square mile study area evaluated (Exhibit E, Renaghan Amendment, p. 47):

Ownership	Acres	% of Total
Federal	13,500	78%
State	2,300	13%
Private		
Corporate Timberlands	700	4%
Small, nontimbered parcels (less than 10 acres-159 ownerships)	218	1.5%
Moderate sized nontimbered parcels (10-37 acres - 6 parcels)	155	1%

Three larger parcels	440	2.5%
Jaqua	106	
Merz	148	
Big Creek	186	
Total	17,313	100%

The plan provides findings which the County claims precludes the siting of a Destination Resort within each ownership category noted above (except Big Creek Property). These findings are summarized below (Exhibit E, Renaghan Amendment, pp. 45-47):

Corporate Timberlands: Land is located in uplands, outside of coastal corridor, no beach access and slopes generally exceed 35 percent.

Small Nontimbered Parcels: Average parcel size is two acres and are too small to accommodate a destination resort facility as proposed.

Moderate Sized Nontimbered Parcels: Three of the six parcels do not have frontage on Highway 101 and do not offer beach access without crossing Highway 101 and traversing private lands. The remaining three parcels have frontage on Highway 101 but do not have direct beach access. There are also topographic constraints. Several parcels are within an area having water availability problems.

Jaqua Property: Constrained by slopes in excess of 30 percent and hazardous access to beach.

Merz Property: Development the the west side of Highway 101 would be minimal because the knoll is classified as a headland and is in the main view orientation along the coastal corridor. Land east of Highway 101 is generally steep although it appears that developable land may exist in the interior parcel but the land does not appear to have developable acreage close to the Highway.

The plan provides the following finding which the County claims makes the Big Creek property suitable for a destination resort facility (Exhibit E, Renaghan Amendment, p. 46):

> The Big Creek property has access to and fronts on two public roads. The Big Creek site has safe access to the beach via established public access which is under Highway 101 and Big Creek Bridge. The proposed development would establish an open space buffer on its own land and is free from incompatible surrounding uses. The Big Creek site has adequate development area along the access routes yet is removed from the creek so that pollution danger is eliminated. The Property affords good views of the ocean. A detailed site analysis shows no geological constraints. The Renaghans are prepared to devote $3 million in capital to develop the site in an environmentally

sensitive manner. The Big Creek site is the most viable alternative on the Lane County coast for locating a destination resort of this type.

Long Term Environmental, Economic, Social, and Energy Consequences

As noted above, no other areas were found suitable for development of a destination resort facility than the one proposed at the Big Creek site. For that reason, the plan only discusses the environmental, economic, social, and energy consequences that would result from developing the site (with special conditions) opposed to leaving the site in its natural state.

The County claims that the benefits of developing this site for a destination resort are not only all positive in terms of their environmental, economic, social, and energy consequences but that they could all be enhanced. An explanation of these benefits and enhancements are described below (Exhibit E, Renaghan Amendment, pp. 47-50).

Environmental

Environmental consequences addressed in the plan relate to the effect of development on elk use of the property, effect of possible increased use on anadramous fish runs in Big Creek, and the impact on the Silverspot Butterfly.

The plan discusses the benefits of establishing a winter range forage area for the elk on the remainder of the 160 acre property stating that left in its natural state, the clear cut areas in five to ten years will return to mixed stands of deciduous, spruce, and other trees, thus eliminating the winter forage areas that now exist. The plan also states that the opportunity for establishing winter range forage areas elsewhere in this area is very limited because lands along the coast are to be left essentially undisturbed. The plan references a report prepared by Dr. Robert Vincent (February 1981) on the relationship between the elk and the development proposed.

The plan states that minimizing impacts on fish habitat can be accomplished through cooperative agreements between the ODFW and the owner. At the request of ODFW, the plan states that portions of the Big Creek under control of the owner will be closed, restricted, or open in accordance with the request of ODFW (p. 49). The plan also states that letters from the Lane County Water Pollution Division indicates that adequate soil for waste disposal exist on the site for removal from Big Creek (p. 49).

The plan states that testimony from Dr. David McCorkle, expert on the Silverspot Butterfly, indicates that with the imposition of conditions, the proposed development will enhance the viability of the Rock Creek/Big Creek Silverspot population. Dr. McCorkle determined that propagation of essential nector providing flowers would be a "boon to the recovery" of the butterfly (p. 65).

Economic

The plan states that the development will supply 36 person years in construction employment with a payroll in excess of $1 million and 25.5 full-time equivalent long term employment positions. The development will generate $41,805 annually in property tax revenue and 20,375 annually in room tax revenue. The plan also states that gross annual income is estimated at $957,500 of which approximately 50 percent will be export income to Lane County and virtually 100 percent will be export income to coastal Lane County. This will result, according to the plan, in new long term indirect income estimated at 861,750 for Lane County as a whole and $1,723,500 to coastal Lane County based on a multiplier of 1.8 (p. 47, 48).

Social

The plan states that the development provides expanded recreational opportunities in the coastal corridor between Yachats and Sea Lion Caves by providing privately developed facilities in an area with recreational amenities for those who are unable or prefer not to utilize campground facilities or as an alternative when campgrounds are not available. The development also provides short and long term employment opportunities in a Labor Surplus Area (p. 49).

Energy

The plan states that (p. 49, 50):

> Energy consequences are positive in that provision of destination resort facilities in Lane County may discourage Eugene-Springfield and other Willamette Valley residents from traveling to Lincoln County or other North Coast Counties for destination resort vacations. By locating accommodation facilities in close proximity to recreational opportunities and scenic amenities and by providing restaurant, store and ancillary facilities in a single confined area, the need for frequent trips from the accommodation facility is reduced.

Compatibilty with other Adjacent Uses

The plan provides the following reasons and facts explaining why the proposed development is compatible with adjacent uses (Exhibit E, Renaghan Amendment, p. 50):

(1) Surrounding State and Federal lands emphasize recreational use, wildlife values and scenic values over timber management. The CONSERVATION/RECREATION/OPEN SPACE plan designation is more compatible with this emphasis than the previous designation of NATURAL RESOURCES: FOREST.

(2) Conditions are to be imposed which minimize conflicts between the destination resort facilities and wildlife values existing on lands within the CONSERVATION/RECREATION/OPEN SPACE designation. Uses on State and Federal lands are buffered from the developed area by 160 acres of open space and by vegetation and topography.

(3) Site review requirements will be imposed to ensure that layout and design of destination resort facilities are compatible with the landscape.

(4) There is no existing development immediately adjacent to the Big Creek property and because of the predominance of public land and public land mangement policies none will occur. Therefore there is no incompatibility with existing development in the area.

(5) Provision of a destination resort in this area complements recreational opportunities on surrounding State and Federal park lands by supplying alternataive types of accommodation facilities. Such complementary private developments are encouraged by State and Federal policies as well as Goal 8.

The County attached conditions to the plan and zone change to assure that the proposed use will be situated in such a manner as to be compatible with the natural resources in the area. A copy of these conditions are attached for the Commission review.

Proposed Use

A major element in reviewing exceptions for destination resorts is also a close examination of the type of development that is proposed. It is important to clearly identify and describe the proposed use so that the need can be properly assessed and provided for.

This is particularly important when the proposed use involves a residential type use because the Commission has set a clear set of tests for approving acceptions for new residential development. As the Commission noted in the Lincoln County review, there are general factors which identify and distinguish destination resorts from other types of development. The provision of a high level of visitor-oriented accommodations and developed recreation facilities are key elements of destination resorts.

While this exception provides extensive data for Tourist Commercial, there is not a definition of a destination resort. However, information available to the Department indicates the proposed development would qualify as a destination resort (material presented to Oregon Economic

Development Commission on January 27, 1984). It includes the following statements describing the proposed development for Big Creek Resort.

> The main lobby, fine dining room, coffee shop, lounge, club room, banquet and meeting areas, and kitchen are to be parts of a tall timbered and glass structure on a hillside promontory. Guest rooms with fireplaces and decks will be in two lodges and in thirty cabins scattered away from the central part of the resort. Each cabin will incorporate three adjoining rooms, one with a kitchen. Altogether, when complete, there will be one-hundred-seventy guest rooms and a banquet and conference room for as many as three-hundred with the capability of seating a meeting of four-hundred-fifty people.
>
> Sewer, water, fire suppression, and security services will be provided on the site and at the expense of the resort.
>
> Recreation components of the proposed design include hiking trails, nature lookout, a glass enclosed swimming pool with jacuzzi, saunas, gym, three indoor tournament tennis courts, a pond for fishing, and an arts and crafts studio. Although Big Creek Resort is designed first and foremost for visitor use, all recreation facilities will be open to use by the general public.
>
> Estimated construction costs for the various elements of the resort are as follows (estimated by Bonadure & Associates, Portland):

Tourist Center	$ 183,000
Restaurant/Conference Center	900,400
Lodges 16 and 24 Units	1,557,600
Cottages 30 Units	2,031,000
Recreation Building	597,600
Maintenance & Crafts	136,000
Resident Management Residences	275,000
	$5,680,000

This information shows there will be a substantial investment in developed recreational facilities and visitor-oriented accommodations. Other than two "resident management residences," it appears there will be no residential development on the site. In addition, the remaining 160 acres of the 186-acre site are dedicated as permanent Open Space to buffer surrounding uses.

For these reasons, the Department concludes Big Creek as proposed is a destination resort.

Zoning of Big Creek Development

The Big Creek Development has been rezoned from CT to DR as indicated from Ordinance No. PA 994-Legislative Findings as follows:

> The Diagrams and Zones reflect only one "need" exception arising from a prior quasi-judicial application. We, therefore, readopt the need exception set forth on attached Exhibit "E". Note that pursuant to CPR summary, the new designation is Destination Resort, rather than Commercial Zones. However, the exception to the Goal remains valid. The site review conditions are also readopted.

The Destination Resort Zone (RC-RCP) from page 16-112 of the Lane Code limit living accommodations to 75 percent for other than year-round residents. Permitted used include all outdoor and indoor facilities, convention facilities meeting rooms, and other facilities listed. Through the permitted use, the zone limits and protects the uses as discussed in the exception.

Objections

The Department has received the following objections to the need-exception for Big Creek resort:

1. Lane County Audubon Society objects to inadequate public notice to coastal residents. LCAS has also relied on a letter to the editor to show why the economic information presented by Lane County is incorrect.

Response

The letter referred to is a letter to the editor in which Lane County Commissioner, Peter DeFazio makes statements about a tax subsidy for Big Creek Development. The letter does not give evidence to challenge economic tactics used by Lane County. The adequacy of Lane County public notice for its decision on this project is discussed in the beginning of this report.

2. Carl Reynolds states the development will conflict with Goals 2, 4, 5, 8, 9 and 17, and the development belongs within an urban growth boundary. Mr. Reynolds also states the facility does not qualify as a resort.

Response

There were no specific Goal issues raised, instead, all that is provided is just a statement that the development would conflict with the Goals. See the discussion above for Goal issues and definitions of destination resorts.

3. Richard Gold restates parts of Goals 2, 5 and 17 and objects to funding by revenue bonds.

Response

Goal issues raised by Mr. Gold are alternatives, reasons, and environmental consequences. See discussion of the exceptions requirements and findings above. Funding is not a Goal issue.

4. Hans Radtke and Friends of the Oregon Coast raise the same issues so they will be reviewed together. Both raise questions of need, alternatives, environmental and economic consequences.

   Both also rely a great deal on, "Trends in the Hotel Industry In the Pacific Northwest," by Pannell Kerr Forster to show why there is not a need and to question the economic impacts. Mr. Forster's report basically compares the years 1981 and 1982 of operating revenue and expenses, occupancy rates, trends by location and trends by type of property. A summary of the trends shows there was an 8.2 percent decline in occupancy rate experienced by their survey of hotels. The national recession had a major effect on the Northwest, with the year-end unemployment rate in Oregon at 11.8 percent, and in Washington, 13.0 percent. This had a strong effect on commercial travelers, with these travelers shortening their typical length of visit and cutting down on their number of visits. The recession also had a strong impact on tourist travel, with the wary public conserving their savings by cutting back on vacation travel. Mr. Forster also projects 1983 will be a much better year for the industry in te Pacific Northwest. Through June, our indications are that occupancy levels are generally up approximately three percent points over the same period in 1982. The long-awaited end to the recession is resulting in increased commercial and tourist travel.

Friends of the Oregon Coast also state the criteria by the applicant automatically elements other sites, and the applicant should have looked for alternative sites in other counties.

Environmental issues raised include, fishing pressure on Big Creek, archeological problems, Silver Spot Butterfly, flooding problems on the site, open space and impacts to the surrounding area.

Response

Mr. Forster's trends report used by Mr. Radtke and Friends of the Oregon Coast to show why there is not a need because of a decline in the hotel industry for the past two years, doe not contradict findins made by Lane County. In the planning process, trends set by one or two years during a national recession cannot be used alone to dispute findings made for a 20-year plan. It is proper for the County to plan based on long-term rather than short-term trends.

Lane County has adopted zone classifications such as Floodplain Combining, Shoreland Mixed Development Combining, Historic Structures or Sites Combining. These zones adequately respond to the environmental concerns raised by the objectors. During permit or site review, these zones overlay on sites identified in the comprehensive plan to protect

archeological sites or flooding problems, etc., as they may apply. A further exception will not be needed to implement these zones.

Friends of the Oregon Coast (FOC) have presented a multifaceted objection to the County's exception to site a destination resort at Big Creek. Each point of the objections is presented below followed by the Department's response.

Objection 1--The applicant did not meet the County plan amendment criteria.

The County adopted a plan amendment asserting an error was made in the original plan adoption because it did not adequately consider the needs for coastal tourist facilities. FOC contends the County's need findings are inadequate for the following reasons:

1. There was no new need not apparent to the County at the time the plan was adopted.

2. The need for destination resort facilities is distinct from demand for tourist facilities upon which the County relies to demonstrate need.

3. FOC provides findings showing demand for resort facilities in nearby resorts has declined in recent years.

4. Even if there were a need for more resorts, the location of existing resorts in built and committed areas shows that this need could be met without an amendment to the rural element of the County's comprehensive plan.

5. The plan's findings are not supported by substantial evidence of changed circumstances in the County's record on the plan amendment.

Response 1--The Department concurs with the County's response to this objection in their June 11 letter (Lane County Response to FOC Objection). The County notes that the County's plan amendment requirements are not relevant to the Commission's review of this particular exception. FOC's objection responds to the 1981 plan amendment regarding Big Creek which was quasi-judicial and was therefore subject to the standards in Chapter 12 of Lane County Code. The exception now subject to the Commission's was the exception adopted as part of a whole package of legislative plan amendments made in 1984 by the County in order to bring its plan into compliance with the Goals.

Objection 2--The FOC contends that the County failed to provide proper notice of amendments to the comprehensive plan.

Response 2--The objection is not valid. The Department concurs with the County's assessment of the adequacy of its public notice. The County's response to FOC notes that: the deficiencies alleged by FOC occurred as part of the 1981 quasi-judicial decision, not the 1984 Legislative decision presently before the Commission (paraphrase of County's response

to FOC objection, June 1984). Consequently, the adequacy of the County's notice in 1981 is not relevant to this acknowledgment review. Even so, the County's response also provide evidence which shows its 1981 decision was preceded by ample and adequate public notice to affected parties.

Objection 3--The County failed to provide substantial evidence to support its conclusion or adequate findings of fact. FOC notes that many of the supporting documents relied upon by the County in approving the exception were not adopted or included as part of the record in 1981 or the comprehensive plan in 1984.

Response 3--The objection is without merit. First, as before, the County decision before the Commission is 1984 Legislative plan decision, not the 1981 quasi-judicial action. Second, in either event, the County's Goal 2 obligation is met by referencing otherwise readily available studies, reports, and plans. It is not necessary for the County to adopt these documents as part of the plan for them to be adequate evidence for a plan decision in general or an exception approval in particular. The only case where such a burden might exist is where a particular study was done for the proposed development or source of information relied upon by the County was not otherwise available to the general public for review. Neither circumstance exists in this case.

Objection 4--FOC contends the County's decision is inadequate because it simply adopts the applicant's case as its findings of fact.

Response 4--The objection is invalid. The issue is the adequacy of the County's adopted findings of fact, not who prepared them. As noted elsewhere, the County's adopted findings are adequate to meet the Goal 2 standards.

Objection 5--FOC contends the County has not provided compelling reasons and facts which show why these other uses should be provided for. This objection is supported by several specific arguments including the following:

- The County has intermingled the "needs" and "alternatives" requirements by arbitrarily defining the uses requiring a particular site.

- Destination resorts do not require a rural location because existing resorts in Lincoln County have located in urban and built and committed areas.

- LCDC policy for rural housing and rural industrial exceptions does not allow equating demand with need as the County has done.

- Most of the County's need findings are based on increased accommodations and resultant taxes and employment that FOC argues could result at any urban location.

- The County's findings that accommodations must be provided in proximity to resources is not a compelling justification for a Goal 4 exception.

Response 5--The objection is not sustained. The applicable exceptions requirements are those adopted by the Legislature in 1983 and subsequently incorporated into Goal 2 and the exceptions rule by the Commission. The County's burden is no longer "compelling reasons and facts" which demonstrate "why these other uses should be provided for." It is now substantial evidence of reasons why the policy embodied in the Goal should not apply (see Goal 2 and the exceptions rule). While the same issues are relevant, the County's burden is slightly less.

The revised reasons needs test is closely linked to the alternatives test. Clearly defining the need to be met is necessary and appropriate way to limit the potential alternative which must be considered. As Lane County states in its response to this objection: "The need criteria serves to define the appropriate area for the alternatives location analysis . . ." (Lane County Response to FOC Objection, June 1984, p. 30). The County's burden is not to so arbitrarily limit the need to be met so that only the proposed site can meet the identified need. As the Department concludes in its response to Objection No. 6, the County has not gone too far in limiting alternatives.

The contention that resorts can be sited in built and committed urban areas is correct and is assessed further in No. 6 below.

While the Commission policy and rule have limited rural housing and industrial uses to those which need rural locations, it is important to note that neither use is proposed here. With the exception of two owner's residences (which are needed to manage the development) all units are overnight accommodations. Further, to some extent it is permissible for the County to equate demand for recreational facilities with "need" or "reasons" because Goal 8's definition of recreational need includes demand of both tourist and visitors to the state for recreational facilities. As FOC notes, this demand is not arbitrarily demand for rural areas: alternative sites in urban areas must be considered and are discussed in greater detail below.

It is permissible for the County to consider nonsite specific factors as part of its justification for this exception. The general needs for tourist accommodations, increased employment, and increased tax base are relevant in combination with other site specific factors. They would be inappropriate only if they were relied on exclusively, and the County used them to conclude that rural location was needed. As noted below, other reasons further narrow the County's "reasons analysis."

The County's findings on the importance of accommodations in proximity to tourist attractions is appropriate. While objector's question the County's conclusion on how near accommodations should be, they provide no clear reason why the County's conclusion of immediate access is unreasonable; especially in the face of the evidence provided by the County which shows existing resorts located with direct access to natural amenities.

Objection 6--FOC objects to each of the six factors selected by the County to limit its consideration of alternative sites. Each factor in FOC's objections is summarized as follows:

a. View of the Ocean. FOC contends the Big Creek site does not have the especially scenic or spectacular views which the County finds make a resort appropriate in this area.

b. Beach Access. FOC contends that beach access is available at sites within the UGB's of Florence and Yachats.

c. Natural Setting. FOC contends that a natural setting is not an essential element of a resort because similar settings can be provided by design in a more urban environment.

d. Developable Area. FOC objects to the arbitrary selection of 26 acres of land free of topographic geologic or soil constraints as a criteria for site selection.

e. Proximity to the Highway. FOC argues there is no basis for the County's decision to require that alternative sites be in close proximity to the highway.

Response 6--The objection is not well founded for the following reasons:

a. Ocean View. The County's criteria is simply ocean view; not access any especially scenic view provided in the area. Other sites are not ruled out because they do not have a particularly scenic view. Further, the County findings make it clear that this site does have an ocean view (see County Response to FOC Objection, June 1984, p. 39).

b. Beach Access. As the County notes in its response to FOC (June 1984, p. 40), "(e) each criteria is necessary, but no single one is sufficient in and of itself to justify a consideration as an alternative to the site . . ." Consequently, the fact that there are sites within the Florence UGB with beach access does not mean they are reasonable alternative sites.

c. Natural Setting. The Department concurs with the County's response to this objection. Adequate natural amenities may be available within the UGB for committed areas. The County was obligated to look. It did and found that Florence did not have the desired natural amenities (see Lane County Response to FOC Objection, June 1984, p. 41).

d. Developable Area. The County's decision to set a minimum of 26 acres for developable land appears to be reasonable in this case given the purpose of the destination resort: to provide a large number of overnight accommodations and supporting recreational facilities and services with settings with high natural amenities. While the choice of this specific figure--26 acres--is not supported in detail, it reflects the reasonable expression of the County's objective to site

a destination resort. It would be unreasonable only if the County had excluded alternative sites of the similar but lesser size or had not explained in any way why 26 acres was needed for the development (see County Response to FOC Objection, June 1984, p. 43).

e. Proximity to the Highway. The Department concurs with the County's response to this objection. The County's record provides ample findings of the need for close proximity of resort and tourist facilities to major highways.

Objection 7--FOC contends that the result of the County's alternative analysis, based on the five factors above, is to arbitrarily rule out appropriate alternatives, particularly sites within the Florence and Yachats urban growth boundaries and the Merz and Jaqua parcels.

Response 7--The response is not well founded. As noted in No. 6 above, the County's five factors are appropriate for identifying alternative sites. Consequently, reasonable application of these factors to include potential alternative sites is also reasonable. More importantly, recent amendments to the exceptions requirements have narrowed this task in an important way. The County no longer has open-ended obligation to identify alternative sites. Statute, Goal, and rule now only require that sites which do not require an exception must be considered. This rules out the Jaqua and Merz properties and other rural sites as alternatives because each would require a Goal exception. Application of the five factors above is appropriate and sufficient to rule out alternative sites within the Florence and Yachats urban growth boundaries.

For reasons as stated in the response to objections, the objections are not supported for the Big Creek Resort. There is substantial evidence in Lane County's findings to answer concerns raised.

Conclusion-Need Exception Big Creek

Based upon the information provided, as discussed above, there exists substantial evidence consistent with ORS 197.732(1)(c) and OAR 660-04-020 and OAR 660-04-022 to support the County's decision to take an exception to Goal 4 to allow the development of a destination resort facility at Big Creek.

Lands for Which Goals 3 and 4 do not Apply (Nonresource)

In order to justify the position that Goals 3 and 4 do not apply to specific lands, substantial evidence must be adopted into the record which indicates the following:

Goal 3

(a) That the land is not predominantly SCS Class I through IV soils (in western Oregon) or I through VI (in eastern Oregon).

(b) That the land is not:

Other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices.

(c) That the land is not:

Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands.

Goal 4

(a) That the land is not:

Land composed of existing and potential forest lands which are suitable for commercial forest uses.

(b) That the land is not:

Other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation.

(c) That the land is not:

Land where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use.

(d) That the land is not:

Other forested land in urban and agricultural areas which provide urban buffers, wind breaks, wildlife, and fisheries habitat, livestock habitat, scenic corridors and recreational use.

If substantial evidence addressing each of the above requirements is not contained within an adopted comprehensive plan, a County must apply Goals 3 or 4, whichever is applicable. Also, a County is obligated to address and satisfy all other applicable Statewide Planning Goals or, where appropriate, take an "exception."

Lane County's Nonresource Lands Process

In November of 1983, Lane County prepared a Marginal Lands Working Paper which contains two processes for designating certain rural lands without applying zones designed to meet the stronger resource conservation requirements of Goals 3 and 4. One of these designation processes, "marginal lands" is addressed under the Goal 3 discussion, the other, "Nonresource/Nonexception Lands," is described by the County as follows:

Lands that do not meet the definition of agricultural land or forest lands as set forth in State Planning Goals 3 and 4. Use

of this land shall be for very low density rural residences, part time farming and other similar activities. Density patterns will be primarily a function of on-site conditions, however, shall not exceed one dwelling unit per five acres.

Land may be designated as NON-RESOURCE/NON-EXCEPTION LAND upon submission of satisfactory factual information to support the following findings:

1. The land is not composed of existing or potential forest lands which are suitable for the commercial production of wood fiber products.
2. The land is not needed for watershed protection.
3. Designation of the land as NON-RESOURCE/NON-EXCEPTION LAND will not adversely effect management of the land for big game range or other wildlife, fish or waterfowl habitat.
4. No extreme soil or climatic conditions exist to the extent to require maintenance of existing vegetative cover to a degree not provided by the NON-RESOURCE/NON-EXCEPTION designation.
5. The land is not located in an agricultural or urban area and providing needed urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors or recreational uses.
6. The land is predominantly Class V-VII soils as identified as the Soil Capability Classification system of the U.S. Soil Conservation Service.
7. The land is not suitable for farm use or grazing taking into account soil fertility, climatic conditions, existing and future availability of water for farm irrigation, existing land use patterns, technological and energy inputs required, or accepted farming practices.
8. Designation of the land as AGRICULTURAL LAND is not necessary to permit farm practices to be undertaken on adjacent or nearby lands.

Land designated as NON-RESOURCE/NON-EXCEPTION LAND shall be zoned RR-5 or RR-10. The determination as to the appropriate density shall take into account the following factors:

a) Suitability for subsurface sewage disposal
b) Domestic water supply availability
c) Transportation system
d) Public services
e) Natural hazards (Marginal Lands Working Paper, pp. 7-9).

The actual plan policies governing the designation of lands as a resource/nonexception lands and the actual zoning of such land are plan policies 16 and 17, respectively. Policies 16 and 17 read as follows:

16. Where lands are not farm and forest lands, they may be designated on the plan diagram as rural residential or as parks and recreation, provided:
    a. Detailed and factual documentation has been presented indicating that the subject lands are not farm and forest lands as defined by Statewide Planning Goals #3 and #4.
    b. An exception to any of the Statewide Planning Goals is not required.
    c. Small isolated non-resource tracts surrounded by farm and forest lands shall be discouraged if such non-resource designation would create compatibility problems.
    d. The Rural Residential Designation would be consistent with other Comprehensive Plan Policies.

17. Residential densities for non-resource lands shall be one residence per five or ten acres and shall be determined through consistency with other plan policies and the following criteria:
    a. Existing development pattern and density of any adjacent committed areas;
    b. Subsurface sewage disposal suitability;
    c. Domestic water supply availability;
    d. Access;
    e. Public service;
    f. Lack of natural hazards;
    g. Effect on resource lands (Plan, p. 4).

In adopting the comprehensive plan, Lane County identified five areas within the County which it designated as "Nonresource" lands.

Conclusions Regarding Lane County's Nonresource Lands Process

Lane County's "Nonresource/Nonexception's Lands" process is consistent with the Commission's requirements for determining that "Goals 3 and 4 do not apply." By indicating that the process for determining and designating lands as Nonresource/Nonexception's Lands is acceptable, this process and addresses the requirements of Goals 3 and 4. All other applicable Goals still must be addressed for lands designated as Nonresource. However, the County still must, where applicable, reconsider under Goal 4 those soils deemed "marginal" for commercial forest management if they qualify under the County's "Commercial" forest definition. See Conclusion to Goal 4 regarding "marginal forest soils."

Also, the County is encouraged to amend its criteria addressing Goal 4 (criteria 2, 3, and 5) to employ language similar to that contained in Goal 4's definition of "Forest Lands." The following example is used to describe the issue.

Under Goal 4, the definition of "Forest Lands" includes the phrase "other forested lands needed for watershed protection, wildlife and fisheries habitat, and recreation." This phrase implies that "inventoried" lands which are (1) forested with commercial or noncommercial forest species, and (2) which are identified by the County's adopted inventories as needed for watershed protection, wildlife and fisheries habitat, and recreation are forest lands under Goal 4.

Technically, the County's standard criteria 2, 3, and 5 can be interpreted to go beyond that required by Goal 4. For instance, criterion 3 (that the NR designation will not adversely affect management of the land for big game range or other wildlife, fish, or waterfowl habitat) only requires a one-part test rather than the two part test contained in the goal. First, "nonforested" land where habitat will be adversely affected is included under criterion 3, but not under the Forest Lands definition. Second, if an area is identified as "needed" for wildlife habitat any developmental activity will adversely affect the habitat in some way and probably the management of that habitat as well. Third, if an area is forested and is still managed as habitat but through the inventory process was excluded from those areas identified as needed for habitat, criterion 3 may still apply where Goal 4 would not.

Similar logic would apply to criteria 2 and 5.

In addition, the fact that Goal 4 may apply to "noncommercial" forest lands does not mean that the same degree of conservation is required as that required for "commercial" forest lands. The County has the option of creating a forest zone with implementing measures designed to conserve a specific type or types of forest resources. (Recent examples where this has occurred are Klamath and Jackson Counties, see also the Goal 4 conclusion on application regarding this issue.)

The review of the 5 specific nonresource/nonexception areas adopted by Lane County shall be evaluated at the next meeting scheduled for Lane County's review.

The Department recently received from the County (received June 25, 1984) additional findings addressing the 5 sites in question as well as additional nonresource/nonexception areas.

Due to the lateness of this submittal, and the need for objecters to be notified of additional submitted findings under the Commission's expedited review procedures, postponment of this portion of the review was necessary.

Lane County's Nonresource Lands Process (Part II)

In the Lane County Acknowledgment Review of June 29, 1984, Lane County's Nonresource/Nonexception Lands designation process is reviewed. Information presented in the June 29 review includes (1) the County's plan policies for designating lands as nonresource/nonexception and applying residential densities to these lands (Policies 16(a) and 17, respectively, Plan, p. 4) and (2) the "general criteria" for determining

nonresource lands contained in the County's marginal lands working paper (Marginal Lands Working Paper, pp. 7-9).

The County's process for determining that Goals 3 and 4 do not apply was found to be consistent with applicable Goal requirements. The information regarding Lane County's nonresource/nonexception lands contained on pages 47 through 50 of the June 29 review is considered Part I of a two part review of the issue. Part II of the review consists of an evaluation of six site specific areas for which information has been adopted indicating that these six areas qualify for the nonresource/nonexception designations.

The County's findings and record regarding these six areas were submitted for review in two parts. Part I was submitted with the rest of Lane County's plan on May 24, 1984. On June 25, 1984, Part II of the County's record regarding nonresource/nonexception lands was received by the Department. The information received on June 25, 1984, was adopted by the Lane County Commissioners without proper notification of objectors as required by OAR 660-03-032(1) (Expedited Review Requirements).

Therefore, Lane County must satisfy the requirements of OAR 660-03-032, before the Commission can formally accept relevant findings contained in materials submitted for review on June 25, 1984.

Evaluation of the Six Site Specific Areas Found to Qualify as Nonresource by the County

Lane County indicates that (1) Agate Creek Planned Unit Development (Wolf), (2) McKenzie Ridge (Thurmond), (3) Addition to Dillard and Highlands (Hemmenway), (4) Second Addition to Dillard Highlands (Hemmenway), (5) Meltebeke's on Van Duyn Road, and (6) Cerro Gordo (Canfield) qualify as nonresource lands. In assessing whether these six areas do qualify as lands for which Goals 3 and 4 do not apply, the Department found that in some cases, a determination could be made based on the information submitted in May of 1984. In other cases, the information submitted on June 25 was necessary to complete the record. The Department also found that adequate justification to support the County's "nonresource" claim for a couple of the areas in question was

lacking despite the additional June 25 information. The following matrix will assist in clarifying this issue discussed above:

		Original Submittal (5-24-84)		Supplemental Findings (6-25-84)	
		Adequate	Deficient	Adequate	Deficient
1.	Agate Creek PUD		X	X	
2.	McKenzie Ridge	X			
3.	Addition to Dillard Highlands		X	X	
4.	Second addition to Dillard Highlands	No information submitted			X
5.	Meltebeke's on Van Duyn Road	X			
6.	Cerro Gordo	X			

Agate Creek Planned Unit Development (PUD)

This proposal is for 16 lots to be developed in two stages. Findings for this designated nonresource site consist of two pages of supplementary findings, the official public hearing notice and a memorandum to the Lane County Hearings Official from staff member George Currin regarding the PUD (5/5/83). Contained in the "original submittal" (5-24-84) is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. A statement that the "majority of soils on the subject property possess no woodland suitability." (NOTE: reference is made to an "Attachment A"--LCPC staff report PZC-82-190. This attachment was not furnished as part of the original submittal.)

2. Statements are provided indicating that 1) no site characteristics are present which make this site desirable for open space, 2) no mineral or energy resources are present, 3) no known ecological or scientifically significant natural areas are identified, 4) designation of this land for non-resource will not affect management of the land for wildlife habitat, 5) this site does not contain or impact scenic areas, 6) the site is not part of a water area, wilderness, wetland, groundwater resource area, or watershed, or 7) this site is not part of a known historical area or a potential or approved recreation trail or scenic waterway. (Supplementary Findings);

Contained in the "supplemental findings" of June 25, 1984, is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. Lane County Planning Commission Staff Report of November 9, 1982, which indicates the following:

   a. Lane County staff agrees that SCS Class I-IV Soils are not predominantly found on this property.

   b. This land is identified by the Lane County Wildlife Habitat Inventory as "sensitive" big game habitat.

   c. The applicant is in error that the suggested big game habitat density is one dwelling per 40 acres. It is one dwelling per 80 acres in sensitive big game areas.

2. LCDC Goal Requirement Report (Attachment A-November 9, 1982)

   a. The subject property is 53 percent nonagricultural soils. Attachment A to this LCDC Goal Compliance Report, which is referenced, indicates that of the 78 acres in question, 41 acres are SCS Class VI, 25 acres Class IV and 12 acres Class III (p. 1).

   b. A perched water table, poor soils, and steep slopes are given as reasons why this land is not "other land" suitable for farm use. SCS Soils OR-1 sheets are provided for each soil which generally support the County's position (p. 1).

   c. The County indicates that this land is not other lands necessary to permit farm practices to be undertaken on adjacent or nearby lands because none of the adjacent or nearby lands are engaged in farm use as defined by the ORS (p. 2).

   d. Regarding Goal 4, the County indicates that the land in question is composed of 59 percent (48 acres) of soils that have no woodland suitability for commercial forest uses. Only Dixonville Soil, which is cubic foot site Class 4, is capable of supporting commercial forest species.

   e. The County states that the parcel is not "other forested" lands needed for other resource uses listed in the Goal 4 definition. Specifically, the property has not been identified as needed for any of the other uses except big game habitat (p. 3). The issue of whether this land is forested land needed for big game habitat is addressed under a Goal 5 statement on page 4; the following statement is provided:

      > While the subject property is not shown on the Lane County Comprehensive Plan Inventory as significant fish or wildlife habitat or habitat for any endangered or threatened species, the Department of Fish and

Wildlife has noted that this property is located in habitat for black-tail deer. The concerns of the Department of Fish and Wildlife can be addressed in that a clustering of dwelling through a Planned Unit Development will significantly minimize the impact on black-tail deer habitat. Such a development will offer better protection to the habitat than scattering dwellings on the acreage which could occur under current land divisions. The dwelling density allowed under this proposal will not exceed the overall dwelling to acre ratio of 1-40 recommended by the State Fish and Wildlife Department for this type of black-tail deer habitat. The overall dwelling to acre ratio will not be exceeded in that the habitat in question is only a part of the total black-tail deer habitat in this area. Adjacent habitat areas will be maintained due to other prime forest land qualities. It is preferable to accommodate dwellings in this location given the poor resource soils and impact of surrounding development than on surrounding lands which are not impacted or of marginal capability.

With regard to the Fish and Wildlife Department's concern about deer damage to gardens and shrubs and the state's obligation to respond to complaints, the applicant will include deed provisions with all sales of property that black-tail deer inhabit the area and that the associated risks should be recognized.

Objection

1000 Friends of Oregon objects to the claim that Goals 3 and 4 do not apply to the Agate Creek PUD because the findings submitted on March 15, 1984, fail to address Goal 3. Regarding Goal 4, 1000 Friends objects to the conclusion that "the majority of soils on the subject property possess no woodland suitability" without specific soils and specific acreages as supportive evidence.

In addition, specific referenced attachments were not included in the County's original submittal of May 24, 1984.

Response to Objection

This objection is partially sustained. 1000 Friends' objection is generally correct with respect to the information contained in the original May 24, 1984, submittal. However, objectors will find that their specific objection is addressed by the Supplemental Findings submitted for review on June 25, 1984.

Conclusion for Agate Creek PUD

The claim that Goals 3 and 4 do not apply is sustained.

Substantial evidence is provided in the record supporting the claim that Goals 3 and 4 do not apply to the property in question and that Goal 5 big game habitat value will be protected through clustering provisions.

McKenzie Ridge (also known as Camp Creek Ridge)

This PUD proposal would establish 79 dwellings on 385 acres of land north of Springfield.

Information in the record includes: (1) an affidavit by the applicant, Robert E. Thurmond, detailing the history of and expenses incurred for this development; and (2) a statement of findings, reasons and conditions. This latter statement includes findings addressing all applicable Statewide Planning Goals as well as applicable County requirement and conditions of approval.

This particular claim that Goals 3 and 4 do not apply to this property has been previously before LUBA and the Commission in Osborne v. Lane County [LUBA No. 81.107].

In their March 18, 1982 decision, LUBA found and the Commission affirmed, that the land in question is not subject to Goal 3 because it is not agricultural land be definition. Also, LUBA found that this land is not subject to Goal 4 primarily because the land is not predominantly forested nor suitable for commercial forest use.

Objection

1000 Friends objects to the McKenzie Ridge PUD because the assumptions regarding the interpretation of soils information are correct. The County has relied totally on SCS soils maps even though such maps can be incorrect.

Response to Objection

This objection is not sustained.

Objectors do not present any specific information regarding the property in question to justify invalidating the Commission's earlier decision in Osborne v. Lane County.

Conclusion for McKenzie Ridge

The County's decision indicating that Goals 3 and 4 do not apply to the 385 acres in question is sustained (see Osborne v. Lane County [LUBA No. 81.107]) and the County's finding contained in the May 24, 1984, submittal.

Dillard Highlands Addition

This subdivision is located approximately two miles south of the Eugene city limits. Phase 1 of Dillard Highlands consists of 14 parcels on

100 acres and is "committed" to non-resource use. The second phase of this development consists of 24 parcels.

Findings from the "original" May 24, 1984, submittal supporting this nonresource/nonexception claim consist of a five-page statement (prepared by David Pedersen and Associates for applicant David Hemenway) titled "Application For Addition to Dillard Highlands Subdivision."

Information from the "original" submittal (5-24-84) relevant to the requirements for substantiating that Goals 3 and 4 do not apply are as follows:

1. A statement indicating "that the predominant soils on the property consist of:

   Dixonville-Philomath Hazelair complex (SCS Class VIe); Philomath SC (SCS Class VIs; Panther CL (SCS Class VIw) and Witzel CL (SCS Class VIs). These non-agricultural soils comprise approximately 92% of the subject property. A small patch (about 10 acres) of Hazelair soils is located on 20-30% slopes on the northern edge of the proposed division. These soils have SCS Classes IVe, subject to severe erosion (Pederson Statement, p. 3).

   Reference is made to an attached soils map which was not forwarded as part of the original submittal (May 24, 1984).

2. Regarding the "other land suitable for farm use" and "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands," the following statement is provided:

   This land does not meet the second definition of agricultural land. That is, it cannot be used for farm use (the current employment of land for the primary purpose of obtaining a profit) nor is it related to the continuation of agricultural activities on adjacent or nearby lands. Other lands in this area are either developed as rural residential or have physical characteristics similar to the subject proprty: gently rolling to steep terrain, a predominance of SCS Class VI soils and little if any potential "farm use". In addition, there is very little physical connection between the subject property and surrounding lands because of the variation in topography. Thus, even if farm use were possible on nearby lands, this proposal would not impact on or adversely affect such activities.

   In summary, the subject property is not agricultural land either in terms of its soil classification or its relationship to other surrounding lands. The surrounding lands are also not agricultural lands as defined by Goal 3 (Pedersen Statement, p. 4).

3. In response to Goal 4 requirements, statements are made that (1) the subject property has no timber site class ratings; (2) that it is predominantly open land; (3) that adjacent lands are similar in character and not used for commercial forest purposes; (4) that other forest uses (i.e., watershed protection, wildlife and fisheries habitat, recreation, extreme conditions of climate, forested lands in urban and agricultural areas) are not applicable or present on the subject property.

   In support of the above statement, the following is provided:

   > The general area slopes south and east towards Dillard Road and Camas Swale. It contains no rivers or creeks and only a small water natural drainage channel flows southeast towards Dillard Road and into Camas Swale. This drainage basin has no watershed value, nor would the proposed subdivision at the low densities proposed impact on any watershed if one were present. The subject property lies in a low, open area surrounded by steep hillsides. The Significant Vegetation and Wildlife Areas working paper indicates that the vegetation on the property is not unique and contains no elements which contribute to making it a signicant Wildlife Area.

4. Additional statements are provided indicating that (1) the subject property has not been considered for nor does it have recreational value; (2) no extreme climatic conditions exist; (3) this land is not needed for open space, wind breaks; and (4) no scenic values are present on the property.

Contained in the "supplementary findings" submittal of June 25, 1984, are (1) a chart titled "Soil Types on Dillard Highlands, 1st Addition," (2) a SCS Soils map for the subject property, and (3) a soils investigation report apparently prepared by Lane County including soils maps. The chart is relevant to the review of this proposed nonresource site summarized as follows:

1. The chart indicates that of the approximately 107 acres of the Dillard Highlands, 1st Addition, (a) 31.5 acres consists of the Dixonville-Philomath-Hazelaire Complex which has no woodland suitability and has SCS Class VIe agricultural soils; (b) 27 acres consists of Panther Silty Clay Loam which has no woodland suitability and has SCS Class VIw agricultural soils; and (c) 22.4 acres consists of Hazelaire Silty Clay Loam which has not woodland suitability and has SCS Class IVe agricultural soils.

   Of the approximate 107 acres, only 2.6 acres have a woodland suitability while only 22.4 acres are SCS agricultural suitability Class IV.

Objections

1000 Friends of Oregon objects because the findings presented are actually conclusionary statements for which supporting factual information is lacking.

Response to Objection

This objection is not sustained. Additional soils information contained in the supplementary findings submitted for review on June 25, 1984 supports the statements presented by the County in their original submittal indicating that Goals 3 and 4 do not apply. (Also see conclusion)

Conclusion for Dillard Highlands Addition

The claim that Goals 3 and 4 do not apply is sustained. Findings contained in the original submittal of May 24, 1984, are supported by information contained in the "supplemental findings" submitted for review on June 25, 1984, of particular significance is the information indicating that only 22.4 acres of the soils present on this property are SCS Class IV with no SCS Class I-III soils and that only 2.6 acres of the 107 acres in question have any woodland suitability rating at all.

Dillard Highlands, 2nd Addition

This proposal involves approximately 154 acres consisting of 29 five acre lots. It is located approximately one third of a mile southeast of the Eugene city limits and the UGB (application for the Second Addition to the Dillard Highlands Subdivision, p. 3).

Findings addressing this proposal were submitted for review on June 25, 1984 (supplementary findings). Included within the County's record for Dillard Highlands 2nd Addition review as lands for which Goals 3 and 4 do not apply is (1) a document titled "Application for the Second Addition to the Dillard Highlands Subdivision," (2) a list of soils with marginal woodland potential, and (3) a soils investigation report (apparently prepared by Lane County) which includes "forest" and "Ag" soils mapping.

Findings indicating why Goal 3 does not apply to the subject property are as follows:

1. Based on SCS soils mapping, the subject property is composed of 53 percent "nonagricultural soils"--Classes V-VIII--Exhibits A, B, and D are referenced.

2. Table 1 on page 11 indicates that 47% of the property is Class I-IV soils.

3. The soils investigation and accompanying "Ag" soils maps appear to indicate that the majority of the property in question is in fact composed of SCS Class I-IV soils. Also, handwritten statements on the "soils investigation report" indicate that "the application is

general concerning soils if there are several more than mentioned" (Request for Soils Investigation, pp. 1 and 2).

4. The subject property is not "other lands" suitable for grazing "because of a combination of problems affecting the growth of pasture and the adverse effects of erosion which would accompany the grazing cattle." The County continues its assesssment of agricultural capabilities by stating the following:

> The various limitations on grazing described upon the applicable SCS soil sheets include low fertility, strong acidity, seasonal high water table, clayey topsoil susceptible to compaction when wet, summer droughtiness, slow permeability, and susceptibility to erosion. Climatic conditions of winter rainfall and summer drought lead to the aforementioned soils problems and do not lead to favorable grazing conditions. The soils can become very dry in the summer, and given the high cost of drilling wells and the restricted grazing time, the prospect of irrigation for this purpose is rendered infeasible now and in the future. Existing rural residential land use patterns within the area and the subject property's proximity to the Metropolitan area make it most valuable for rural residential development. The technological and energy inputs required to farm the subject property due to the combination of soils and slope render it not farmable by a reasonable and prudent farmer for the primary purpose of obtaining a profit in money. Even if there were accepted farming practices which made grazing profitable on this site, the erosion potential of this activity makes this property unsuitable for grazing (Application for Dillard Highlands 2nd Addition, pp. 10 and 12--hereby referenced on Application).

5. The subject property is not lands in other classes necessary to permit farm practices to be undertaken on adjacent or nearby lands "as none of the adjacent lands are engaged in farming practices" (Application, p. 12).

Findings indicating why Goal 4 does not apply to the subject property are as follows:

1. In assessing whether this land is lands composed of existing and potential forest lands which are suitable for commercial forest uses the County indicates that of the 154 acrs, 57 acres is composed of Site Class III (site index 140), 31 acres is composed of Site Class IV (site index 110), 43 acres is composed of noncommercial forest lands, 18 acres is used for utility easements, and 5 acres is "deemed" as necessary lands for management (Application, p. 14). The County indicates that for this discussion, Site Class 125 (borrowed from Douglas County) was used to assess commercial forest land suitability (Application, p. 16).

The County concludes that "only 57 acres, or 37 percent of the subject property has any commercial forest potential" (Application, p. 16).

2. The soils investigation and accompanying "Forest" soils maps indicate that additional soils not discussed by the County exist on the subject property (Request for Soils Investigation, pp. 1 and 2).

3. The County's "Exhibit F" presents from Forester Bob Hohenhaus an evaluation economic returns from commercial forest production. The County concludes that at the land's purchase price of $2,395,302, the net return from commercial forest production of the Site III and IV land is $-217 per acre (Exhibit F, p. 2).

4. The County indicates that subject property is not "other lands" used for watershed protection, wildlife and fisheries habitat, and recreation because (a) no inventories identify it as needed for watershed protection; (b) the area is identified as the "impacted" and thus, not needed for big game habitat as well as not identified as significant habitat for fish or other wildlife species; (c) the subject property has not been identified as needed for recreation (Application, pp. 24-26).

5. In addressing the other aspects of the "Forest Lands" definition, the County indicates (a) that any soil conditions requiring maintenance of vegetative cover will be protected through conditions attached to development approvals, and (b) because the property is not within a UGB or in agricultural land, the "other forested "lands" definition does not apply (Application, pp. 26-27).

Conclusion for Dillard Highlands 2nd Addition

The claim that Goals 3 and 4 do not apply to the subject property is not sustained.

First, evidence is provided indicating that the subject property is predominantly SCS Class I-IV soils and thus subject to Goal 3 (soils investigation reports). Second, substantial evidence is not provided indicating that Goal 4 does not apply. The County's claim that forest site index 125 can be used to assess the commercial viability of this property is inconsistent with the County's definition of commercial forest lands. Also, the County's standards for determining income (under the F-2 Zone's woodland suitability test) seems to indicate that the land is potential commercial forest land.

The County's conclusion that Goal 4's forest lands definition ("lands composed of existing and potential forest lands which are suitable for commercial forest uses") does not apply to Dillard Highlands' Second Addition, because the current rate of return is negative for managing this land as commercial forest land is invalid. As is the case under Goal 3 (Goal 3 must be applied to lands with SCS Classes I-IV soils), the Commission requires counties to apply Goal 4 to lands with cubic foot site classes suitable for commercial forest managment as reasonably

defined and inventoried by the County or the County maust take an exception to Goal 4. The requirement to apply Goal 4 in the manner stated above is consistent with the 1983 Legislature's marginal lands requirements which indicate that lands capable of producing 85 cubic feet of merchantable timber per acre per year can not be considered as marginal lands unless extensive parcelization exists within the area (see ORS 197.247(1)(b)).

Meltebeke's on Van Duyn Road

This proposal involves the rezoning of 258 acres from a forest zone to GR-10 based on the claim that Goals 3 and 4 do not apply. Buidling sites for 24 dwellings are proposed. This land is part of a larger 598-acre parcel owned by the applicant. Also, a portion of this 258-acre parcel is platted as County View Estates, lots 1 through 5.

Information contained in the original May 24, 1984, submittal includes:

1. A statement titled "Findings Supporting nonresource Designation for Certain Lands of Bob Meltebeke on Van Duyn Road" (with a map Exhibit A, attached).

2. Exhibit B is a copy of the Lane county Planning Commission's findings in support of this zone change.

3. Exhibit C is a map of the subject property depicting its soil types.

4. Exhibit D is a list of the soil types along with each soil's SCS classification and percentage of occurance on the subject property.

5. Lane County Planning Commission--Addendum to Staff Report (8/23/83).

6. Area map depicting the property to be rezoned.

7. Applicant's supplemental statement to the Lane County Planning Commission.

Contained in this "original" submittal is the following information addressing the Commission's requirements for substantiating that Goals 3 and 4 do not apply:

1. That the land is not SCS Class I-IV agricultural lands. Lane County Exhibit B--Lane County Planning Commission (LCPC), Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

> A detailed soils investigation of the subject property was undertaken for the applicant by Consulting Environmental Sanitarians, Ltd. (See June 21, 1983, transmittal letter from Terry M. Rahe of CES, Ltd. to Bob Meltebeke.) The results of the soils analysis are summarized in the Applicants' Statement at 5-7.)

Only 5.9% of the 258 acres proposed for rezoning are SCS Class I-IV soils.

When the entire Meltebeke ownership of 598 acres is considered together, ony 27.1% has an SCS Class of IV or better (LCPC, p. 2).

2. That the land is not other lands suitable for farm uses . . . suitable for grazing . . . some finding addressing this issue are as follows:

Almost all of the Bashaw Clay and Conser Silty Clay Loam (Class III and IV soils) occupy the flat field in the northwest portion of the property that is not to be rezoned. These soils have drainage and overflow problems, based upon SCS data. They are subject to winter flooding and are very droughty in summer. (SCS soils tables.)

The Dixonville/Philomath/Hazelaire complex and Panther Silty Clays (Class VI soils) are the predominate soil types. They occupy 33.7 percent of the entire ownership and 42 percent of the area propoed to be rezoned. These soils have low permeability, low available water capacity, moderate erosion potential, high plasticity, thin and rocky soils, and droughty conditions. They are poorly suited for production of conifers, which tend to suffer from root rot and windthrow. (SCS soils tables.)

The present lessee of the Meltebeke property raises cattle on this and several other tracts in the vicinity. The property is suitable for grazing less than six months a year due to wetness in winter (which causes cattle to destroy the pasture) and dryness in summer (which inhibits growth of grass). (Letter from DuWayne Penfold, July 10, 1983).

The entire Meltebeke property is not a viable economic unit as a farm. It is incapable of producing a cash crop, including grazing of animals, that would be sufficient to cover operating expenses and retire indebtedness on the land. (See letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.) (LCPC, p. 3).

On page 9 of "Attachment 2," Meletebeke supplemental zoning App. Statement, the County provides the following assessment of this property's agricultural suitability:

In addition, Floyd Holbrook, Agricultural Management Specialist, has submitted a report stating that, while the property can be grazed, it would be necessary to do intensive clearing and planting, with a resulting

production level that would not support an income adequate to retire the debt on the property, based on current farmland values in the area:

> "The major problem with improving the property for grazing is that the acreage can not support enough animals in either beef or sheep in order to pay operating expenses and retire the land debt. The main reason for not being able t (sic) support adequate livestock is due to the moisture availability and the shallow soil depth. The soil types are such that fertilizers are restrictedby (sic) chemical bonds and do not allow for maximum pasture production."
>
> "These figures [see letter] clearly show that the subject property will not support an economic unit." August 4 Holbrook letter.

3. That the land is not "lands in other classes . . . necessary to permit farm practices to be undertaken on adjacent or nearby lands. Some findings regarding this issue are as follows:

   No adjacent or nearby farmer has voiced opposition to this rezoning proposal.

   Dr. Penfold leases Meltebeke land to the northwest of the area to be rezoned. It is a hayfield on which he raises cattle. Dr. Penfold also raises cattle on several other tracts near the Coburg/I-5 interchange.

   The Meltebeke property leased by Penfold has little value for grazing, and the proposed rezoning will have little impact on the productivity of the Penfold farm. (Letter of DuWayne Penfold, July 10, 1983.)

   The area to the north of the subject property is scrub hillside and part of the Coglietti ranch. The immediately abutting area is not cultivated and receives limited grazing use.

   All other agricultural lands are isolated from the subject property by the ridge to the east and south, and the residential land to the west.

   A Wildlife Management Plan has been submitted by the Applicant and is a condition on zoning approval. Under this management plan there will be protective corridors running the length of the property which will buffer residential and farm uses. Under the plan animals will be restrained through fencing and deed restrictions.

Purchase of the subject property by adjacent farmers might increase their total income but reduce their return per acre. (Letter of Floyd W. Holbrook, Agricultural Management Specialist, August 4, 1983.)

4. That the land is not inventoried as forest land, not predominantly forested, and is not suitable for commercial forest production. County Exhibit B--Lane County Planning Commission (LCPC)--Findings of Fact--is referenced. Some of the findings addressing this issue are as follows:

   Neither the 258 acres to be rezoned nor the entire 598 acres is inventoried as forest land.

   Neither the 258 acres nor the 598 acres is presently "forested" in the meaning of the goal. A majority of neither acreage is covered with a commercial stand of conifers. Neither is a greater portion of either acreage covered with oak or similar noncommercial species.

   The vast majority of both the 258 acres and the 598 acres has no forest site class at all.

   Only 54 acres or 21 percent of the 258 acres to be rezoned has soil with commercial forest potential, and this acreage is in four scattered locations. (Letter from Robert Hoenhaus, Consulting Forester, June 28, 1983.)

5. That the land is not forested land based on the following findings:

   The upland areas between the subject property and the crest of the Coburg Hills, which contains the most densely wooded area, will be left in forest use, and will be managed under a management plan submitted by the applicnt's consulting forester.

   Wildlife corridors provided in the wildlife management plan will provide protection for wildlife resources. (See Goal 3 findings above.)

   The proposed 24 units will be clustered. Clustering will minimize impacts on wildlife and will permit protection of vegetative cover.

   Development density will be more than 10 acres per unit on the property to be rezoned, about 30 acres per unit for all the Meltebeke property, and far more than 40 acres per unit in the surrounding area.

   Grazing on the dry slopes of the subject property is a use that presently conflicts with goals of protecting vegetative cover and preventing soil erosion.

> Conversion of the property to low density, clustered residential use with extensive wildlife corridors under the wildlife management plan will displace grazing, a use that conflicts with vegetation, soil, watershed and wildlife protection, with a use that will improve forest land, open space, wildlife values that the site does possess.
>
> County General Plan Policy 5C13 requires application of Goal 5 conflict-resolution procedures and administrative (OAR 660-16-000) when, as here, the proposed development density is below that recommended by the Oregon Department of Fish and Wildlife for big game (LCPC, Exhibit B, pp. 5-6).

Some information contained in the record, contlicts with the findings adopted by the County. No specific discussion is contained in the "original submittal" clarifying the relationship of this information to that used by the County in making its decision is provided. (However, information contained in the supplemental findings--letter from Rober A. Holenhaus--indicates that the revised proposal of 258 acres excludes the majority forest soils discussed on page two of the "LCPC Addendum."

Relevant information regarding the "Nonresource" claim included in the "supplementary findings" submitted on June 25, 1984, are:

1. An area map showing the proposed 258 acres;

2. An aerial photo and a series of overlays which consists of a soils map, a colored overlay showing "Ag and forest soils" and the development area;

3. A sheet listing specific soils and acreages;

4. A large scale soils map prepared by Terrance Rahe;

5. Another aerial map containing soil lines;

6. A letter from R. Holenhaus, professional forester;

7. A letter from T. Rahe, soil scientist, describing the soils found on the property; and

8. A letter from J. Lockard, SCS District Conservationist, discussing the soil known as the Dixonville-Philomath-Hazelaire complex.

With the exception of a statement indicating that only 54 scattered acres are suitable for commercial forest use (Hoenhaus) specific findings or conclusions were contained in the supplemental findings. This information apparently was supplied to corroborate the statements contained in the "original submittal."

Objection:

1000 Friends of Oregon objects because information in the record contradicts findings that Goal 4 does not apply. Also, the County relies on soils mapping for this determination.

Response to Objection

This objection is partially sustained.

The objectors are correct that information in the record (page 2 of the "Lane County Planning Commission Addendum to Staff Report") indicates that Goal 4 does apply to this land or a portion of the property in question. However, information contained in the supplementary findings of June 25, 1984, addresses this issue (letter from R. Hohenhaus and also personal communication from J. Mann, Lane County Planning Department, 7/16/84).

Regarding the County's reliance on soils mapping, this objection is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Meltebecke's on Van Duyn Road

When considering both the original submittal of "May 24, 1984" and the "supplementary findings" of June 25, 1984, substantial evidence is provided to sustain the claim that Goals 3 and 4 do not apply to the 258 acres in question.

Cerro Gordo

This proposal is for 60 residential lots and one common area lot on 604 acres on Dorena Reservoir in southern Lane County. Findings for this designated nonresource site were submitted with the County's original submittal of March 15, 1984, as well as with the supplemental findings submitted on June 25, 1984.

The "original" submittal for Cerro Gordo consists of a number of exhibits which are as follows:

1. A map of the property displaying (a) the nonforest soils, forest soils, and committed lands; (b) ridge lines, Row River Road, and Dorena Lake; and (c) adjacent ownerships and the area zoned RR-10 for which the nonresource claim is made.

2. Findings and conclusions in support of nonresource designation for Cerro Gordo Ranch--CPR Application No. 1102.

This statement consists of 173 pages including a 44 page wildlife management plan, a forest lands assessment by Woodland Management, Inc., an appraisal by Terrance Rahe (registered sanitarian) of the area's suitability for subsurface sewage disposal, and a detailed discussion addressing each Statewide Planning Goal as well as numerous letters generally in support of the proposed development.

The "supplemental findings" (June 25, 1984) for Cerro Gordo consists of (1) a five page document labeled "Incorporation of Applicant's Findings and Conclusions," (2) the "Cerro Gordo Preliminary Cluster Subdivision Plan," as well as (3) a number of letters addressing a range of issues, some of which not directly associated with the Goal 3 and 4 applicability question while others are duplicate information contained in the original submittal.

Contained in the "original" submittal (3-15-84) is the following information addressing the Commission's requirement for substantiating that Goals 3 and 4 do not apply:

1. In addressing Goal 3, the County indicates that 76 acres of the 604 acres consists of soils with SCS agricultural suitability Classes III-IV (12 percent). The dominant soil type (302.6 acres) is the Dixonville-Philomath-Hazelaire Complex (Findings and Conclusions . . ., p. 12).

2. Regarding the other aspects of the Goal 3 defintion, the County indicates:

   a. That there is no evidence of recent agricultural activity;

   b. Due to the lack of rainfall in the summer, the southern exposure of this site and no source for water for irrigation agricultural productivity is limited;

   c. The Dixonville-Philomath-Hazelaire Complex is rated three to six AUMs per acre for grazing and no suitability for crop production while the soils;

   d. Ninety percent of the property products less than ten AUMs of pasture per acre;

   e. Two hundred ten acres (35 percent) of the property is situated on Cerro Gordo Mountain which rises 1,200 feet above the lowest elevation point.

   Based on the preceding findings, the County concluded that the property as a whole would not be an economic farming unit (nor would be purchased for agricultural use) under Goal 3's "other lands suitable for agricultural use . . .definition (Findings and Conclusions . . ., pp. 12-14).

3. Regarding whether this site qualifies as "lands in other classes necessary to permit farm practice to be undertaken on adjacent or

nearby lands," Lane County indicates that (a) there are no agricultural lands or agricultural uses in the imediate vicinity of the subject property, (b) Dorena Lake and the ridges of the mountain combine to surround the property, and (c) the nearest agricultural uses are approximately one mile from the property in question. Given the preceding facts, the County concludes that this site does not qualify as "lands in other classes necessary to permit farm practice on adjacent or nearby lands" (Findings and Conclusions . . ., p. 14).

4. Regarding whether the site is composed of existing and potential forest land suitable for commercial forest use, the County indicates that 507 acres of the 604 acres is composed of soils with no woodland suitability indicated by the U.S. Soil Conservation Service (Findings and Conclusions . . ., p. 16).

5. In addressing the other aspects of the Forest Lands definition, the County responds as follows:

   a. From aerial photographs, the forested and nonforested acreages were calculated. Douglas Fir is growing on 198 or 32.8 percent of this site. Oak is growing on 119 acres or 19.7 percent of this site while 287 acres or 47.5 percent remains nonforested. Fifty-two point five percent of the site is covered by trees. The County recites from LUBA's Osborne v. Lane County decision (5 Or LUBA 172) that LUBA does "not view the fact that trees may be growing on the property in various places, as the record seems to indicate, to mean the land is forested within the meaning of Goal 4." The County indicates that the opinion implies that when considering species such as oak, not a simple majority, but rather " the far greater area" must be covered by trees to conclude that a property is forested (Findings and Conclusions . . ., p. 17). Thus, the County indicates that 52 percent forest cover alone does automatically qualify this land under the forest land definition. The County concludes by stating, "Considering the total extent of tree cover, the subject property is not forested within the meaning of Goal 4.

   b. With regard to "lands where extreme conditions of climate, soil, and topography require vegetative cover irrespective of use," and "other forested lands in urban and agricultural areas which provide buffers, windbreaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use, the County indicates the following:

      (1) The property is not (a) identified as an important watershed, (b) an agricultural or urban area, (c) needed for recreation, (d) necessary to be maintained in its present condition to provide buffers, scenic corridors, livestock habitat, or windbreaks (Findings and Conclusions . . ., pp. 18-21).

(2) The conditions imposed during this development's approval will resolve any potential problems presented by extreme soil and slope conditions as well as conflicts with big game (Findings and Conclusions . . ., pp. 18-20).

Also, findings addressing other relevant Statewide Planning Goals were included. Of particular significance to the "nonresource" designation issue are findings addressing wildlife habitat and the "Goal 5 process." The following are findings contained within the "Findings and Conclusions" document presented in the County's original submittal (5-24-84):

1. On pages 123 and 123, a detailed statement of potential consequences on big game habitat from residential development is presented.

2. A series of recommendations for mitigating asdverse impacts from residential development on big game habitat are presented on pages 125-127.

3. A discussion of residential densities and deer habitat is presented on page 217. As stated, the recommended density for big game is one unit per 80 acres preferred; one unit per 40 acres is acceptable with clustering. The County states that, "The Cerro Gordo property is requesting a subdivision of 100 lots with clustering, thus maintaining an average lot size of 10 acres" (p. 217).

4. The County indicates that "residential development in rural areas rarely acts to exclude or reduce deer populations," "the contrary usually occurs (Jim Greer, 1983)." The main impact of development is the loss of hunting lands. Cerro Gordo prohibits hunting (p. 128).

5. On page 125, the County concludes its discussion of density as follows:

> The Cerro Gordo project, which calls for a density of one lot for every 10 acres, can be thought of in the larger ecological context of the drainage basin (approximately 2000 acres) as resulting in a density approaching one lot for 20 acres. Again considering the clustered design of the development this leaves considerable land for natural processes to occur.

6. On pages 129-131, the County discusses the wildlive habitat and the Goal 5 Rule requirements. These are excerpts from this discussion:

   a. In identifying conflictihg uses there has previously been discussion as to whether residential development actually negatively impacts wildlife. Experts tend to feel that deer populations usually are minimally affected by rural residential development and tend to adapt to people's presence quite rapidly (Jim Greer, ODF&W; Lane County Extension Service, 1983) (p. 130).

b. The ESEE consequences on both wildlfe and rural residents have been fully detailed in the previous section--"Potential Impacts of Development in Wildlife." The primary consequence on wildife is loss of habitat (environmental) while the primary consequence on rural residents is damage to landscaping and gardens (economic) and ultimately not being allowed to live in a rural setting (social). The section on "Mitigation of Impacts" gives recommendations for resolving these issues.

Therefore, in section 660-16-010 of LCDC's interpretive rules the way to resolve the conflict of uses is seen as (3) limiting conflicting uses (pp. 130-131).

7. On pages 133 through 147, present a detailed "wildlife and development plan" which was designed to satisfy OAR 660-16-010(3), "Limit Conflicting Uses."

As indicated, Lane County also submitted information regarding this developmental in their "supplemental findings" received by the Department on June 25, 1984. The information regarding Cerro Gordo contained within the supplemental findings was a reiteration of the conclusions and findings already present in the original submittal of May 24, 1984.

Objection

1000 Friends objects to the designation of Cerro Gordo as "nonresource" because of the County's reliance on SCS soils mapping information. Objectors claim that this information is inappropriate to judge the capability of this land for commercial forest use.

Response to Objection

This objectin is not sustained. In order to complete inventory requirements for both Goals 3 and 4, most counties have had to rely on such information to satisfy their land use planning obligations. The Commission has found acceptable on numerous occasions, soils mapping prepared by the U.S. Soil Conservation Service (or other governmental agencies--e.g., BLM) provided it is the best information available at that time.

Conclusion for Cerro Gordo

The claim that Goals 3 and 4 do no apply is sustained; however, one unresolved Goal 5 issue as well as a Goal 14 issue (see Goal 2) remains. Substantial evidence is contained within the "original submittal" to indicate that this land is not agricultural land under the Goal 3 definition. The approximately 604 acres in question is not predominantly SCS Class I-IV soils nor do findings indicate that it is reasonable to conclude that this property is "other lands" suitable for farm use or "lands in other classes" necessary to permit farm practices to be undertaken or adjacent or nearby lands.

Substantial evidence is provided also indicating that the property in question is not (1) "lands composed of existing and potential forest lands which are suitable for commercial forest uses and (2) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock, scenic corridors, and recreational use.

Also, the County has adequately addressed through open space requirements and developmental conditions the issue raised regarding extreme conditions of soil and topography where maintenance of vegetative cover qualifies as forest lands.

The question of whether this property qualifies as "other forested lands needed for wildlife habitat" has also been addressed. With appropriate density limitations, Goal 5's requirements for big game habitat under OAR 660-16-010(3) (limit conflicting uses) could be met. Thus, the County has satisfactorily addressed the 'other forested lands needed for wildlife habitat' issue and justified their claim that Goal 4 does not apply.

The Oregon Department of Fish and Wildlife (ODFW) indicates (within their objection regarding big game habitat--see Goal 5 section, p. 35) that using clustering to double its prefered densities is a measure satisfying OAR 660-16-010(3). Densities greater than those recommended would be a OAR 660-16-010(2) decision.

Because the density authorized by Lane County for Cerro Gordo exceeds ODFW's accepted densities mitigation strategy under the "3C" approach (OAR 660-16-010(3)), one of three options remains open to the County to resolve this issue. These options are as follows:

1. Provide additional ESEE consequences analysis justifying the decision to "allow the conflicting uses fully" (OAR 660-16-010(2)) at a density exceeding a threshold acceptable to ODFW; or

2. Limit the density in the Cerro Gordo development to ODFW's recommended density with clustering consistent with (OAR 660-16-010(3)); or

3. Cooperate with ODFW to design a mitigation strategy which combines (a) the current wildlife management plan for Cerro Gordo; (b) additional ESEE consequence analysis supporting the decision to allow a density which exceeds ODFW's recommended density with clustering; and (c) other mitigation measures deemed necessary by ODFW. Also, the Department suggests that the Goal 2 density issue be considered and resolved in conjunction with the Goal 5 density question.

Overall Goal 2 Conclusion

The Lane County Plan and the rural portion of the Eugene/Springfield Metropolitan plan do not comply with Goal 2.

The Lane County plan is exceedingly well documented, and is carefully organized around specific statewide Goal requirments. Problems with mapping and exceptions data (partially alleviated by the submission of updated maps during the review process) are primarily caused by last minute changes to the documents. According to Lane County staff, recently completed computerization of countywide zoning and plan data makes available a mapping capability far beyond that submitted to date (examples of this will be available at the public hearing). However, the lack of an up-to-date readable plan map at the time of this report's mailing constitutes a major Goal 2 compliance issue.

Problems with mapping and presentation aside, the structure of the plan is significantly improved over the 1980 submittal. In the previous denial of Lane County's plan, the Commission found major organizational problems associated with conflicting subarea plans, nonexistent inventories and nonbinding policies. The current submittal has surmounted these problems.

There are several Goal 2 problems associated with plan ordinance structure, or with plan/zone consistency. The plan does not define the various plan categories in a way which will clearly guide the zoning applied to each category. This will create confusion in future rezoning decisions, especially with the vague rezoning criteria in LC 16.252.

Lane County Cluster Subdivision provision allows for the creation of urban uses and urban levels of development in rural areas. Statewide Planning Goals define rural land as lands outside UGBs and are: "(a) Non-urban agricultural, forest or open space lands or (b) other lands suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services, and which are not suitable, necessary or intended for urban use." The Cluster Subdivision Provision allows development at urban densities and with urban uses (i.e., multifamily dwellings) in rural areas, including exception areas and nonresource areas. Conceivably, a 500 acre parcel could accommodate 500 units on small lots, with the remainder of the parcel in "common open space." This would be an urban subdivision at this point. The County must amend the ordinance to define levels of development appropriatge to these rural areas (see Goal 11). The clustering provisions must be designed to not permit urban uses in rural areas.

Lane County's PR Zone allows uses outright in resource areas without reasonable standards required under ORS 215.213(2)(e). Minor betterments and general park improvements are uses the Commission has allowed outright in resource areas. Uses such as RV parks, recreational marinas, and large recreational development require, at a minimum, standards to assure that these types of uses are compatible with existing uses and minimize impacts to resource lands. Another problem with the PR Zone regards application: the County has not taken a valid exception to areas zoned PR (see discussion under built and committed exception).

The County has adopted a provision stating that all applications which have progressed through at least one public hearing would be completed under procedures applicable at the time of the hearing (Ordinance 1-84). This acknowledgement review only applies to submitted materials. All amendments not acted on by the Commission under this review must follow post acknowledgement requirements. Actions in the County which would fall under these (Ordinance 1-84) provisions must include findings which apply the Goals. (For example, applications under the existing F-2 Zone could not be approved by the County without Goal findings. These findings would necessarily note the deficiencies found in this report). They must also follow 45-day notice procedures and post acknowledgement requirements if they are amendments to the Plan or Zoning Ordinances. The County is strongly encouraged to delete this provision and process these applications through ordinances which are amended in response to this review.

In order to comply with Goal 2, Lane County must:

1. Provide legible maps for all rural lands showing adopted plan categories.

2. Clearly define which zones are intended to implement each plan category.

3. Delete the provision in Sections 16.015 and 16.252 which permit legislative zone amendments to be adopted by order rather than by ordinance.

4. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone these lands identified in the Goal 2 Exception with the appropriate resource zone.

5. Amend the plan to clearly identify areas zoned PR which are within built and committed exception areas. For those areas within an exception area, provide for information addressing OAR 660-04-025 requirements or exclude those lands from areas designated as a built and committed exception area,

6. Amend the PR-RCP Zone to include standards for uses permitted outright (consistent with ORS 215.213(2)). Note: These should not include review of minor betterment activities as described in ODOT's State Agency Coordination Program.

7. Amend the zoning code to exempt maintenance and improvements in Jennie B. Harris State Park and Squaw Creek State Wayside from conditional use procedures. This is most easily accomplished by zoning all of these parks to PR.

8. In conjunction with compliance requirements under Goal 11 of this report, the County must (1) clearly define uses, densities, unit quantity, and levels of service appropriate to rural "cluster" subdivisions, and (2) adopt appropriate ordinance amendments implementing these standards. Densities exceeding those appropriate for rural areas shall additionally require a Goal 14 exception.

9. Amend Lane Code Chapter 16 to correct inconsistencies in the cross-referencing system, where subsections are referred to within the same section of the ordinance.

10. Amend the plan (a) to include additional fundings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the county chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

11. Amend the plan to justify the potential one dwelling unit per 5 acre density authorized for Cerro Gordo's 600 acres in view of ODFW's accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (See also Goal 2's cluster development issue.)

In order to comply with Goal 2 for the rural portion of the Eugene-Springfield Metropolitan plan, the County must amend the plan and zoning ordinances to:

12. Remove the AO zoning from all privately owned parcels within the Mahlon Sweet Airport Exception Area consistent with Transportation Policy 11 and apply an appropriate resource zone to these lands.

13. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone TL 1600 in the Royal Avenue Exception ares with the appropriate resource zone.

14. Amend the zoning code to exempt maintenance and improvements in Armitage State Park from conditional use procedures. This is most easily accomplished by zoning all of this park to PR.

GOAL 3: AGRICULTURAL LANDS

Goal 3 defines agricultural lands and requires that such lands be "inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215." Oregon Administrative Rule 660-05-000 provides further classification of Goal 3's requirements. If a local government finds that any of the inventoried agricultural land is built on or committed to nonfarm uses and thus no longer available for farm use, or that agriculatural land is needed for nonfarm uses, an exception to Goal 3 is required.

Inventory

Goal 3 defines agricultural land in western Oregon as:

1. Lands of predominantly Class I-IV Soils; and

2. Other lands suitable for farm use based on several factors; and

3. Lands in other classes necessary to permit farm practices to be undertaken on adjacent or nearby lands.

Information on Agriculture in Lane County is found in the Working Paper: Agricultural Lands and the addendum to the Working Paper entitled: "Commercial Agriculture and Farm Parcel Size in Lane County." The first working paper noted above provides a discussion under the following topics: the need to preserve agricultural lands (pp. 1 and 2); Statewide Planning Goal 3--what it says and what is required for compliance with the Goal (pp. 2-6); natural characteristics of agriculture in Lane County (pp. 6-13); economic and social characteristics of agriculture in Lane County (pp. 14-25); definition of commercial farm units (pp. 26-31); and the County's role creating an acceptable program for Goal compliance, including suggested policies as a starting point for policy development (pp. 31-35).

The second working paper noted above "addendum," is to supplement the material presented in the first Working Paper and seeks to address the answer to the following questions (Addendum, p. 1):

1. What is a commercial agricultural enterprise?

2. What parcel sizes are appropriate for the continuation of commercial agricultural enterprise within an area?

According to the Working Paper, Lane County does not yet have a completed SCS Soil Survey (p. 9). Instead, Lane County's Soil Scientist in close cooperation with the local SCS office, produced generalized soil maps at a scale of 1" = 3000', which represent the best Countywide information available until publication of the Lane County Soil Survey is completed by SCS (p. 9). These maps are available in the Lane County Department of Environmental Management Offices in Eugene.

Lane County's Farmland Inventory

This inventory groups all of the County's 210 SCS Class I-VII soil types into three categories: prime farmland; additional farmland of local importance; and other Class I through VII Soils. A listing of all SCS Soil Mapping Units is provided in the Appendix C of the Working Paper.

Prime Farmland

These areas are recognized by the County as land that is best suited for producting food, feed, forage, fiber and oil seed crops. It has the soil quality, growing season, and moisture supply needed to economically produce a substantially high yield of crops with minimal imputs of energy and economic resources, and farming it results in the least damage to the environment (Working Paper, Agricultural Lands, p. 10). The Working Paper states that according to an unpublished SCS report, about 160,000 acres or less than six percent of Lane County meets the soil requirements for prime farm land (p. 10). The Working Paper also states that of this prime farmland, 60,000 acres is used for crops, 40,000 acres are in forest nursery or Christmas tree production, and 15,200 acres are

in urban areas. Crops grown on this land (mainly corn, snapbeans, wheat, peppermint, and filberts) account for an estimated 50 percent of Lane County's agricultural income for 1980 (p. 10). A list of all SCS Soil Mapping Units that make up the prime farmland category is provided. The approximate acreage of each map unit is also provided except when the use is urban or built up land (pp. 10 and 11).

Additional Farmland of Local Importance

These areas include those lands that are near prime farmland and that economically produces high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield for selected crops as prime farmland, if conditions are favorable (p. 11). A list of all SCS Soil Mapping Units and approximate acreage of each unit is provided. The SCS Soil Map Units are also grouped under three categories: Willamette Valley Foothills; Coast Range Valleys, Terraces, and Gently Sloping Foothills; and Large Wet Terraces (Ryegrass Areas).

Other Class I through VII Soils

These areas include those Class I-IV soils not listed as prime farmland nor additional farmland of local importance and Class VI and VII soils if the USDA Soil Interpretive Guide forms (OR-1) indicate crops or pastureland potential (p. 12). According to the soil map units under this category, no Class V soils exist (pp. 12, 13). The Working Paper states that this category is not included in the SCS report but is included in the Working Paper for purposes of completing the agricultural land inventory (p. 10). A list of the SCS Soil Map Units under this category has been provided (pp. 12 and 13). Acreage figures of these SCS Soil Mapping Units are not provided.

The Working Paper discussion of "factors affecting agricultural lands in Lane County" goes on to discuss irrigation capabilities. The Working Paper states that according to a 1972 Upper Willamette Resource and Conservation and Development Project Report, there are approximately 243,200 acres of land suitable or having potential for irrigation in Lane County (p. 13). The Working Paper also states that the 1978 U.S. Agriculture Census reports 32,002 acres of irrigated land, 24,424 acres of which is cropland (p. 13).

The Working Paper discussion of "economic and social characteristics" provides a lengthy discussion of farm composition, crop values, production trends, food processing, farm employment, markets, and agricultural land rent zones. A number of tables from the 1974 and 1978 USDA Census of Agriculture are also included within this section of the Working Paper. These include the following:

1. Selected Agricultural Characteristics in Lane County.

2. All farms and all farms with sales of $2,500 or more, 1978-1969.

3. Farm by Value of Sales and Operations.

4. Farms with sales of $20,000 or more and farms with sales of less than $20,000.

5. Livestock and Poultry Inventory and Sales.

6. Selected Crops Inventory.

7. Market Value of Agricultural Products Sold.

8. Estimated Gross Agricultural Income ($1,000).

The Working Paper states that the 1978 U.S. Census of Agriculture reported 1,709 farms within Lane County, occupying 266,765 acres or 9.2 percent of land area. The Census reported that 983 farms with sales of $2,500 or more occupy 226,380 acres resulting in an average farm size of 230 acres. The Census also reported that the value of land and buildings of farms with sales of $2,500 or more averages $1,579 per acre; up from $716 per acre in 1974 (Working Paper, Agricultural Lands, p. 14).

Minimum Parcel Sizes

Goal 3 requires that minimum lot sizes "shall be appropriate for the continuation of the commercial agricultural enterprise within the area." Lane County has two different sets of minimum lot sizes. One is a set of minimum lot sizes for farm operations (LC 16.212(6)(d)). The other set is for minimum farm parcels or field sizes (LC 16.212(7)(a)). For approval of farm dwellings under ORS 215.213(1)(g) both sets of the minimum lot sizes must be adhered to (LC 16.212(2)(f)(ii), (2)(g)(i) and (2)(b)(sic), and (2)(h)(iii)). These two sets of minimum lot sizes area as follows:

Farm Operations (LC 16.212(6)(d))

Farm Group	Minimum Acres
Cash grains	120
Field crops (includes grass seed production)	160
Tree fruit and nuts	40
Horticultural specialties	20
General farm, primarily crop	320
Extensive animal grazing	120
Intensive animal husbandry	40
Dairy farm	240
General farm, primarily livestock	80
Berries and grapes	20
Vegetables and melons	120

Field Sizes LC 16.212(7)(a)

Zone	Minimum Acres
E-25	25
E-30	30
E-40	40
E-60	60

The addendum to the Working Paper provides an explanation of these lot sizes chosen. The discussion is based on an analysis of information gathered basically from 4 sources: (1) USDA Census of Agriculture; (2) OSU Extension Service, Special Report 696; (3) Lane County Georgraphic Data Systems; and (4) Lane County Extension Agents.

For farm operation parcel sizes (LC 16.212(6)(d)) the County provides two tables. Table II (p. 9) shows number of farms, smallest farm size for farms generating 80 percent, 70 percent, and 60 percent of sales volume and percent of group totals for each farm group. Table III (p. 10) shows the size distribution of farms having sales of $2,500 or more by farm group. The 30th percentile or point above which 70 percent of sales occur is also shown on Table III. The farm operation parcel size chosen is just above the median parcel size range for a particular crop. For example, 54 vegetables and melon farms have a median parcel size range of 80 to 119 acres, the minimum farm operation parcel size chosen for that type of crop is 120 acres. To support the conclusion that the median size range could be used to establish a point at which signficant contribution occurs, the County had to show that farm operations at the median size range contributed in a substantial way to the agricultural economy. The County did this by showing a correlation between median size range and a point at which farms generating 70 percent of sales volume occur.

For determining minimum farm parcels or field sizes (LC 16.212(7)(a)) the County provides two tables. Table VII shows existing farm parcels over ten acres in size for 19 regions of the County. These regions were established on the basis of soil series and location (p. 3). The number of farm parcels over 10 acres in each region is provided. The 20th, 30th, 40th, and 50th percentiles or the point at which a certain percent of parcel sizes are above and below a certain size is also shown on table VII(i.e., 20th percentile or 80 percent of the cases above a point and 20 percent of the cases below a certain point). Comparing Table VII with the farm size standard chosen shows five regions having a farm size standard between the 30th and 40th percentile, nine regions having a farm size standard between the 40th and 50th percentile and five regions having a farm size standards between the 50th percentile and the average parcel size. Table VIII shows the primary farm activities and preferred parcel acreages based on the County Extension Agents Opinion (p. 4). The primary farm activities selected by the Extension Agent for each of the 19 regions are similar in some ways with the primary crops based on soils series shown on Table V (p. 12).

The following table shows the comparison between the chosen farm size standard (LC 16.212(7)), the preferred parcel sizes chosen by the County Agricultural Extension Agent and the results of the farm parcel survey conducted by the County:

Region No.	No. of Cases	Percentiles Size (acres) 20th	30th	40th	50th	Preferred[1] Parcel Size Ext. Agent	Farm Size Standard LC 16.212(7)
1	106	24	32	39	46	80-40-60	40
2	75	24	36	44	60	80-40-60	40
3A	60	21	27	31	45	80-40-60	40
3B	34	18	20	23	29	80-40-60	30
3C	23	19	20	25	27	80-40-60	30
4	510	16	19	22	27	40-10-40	30
5	102	14	18	20	28	40-10-40	30
6	11	21	24	42	57	25	25
7	89	17	19	25	31	40-10-40	30
8A	17	14	56	69	82	25-40-40-80	40
8B	75	20	28	38	44	25-40-40-80	40
9A	15	17	20	20	31	25-40-40-80	40
9B	29	27	34	42	59	25-40-40-80	40
12	177	20	25	36	51	-40-80	40
13	12	15	17	47	50	25-40	40
16	260	21	31	39	47	80	40
17A	89	14	18	23	34	25	25
17B	38	22	27	40	59	40	40
18	197	17	20	23	27	40-10-40	25

[1]Note: The preferred parcel size established by the County Extension Agent is based on selected farm activities. For Regions No. 1, 2, 3A, 3B, and 3C, the primary activities are: grass seed (80); wheat (40); and peppermint (60). For Regions 4, 5, 7, and 18, the primary activities are: row crop (40); orchard (10); and wheat/peppermint (40). For Regions 6, 17A, and 17B, the primary activity is pasture (40). For Regions 8A, 8B, 9A, and 9B, the primary activities are: pasture (25); cereal grain (40); row crop (40); and grass seed (80). For Region 12, the primary activities are: pasture/timber; cereal grain (40); and grass seed (80). For Region 13, the primary activity is pasture/timber; and cereal grain (40). For Region 16, the primary activity is grass seed (80).

Objection

1000 Friends' objection to Lane County's minimum lot sizes is as follows:

1. Lane County's Inventory of Farms Used in Calculating Its Minimum Lot Size Improperly Includes A High Proportion Of "Farms" It Has Defined As Noncommercial.

Response

The objection is not sustained.

While it is possible that some noncommercial farms may have been included within the County's inventory, Lane County's selection of minimum lot sizes is based on an inventory of farms that contribute in a substantial way to the agricultural economy. In its section of farms, the County not only excluded farms with gross sales less than $2,500, but also showed that farms with lot sizes above the medium parcel size range are generally the same type of farms generating 70 percent of gross sales in the County (Table III). In the County's selection of minimum field sizes, only parcels over 10 acres were used in the inventory (Table VII). According to the County's survey, fields as small as 14, 17, and 18 acres contribute to the agricultural economy and using parcels as small as 10 acres is appropriate for justifying minimum field sizes.

Plan Policies

Lane County adopted 15 plan policies relating to agricultural lands. Among them are the following (Lane County Rural Comp. Plan, Policies, and Legislative Findings, pp. 6-7):

1. Encourage agricultural activities by preserving and maintaining agricultural lands through the use of an exclusive agricultural zone which is consistent with ORS 215.

4. To insure that zoning districts applied to agricultural lands encourage valid agricultural practices in a realistice manner; emphasis shall be placed on minimum parcel sizes which are based upon a countywide inventory and which are adequate for the continuation of commercial agriculture. As minimum parcel sizes decrease to accommodate more specialized commercial agricultural activities, the burden of proof upon the applicant shall increase in order to substantiate the proposed agricultural activity and restrictions shall increase in order to obtain a residence on the commercial farm unit. Deviation from minimum parcel sizes of the Exclusive Farm Use land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berrys, grapes or horticultural specialities. A temporary mobile home which is accessory to the farm management may be conditionally located upon the farm parcel for a reasonable length of time to allow for substantial implementation of the farm management plan. Upon evidence that the farm management plan has been substantially implemented, the mobile home may be allowed on a permanent basis or may be converted to a permanent dwelling.

7. Some agricultural land in the County is not suitable or available for agricultural use by nature of being built upon, committed to or needed for nonagricultural uses. The County shall plan and zone such lands for nonagricultural used by using applicable comprehensive plan policies and the exceptions process of LCDC Goal 2, Part II.

8. Provide maximum protection to agricultural activities by minimizing activities, particularly residential, that conflict with such use. Whenever possible planning goals, policies and regulations should be interpreted in favor of aricultural activities.

10. Such minimum lot sizes or land division criteria as are used in exclusive farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprize in the region. The commercial agricultural, minimum field or parcel sizes and corresponding farming regions identified in Addendum to Working Paper: Agricultural Lands shall be used to determine the appropriate division requirements for lands zoned Exclusive Farm Use (E).

11. Conversion of rural agricultural land to urbanizable land shall follow the process and criteria set forth in LCDC Goal 3.

14. Agricultural lands that satisfy the requirements of ORS 197.247 may be designed as Marginal Lands and such designation shall also be made in accordance with other plan policies. Uses and land divisions allowed on Marginal Lands shall be consistent with those allowed by ORS 197.247.

Plan and Zone Designations

Lane County's plan map employ one Agricultural Plan designation which is implemented by one EFU zone having 4 minimum parcel sizes or field sizes (25, 30, 40 and 60 acres). These 4 parcel sizes are applied to farmland in the County based on the parcel size inventory of the 19 regions previously discussed. Any change in the minimum parcel size would constitute a zone change and is therefore, subject to the criteria for a zone change pursuant to Section 16.252 (personal communication, Jim Mann, June 18, 1984). Section 16.252(1) requires compliance with the specific purpose of the EFU zone and conformity with the comprehensive plan.

Implementing Measures

Lane County has applied marginal lands and is therefore required to adopt the EFU zone provisions of ORS 215.213(1) through (3) only.

Lane County has nine separate provisions for dwellings in its EFU zone. One of these is for homes on "lots of record" under ORS 215.213(4). LC 16.212(3)(c). Another is for nonfarm dwellings authorized by

ORS 215.213(3) on generally unsuitable land. LC 16.212(4)(j). Two are for homes of the type authorized by ORS 215.213(2)(a) and (b). LC 16.212(3)(a); (b). Two more are for legislatively defined and allowed "hardship" mobile homes, ORS 215.213(1)(j) and "farm relative" dwellings, ORS 215.213(1)(e). LC 16.212(2)(j); (i). The three remaining provisions are for "dwellings customarily provided in conjunction with farm use" and apply to three different situations. They are:

- The first farm dwelling on any and all parcels used as part of a farm management unit already in farm production. LC 16.212(2)(f).

- The first farm dwelling on any and all parcels proposed for farm management, but not yet in production. LC 16.212(2)(g).

- The second farm dwelling on any or all parcels used as part of a farm management unit already in farm production. LC 16.212(2)(h).

Under each of these three farm dwelling provisions, the dwelling must be located on a parcel not smaller than the applicable parcel size in LC 16.212(7) and part of a farm operation equal to or greater in size than the farm group sizes specified in LC 16.212(6)(d). This is because LC 16.212(6)(c) "deems" operations of the specified size in (6)(d) "as contributing in a substantial way to the agricultural economy of the County." The ordinance requires the applicant to submit information showing satisfaction of these area requirements. Applicants for farm dwellings on land not currently managed as a farm operation must prepare a "farm management plan." LC 16.212(2)(g)(v)(e). This plan must be "substantially completed" prior to authorization of a permanent dwelling. LC 16.212(2)(g)(vi). Prior farming experience must also be documented by applicants for a dwelling proposed for a "contemplated" farm use. LC 16.212(2)(g)(v)(d). Under all three dwellings provisions the applicant must identify the "extent of involvement in the proposed farm use activity by the occupants of the proposed dwelling." LC 16.212(f)(iv)(d); (g)(v)(d); (h)(iv)(d). All other permitted uses and uses allowed conditionally are consistent with ORS Chapter 215.

Disqualification from Farm Tax Deferral: During the 1981 Legislative Session, ORS 215.236 was adopted, requiring the disqualification from farm tax deferral of parcels prior to final building permit approvals for nonfarm dwellings. This provision has not yet been included within the County's EFU Zone.

The standards for land divisions are found under LC 16.212(7) of the EFU Zone. A division of land may be allowed down to 20 acres for horticultural specialties, berries, and grapes provided a farm management plan establishes suitability of the land for the intended use (LC 16.212(7)(b)). Land divisions under LC 16.212(7)(a) and (b) require that a statement be placed on the partition map dislosing that a dwelling is not guaranteed unless the provision of this zone for obtaining a dwelling are met (LC 16.212(7)(e)).

A division of land may be allowed for nonfarm uses under ORS 215.213(2)(e), (f), and (g), provided the parcel is not larger than the minimum size necessary for the use (LC 16.212(7)(c)). A division of

land may be allowed for a dwelling not provided in conjunction with farm use if the dwelling has been approved pursuant to the provisions under ORS 215.213(3)(LC 16.212(4)(j)) on generally unsuitable lands and if the division would not conflict with the purpose of the EFU Zone (LC 16.212(7)(d)). All land divisions noted above including land divisions meeting the four minimum area requirements of LC 16.212(7)(a) are subject to the application and review procedures of Lane Code Chapters 13 and 14 (LC 16.212(7)(e)).

Lane County's Agricultural Plan designation and the four field size standards of the EFU Zone was applied consistent with the inventory analysis previously discussed. The areas zoned EFU are the same as the areas designated Agriculture (A) on the Plan Diagram Zoning Map.

Objection

1000 Friends object to the lack of standards for the siting of farm dwellings because they do not exclude nonfarm dwellings.

Response

The objection is not sustained.

The farm dwelling approval standards allowed under LC 16.212(2)(f), (2)(g), and (2)(h) use essentially the same language as those under ORS 215.213(1)(g). A farm dwelling customarily provided in conjunction with farm use (existing or contemplated) is allowed provided it complies with certain conditions. These conditions require that the farm dwelling must be located on a lot that is managed as part of a farm operation of a size equal to or greater than the minimum farm operation sizes under LC 16.212(6)(d) and will be located on a lot that is equal to or larger than the minimum field sizes under LC 16.212(7)(a). LC 16.212(2)(f)(ii); (2)(g)(i), (b)(sic); and (2)(h)(iii).

Objection

John W. Shonkwile representing C. Rober Suess, Helen Suess, Suess Brothers Company, and Scott & Suess Builders Company object to the County zoning certain properties EFU which they claim are not agrigultural land but rather have marginal land or nonresource characteristics.

Response

The objection is not sustained. The properties in question consist of a 125-acre parcel and a 121-acre parcel. The 125-acre parcel consists of all class IV soils. The 121-acre parcel has 89 acres of class V and VI soils. Lane County has defined these areas agricultrual lands based on the requirement of Goal 3 to include "other lands suitable for farm use." Both of these areas are within the definition of agricultural land defined by Goal 3 and Lane County. The County's decision to therefore zone property EFU, which is defined as agricultural land, instead of a zone requested by the property owners does not constitute a violation of Goal 3.

Metro Area

Information regarding agricultural lands within the Metro Area General Plan Boundary and outside the Eugene-Springfield UGB is found in two separate acknowledgment submittals: (1) Lane County Rural Comprehensive Plan submitted for this review; and (2) Eugene-Springfield Metro Area acknowledgment request (August 19, 1982). The inventory of soils is contained in the Agricultural Lands-Addendum to the Metro Area General Plan (October 1981). The inventory analysis used to justify minimum parcel sizes is contained in the County-wide Working Papers on Agriculture. Plan policies pertaining to agricultural lands are contained in the Metro Area General Plan. Where the County's EFU Zone requires compliance with certain plan policies, those particular policies apply to the metro areas as well (personal communication, Jim Mann, June 25, 1984). The County's EFU Zone (LC 16.212) applies to all agricultural lands in the metro area outside the UGB. These lot sizes are based on the County-wide inventory of parcels and primary farm crops (see discussion of minimum lot sizes). Chapter 16 of the Lane Code applies to the Metro Area outside the UGB.

Requirement

1. Inventory all agricultural lands as defined by Goal 3.

Response

Information on agricultural lands in the Metro Area is contained in the Metro plan update "Agricultural Lands-Addendum." The inventory was based on SCS soil mapping (p. 1).

A list of all SCS soil mapping units for the Metro Area is provided in the Appendix of the Addendum. The plan defines agricultural land as follows (p. 2):

1) Agricultural Soil Capability Class I-IV,

2) "Other" - Agricultural Soil Capability Classes V - VIII in current agricultural use, and

3) "Other" - Agricultural Soil Capability Classes V - VIII based on proximity to areas defined in 1) and 2) above.

A map is provided showing the three types of agricultural lands described above. The above definition is consistent with Goal 3 and is basicaly the same used in the County-wide inventory of agricultural lands.

Lane County's inventory included agricultural lands within the Metro Area when analyzing and determining the appropriate minimum lot sizes (see discussion on minimum lot sizes) (personal communication, Jim Mann, June 25, 1984).

Conclusion

Lane County, City of Eugene and City of Springfield satsify Requirement 1.

Requirement

2. Designate in the plan all agricultural lands for farm use. Where the Parks and Open Space designaton is applied to agricultural lands in private ownership, the definition of the designation must be amended to require preservation of agricultural lands.

Response

All lands defined as agricultural lands are designated EFU except for one built and committed exception area which has not been justified in its entirety (Royal Avenue area). Lane County has taken an exception for 1,856 acres in 18 different areas within the Metro Area outside the UGB (see Goal 2 discussion of Metro Area Exceptions). The Park and Recreation (PR) Zone is addressed under Goal 2 and the IOTC requirements apply to the Metro Area as well.

Conclusion

Lane County, City of Eugene and City of Springfield satisfies requirement 2. The inadequate findings justifying the Royal Avenue exception area and the Park and Recreation Zone issues are addressed under Goal 2.

Requirement

3. Adopt policies to preserve agricultural lands.

Response

The Metro Area General Plan adopts the following Agricultural lands policies (1982 amendment to the August 1980 Metro Area General Plan):

5. Where agricultural land is being considered for inclusion in future amendments to the urban growth boundary, (the) least productive agricultural land shall be considered first. Factors other than agricultural soil ratings shall be considered when determining the productivity of agricultural land. Relevant factors include suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation, ownership patterns, land use patterns, proximity to agricultural soils or current farm uses, other adjacent land uses, agricultural history, technological and energy inputs required, accepted farming practices and farm market conditions.

28. Designated agricultural lands shall be protected for agricultural uses through zoning for exclusive farm use or equivalent acceptable zoning and through application of other protective measures.

29. Prior to the next update, a study should be initiated to examine ways of buffering and protecting agricultural lands on the urban ringe from the effects of urban development.

Depending on the specific provision of the EFU Zone, plan policies contained in the Lane County Rural Comprehensive Plan would also apply to agricultural land in the Metro Area outside the UGB.

Conclusion

Lane County, City of Eugene and City of Springfield satisfy Requirement 3.

Requirement

4. Zone agricultural lands in the Metro area for Exclusive Farm Use pursuant to ORS Chapter 215 and Goal 3 based on the requirements established in the Lane County Report (pp. 33-34). Where the PR Zone is applied to private land, it must be consistent with ORS Chapter 215 and Goal 3.

Response

Lane County has zoned agricultural lands in the Metro Area outside the UGB for Exclusive Farm use pursuant to ORS Chapter 215 and Goal 3 based on the justification provided for the County's minimum lot sizes. The deficiencies in the PR Zone are discussed under Goal 2 and will be addressed in the IOTC's of Goal 2.

Conclusion

Lane County, City of Eugene and City of Springfield satisfy Requirement 4.

Marginal Lands

Lane County has designated and allows for additional designations for marginal lands as authorized by Statewide Goals 3 and 4 if agricultural or forest lands satisfy the criteria in ORS 197.247 (Plan Policies Goal 3 and Goal 4). There is no plan policy requiring a plan amendment to the Lane County Plan for a marginal land designation (personal communication, Jim Mann, June 22, 1984). Plan amendments require a finding by the Board that the designation "meets all requirements of local and state law including Statewide Planning Goals" (Lane Code 16.400(6)(h)(iii)(a).

Lane County has adopted a "Marginal Lands" report which includes information about the lands designated as "marginal." Thirteen separate designations have been made. The County has not adopted findings and reasons in support of these designations which were written by itself or County staff. Rather, the County Board has adopted the written information submitted by the applicants for the thirteen designations. The format, type of information and level of detail varies widely for each of the designations.

Each of the designations is based on the County's determination that the proposed marginal land satisfies the "low productivity" test in ORS 197.247(1)(b)(C) and was not managed as part of a farm which earned the income required by ORS 197.247(1)(a). These criteria read as follows:

> (a) The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced $20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of $10,000 in annual gross income; and
>
> (b) The proposed marginal land also meets at least one of the following tests:
>
> (c) The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservatin Service on October 15, 1983, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eight-five cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 447.001(21).

Some of the County's submitted information specifically addresses the required criteria while others simply include relevant information which is not organized to directly address the relevant criteria. Only 5 areas provide findings which directly address the required criteria for the designation of marginal lands under ORS 197.247. The follwing table descibes the 13 areas zoned Marginal Lands, their approximate acreage, map index number, and soils information. (Source: Lane County Rural Comprehensive Plan, Marginal Lands, and Zoning Map.):

Lane County Marginal Lands

NAME/CPR	ACRES	PLOT	SOILS INFORMATION
Merz/603	70	28, 29	Incomplete
Merz/604	25	21	100% Sand Dune
Cuddeback/609	333	27, 28	Forest Site Class 2 & 3
Harrison/727	60	285	Conflicting data
Brackenbusch/728	60	285	36% Class I-IV/24% F.S.C 4
Mathers/779	111	398	17% Class IV/17% F.S.C. 4
Peters/794	125	269	Conflicting data
Hledik/863	205	21	Not provided
G.E. Credit Co/1086	20	401	Conflicting data
Rennie/110	63	503	Class VII & VIII/no woodland suitability
Rodman/1210	80	382	8 acres Class III/F.S.C. 4
KVAL/1376	100	334	Conflicting data
Lesch/1700	110	383	10% Class III & IV/10% F.S.C. 4

NOTE: F.S.C. = Forest Site Class

The above table indicates which areas satisfy the "low productivity" standard under ORS 197.247(1)(b)(c). Those areas are: Merz/604; Brackenbusch; Mathers; Rennie; and Lesch. Areas which satisfy the "low productivity" standard under ORS 197.247 (1)(b)(c) must also satisfy the "income" standard under ORS 197.247(1)(a). The County's adopted findings indicate that the 13 designated areas are viewed as marginal forest land with no appreciable farm uses being conducted. For lands not managed as part of a farm operation the income test is that the proposed marginal land is not "capable of producing an average, over the growth cycle, of $10,000 in annual gross income" (ORS 197.247(1)(a)). The marginal lands act also uses this $10,000 standard for the approval of forest related dwellings on existing lots in an EFU zone (ORS 215.213(2)(b)) and is being used by Lane County in its F-2 Zone (LC 16.211(3)(c)(iii)). Lane County has determined the minimum acreages necessary for various forest site classes to produce $10,000 in gross annual income. These are:

Cubic Foot Site Class	Potential Yield cu. ft/acre/yr	Acreage Minimum
6	20-49 cf/ac	64
5	50-84 cf/ac	43
4	85-119 cf/ac	34
3	120-164 cf/ac	24
2	165-224 cf/ac	17

Parcels with soils less than these minimum acreages for forest areas are therefore considered marginal. Parcels with soils over these minimum acreage for forest areas would be capable of producing an annual income greater than $10,000 and therefore would not qualify as marginal lands.

Marginal Land Zone

Lane County has adopted a Marginal Land Zone (ML-RCP) (LC 16.214). ORS 215.317 sets forth specific uses allowed on lands designated as Marginal Lands. The uses allowed outright and conditionally allowed in the ML Zone are consistent with the permitted use requirements of ORS 215.317(1) and (2). The ML Zone is also consistent with the land division requirements of ORS 215.237.

ORS 215.288(2) requires that if a County amends its comprehensive plan or land use regulations to allow for the designation of marginal land under ORS 197.247, or to allow the establishment of dwellings under ORS 215.213(4) to (8), the County is required to apply ORS 215.213(1) to (3) to land zoned for Exclusive farm uses. Lane County has both applied Maringal Lands under ORS 197.247 and the establishment of dwellings under ORS 215.213(4) (LC 16.212(3)(C)). The County's EFU Zone (LC 16.212) is consistent with ORS 215.288 (See: Goal 3 discussion of implementing measures.

Objection

1000 Friends objects to Lane County's Marginal Lands designations because the County has not adopted findings and reasons for each designation but only the property owner's descriptions of their land. This, they allege,

leaves conflicts in the evidence unresolved and does not adequately explain the basis of the designations.

Response

The objection is not sustained.

Lane County is required to adopt findings and a statement of reasons to support its plan amendments which designate areas as marginal land. However, the County is not required to adopt findings it has written, but can adopt those written and submitted by the applicant for the plan change. The real issue is whether the findings adopted, regardless of who wrote them, are adequate to justify the plan amendment. What is considered adequate findings was explained by the Oregon Supreme Court as follows:

> We wish to make it clear that by insisting on adequate findings of fact we are not simply imposing legalistic notions of proper form, or setting an empty exercise for local governments to follow. No particular form is required, and no magic words need be employed. What is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient.
>
> We do not believe the requirement of adequate findings and reasons imposes an excessive burden on the governing body or its staff. In contested land-use proceedings involving significant changes and the presentation of large amounts of conflicting evidence, the major proponents and opponents of the change will frequently be represented by counsel. In such cases it would be quite proper for the governing body to request the parties to prepare and submit proposed findings which could be reviewed and used, as appropriate, in preparing its own final order.
>
> Sunnyside Neighborhood v. Clackamas County, 280 OR 3 (1977)

The adequacy of Lane County's findings and reasons supporting their decisions regarding marginal lands are discussed in the response to the rest of 1000 Friends' objection and the conclusion to the marginal lands Section of this report. Those parts of the report explain which marginal lands designations are adequately justified and which areas were not.

Objection:

1000 Friends also objects to the Cuddeback, Harrision, Brackebusch, Peters, Hledik, G.E. Credit Corp., Rodman, and KVAL properties.

Response

The objection is sustained with respect to all contested areas, except the Brackebusch property (see Marginal Land Conclusion). The 60 acre

Brackebusch property has only 22 acres of SCS Class III and Class IV Agricultrual Soils and only 14.5 acres of Forest Site Class 4. Findings provided show that the property qualifies as Marginal Lands. The predominate soils are SCS Class VI and soils having no woodland suitability. According to the information provided, the highest gross income that was ever produced on the property was $3,000 and the property has never been managed for farm purposes. The 14.5 acres of Forest Site Class 4 falls below the County's $10,000 annual income standard by more than one-half of the minimum acreage (34 acres). If there was an additional 20 acres of Forest Site Clas 4 soils, then the parcel would not qualify as marginal lands according to the County's own standard.

Marginal Lands Conclusion

Based on the evidence submitted by the County, not all areas designated as Marginal Land qualify under ORS 197.247. In addition, there is no plan policy which requires a plan amendment when designating land as Marginal Land. Upon examination of the information provided on soil capability, the Merz/603, Cuddeback, Harrision, Peters, G.E. Credit Corp., Hledik, Rodman, and KVAL properties do not satisfy the "low productivity" criterion under ORS 197.247. In a number of cases, information on soils was either not provided (Hledik and Merz/603), or conflicted with other soils data provided (Harrision, Peters, G.E. Credit Corp., and KVAL). Information provided for the Rodman property indicates that the entire parcel consists of Dixonville silty clay loam which has a Forest Site Class of 4. Soils on the 333 acre Cuddeback property consist of Forest Site Class 2 and 3. Findings include testimony from individual foresters stating that notwithstanding the soils data, this land is subject to constraints on management and harvesting (unsuitable soils, proximity to coastal lakes, and a water district) thus making it incapable of producing 85 cu.ft/ac./yr. However, these constraints on forest uses do not change the fact that the soils on these lands are capable of producing more than 85 cubic feet per acre per year of merchantable timber. Secondly, physical constraints on timber management are factors already built into the forest classification system. (personal communication, DOF-Dave Stere, June 19, 1984). The remaining areas, except Mathers, satisfy the "income" criterion under ORS 197.247 (1)(a). Only a conclusionary statement is provided for the Mathers' property stating that area meets the income requirement and is qualified as Marginal Lands under ORS 197.247(1)(a). The conclusion is not supported by findings based on objective data supporting the conclusion. The remaining areas provide findings in addition to the conclusion that the "income" criteria has been satisfied.

Based on the evidence submitted, the following areas qualify as Marginal Lands under ORS 197.247:

1. Merz (CPR 604 only)
2. Brackebusch
3. Rennie
4. Lesch

Overall Conclusion

Lane County does not comply with Goal 3.

Lane County has provided a thorough discussion of its agricultural land base and its importance to the County. Agricultural lands have been inventoried in accordance with Goal 3. The County's farm inventory and land use data provides the necessary justification for setting minimum lot size standards. Several effective policies have been adopted to assure the protection of agricultural land as defined by Goal 3 and implementing measures very nearly reflect the EFU statutory requirements. Lane County's approach towards its diverse agricultural land base is innovative and will prove an effective model for other counties having similar agricultural characteristics. The remaining issues which need to be corrected are regarding marginal lands (see Marginal Lands Conclusion) and the disqualification from farm tax deferral for non-farm dwellings.

In order to comply with Goal 3, Lane County must:

1. Amend the EFU Zone to require disqualification from farm tax deferral of parcels prior to final building permit approval for nonfarm dwellings pursuant to ORS 197.236.

2. Adopt a plan policy requiring a plan amendment to the County Plan when designating land as Marginal Lands.

3. Amend the plan to include adequate findings and reasons for applying the marginal lands zone to the Merz/603, Harrison, Peters, Hledik, G.E. Credit Corp., and KVAL properties and provide the required information to determine compliance with ORS 197.247. If the information provided shows that the land does not qualify as marginal land under ORS 197.247, plan and rezone the properties with appropriate resource designations and implementing zones.

4. Amend the Plan Map and Zoning Map for the Cuddeback and Rodman properties to an appropriate resource designation and implementing zone.

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GOAL 4: FOREST LANDS

Goal 4 requires the conservation of forest lands for forest uses. Also required is (1) an inventory of lands suitable for forest uses and a determination and mapping of the productivity of these lands for commercial use; (2) designation of inventoried lands on the comprehensive plan map as forest lands; and (3) retention of forest uses on designated forest lands (OAR 660-06-000(1)).

OAR 660-06-015(1) states that:

> . . . the inventory shall include land forested in commercial and noncommercial species and nonforested land suitable for forest uses, unless the nonforested land is inventoried as Goal 3 agricultural land or is planned for nonresource uses and an exception to Goal 4 is justified and taken. Outside urban growth boundaries, this inventory shall include a mapping of forest lands by cubic foot site class of the dominant commercial species in accordance with the U.S. Forest Service Manual "Field Instruction for Integrated Forest Survey and Timber Management Inventories--Oregon, Washington and California, 1974."

In designating forest lands within counties:

> . . . the most common plan designation is "Forest" or "Forest Land." In areas of intermingled agricultural and forest lands, an "Agricultural/Forest Lands" designation may also be appropriate. If some other designation is used for forest or agricultural/forest land, it must nonetheless carry equivalent protection for forest uses. The plan shall define the designation in order to explain its purpose and where it is applied (OAR 660-06-015(1)).

Goal 4 defines forest lands and forest uses as follows:

Forest Lands--are (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buffers, wind breaks, wildlife, and fisheries habitat, livestock habitat, scenic corridors and recreational use.

Forest Uses--are (1) the production of trees and the processin of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clear air and water; (6) outdoor recreational activities and related support services and wildnerness values compatible with these uses; and (7) grazing land for livestock..

In reviewing Lane County's plan, the Commission can rely on 1) Goal 4 2) OAR 660-06-000 through 030 and 3) where applicable, other recent acknowledgment reviews (e.g., Coos County, Umatilla County, Clatsop County, Klamath County, and others).

Factual Base

Lane County's factual base consists of the "Forest Lands Working Paper" prepared in March 1982, and "Addendum to Working Paper" prepared in November 1983.

The "Forest Lands Working Paper" contains information addressing 1) Goal 4's requirements, 2) issues raised by the 1981 acknowledgment review of Lane County's Plan, 3) corrections to deficiencies, 4) economics of the forest resource, environmental and social, and energy programs affecting forest management and a forest resource summary.

In the January 22, 1981, review of Lane County's plan, the Commission adopted Goal 4, IOTC 1 requirement which reads as follows:

> Amend the forest land inventory to distinguish between forest land and nonforest land and show that all forested land and potential commercial forest land is inventoried within the coastal area; this inventory must consider cubic foot site classes other than Douglas fir (Lane County Acknowledgment Review, 1-22-81, p. 43).

In response to this IOTC, Lane County has adopted the following: (1) a definition of commercial forest land as lands capable of producting crops of industrial wood in excess of 20 cubic feet per acre per year (Forest Working Paper, p. 4 and p. 8); (2) a general countywide cubic foot site class map for Douglas fir classes II, III, and IV and V (Forest Working Paper, Map 4); and (3) a list of soils suitable for producing Douglas fir by cubic foot site class (Forest Working Paper, Appendix 1).

In responding further to IOTC 1, Lane County states the following regarding its forest lands inventory:

> Map 4 depicts the "general" productivity distribution by cubic foot site class for Douglas fir, and the significance distribution of other commercially important species in Lane County. The inventory for Lane County's forest lands identifies those forest lands which produce Douglas fir at cubic foot site classes 2 through 5. This highly generalized distribution map was determined from the more specific vegetation cover maps produced from the soils mapping as noted in the previous methodology section (Sect. III A.1. p. 4). These specific vegetation cover maps are available in the Lane County Planning Division for more detailed research.
>
> It is possible to convert a site index determined for one species to the appropriate site index for another species. This type of conversion is obtained by simply comparing the cubic

foot site classes shown at the bottom of each table (see Appendix III). For example, a site capable of growing a Douglas fir to a height of 190 feet in 100 years (Site Index 190) found at the top of the table is in the middle of cubic foot site class 2. To convert this to a Western Hemlock, found at the bottom of the table, equals a Site Index of 130. Therefore, the site that grows the average Douglas fir to a height of 190 feet in 100 years should grow the average Western Hemlock to a height of 130 feet in the same time. Due to this high inter-species cubic foot site class correlation, the appropriateness of using a Douglas fir standard in all areas of the County (within the geographic and species range limits) is considered justified.

Cubic foot site class mapping of several species has been compared with the Douglas fir cubic foot site class mapping and in general, matches well (Forest Working Paper, p. 13).

Also, contained in the Forest Working Paper is information discussing a number of issues from which the following County findings have been generated:

- The cubic foot site class mapping shows that Lane County forests generally contain Douglas fir cubic foot site classes 2, 3, 4 and 5 with cubic foot site class 3 being the most common (Forest Working Paper (FWP), p. 39).

- Lane County's economy is estimated to be 50 percent to 66 percent dependent on the forest industry (FWP, p. 40).

- The commercial forest land base is decreasing because of the removal of forest land for other forest uses and development activities (FWP, p. 40).

- Conflicts between the demands for timber and the scenic, wilderness, open-space, and recreation values of forest lands will continue to be a major issue in Lane County (FWP, p. 41).

- Increasing demands for residential development on forest lands are exerting pressure on potentially productive forest land to be converted into other competing and conflicting uses (FWP, p. 41).

- The future rural residential or second home owner may cause economic and social conflicts with forest land owners utilizing silvicultural techniques (such as logging activities, slash burning, and chemical applications of herbicides and insecticides) for intensified forest management (FWP, p. 41).

- Fragmenting the forest resource lands through development activities restricts economically feasible management practices (FWP, p. 41).

- The State of Oregon, through LCDC Goal 4, requires local governments to identify forest lands and to provide maximum protection for forest

uses. Forest lands are to be retained for forest uses by limiting nonforest uses. All forest uses are to be considered when apply Goal 4 (FWP, p. 41).

- Public agencies manage 62 percent of Lane County's commercial forest land which contains 78 percent of the standing commercial timber (FWP, p. 42).

- Although 78 percent of the County's standing commercial timber is found on publicly owned lands, only 72 percent of the harvest comes from these lands (FWP, p. 42).

- The forest industry manages 30 percent of Lane County's commercial forest land, which contains only 17 percent of the standing commercial timber (FWP, p. 42).

- Although only 17 percent of the volume of the County's commercial timber is found on industrially owned land, 21 percent of the harvest comes from these lands (FWP, p. 42).

- The nonindustrial forest land owner manages eight percent of Lane County's commercial forest land which contains only five percent of the County's standing commercial timber volume (FWP, p. 43).

- The small private forest lands are largely under-productive due to their small parcel size and fragmented distribution, their need for capital investment incentives, and their lack of knowledge and understanding of forest management practices (FWP, p. 43).

- Prime commercial forest land must be protected from the constant pressures of rural development creating conflicting, nonforest land uses (FWP, p. 43).

In the Addendum, the Forest Working Paper, the County indicates that 1,119,420 acres of commercial lands in Lane County is owned by the public. The forest industry owns 541,070 acres while private nonindustry commercial forest lands amount to 152,740 acres (Addendum, p. 5).

On pages 8-9 of the addendum, the County presents information regarding parcelization of forest lands. Part of that discussion is as follows:

> The presumption that parcel sizes 80 acres and greater are of a "commercial" size is a recommendation by the DLCD that is widely accepted. The question then, is what minimum parcel size will allow future residential development without adversely impacting forest resources land? To answer this involves an analysis of the current level of residential development on parcels less than 80 acres in size.

The following table shows the total number of tax lots by ownership category for parcels of all size classes and correspondingly, the number of taxlots that are developed:

Ownership	Total No.	Devlpd. No.	% of Devlpd.	% of Total
Non-industrial	4,142	1,205	97.6	13.6
Industrial	2,817	32	2.6	0.4
Public	1,895	9	0.7	0.1

These relationships emphasize the differences of the residential impact on the different types of ownerships. Clearly, the non-industrial ownership is the ownership category of most concern as approximately 98% of the residences on forest land in Lane County are on Non-industrial owned forest land.

In the addendum to the Forest Working Paper, Lane County provides extensive information in support of a minimum parcel size of 80 for "Impacted" Forest Lands. To justify this parcel size, the County attempts to ascertain the point at which the number of acres of bare forest land becomes valued more for its forest values than for its residential value. In order to make such a determination, the County assumed bare land residential values of $18,000 per acre for rural lands near Eugene-Springfield and $12,000 per acre for rural lands in the remainder of the County (Addendum, pp. 15-18). The following is an explanation of a graph contained in the Addendum's Figure XIII which depicts the County's findings for most of the cubic foot site class 3 rural lands of Lane County:

Figure XIII illustrates the relationship for the average of Forest Land Value Zones A-E within which most of the Non-industrial ownership is located. The average residential acre bare land value is set at $12,000 and intersects the bare forest land value at approximately 66 acres. This parcel size represents the size in which the value of the bare forest land is equal to the value of the bare land residential acre. Parcel sizes greater than 66 acres in these zones have a forest land value greater than the residential land value. One would presume that because of the greater value of the land for forest land, parcels greater than 66 acres in this ownership category would predominantly be purchased for their forest land resource attributes. Parcel sizes less than 66 acres in these zones have a residential land value that exceeds that of the bare forest land and therefore, would presumably be purchased for attributes that are valued greater than those of the forest lands resource (Addendum, p. 17).

For the area near Eugene-Springfield, the County determined that 77 acres was the point of intersection (for cubic foot site class III land) between residential value and forest value (Addendum, p. 15) while at 62 acres that point was established for tax assessment zone A which generally represents rural areas from the coast to the Eugene-Springfield area.

In concluding their parcel size analysis, Lane County provided the following summary statements:

1. 98% of the residential development on forest land in Lane County falls within the Non-industrial ownership category.

2. Parcel sizes less than 80 acres in size represent 83% of the residential development on Non-industrial forest land.

3. The frequency distribution and acreage distribution of the parcel sizes represents no discernable pattern for parcels less than 80 acres, other than that which is explained by the typical conveyance of property on the Township-Range-Section system.

4. Bare land values of forest and residential land represent "stable" quantifiable variables for measuring the relative value of alternative land uses that can be compared on a regional basis by parcel size.

5. Parcel sizes greater than 68 acres in the Non-industrial category have a higher bare land value for forest land uses than for other uses.

6. A parcel size of 68 acres for the Non-industrial category represents 77% of this ownership's residential development.

7. Parcel sizes greater than 38 acres in the Non-industrial category have a higher bare land value for resource land uses (combining agriculture and forest bare land values) than for other non-resource uses.

8. The total acreage of all parcels 80 acres and less in the Non-industrial ownership represent less than 5% of all the acres of Lane County's forest land (Addendum, p. 20).

Forest Policies

Lane County has adopted 18 forest policies. Included as forest policies are statements indicating that (1) the FPA is the only mechanism for regulating forest practices (unless a Goal 5 resource through use of the Goal 5 process requires special regulation); (2) consolidation of forest ownerships are encouraged; (3) reforestation of under-productive forest lands is encouraged; and (4) the County is concerned about the projected shortfall in its timber supply and it supports efforts to develop plans to address this problem.

A number of the County's adopted Forest policies are especially relevant to this Goal 4 review of the County's Forest Element.

These policies are as follows:

1. Conserve forest lands for the multiple forest uses of commercial timber management; watershed protection; wildlife, fisheries and livestock habitat; and recreation; as per Goal 4.

2. Forest lands will be segregated into two categories, Nonimpacted and impacted and these categories shall be defined and mapped by the general characteristics specified in the Nonimpacted and Impacted Forest Land Zones General Characteristics.

3. Forest lands that satisfy the requirements of ORS 197.247 may be designated as Marginal Lands and such designations shall also be made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands shall be those allowed by ORS 197.247.

6. Prohibit residences on Nonimpacted Forest Lands except for the maintenance or replacement of existing residences or except for a residence on a lot of record. A lot of record shall be defined consistently with Sections 9 to 12, Chapter 884, Oregon Laws 1981 and as ammended (sic) by SB 237.

7. Residences shall be conditionally permitted on Impacted Forest Lands if they are necessary and accessory to farm or forest uses, or if they are in conjunction with the propagation or harvesting of a forest product on a tract managed as part of a wood lot meeting the acreage minimum standards of forest policy 12.a below, or if they are on a lot of record as defined in the above policy 6, and if impacts upon adjacent and/or nearby farm and forest lands are limited.

8. Regard nonforest uses within or adjacent to forest lands as being subject to the normal and accepted forest practices in the locality.

9. Require that nonforest uses other than a residence on Nonimpacted Forest Lands be compatible with forest uses, practices and operations or adjacent and nearby forest lands; and that there be provided valid reasons why the use should be sited on Nonimpacted Forest Land or evidence that the proposed site is on land generally unsuitable for forest uses.

10. Require that nonforest uses on Impacted Forest Lands be compatible with farm/forest uses, operations and practices on adjacent and nearby farm and/or forest lands (Plan, p. 8).

Forest Policies 11 describes the standards for land divisions in the "Nonimpacted" areas of the County. Forest Policy 11 reads as follows:

11. Parcel size for Nonimpacted Forest Land must conserve forest land for Nonimpacted forest uses and be consistent with the Nonimpacted Forest Land Zone General Characteristics.

    The following division standards are consistent with and will implement this policy:

    a. 40 acre (1/4 1/4 Section) minimum lot size for purpose of land division if adjacent to other Nonimpacted Forest Lands.
    b. Deviation from the 40 acre minimum lot size may be conditionally allowed if the land division is for the purpose of separating an existing residence from the adjoining forest land if the parcel containing the residence is limited to the least amount of area possible so as to maximize forest uses on the adjacent forest land.
    c. Lot line adjustments for purposes other than the creation of an additional lot are permitted.

Forest Policy 12 describes the standards for land divisions in the "Impacted" areas of the County. Forest Policy 12 reads as follows:

12. Parcel sizes for Impacted Forest Land must be adequate to conserve forest land for Impacted farm and forest uses and be consistent with the Impacted Forest Land Zone General Characteristics, III.C.

    The following division standards are consistent with and will implement this policy:

    a. For the creation of a woodlot for the purpose of the propagation or harvesting of a forest product, the minimum area shall be at least 20 acres and that which is consistent with the Douglas fir cubic foot site indexes and minimum area computations promulgated by the Oregon Department of Forestry and specified below and additional area to accommodate a homesite, access and fire breaks and a logical parcel layout and use of the parcel. There shall be presented for each application sufficient factual documentation to verify that each proposed tract meets the above requirements.

Cubic Foot Site Class	Potential Yield cu.ft./acre/yr	Acreage Minimum
6	20-49-cf/ac	64
5	40-84-cf/ac	43
4	85-119-cf/ac	34
3	120-164 cf/ac	24
2	165-224 cf/ac	17

b. Deviation from the standard specified in 12a above for a 40 acre parcel (1/4 1/4 section) on Impacted forest land to be used for farm use may be allowed. Proposed residences for such parcels shall be accessory to commercial farm use and shall be allowed only if consistent with accessory dwelling standards in the EFU Zone.

c. Deviation from the standard specified in 12a above of the impacted forest land for the creation of a parcel not smaller than 20 acres may be allowed when at least 19 acres of the parcel being created are currently managed or planned to be managed by a farm management plan for a farm operation consisting of one or more of the following: berries, grapes or horticultural specialties. A temporary mobile home which is accessory to the farm management may be conditionally located upon the farm parcel for a reasonable length of time to allow for substantial implementation of the farm managment plan. Upon evidence that the farm management plan has been substantially implemented, the mobile home may be allowed on a permanent basis or may be converted to a permanent dwelling.

d. Lot line adjustments for purposes other than the creation of an additional lot are permitted.

e. Land divisions for non-farm or non-forest dwelling as per EFU standards (Plan, pp. 8 and 9).

Forest Plan Designations

Lane County has two forest land designations, Nonimpacted and Impacted. The characteristics or criteria used to distinguish "Impacted" from "Nonimpacted" Forest Lands are as follows:

Nonimpacted Forest Land Zone General Characteristics

1. Managed for commercial forest uses.

2. Capable of commercial forest uses.

3. Used for other forest uses or lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover.

4. Contiguous to other parcels of similar use.

5. Composed of large parcels, generally 80 acres and greater in size.

6. Under public or industrial forest ownership.

7. Not developed with residences.

8. Accessed by arterial roads or roads intended primarily for forest management.

9. Not provided with levels of public utilities and services suitable for residential development.

10. Outside developed and committed areas and UGB's.

Impacted Forest Land Zone General Characteristics

1. Managed for forest and/or agricultural use or capable of being managed for forest and/or agricultural use.

2. Adjacent to or near committed or developed areas and UGB's and/or adjacent to Nonimpacted forest areas or agricultural areas.

3. Contiguous to other parcels of similar use.

4. Composed of parcels generally less than 80 acres in size.

5. Under non-industrial private ownership and/or developed with residences.

6. The road network in the vicinity provides access to forest and/or agricultural land and access to residences.

7. Provided with levels of public utilities and services suitable for residential development.

8. Outside development and committed areas and UGB's (Plan, pp. 10-11).

Lane County has used the above general characteristics in applying to the Nonimpacted Forest Lands the "F-1" Zone and to the Impacted Forest Lands the F-2 Zone.

Conclusion on Application of the F-1 and F-2 Zone

In order to assess whether the F-1 and F-2 Zones are appropriate to conserve forest lands for forest uses (or appropriate for the continuation of commercial agricultural enterprises within the area), a review of how the County applied these two zones to various forest lands is necessary. In conducting this review, the Department relied upon the County's Index Map, Zoning Maps, aerial photo maps, the computer printout of acres and ownership and assessors land use index, which were all part of the County's submittal. The following is a sampling of appropriate and inappropriate application of the F-2 Zone for maps number 272 through 443. These maps cover the areas generally southwest of Eugene (Lorraine-Fox Hollow Road Spencer Creek), north of Eugene and south of Eugene down to Cottage Grove.

The following are evaluation statements addressing specific examples of rural areas where the County has applied the F-1 and F-2 Zones:

Map

272 This map contains Sections (Sec) 6 and 7 of Township (T) 19--Range (R) 4.

The F-1 Zone has been applied to forest industry owned lands; one of approximately 198 acres owned by IP and two 80 acre parcels owned by Cove Lumber and Zip-O-Log.

The F-2 has been applied to all remaining noncommitted parcels including 590 acres of a much larger forest grazing operation owned by McNutt. In fact, this ownership consists of approximately 1,790 acres located in T19-R5 secions 1 and 2. The F-2 Zone as applied to this property is not justified based on the County's general characteristics.

275 Consists of Sections 6 and 7 of T20--R4. Lands zoned F-1 are all forest industry owned lands or public lands; even though the industry lands are adjacent to RR-5 zoned lands.

F-2 zoned lands are nonindustry owned lands. The one ownership consists of a 636 acre farm deferred parcel is not appropriately zoned.

287 Consists of Sections 5 and 8 of T 19--R 4.

F-1 zoned lands are industry owned lands. Lands zoned F-2 are generally smaller ownerships. This area is a good example of where the current F-2 is appropriately applied.

309 Consists of Sections 15 and 22 of T 18--R 4. Again, this area's F-2 zoning is appropriate.

311 Consists of Sections 3 and 10 of T 19--R 4. The application of F-2 zoning for the 179 acre, 158 acres, and 120 acre parcels is not justified.

430 Consists of Sections 25 and 36 of T 19--R 3. Again, only industry (80 acres) and public (120 acres) are zoned F-1 while a single nonindustry parcel of 878 acres is zoned F-2. Such zoning is not consistent with the County's characteristic for applying the F-1 and F-2 zones.

432 Consists of Sections 13 and 24 of T 20--R 3. Again, some very large parcels are zoned F-2 for reasons not consistent with the F-2 general characteristics.

Summary: The F-2 zoning of lands on maps 297 and 309 are consistent with the County's general characteristics for the F-2 Zone and consistent with past Commission decisions for secondary forest zones (see Conclusion for Goal 4).

Maps 272 and 275 contain large farm deferred parcels zoned F-2. The current F-2 Zone does not assure the continuation of the existing commercial agricultural enterprise within these areas nor is it consistent with the Commission's Goal 3 and 4 requirements (see 1000 Friends v. Douglas County, LUBA 79.006).

Maps 311, 430, and 432 represent examples where larger parcels were zoned F-2 in a manner inconsistent with the County's Nonimpacted and Impacted characteristics as well as with the Commission's Goal 4 requirements (see Conclusion to Goal 4). Also, it appears from these examples that F-2 zoning was applied to some tax lots without assuring that adjacent tax lots were not actually under the same ownership

Implementation Measures: F-1 and F-2 Zones

To implement the Nonimpacted and Impacted plan designations, Lane County adopted, as part of the Lane County Rural Comprehensive Plan--Development Code, the F-1 Zone for application to nonimpacated areas and the F-2 Zone for application to impacted areas.

F-1 Zone--The purpose of Lane County's F-1 Zone is as follows:

> (a) To conserve forest land for forest uses in accordance with Statewide Planning Goal #4.
> (b) To recognize that the preservation and protection of commercial forest lands within Lane County is necessary for the continuous production of forest crops, and that such are beneficial to the economy of the County and to the welfare of its people.
> (c) To encourage multiple use of forest land for commercial timber management, watershed protection, maintenance and protection of fish and wildlife resources, livestock habitat and recreation.
> (d) To protect commercial forest lands from intrusion of noncompatible uses by prohibiting or restricting nonforest uses that create potential impacts.
> (e) To implement the forest land policies of the Lane County Rural Comprehensive Land Use Plan (Code, p. 16-24).

Also, the County indicates further their intent to protect forest resources by the following statement:

> It is the County's policy to protect forest operations from conflicting land uses. Nothing in this section is intended to

> interfere with normal forestry practices that might result in conditions such as noise, dust, smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest uses (i.e. dwellings) within the Forest Lands Zones must recognize the intent of the Zone is to protect resource management activities and that in the event of conflict between residential uses and forestry practices, this Chapter will be interpreted in favor of these resource management practices (Code, p. 16-24).

Section 16.210(2) authorizes as permitted uses forest uses, farm uses, aggregate mining in conjunction with farm or forest uses, other uses accessory and necessary uses (such as fire prevention facilities, log scaling, utility facilities, and transmission lines for permitted or accessory uses, solid waste disposal sites for industrial forest uses, etc.) water impoundments for forest or farm use, exploration of mineral and other resources, fish and wildlife habitats, and other uses consistent with Goal 4.

The County also permits outright public parks, campgrounds, boating facilities, camps, and such other recreational facilities, including "lodges" and accessory parking in conjunction with overnight lodging. (16.210(4)(11).

In addition, the County allows a dwelling consistent with the provisions for lots of record contained in ORS Chapter 215. (Note: The County permits a lot of record as defined by ORS Chapter "15" instead of "215." This typographical needs to be corrected.)

Section 16.210(3) authorizes a number of uses and activities subject to the Director's approval procedures contained in LC 14.100. Uses authorized under this subsection include the replacement of a legal residence and a home occupation as provided in ORS 215.448.

Section 16.210(4) authorizes uses and activities subject to the criteria listed in Section 16.210(5) as reviewed by the hearings official. Such uses include sorting yards and log storage, solid waste disposal sites ten acres in size or less, mining, power distributions, communication facilities, hydroelectric generation facilities (with a 100 acre foot size limittion), and privately owned parks and campgrounds.

Section 16.210(5) establishes the conditional use review criteria which are identical to those conditional use review standards accepted by the Commission in the Coos County Acknowledgment Review (November 1983) for predominantly forested areas.

F-1 Zone's Minimum Lot Size and Development Standards--Section 16.210(6) provides for divisions of land zoned f-1 to be a minimum of 40 acres except as provided for the following reasons:

> (a) A division of land to create a parcel less than 40 acres may be conditionally allowed . . . if it is for the purpose of separating an existing residence from the adjoining

forest land and the parcel containing the residence is limited to the least amount of area reasonably possible so as to maximize forest use on the other parcel.

(b) The adjustment of a common property boundary which results in no additional parcels. . . .(Code, p. 16-28).

Section 16.210(7) contains the F-1 Zone's development standards. The County's development standards contain Class I stream setback of 100 feet, riparian vegetation removal provisions and a property line setback provision.

Because the F-1 Zone only allows the replacement of existing structures and dwellings on legal lots of record as defined by ORS Chapter 215, no other dwelling siting standards were provided.

The F-2 Zone

The County states that the purpose of the F-2 is as follows:

(a) To implement the forest land policies of the Lane County Rural Comprehensive Plan which recognize that certain forest lands are impacted by nonforest uses and merit different treatment than Nonimpacted Forest Lands.
(b) To conserve forest land for forest uses consistent with Statewide Planning Goal #4, including commercial timber management, watershed protection, maintenance and protection of fish and wildlife resources, livestock habitat and recreation.
(c) In areas of mixed farm/forest uses where forest uses do not predominate, to conserve such land for uses consistent with Statewide Planning Goals #3 and #4.
(d) To protect lands mentioned in LC 16.211(1)(b) and (c) above from the intrusion of noncompatible uses by restricting nonforest uses or nonforest and nonfarm uses that create potential impacts.

Section 16.211(2) authorizes as permitted uses the same uses permitted outright in the F-1 Zone.

Section 16.211(3) authorizes the following uses subject to the Director's approval pursuant to LC 14.050 and LC 14.100:

(a) Replacement of a legal residence.
(b) A dwelling is deemed "accessory and necessary" to forest management (on a vacant legal lot) provided:

(i) A detailed forest management plan is submitted for the legal lot which demonstrates forest production will be enhanced by on site forest management from the residence, and
(ii) Evidence is submitted indicating that the legal lot is qualified for and has a forest deferral pursuant to State Law, or

(iii) If the legal lot does not have a forest deferral pursuant to State law, then upon substantial completion of the details represented in the forest management in LC 16.211(3)(b)(i) above, the dwelling or mobile home shall be allowed on the property. Substantial completion of the details represented in the forest management plan shall be verified by a qualified private forester and such verification shall be submitted in writing to the Department. During the interim, while the forest management plan is being implemented on the subject legal lot, a temporary mobile home in conjunction with the forest use shall be allowed for a period not to exceed five years. If the forest management plan is not implemented within the five-year period, the temporary mobile home shall be removed.

(c) A dwelling ". . . in conjunction with the propagation or harvesting of a forest product on a vacant legal lot that is managed as part of a woodlot meeting the Douglas fir cubic foot site index and acreage requirements below:"

Cubic Foot Site Class	Potential Yield cu.ft./acre/yr	Acreage Minimum
6	(20-49 cf/ac)	64
5	(50-84 cf/ac)	43
4	(85-119 cf/ac)	34
3	(120-164 cf/ac)	24
2	(165-224 cf/ac)	17

(d) Home occupations as provided by ORS Chapter 215.448.

(e) A dwelling when necessary and accessory to the use permitted in LC 16.211-10(8) above (Code, pp. 16-32 through 16-35).

Section 16.211(4) conditionally authorizes in areas where agricultural uses predominate within the F-2 Zone the following uses:

(c) Public or private schools, including all buildings essential to the operation of a school.
(d) Churches.
(e) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for use by public sale.
(f) A dwelling or mobile home customarily provided in conjunction with farm use existing on the subject property and which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) zone, LC 16.212(2)(f).
(g) A dwelling or mobile home customarily provided in conjunction with a farm use not yet existing on the subject property and which complies with the requirements for such a

residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(g).

(h) A dwelling or mobile home customarily provided in conjunction with farm use existing on the subject property, where another residence already exists on the subject property, and which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(h).

(i) A dwelling or mobile home to be occupied by a relative of the farm operator which complies with the requirements for such a residence specified within the Exclusive Farm Use (E) Zone, LC 16.212(2)(i).

(j) A mobile home used to satisfy a temporary hardship situation.

(k) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(i) Consists of 20 or more acres.

(ii) Is not smaller than the average farm or woodlot in the County producing at least $2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(iii) Does not already have a dwelling or mobile home on it.

(l) A dwelling or mobile home in conjunction with farm use or the propagation or harvesting of a forest product on a legal lot that is managed as part of a farm operation or woodlot smaller than required under LC 16./212(6) (Exclusive Farm Use Zone) if the legal lot:

(i) Has produced at least $10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least $10,000 in annual gross farm income.

(ii) Is a woodlot capable of producing an average over the growth cycle of $10,000 in gross annual income.

(iii) Does not already have a dwelling or mobile home on it.

(m) A solid waste disposal site ordered by DEQ.

Section 16.211(5) authorizes the County's hearings officer to conditionally permit a number of nonfarm uses authorized by ORS 215.213 as well as log sorting yards and maintenance, repair, and storage for forest management equipment.

Section 16.211(6) establishes the review criteria for all uses listed under 16.211(5). The criteria contained in Section 16.211(6) are consistent with those approved by the Commission for mixed use areas in the Coos County Acknowledgment Review (November 1983).

F-2 Zone's Minimum Lot Size

Section 16.211(7) addresses minimum lot size requirements in areas zoned F-2.

For parcels created as "woodlots," the minimum parcel size shall be at least 20 acres and must meet the acreage minimum requirements specified in LC 16.211(3)(c) (Section 16.211(7)(a)). (For example, using the formula contained in LC 16.211(3)(c), a 160 acre parcel with consisting of 10 acres of cubic foot site class 2 capability, 90 acres of cu. ft. site class 3 capability, 20 acres of class 4, and 40 acres of class 5 could be divided into four parcels. Using the same standard, an 80 acre parcel with cubic foot site class 2 capability could be divided into four 20 acre parcels while an 80 acre parcel of cubic foot site class 3 land could be divided into three parcels.)

Section 16.211(7)(b) authorizes divisions for farm parcels. The minimum lot size is 40 acres. Also, a farm management plan is required as well as a statement that a dwelling is "not guaranteed unless the provisions of this zone for a residence in a mixed farm/forest area (LC 16.211(4)) are met." (Note: LC 16.211(4) references the requirements for siting a dwelling on lands zoned EFU--see Goal 3 discussion.)

Section 16.211(7)(c) authorizes divisions for growing grapes, berries, or horticultural specialties. The minimum lot size is 20 acres provided the provisions for dividing EFU lands and siting a farm dwelling as discussed in 16.211(7)(b), above, are met.

Section 16.211(7)(d) states the following:

> The remaining portion of the parent parcel being divided must also comply with either LC 16.211(a), (b) or (c) above.

Section 16.211(8), "siting and fire/safety standards for dwellings," the county requires a 500 foot setback for dwellings on property adjacent to F-1 zoned lands and 300 feet setback from F-2 zoned lands. The County encourages the dwelling to be sited on the least valuable farm or forest land or clustered with other residences to minimize impacts (in these instances, the larger setbacks could be reduced). Also, the County requires a fuel break of 50 feet and water supply for fire suppression.

Section 16.211(9) establishes stream and riparian vegetation setbacks for dwellings and structures as well as riparian vegetation removal standards.

Objections

1. The League of Women Voters of Central Lane County object to the F-2 zone's minimum lot size provisions for authorizing divisions of forest land and the provision for allowing forest dwellings on "newly" created parcels.

Response to Objection 1:

This objection is generally sustained. See conclusion.

Objection

2. Clifford Lamb raises the following objections:
   a. "The inventory of the forest land soils is incomplete and the basis for exclusion is inaccurate and inconsistent"
   b. "The F-2 ordinance provisions fail to assure that land divisions create parcels large enough for commercial use"
   c. The F-2 ordinance fails to assure that dwellings are necessary and accessory to forest management.

Response to Objection 2:

a. This objection is sustained. Mr. Lamb is correct that the County has not included in its listing of forest soils in "Appendix 1" of the Forest Working Paper. Some of the soils identified as "marginal" forest soils by the soil conservation service are not listed in "Appendix 1" (Jim Mann, Lane County Planning Dept., June 21, 1984). The County needs to indicate why such soils do not fall under the forest lands definition. The County has defined commercial forest land as lands capable of producing 20 cubic feet per acre per year of industrial wood. (Forest Working Paper p. 4). This issue is important to the County in its assessment of Nonresource/Nonexception lands as well as nonforest uses.

b. This objection is partially sustained. Mr. Lamb is correct that the F-2 zone is deficient with respect to Goal 4 requirements for creating new parcels. Particularly where the application of this zone is inappropriate (see conclusion to Goal 4). Mr. Lamb is not sustained on the point that all newly created parcels within a secondary or mixed use zone must be large enough for commercial use (also see the conclusion to Goal 4)

c. This objection is generally sustained (see conclusion to Goal 4).

Objection

3. 1000 Friends of Oregon raises the following objections to Lane County's Goal 4 provisions:
   a. The F-2 zone's provisions for minimum lot sizes are not justified.
   b. The County's F-1 40-acre minimum division standard is not adequately justified.
   c. LC 16.211-(10)(i) is improperly referenced in LC 211(3)(e).
   d. LC 16.211(3)(b) which allows a dewlling on a vacant legal lot which is "deemed" accessory and necessary for forest managment based on a detailed management plan showing "enhancement" of the site and forest tax deferral or substantial completion of the management plan. Also, this provision has no minimum parcel size at which an existing lot is ineligible for a forest dwelling.

e. LC 16.211(3)(c) which authorizes a dewlling in conjunction with a managed woodlot on a vacant legal lot that satisfies the County's cubic foot site class/acreage minimum requirements.
f. The County's findings in its Forest Working Paper do not support its standards for authorizing forest dwellings on legal vacant lots in the F-2 zone.
g. Certain uses authorized in the F-1 and F-2 zones violate Goal 4. These uses are as follows: home occupations, mining, power and telephone lines, communication facilities, hydroelectric generation facilities, private parks and lodges (overnight accommodations).
h. LC 16.211(6) allows nonforest uses if "evidence is provided supporting reasons why the proposed use should be sited on forest lands"
i. LC 16.210(6)(a) (F-1 zone) allows the separation of an existing residence from forest lands and thus allows the creation of a nonforest dwelling.
j. LC 16.201(a)(1) in the F-1 zone allows all farm uses defined in ORS 215.203 and does not limit farm uses to grazing only.

Response to Objection 3

a. This objection is generally sustained (see conclusion to Goal 4).
b. This objection is sustained. However, we disagree that such justification is difficult. Because the County's F-1 zone restricts dwellings under 16.201(2)(L) to "lots of record as defined by ORS Chapter 215 and under 16.210(3)(a) to replacement structures, a parcel size which can be shown to facilitate normal industrial forest managment (i.e., 40-acres) is adequate justification to satelfy Goal 4's requirement" (see conclusion to Goal 4).
c. This objection is sustained (see conclusion).
d. This objection is sustained (see conclusion).
e. This objection is not sustained.
f. This objection is partially sustained. Objectors are correct that the County's Forest Working Paper presents reasonable evidence supporting a much larger minimum lot size than 20 acres.

Objectors are not sustained with respect to the woodlot provisions, as discussed above in response to objection 3, because such provisions are allowed by statute.
g. This objection is partially sustained. The home occupation provisions authorized by Lane County are identified provisions to those authorized by ORS 215.448. For the other uses except lodges (overnight accommodations) the Commission indicated in the Coos County Acknowledgement Review (November 1983) that these uses may be allowed subject to standards which assure that forest uses are adequately conserved. The standards used by Lane County were contained in the Coos County Acknowledgement Review. The only exception to the listed uses authorized by the County are: (1) lodges in both the F-1 and F-2 zones; (2) farm equipment repair in the F-1 Zone, LC 16.2104(b); and (3) power distribution lines (requiring a clearing width greater than 50 feet) as authorized by LC 16.210(4)(e) of the F-1 Zone.

Objectors are correct that lodges, (which are not defined by Lane County) and their accessory parking areas can not be evaluated against the standards contained in 16.210(5)(a)(i). At a minimum, a standard of general unsuitability for forest uses (and the other standards in 16.210(5)) must be used or an exception to Goal 4 must be taken. (This use was not part of the Coos County submittal.)

h. This objection is sustained for lodges only (see the response to 3 g). It is not sustained for the other uses based on the discussion contained in the Commission's Coos County Acknowledgement Review (November 1983).

i. This objection is not sustained. Lane County's provision for allowing the separation of an existing dwelling form remaining forest lands in the F-1 to facilitate forest management is an acceptable practice. This issue was addressed by the Commission in the Coos County Acknowledgement Review (November 1983).

j. This objection is not sustained. Allowing farm uses as defined by ORS 215.203 in all forest zones has been found consistent with Goal 4 requirements on numerous occaisions by the Commission. (See Coos County Review, pp. 106-107, November, 1983).

Objection

4. Douglass Lagenor objects to the application of the F-2 zone on lands adjacent to Oakridge.

Response to Objection 4:

This objection is not sustained. Oakridge is acknowledged and thus, has provided for anticipated growth within their urban growth boundary. Also, this UGB was mutually adopted by the City and the County to address the very issue of future urban development.

Objection

5. William and Marjory Potter, Mr. Knight, David Montgomery, Ken Faulk, Tom Nevins, and others object to the Forestry zoning imposed by Lane County because of the severe constraints contained in the zone.

Response to Objection 5:

This objection is not sustained. Under the Statewide Planning Goals, Lane County is required to limit certain types of development on resource lands with the intent of conserving Oregon's resources. As discussed in the conclusion, the County's F-2 zone is appropriate of certain lands in Lane County.

METRO AREA GENERAL PLAN

Factual Base

For that rural area outside the Eugene-Springfield urban growth boundary best addressed by the metro area general plan, the forest working paper, titled "metropolitan plan update, Forest Lands", (Revised. Oct, 1981), is part of the County's submitted.

Theis document provides an inventory of forest lands by cubic foot site class for Douglas Fir. (site classes range from 2 to 5 in this inventory). Also, inventoried is "other forested lands" as described in another working paper. "vegetation/wildlife/wildlife habitat" workng paper (L-COG, April, 1978). No information is provided which supports the decisions to zone these rural forest lands with the County's F-2 Zone.

Policies

Contained in the Metro Area general plan are three forest policies. One forest policy recognizes the Forest Practices Act for commercial forest uses while another policy supports small woodlot management in rural areas. Forest Policy 17 addresses issues relating to the zoning of these forest lands and protection of forest land values. Forest policy 17 reads as follows:

> In rural lands outside the urban growth boundary, forest lands designated in the Metropolitan Plan shall be protected for forest uses through zoning for forest use and through application of other protective measures. The values of forest lands shall not be destroyed or deteriorated by nonforest uses (Metro Area General Plan, p. III-C-9).

No plan policy exists addressing the application of the F-2 Zone to forest lands under the jurisdiction of this plan.

Application and Implementing Measures

Lane County has applied the F-2 Zone to the rural forest lands under the jurisdiction of the Metro Area General Plan.

Conclusion for the Lane County Rural Comprehensive Plan

Lane County does not comply with Goal 4.

The County has successfully completed a number of Goal 4 requirements and presented for review a unique approach to conserving forest lands for forest uses.

Lane County has inventoried and generally designated as forest land those lands suitable for forest uses. Also, the County has mapped by cubic foot, site class forest lands at a County-wide scale. Lane County has adopted, under ORS 215.203 and 215.213, the "new" provisions for

Exclusive Farm zones and under ORS 197.247 and ORS 215.317--the "Marginal Lands" provisions. By adopting these statutory provisions, Lane County is afforded some additional flexibility with respect to certain activities in particular, and the authorization of dwellings in conjunction with those authorized activities in both their exclusive farm use and mixed use (F-2) zone.

Despite the innovative approach used by Lane County, there remains some fundamental goal deficiencies which must be resolved before the County's approach can be found in compliance with Goal 4.

As presented before the Commission at their Goal 4 workshop, there are four basic components on which a County's forest element must be evaluated: (1) inventory information, (2) policies, (3) application of plan designations and zoning, and (4) implementing measures. This conclusion is divided into four parts addressing each of these components.

Inventory Information

Lane County has done some exceptional work in preparing a basis on which to make policy decisions regarding forest lands. However, some deficiencies remain.

First, the County needs to amend its Forest Working Paper to provide justification for the F-1's 40-acre minimum lot size. Because Lane County precludes the siting of dwellings (both forest and nonforest) in this zone except as authorized by ORS Chapter 215 land value due to residential speculation will not inflate the forest land values within the F-1 zone. Also, potential residential forest management conflicts will be reduced. Thus, a justification of the 40-acre minimum based on local commercial forest management practices would suffice.

Second, the County's Forest Working Paper Addendum provides excellent justification for a larger minimum lot size in the County's impacted areas. Presuming the County wishes to maintain its present minimum lot size for land zoned F-2, then additional evidence is necessary to show that this zone has been applied primarily to "areas consisting of predominatly single ownerships of that (minimum) size." See the Goal 4 Conclusion for Application of Zones.

Third, the County needs to add to its list of soils (Forest Working Paper, Appendix A) any soils capable of producing 20 to 49 cf/acre/year (or cubic foot site class 6). (Note: the definition of commercial forest lands as defined by Lane County is 20 cu.ft./acre/per year. However, this definition is not required by Goal4. The Commission has found cubic foot site class 5 an acceptable definition of commercial forest land in previous acknowledgement reviews. The recognition by the County of these soils as suitable for commercial forest production is important in the assessment of the income tests for marginal lands and woodlots under the EFU and F-2 zones and in determining Nonresource/ Nonexception lands as well.

For general inventory use, Lane County must rely on SCS soils information except in circumstances where more reliable site-specific information demonstrates that this information does not accurately portray a site's suitability for commercial forest uses. In such situations, findings must address the feasibility of successfully managing a range of commercial forest species (not just Douglas Fir) and explain, in detail, the deficiencies with the SCS soils information.

Policies

The deficiencies with respect to Lane County's forest policies are (1) the lack of a policy describing precisely the standards for authorizing a change from "Nonimpacted" (F-1) to "Impacted" (F-2); (2) a flaw in forest policy 11 regarding the minimum lot size in the F-1 zone if adjacent to "Impacted" Forest Lands; and (3) ambiguous characteristics for determining Impacted Forest Lands.

First, Lane County's Nonimpacted and Impacted Forest Land categories have vastly different purposes and criteria. The County must provide precise standards to govern their application. (Note: in Clatsop County's review, the Commission required the County to provide a policy establishing precise criteria for applying its three forest zones. Also, the Commission required a plan policy indicating that to change from its commercial forest zone to one of the secondary forest zones requires a plan amendment.) Because of the differences in characteristics (or criteria) and implementing measures for Nonimpacted (F-1)and Impacted (F-2), lands similar policies to those required of Clatsop County (and also Klamath County) are needed in Lane County's Plan to assure that forest lands will be conserved. Lane County needs to adopt, by policy, specific criteria for Nonimpacted and Impacted Forest Lands consistent with the conclusion under "application" to follow. Also, another plan policy requiring a plan amendment to change from Nonimpacted to Impacted is necessary.

Second, Forest Policy 11 indicates that the minimum lot size for nonimpacted Forest Lands is 40 acres for the purpose of a land division "if adjacent to other Nonimpacted Forest Lands." Policy 11 does not indicate which minimum lot size or divison standard applies where a nonimpacted forest (F-1) parcel is not adjacent to other nonimpacted lands. The County needs to delete the following to clarify Policy 11: "if adjacent to other Nonimpacted Forest Land." However, it must clarify this statement in a manner consistent with Goal 4.

Third, generally the characteristics for both nonimpacted and impacted lands are appropriate and provide the basis for establishing criteria to appropriately distinguish between these types of resource areas. However, a few of the "impacted characteristics" are too general to conform to the Commission's standards for accepting the F-2 zone as the only secondary forest or mixed use zone. The following "Impacted" lands characteristics are at issue:

1. "Managed for forest and/or agricultural use or capable of being managed for forest and/or agricultural use.
   Issue: This characteristic applies to all forest and agricultural lands in the County.
2. "Contiguous to other parcels of similar use."
   Issue: Again, this characteristic applies to all resource areas of a homogenous nature.

3. "Under nonindustrial private ownership and/or developed with residences."
   Issue: This characteristic has been over used to apply the F-2 zone to some extremely large parcels (see examples under application conclusion).

4. "Outside developed and committed areas and UGBs."
   Issue: Again, all resource parcels satisfy this characteristic.

Additional precision is necessary to establish a policy containing appropriate criteria for "Nonimpacted" and Impacted lands.

Application of Plan Designations and Zones

Of all issues raised under this review of Goal 4, the question of misapplication of the County's F-2 zone to lands which are currently managed commercially or of a size to be managed commercially as a forest operations presents a significant violation of Goal 4 as interpreted by the Commission in a number of Acknowledgment Reviews. In addition, a number of very large "farm operations" and "farm-forest operations" were zoned F-2. Where this misapplication has occurred, the County needs to reevaluate to see if implementing measures under the F-1 and EFU-zones better provide the type of protection for these commercial operations envisioned by Goals 3 and 4.

The F-2 zone was established to apply to the very broad category known as "Impacted lands." As previously discussed, the general characteristics for Impacted lands allow for the inclusion of all types of land and land uses. In developing the F-2 as a means of implementing statutory and Statewide Planning Goal requirements, the F-2 zone tries to be a qualified exclusive farm-use zone, mixed use or secondary forest zone and a type of "marginal lands" zone. By applying the F-2 zone to the several thousand acres (approximately betwen 100 and 150 thousand acres) of nonpublic, nonforest industry-owned forest lands as well as numerous very large farm forest operations, it is safe to presume that included within the F-2 zone are lands which could also be designated as follows:

Land Use Activity	Appropriate Zone
Commercially Managed Forest Land	F-1
Commercially Managed Agricultural Land	EFU
Committed Lands	PR
Marginal Lands	ML
Nonresource/Nonexception	RR
Small Sized Ownerships	F-2

The F-2 Zone is not rejected in its entirety. However, in order to establish farm-forest, secondary forest, or mixed use zones consistent with past Commission decisions, the zone must be applied to areas where the ownership pattern and management practices are similar. Also, the implementing measures must be designed to conserve that particular resource area and facilitate the type of resource management practices occuring in the area.

In past reviews, the Commission has found acceptable three different types of mixed use or secondary forest zones. These zones are discussed below in order to further describe possible amendments available to the County.

1. In the Clatsop County Acknowledgement Review, the Commission described one type of secondary forest zone as follows:

> A secondary forest or mixed resource use zone with a 20 acre or 40 acre minimum was appropriate if such a zone is applied to areas consisting of predominatly single ownerships of that size and if the zone actually limits further the opportunity for parcelization and development which conflicts with the Goal to conserve forest lands for forest uses. Numerous secondary zones have been approved on this basis; examples include Douglas County's AW-20 zone, Clackamas County's Transitional 20 acre Zone, Tillamook County's SFW-20 zone (also see Coos County Review, November 16, 1983, p. 104). The Commission's acceptance of secondary forest zones is based on the recognition of prevailing ownership patterns with the understanding that further parcelizaton of forest lands will be limited. To satisfy Goal 4, such zones must be: (1) representative of an area's existing ownership size and resource management activities, (2) limited in application to specific areas by plan policy, and (3) must be designed to limit further parcelization. In order to successfully meet these three requirements, the criteria used in applying such secondary zones must be precise and carefully applied. (Clatsop County Review, P. 50, April 13, 1984).

2. Another type of second forest zone is based on the concept of conserving large commercial resource operations engaging in both agriculture and forestry. This zone naturally requires a large minimum lot size with criteria for applying the zone and for authorizing future land divisions based on the continuation of "commercial" agriculture/forest operations (1000 Friends v. Douglas Co., LUBA 79-006).

3. Also, there is another approach found acceptable to the Commission. Justification of a forest zone's minimum parcel size designed to conserve forest resources other than the commercial forest resource. For example, Jackson County's Open Space Resource Zone (a 20-acre minimum lot size zone with density provisions consistent with Goal 5

was applied to forest lands with no commercial forest values. Because the land was forested and found to be needed for "other" forest uses as defined by Goal 4, a secondary forest zone conserving forest resource values "other" than "commercial" forest values was applied (see also Klamath County's Forest/Range zone).

Based on the County's application of the "current" F-2 zoning provisions, it appears that many areas in Lane County are zoned appropriately in a manner consistent with previous Commission decision (see Clatsop County discussion in "1" above). Areas appropriately zoned are those as represented by Maps 287 and 309 as discussed on page 81 of this report.

For commercial farm-forest lands zoned F-2 (e.g., Maps 272 and 275 on pages 81 and 82 of this report), the County needs to rezone these lands with an appropriate forest resource zone. Options available to the County include (a) rezoning commercial farm forest operations with a zone similar to the zone found acceptable to the Commission as described in Example 2 above; (b) rezone the "forested" portion of these commercial farm forest operations to F-1 or another appropriate forest zone with a justified minimum lot size. The remaining "agricultural" portion of these commercial farm forest operations can be re-zoned under the County's EFU Zone provided an appropriate lot size for grazing operations is applied; or (c) rezone the "forested" portion of the commercial farm-forest operations, as discussed in (b) above, and amend the F-2 Zone to include an appropriate minimum lot size for commercial grazing operations under LC 16.211(4).

With respect to other forested areas similar to those represented by Maps 311, 430, and 432 on page 81 of this report, the County needs to rezone these lands either F-1 or establish a suitable forest zone which will conserve these forest lands for "commercial" forest uses.

Implementing Measures

As previously discussed, the F-1 zone (LC 16.210) and the F-2 zone (LC 16.211) are the implementing measures applied to land designated under Goal 4.

F-1 Zone

The F-1 zone, as applied to Lane County's commercial forest lands, has two deficiencies.

First, under LC 16.210(4)(i), the County needs to specify that private lodges (currently undefined) and accessory uses to lodges must be assessed under the generally unsuitable test (LC 16.210)(5)(a)(ii) or take an exception to Goal 4. (Note: when the Commission provided suggested conditional use criteria for a number of uses in the Coos County Acknowledgement Review (pp. 108-109, November 1983), that review failed to indicate under what circumstances option "a" or option "b" of ciriterion one should be used.) Option "a"--"evidence is provided supporting reasons why the proposed use should be sited in forest lands"--was suggested for assessing low-level power lines or other such

uses for which siting only on generally unsuitable lands is an impractical requirement for a needed use. Option "b"--"that the proposed site is on land generally unsuitable for forest use"--has been a required review standard for such uses as lodges or nonforest dwellings where the use is "desired" but not a necessary use. By applying LC 16.210(5)(a)(ii) to lodges and its accessory uses, along with the other LC 16.2120 (5)(b)-(f), this issue will be resolved.

Also, the County needs to delete from LC 16.210(4)(b) farm equipment repair and amend LC 16.210(4)(e) to indicate that power distribution lines needing a clearing width of greater than 50 feet require an exception to Goal 4 to be sited on lands zoned F-1. The County shold add the 50 foot clearing with limitation to LC 16.210(4)(e) to be consistent with Commission requirements.

Second, as discussed under the "inventory information" conclusion, some additional findings justifying the 40-acre minimum lot size provision (LC 16.210(6)) is needed.

F-2 Zone

The F-2 zone, as it is applied, does not adequately conserve forest lands for forest uses. Some of the deficiencies discussed in the following paragaraphs, such as the 20-acre minimum lot size, may be resolved through reapplication of the F-2 zone. However, the concerns raised regarding implementing measures address the F-2 zone as it is currently applied. LC 16.211(3)(b), which allows a residence on a vacant legal lot and "deems" it accessory and necessary. . . ., contains a number of flaws. First, the accessory and necessary standard is an approval standard which requires supporting findings indicating (1) that the dwelling is incidental and subordinate to the main forest use and (2) that the dwelling is needed.

Lane County "deems" this test satisfactory without making these proper findings.

Also, the County relies on submission of a detailed forest management plan. However, informational requirements needed to complete such a plan are lacking in the ordinance. The County needs to adopt provisions specifying the contents of this plan and standards which require findings that the dwelling is accessory (incidental and subordinate to a primary forest use) and necessary.

Second, this provision, LC 16.211(3)(b), also authorizes dwellings that (i) comply with the management plan (ii), have a tax deferral and (iii) have substantial completion of the management plan on all "existing" legal lots regardless of size. In reality, this practice circumvents the statutory requirements for "lots of record," the nonforest dwelling provisions, and the accessory and necessary requirments for a legitimate forest dwelling. A reasonable minimum lot size is needed at which "existing" lots below that size must be assessed against either the lot of record or nonforest dwelling standard.

LC 16.211(5)(i), lodges (with overnight accommodations) and accessory facilities, must be assessed either under the generally unsuitable standard (LC 16.211(6)(f)(ix)) or as a Goal 2 "exception" (see discussion under Conclusion for Implementing Measures - F-1).

LC 16.211(7) establishes a 20 acre minimum lot size that increases up to 64 acres depending on a properties capability of producing $10,000 annually (as assessed by cubic foot site class). This lot size standard (particularly extracted from the new statutory requirements for establishing a dwelling on a "woodlots" under the exclusive farm use provisions ORS 215.213(2)) is not appropriate for conserving all of the forest lands zoned F-2. This minimum lot size is not appropriate, particularly where the F-2 Zone has been applied to parcels of a size currently managed or capable of being managed for commercial forest uses (see the preceding discussion on Application of the F-2 Zone). Some adjustments are necessary to the F-2 Zone's minimum lot size or the County may rezone areas zoned F-2 to more appropriate resource zones as previously discussed.

Conclusion for the Metro Area General Plan

Lane County and the Cities of Eugene and Springfield do not comply with Goal 4. Justification for applying the F-2 Zone to forest lands addressed by the Metro Area General Plan has not been provided. It appears such zoning may be reasonable provided information showing the F-2 Zone's minimum lot size is representative of the pattern of contiguously owned forest lands and provided changes are made to the F-2 consistent with the Commission's requirements as previously discussed.

In order to comply with Goal 4, Lane County must:

1. Amend the Forest Working Paper and addendum to:

    a. Provide justification for the F-1 Zone's 40 acre minimum.

    b. (1) Include information on the pattern of contiguous ownerships (either map or statistical) in support of a decision to retain current F-2 zoning. Such information must show that the minimum lot size is representative of the ownership pattern of the area and that the zone actually limits further opportunity for development; or (2) include information justifying an alternative approach consistent with Goal 4 taken to resolve issues raised regarding the F-2 Zone.

    c. Amend the Forest Working Paper (Appendix 1 - Lane County Forest Soils) to include "all commercial forest soils" in a manner consistent with an appropriate definition of commercial forest lands.

2. Amend the comprehensive plan to:

   a. Include a Forest Policy which establishes precise criteria for applying the F-1 and F-2 Zones. (At a minimum, criteria for applying the F-1 Zone must include ownerships of a size capable of being managed as commercial forest lands.)

   b. Amend the four characteristics discussed under the Goal 4 conclusion for policies to establish criteria which apply only to lands appropriately zoned F-2 as per the examples discussed under "application."

   c. Include a policy which requires a plan amendment to rezone lands from F-1 to F-2.

   d. Delete the following from Forest Policy 11(a) "if adjacent to other nonimpacted forest lands.

3. Amend the County zoning map by rezoning private non-industrial ownerships capable of commercial forest management (including forested portions of commercial farm-forest operations) currently zoned F-2 with an appropriate resource zone. An acceptable forest zone is the F-1 Zone or forest zone containing a minimum lot size of at least 80 acres as justified by the County's "Forest Working Paper Addendum."

   Also, where the County can justify such a decision, the County may apply the marginal lands zone or rural residential zones to "committed" or nonresource lands.

4. Amend LC 16.210(4)(i) of the F-1 Zone and LC 16.211(5)(ii) to require that "lodges" be evaluated against the "generally unsuitable test" in addition to the other review standards already applied to this specific use.

5. Amend the F-2 zoning provisions as follows:

   a. In 16.211(3)(b), adopt informational requirements for the "detailed forest management plan." At a minimum, such provisions must require sufficient information to establish adequate findings that a proposed "forest" dwelling is "necessary" and "incidental and subordinate to" the primary forest management activities described in the forest management plan.

   b. Include in LC 16.211(3)(b) a "floor" or minimum parcel size requiring parcels below 10 acres to be assessed against the nonforest dwelling or lot of record provisions.

   c. Amend 16.211(7)(b) to apply to all commercial forest grazing operations zoned F-2 the larger minimum lot size (120 acres) for extensive animal grazing as required by LC 16.212(6)(d).

In order to comply with Goal 4, Lane County and the Cities of Eugene and Springfield must:

1. Amend the Metropolitan Plan Update, Forest Lands Paper, to include justification for applying a "revised" F-2 Zone to forest lands addressed by this plan.

Suggestion for Plan Improvement

Amend the F-1 Zoning provisions as follows:

a. Delete from LC 16.210(4)(b) provisions authorizing farm equipment repair, and

b. Add to LC 16.210(4)(e) the power distribution line size limitation "of a clearing width 50 feet or less. Power distribution lines needing a clearing width greater than 50 feet require an exception to Goal 4.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

This Goal 5 report is divided into two major parts. The first part is the review for all areas of Lane County outside the Metro Plan Boundary. The second part is for those areas inside the Metro Plan Boundary, but outside the Metro Area UGB.

PART I--AREAS OUTSIDE
THE METRO PLAN BOUNDARY

Introduction

All Goal 5 resource categories are applicable to Lane County, and are addressed in separate subsections of this report.

According to Section 660-16-025 of the Goal 5 Administrative Rule (OAR 660-6-000 through 660-16-025), the Goal 5 Rule requirements apply to jurisdictions under denial orders as of the date the adoption of the Rule (June 1981). Lane County was issued a denial order in March of 1981. Therefore, the Goal 5 Rule has been used during this review for purposes of judging compliance.

In the following discussion, the numbers and letters in parentheses refer to sections of the Goal 5 Administrative Rule (e.g., (1A), (1B), (1C), (2A), (3A), (3B), (3C)). It should be noted, however, that these are the citations used by the Commission in its June 1981 adoption of the Rule. Since that time, the Secretary of State's office has recodified the Rule and has assigned different numbers and letters to its various subsections. The references in this report are to the Commission's 1981 version, since it is the one with which most readers are familiar. A copy of this Rule is attached to this report for reference.

Goals 16 and 17 establish more specific inventory and protection requirements for some Goal 5 resources that are located in estuarine or coastal shorelands areas.

Lane County's plan and implementing measures were acknowledged as being in compliance with the Coastal Goals in July, 1983. Therefore, this Goal 5 review does not address the following Goal 5 resources in those areas:

Goal 5 Resource	Addressed Under Goal 16	Addressed Under Goal 17
Open Space	X	
Mineral and Aggregate Resources		
Energy Sources		
Fish and Wildlife	X	X (only "riparian," "major marshes and significant wildlife habitats")
Ecologically Significant Natural Areas	X	X
Scientifically Significant Natural Areas	X	
Outstanding Scenic Views and Sites		X (where the quality is primarily derived from or related to the association with coastal water areas)
Watersheds		
Groundwater Resources		
Wetlands	X	X (only "major marshes," "significant wildlife habitat," and wetlands with "exceptional aesthetic quality")
Historic/Archaeological Sites		X
Wilderness	X	X
Oregon Recreation Trails		
Wild and Scenic Rivers and Waterways		

Land Needed or Desirable for Open Space

Inventory

Lane County's Recreational Resources Working Paper contains a section addressing open space (pp. 4-5). The County discusses the various kinds of open space, and the benefits of preserving open space. The County indicates that it considers "all lands designated for agricultural or forest use, or for other clearly similar resource-production use" to be open space (p. 5). Additionally, the County concedes that recreational areas, including parks, and significant or scientific natural areas also contain open space qualities. Because of "its broad nature, open space is not mapped as a site-specific, separate resource item. Instead...other designations with open space qualities are mapped..." (p. 5). Please refer to the Goal 3, 4, 9, 15 and other Goal 5 portions of this report for more detailed information about Lane County's inventories of lands possessing open space values. See also the July 1983 staff report adopted by the Commission for a discussion of compliance with inventory requirements of Goals 16-18.

Policies

Lane County has adopted one policy which addresses open space resources, per se (Open Space and Scenic Areas Policy 1, Plan, p. 16):

> Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals are developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

In addition, the County has adopted numerous policies regarding agricultural and forest lands, a variety of Goal 5 resources which possess open space values, the Willamette Greenway recreation areas, and coastal resources. Please refer to the Goal 3, 4, 8, 15 and remaining Goal 5 sections of this report for details. See also the July, 1983 Commission action for a discussion of policies addressing Goals 16-18.

Implementing Measures

As noted in the Goal 3 and 4 sections of this report, Lane County has several resource zones which it has applied throughout the County. It has also adopted and applied a Greenway Permit ordinance to lands within the Willamette Greenway (see the Goal 15 section of this report for details). However, these Goals have not yet been fully satisfied, nor have some Goal 2 exceptions been justified. Several coastal zones have been developed and applied in coastal shorelands, estuarine, and beaches and dunes areas (see the July, 1983 staff report adopted by the Commission regarding compliance with Goals 16-18).

Finally, as noted in the remaining subsections of the Goal 5 section of this report, the County has adopted several implementing measures for the protection and/or resolution of conflicts with Goal 5 resource sites containing open space values.

In particular, the County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213), which is intended to protect areas having unique and irreplaceable natural resources which are vital elements for a safe, healthful and pleasant environment for human life. The Natural Resource Zone states that it may be applied to public and private lands where the Rural Comprehensive Plan requires natural resource site protection, but that the zone is not intended to be applied to other types of resource land, such as agricultural land and forest land. This is not to say, however, that the Natural Resource Zone cannot be applied to agricultural and forest lands. If a Goal 5 resource site is located on agricultural or forest land, Natural Resource zoning will be applied after an analysis of the ESEE consequences of conflicting uses has been completed demonstrating the appropriateness of Natural Resource zoning (confirmed by Jim Mann, Senior Planner, personal communication, June 20, 1984).

Emphasis of the Natural Resource Zone will be placed on limiting and regulating human activity in areas where:

(a) The acceptable water quality of streams, lakes, estuaries of the ocean may be endangered;
(b) Watersheds and their streams or lakes are used for domestic water supplies;
(c) Vegetative cover is essential to maintain soil stability and prevent erosion;
(d) Natural conditions are vital for either unique vegetative ecosystems, aquatic or wildlife habitat; and
(e) Scenic quality or vistas or open space is unique and/or irreplaceable.

In the NR Zone, the following uses are allowed outright (Section 16.213(2):

(a) The following recreational facilities and uses owned by a governmental agency of a nonprofit community organization limited to day use.

(i) Exhibitions of the natural conditions of shorelands, dunelands, forested areas, streams and lakes, marshlands, or similar areas of unique and irreplaceable value, and the vegetation and wildlife supported by such lands and waters provided that in no event shall such activity destroy, or endanger the relationships between the natural conditions being exhibited.

(ii) Picnicking areas, day parks and playgrounds.

(iii) Accessory facilities for outdoor recreation activity such as fishing, clam digging and hunting (provided such activity is conducted only in those areas allowed pursuant to Federal, State and Local fish and game regulations) and hiking and horseback riding.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

Single family dwellings or mobile homes for residential purposes for a watchman, caretaker or operator in conjunction with a permitted use, in the NR Zone above, are considered "Special Uses" subject to approval by the Planning Director (Section 16.213(3)). The following "Special Uses" are subject to approval by a Hearings Officer (Section 16.213(4)):

(a) Piers and boat houses.
(b) Single-family dwelling or mobile home and accessory structures.
(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.
(d) Forest uses and any accessory uses.

Uses in Section 16.213(4) above are subject to compliance with the following conditional use criteria (Section 16.213(5)):

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.
(ii) That the proposed site is on land generally unsuitable for natural resource uses.
(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;
(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby resource lands;
(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;
(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and
(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

Property development standards for all uses allowed in the NR Zone are set forth in Section 16.213(6) and include setbacks from front, side and rear yards.

Specific application of the Natural Resource Zone is discussed in the other Goal 5 sections of this report. A review of the County's zoning maps indicates that the NR Zone has been applied to a number of Goal 5 areas in the County.

Section 16.215 of the Zone Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses outright and conditionally. However, as noted in the Goal 2 Section of this report, the PR Zone allows a number of uses which could conflict with the purpose of the zone. Some of these uses could also conflict with a number of Goal 5 resources including open space. This issue is dealt with in the Goal 2 portion of this report.

Conclusion--Open Space

Lane County has not inventoried any specific open space areas, per se. However, it considers farm and forest lands, recreation areas as well as natural areas to possess open space values. These have been inventoried as part of other Goal requirements. The County has a policy recognizing all resource lands as open space lands and indicating that resource-related activities shall predominate in these areas. Open space loss will be minimized where development is proposed, according to the County's policy. Resource zoning has been applied to most of the County, along with special zoning districts which help protect open space (e.g., Willamette Greenway, Natural Resource Zones).

Mineral and Aggregate Resources

Inventory

Lane County's inventory of mineral and aggregate resources is contained in its Mineral and Aggregate Working Paper.

Mineral Resources: The Working Paper addresses the following minerals: clay, copper, lead, gold, zinc, silver, mercury, antimony, arsenic, tourmaline, molybdenum, and pumice (pp. 3-5). The general locations of these mineral deposits are shown on a map (Appendix A), and are concentrated in four main areas: Hobart Butte, Bohemia, Fall Creek, and Blue River. The locations of these four areas are shown on the map as well. Information about the general quality, and quantity of these resources is provided. The County has not provided information on the location, quality, and quantity of specific sites, however.

Aggregate Resources: Lane County inventoried its aggregate supplies by examining permit lists from the Department of Geology and Mineral Industries and the Division of State Lands, by conducting telephone searches, taking on-site tours of aggregate-producing areas; and by talking with industry representatives (p. 6). The locations of 30 identified sites appear on a map in Appendix C and are listed by legal descriptions and tax lot numbers in Appendix D. A more extensive list of all tax parcels having any record of previous aggregate extraction is included in Appendices E and F. Appendix D is considered the County's (IC) inventory for lands outside the Metro Planning Area. Appendix E is an inventory for lands inside the Metro Area. However, it is inconsistent with the (IC) inventory contained in the Metro Plan. The County has indicated it recognizes the Metro Plan inventory and will be

deleting Appendix E (confirmed by Mike Copely, Lane County Planner, personal communication, August 8, 1984)." Appendix F is the (1B) inventory for lands outside the Metro Area (confirmed by Mike Copely, Lane County Planner, personal communication, July 16, 1984).

Information on quantity of (1C) sites is presented in cubic yards, but the County cautions that the accuracy of this information is limited. In many cases, individual suppliers had only a cursory knowledge of the extent of their resources (p. 7). Quality of the supplies was not evaluated, due to time and budget constraints as well as the variability of resource materials.

Supply estimates were compiled by region (there are four regions in the County) and then coupled with demand estimates for each region in order to assess localized needs and supply/demand situations (p. 7). Demand forecasts were based on population projections and a per capita consumption figure of 22 tons annually (p. 7). Based on these estimates, cumulative demands for each region were projected. This analysis shows that existing supplies will be sufficient to satisfy demand to the year 2000. This will be particularly true if actual population growth rates are on the low side of the estimates. The available supply for the non-metropolitan area of the County is about three times the figure for projected consumption even when assuming the high population projections (p. 8). However, in terms of the supply/demand situation for each region, the margin of supply over demand for the southern section is relatively small. This is true also (but less so) for the western region. Also, the Metro Area will use some of the County supplies. Similarly, 5 to 10 percent of the U.S. Forest Service and BLM needs are supplied by the private market (p. 9).

Conflicting Uses/ESEE Consequences Analyses

Mineral Resources: Lane County reports that most of the mineral areas are on public lands (either the BLM or U.S. Forest Service). As such, federal laws govern prospecting, claims, and mining activities. Current forest resource designation and zoning for these areas "do not appear to preclude their development potential. Forest management and mining activities are considered to be compatible activites by most authorities" (p. 5).

Aggregate Resources: Each of the 30 inventoried sites was evaluated in terms of the following potential conflicts:

1. Areas of significant natural value contained in the Oregon Natural Heritage Program inventory;
2. Historical resources contained in the Working Paper on Historical Resources;
3. Willamette Greenway;
4. Park and recreation sites contained in the Lane County Parks and Open Space Master Plan;
5. Sensitive fish and waterfowl habitat identified in the Working Paper on Flora and Fauna; and
6. Existing or planned residential development.

Appendix J summarizes the results of the County's analysis. No conflicts were noted for any of the sites. Sites were not evaluated in terms of conflicts with agricultural or forest lands, since all of the sites are existing sites and therefore no longer available for these uses (p. 10).

Policies

A number of mineral and aggregate resources policies have been adopted (Plan, pp. 13-14). These include:

1. Known mineral resource sites within the County, which include those identified in Appendix "D" of the "Mineral and Aggregate Resources Working Paper," shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. Such designation and regulation is to follow the requirements of the Goal 5 rule (OAR 660-16-000 through 660-16-025), which is addressed in Appendix "J" of the "Mineral and Aggregate Resources Working Paper."

2. Exploration for mineral resources (in contrast to actual mining) shall be a permitted activity in the rural portions of the County. Areas designated primarily for residential purposes are to be excluded from this policy as are areas that, having undergone analysis in accordance with OAR 660-16-000, are designated as having some unique natural, historical or cultural value. Exploratory drilling for gas, oil or other hydrocarbons is not within the scope of this policy.

3. Mining operations are regulated by state and federal government agencies. County regulations shall supplement these actions only as necessary to ensure compatibility in the area, or to protect other resources.

4. Conserve and manage land, soil and mineral resources by respecting their physical limitations and environmental assets.

5. Update, in cooperation with local aggregate operations, federal, state and local agencies, past sand and gravel inventories to ensure supply/demand information is current.

6. Protect aggregate deposits from encroachment of incompatible uses and ensure that aggregate material in close proximity to its point of use will be available when needed.

7. Present and future land use controls shall be implemented to allow for the discovery of new mineral and aggregate resources when it is demonstrated that the projected demand for those resources in a given area will exceed available supply and conflict with adjacent uses can be minimized.

Conflict analysis and resolution shall follow the methodology set forth in Appendix "J" of the Working Paper: Mineral and Aggregate Resources; however possible impact on agricultural lands, forest lands and residential development (existing or planned) must also be considered. For sites within the Willamette Greenway or near Goal 5 inventoried resources, notification of the potential conflict shall be sent to the appropriate body (e.g., Pioneer Museum, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, etc.).

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacts during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listed in Appendix "J" of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

10. Sites for which not enough information is presently available to determine quality, quantity and conflicts with other uses which include those sites listed in Appendix "F" of the "Mineral and Aggregate Working Paper," shall be considered "Significant" in terms of OAR 660-16-000 through 660-16-025, but requiring that the Goal 5 evaluation process be delayed (the "1B" option). At such a time as it is clear that these sites will be needed within the County's advance framework, they shall be evaluated per the Goal 5 rule including conflict analysis and implementation of protective measures. Such evaluation will take the form of Plan amendment or revision studies. Notwithstanding the above schedule, all "1B" sites will be evaluated within five years of the date of this Policy adoption. These sites are included herein as Goal #5 Mineral and Aggregate Exhibit A.

11. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Policy 11 above indicates that significant fish and wildlife habitat areas in the Greenway shall be protected in accordance with

Section C.3.i. of Goal 15. Section C.3.i. requires that aggregate extraction be allowed only when "subject to compliance with local regulations designated to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation" (emphasis added). The Goal standard for significant fish and wildlife habitat areas, however, is stronger. It is spelled out in Section C.3.d. of Goal 15, rather than simply Section C.3.i. (This is also addressed in the Goal 15 section of this report).

Implementing Measures

Lane County has adopted a Quarry and Mine Operations Combining (/QM-RCP) Zone to protect major deposits of minerals, rock, and related material resources, and to resolve conflicts with surrounding uses (Lane Code, Section 16.216).

The Quarry and Mine Operations Combining Zone shall be available for use by the County for new or existing operations when requests are received as part of an areawide or legislative rezoning, or a specific property or quasi-judicial rezoning. When property under consideration of /QM zoning is in close proximity to existing and planned uses potentially incompatible with /QM uses, the application of the zone may be limited to a specific portion of a property in order to encourage the compatibility and proper management of land uses.

The Quarry and Mine Operations Combining Zone is intended to be applied only to those operations which have been evaluated through the Goal 5 Administrative Rule process. Other quarry and mining operations of short-term or intermittent duration should be provided pursuant to the special use provisions of the various zones.

In the Quarry and Mine Operations Combining Zone, the following types of buildings and uses are permitted, subject to the provisions of the Quarry and Mining Operation Reclamation Permit and exceptions set forth in the code (Section 16.216(4)).

(a) Uses permitted in the parent zone with which the /QM zone is combined.
(b) Extracting and storing of minerals, including equipment and materials necessary to carry out these functions.
(c) Plants for the processing of minerals from quarry and mine extraction operations.
(d) Sale of products generated from the quarrying and mining operation.
(e) Activities pemitted as part of the reclamation process provided for in the Reclamation Plan.
(f) Structures an buildings used in conjunction with the extracting and storing of minerals.

The zone requires that a surface mining permit first be obtained from the Department of Geology and Mineral Industries

(Section 16.216(5). Section 16.216(6) sets forth blasting notice and records requirements.

Section 16.217 of the Lane Code is the County's Sand, Gravel, and Rock Products (SG-RCP) Zone. The SG Zone "shall only be applied to those sites which have been evaluated consistently with the Statewide Planning Goal No. 5 Administrative Rule conflict resolution process (Sec. 16.217(4)). In the SG-RCP Zone, sand and gravel operations are permitted subsequent to the following restrictions: For any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal No. 5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

A number of uses are allowed in the SG-RCP Zone when conducted in conjunction with a sand and gravel operation (Sec. 16.217), including asphalt paving-mix plant and accessory buildings; cement concrete batching plant; aggregate products fabrication and sale; sand and gravel resource-related equipment storage yard, maintenance and storage buildings, offices and warehouses "appropriate to the uses permitted in this District"; retail or wholesale sales of products related to the use of sand, gravel and related products; agriculture, grazing or timber raising; dwellings for owners, operators or help required; and signs. The zone contains site improvement standards, as well as setback standards, cover, planting, drainage and topsoil standards, and operating standards.

The SG-RCP Zone establishes a Sand and Gravel Review Committee to determine if operating plans or revised plans comply with the requirements of the zone or with "a river plan which may be adopted by the Board." The committee is made up of the Planning Director, the Public Works Director, the Parks and Recreation Director, the Chief Sanitarian, the County Hydrologist, and the County Floodplain Specialist. The Review Committee is notified of all operating plans and revised plans, and has seven days to approve the plan or require modification of the plan.

It appears, from an examination of zoning maps, that the SG Zone has been applied to a number of sites that are not included on any plan inventory of (1C) sites. Yet, contrary to the zone's purpose statements, the County has not applied the Goal 5 process to these sites to justify SG zoning.

Section 16.218 of the Lane Code is the County's Sand, Gravel and Rock Products-Controlled Process (SG-CP-RCP) Zone. The zone is intended to provide more restrictive control of processing activities than the SG-RCP Zone (described above) for the protection of surrounding properties or for greater control over the location and operation of processing activities. The SG-CP-RCP Zone shall apply only to sites which have been evaluated via the Goal 5 Rule process (Sec. 16.216(3)).

The requirements of the SG-CP-RCP Zone are the same as in the SG-RCP Zone except that the Sand and Gravel Review Committee, in its evaluation of operational plans, must evaluate "the location for the erection or enlargement of all processing equipment and activities, including, but not limited to asphalt paving mix and cement concrete batching plants" according to the following "Operational Plan Approval Criteria":

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity; and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverge and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

Among the permitted uses in the F-1 Zone are (1) mining and quarrying and processing of rock permitted in accordance with the FPA for forest road construction or other forest related uses, or when used solely in conjunction with a farm use on which the mining or quarrying occurs, and (2) operations conducted for the exploration of aggregate or other mineral and subsurface resources (Lane Code, Section 16.210(2)(c) and (g)). Mining, quarry, and processing of mineral, geothermal and other subsurface resources; and rock mining, quarrying and processing which exceeds the standards in 16.210(2)(c), above, are allowed conditionally subject to a Hearings Official approval. Conditional use criteria in the F-1 Zone have been discussed in the Goal 4 section of this report.

In the F-2 Zone, mining, quarrying, and processing of rock for forest or farm road construction is permitted outright on the same tract as the mining or quarrying occurs (Sec. 16.211(2)(c)), as are operations for the exploration for aggregate or other mineral or subsurface resources (Sec. 16.211(2)(e)). The mining, quarrying, and processing of mineral and other subsurface resources; and rock mining and quarrying and processing that exceeds the standards in Section 16.211(2)(c), above are considered Special Uses, subject to Hearings Official approval

(Sec. 16.211(5)(d)). This is also the case for operations conducted for the exploration, mining and processing of aggregate or other mineral resources or other subsurface resources (Sec. 16.211(5)(k)). Criteria for permitting these uses are found in Section 16.211(6).

In the Exclusive Farm Use Zone, operations for the exploration, mining and processing of aggregate and other mineral resources or other subsurface resources are Special Uses, subject to Hearings Official Approval (Sec. 16.212(4)(b)).

Please refer to the Goal 15 section of this report for a discussion of the County's approach to mineral and aggregate sites located within the Willamette Greenway.

Objections

1. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

2. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in the Goal 15 section of this report.

3. James Spickerman (on behalf of Leon Funke and Michael Horton) has objected to the zoning of farm lands for sand and gravel extraction and processing uses.

   a. Objectors are specifically concerned about the following parcels:

      17-03-06 TL 400, 500, 300, 201
      17-03-05 TL 300, 1500, 1300, 1900
      16-03-31 TL 901, 500 and 101

      The 455 acres in these parcels are primarily agricultural land and have been zoned SG-RCP according to objectors. Allowed uses include sand and gravel extraction as well as asphalt paving mix plant, concrete batching plant, aggregate products fabrication and sale, and retail or wholesale sales of products. The land was previously designated EFU. Objectors point out that in Westerburg v. Linn County, LUBA held that a Goal 2 exception to Goal 3 was required when a zone change was made from EFU to aggregate extraction and processing where the new zone permitted manufacturing processes and activities. Objectors believe, therefore, that Lane County should have taken an exception prior to rezoning these parcels.

b. Objectors claim that the County applied SG zoning to parcel 16-03-31 Tax Lot 601 and 602 without the necessary ESEE consequences analysis of conflicts with Goal 3 uses and other Goal 5 uses. Objectors point out that the site has a "long history of documented conflict between the sand and gravel extraction use and adjacent agricultural and residential uses. Objectors further point out that in Olsen et al. vs. Scappoose Sand and Gravel Co., LUBA indicated that the Goal 5 Rule requires that, where conflicting uses have been identified, the Goal 5 resource site (e.g., mining) may itself have an impact on other uses and these impacts must be considered in analyzing the ESEE consequences.

c. Objectors believe that plan policies do not address the Goals adequately because there is no method set forth in the plan for Goal 5 conflict resolution analysis. The plan states that such analysis and resolution of conflicts shall follow the methodology in Appendix J of the Mineral and Aggregate Working Paper. Objectors, however, state that Appendix J contains no such methodology, but only a statement of conclusions regarding particular sites.

d. Objectors point out that the plan policies set forth no method to reconcile Goal 5 and Goal 3 conflicts (specifically, where agricultural soils are underlaid with aggregate resources).

e. Objectors claim that plan policies make no provision for ESEE analysis of conflicting Goal 5 uses.

f. Objectors claim that the plan does not comply with Goal 5 Guideline B9 which states:

> Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization, as well as for the primary use.

g. Objectors claim that, although a number of sites are to be considered under the (1B) process at a later date, the sites are not included on the plan inventory as a "special category," as required by the Goal 5 Rule.

h. Objectors believe the plan is not internally consistent. Specifically, objectors point out that EFU lands are zoned SG-RCP, but there is no basis for this in policies or in working papers. A number of parcels are zoned for sand and gravel extraction, but not all have been designated for such uses.

Objectors also point out that SG-RCP zoning is contrary to agricultural lands policies (to provide maximum protection for agricultural activities by minimizing activities that could conflict with such uses.

i. Objectors point out that no consideration is given to the effects of SG-RCP zoning on the groundwater resources of agricultural lands adjacent to the land designated SG-RCP.

Response to Objections

1. The response to the objections regarding the Pudding Creek heronry is presented in the Goal 15 section of this report.

2. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

3. a. Objectors contend that sites 17-03-06, TL 400, 500, 300, 201; 17-03-05 TL 300, 1500, 1300, 1900; 16-03-31 TL 901, 500, and 1001 were all rezoned from EFU to S-G-RCP without an exception. Objectors cite Westerberg vs. Linn County as requiring this be done where the new zone permits processing activities. This was based on the fact that ORS 215.213 allows processing conditionally, but at the time of Westerberg vs. Linn County, "processing" did not include the batching and blending of aggregate. However, the 1983 Legislature changed the statutory definition of "processing" (ORS 517.750(9)) to include "crushing, washing, milling, screening as well as the batching and blending of mineral aggregate into asphaltic and portland cement concrete product . . .". Therefore, objectors are not correct in suggesting that a Goal 2 exception be taken for such sites. However, this is not to say that the Goal 5 Rule process does not apply. In the case of the parcels cited by objectors, this process has been completed for only 17-03-06 TL 400, 17-03-05 TL 300, 16-03-31 TL 901, and 16-03-31 TL 1001. The Mineral and Aggregate Working Paper (p. 10) indicates that, because these are existing operating sites, these sites are no longer available for agricultural use. No conflicts were found to exist for any of these four sites.

b. Objectors are correct that parcel 16-03-31 TL 601 has not been analyzed according to the Goal 5 process. Site 16-03-31 TL 602, however, is included as Site No. 21 in Appendix D of the County's Mineral and Aggregate Working Paper. No conflicts were found to exist with Site No. 21. Conflicts with agricultural uses for the site were not analyzed because the site is an operating site and it is assumed it is no longer available for agricultural use (Working Paper, p. 10). Objectors are correct, however, that the County did not address conflicts with adjacent agricultural and residential uses. This has not been required except when a new site or expansion of an existing site is proposed. Policies 7 and 10 require Goal 5 analysis in such circumstances, including analyzing and resolving conflicts with surrounding uses.

c. Objectors are not correct that the County lacks a method for analyzing and resolving conflicts pertaining to (1C) mineral and aggregate resources in Appendix D. The County indicates that

there are no conflicting uses for these sites, and therefore either the SG ,/QM or SG/CP zone will apply. It also indicates that sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts (Mineral and Aggregate Policy 9). All (1B) sites require a full Goal 5 evaluation, including conflict resolution and plan amendments or revision studies before extraction activities are allowed, according to Mineral and Aggregate Policy 10.

Objectors are correct that Appendix J is a statement of conclusions about the conflicts with the 30 (1C) sites, and not a methodology for analyzing and resolving conflicts per se. However, the policy should be interpreted as requiring that the same methodology used in producing Appendix J will be used in future conflict/resolution situations (i.e., determining whether there are conflicts with other Goal 5, 8, and 15 resources, or with planned or existing development). The policy would also require consideration of possible impact or agricultural and forest lands in approval of any new site or expansion of an existing site.

d. Objectors are not correct that there is no plan policy method to reconcile conflicts on agricultural lands that contain aggregate resources for those (1B) sites in Appendix F. Specifically, Mineral and Aggregate Policy 10 requires a full Goal 5 Rule evaluation of (1B) sites. This will require a site-by-site analysis of conflicts (including those with agricultural lands), an ESEE consequences determination of those conflicts, and application of measures to resolve conflicts.

e. There is no specific Goal 5 requirement to adopt plan policies which require analysis of ESEE consequences of identified conflicting uses. Rather, such conflicts are to be resolved during the planning process, based on such an analysis which is to be incorporated into the plan. (The exception to this is for (1B) sites. Jurisdictions must adopt policies to apply all applicable steps of the Goal 5 Rule to such sites. Lane County has such a policy for its (1B) mineral and aggregate resources--Mineral and Aggregate Policy 10).

f. Guidelines do not carry the same weight as the Goals, and therefore, this objector's concern is not a Goal requirement. However, objectors do raise an important concern, and the County is urged to plan such sites for interim, transitional and "second" use.

g. Contrary to objector's statements, the County has placed its (1B) sites on a special category inventory--Appendix E and F of the Mineral and Aggregate Resources Working Paper. It also has expressed this in Mineral and Aggregate Policy 10.

h. Objectors are correct that some lands are zoned SG that are not on the (1C) inventory, nor has the Goal 5 process been applied to them to justify SG zoning rather than EFU, or some other zoning.

SG zoning for a particular site may be counter to the County's policy of providing maximum protection for agricultural activities by minimizing activities that could conflict with such uses. However, Goal 5 requires protection of mineral and aggregate resources. These Goal requirements must be balanced. This is done through the Goal 5 process. When analyzing the ESEE consequences of conflicting uses for a particular site, the requirements of other Statewide Goals must be considered and balanced against Goal 5 requirements.

i. Objectors have not provided information demonstrating how SG zoning will have an effect on groundwater resources of adjacent agricultural lands. Other state statutes require that this concern be addressed.

Conclusion--Mineral and Aggregate Resources

Lane County has inventoried its mineral and aggregate resources and has identified 30 specific aggregate sites which are considered (1C) sites. The amount of aggregate contained in these 30 sites is sufficient to satisfy the demand to the year 2000. The County indicates there are no conflicting uses with any of these sites, and has applied QM-RCP, SG-RCP, or SG-CP-RCP zoning to those sites. These zones assure that extraction can occur, subject to appropriate conditions regarding such things as setbacks, drainage, traffic and operation.

The County has identified a number of (18) sites which will be evaluated according to the Goal 5 process (including plan amendments, where necessary), within the next five years.

A number of sites not in any plan inventory have been zoned for sand and gravel extraction, but have not been justified as such, based on an analysis of ESEE consequences of conflicting uses.

Energy Sources

Inventory

Lane County has adopted an Energy Working Paper which describes energy consumption and both conventional and alternative energy sources. Conventional sources includes electrical energy from seven utility companies and natural gas and petroleum from out-of-state sources (pp. 7-15). Alternative sources include solar, hydroelectric, biomass, cogeneration, wind, and geothermal energy (pp. 15-29). Of these, the County considers only hydro power and geothermal sites to be site-specific (p. 39).

The Working Paper identifies eight dams currently generating power or having the potential to do so (p. 18), as well as eight existing nonpower dams with hydroelectric generation potentials exceeding 200kW (p. 18). Maps showing the general locations of these sites are on page 19 of the Working Paper. Information about the dam height, hydraulic head and capacity for each site is presented on page 18. Proposed dams with generation potentials exceeding 25MW and those with potentials between 200kW and 25MW are identified on page 21 of the Working Paper and mapped on page 22. Information about dam height (where known), hydraulic head, system head, and capacity is presented (p. 21).

Wind potential in Lane County is through to be highest along the Coast and Coast Range. Eugene Water and Electric Board (EWEB) and 19 public utilities operate an experimental windmill in the Coast Range north of Lane County, and PP&L operates a wind turbine near Coos Bay. Average wind speeds in Lane County, however are too low to power such windmills (p. 26).

There are two known Geothermal Resource Areas (KGRA's), both of which are in the eastern portion of the County on federal land. Both are under study by the Oregon Department of Geology and Mineral Industries (p. 29). The locations of the two KGRA's--Belknap-Foley KGRA and McCredie KGRA--are shown on Map 7 (p. 30). Information regarding their reservoir temperatures, mean reservoir volume, wellhead thermal energy and thermal power, and resource to land distance is presented in Table 11 (p. 31). The Energy Working Paper also describes the stages of geothermal energy development and discusses the constraints upon geothermal power generation (pp. 28-29). Although the potential for geothermal energy development in Lane County is "significant," further information is needed regarding its potential in the two KGRA's and the environmental impacts associated with such development (p. 29).

A cogeneration facility capable of producing 28,000 kilowatts of power exists at the Weyerhaeuser plant in Springfield, and another facility capable of producing 800 kilowatts is being installed in the Lane Plywood Company of Eugene (pp. 25-26).

The Working Paper disucsses the potential for biomass as an energy source in Lane County (pp. 23-25). There are two major sources--forest lands and farm lands. The potential for energy generation from these sources is great, but economic feasibility and environmental impacts are primary constraints to development of these sources at this time (p. 25).

Conflicting Uses/ESEE Consequences Analyses

General, non-site-specific conflicts are discussed for each of the major energy source categories identified (i.e., hydroelectric, biomass, solar, cogeneration, wind).

Regarding hydro sites, the County states:

> Maps have been presented illustrating a number of alternative hydro sites on various rivers in the County. Since these sites

> are, at present, in the proposal stage, it is premature to evaluate conflicting uses for each one, but the sites need to be acknowledged by designation on Plan Diagrams, and some effort made to ensure their availability when needed. Conflicting uses will be examined and resolved at such a time as the sites are actually being proposed for development; this could probably be done most efficiently as part of the elaborate permitting process hydro power must undergo before approved. In most cases, conflict resolution is a major factor in hydro development even through many of the sites are located on public land, or lands presently set aside for resource uses--especially timber lands. Existing resource-based zoning can do much to prevent them from being subjected to development if energy considerations are incorporated into the zoning requirements. In Goal 5 language, the "1B" option should be taken at this time (p. 39).

Regarding geothermal sites, the County indicates that because they are located on federal lands, they will have to go through a series of state and federal permit approvals. Zoning "only reflects the County's desire that the sites be protected from conflicting uses." Therefore, the County has not conducted an analysis of conflicting uses (p. 39).

Solar access does not appear to be endangered at this time in the rural areas. However, this is not the case in newly developing residential and commercial areas (p. 39).

Policies

Five Energy Resource policies have been adopted by Lane County (Plan, p. 17):

1. Lane County shall identify energy resource areas within the County and protect such areas through the use of existing ordinances and regulations. Such regulations shall address hydroelectirc, geothermal, and wind power sites.

2. Lane County shall encourage the exploration and development by other agencies of renewable energy resources such as geothermal, wind, biomass, hydroelectric and solar, and shall monitor such development to ensure that the development does not cause adverse effects within the County.

3. Lane County will use the work of the L-COG Committee on Energy, and its report, "Lane County Electic Energy Planning Program, Final Report (1983)" as a source of resource identification and site protection measures. This will supplement the County's own measure expressed in Policy and Zoning Statements.

4. The County shall protect the sites of hydroelectric resources through conditional or special use provisions of its resource zones. Sites for which a license has been

applied for with federal and state authorities, or for which water impoundments of more than 100 acre-feet are proposed, or which will generate power in excess of 75KW, shall be shown on the Plan as a special designation, an Exception to applicable LCDC Goals taken if necessary, and a special zoning district applied. At that time, the Goal 5 rule conflict analysis shall also be carried out.

5. For additional energy policies see Goal 3.

Implementing Measures

Hydroelecric generating facilities with water impoundments of less than 100 acre-feet are allowed conditionally subject to Hearing Official approval in the F-1 and F-2 Zones (Lane Code, Sections 16.210(4)(g), 16.211(5)(g)).

A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility is also permitted conditionally (subject to Hearings Official approval) in the F-1 and F-2 zones (Section 16.210(4)(h), 16.211(5)(h)).

The conditional use criteria for approving or denying these hydroelectric facilities are those for other nonforest uses (Sec. 16.210(5)(a) through (f); 16.211(5)(f)(i) through (vi)).

Hydroelectric facilities having impoundments over 100 acre-feet are not permitted outright or conditionally in the Lane Code. Instead, the County shall analyze the conflicts per the Goal 5 Rule, take an Exception to the applicable Goal if necessary, and apply a special zone to those sites, as specified in Energy Policy 4.

As noted in the Working Paper, resource zoning will help prevent possible sites from being developed for other uses.

Conclusion - Energy Sources

Lane County has identified a number of potential energy sources, many of which are on federal land, and all of which are (1B) sites at this time. There is potential for hydroelectric developments on nonfederal land, but the County contends that it is premature to evaluate conflicting uses. Nevertheless, the County has decided to allow small sites in its F-1 and F-2 Zones conditionally. Larger sites will require plan amendments, along with application of the Goal 5 Rule, exceptions to appropriate goals and possible development and application of a special zone. The County has adopted a policy commitment to this effect. In the meantime, resource zoning will help prevent potential sites from being lost to other uses. (See, however, the Goal 4 section of this report for a discussion of problems with the F-2 Zone.)

Fish and Wildlife Areas and Habitats

Inventory

Information about Lane County's fish and wildlife resources is contained in its Flora and Fauna Working Paper and the addendum to that working paper. Pages 5-10 describe in general each of the 11 major habitat types in the County, along with a discussion of the value of the habitat type to wildlife, and general location of each habitat type. These include:

1. Estuary and Bay
2. Inland Marsh
3. Wet Meadows
4. Lakes and Reservoirs
5. Riparian Vegetation
6. Annual and Perennial Grasslands
7. Coastal Shore Pine/Spruce
8. Douglas Fir/Trailing Blackberry
9. True Fir/Alpine
10. Deciduous Hardwoods
11. Agricultural Lands.

The County prefaces this material by stating that this information "is not considered an inventory and is not accompanied by maps. It is intended merely as background information."

The Working Paper and its addendum contain special sections addressing endangered, threatened, and special concern species, riparian and wetland areas, sensitive fish and waterfowl areas, and big game range. These are discussed separately below.

Endangered, Threatened and Special Concern Species: The Working Paper lists plants and animals which are threatened, endangered, or of special interest (pp. 11-12). Further information is provided for six of these species--northern spotted owl, northern bald eagle, wolverine, silverspot butterfly, western snowy plover, and American osprey (pp. 12-13). This information does not provide location, quality, or quantity information on any specific habitat areas or sites. However, the County indicates that:

1. No spotted owl or bald eagle nests are known to occur on private property;

2. Wolverine habitat is in high elevation, remote areas and therefore in federal ownership;

3. Snowy plover habitat is within state jurisdiction.

4. Osprey nests are found throughout the County, although not in great numbers. The County indicates the ODFW maps show their locations, but these maps have not been adopted or submitted for review.

5. Silverspot butterfly habitat is found only "along a small section of the Oregon Coast." It is recognized in the Coastal Resource Management Plan of Lane County.

Lane County has indicated that Silverspot butterfly habitat occurs on federal land adjacent to the Big Creek (Reneghan) Exception Area as well as on the Renaghan property itself (Exhibit E--Renaghan Amendment, pp. 27, 31). It should be noted that the Exception document contains one statement (Finding 37e) on page 27 which appears to contradict this. Specifically, finding 37e states there are no sensitive species on the property, and that the Silverspot butterfly habitat is located on adjacent federal land only. The Exception document contains several other statements indicating that such habitat occurs in the northwest corner of the property.

The County provides no information at all regarding great blue heron rookeries or pigeon mineral springs, which are considered sensitive bird habitat areas by the Department of Fish and Wildlife. (The exception to this is for two rookeries in the Willamette Greenway. They are addressed in the Goal 15 section of this report.) The inventory of sensitive bird sites developed by ODFW and provided to the Department of Forestry (DOF) as part of a recent management agreement between those agencies, identifies 15 great blue heron rookeries, 21 osprey nest sites, three pigeon mineral springs, and at least one bald eagle nest site in Lane County, most of which are on nonfederal land. According to Flora and Fauna Policy 15, "currently known pigeon springs, heron and raptor (hawk, osprey, and eagle) nest sites. . . shall be placed in a '1B' category."

Riparian and Wetland Areas: Riparian lands are defined by the County as all lands along both banks of Class I streams in Lane County, to a setback line of 100 feet from ordinary high water (Addendum, p. 7).

The County indicates in its Flora and Fauna Working Paper (p. 16) that all lakes, reservoirs, and Class I streams in Lane County have been mapped, but were not included because of budgetary limitations. They are available in the Planning Department offices. The Addendum to the Working Paper (p. 6) states that ODFW has provided maps of all Class I streams, as well as major significant wetland areas. Detailed maps are available for review in County offices, and a generalized summary map is included in the Addendum (p. 20).

The Flora and Fauna Working Paper discusses the values associated with wetlands and riparian areas for both fish and other wildlife types (pp. 14-15). The County notes that the U.S. Fish and Wildlife Service has identified a number of wetland types in its National Wetland Inventory. Currently, about half of the County has been mapped, enabling identification of major wetlands. These include:

1. Fern Ridge periphery, exclusive of parkland;

2. Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel;

3. North Fork Siuslaw fresh-water marsh;

4. Maple Creek marsh;

5. Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

The County indicates that these areas are mapped in detail on the Plan Diagram maps. More specific location, quality, and quantity information for each of these five wetland areas is contained in the Working Paper Addendum (pp. 11-13).

The County has not inventoried a wetland south of Sutton Lake and east of Highway 101, or a Darlingtonia bog east of Florence. As noted in the 1983 Coastal Goals review of Lane County (p. 8), these wetland were to be addressed under Goal 5:

> The County notes there are only two Goal 18 resource areas east of Highway 101 which do not fall within the coastal shorelands boundary. They are two wetland habitat areas identified in the coastal resource inventory maps. The County should note that it will have to adequately address these two areas later under Goal 5 when it brings the remainder of the County plan into compliance.

The Darlingtonia bog is addressed in more detail in the Natural Areas section of this report.

Sensitive Fish and Waterfowl Areas: The County notes that this is a subcategory of the previous section, Riparian and Wetland Areas (p. 20). Maps have been provided the County by ODFW showing important waterfowl nesting habitat and streams that receive high use by anglers and/or game fish (p. 20), but were not submitted for review. A large-scale map is available in the County Planning offices (Addendum, p. 5). A generalized, small-scale map is included on page 20 of the Addendum which shows the locations of important streams and stream reaches. A list of these specific reaches, by basin, is included in the Addendum (pp. 2-4). All identified areas are of high quality and are considered important (Working Paper, p. 21). The extent of riparian vegetation is described in the previous subsection of this report. The County notes that there are native anadramous fish runs in Big Creek within the Big Creek Exception Area (Exhibit E--Renaghan Amendment, p. 44). These include coho salmon, cutthroat trout and steelhead.

Big Game Range: The County notes that ODFW divides big game range in Lane County into three categories--Major, Peripherial, and Impacted. The Major Range supports the majority of big game and, in general, consists of sparcely developed commercial forest lands. Peripheral Range is generally located on foothill areas between commercial forest lands and valley floors. Peripheral Range supports substantial big game populations and serves as wintering areas for animals in severe winters. Impacted Range consists of those areas that have existing levels of development which preclude future wildlife management options for

maintaining viable wildlife populations and recreational opportunity, although they frequently contain big game populations.

All three big game range areas are depicted on Lane County Wildlife Inventory Maps, according to the Flora and Fauna Working Paper (p. 23). However, these maps were not submitted for review because of budget constraints. They are available in the Planning Department Office (p. 23). The Working Paper notes that the highest quality big game range is in the Major Range because development is limited. Peripheral Range is important, but has enough development to limit big game use and managment options. Impacted Range is of the lowest quality because of existing development (p. 23). The County provides acreages for these three categories (p. 24).

The County recognizes major elk habitat on a portion of the Big Creek Exception site (Exhibit E-Renaghan Amendment, p. 52).

Conflicting Uses/ESEE Consequences Analyses

Endangered, Threatened and Special Concern Species: As indicated earlier, Lane County knows of no spotted owl or bald eagle nest sites on private land. Similarly, wolverine habitat is on federal land. The County notes that the State Parks Division of ODOT regulates vehicular uses in snowy plover habitat (Working Paper pp. 12-13). Specific conflicts with osprey nest areas are not identified, but the County notes that protective measures in riparian areas (e.g., Willamette Greenway permit requirements, coastal shorelands overlays, riparian and wetland area provisions) will resolve conflicts (Addendum, p. 15).

The Working Paper indicates that the Coastal Resources Management Plan of Lane County recognizes the Silverspot butterfly and applies a prime wildlife managment unit to its habitat (p. 13). Specific conflicts and ESEE consequences are not discussed in the Working Paper, however.

It should be noted that a portion of the critical habitat for the Silverspot butterfly is included in the Rock Creek Federal Wilderness Area, recently approved by Congress. Another portion of the habitat is located within the County's Big Creek Exception Area. That exception indicates that the applicant "will enter into contractual arrangements with the Siuslaw National Forest or Western Oregon State College to take whatever measures are necessary to mitigate any potential conflicts or adverse impacts associated with the development" (Exhibit E--Renaghan Amendment, p. 27). According to the Exception (p. 28), the U.S. Fish and Wildlife Service's Endangered Species Office indicates that this project will have not significant adverse impact on the Silverspot's habitat.

Conflicting uses and ESEE consequences analysis have not been conducted for sensitive bird habitat areas, since these resource sites have been placed in a (1B) category.

Inasmuch as the County failed to inventory a number of nonfederal sites as (1C) resource sites (e.g., great blue heron rookeries, pigeon mineral springs, bald eagle nest, osprey nests), the County has not identified

conflicting uses or ESEE consequences of those conflicting uses with these sites. Information does exist for these sites, however, as indicated earlier, enabling the County to conduct such analyses.

Riparian and Wetland Areas: Two major activities conflict with riparian and wetland habitat areas, according to the County's Working Paper (p. 17)--destruction of vegetation for any purpose (e.g., forestry, agriculture, construction, recreation, aggregate extraction), and draining surface or subsurface water which then changes the vegetative structure and generally the habitat value. The County has developed separate ESEE consequence analyses for riparian lands and wetlands.

The riparian lands ESEE consequence analysis is further divided into three categories--(1) resource areas (forest and agricultural lands), (2) rural lands (partially or sparsely developed), and (3) developed and committed lands, including communities (Addendum, pp. 7-10). Based on these analyses, the County decided to develop a (3C) approach in order to limit conflicting uses. ODFW has recommended a 50 foot setback along all class I streams in rural development zones and a 100 foot setback in rural resource zones (Addendum, p. 10).

Separate conflicting uses/ESEE consequences analyses have been conducted for each of the five major wetlands identified (Addendum, pp. 11-13). Based on these analyses, the County has determined that areas owned by the Corps of Engineers (Fern Ridge Reservoir, part of Lower Long Tom, Amazon Canal) have sufficient protection, and furthermore, cannot be regulated by the County since they are in federal ownership. Areas under Coastal Resources Zoning (North Fork Siuslaw, Maple Creek Marsh) are also assumed to be adequately protected. A (3C) approach (e.g., Natural Resource Zoning) is appropriate for all other privately-owned areas (part of Lower Long Tom) (p. 13).

Sensitive Fish and Waterfowl Areas: Removal of riparian vegetation in identified sensitive areas is considered the major conflicting use with these resources (Working Paper, p. 21). The County notes that the ESEE consequences analysis is generally the same as that for riparian areas and wetlands, summarized in the previous section of this report (Working Paper, p. 21). However, the County indicates that since the sensitive fish and waterfowl areas are considered more valuable than others in the County, the effects of vegetation removal can be more significant (p. 21). Based on these analyses, Lane County has chosen a (3C) approach to protect riparian vegetation in such areas "whenever possible" (p. 22). The County notes that ODFW has recommended setbacks of 50 to 100 feet along waterways designated as sensitive fish habitat, plus natural resource zoning for wetlands not within that riparian strip (Addendum, p. 5).

Conflicting uses and ESEE consequences of conflicting uses with fish habitat in the Big Creek Exception Area are addressed on pages 54-56 of the Exception. Based on this analysis, the applicant will be required to protect the anadromous fish through development of a management plan and protection or riparian vegetation (pp. 27, 55).

Big Game Range: The primary conflict with big game range is identified as residential use at densities over one dwelling unit per 40 acres in Peripheral Range, and one unit per 80 acres in Major Range (Working Paper, p. 24). The County indicates that its 80-acre commercial timber zoning is very restrictive in terms of dwelling unit placement, and therefore, "it is unlikely that conflicts will occur" in Major Range areas (Addendum, p. 14). Similarly, the County believes its 40-acre zone will satisfy ODFW's recommended density in Peripheral Range (p. 14). Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas (p. 14).

The conflicts and ESEE consequences of conflicts with major elk habitat in the Big Creek Exception area are discussed on pages 53-54, and 56 of the Exception document. Based on this analysis, the applicant will be required to protect elk winter forage areas (p. 27) and to develop an elk managment plan (p. 32).

Policies

Lane County has adopted numerous policies regarding its fish and wildlife resources (Flora and Fauna Policies, Plan, pp. 14-16). These policies include the following:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "Significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development

setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or, that riparian vegetation does actually extend all the way into the 500 foot or 100 foot setback to the location of the proposed improvements.

Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife.

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected signficiant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process.)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

13. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met.

14. A group known as the "Lane County Flora and Fauna Committee" is to be established and given permanent status by the Board of County Commissioners. The committee shall represent a wide array of environmental interests and the interests of property owners. Its tasks shall include: evaluation of LCDC Goal 5 concerns and resources, development of information to help the County comply with OAT [sic] 660-16-000/025 ("Goal 5 Rule"), research and provision of resource site data to the County, and response to work in progress. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

15. Currently known pigeon springs, heron and raptor (hawk, osprey and eagle) nest sites shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluation per "1B" requirements within two years of the date of plan adoption. Lane County shall consider enlarging the list of significant nest sites whenever information about additional sites becomes available. The significant nest sites shall be those identified by Jim Greer and Jim Hutchison (Department of Fish and Wildlife biologists) in a

12/20/83 letter to Jim Mann (Senior Planner, Lane County Land Management Division), and these sites shall be incorporated into the Lane County General Plan Policies document as Flora and Fauna Exhibit A.

16. Rare and endangered vascular plants, identified in the 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

17. Lane County recognizes that Douglas fir old growth stands provide valuable and unique wildlife habitat and will encourage the Forest Service and Bureau of Land Management to maintain acreage in this age class sufficient to ensure viable populations of dependent wildlife species.

Policy 22 (Plan. p. 5) states:

> Sites considered 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the "significant" sites and after sufficient information is available regarding the location, quality and quantity of the "significant" sites.

Lane County's Forest Lands Policy 17 (Plan, p. 10) states:

> Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

Implementing Measures

Lane County has adopted the following riparian setback standards and riparian vegetation maintenance standards in its F-1, F-2, E-RCP, ML-RCP,

PR-RCP, and DR-RCP Zones (Lane Code, Sections 16.210(7)(a) and (b), 16.211 (9)(b) and (c), 16.212 (8)(b) and (c), 16.214(7)(b) and (c), 16.215(6)(a) and (b), and 16.232(5)(b) and (c), respectively):

(b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:

(i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and

(ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or

(iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.

(c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:

(i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazard.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

In the PF/RCP C-R, RCP, RA-RCP, and RR-RCP Zones (Sections 16.219(4)(b) and (c); 16.223(5)(b) and (c); 16.229(7)(b) and (c); and 16.231(7)(b) and (c), respectively), the setback is 50 feet, rather than 100 feet.

The following zones indicate the Class I Stream and Riparian Vegetation requirements of LC 16.229-35(2) and (3) shall apply: C-1, RCP (Section 16.220); C-2, RCP (Section 16.221); C-3,RCP (Section 16.222); M-1, RCP (Section 16.224); M-2, RCP (Section 16.225); and M-3, RCP (Section 16.226). The RG-RCP Zone (Section 16.230) indicates that Section 16.299(2) and (3) shall apply. However, the Lane Code does not contain any section with the numbers 16.299-35(2) and (3) or 16.229 (2) and (3).

As discussed in the open space section of this report, Lane County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213) which is, in part, intended to protect aquatic and other wildlife habitat areas. Please refer to that section of this report for details. It should be pointed out that the NR zone does not contain riparian setback and vegetative maintenance standards. Although major development in the NR zone is not anticipated, the NR zone permits a variety of structures. These structures should be required to be set back in order to protect riparian vegetation, just as they are in other zoning districts. In fact, since the purpose of the NR zone is to protect wildlife and aquatic habitats, there is even more reason why such setbacks should be required.

A review of the County's zoning maps indicates that the NR Zone has been applied to a number of habitat areas in the County. One of the sites zoned NR is the Big Creek Exception Area, which contains fish and big game habitat, and habitat for the endangered Silverspot butterfly. According to the Exception (p. 27), no alteration of the riparian vegetation will occur, and the owner has agreed to enter into contractual arrangements to protect elk winter forage areas. The applicant will also take measures that may be necessary to protect the habitat of the Silverspot butterfly.

Contrary to statements contained in the Flora and Fauna Working Paper, Lane County's F-1 (Nonimpacted Forest Lands) Zone establishes a 40-acre (rather than an 80-acre) minimum lot size (Lane Code, Section 16.210(6)), except that (a) a land division to create a parcel of less than 40 acres may be allowed conditionally if it is for separating an existing residence from adjoining forest land, and (b) a common property boundary may be adjusted so long as no additional parcels are created. As noted in the Flora and Fauna Working Paper (p. 24), and as discussed earlier in this report, ODFW's recommended density in Major Big Game Range (which, according to the County, is mostly zoned F-1) is one unit per 80 acres. Inasmuch as the F-1 zone does not allow dwellings, this density standard has less meaning in Lane County's F-1 Zone.

The F-2 (Impacted Forest Lands) Zone (Lane Code, Section 16.211) requires a minimum of 20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel. However, there is no requirement that, in the Big Game Range portions of that zone, densities will not exceed those

recommended by ODFW (i.e., one unit per 40 acres in the Peripheral Range, or one unit per 20 acres with clustering and siting standards; one unit per 80 acres in the Major Range, or one unit per 40 acres with clustering and siting standards).

In the Exclusive Farm Use Zone (Lane Code, Section 16.212), a dwelling or mobile home not in conjunction with farm use may be approved if it meets certain criteria; similarly, a division of land may be allowed for a dwelling not in conjunction with farm use if it meets those criteria and does not conflict with the purpose of the zone. However, none of the criteria address ODFW's dwelling density recommendations, and the purpose statement of the zone does not refer to maintaining wildlife habitat values. As noted in the Goal 3 section of this report, minimum lot size is from 20 to 60 acres, depending upon location. As noted in the Flora and Fauna Working Paper (p. 24) and as discussed earlier in this report, ODFW's recommended density in Peripheral Big Game Range (which, according to the County, is mostly zoned Exclusive Farm Use) is one unit per 40 acres. There are no standards in the zone which require lot sizes to be 40 acres or greater in the Peripheral Big Game Range portions of the zone, or alternatively, that require clustering of dwellings (to allow densities as great as one unit per 20 acres.

Lane County has adopted a Marginal Lands (ML-RCP) Zone (Lane Code, Section 16.214) which appears to have been applied to wildlife habitat areas, and could be applied to other areas in the future. (The County did not submit maps showing the locations of its big game habitat areas, so it cannot be determined with certainty whether it has been applied in big game habitat areas). ORS 197.247(8) requires that application of such a zone satisfy all requirements of other Goals, in this case, Goal 5. The County has not adopted findings demonstrating how the specific applications of the ML zone comply with the Goal 5 Rule. Criteria for approval of future ML zoning (Section 16.214(4)) do not include compliance with Goal 5.

Section 16.215 of the Lane Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses and activities outright, and a number of others if within a built and committed exception area that is designated as nonresource land. The zone also lists uses that are subject to hearings official approval. Section 16.215(5)(e) of the zone contains the following conditional use approval critera:

> When a use is proposed in an area designated as Major Peripheral Big Game Range or as Sensitive Fish and Waterfowl areas as shown on the Lane County Wildlife inventory, the Oregon Department of Fish and Wildlife shall be notified and their comments shall be considered in evaluating the proposed use.

The PR zone allows a number of uses that could conflict with wildlife habitat and other Goal 5 values, and with the purpose of the zone, as noted in the Goal 2 section of this report.

The County has not adopted any implementing measures to protect and/or resolve conflicts with sensitive bird habitat sites.

As noted in previous acknowledgment reviews (e.g., Tillamook County), the Commission has allowed counties to adopt plan policies and ordinance language which clearly expresses the intent to rely on the FPA, Rules, and the March 1984 agreement between the Board of Forestry (BOF) and the Fish and Wildlife Commission (F&WC) to resolve conflicts between timber management activities and sensitive bird sites. Lane County has no such policy commitment, and it has not inventoried all sites on the BOF/F&WC list of sites covered by this agreement. However, even if such a policy is adopted by counties, they are still required to adopt implementing measures to resolve conflicts between other uses (e.g., development) and sensitive bird sites. Lane County has not adopted such measures.

Lane County has not identified sites that are considered to be more important than commercial forest operations based on a Goal 5 ESEE consequences analysis, per Forest Lands Policy 17 (Plan, p. 10), nor has it adopted and applied any implementing mesures to such sites which regulate timber management activities. "However, this is because the County knows of no such sites at this time. The County has indicated that this is a policy which will be applied in the future, as appropriate" (Roy Burns, Planning Director, personal communication, August 8, 1984).

Objections

1. The Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon and the Legue of Women Voters of Central Lane County (LWV) have objected to the County's approach to sensitive bird nesting and use sites. Specifically objectors point out that the Flora and Fauna Working Paper discusses only some of the species considered sensitive. Missing are designations of heron rookeries and pigeon mineral springs. Policy 15 addresses all sensitive species (bald eagle nests, heron rookeries, snowy plover habitat, spotted owl nests, osprey nests and pigeon mineral springs). Further, objectors point out that Policy 15 places these species in a (1B) category. Both ODFW and 1000 Friends indicate that the County possesses inventory information (including recent ODFW updated information) which is sufficient to complete the Goal 5 process for this resource category. ODFW indicates that the location, quality, and quantity information provided the County is similar to that provided to other counties which have completed the Goal 5 process and which have been acknowledged. The League of Women Voters is concerned that two years is too long for these resource sites to be without protection. Most are not in the Greenway, and therefore do not even receive minimal protection.

   1000 Friends also objects to the fact that neither Flora and Fauna Policy 2 or 3 provides adequate protection for these sensitive species. Policy 2 simply indicates the County will recognize existing programs that protect species; it does not bind the County to any particular course of action. 1000 Friends believes the County

must make an affirmative commitment to protect threatened and endangered fish and wildlife species. Policy 3 also fails to guarantee protection of sensitive species since it requires the County to seek to minimize adverse impacts through County regulations (including zoning). 1000 Friends suggests that present zoning may be construed to "minimize adverse impacts" but this may not necessarily provide adequate protection for particular sites.

1000 Friends also objects to the use of the definition of "sensitive species" used in Policy 3. Objectors believe it is overly general and could be construed by decision-makers to exclude certain species. Objectors believe that County Policy 3 should reference the list of "species of special concern" that appears in the Working Paper, rather than use a vague term in the policy. Similar comments have been filed by Oregon Forest Industries Council.

2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations "if conflicts can be resolved in accordance with OAR 660-16-000." Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.

3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting of standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

4. ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal and nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where

marginal and nonresource lands are located, and therefore the extent to which they are in game range areas, since the zone map format and resource inventory map formats are not easily comparable. 1000 Friends points out the Goal 5 must be applied whereever Goal 5 resources occur, even in areas designated marginal or nonresource land.

5. ODFW, 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's treatment of the Pudding Creek Heronry. Objectors point out that the County conducted a Goal 5 ESEE consequences analysis, but that inasmuch as the sand and gravel plan and zone designations have been retained on the site, conflicts have not been resolved. Please refer to the Goal 15 section of this report for further details concerning objections to the zoning of this site.

6. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Objectors indicate that the County has not adopted a program that is adequate to protect and/or resolve conflicts with the site under Section (3C) of the Goal 5 Rule. Objectors point out that the 1981 LCDC order for the Eugene/Springfield Metro area include a requirement that the ESEE consequences of designating the island for sand and gravel use must be evaluated in the context of regional aggregate supply and demand. The IOTC further required that if the island were to retain a partial sand and gravel designation, the Metro Area Plan and the Lane Code (Section 10.210) must be amended to require that limited aggregate extraction will minimize the impact on scenic and wildlife values. The IOTC also referenced Goal 15 requirements and IOTCs. Objectors contend that neither the Goal 5 nor Goal 15 IOTCs have been adequately addressed. These objections are also contained in the Goal 15 section of this report.

7. 1000 Friends of Oregon has objected to the fact that Lane County has placed only five noncoastal wetlands in its (1C) inventory, and has placed all others in a (1B) category. 1000 Friends believes the County has sufficient information to be able to classify the others as either (1A) or (1C), since such information was given to the County by ODFW, interested citizens, and the Lane County Flora and Fauna Committee. Objectors indicate that Goal 2 Policy 22 is inadequate for these (1B) sites since it requires only that interim protection be applied at the beginning of the plan refinement process --no sooner. Objectors point out that Goal 15 requires protective measures be applied as soon as their significance has been determined.

   Finally, 1000 Friends indicates that the U.S. Fish and Wildlife Service's National Wetland Inventory is the basis for Lane County's wetland inventory. Flora and Fauna Policy 7 states that this inventory, although incomplete in Lane County, will be used to evaluate (1B) wetlands within two years of the date of plan adoption

or when the national inventory is completed. 1000 Friends points out, however, that such an inventory is not scheduled for completion for another 5-10 years, and Lane County is not within a priority inventory area. Objectors believe the County should amend Policy 7 and the Addendum to the Flora and Fauna Working Paper (p. 6) to recognize alternative sources of data shall be used to assess the significance of wetlands and to identify their boundaries.

8. 1000 Friends has objected because the County definition of wetlands in its Working Paper is much narrower than that contained in the Statewide Planning Goals or the U.S. Fish and Wildlife Service, but the County has not justified how such a definition is consistent with Goal 5. The Working Paper states that a wetland is "an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre." Objectors indicate the County has no definition of wetlands in either its plan policy document or in its zoning ordinance.

9. 1000 Friends objects to the fact that Lane County is relying on the FPA to maintain riparian corridors along Class I streams and wetlands, and will take no actions to limit conflicting uses in areas subject to the FPA. Objectors state that there is no analysis in the submittal materials which demonstrates how the FPA and Rules provide protection for riparian resources consistent with Goal 5. Therefore, 1000 Friends objects to LC 16.210(7) and 16.211(9).

10. 1000 Friends objects to the County's failure to apply riparian protection measures around lakes and along Class II streams. Objectors point out that Class II streams regulate water temperature, quality, and quantity of downstream Class I streams.

11. Friends of the Oregon Coast has objected to the County's Renaghan Amendment (Big Creek Exception) for a number of reasons, some of which relate to fish and wildlife concerns. These are as follows:

    a. Objectors believe that many of the findings are "contractory and irrelevant." Objectors cite two examples. The first is that finding 37d (p. 27) conflicts within finding 37e (p. 27). One calls for establishing permanent elk forage areas; the other calls for maintaining the property in forest. Objectors also indicate that the County's claim that there are no sensitive species on the property contradicts findings 40a (5) and 44b(6) which state that the northwest corner of the property contains Silverspot butterfly habitat.

    b. Objectors claim that because the applicant retained a consulting wildlife biologist, his statements in the record should be expected to support the establishment of a destination resort. Objectors believe that his statements are treated by the County as findings of fact although they sometimes "are argumentative of the County's Coastal Sub-Area Plan and of the Oregon Department of Fish and Wildlife's Management plans."

c. Objectors believe that, although the applicant and ODFW will be required to work together to mitigate adverse impacts on fish and wildlife, these efforts will be "experimental" and therefore cannot justify the resort complex in the the middle of prime and sensitive habitats.

d. Objectors point out that the Exception recognizes ODFW's concerns about increased fishing pressure on Big Creek as a result of the development, and that potential harm can only be mitigated by regulating sport fishing (through reductions) on the creek. Objectors feel that long-time anglers will therefore be penalized by the development.

Response to Objections

1. Objectors are correct in pointing out deficiencies in the County's inventory of sensitive bird nesting and use sites. Information on location, quality, and quantity is available, yet the County has taken a (1B) approach to several of the species identified. Sufficient information exists for the County to be able to complete the Goal 5 process for this resource category.

   Objectors are also correct that Flora and Fauna Policies 2 an 3, themselves, do not guarantee protection for sensitive species, particularly in light of the absence of implementing measures to provide such protection. The adequacy of these policies can be judged only after the County completes the Goal 5 process for the habitat areas of these species. Lane County has erroneously placed such species in a (1B) category, and has not yet completed the Goal 5 process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

   > Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

   Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this

policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.

4. Objectors are correct that Goal 5 has not been applied by the County in the process of designating marginal lands. ORS 197.247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5. The ML Zone itself also does not include language which assures compliance with Policy 11."

"Objectors are not correct that the Goal 5 process was not addressed in the process of designating nonresource lands. However, the Goal 5 conflicting uses/ESEE consequences analysis for one of the nonresource areas--Cerro Gordo--does not justify the residential densities proposed. Specifically, the site is located within major as well as peripheral big game habitat. Conflicts with big game habitat are recognized, but the applicant asserts that the RR-5 designation 'clearly and precisely limits the densities and uses allowed on the property to a level which will assure good deer habitat . . .' However, the ESEE consequences analysis does not support this statement. The applicant summarizes the potential negative environmental consequences of development in deer habitat as loss of habitat, disturbance of wildlife, interference with wildlife movement, increased deer populations due to decreased hunting pressure, wildlife damage, imbalance of species diversity, pollution of water sources, wildlife injuries, and ODFW complaints. The only positive impact identified is improvement to the habitat due to possible native plantings and water impoundments and education of residents about the needs of wildlife. The economic

consequences are identified as damage to landscaping and gardens. The social impacts are described as 'ultimately not being allowed to live in a rural setting.'

The applicant has proposed a wildlife management plan which calls for clustering buildings and maintaining wildlife corridors. Although the proposed clustering and wildlife corridor measures will help resolve some of the conflicts identified, the overall density of development (with clustering) is one unit per five acres. ODFW recommendations are one per 80 acres (or one per 40 acres with clustering) in major big game habitat, and one per 40 acres (or one per 20 acres with clustering in peripheral habitat. According to the County's own plan (Policy 11), such densities cannot be exceeded without being justified through an ESEE consequences analysis. As indicated above, the applicant's ESEE consequences analysis does not support development at densities which exceed ODFW's recommendations, nor does the analysis provide justification for that level of development, in light of the negative impacts such development would have on habitat values. The County's findings in support of nonresource designation for Cerro Gordo indicate that approval is conditioned upon the fact that residential development will be clustered, and that provisions of the wildlife management plan 'in substantially its present form subject to modifications' will be followed. However, it is unclear what the word "substantially" means, and what modifications would be made. Also, the degree of clustering is unclear in the wildlife management plan. The plan proposes 10 to 20 clusters of 1 to 30 lots each. The ultimate number and configuration of these clusters is not specific. There is a significant difference between 10 clusters of 2 lots and 20 clusters of 30 lots each. It should be pointed out that the wildlife management plan was prepared for a 1,000 acre proposal. According to the applicants, this proposal has been reduced to 600 acres (Chris Canfield, personal communication, August 14, 1984). This adjustment has not been reflected in the submittal materials, however.

The mitigation measures proposed will help lessen the conflicts between deer and the development. However, even with the implementation of such measures, negative impacts will occur. The County has decided to allow such impacts to occur, but has not justified such a decision through an ESEE consequences analysis. This is not to say that no development would be possible at the Cerro Gordo site. However, the County must clearly specify what level of development and density and clustering provisions are anticipated, and must either justify (through an ESEE consequences analysis) allowing such impacts to occur, or modify the density and/or configuration of units so that the impacts are acceptable. Whatever decision is made must be supported by adequate reasons, according to the Goal 5 Rule." See the Goal 2 section of this report for further information.

5. The response to the objections regarding Pudding Creek Heronry is presented in the Goal 15 section of this report.

6. The response to the objections regarding Big Island is presented in the Goal 15 section of this report.

7. The County has indicated it has sufficient inventory information on only five noncoastal wetlands at this time. 1000 Friends has not provided location, quality, or quantity information on specific wetlands it believes should be (1C) sites, rather than (1B) sites.

   ODFW has not objected to the County's determination that only five wetlands are (1C) and the remainder are (1B) sites. 1000 Friends is correct that Policy 22 calls for protection of (1B) sites only at the beginning of the plan refinement process. However, the Goal 5 Rule does not require any interim protection for (1B) sites.

   Although the incomplete National Wetlands Inventory is the basis for the County's wetlands inventory, 1000 Friends is not correct that the County must wait until the National Inventory is completed before it can apply the Goal 5 process to (1B) sites. Furthermore, Policy 7 does not prevent the County from considering information about other sites not on the national inventory during its plan update process. 1000 Friends, or other parties may supply the County with information about wetlands, and the County would be required to apply the Goal 5 process to those sites. Plan Policy 7 states:

   > Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal; state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the national Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process).

   While the policy does not permit the use of alternative sources of information during the update process, 1000 Friends is correct in suggesting that the policy could be improved by actually stating that other sources of information (besides the National Inventory) will be used.

8. 1000 Friends is correct in pointing out that the County's Working Paper definition of "wetlands" is narrower than that contained in the Statewide Planning Goals. Wetlands very often do not have open, standing water present at least six months out of the year. Reliance on the County's definition could result in some wetlands possibly being excluded from the County's (1C) inventory.

9. 1000 Friends is correct that the County is relying on the FPA to resolve conflicts between timber management activities and riparian areas along Class I streams and wetlands, although the County has not made a statement to this effect. It is clear in Forest Lands Policy 17 and in various sections of the Zone Code that the County is not regulating harvest activites. Objectors are also correct that the County has not provided an analysis demonstrating how the FPA and Rules provide protection for the Goal 5 resource. However, it has been Commission practice not to require counties to adopt implementing measures to resolve conflicts between timber management activities and riparian corridors.

10. 1000 Friends is correct that the County has not applied riparian protection measures around lakes or along Class II streams, or otherwise justified not providing such protection, based on an ESEE consequences analysis of conflicting uses. Information in the Flora and Fauna Working Paper (pp. 6 and 15) suggests that these are important Goal 5 resources.

11. The objections of Friends of the Oregon Coast are not sustained with regard to fish and wildlife concerns for the following reasons:

    a. Objectors are correct that the Exceptions document contains some conflicting statements, particularly whether the property contains Silverspot butterfly habitat. Specifically, finding 37e (p. 27) is misleading, since the site does contain Silverspot habitat. In light of the fact that the County's intent is clearly to take whatever actions are necessary to protect the Silverspot butterfly, this inconsistency is not a Goal violation.

       With regard to the Exception documents' statements regarding elk forage, it can be assumed that, although the main intent is to keep the property in forest, portions of the property will be in other uses. These findings are broadly written, and, as such, are not contradictory.

    b. Objectors have not indicated how findings 47d(1) through (13) violate Goal 5, only that they are sometimes "argumentative" of other documents.

    c. Objectors have not indicated why they believe ODFW's attempt to mitigate impacts on habitats will be experimental, or otherwise why they cannot suceed in providing adequate protection.

d. Objectors have not indicated how regulating sport fishing on Big Creek to protect the resource long-term violates Goal 5. While it is unfortunate that long-term anglers may be "penalized," this is not a Goal issue.

Comments

Oregon Forest Industries Council (OFIC) and the Lane County Landowners Association have commented that Policy 22's intent is unclear, since it calls for interim protection measures for "significant" Goal 5 resource sites. However, the policy addresses (1B) sites. The association indicates that (1B) applies where some information exists but is inadequate for purposes of identifying a site and determining its significance. Commentors also point out that interim protective measures are neither required nor appropriate for Goal 5 compliance.

Response to Comments

Policy 22 (Plan p. 5) states:

> Sites considerd 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the 'significant' sites and after sufficient information is available regarding the location, quality, and quantity of the 'significant sites.

While it is true that Policy 22 is somewhat ambiguous, the policy appears to recognize the fact that certain Goal 5 resource categories have significance (e.g., all eagle nests are significant), although their specific locations may not be known at this time. Therefore a (1B) classification is appropriate. The Goal 5 Rule does not require interim protection measures for (1B) sites. However, the Rule does not prohibit jurisdictions from adopting and applying interim measures to (1B) sites.

Conclusion -- Fish and Wildlife Habitats

Lane County has adopted inventory information for a number of fish and wildlife habitat areas, and has identified conflicting uses and ESEE consequences of those conflicting uses. Implementing measures including riparian setbacks and vegetation maintenance standards and a Natural Resource Zone have been adopted. However, a number of deficiencies still remain and must be corrected before acknowledgement can be granted. These are summarized below.

Lane County has placed all sensitive bird habitat sites in a (1B) category, even though information is currently available and is adequate for completing the Goal 5 Rule process. The County needs to adopt a (1C) inventory for known sites and complete the Goal 5 process.

Implementing measures which carry out ODFW's development density recommendations in Major and Peripheral Big Game Range areas have not been adopted, particularly in the F-2, ML and EFU zones. The County has not applied the Goal 5 process to "nonresource" lands.

The County's three commercial, three industrial, and its garden-apartment zones reference a nonexisting code section for their riparian setback and vegetation maintenance standards. It is obvious that the County intended to apply such standards in those zones but until the zones are amended to either (1) reference the correct section of the code containing those standards, or (2) incorporate such standards themselves, there are no riparian standards in effect in those seven zones. Riparian protection measures have not been applied around lakes, in the Natural Resources Zone, or along Class II streams, or justified as not being necessary, based on an analysis of ESEE consequences of conflicting uses.

The County uses a narrower definition of "wetlands" than in the Goals, and therefore, some wetlands may be left off any future (1C) inventory.

The Parks and Recreation zone allows a number of uses which could conflict with the purpose of that zone, and with Goal 5 resources present (including fish and wildlife habitat values).

A Natural Resources Zone has been developed and applied to lands in the County, but it is unclear which habitat sites have been given NR zoning or whether it has been appropriately applied.

Ecologically and Scientifically Significant Natural Areas

Inventory

The County's Flora and Fauna Working Paper contains the County's inventory information on natural areas (pp. 26-32). This working paper indicates that the County evaluated the 86 sites on the Natural Heritage Inventory and the nine sites identified by the Natural Areas Preserves Advisory Committee. (Note: The Committee is now known as the Natural Heritage Advisory Council). These sites were evaluated by Lane County, first of all, to determine whether there was adequate information on location, quality and quantity. If this was the case, and that information suggested that a site was "significant," it was placed in a (1C) category. If information existed, but the site was determined to be not significant, it was classified (1A). If there was inadequate information, sites were placed in a (1B) category (pp. 26-27).

The County placed six sites in the (1B) category:

1. Booth Island/Siltcoos Lake

2. McKenzie River Island (not be confused with the island at the confluence of the McKenzie and Willamette Rivers)

3. South Fork Gate Creek

4. Swamp Creek

5. Marshall Island Heronry

6. Willamette Valley Quaking Aspen Grove

The County has provided justification why it believes the (1B) classification is appropriate for each of the site sites (pp. 27-28). The Nature Conservancy has indicated it has no updated information for any of the six sites at this time and that a (1B) classification is appropriate (Curt Soper, personal communication, June 15, 1984).

Fifty-six other sites were determined to be in a (1C) category and therefore constitute the County's natural areas inventory (p. 28). The County has grouped these sites according to their ownership. There are 23 sites on U.S. Forest Service land, six on BLM land, four sites within state parks, and 25 that are either in the Willamette Greenway or covered by the Coastal Resources Management Plan (pp. 30-32). Two additional sites (Upper Yachats Elk Pasture and Fern Ridge) are also (1C) sites, but do not fall into the above categories (p. 32).

No information regarding location, quality or quantity of the federally-owned sites is provided in the Working Paper. Information regarding the natural features present in the State park sites and at the 25 Greenway or Coastal sites is summarized (pp. 30-32). All are significant in terms of quality. Locations of these sites have not been provided.

It should be noted that, during the review of the coastal portion of the Lane County plan, a privately-owned Darlingtonia bog, east of Highway 101 and east of the City of Florence, was identified. The bog did not quailify as an ecologically significant natural area under the Coastal Goal requirements. It does, however, possess natural values that could qualify it as a Goal 5 (1C) natural area. However, Lane County has not addressed this site in its Working Paper or other submittal materials.

Conflicting Uses/ESEE Consequences Analyses

Because of their ownership by the U.S. Forest Service or the BLM, the County believes no conflicts exist for the 29 federal sites (Flora and Fauna Working Paper, p. 28).

The County indicates that no conflicts exist for the four state park sites based on uses allowed in zoning districts applied to those sites (p. 29). The Flora and Fauna Working Paper Addendum (p. 15) states, "the State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen." However, as noted in the Goal 2 section of this report, the Parks and Recreation zone which has been applied to these state parks, allows a number of uses which could conflict with natural area values.

No conflicts have been identified for the Coastal or Greenway sites because of programs and zoning districts applied to them (p. 30).

With regard to the two remaining sites (the Elk Pasture and Fern Ridge), the County indicates there are no conflicts. The Siuslaw National Forest and ODFW own the site and have an agreement concerning use of the site as an elk wintering area. Fern Ridge is owned by the Corps of Engineers and, under a 1980 management plan for the reservoir, the natural values present will be protected (p. 32).

It should be pointed out that public ownership, in and of itself, does not necessarily mean there are no conflicting uses, nor does it guarantee site protection. Although several of the U.S. Forest Service and BLM sites are formally protected by those agencies (e.g., wilderness areas, designated research natural areas), others are not. Unless the federal agencies have formal protection programs in place for natural areas, it cannot be assumed that no conflicts exist, nor can they be considered "2A" (protected) Goal 5 resource sites. However, since the Commission has not required counties to complete steps (2) and (3) of the Goal 5 Rule for sites on federal land, it is recommended--but not required--that Lane County correct the statement on page 28 of the Flora and Fauna Working Paper regarding conflicts on federal land.

Policies

Lane County has adopted the following policies regarding natural areas (Flora and Fauna Policies, Plan, pp. 14-16):

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

12. If uses are identified (which were not previously identified in the Plan which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

16. Rare and endangered vascular plants, identified in a 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per

"1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

Policy 22 (Plan, p. 5) states:

> Sites considerd "significant" in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the "significant" sites and after sufficient information is available regarding the location, quality, and quantity of the "significant sites".

See also the Goal 15 section of this report and the coastal review of the Lane County Plan for a discussion of other relevant plan policies which address natural area.

Implementing Measures

As indicated by the County, a number of natural area sites are located on federal land, over which the County lacks jurisdiction. A number of other sites are significant natural areas within the Coastal Planning Area and the implementing measures applied to them have been acknowledged as being in compliance with the Coastal Goals. The two Greenway sites are actually riparian areas along the Middle Fork and the Coast Fork of the Willamette River. The County's Greenway Permit ordinance and its riparian setback and maintenance standards provide a degree of protection for these areas. (See, however, the Goal 15 section of this report for a discussion of specific deficiencies in the Greenway ordinance).

The four state parks have been zoned Parks and Recreation. However, as noted in the Goal 2 section of this report, the PR zone allows a number of uses that could conflict with the natural area values of the sites. ODOT has indicated it does not forsee conflicts with the four sites, according to the County. However, there are no management plans for the sites, or letters from ODOT which confirm that this is the case.

Objections

1. The League of Women Voters of Central Lane County (LWV) has objected to the fact that the County has placed rare and endangered plant species in a (1B) category with a two year time delay for their evaluation through the Goal 5 process. The LWV is concerned because it believes two years it too long for these resources to be without protection. Objectors point out that since most of these resources are not within the Willamette Greenway, they will not receive even minimum interim protection.

2. Lane County Audubon Society and 1000 Friends of Oregon have objected because the County has not provided adequate protection to a natural area known as Russel Creek Basin. This objection is described in more detail in Part II of this Goal 5 Report.

Response to Objections

1. Flora and Fauna Policy 16, which requires Lane County to evaluate the (1B) rare and endangered plant species list in two years does not refer to any particular sites containing these species, nor have objectors provided a list of sites which they believe should have been placed in a (1C) rather that a (1B) category. If sites are not known at this time, then a (1B) classification is appropriate, including policy commitment to address them in the future.

2. Objectors are correct that protection and/or conflict resolution measures have not been applied to the Russel Creek Basin natural area, in spite of an ESEE consequences analysis and recommendations regarding protection of the site in the Metro Working Paper. This issue is addressed in greater detail in the Part II section of this Goal 5 report.

Comments

1. Lane County Landowners Association has pointed out that the County's list of rare and endangered plants is simply a list of species and does not address any specific or general sites. Commentors believe, therefore, the Goal 5 Rule does not apply to these species until sites are identified. (Flora and Fauna Policy 16 indicates that certain plants are considered significant and shall be placed in a (1B) category and evaluated with two years).

2. Lane County Landowners Association also comments that, contrary to Flora and Fauna Policy 7, wetland resources cannot be considered "significant" while placed in a (1B) category.

Response to Comments

1. Commentors are correct that Policy 16 refers only to a list of species, and does not address any sites. Therefore, the Goal 5 Rule will apply if and when sites containing these species are identified.

2. Contrary to the commentor's statements, wetlands--as a resource category--can be (and generally are) considered "significant," even through individual sites may be in a (1B) category because of lack of site-specific inventory information.

Conclusion -- Natural Areas

Lane County has identified 62 natural areas, 56 of which it has classified as (1C) sites. The County has provided sufficient justification for the (1B) classification of the other six sites. Most of the 56 (1C) sites are on federal land, within the Coastal Planning

area, or the Willamette Greenway. Therefore, the County has found that the sites are either not within its jurisdiction to regulate, or implementing measures have been applied which provide adequate protection.

Four state parks contain natural area values. The County indicates that because of their zoning (Parks and Recreation), they are adequately protected. However, an examination of that zone reveals that a number of uses are allowed in that zone which could conflict with the natural values present. State ownership in and of itself does not guarantee protection of these values, unless the agency has an adopted park managment plan, which requires protection. As noted in Goal 2, state agencies are also subject to Goal compliance and acknowledged plans. This is an issue which should be further explored through State Agency Coordination agreements.

The County has not applied the Goal 5 Administrative Rule to a Goal 5 Darlingtonia bog located east of the City of Florence that is not covered by the Coastal Goals.

Outstanding Scenic Views and Sites

Inventory

The County's scenic views and sites inventory information is contained in the Recreational Resources Working Paper (pp. 5-13). This consists of a discussion of several inventories and rating systems used by other public entities (e.g., Bureau of Land Management, U.S. Forest Service, State Department of Transportation, former Coastal Conservation and Development Commission, several parks and open space plans of Lane County and the City of Eugene) (p. 6). However, the Working Paper contains no location, quality or quantity information for any specific sites, nor are any of the aforementioned inventories adopted by reference. Instead, the County has decided that, given the time and resources available as well as the difficulty, it cannot conduct site-specific inventory (p. 7). The County suggests that this be undertaken before the first plan review/revision occurs (p. 7). The County describes in some detail how such an inventory could be conducted, including defining the objective, determining what areas or types of scenic types are "critical", establishing an evaluating or rating system, applying a rating system, and implementing decisions made regarding such areas (pp. 6-14).

The County's Exception for the Big Creek area recognizes scenic values on he property, and on surrounding federal lands (Exhibit E--Renaghan Amendment, p. 53).

Conflicting Uses/ESEE Consequences Analyses

Because the County has not conducted an inventory of outstanding scenic reviews and sites, it has not identified conflicting uses with specifies sites or ESEE consequences of those conflicting uses.

Policies

Lane County's policy regarding scenic resources is as follows (Open Space and Scenic Areas Policy 3, Plan, p. 17):

> Initiate a program to identify areas of outstanding scenic value, identify and resolve conflicts after consideration of social, economic, energy and environmental consequences and protect sites for which conflict resolution indicates protection is desirable. This program will be initiated prior to the next scheduled Plan update (five years from adoption of revised Plan). The County is encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this policy.

Implementing Measures

Because Lane County has decided to put off the application of the Goal 5 process for this resource category until a later date, no implementing measures regarding the protection and/or resolution of conflicts with scenic views sites have been adopted or applied.

The scenic values of the Big Creek Exception Area are to be maintained through a combination of measures, including keeping 87 percent of the property in open space; placing development away from Big Creek and east of Highway 101 (so it is not visible from the north and will not interfere with the most viewed coastal areas); designating the site Conservation/Recreation/Open Space; and by imposing site review requirements. The site will be zoned NR, as well (Exhibit E--Renaghan Amendment, p. 56).

Objection

Friends of the Oregon Coast object because they believe the proposed development in the Big Creek Exception Area will not enhance the outstanding scenic view associated with the site, and would, in fact, destroy the "picture-book" setting.

Response to Objection

Objectors have not provided specific information as to why the combination of plan and zone designations for the site, site review and the requirement for 87 percent open space is not sufficient to protect scenic resources associated with the site.

Determining what is sufficient to protect scenic views and sites is more difficult and more subjective than for other Goal 5 resource categories. However, in the absence of more specific information from objectors, the objection cannot be sustained.

Conclusion--Scenic Views and Sites

Lane County has not inventoried outstanding scenic views or sites, nor has it identified conflicting uses and ESEE consequences of conflicting uses. No implementing measures addressing this resource category have been adopted or applied on the ground. Instead, the County has a policy to initiate a program to address this resource category prior to the next plan update (five years from adoption of the revised plan).

Lane County should be commended for the serious thought and consideration it has given to this subject, and for its commitment to initiate a comprehensive program to identify and protect outstanding scenic resources. Understandably, such a program can be complex and time-consuming, particularly as it is outlined in the County's Working Paper. However, the Goal 5 Rule requires counties to develop programs prior to acknowledgment, based on information that is currently available. According to the County's own Working Paper, several inventories already exist. For example, the County recognizes that there are several state scenic highways, sites recognized in its own Parks and Open Space Master Plan, as well as sites within federal wilderness areas or on other federal lands. It should be noted that, in the 1981 denial order for Lane County, there were in-order-to-comply requirements directing the County to inventory scenic resources and to apply Goal 5 to those sites.

Neither the Goal nor the planning process itself requires that new information be generated or that information be perfect before planning decisions are made. If this were to case, nearly all planning decisions would be put off until the post-acknowledgment period. It is recommended that Lane County embark on a comprehensive scenic resources program during post-acknowledgment, as called for in its plan. However, prior to acknowledgment, the County must, at a minimum, inventory known sites, and complete the Goal 5 process for those sites. This work may be refined during post-acknowledgment as part of the County's more detailed, comprehensive scenic resources program work.

Water Areas, Wetlands, Watersheds and Groundwater Resources

Inventory

Lane County has developed a separate document, Water Resources Working Paper, which contains inventory information, and conflicting uses/ESEE consequences analyses for this Goal 5 topic.

Watersheds: A map showing the locations of Lane County's water basins is contained in the Appendix to the Working Paper (Map 2). The County does not provide quality or quantity information for each individual basin, but rather indicates that quality and size vary (p. 5). The County does note, however, that the Upper Middle Fork Willamette, Mosby Creek, and the entire Siuslaw River have severe sedimentation problems. The remainder of the Willamette and the tributary streams to the Willamette and the Siuslaw have moderate sedimentation problems. According to DEQ, the Siuslaw River basin is a "regional hot spot," (i.e., a considerable

portion has a severe problem but is not as important as compared to other hot spots, statewide). DEQ has indicated that 410 miles of streams in Lane County have streambank erosion problems, 67 of them having severe erosion. This is particularly true in the Siuslaw Basin, and in tributary streams to the Willamette and short reaches of the Willamette River itself (p. 4).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's wetlands inventory.

Surface Waters: Lane County streams are shown on Map 2 in the Appendix to the Water Resources Working Paper. More complete mapping of surface water is available in the Planning Department office, however (p. 7). Based on a 1974 Water Quality Report and its 1981 update, the County reports that the quality of water in Lane County is generally quite high (p. 7) However, the Mowhawk, Long Tom, and portions of the Coast Fork and Main Stem of the Willamette have slow, meandering reaches and are affected by extensive development (p. 7). Specific problems along these rivers are discussed briefly (pp. 7-8). The Water Resources Working Paper contains a brief discussion of minimum stream flows, particularly those on the Willamette which are regulated by reservoir releases determined by the Corps of Engineers (pp. 8-9).

The Flora and Fauna Working Paper (p. 16) indicates that all lakes and reservoirs have been mapped and are available in the County Planning Department offices. There are about 300 Alpine Cascade Lakes in the County, varying in size from Waldo Lake (6,420 acres) to Mouse Lake (.05 acres) (Water Resource Working Paper, p. 8).

Groundwater: The principal aquifiers which yield moderate to high volumes of water are located on the coast near Florence in dunal sands, along the lower McKenzie Valley, the lower Middle Fork Willamette Valley, the Lower Coast Fork Willamette Valley, and on the valley floor north of Eugene along the Willamette River (p. 10). Map 3 in the Working Paper shows the quantity of groundwater in Lane County; groundwater quality is depicted on Map 3.

Conflicting Uses/ESEE Consequences Analyses

Watersheds: The County states that the only conflict that is specifically a watershed conflict, and not a surface or groundwater conflict, is contamination or possible contamination of surface water supplies used for domestic purposes. Timber propagation and harvesting activities, particularly herbicide use and erosion caused by ground disturbance can affect municipal water sources (p. 5) Residential development and road construction also cause erosion problems (p. 5). The County notes that resolution of timber harvesting conflicts is beyond its regulatory scope. It also points out that several watersheds used for domestic water supplies are "substantially within federal owernship." The County notes that the watershed for the City of Cottage Grove is almost entirely within federal ownership. The Umpqua National Forest and the U.S. EPA have adopted a plan to address problems, yet these problems continue (p. 5). The County indicates that the potential

for similar problems exist for domestic suppies from federally-owned watersheds such as Mapleton, Tide, London Springs, and Eugene's supply, the McKenzie River (p. 5).

The County has not conducted an ESEE consequences analysis because the problem is outside its jurisdiction to resolve. However, the County supports adoption of policies or amendments to state and federal laws (including the FPA) which provide greater levels of protection for watershed (p. 6).

Development -- which is regulated by the County -- could impact the Clear Lake watershed. This watershed serves the Heceta Water District and provides a portion of the water for the City of Florence (p. 6). The County discusses the possibility of designating a "protected watershed" but has decided to take no action until sufficient information is gathered on the sources of pollutants. (p. 6). An intensive study is presently underway in response to a temporary DEQ rule (p. 6).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's conflicting uses/ESEE consequences analysis for wetlands.

Surface Waters: A number of conflicts exist for surface waters of the County, but the County asserts they are not consequences of County actions. Rather, it believes they are the result of federal agency management programs (e.g., reservoirs have certain congressioally authorized uses, but these often do not include some uses that are of importance of the County, such as waste dilution, fish and wildlife and recreation). The Corps of Engineers is in the process of reviewing authorized uses on six reservoirs, and could propose reauthorization (p. 9).

Similarly, certain streams such as the Coast Fork Willamette, Coyote Creek, Long Tom River and Lost Creek, appear to have been overallocated. The County recognizes that the State Water Resources Department (WRD) has responsibility for establishing minimum streamflows. The County believes WRD should initiate adjudication, including establishing minimum streamflows for major waterways (p. 9).

Erosion from forest lands is also a conflict with water quality, but the County points out that it is regulated by the FPA or federal regulations. (p. 9). Agriculturally caused water quality problems are being addressed by DEQ and soil and water conservation districts, although three SWDs in the County have not yet adopted model Best Management Practices by DEQ (p. 9). Outside UGBs, urban runoff is primarily from industrial facilities, especially hazardous materials stored at this sites (p. 9-10). This is also regulated by DEQ.

Groundwater: Two conflicts have been identified for groundwater resources -- development in quantity-limited aquifers, and development in areas where groundwater quality may be polluted. Separate ESEE

consequences analyses are presented for these two types of conflicts. The County has concluded that:

1. For a quality-limited aquifer, otherwise acceptable development should be allowed if there is an adequate showing that water will be available for a forseeable period in the future, and that the additional withdrawal will not negatively impact surrounding water users. A number of specific code revisions are recommended to carry out these requirements (p. 12).

2. For groundwater quality problem areas, the County has determined that resolution of conflicts should be different for different types of contaminants (p. 14). These include:

   a. For development in aquifers contaminated by natural means, there should be a system to inform people of potential problems, and to suggest that well drilling and testing take place prior to construcion. Areas of quality limitation could be placed on a computerized land file, and could be checked when a building permit application is reviewed. Similarly, notification would be a matter of public record and would be available to future parties interested in these properties as well.

   b. Old and smaller solid waste sites in the County are mapped, but not enough is known about specific leachate problems or groundwater characteristics to designate hazard notification areas around them. The Working Paper recommends inventorying each site, including period of operation, type of wastes deposited, and groundwater characteristics. Based on the information, a hazard notification system should be established (p. 14).

   c. Two sensitive aquifers are currently subject to DEQ rules for sewage system installation -- the River Road/Santa Clara area, and the North Florence area. For other developed areas located on sensitive aquifers and which have known or suspected contamination problems (Mapleton, Noti, Elmira, Crow, Coburg, Goshen, Creswell urbanizing area, Saginaw, Marcola, Dexter, Cedar Flats, Walterville, Leaburg, Vida, Blue River, and McKenzie Bridge), current County policy calls for a minimum parcel size of one acre if community water is available, or two acres if individual wells are used. The County points out that this policy does not correct the existing situation, but should prevent aggravation of the situation (p. 15). These quality-limited aquifier areas will be placed on the County computer file, and applicants for building permits involving new wells will be informed of possible sewage contamination in the groundwater.

Policies

The following policies address water resource issues in Lane County (Water Resources Policies, Plan, pp. 17-18):

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and establish priorities among the varous beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

4. The primary means of evaluating groundwater resources for land use planning purposes shall be through the land division review process. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

Additional policies regarding water resources, including wetlands, are discussed in the Fish and Wildlife section of this report, as well as in the Goal 6 and 11 sections.

Implementing Measures

As noted in the Fish and Wildlife section of this report, the County has adopted riparian setback and vegetation maintenance standards in a number of zoning districts.

A Natural Resources Zone has been applied to several wetlands (confirmed by Mike Copely, County Planner, personal communication, July 16, 1984).

Section 13.050(13) of the Lane Code addresses the provision of water in the County. This section requires lots and parcels to be served by an approved public, community, or individual water system. Aquifer and quality tests are required for public and community systems, and may be required for individual water sytems. These tests are as follows (Section 13.050(13)):

(c) Aquifer and quality tests or geological evaluation may be required by Lane County for any lot or parcel. These requirements may include, but need not be limited to, evaluation of existing well logs and preparation of a geological report on the area, and evaluation of the site by a professional geologist, or engineering geologist or full scale aquifer tests as required. In determining the detail of analysis required, the following apply:

(i) Areas designated by Board order as having problems in the quantity or quality of available water as adopted, documented in Lane Manual and filed in the office of the Department shall meet the following requirements for all parcesl less than 20 acres in size. The applicant must affirmatively demonstrate, in a manner acceptable to Lane County, that the proposed subdivision/partition is capable of sustaining the devlopment anticipated with sufficient potable water. This demonstration must include, but need not be limited to, aquifer tests. More specifically, the aquifer test shall show coefficient of transmissivity, permeabiltiy, storage and the specific yield. The bacteriology/ chemical tests shall show compliance with standards set by the Oregon State Health Division and Lane County. The test procedure shall utilize standard acceptable practices for aquifer tests using pumped and observation wells and records of static water level, date, clock, elapsed time (in min.), depth of water, drawdown and recovery. Analysis using the non-equilibrium method (or other methods where appropriate) must be performed by a licensed geologist or engineer. A copy of all field notes and test results shall be submitted with the report, together with summary statements which indicate whether the proposed use of the aquifer could adversely impact the neighboring wells or properties or deplete the aquifer and the general impact of the proposed use.

(d) For all areas not designated as problem areas by the procedures documented in LC 13.050(13)(a) above, a pump test report or a well log report shall be supplied, unless determined by Lane County to be not necessary.

Pump test and well log reports shall be prepared according to criteria in the ordinance.

Conclusion -- Water Resources

The County has done a good job of inventorying its water resources and problems associated with those resources. The County has analyzed the ESEE consequences of conflicting uses, and has adopted some excellent implementing measures to help resolve conflicts, particularly riparian setback and vegetation maintenance standards and aquifer and quality requirements.

Wilderness Areas

Inventory

Lane County's inventory of designated wilderness areas is contained in its Recreational Resources Working Paper on a map entitled, Recreational Resources. The locations of three wilderness areas are depicted--Mt. Washington Wilderness, Three Sisters Wilderness, and Diamond Park Wilderness.

Page 4 of the Working Paper describes in general the County's role in managing such areas.

It should be noted that recently, new wilderness legislation was passed by the U.S. Congress, establishing a number of new wilderness areas in Oregon. Several of these are within Lane County. These include Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake.

Because of the fact that Congressional action occurred so recently (after Lane County submitted its plan), it is suggested--but not required until first plan update--that the plan be amended to inventory these new areas.

Conflicting Uses/ESEE Consequences Analyses

Because of their federal ownership, remote locations and federal protection for wilderness values, the County indicates that wilderness areas are "free from County-generated conflicts" (p. 4).

Policies

Lane County has one policy addressing wilderness areas (Open Space and Scenic Areas Policy 2; Plan, p. 17):

> Lane County will recommend that no new wilderness areas be designated in the County without a complete analysis of the revenue and employment impacts to Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvest on other public lands.

Implementing Measures

Forest resource zoning has been applied to wilderness areas. The County explains in its Recreational Resources Working Paper (p. 4) that this zoning "will pay homage to the concept of County 'protection' of them, but in practical fact they are simply out of the relm of County authority."

Conclusion--Wilderness Areas

Lane County has inventoried the three wilderness areas within its boundaries and has adopted a plan policy recommending that no new wilderness areas be designated without an analysis of revenue and employment impacts. The areas have been given forest resource zoning. It is recommended that, by first plan update, the County amend its plan to inventory the recently designated new wilderness areas.

Historic and Cultural Resources

Inventory

The Working Paper identifies each of the approximately 500 sites identified in Lane County on a preliminary inventory and survey of historic and archaeological resources. Each is identified by site number or name, by location (township, range, section) and by map symbol. Each appears on a quad map included in that document. A map symbol for each site indicates whether it is an archaeological site, a transportation site or route, a settlement feature, an agricultural site, a mining site, a logging site, a marine site, an historical site, or a natural feature.

Lane County has adopted an Historical Resources Working Paper which explains the process and criteria used in evaluating the "significance" of the 500 sites identified in the County (Addendum to the Working Paper, pp. 1-2). All sites on the National Register of Historic Places are considered significant and are in the (1C) category of the Goal 5 Rule. All sites or structures still in existence contained in the Statewide Inventory are also considered significant, and where sufficient information is available to carry out a conflicting uses analysis, a (1C) label has been given. Archaeological sites are considered (1B) sites, but the County indicates they should be given special interim protection until a data and a protective program for them are developed. All other sites identified are (1A) sites (pp. 1-2).

In all, the County determined there are 63 (1C) sites. These are listed on pages 3 and 4 of the Working Paper Addendum, along with their locations and map numbers. These sites are mapped on quadrangle maps that are included in the Working Paper. Each site has been given a map code which specifies the "theme" of the site (i.e., archaeological, transportation, settlement features, cemetery, century farm, grange hall, old barn, mining, logging, marine industry, historical site, natural landmark, and hot springs). Further information about each (1C) site

that is also on the Statewide Inventory is appended to the addendum to the Working Paper. The Addendum to the Working Paper also summarizes the quality and quantity of these (1C) sites (pp. 5-9).

It should be noted that the County has indicated that several (1C) sites on the historic sites inventory in the Working Paper Addendum (pp. 3-4) were deleted by the Board of Commissioners during final plan adoption, including sites # 32, 34, 39, and 42 (Mike Copely, County Planner, personal communication, June 15, 1984). There is no indication of this in any of the resubmittal materials. Site 34 is within the Creswell UGB. However, there are no reasons presented supporting deletion of sites # 32, 39, or 42 (the Andrew Keeney House, the Paschelke House, and Fall Creek Christian Church, respectively).

Conflicting Uses/ESEE Consequences Analyses

Pages 5-9 of the Addendum to the Working Paper contain the County's conflicting uses identification and ESEE consequences analyses for the (1C) sites. These analyses are presented by category for the following categories: Transportation Sites (bridges), Settlement Features, Barns, Marine Sites, Historical Sites/Landmarks, and Archaeological Sites.

In its Working Paper, the County recognizes destruction of the structural sites as a conflict, but fails to recognize major exterior alteration as a conflicting activity. However, it is clear in the County's zoning ordinance that the County considers major exterior alteration as an activity which could conflict with historic resources. For archaeological sites, the County identifies any land use or activity which damages the integrity of the site as a conflict.

Policies

Lane County has adopted a number of plan policies which address historic and archaeological resources (Plan, pp. 12-13). These include the following:

1. A group known as the "Lane County Historic Resource Committee" is to be established and given permanent status by the Board of County Commissioners. The Committee shall represent a wide array of historical interests and the interest of property owners. Its tasks shall include: general concern with historical matters in the County; to monitor conditions affecting such resources; to devise criteria and methods for the selection of newly-designated historical resources; to advise the staff and officials of the County on proposed new historical sites and structures; to oversee the administration of the Historic Structures or Sites ordinance; and other related tasks and duties. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

2. The County shall administer the "Historic Structures or Sites" section of Lane Code Chapter 10 as a means of protecting historic resources. These regulations shall be applied to all sites contained in [the] list of "Historic Structures or Sites" referenced by the ordinance, which are sites deemed significant by the County, and therefore meriting protection from conflicting uses by a limitation of such conflicting uses.

3. The Goal 5 conflict resolution process (OAR 660-16-000 through 660-16-025) which has been applied in the selection of historical sites and structures contained in the General Plan and implemented through the "Historic Structures or Sites" ordinance, shall continue to be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or change in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historic sites and resources. A long-term objective shall be in the inclusion of historical sites in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

9. The County shall work with concern local, state and federal agencies to coordinate efforts to identify and protect historical resources.

10. Archeological sites identified in the Historical Resources Working Paper and Addendum to the Historic Resources Working Paper shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the

date of plan adoption. These significant sites shall be incorporated into the Lane County General Plan Policies document as Historical Resources Exhibit A.

Note: Policy 2, above, incorrectly refers to Lane Code Chapter 10, rather than Chapter 16 as its implementing measure for historic sites.

Implementing Measures

Section 16.233 of the Lane County Development Code is the Historic Structures of Sites Combining Zone (/H-RCP), the stated purpose of which is to allow the County to review building and demolition permits to ensure historic resources are preserved. The Code specifies that "no person may alter or demolish any Historic Structure or Site" unless a permit to do so has been issued. Upon receipt of an application for such a permit, the Planning Director shall notify the Lane County Museum Director and the State Historic Preservation Officer.

A demolition permit shall be approved only if evidence is submitted demonstrating that "every reasonable effort shall be made to maintain the Historic Structure by acquisition, protection, stabilization, rehabilitation, restoration or reconstruction project (a demonstrated lack of private and public funding for maintenance of a structure is sufficient cause to allow demolition)." A permit to alter an historic site or structure shall be approved only upon submission of evidence that (a) any use or change "should be compatible with the historical nature of the property," and (2) only the minimum alteration of the structure or site and its environment necessary to achieve the intended use shall be allowed. Consideration shall be given to four alteration guidelines in satisfying the second criteria, above. These guidelines are as follows:

(1) Only the minimum alteration of the designated historic building, structure or site and its environment necessary to achieve the intended use shall be allowed.

(2) The distinguishing original qualities or character of a designated building, structure or site and its environment should not be destroyed. The removal or alteration of any historical material or distinctive architectural features should be avoided.

(3) All designated buildings, structures and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance should be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected.

It must be noted that the zoning maps do not show that the combining zone has been applied to all 63 inventoried (1C) sites as intended. Specifically, the maps do not show that the combining zone is applied to (1C) sites 1-20, 24, 35, 38, 44, 45, 46, 48, 55, 57, 59 or 61. The ordinance also does not indicate which sites fall within that zone designation. This is also contrary to Historic Policy 2, which states that the zone shall be applied to all sites on a list referenced in the ordinance.

Objections

1. The Oregon Department of Transportation (ODOT) has objected because of a conflict between the historic resources working papers and the ordinance. Specifically, ODOT finds that the historic ordinance applies only to sites and structures on the National Register of Historic Places, and does not cover other (1C) sites identified in the working papers.

2. Friends of the Oregon Coast object because of the failure of Lane County to address cultural and archaeological resources of the Big Creek Exception Area. Specifically, objectors indicate that Goal 5 requires such resources to be inventoried. Yet, according to objectors, the Exception does not address this topic "in any way." Objectors provide information indicating that such resources are common at the mouths of coastal rivers. Due to the probability of Indian graves and/or a significant archeological site at the mouth of Big Creek, and the fact that, based on the County's own definition of conflicting uses, road building, building construction and land clearing for a destination resort are considered conflicting uses, objectors believe that "the new zoning of the Renaghan property is in violation of Goal 5 until an intenstive cultural resources inventory has been conducted and this portion of Goal 5 addressed."

Response to Objections

1. ODOT has misread the Lane Code with regarding to the County's Historic Structures of Sites Combining Zone. ODOT has apparently reviewed the County ordinance which applies inside UGBs. That zone does limit the zone's application to National Register sites. However, ODOT has failed to note that the ordinance which applies outside UGB's (in rural Lane County) is somewhat different. Specifically, the rural zone does not contain language that limits application to National Register sites. Therefore, the objection is not sustained.

2. Objectors are correct that the exception for the Renaghan property does not address historic or cultural resources. However, as pointed out by the objectors themselves, the State Historic Preservation Office knows of no site on the property, nor do anthropoligists at Oregon State University. County's are required, under Goal 5, to rely on whatever information is available in producing comprehensive plans. They are not required to conduct extensive archaeological surveys. Therefore, the County's exception does not violate Goal 5

for cultural or archeological resources. If, in the event, such resources are discovered during site development, the Goal 5 Rule would have to be applied by the County, including possible plan amendments.

Conclusion--Historic Resources

Lane County has adopted an inventory of historic resources and has analyzed conflicts and ESEE consequences of conflicts with these resources. The County has a combining zone which is intended to be applied to historic sites.

The zone provides procedures and criteria for resolving conflicts with inventoried sites, particularly major exterior alterations and demolitions. However, the County has not applied the zone to all 63 (1C) sites identified in its plan, as intended.

Oregon Recreation Trails

Inventory

Lane County's inventory of Oregon Recreation Trails is included in its Recreational Resources Working Paper (p. 15, Recreational Resources Map).

The County describes these trails as follows:

1. Coast Range Trail--not developed. Funding limitations and the desire of the state not to condemn private land for trail development suggests that it will be some time before it is completed. Mapped route is general in nature.

2. TransAmerica Bike Trail--fully signed and marked, with route maps published by the state.

3. Eugene to Pacific Crest Trail--a few portions are developed with work now underway by a local chapter of the Sierra Club. Uses bikeways in Eugene Area.

4. High Divide Trail--proposal only, same as #1 above.

5. Coast Trail--Lane County developed portions occur in Cape Perpetua and Heceta Head recreational areas, with preparations being made for inclusion of Oregon Dunes National Recreation Area lands. No private lands involved at this point.

6. Coast Bicycle Trail--designated, signed and mapped.

7. Pacific Crest Trail--fully developed. No private lands involved in Lane County. Located in Willamette National Forest.

These descriptions are basically accurate. It should be noted that, according to Jack Remington, State Trails Coordinator, ODOT has proposed general routes for the unbuilt portions of the Eugene to Pacific Crest Trail and the Coast Trail. Portions of the High Divide Trail already exist since they follow several other developed trails. However, only general routes have been proposed for the unbuilt portions of the High Divide Trail (personal communication, June 20, 1984).

The general location of each of the seven trails is depicted on the County's Recreational Resources Map in the Working Paper. No specific locations have been provided in either the text or on the map, however, for existing trails. Specific routes for the Pacific Crest Trail, the TransAmerica Bike Trail, the Coast Bike Route, and portions of the High Divide Trail and the Eugene to Pacific Crest Trail are known, since these trails are developed.

Conflicting Uses/ESEE Consequences Analyses

The County has not identified specific conflicting uses with the seven proposed or existing Oregon Recreation Trails.

However, the Coast Bicycle Trail, TransAmerica Bike Trail and the Pacific Crest Trail are fully developed and are either on federal or other public lands or on public rights-of-way, as are portions of Eugene to Pacific Crest Trail and portions of the Coast Trail. Therefore, the County concludes that they are likely to experience few conflicts.

No specific routes for the Coast Range Trail or the unbuilt segments of the Coast Trail, the Eugene to Pacific Crest Trail, or the High Divide Trail have been determined by ODOT. Although most of these proposed trails would cross public lands, segments of these trails are proposed to cross private lands, and conflicts could occur. However, since their locations are only generally known at this time, specific conflicts cannot be determined.

Policies

Lane County's recreational trails policy (Open Space and Scenic Areas Policy 4, Plan, p. 17) is:

> The County shall acknowledge recreational trails which are developed by the Oregon Parks Outdoor Recreation Plan and shall display the routes on its Plan documents.

Lane County lacks a policy to cooperate with ODOT in the protection of existing trails. The County also lacks a policy to coordinate with the Oregon Department of Transportation in applying the steps of the Goal 5 Rule during any future identification or establishment of proposed trails or trail segments.

Implementing Measures

No specific implementing measures have been adopted by Lane County for the protection and/or resolution of conflicts with existing or proposed trails.

Conclusion--Recreation Trails

Lane County has identified the seven existing or potential state recreation trails in its Recreational Resources Working Paper, but has not provided a description or map of the specific locations of existing trails. It has, however, recognized the fact that ODOT has maps of these trails. The County lacks a plan policy to coordinate with ODOT in applying the Goal 5 Rule if and when any of the unbuilt trail segments are identified or proposed for construction or designation. The County also lacks a policy to cooperate with ODOT in the protection of existing trails.

No conflicts exist with developed trails and trail segments, and therefore, special implementing measures are not necessary in those areas. Implementing measures have not been adopted for the protection and/or resolution of conflicts with the proposed trails and trail segments, nor are any appropriate at this time since their specific locations are not yet known.

Potential and Approved Scenic Rivers and Waterways

Inventory

The County's Recreational Resources Working Paper briefly describes both the State Scenic Waterways Program and the Federal Wild and Scenic Rivers Program (p. 16). The County correctly notes that there are no designated federal rivers in Lane County at this time. However, the County fails to note that during the 1983 Legislative Session, a bill was passed (HB 2435) designating Waldo Lake and the North Fork of the Middle Fork of the Willamette River (from Waldo Lake to about one mile upstream from Westfir) as a State Scenic Waterway. The County's working paper incorrectly indicates there are no state designated waterways.

The Working Paper correctly recognizes that five river stretches are on the U.S. Interior Department's inventory of potential scenic rivers (p. 17):

1. Upper McKenzie (from Tamolitch Falls to McKenzie Bridge);

2. Steamboat Creek (from its source to its confluence with the Umpqua River);

3. Alsea (entire length; only a small upper portion in Lane County);

4. Siuslaw (from its source to Lake Creek confluence); and

5. Willamette (from Eugene to Corvallis).

All five of these river segments are shown in a general fashion on the Recreational Resources Map contained in the County's Recreational Resources Working Paper.

The County correctly notes that the Upper McKenzie (from Tamolitch Falls to McKenzie Bridge) is also on the state potential scenic waterways list. However, the County fails to mention that Steamboat Creek and Alsea River (the same stretches as on the federal potential list) are also on the state potential list.

The County recognizes that the area affected along each of the inventoried rivers is one-quarter mile on each side measured from ordinary high water (p. 16).

Policies

The following policy has been adopted regarding wild and scenic rivers (Open Space and Scenic Areas Policy 5, Plan, p. 17):

> The County shall cooperate with appropriate state and federal agencies in the selection of scenic and wild rivers.

This policy does not commit the County to coordinate with those agencies in applying the Goal 5 Rule process in studying rivers for possible state or federal designation and in making such selections.

Conflicting Uses/ESEE Consequences Analyses

Lane County suggests that conflicting uses and ESEE/consequences should be identified at the time a river is studied for designation (pp. 17-18). The County also suggests that resource zoning should provide protection for such rivers (p. 17).

Implementing Measures

Waldo Lake and the stretch of the North Fork of the Middle Fork of the Willamette River that is designated as a State Scenic Waterway are located entirely on federal land (confirmed by Jim Payne, State Rivers Program Coordinator, personal communication, June 14, 1984). The portion of the Alsea River that is on the state and federal potential lists is also in federal ownership. The Willamette River is within the Willamette River Greenway, to which the County has applied a Greenway Development ordinance (see the Goal 15 section of this report for details).

Portions of the McKenzie River, Steamboat Creek, and the Siuslaw River flow through federally-owned lands. However, some stretches are in non-federal, private ownership. Developed and committed exceptions have been taken along all of these stretches of the McKenzie and Siuslaw Rivers and Steamboat Creek, most of which have been found to be valid

Additional Information Submitted

Date Stamp RECEIVED JAN 15 2019

Submitted By: Jim Belknap

Phone Number: 541-954-2944

Email Address: jim.e.belknap@gmail.com

Project Address: None

Permit Number (BP, PA, SP, SI): PA19-05298

Submittal Description: Applicant's Response to Supplemental Post-Hearing Evidentiary Submission (Week 2)

Type of Submittal:

- ☐ Additional Information
- ☐ Response to Plan Review Comments
- ☐ Revisions to Approved Plans
- ☐ Other: _____
- ☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: Deanna Wright Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swm 12/26/2018

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
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Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Gary Darnielle
Lane County Hearings Official
c/o Rachel Serslev, Planner
3050 North Delta Highway
Eugene, OR 97408

January 14, 2020 Personally Delivered
Copy by email to: Rachel.serslev@lanecountyor.gov

Re: PA19-05298, Applicant's Response to Supplemental Post-Hearing Evidentiary Submission

Dear Mr. Darnielle:

This letter is to respond to the submission of Lauri Segel in her email of December 19, 2019, submitted for the reopened record for PA19-05298. I also feel a need to respond to the copy of the letter authored by Aileen P. Kaye, apparently provided by Ms. Segel, originally submitted to the Oregon House Committee on Natural Resources regarding House Bill 3661 and placed into the Committee record on May 10, 1993. I must preface my discussion, though, that it truly escapes me that Ms. Kaye's comments have any bearing on the issues at hand regarding the approval of the Template Test Dwelling Special Use Permit for Tax Lot 18-02-11-00-00507, the subject of the current appeal.

Ms. Segel opines that letters provided by James Mann, retired Senior Planner for the Lane County Land Management Division, and Kent Howe, former Land Management Division Director, were not "signed in the presence of a Notary." At the risk of incurring the wrath of LandWatch's legal counsel again for demonstrating a lack of respect for their opinions, I must note that not a single piece of information that has been submitted by either side of this argument has been "signed before a notary." In nearly 30 years that I have been involved in providing land use consulting services I have never asked for anyone submitting information in assistance of an application to have their work notarized.

My humor has evaporated. Ms. Segel: So what?

The letters from Mr. Mann and Mr. Howe were provided by Michael Farthing, legal counsel for the Applicants, in his letter of November 7, 2019 at Exhibits A and B. What Mr. Mann and Mr. Howe provided is a historical context of events occurring in 1983 and 1984 as Lane County wandered through the wilderness that was the first 10 years of Oregon's land use planning system attempting to obtain an acknowledgment of the county's Rural Comprehensive Plan (RCP). Nearly 40 years after that event the Applicants in this Planning Action, PA19-05298, are being confronted with a charge by the Appellants that somehow Lane County has operated without an acknowledged Comprehensive Plan.

To quote Mr. Malone, attorney for the Appellants, in his letter dated November 21, 2019:

"..., it is an open issue as to whether the comprehensive plan has been acknowledged to comply with the administrative rules implementing the current version of Goal 5 and the forest template dwelling statute."

That is an incendiary statement to which Mr. Malone has failed to produce any substantiating evidence. It is not an "open issue," Exhibit 6 to my letter of December 6, 2019, is the Land Conservation and Development Commission Acknowledgment of Compliance, dated September 13, 1984, acknowledging the Comprehensive Plan of Lane County. In the acknowledgment by LCDC of the F2 Template Dwelling provisions of Lane County Code no further actions were required to address the Big Game Habitat issues of Goal 5, the matter was settled in 1984 with the adoption of the F1 zoning and its prohibition on the placement of residences in 94.4% of the forestland in Lane County. It is to this point that the letters from Mr. Mann and Mr. Howe are addressed discussing the percentage of the <u>total land base</u> of Lane County. The reference to the percentage of forestland is taken from the numbers quoted by LCDC in their acknowledgment of the Lane County Comprehensive Plan.

The dismissal of Mr. Malone's assertion that the Comprehensive Plan fails to implement the current version of Goal 5 is summarized in the Hearings Official decision of the appeal of PA18-05913, commonly referred to as the *Green* decision. In this decision, dated November 25, 2019, a copy of which was provided by Mr. Farthing as Exhibit A to his letter of December 18, 2019, the assertion that the Lane County Comprehensive Plan has failed to address Policy 11 or Goal 5 in providing for the protection of Big Game Habitat is completely refuted.

Ms. Segel offers a disingenuous claim of innocence in stating that LandWatch has not made a "personal jab at Mr. Howe..." She then goes on to state:

"The fact is that Mr. Howe has never shied away from colluding with the developers and their agents, as the attached letter shows." (Apparently this is the letter from Aileen Kaye, referenced above.)

For not having taken a personal jab at Kent Howe, this is a pretty good swipe and personally, I find it despicable. When Mr. Howe retired I wrote him a note that said while he and I had not always agreed, he was always able to do so without being disagreeable. An unusual and admirable trait. What I found applicable to Mr. Howe was he carried out the Lane County Code and Oregon State Statutes in an honorable manner and as he viewed the intent of the rules. I certainly never found him in collusion with the applications of my clients or me. Mr. Howe and Mr. Mann were dedicated public servants in the very truest sense. Ms. Segel's comments regarding these two public employees are beneath further discussion.

Ms. Segel continues to confuse the difference between "legal lots" – lawfully established units of land, as defined in ORS 92.010(3) – and tax lots, an identifying account number for taxation purposes. The appellants have made the issue of "density" as part of their objection. Our point is since the adoption of the current F2 zoning in 1984 and the minimum lot size of 80 acres as mandated by House Bill 3661 in 1993, the creation of lots by partition or subdivision has become a virtually unknown event. The effect of this change has been to establish what is, by anyone's definition, a finite number of parcels within the F2 zone: those created "By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations." ORS 92.010(3)(a)(B)(ii).

What you see is what you get. The number of parcels that can be recognized as having been lawfully established, a Legal Lot, is what has existed for most of Lane County since March 26, 1975; that is a finite number. The number of lawfully created units of land taken in the context of the total land base, the definition of density, has remained unchanged by any measureable amount. We simply are not creating new parcels. The work of NIMPKISH, LLC, the owners of the subject property, has not resulted in the creation of a "new" parcel. There has been established a new tax lot for identification purposed of the Lane County Department of Assessment and Taxation, but not a new Legal Lot.

As is discussed by the Lane County Land Management Division, tax lots are not necessarily Legal Lots, tax lots may have more than one Legal Lot within them. The Appellants simply do not get that and continue to file meritless appeals, as was previously filed, and dismissed, with the subject property.

Tax lots are assigned when a conveyance occurs. When a deed or other conveyance goes of public record the cartographer's office of the Department of Assessment and Taxation

examines the instrument and if the legal description is different than that previously recorded for the tax lot in question a new tax lot is assigned. After all these years it is disappointing that the Appellants simply refuse to acknowledge this process.

Contrary to Ms. Segel's assertion that this process was somehow "hatched by the developers and the agents in the mid-1980's, a practice that both Mr. Mann and Mr. Howe enabled" one can only say: they carried out the law that was passed by the Oregon Legislature. Period.

As to the letter authored by Aileen Kaye I can only say: Seriously? We are to expect that a copy of a letter submitted regarding House Bill 3661 in 1993 reporting on an eavesdropped conversation in a restaurant in Salem is to be considered as evidence in this appeal? For one of the few times in my life, I am at a loss for words. The one that comes to mind is simply: Balderdash!

It's time to answer the question. Does the Special Use Permit application filed in PA19-05298 comply with County Code and State Statute? The Applicants have expended thousands of dollars defending their application, and the approval by County Staff, against this fallacy riddled appeal.

Thank you again for your time in considering my comments.

Sincerely,

Jim Belknap

Jim Belknap

Cc: NIMPKISH, LLC
Michael Farthing

Additional Information Submitted

Date Stamp
RECEIVED
JAN 16 2020

Submitted By: Michael Farthing
Phone Number: 541-683-1960
Email Address: mefarthing@yahoo.com
Project Address:

LANE COUNTY OREGON

Permit Number (BP, PA, SP, SI): PA 19-05298
Submittal Description: APPLICANTS RESPONSE TO SUPPLEMENTAL POST-HEARING EVIDENTIARY SUBMISSION

ATTENTION: RACHEL SERSLEV

Type of Submittal:

☐ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other:

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: Deanna Wright Amount Due:
☐ Approved Dated ☐ Applicant contacted

How will fees be paid? ☐ In person ☐ Online ☐ By phone

rev 12/6/2018

Michael E. Farthing

Attorney at Law

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Office: 541-683-1950 ◊ Fax: 541-654-5083

email: mefarthing@yahoo.com

January 16, 2020

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **PA 19-05298 (Nimpkish LLC)**
Appeal of Director Approval of Template Dwelling in F-2 zone by Landwatch Lane County
Applicant's Response to Supplemental Post-Hearing Evidentiary Submission

Mr. Darnielle,

Please enter this letter into the record of the above-referenced appeal that I am submitting on behalf of the Applicant and in support of the Director's decision and findings. Mr. Belknap and I previously submitted County orders, reports, maps and other documents that related and responded to the various allegations made by Mr. Malone in his testimony and letters and also to Mr. Mulkey's various speculations.

The appellant, LandWatch, submitted letters on December 19, 2019, including a letter, dated December 19, 2019, from Mr. Malone and an email from Ms. Segel which included a single exhibit. Mr. Belknap has submitted a detailed and thorough response to Ms. Segel's email and to the strange and completely irrelevant 1993 letter from a Ms. Kaye. Mr. Mulkey of 1000 Friends, after an earlier appearance, has apparently elected to forego this opportunity to actually provide evidence into the record to support his baseless claims.

This was the point in this elongated appeal process when all parties were given an opportunity to provide more evidence, particularly concerning LandWatch's and 1000 Friends' Goal 5 compliance issue. Mr. Belknap responded with evidence about the subject property, and template dwelling siting standards and other site details (well logs, fire district update, geotech analysis). I provided research about Lane County and certain Goal 5 projects that occurred in the 1990s which culminated, at least with regard to F-2 zoning and the template dwelling criteria, with the County's adoption of changes to Chapter 16. Those amendments included adoption of the present F-2 zoning ordinance, with a provision for a forest template dwelling that mirrors the State regulations (OAR 660-006-0025) and statutes (ORS 215.750). County Ord. No. 5-02, adopted August 28, 2002. *See* Ex "F" , 12-18-19 Farthing Letter.

For now, I am getting ahead of the purpose of this letter which is to respond to LandWatch's evidentiary submission, such as it is, in this appeal. It consists of Mr. Malone's 2-page letter which accuses Mr. Howe of an error in his previously-submitted letter (Attachment "A" to Farthing 11-07-19 letter) and Ms. Segel's various complaints which included a 1993 letter from a Ms. Kaye. Ironically, the only physical evidence is Ms. Kaye's letter. It bears repeating: The opponents, LandWatch and 1000 Friends, have not provided any credible or relevant physical evidence, legal or geotechnical analysis or anything else that relates to the specific criteria and siting standards for this application. Instead, they provide nothing more than groundless speculation based upon unsupported conclusions.

Malone Letter (12-19-19)

Mr. Malone's entire letter is directed at a statement made by Mr. Howe in his letter, dated October 14, 2019, which stated that Big Game Habitat areas were not formally designated in 1984 by Lane County as significant "C" sites as that classification was then described in the Goal 5 rules in effect in 1984. *See* OAR 660-016. Mr. Howe's statement was and continues to be accurate and true.

Mr. Malone took issue with Mr. Howe's statement because of a recent LUBA decision, *Save TV Butte v. Lane County* , LUBA NO. 2017-031, decided 01-18-18, in which LUBA concluded, based on the application, facts and the record before them, that the County's Big Game Habitat sites were "significant" as if they had been specifically called out as 1 "C" sites in the 1984 plan adoption

process. They were not identified as such in the RCP that was adopted in 1984. LUBA concluded in *Save TV* that the important point was that they were identified and inventoried in accordance with rules in effect at that time for identifying 1 "C" sites. They were, in effect, 1 "C" sites and had to be addressed as such in the PAPA that was at issue in that case.

Regardless, Mr. Howe's statement was and is correct. Of course, Mr. Malone casts aspersions on Mr. Howe in an apparent attempt to discredit his statement about how and why Lane County's consideration of Goal 5 was eventually acknowledged by DLCD and found to be in complete compliance and conformity with Goal 5. His statement is accurate but, as LUBA determined, non-dispositive at least in the *Save TV* case. What is important is that it has absolutely no relevance either with regard to Mr. Howe's statement about the County's Goal 5 acknowledgment or, more importantly, to the present application and its satisfaction of the applicable criteria.

The truly incredible aspect of Mr. Malone's (and especially Ms. Segel's) so-called response to all the evidence we submitted is to provide a single 1993 letter from an out-of-county person and to take issue with a statement that required judicial interpretation to be clarified. Is that all LandWatch has to say about our evidence? What about Mr. Remboldt's letter? The letters from the Fire Chief? What is your response to the County's adoption, in 2002, of an F-2 zoning ordinance that included the template dwelling provisions that are in effect and applicable to this application? Mr. Malone, Ms. Segel, Mr. Mulkey and the rest of LandWatch, please explain why and how Goal 5 was violated, affected, addressed, considered or otherwise became an issue when the template zoning was adopted by Lane County?

Beyond all the evidence that Mr. Belknap has provided into this record, LandWatch has not responded to Ms. Davies' rejection of its Goal 5 argument as set forth in her decision in PA 18-05913, decided November 25, 2019 (*Green*). *See* Ex "A", Farthing letter 12-18-19. In her decision, Ms. Davies provides a detailed response to LandWatch's claim that for this and presumably all future forest template dwelling applications in Lane County that are on lots less than 40 acres are in conflict with the well-known Policy 11 of the Flora and Fauna Working Paper. LandWatch has no response to her analysis and reasoning rejecting that groundless allegation.

Again, Mr. Belknap's response to Ms. Segel is necessary and complete. It is both frustrating and unproductive to continually respond to the same inconclusive and unsupported claims of what the law should be rather than what it is and how it is applied. LandWatch, your rhetoric is growing old and irrelevant.

Sincerely,

Michael E. Farthing

Enclosure

c: Gary Darnielle (via email)
Rachel Serslev (via email)
Nimpkish LLC (via email)
Jim Belknap (via email)
Sean Malone (via email)
Andrew Mulkey (via email)

SERSLEV Rachel

From: Sean Malone <seanmalone8@hotmail.com>
Sent: Thursday, December 19, 2019 3:52 PM
To: SERSLEV Rachel; DARNIELLE Gary L; Lauri Segal; FARTHING Michael (SMTP); GILBRIDE Kevin E
Subject: LandWatch - 2nd open record testimony - Nimpkish/PA19-05298
Attachments: Malone to Lane County re Nimpkish - 12.19.19.pdf

Follow Up Flag: Follow up
Flag Status: Completed

[EXTERNAL □]

Please add the attached testimony to the record for Nimpkish/PA19-05298.

Thank you,

Sean Malone
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December 19, 2019

Via Hand Delivery

Lane County Hearings Official
c/o Lane County Planning Department
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-4065

Re: LandWatch testimony in opposition to Request for Template Dwelling in the F-2 zone, 509-PA19-05298 (Nimpkish).

On behalf of LandWatch Lane County, please accept this testimony in support of the appeal and in opposition to the application described above.

The Howe and Mann letters are not supported evidence. Instead, they are merely conjecture about the alleged rationale or purpose of what occurred in the mid-80s. This rationale should be set forth in some adopted document, ordinance, or order, not the alleged recollection of these two individuals. Central to the letters is the following paragraphs:

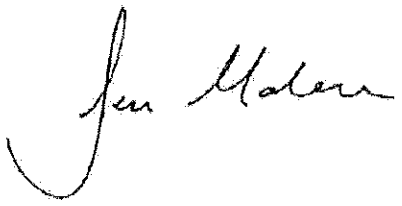
> "At the same time, Lane County was trying to comply with Goal 4 requirements for Forest Lands and Lane County adopted Goal 4, Policy 5 that prohibited new dwellings on Non-Impacted Forest Lands zoned F-1. This prohibition applied to 84% of Lane County and substantially addressed the concerns of residential impacts on Big Game Habitat raised under Goal 5 by the ODFW. As a result, Policies 9, 10, and 11 of the 1982 Flora and Fauna Working Paper do not designate any Big Game Habitat areas as significant 'C'.
>
> Lane County limited residential develop in Big Game Habitat areas by prohibiting new dwellings in 84% of Lane County (the F1 zone). Lane County complied with the Goal 5 Rule and did not need to further restrict development in Big Game Habitat areas because so much land was preserved from development. Lane County's Big Game Habitat was not categorized as a significant Goal 5 resource. Based on this recognition, no analysis of residential densities is required in wildlife habitat areas in Lane County. Therefore, there are no development limitations on residential densities in Lane County."

Howe Letter, Oct. 14, 2019. This unsupported conclusion was rebuffed by LUBA in *Save TV Butte v. Lane County*, LUBA No. 2017-031, slip op at 20-27, in which it appears either Mr. Mann or Mr. Howe already spun this yarn. More specifically, LUBA stated:

> "Based on what the county did in the Flora & Fauna Working Paper, ti is most accurate to say the county adopted a 1C inventory decision, *i.e.*, that the inventoried big game habitat is 'significant or important.' While one can question whether the Flora and Fauna working Paper fully complies with the Goal 5 rule, it is quite clear the county did not adopt a 1A decision, and despite the planner's suggestions to the contrary, it did not adopt a 1B decision either, because it adopted in the Flora & Fauna Working Paper, which explains how the county will go about implementing ODFW's density recommendations in big game ranges. We agree with petitioners that the county erroneously determined that its adopted inventory of big game habitat is not 'an acknowledged list of significant resources . . . for which the requirements of Goal 5 have been completed at the time the PAPA [in this case was] initiated,' within the meaning of OAR 660-023-0180(5)(b)(D)."

Save TV Butte, slip op at 26-27. Clearly, this contradicts the Howe and Mann letters' central tenet, and the other unsupported allegations in the letter should also be rejected, unless or until some evidentiary support for the veracity of the statements has been proffered. As of yet, there has been no such showing, just baseless conclusions.

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

SERSLEV Rachel

From: Lauri Segel-Vaccher <fourhope@comcast.net>
Sent: Thursday, December 19, 2019 3:58 PM
To: GILBRIDE Kevin E
Cc: SERSLEV Rachel
Subject: NIMPKISH new Open Record PA1905298
Attachments: Aileen Kaye 1993 letter re HB 3661 and Lane County.pdf

[EXTERNAL ☐]

Kevin,

Please enter the following remarks into the re-opened record of PA1905298 on behalf of LandWatch Lane County, and please confirm receipt.

thank you.

Lauri Segel
LWLC
PO Box 5347 Eugene 97405

****

LandWatch Lane County has been criticized for expressing the opinion that letters from previous Lane County planning directors should not and cannot be relied on as substantial evidence.

Neither letter was signed in the presence of a Notary, which could have easily been done. Neither letter provided substantial evidence (Ordinances/Orders/Acknowledgments/Minutes, etc.) to support their assertions.

In addition, it is not true, as has been asserted, that LWLC made a "personal jab at Mr. Howe's credibility that is most likely based on LandWatch's inability to convince Mr. Howe when he was Director, that their interpretations of Lane Code should be implemented."

The fact is that Mr. Howe has never shied away from colluding with the developers and their agents, as the attached letter shows. All the interpretations the County relied on between the mid 1980s until fairly recent times came in large part from the developers and their agents, including Board interpretations adopted by Board Orders. LWLC only requested and expected a level playing field, a neutral Planning Director, not acquiescence to our points of view.

Finally, regarding the idea asserted by the applicant that the 1993 template law had the effect of establishing "finite" density and that only subsequent plan amendments and zone changes would result in increased number of "residential lots" - in fact, this lot, and 3 other Nimpkish/Goodman 'lots' (#506, 508, 509) are NEW as of 2019 when they were 'segregated' by Assessment and Taxation as 'new tax lots' in response to recording of conveyance deeds (for $00 dollars) from Goodman to Nimpkish (also established in 2019) .

In fact, LC's practices regarding underlying units of land was hatched by the developers and the agents in the mid-1980's, a practice that both Mr. Mann and Mr. Howe enabled and which has had the effect of adding tens of dozens

of new small sized tax lots to lane county's forest land base, without any reviews pursuant to subdivision or partitioning laws that require consideration of multiple factors including access and compliance with the Goals.

BILL # HB 3661
HOUSE NR E&E SUBCOMMITTEE
EXHIBIT H
DATE 5-10-93 PAGES 3
SUBMITTED BY Aileen P. Kaye



10095 Parrish Gap Rd., SE
Turner, Oregon 97392
May 10, 1993

House Committee on Natural Resources
453-B State Capitol
Salem, Or. 97310

Re:HB 3661

Mr. Chairman and Members of the Committee:

Please do not pass HB 3661 which is designed to severely weaken our existing land use laws. I am very concerned that this bill allows our precious rural lands to be handed over to the so called land "developers". This bill opens vast areas of rural land to subdivision which will result in a California-like mess of urban sprawl, water problems, loss of wildlife habitat, loss of grazing land, traffic problems, loss of quality of life. This bill shows a disdain for wildlife, green space, wetlands, flora, pasture, hay production, etc. Building houses on those lands means building roads, stretching scarce water supplies, etc. It displaces or kills birds of prey, deer, etc.

We must reserve the rural lands for rural uses. This bill would encourage people who do not need rural land for growing of crops or raising of animals to move to the country just for the view. This is what ruined California.

Our current system allows enough home building. This is evidenced by the rapid housing development in Washington and Deschutes counties. Please also see the attached article about the rapid growth of housing on rural lands in Marion County.

HB 3661 ends current land use protections by:

**Giving more power to County Commissioners who, in my opinion, are usually beholding to builders and housing developers. They also have been hiring county planners who favor allowing housing on rural and forest land rather than preserving it.*

**Allowing subdivision of rural lands to as little as ten-acre parcels.*

**Opening up land for residential development now used for the growing of hay and the pasturing of livestock for housing development.*

I witnessed a very disturbing incident last June 29. My husband and I went to breakfast at Sybil's Omelettes in Salem. I had just read an article in the Salem newspaper about the formation of a group of architects and housing developers who want to abolish city governments and form a "regional" government with paid "commissioners". My husband then said, "Listen to this conversation next to us!"

Seated next to us were five men. They were saying things such as:

1."We've got to legitimize rural development."
2."Forget the forest lands for now; concentrate on agricultural land. We've got to change the minimum lot size; it is only there for administrative convenience."
3."Get rid of the 20 acre requirement."
4."Get rid of the urban growth boundary system."
5."We should not be preserving rural lands just because some farmer may lease it."
6."Jim knew land use better than Mashofsky."
7."We must get rid of the exception process."
8."It's local government vs. state government."
9."We must change the definition of rural lands."

My husband and I thought these must be members of this new Salem group trying to recruit more members. As they left, I said to one of them, "You builders have taken enough rural land already. Just leave the rest alone! You must be from that new group starting in Salem."

He said, "No, I'm from Lane County and this group is from all over the state. I'm sick of Californians getting all of the good land out in the country. We want more rural land for Oregonians like my relatives to move onto!" (I later found out his name was Dale Riddle.)

I said, "Do your relatives have livestock or crops for which they need rural land?" He said, "no". As he left, I was shocked to see him get into a publicly owned car driven by the man who seemed in charge of the meeting.

When I got home, I called the Legislature to see if some land use hearing was being held. There was a meeting of a "work group" scheduled for 9 AM in the conference room of the Indian Commission (how ironic). I then called the Lane County motor pool to find out the name of the driver. The driver turned out to be Kent Howe who apparently is a land use planner for Lane County. As Mr. Howe was the one who said most of the things listed above, I was really taken aback and thought this is really a case of the fox guarding the hen house.

I then went to the Capitol to the meeting of the Work Group. All five men were there. The chairman of the group (Rep. Jerry Barnes) and one other legislative member had been at Sybil's. The fifth man was Fred Van Natta.

The LCDC is greatly needed. It already weakened the land use rules this past year. Please do not weaken the law any further. KEEP OREGON THE "OREGON" WE ARE KNOWN FOR NATIONALLY. Thank you for your time.

Sincerely,

Aileen P. Kaye

Aileen P. Kaye

Additional Information Submitted

Date Stamp
RECEIVED
DEC 19 2019

Submitted By: Jim Belknap
Phone Number: 541-954-2944
Email Address: jim.e.belknap@gmail.com
Project Address: _____

Permit Number (BP, PA, SP, SI): 509-PA19-05298
Submittal Description: Additional submission to re-opened record

Type of Submittal:

☐ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other: _____

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: PA Basket Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

smw 12/26/2018

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jlm.e.belknap@gmail.com

Gary Darnielle
Lane County Hearings Official
C/O Rachel Serslev or Kevin Gilbride, Planners
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Original by Personal Delivery, electronic copy enclosed

Re: 509-PA19-05298

December 18, 2019

Dear Mr. Darnielle:

This letter is being submitted as part of the reopened record in PA19-05298. In viewing the issues that have arisen in the consideration of an application for a Template Dwelling approval on an adjoining tax lot I am including information that, while not requested specifically with regards to this application, appears to touch on areas of interest that have been expressed in the hearing of the appeal of PA19-05299.

Well Logs. At the November 14 hearing of the appeal for PA19-05299 the question was posed if we had assembled well logs for the area around the subject property and I responded we had not. A comment was made that the area is "known for low production wells" (or words to that effect) and a request followed that we gather information on well logs. While I remain perplexed as to how this matter is identified in Lane Code as being applicable to the evaluation of a Template Test Special Use Permit, I am happy to address such concerns and will do so again with regards to this application.

At Exhibit 1 to this letter is a summary of wells located in Section 11, Township 18 South, Range 2 West Willamette Meridian. As noted in this summary, there are 57 Water Well Reports maintained by the Oregon Water Resources Department, 3 relating to State of Oregon requirements to note well abandonment, 1 to an extension of casing, and 53 reporting on the construction of wells. The flows range from 0 gallons per minute (GPM) to 360 GPM. In parcels nearby or adjoining the subject property a well is noted as having 8 GPM on Tax Lot 506, wells having a 3 GPM flow and 5 GPM flow on Tax Lot 501 (abutting the subject property

to the east). Approximately 450 feet to the west of the subject on Tax Lot 404 are wells having 1.5 GPM and 2.6 GPM. Across R. R. Baker Road is Tax Lot 600 having a well producing 5 GPM and south of Lot 600 is Tax Lot 701 with a flow of 60 GPM. Approximately 2200 feet to the west is Tax Lot 302 with a well having a flow of 100 GPM.

As noted in our report, we are providing the ten entry summary pages maintained by the Water Resources Department and a map with annotations made for the lots that have been identified from well logs depicting the reported flow of the wells. We have obtained each of the well logs (approximately 70 pages) and will provide those if requested, however for brevity they are not included with this letter. It would seem the summary pages depict accurately the performance of the wells in the area. As the question seems to be one of "feasibility" – that is, is it feasible that the applicant will be able to drill a well on the subject property sufficient to meet domestic water needs - we feel the answer is affirmative.

Road Grade. At the hearing for the appeal of PA19-05299 the question was asked if the Fire Chief, Andrew Smith, from the Pleasant Hill-Goshen Fire and Rescue Department had considered the grade of the driveway proposed for access to Tax Lot 506, the subject property of that Planning Action. I commented that Chief Smith had seen the driveway proposal when he conducted his on-site evaluation of the design for the reconstruction of R. R. Baker Road on March 13, 2019 that resulted in his letter of March 14 stating the proposal met the preliminary conditions of approval, but we had not asked him to walk over the actual driveway.

At our request Chief Smith, on December 6, 2019, conducted an additional inspection of the subject property, again evaluating the grade of each section of R. R. Baker Road from its starting point at Wallace Creek Road to the proposed termination point of our reconstruction, the driveway access to Tax Lot 507, the subject of PA19-05298. I identified our proposed turn-around points and we discussed the specific issue of "Chimney Draw Effect." In addition, we asked Chief Smith to walk the proposed driveways for Tax Lot 507 and 506. Chief Smith noted the driveway approach into Tax Lot 507 is virtually at grade from R. R. Baker Road.

Chief Smith has provided an additional letter discussing his review of the site, the proposed road and grade issues and the proposed driveway and its grade as it accesses Tax Lot 506, as well as comment on the risk of Chimney Draw Effect. A copy of Chief Smith's letter dated December 9, 2019 is attached at Exhibit 2.

Landslide Susceptibility. We have provided a letter from Michael Remboldt, a licensed Professional Engineer and Geotechnical Engineer, and principal with K & A Engineering, dated October 31, 2019. Mr. Remboldt's letter followed his on-site evaluation of the property and other elements of review customarily entailed in what is referred to as a Level 1 report. In that letter Mr. Remboldt concludes:

> "Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT

> needed to ensure safety on or off the property with respect to hazards associated with slope movement."

In response to the attack leveled by Sean Malone and Andrew Mulkey on Mr. Remboldt's October 31, 2019 letter we asked Mr. Remboldt to address their specific concerns. Mr. Remboldt provided a letter dated December 2, 2019, which has also been placed in the record, discussing the erroneous conclusions made by Mr. Malone and Mr. Mulkey. As a result of questions that arose at the hearing for the appeal of PA19-05299 we asked Mr. Remboldt to again discuss the elements of a Level 1 evaluation of landslide hazard and to discuss specifically his evaluation of R. R. Baker Road. Mr. Remboldt provided a letter dated December 11, 2019 with specific comments relating to the stability of R. R. Baker Road, the private access road to Tax Lot 507, the subject of this application and appeal. Copies of the correspondence from K&A Engineering, Inc., authored by Michael Remboldt, P.E., G. E. (Licensed Professional Engineer and Geotechnical Engineer) are included with this letter at Exhibit 3.

Mr. Malone has objected in other correspondence to the use of the K & A Engineering report stating somehow we are deferring "discretionary decision-making to a point in the future in violation of Rhyne v Multnomah County." The discretion to be applied at some future time in this case is in the actual issuance of a building permit, not in meeting the standards of approval for a Template Dwelling or other land use application.

At some future time an applicant is going to request a building permit from Lane County for the subject property and be required to submit specific information with regards to the size and weight of the building, how ground water and precipitation will be dispersed or disposed of, what kind of foundation has been designed, how close will the structure be to breaks in the physical relief of the land, etc.

At the risk of being overly simplistic, this application process and review will vary widely on whether one is seeking to place a single wide mobile home or construct a three story 8,000 square foot house with a daylight basement. The building department officials will engage to request additional information at such time relating to a geotechnical report that examines the specific proposal for construction. At such time, as Mr. Remboldt points out in his December 11, 2019 letter, the likely requirement will be a Level 2 geotechnical analysis, but that decision will be based on the proposed structure and will result in requirements of construction for excavation, soil compaction, foundation design, size and component, and finally the issuance of a building permit that will meet the Oregon Structural Specialty Code, or the denial of such a permit.

If the applicant for the building permit cannot meet the requirements of the county building department with regards to a sufficient geotechnical analysis no building permit will be issued. The issuance of the building permit is not a foregone conclusion with the meeting of the Template Test requirements for a Special Use Permit. Mr. Malone has jumped to the conclusion that relying upon the building officials to approve the design of the structure in accordance with

building code and sound engineering is "not accountable to the general public.... (and is) potentially in conflict with siting criteria and even the approved site plan."

Potentially? Not accountable to the general public? Every building permit issued by every building department in the State of Oregon is accountable to the public for its compliance with the State's building code. It is the public that is set out to be protected in the approval of a building permit.

Mr. Malone in his representation of LandWatch Lane County in other appeals has previously stated the "Lane County Rural Comprehensive plan policies related to hazardous areas include Goal 7 policies 1, 2 and 3 which provide as follows:"

"1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decision(s). Specific land use decisions shall be based upon inventory and **upon on-site or other evaluation as appropriate.**"

My emphasis added.

Mr. Malone has continued:

"Here, because this is a specific land use decision, **the application must include "on-site or other evaluation as appropriate."**

"As such, Goal 7 may apply directly*, including the requirement that 'when reviewing development requests in high hazard areas, local government should require site-specific reports, appropriate for the level and type of hazard (e.g. hydrologic reports, **geotechnical reports** or other scientific or engineering reports) prepared by a **licensed professional**'...."

*(May apply? Certainly a definitive and well supported statement!)
Emphasis Added

How can Mr. Malone conclude that we have done anything other than complete an "on-site" evaluation of the property by a licensed professional, appropriate for the evaluation of the proposed development at this time?

Easement for the use of R. R. Baker Road. At the hearing for the appeal of PA19-05299, the question was expressed as to the access provisions made in the easement for R. R. Baker Road and whether that easement would allow for the reconstruction that we proposed. We provided a copy of the easement in the application under PA19-05298, noted as having been recorded at Lane County Recorder's Reception Number 2019-010337. County staff reviewed the easement as complying with access requirements for a Template Test Special Use Permit. The specific question posed was whether the easement would allow the applicant to carry out the proposed reconstruction and establishment of turn around points.

I am attaching a copy of the recorded easement to this letter as Exhibit 4. Please note Section 5.2, "Maintenance/Repair. Any party may cause the easement, or any portion thereof, to be maintained, repaired or reconstructed." The easement continues in Section 5.6, "Perpetual. The grant of this easement is perpetual and non-exclusive and shall run with the land and shall be binding upon and inure to the benefit of the Grantors and Grantees and their heirs, successors, and assigns."

Hendrickson Well Drilling. At the November 14, 2019 hearing of the appeal of PA19-05299 Mr. Malone challenged the letter we had provided by Jeff Hendrickson, principal in Hendrickson Well Drilling, as to their qualification to carry out the road construction proposed for R. R. Baker Road. Mr. Hendrickson's previous letter was also submitted with the application that is the subject of this letter, PA19-05298. Without any knowledge of the contractor's ability Mr. Malone managed to sow the seed of confusion and introduce a level of doubt that resulted in a question on the part of the Hearings Official about whether the construction of the road by a "well drilling company" could actually be accomplished. I am attaching at Exhibit 5 a letter dated December 5, 2019 from Jeff Hendrickson, owner of Hendrickson Well Drilling, that discusses his company's history and their name and provides a few photographs of their construction equipment.

We previously provided for the record a copy of the Land Conservation and Development Commission Acknowledgment of Compliance, Lane County, dated September 12, 1984 with an annotated date of "Commission Action" of September 13, 1984. Pages 15 through 26 provide a broadly encompassing discussion of the application of the Flora and Fauna Working Paper, the evaluation of various parcel sizes to be applied to forest zoned lands and the allowance of residential construction in the various zoned areas.

Prior to the acknowledgement of the Lane County Comprehensive Plan by LCDC was a thorough vetting of the county's attempts at obtaining acknowledgment, notably discussed in the document attached at Exhibit 6 to this letter, entitled "Land Conservation and Development Commission Acknowledgment of Compliance" with a "Date of Commission Action of August 17, 1984." Now submitted for the record, this document provides a very fascinating discussion of the various "stakeholders" to the adoption of the county's plan. Notably such groups as 1000 Friends of Oregon, Oregon Department of Fish and Wildlife, League of Women Voters of Central Lane County, Lane County Audubon Society and private land owners submitted objections and comments on the proposed comprehensive plan. In response to these inputs was the report discussed above and attached at Exhibit 6 that eventually resulted in the acknowledgement of Lane County's Comprehensive Plan.

The last item of discussion in this letter is a response to a bizarre letter provided by Sean Malone, dated December 12, 2019, and referencing "PA19-05298," the subject of the application under appeal and this record, but noting the owner as "Goodman." PA19-05298 is applicable to Tax Lot 18-02-11-00-00507, the owner is NIMPKISH, LLC. PA19-05299 is applicable to Tax Lot 18-02-11-00-00506, the owners are Gray and Dorotea Goodman. On the surface the issue may

be as innocuous as a typographical error, however Mr. Malone's letter goes on to discuss a secondary fuel break issue that supposedly extends to a property to the south, identified as Tax Lot 18-02-11-00-00508, and demands an easement be granted over Tax Lot 508 for the benefit of an unidentified property, but presumably Tax Lot 506. A review of the Site Plan and the Parcel Map of Tax Lot 506 clearly shows the proposed fuel break being over 400 feet away from the boundary with Lot 508.

The content of Mr. Malone's December 12, 2019 letter appears to have no consequence on the discussion of the application for a Special Use Permit allowing a Template Test Dwelling on Tax Lot 507, but his reference to the Planning Action Number of PA19-05298 again sows the seeds of confusion over the entire process of reviewing the appeal filed by LandWatch Lane County.

In response to Mr. Malone's December 12, 2019 letter I prepared a written discussion of the above points and submitted it for the record of PA19-05299. Addressing what may be as simple as a typographical error, but not wishing to rely on that belief and failing to insure the record is fully established for PA19-05298, I am enclosing at Exhibit 7 the letter submitted in PA19-05299 dated December 17, 2019.

I thank you for allowing the record to be re-opened and appreciate the opportunity to submit the enclosed additional material.

Sincerely,

Jim Belknap

Jim Belknap

Encl Exhibit 1 Well Log Summary
Exhibit 2 Pleasant Hill-Goshen Fire and Rescue Department Correspondence
Exhibit 3 K & A Engineering Correspondence
Exhibit 4 R. R. Baker Road Access Easement
Exhibit 5 Hendrickson Well Drilling Correspondence and Photographs
Exhibit 6 Land Conservation and Development Commission Acknowledgment of Compliance dated August 17, 1984
Exhibit 7 Letter dated December 17, 2019 Re: PA19-05299, Malone 12/12/19 Letter

Cc: NIMPKISH, LLC
Michael Farthing

PA19-05299
Tax Lot 18-02-11-00-00506
Goodman

Well Log Summary

We researched the records of the Oregon Water Resources Department for Water Well Reports (Well Logs) relating to wells located within Section 11 of Township 18 South, Range 2 West. 57 reports are maintained by the State of Oregon in Section 11, 3 of those reports are of abandonment operations on wells, 1 report was for an extension of casing with no new depth being drilled. The remaining 53 reports cover a time span from the early 1960s through this year. Notably, many of the reports dating to the 1960s and 1970s do not provide tax lot number, address or sufficient information to make an identification of where the well was drilled. The more recent well logs give quarter/quarter section data or tax lot identification. Included with this summary is a full section map for Section 11 from the Lane County Department of Assessment and Taxation with annotations made in each tax lot where the Well Log can be confirmed to note the reported yield of water.

Also included with this report are the six summary pages for Section 11 as maintained by the Water Resources Department. Each of the summary pages have 10 entries, except for the final page that has 7. Where reported the fourth column from the left side of the page has the tax lot identified. The twelfth column from the left has the reported yield in gallons per minute of the well. Complete copies of each of the Water Well Reports listed in the summary pages have been obtained and are available on request. This compilation of reports is approximately 70 pages in length and for brevity is not being provided with this summary discussion.

As is typical for Lane County, the wells vary greatly. In our study area the wells range from 0 gallons per minute ("dry holes") to 360 gallons per minute. In some cases a single tax lot will have two or more wells ranging in production from 0 gallons per minute to 30 gallons per minute. Water, it seems, is where you find it.

With regards to the immediate area of the Subject Property, Tax Lot 506: to the north on Tax Lot 401 are two wells, one having a production of 1 gallon per minute, the second having production of 8 gallons per minute. Nearby the Subject Property to the east is Tax Lot 501 also having two wells, one with a yield of 3 gallons per minute, the other producing 5 gallons per minute. To the west of the Subject is Tax Lot 404 with two wells, one with a yield of 1.5 gallons per minute, the other with 2.6 gallons per minute. Across R. R. Baker Road from the Subject Property is Tax Lot 600 with a well producing 5 gallons per minute. Immediately south of Tax Lot 600 is Tax Lot 701 having a well producing 60 gallons per minute. A third of a mile west of the Subject Property is Tax Lot 302 having a well producing 100 gallons per minute.

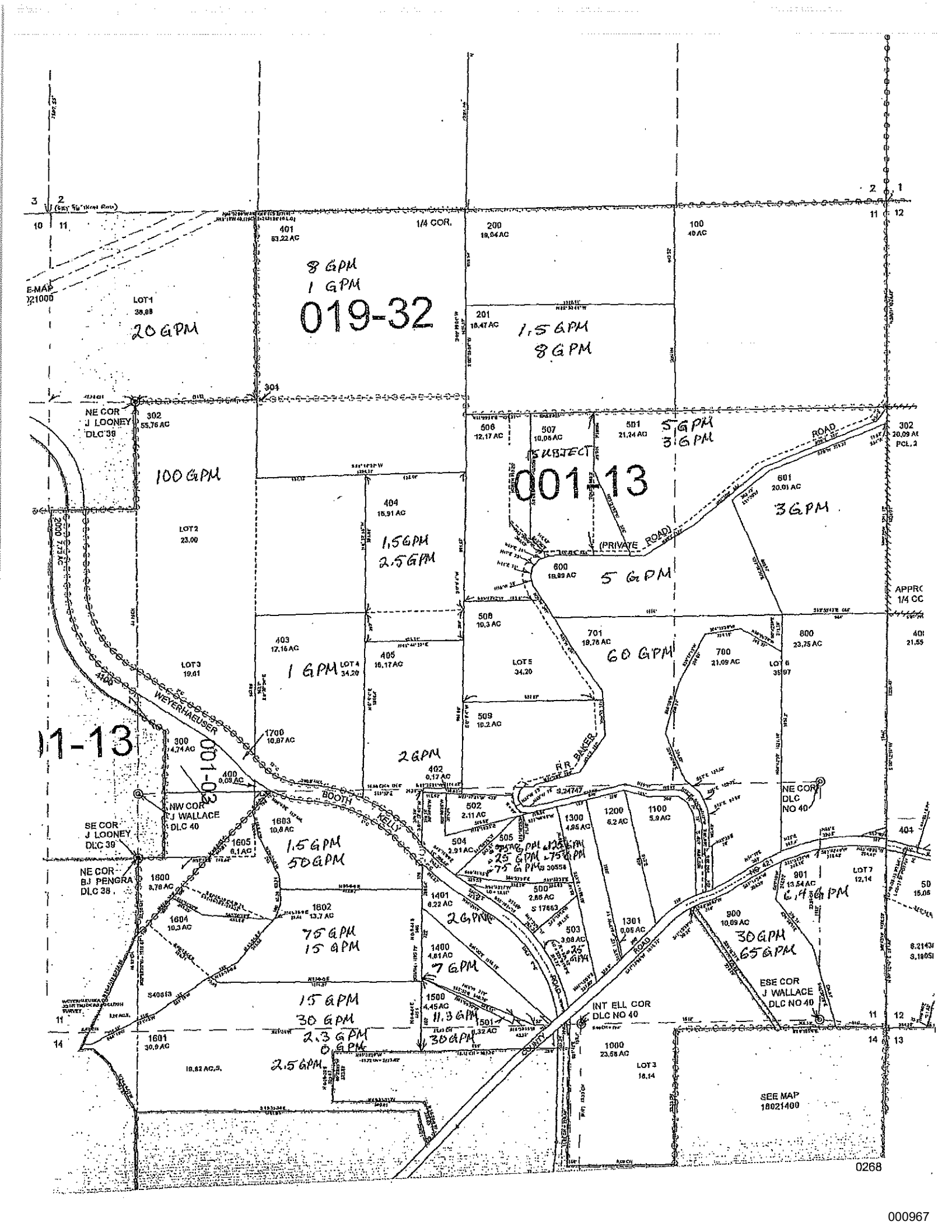
While there are certainly properties in Section 11 with a troubled history of wells, there are also properties having wells with significant flows of water. A well with a flow of 1 gallon per minute will produce 1,440 gallons of water per day, usually pumped with some type of a flow restrictor to not

overtax the pump into a holding tank where another pump will maintain a flow to the residence meeting a short term increase in periodic demand such as from bathing, clothes washing, etc.

It should be noted the typical septic system is designed to accommodate 450 gallons of effluent per day: waste water from toilets, bathing, washing of clothes and dishes, etc. While this will not leave sufficient water to support a large lawn it will allow for a small garden area and more than adequate drinking water. In our example of the 1 gallon per minute well and the use of a holding tank, the water system will make available approximately 1,000 gallons of water per day after meeting the usual demand for water that will be discharged into a septic system. To put this into context, and by way of example, the typical "Rainbird" style of sprinkler will use 2.7 gallons per minute of water when operated at 40 pounds per square inch of pressure, a common water pressure delivered to a residence. Thus the available water for something like a small garden or lawn area would be adequate to operate the sprinkler for about five hours after allowing for 100 gallons per day of drinking water.

It is simply not uncommon for rural landowners to manage their domestic water usage as opposed to urban dwellers that have all the water they could ever consider needing delivered to the meter in their front yard.

The research of Well Logs in Section 11 indicates it is feasible to expect that a well can be drilled on the Subject Property that will meet domestic purposes.


8 GPM
1 GPM
019-32
20 GPM
1.5 GPM
8 GPM
100 GPM
SUBJECT
001-13
5 GPM
3 GPM
3 GPM
1.5 GPM
2.5 GPM
5 GPM
60 GPM
1 GPM
2 GPM
1.5 GPM
50 GPM
75 GPM
15 GPM
15 GPM
30 GPM
2.3 GPM
7 GPM
11.3 GPM
30 GPM
2.5 GPM
6.4 GPM
30 GPM
65 GPM
NE COR J LOONEY DLC 39
NW COR J WALLACE DLC 40
SE COR J LOONEY DLC 39
NE COR BJ PENGRA DLC 38
NE COR DLC NO 40
ESE COR J WALLACE DLC NO 40
INT ELL COR DLC NO 40
(PRIVATE ROAD)
WEYERHAEUSER
BOOTH KELLY
R.R. BAKER
COUNTY ROAD
SEE MAP 18021400
0268
000967

Oregon Water Resources Department
Well Report Query

Main Help
Return Contact Us

Well Report Query Results *GPS points, where available are at the far right of the table. Click link to view on map*

Township: 18 S, Range: 2 W, Sections: 11

Well Log	Details	T-R-S/ QQ-Q	Tax Lot	Street of Well	Owner	Company	Special Standards	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Received Date	Bonded Contractor	Startcard	Well ID #	New	Abandon	Deepen	Alteration	Conversion	Domestic	Irrigation
LANE 1244	Details	18.00S-2.00W-11 -			PARSONS, LARRY 38763 ROW RIVER RD COTTAGE GROVE OR 97424			W	139.00	275.00	60.0	15.0	02/09/1984	02/22/1984	JONES, CASEY L CASEY JONES WELL DRILLING CO.			✔					✔	
LANE 1440	Details	18.00S-2.00W-11 SW-NE	600		JONES, CASEY L 37116 IMMIGRANT RD PLEASANT HILL OR 97455			W	332.00	690.00	110.0	5.0	10/28/1992	11/25/1992	JONES, CASEY L	40512		✔					✔	
LANE 1490	Details	18.00S-2.00W-11 SW-NE	701	WALLACE CR RD	JONES, CASEY 37116 IMMIGRANT RD PLEASANT HILL OR 97455			W	191.00	226.00	134.0	60.0	08/30/1993	09/24/1993	JONES JR, CASEY L	57601		✔					✔	
LANE 2440	Details	18.00S-2.00W-11 SW-SE	1401	37065 WALLACE CREEK RD	ROSSO, JACK 37065 WALLACE CREEK RD SPRINGFIELD OR 97478			W	190.00	450.00	52.0	2.0	10/09/1995	11/13/1995	JONES, CASEY JR	83712		✔					✔	
LANE 1244	Details	18.00S-2.00W-11 -	901	WALLACE CRK RD, JASPER	WHIPPLE, BOB 48582 MCKENZIE HWY VIDA OR 97488			W	120.00	275.00	65.0	6.4	07/17/1985	10/29/1985	CHRISTENSEN, PAUL			✔					✔	
LANE 1625	Details	18.00S-2.00W-11 -			PETERSON, RONALD			W	210.00	435.00	200.0	100.0	10/21/1982	11/05/1982	JONES, CASEY L			✔					✔	
LANE 1626	Details	18.00S-2.00W-11 -			PETERSON, RONALD			W	92.00	660.00	630.0	1.0	10/15/1982	11/05/1982	JONES, CASEY L			✔					✔	
LANE 1000	Details	18.00S-2.00W-11 -			HEDDON, DANIEL			W	45.00	350.00	40.0	6.0	09/24/1979	10/19/1979	JONES, CASEY L			✔					✔	
LANE 1608	Details	18.00S-2.00W-11 -			SCHULZ, LYLE			W	0.00	400.00	52.0	4.0	08/18/1967	12/05/1967	WILSON, WALT GROUND WATER SYSTEMS INC					✔			✔	
LANE 1548	Details	18.00S-2.00W-11 -			FERRINGTON, HARDY W			W	0.00	100.00	50.0	100.0	08/24/1966	09/06/1966	JONES, DELBERT S			✔					✔	

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Township: 18 S, Range: 2 W, Sections: 11

Well Log	Details	T-R-S/ QQ-Q	Tax Lot	Street of Well	Owner	Company	Special Standards	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Received Date	Bonded Contractor	Startcard	Well Id #	New	Abandon	Deepen	Alteration	Conversion	Domestic	Irrigation
LABE 15360	Details	18.00S-2.00W-11 -SE			BAKER, FORREST			W	344.00	359.00	300.0	12.0	07/23/1976	07/30/1976	CARTER, JAMES I			✔					✔	
LABE 15361 Groundwater Info	Details	18.00S-2.00W-11 -			BARRETT, ROBERT (BOB) WALLACE CREEK RD SPRINGFIELD OR 97477			W	0.00	360.00	95.0	250.0	10/11/1955	03/07/1956	JONES, DELBERT S			✔					✔	
LABE 15362	Details	18.00S-2.00W-11 -			HUTCHINSON, N D			W	0.00	145.00	40.0	350.0	10/07/1965	10/21/1965	JONES, DELBERT S			✔					✔	
Abandonment LABE 15363	Details	18.00S-2.00W-11 -			REYNOLDS, BOB			W	0.00	0.00	0.0		05/27/1963	05/27/1963	JONES, DELBERT S			✔	✔				✔	
LABE 15364 Groundwater Info	Details	18.00S-2.00W-11 -			REYNOLDS, ROBERT			W	0.00	605.00	240.0	360.0	09/02/1964	09/28/1964	JONES, DELBERT S			✔					✔	
LABE 15365	Details	18.00S-2.00W-11 -			PARSON, MR LARRY			W	60.00	105.00	12.0	7.0	06/27/1977	07/05/1977	JONES, CASEY L			✔					✔	
LABE 15366	Details	18.00S-2.00W-11 -			BROWN, HOBART			W	0.00	125.00	73.0	20.0	08/13/1962	09/04/1963	JONES, DELBERT S					✔			✔	
LABE 15367	Details	18.00S-2.00W-11 -			BROWN, HOBERT			W	0.00	100.00	70.0	25.0	00/00/1960	03/28/1961	JONES, DELBERT S			✔					✔	
LABE 15368	Details	18.00S-2.00W-11 NW-NW			REYNOLDS, BOB			W	0.00	218.00	80.0	20.0	05/28/1963	05/28/1963	JONES, DELBERT S			✔					✔	
LABE 51023	Details	18.00S-2.00W-11 SW-SE	505	.25 MILES UP RR BAKER RD ON LEFT, JASPER	REXIUS, RUSSELL 1764 KINGS NORTH ST EUGENE OR 97401			W	233.00	445.00	380.0	0.0	07/05/1996	07/19/1996	JONES JR, CASEY CASEY JONES WELL DRILLING	91897	3730	✔					✔	

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Township: 18 S, Range: 2 W, Sections: 11

Well Log	Details	T-R-S/ QQ-D	Parcel	Street of Well	Owner	Company	Special Standards	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Received Date	Bonded Contractor	Startcard	Well Tag #	View	Apparatus
LANE 51161	Details	18.00S-2.00W-11 SW-SE	505		REXIUS, RUSTY 1764 KINGS N ST EUGENE OR 97401			W	162.00	267.00	159.0	0.0	07/30/1996	08/29/1996	JONES JR, CASEY CASEY JONES WELL DRILLING	91677	3763	✔	
LANE 51229	Details	18.00S-2.00W-11 NE-NE	601	86711 R R BAKER RD	WYRICK, GREGORY 86711 R R BAKER RD SPRINGFIELD OR 97478			W	253.00	285.00	96.0	3.0	07/30/1996	08/30/1996	LEE, KIRT E. LEE WELL DRILLING & PUMP SERVI	92504	1546		
LANE 51352	Details	18.00S-2.00W-11 SW-SE	505	.25 MILE UP RR BAKER RD ON LEFT, JASPER	HOUTMAN, JOEL 5300 PALMER CANYON CLAREMONT CA 91711			W	130.00	627.00	217.0	0.0	09/16/1996	09/16/1996	JONES JR, CASEY CASEY JONES WELL DRILLING	91687	5763	✔	
LANE 51353	Details	18.00S-2.00W-11 SW-SE	505	.25 MILE UP R R BAKER RD ON LEFT, JASPER	HOUTMAN, JOEL 5300 PALMER CANYON CLAREMONT CA 91711			W	200.00	485.00	245.0	0.0	09/21/1996	09/16/1996	JONES JR, CASEY CASEY JONES WELL DRILLING	92503	6771	✔	
LANE 51354	Details	18.00S-2.00W-11 SE-SE	900	37169 WALLACE CREEK RD	OFFENBACHER, CURT 37169 WALLACE CREEK RD SPRINGFIELD OR 97478			W	164.00	203.00	150.0	30.0	09/05/1996	09/16/1996	JONES JR, CASEY CASEY JONES WELL DRILLING	92874	6787	✔	
LANE 53555	Details	18.00S-2.00W-11 -	1500	37047 WALLACE CR RD	SMITH, OEB	JOE SMITH 37047 WALLACE CR RD SPRINGFIELD OR 97477		W						09/19/1997			19365		
LANE 59510	Details	18.00S-2.00W-11 SW-NE	701	86561 RR BAKER RD	GRACE, GARY 86561 RR BAKER RD SPRINGFIELD OR 97478			W		225.00	133.0		12/23/1999	01/25/2000	CHRISTENSEN, PAUL CHRISTENSEN WELL DRILLING	116106	31730		
LANE 59515	Details	18.00S-2.00W-11 SW-SE	503	37071 WALLACE CREEK RD	DENHAM, EDWIN	DENHAM, STEPHENIE 37071 WALLACE CREEK RD SPRINGFIELD OR 97478		W	250.00	305.00	242.0	0.0	08/28/2000	09/11/2000	JONES JR, CASEY CASEY JONES WELL DRILLING	135376	42695	✔	
LANE 59021	Details	18.00S-2.00W-11 SW-SE		86498 RR BAKER RD	LANGAN, TOM 86498 RR BAKER RD SPRINGFIELD OR 97478			W		570.00	260.0	0.0	10/04/2000	10/16/2000	JONES JR, CASEY CASEY JONES WELL DRILLING	136129	3763		
LANE 59020	Details	18.00S-2.00W-11 SE-SW	1500	37047 WALLACE CREEK RD	FEELEY, JOHN 37047 WALLACE CREEK RD SPRINGFIELD OR 97478			W	85.00	143.00	33.0	30.0	05/04/2004	05/07/2004	JONES JR, CASEY CASEY JONES WELL DRILLING	165532	70463	✔	

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Township: 18 S, Range: 2 W, Sections: 11

Well Log	Details	TR-SI QQ-Q	Tax lot	Street of Well	Owner	Company	Special Standards	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Received Date	Bonded Constructor	Startcard	Well Id #	New	Abandon	Deepen
LANE 64719	Details	18.00S-2.00W-11 -	600	BRAND S RD	SMEKAL WOLF, DEBORA PO BOX 2114 JASPER OR 97438			W	365.00	400.00	250.0	15.0	07/01/2005	08/05/2005	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	171777	74853	✔		
LANE 65131	Details	18.00S-2.00W-11 SE-SW	1500	37047 WALLACE CREEK RD	FEELEY, JOHN 37047 WALLACE CREEK RD SPRINGFIELD OR 97478			W		0.00			10/20/2005	10/24/2005	JONES JR, CASEY CASEY JONES WELL DRILLING	181097	19365		✔	
LANE 65961	Details	18.00S-2.00W-11 SE-SE	800	37160 WALLACE CREEK RD	OFFENBACHER, CURT 37160 WALLACE CREEK RD SPRINGFIELD OR 97478			W	480.00	497.00	178.0	65.0	09/17/1997	03/09/2006	JONES JR, CASEY CASEY JONES WELL DRILLING	101893	6787			✔
LANE 66345	Details	18.00S-2.00W-11 -	1600	35676 BRAND S RD, SPRINGFILED	SMEJKAL WOLF, DEBRA PO BOX 2114 JASPER OR 97438			W	260.00	300.00	45.0	15.0	06/09/2006	07/06/2006	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	187132	92062	✔		
LANE 66367	Details	18.00S-2.00W-11 -	1603	NEAR 35676 BRAND S RD, SPRINGFIELD	WOLF, DOUG	WOLF, DEBRA PO BOX 2114 JASPER OR 97438		W	160.00	490.00	90.0	1.5	07/25/2006	08/02/2006	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	187143	92096	✔		
LANE 66368	Details	18.00S-2.00W-11 -	1602	NEAR 35676 BRAND S RD, SPRINGFIELD	WOLF, DOUG	WOLF, DEBRA PO BOX 2114 JASPER OR 97438		W	260.00	280.00	75.0	75.0	07/26/2006	08/02/2006	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	187144	92095	✔		
LANE 66369	Details	18.00S-2.00W-11 -	1603	NEAR 35676 BRAND S RD, SPRINGFIELD	WOLF, DOUG	WOLF, DEBRA PO BOX 2114 JASPER OR 97438		W	405.00	420.00	75.0	60.0	07/27/2006	08/02/2006	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	187145	92097	✔		
LANE 66375	Details	18.00S-2.00W-11 SW-SW	1601	37661 WALLACE CREEK RD, SPRINGFIELD	WOLF, DOUG	WOLF, DEBBIE PO BOX 2114 JASPER OR 97438-0299		W	190.00	220.00	120.0	30.0	01/25/2006	02/22/2006	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	197625	91822	✔		
LANE 66828	Details	18.00S-2.00W-11 SE-SE	800	37221 WALLACE CREEK RD SPRINGFIELD, OR 97477	WINEGAR, FRED 37221 WALLACE CREEK RD SPRINGFIELD OR 97477			W		0.00			07/21/2008	07/23/2008	JONES JR, CASEY CASEY JONES WELL DRILLING	1004100			✔	
LANE 66838	Details	18.00S-2.00W-11 SW-SW	1601	36995 WALLACE CREEK RD JASPER, OREGON	ZIEMSKI, GLEN 2926 CHANDLER AVE EUGENE OR 97403			W	75.00	540.00	70.0	2.3	09/19/2008	09/22/2008	JONES JR, CASEY CASEY JONES WELL DRILLING	1004972	95683	✔		

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Well Log	Details	Y-R-S/ QQ-Q	Tax lot	Street of Well	Owner	Company	Special Standards	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Received Date	Bondad Constructor	Startcard	Well ID #	View	Abandoned	Deepen
LANE 60911	Details	18.00S-2.00W-11 SW-SW	1601	36995 WALLACE CREEK RD, JASPER	ZIEMSKI, GLEN 2926 CHANDLER AVE EUGENE OR 97403			W		420.00		0.0	09/22/2008	09/23/2008	JONES JR, CASEY CASEY JONES WELL DRILLING	188467	96684	✔		
LANE 60943	Details	18.00S-2.00W-11 SW-SW	1601	36995 WALLACE CREEK RD, JASPER	ZIEMSKI, GLEN 2926 CHANDLER AVE EUGENE OR 97403			W		660.00			09/23/2008	09/26/2008	JONES JR, CASEY CASEY JONES WELL DRILLING	188468	96685	✔		
LANE 60469	Details	18.00S-2.00W-11 SE-NE	501	86699 RR BAKER RD SPRINGFIELD, OR 97478	GOODMAN, GRAY 86699 RR BAKER RD SPRINGFIELD OR 97478			W	70.00	150.00		0.5	04/20/2009	04/21/2009	JONES JR, CASEY CASEY JONES WELL DRILLING	1006619	101201			
LANE 71145 Exempt Use Well	Details	18.00S-2.00W-11 SE-NE	601	86699 R R BAKER RD	GOODMAN, GRAY PO BOX 2113 JASPER OR 97438			W	166.00	303.00	155.0	3.0	07/06/2011	07/08/2011	JONES JR, CASEY CASEY JONES WELL DRILLING CO INC	209731	105797	✔		
LANE 71402	Details	18.00S-2.00W-11 SW-SW	1601	36995 WALLACE CREEK ROAD, JASPER, OR	ZIEMSKI, GLENN 36995 WALLACE CREEK ROAD SPRINGFIELD OR 97478			W	150.00	500.00	170.0	2.5	09/30/2011	10/05/2011	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	206467	104615	✔		
LANE 71443	Details	18.00S-2.00W-11 SW-SE	1400	37059 WALLACE CREEK RD, SPRINGFIELD	VANDENDRIES, HANK 1555 CORUM AVE EUGENE OR 97401			W	169.00	240.00	19.0	7.0	10/20/2011	11/07/2011	FIELDER, WILLIAM 'BILL' E. BILL FIELDER WELL DRILLING & PUMP	1015177	105393	✔		
LANE 74250	Details	18.00S-2.00W-11 SE-SW	1602	36987 WALLACE CREEK RD	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	218.00	240.00	92.0	15.0	05/09/2015	06/01/2015	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	209930	118983	✔		
LANE 76280 Exempt Use Well	Details	18.00S-2.00W-11 SW-NW	302	BRAND S RDWNSPRINGFIELD, OR 97478	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	98.00	140.00	60.0	100.0	09/27/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215707	130841	✔		
LANE 76281 Exempt Use Well	Details	18.00S-2.00W-11 NE-SW	403	BRAND S RD, SPRINGFIELD, OR	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	275.00	500.00	427.0	1.0	09/28/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215708	130842	✔		
LANE 76282	Details	18.00S-2.00W-11 NE-SW	402	BRAND S RD, SPRINGFIELD, OR 97478	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	54.00	340.00	271.0	2.0	10/02/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215709	130843	✔		

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Well Log	Details	T-R-S/ QQ-Q	Tax lot	Street of Well	Owner	Company	Special Standards	Well Type	First Water	Completed Depth	Static Water Level	Yield	Completed Date	Received Date	Bonded Contractor	Startcard	Well Id #	Use	Abandon	Deepen	Alteration	Conversion	Domestic	Irrigation
LANE 76264 Exempt Use Map	Details	18.00S-2.00W-11 NW-NE	201	BRAND S RD, SPRINGFIELD, OR	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	36.00	260.00	217.0	1.5	10/03/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215710	130844	✔					✔	
LANE 76265 Exempt Use Map	Details	18.00S-2.00W-11 NE-NW	401	BRAND S RD, SPRINGFIELD, OR	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	70.00	140.00	53.0	8.0	10/04/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215711	130845	✔					✔	
LANE 76266 Exempt Use Map	Details	18.00S-2.00W-11 SE-NW	404	BRAND S RD, SPRINGFIELD, OR	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	298.00	380.00	330.0	1.5	10/04/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215712	130846	✔					✔	
LANE 76267 Exempt Use Map	Details	18.00S-2.00W-11 NW-NE	201	BRAND S RD, SPRINGFIELD, OR	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	65.00	140.00	27.0	8.0	10/05/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215713	130847	✔					✔	
LANE 76268 Exempt Use Map	Details	18.00S-2.00W-11 NE-NW	401	BRAND S RD, SPRINGFIELD, OR	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	125.00	280.00	253.0	1.0	10/05/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215714	130848	✔					✔	
LANE 76269 Exempt Use Map	Details	18.00S-2.00W-11 NE-SW	404	BRAND S RD, SPRINGFIELD, OR	WOLF, DOUG PO BOX 2114 JASPER OR 97438			W	38.00	240.00	202.0	2.5	10/08/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215715	130849	✔					✔	
LANE 76270 Exempt Use Map	Details	18.00S-2.00W-11 NW-SW	302	BRAND S RD, SPRINGFIELD	WOLF, DOUG PO BOX 2114 JASPER OR 97438-0280			W		200.00	0.0		10/09/2018	11/06/2018	HENDRICKSON, JEFF HENDRICKSON WELL DRILLING INC	215716	130850	✔					✔	

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Pleasant Hill Goshen Fire & Rescue

85880 First Street, Eugene OR 97405
Station 1: 36024 Highway 58, Pleasant Hill OR 97455
Station 2: 36755 Jasper Lowell Rd, Pleasant Hill OR 97438

Fax (541) 746-7958
www.goshenfd.org
www.pleasanthillfire.org

December 9, 2019

PA19-05298
Exhibit 2 to
Reopened Record 12/18/19
Submission Of
Additional Materials

Jim Belknap,

Belknap Properties LLC

1785 E. Main Street,

Cottage Grove, OR 97424

This letter is to confirm our on-site discussion on December 6, 2019 regarding the "Goodman" properties located on RR Baker Rd in unincorporated Springfield. We met to clarify questions regarding access and driveways on the road.

1) During this meeting I reviewed updated road proposals for RR Baker Road improvements which included 9 turn-outs being added to the roadway. We have reviewed the grade which is sufficient for Fire Department access.
2) During this meeting we discussed 'Chimney Draw Effect' and the proposed properties. The properties for development have significant fire breaks already in development. Establishing a defensible space around the homesites following lane county code 16.211(6)(c) will help address your needs that should be adhered to. Establishing the defensible space of 130' to 180' around the homesites as depicted in the Site Plan will greatly reduce or eliminate the risk factors of chimney draw effect.
3) During this meeting we reviewed the driveway proposal for the building site on tax lot 506 for property '3'. The driveway in question will be accessible and conducive for Fire Department access. The road should remain compliant with Lane County Code for a single driveway serving a single property.
4) During this meeting we reviewed the proposed driveway for the building site on tax lot 507. This driveway is accessible for fire department access and should continue to meet our standards outlined to you and listed in item '3'.

Prior to the meeting you did provide us maps for the area including all proposed changes and improvements. I see no immediate concerns with the changes you have made and find it satisfactory for us to provide our approval understanding that the roads still must be completed and reviewed to confirm accuracy and compliance at that time.

During our meeting you did express concern over the grade on one driveway access. That grade may in one section reach 18%. The section was shorter than 100' for that grade. You expressed to me the

anticipation that with grading work and improvements that would most likely drop to 16%. In addition, we outlined that you would have a turn-out for apparatus prior to the grade and a turn-around after the grade section at the main homesite. This further improves the access to the homesite for fire apparatus. I approve this grade from the standard of the Fire District and do not see that being an issue for our apparatus to access or pass this grade.

I appreciate your time in meeting with me and discussing this access. Please consider this letter approval from the Fire District perspective regarding the matters as hand. Should you have further questions you may contact my office at (541) 747-3104.

Sincerely,

Andrew Smith, Fire Chief

Gmail Jim Belknap <jim.e.belknap@gmail.com>

R. R. Baker Road

1 message

Jim Belknap <jim.e.belknap@gmail.com> Tue, Dec 3, 2019 at 2:30 PM
To: Andrew Smith <andrew.smith@pleasanthillfire.org>, Gray Goodman <ghyrax@gmail.com>, "Michael E. Farthing" <mefarthing@yahoo.com>

Dear Chief Smith,
I wrote to you a week, or so, ago to discuss our project on R. R. Baker Road, off of Wallace Creek Road. You previously did an inspection of this project and wrote us a letter confirming that our proposal would be satisfactory for the Pleasant Hill-Goshen Fire and Rescue Department's access needs. I presented this letter to the Lane County Land Management Division office.

As I mentioned, our application for Tax Lot 507 and 506 (See the attached map) has been appealed by LandWatch Lane County. At the hearing for the appeal on Tax Lot 506 the Hearings Official, Gary Darnielle, asked if we had had the fire department review the driveway proposal. I responded we had pointed out the driveway approach points onto R. R. Baker Road, but had not specifically dragged you out into the brush to look at the proposed driveway as it was to be constructed. Mr. Darnielle directed us to have you take another look at the property and review the driveways that are proposed.

Of particular concern to Mr. Darnielle is the grade into Tax Lot 506, there is an 80' +/- section that has a grade of approximately 18%. We think we can reduce this to around 16% with some cut and fill, but this has Mr. Darnielle asking if it will be acceptable to your agency. I note the county code allows for grades up to 20% for distances not to exceed 100', but obviously if the fire department has a specific concern we need to address it.

We have a deadline of December 12 to submit our additional information, to include your review of the driveways. Would you be able to meet me this week, Wednesday morning, anytime Thursday or Friday? 12/4,5,6/19.

I am attaching the tax lot maps, our roadway proposal for R. R. Baker Road (which has changed modestly since you saw the property) and the driveway proposal.

I'll give you a bit to digest this email and then call to see if we can arrange a time to meet. If you want to reach me please call 541-954-2944.

Thank you again for your courtesies.
Jim

--
Jim Belknap
Principal Broker
Belknap Properties, LLC
P. O. Box 362
Cottage Grove, OR 97424
541-954-2944 Cell
541-942-1653 Fax

Goodman & NIMPKISH, LLC Road and Driveway proposal.pdf
2509K

Pleasant Hill Goshen Fire & Rescue

85880 First Street, Eugene OR 97405
Station 1: 36024 Highway 58, Pleasant Hill OR 97455
Station 2: 36755 Jasper Lowell Rd, Pleasant Hill OR 97438

Fax (541) 746-7958
www.goshenfd.org
www.pleasanthillfire.org

May 7, 2019

Jim Belknap

Belknap Properties, LLC

PO Box 362

Cottage Grove, OR 97424

RE: R. R. Baker Road Properties

This letter is to confirm the response of Pleasant Hill Goshen Fire & Rescue to the area of R. R. Baker Road in the event of a structure fire. If a fire were to be reported in that general area the standard response as a MINIMUM is outlined below:

3 – Type 1 Structure Firefighting Engines

3 – Type 1 Water Tenders (1 with 2100 gallons and 2 with 3000 gallons of water)

2 – Command/Chief Officers

1 – Rescue Vehicle

Automatic Mutual aide assistance from Dexter and Lowell Fire Districts with Engine or Tender support.

For further clarification to the above, please contact our administrative offices at 541-747-3104.

Andrew Smith, Fire Chief

Exhibit 10

Gmail

Jim Belknap <jim.e.belknap@gmail.com>

Tax Lot 18-02-11-00-00506 (part) R.R. Baker Road

2 messages

Jim Belknap <jim.e.belknap@gmail.com> Thu, Apr 11, 2019 at 5:17 PM
To: andrew.smith@pleasanthillfire.org

Chief Smith,
Thank you for taking the time to visit today. As we discussed on the phone, I have prepared an application for a Special Use Permit allowing a dwelling under the provisions of what is called the Template Test, this is the application we visited about on-site last month when you reviewed the access road.

As I shared with you today on the phone, part of the application addresses the following:
"Attach to this application objective information demonstrating evidence of compliance with Lane Code 16.211(8)(e), now referenced as Lane Code 16.211(6)(b)(i), including:
Itemized list of firefighting equipment. Obtain from the fire district (if applicable)."

In a previous telephone conversation with a member of your department I was advised you have the following equipment:
3 Water Tank Trucks. One of 2,500 gallons, one of 3,000 gallons and one of 3,500 gallons
5 Structural Engines (Pump Trucks), Two carrying 1,000 gallons, two carrying 750 gallons and one carrying 500 gallons
2 Type 6 Engines (commonly called Brush Trucks), One carrying 250 gallons and one carrying 300 gallons.

When we met at the property you confirmed this equipment was available to fight a fire on the subject property and also indicated your department has cooperating agreements with other fire departments in the area to assist if necessary.

I provided the above list of equipment to Lane County in our application, but they have deemed the application "incomplete." the staff planner has stipulated "It may be beneficial to supplement the statement (my statement in the application) with evidence directly from the fire district pertaining to the district's available firefighting equipment, such as a letter form the fire district..."

Would you please be so kind as to review the information I provided in the application, set forth above, and if this reflects the equipment your department has available for firefighting acknowledge this email as accurately depicting such equipment. I will print a copy of your response and include it with a supplement to our application.

Thank you for your continuing courtesies with this matter.

--
Jim Belknap
Principal Broker
Belknap Properties, LLC
P. O. Box 362
Cottage Grove, OR 97424
541-954-2944 Cell
541-942-1653 Fax

Andrew Smith <andrew.smith@pleasanthillfire.org> Mon, Apr 15, 2019 at 8:09 AM
To: Jim Belknap <jim.e.belknap@gmail.com>

Good Morning Jim,

Sorry for the delay in returning you email. You are correct with the expected response for a fire at the locations addressed above. This equipment is available from the nearby stations through our own agency and or support from Automatic aid. Should you need a further letter to verify this, let me know and I will be glad to assist.

[Quoted text hidden]

--

Andrew Smith

Fire Chief
Pleasant Hill Goshen Fire & Rescue
(541) 747-3104
"One Team"

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the Public Body. Members of the Public Body may respond to this message, but they should not send a copy of the reply to other members. This email and replies may be subject to public disclosure.

Pleasant Hill Goshen Fire & Rescue

85880 First Street, Eugene OR 97405
Station 1: 36024 Highway 58, Pleasant Hill OR 97455
Station 2: 36755 Jasper Lowell Rd, Pleasant Hill OR 97438

Fax (541) 746-7958
www.goshenfd.org
www.pleasanthillfire.org

March 14, 2019

Jim Belknap,

Belknap Properties

1785 East Main Street

Cottage Grove, OR 97424

This letter is to verify that on March 13, I conducted an onsite review of proposed plans for development and establishment of homesites on R R Baker Road, Springfield OR 97478. The intent of this visit was to review plans for access road and driveways for the properties to include R R Baker Road. The proposed homes sites are as follows: Tax Lots 18-02-11-00-501 and 506 which have four home sites.

After review and discussion regarding your plans, the Fire District is willing to provide preliminary verification of compliance for the described project. All plans are within the standards set forth by Pleasant Hill Goshen Fire & Rescue and meet Lane County Standards. Please accept this letter of verification of acceptance.

Please contact our Administrative Offices at (541) 747-3104 should you have further questions regarding your project.

Sincerely,

Andrew Smith, Fire Chief

Attachment 2
Supplement to
PA 19-05299

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Chief Andrew Andrew Smith
Pleasant Hill-Goshen Rural Fire Protection District

March 5, 2019

Re: Tax Lot 18-02-11-00-00506 Road Evaluation

Dear Chief Smith:

As we have discussed on the phone, I am assisting Gray and Dorotea Goodman with the application for four dwelling approvals on the above referenced tax lot. I am enclosing a map that depicts five parcels referenced as being part of Tax Lot 501, this map was prepared prior to a series of property line adjustments that have established the five parcels we are now addressing, those parcels have been drawn onto the map. The most easterly of the five parcels has retained the original Tax Lot 501 and has an address of 86690 R.R. Baker Road, Springfield, OR. The remaining four parcels are now encompassed within the remapped Tax Lot 506.

As part of the application for dwelling approval, a process called a Special Use Permit in Lane County, we are required to submit a letter of "Preliminary written verification of compliance from the agency providing fire protection." The standard is set forth as follows:

"The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified in Lane Code 16.211 (8)(e)."

My request of your department is to provide us with a letter that confirms the access established over Wallace Creek Road and continuing on R.R. Baker Road to the proposed building sites within Lane County Tax Lot 18-02-11-00-501 and 506 is adequate for fire fighting equipment.

Thank you for your attention to this request.

Sincerely,

Jim Belknap

Cc: Gray and Dorotea Goodman

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

December 11, 2019 **Project: 19060**

Mr. Jim Belknap
Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

PA19-05298
Exhibit 3 to
Reopened Record 12/18/19
Submission Of
Additional Materials

Subject: Response to Appellant Comments
Lane County PA19-05298
Nimpkish, LLC Template Test Dwelling Special Use Permit
Tax Lots 506, Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. Belknap,
At your request, I am writing to expand on our recommendations for the subject project site dated November 13, 2019. The scope of these supplemental recommendations is limited to issues regarding questions of landslide hazard.

Landslide Hazard Evaluation Process
The recommendations that K & A Engineering, Inc. provided for the subject parcel (dated November 13, 2019) summarize what is termed a "Level I" evaluation of slope stability for the project site(s).[1] Level I evaluations typically include:

- **Literature Search:** a review of available reports and maps available in the literature for the site describing geology and geologic hazards. We consulted geologic maps of the area, DOGAMI hazard maps, and aerial photography of the site and surrounding areas.
- **Site Review:** Level I evaluations include a visual site inspection. We visited the site and spent time looking for visual indicators that are always present in areas of active slope movement including tension cracks, fresh scarps, sloughing, depositional areas, and ponding. We also inspected road cuts to determine the general nature and depth of subsurface conditions in the area.
- **Preliminary Stability Evaluation:** Based on our field observations and available topographic data we made an evaluation of the general nature of slope stability of the area. There are other parameters that affect slope stability in addition ground slope, such as soil shear strength, soil depth, groundwater, root strength, just to name a few. Basing decisions of stability on ground slope gradient alone is bad science.

Recommendations for further investigation and a more detailed evaluation of slope stability are made based on the findings of the Level I evaluation. In this case, we recommended a Level II geotechnical investigation for the subject project site because of their location within or near the DOGAMI high-hazard mapping. The Level II investigation is a detailed study requiring geotechnical borings, laboratory

[1] The Level I analysis is in the context of a three-level approach to geotechnical evaluation which is current standard of practice. As an example, the Eugene city code requires such a process which is detailed in section 9.6710 "Geological and Geotechnical Analysis."

testing, calculation of factors of safety, etc. and will incorporate the specific nature of the proposed structure, roadway grading, and general site grading plans.

This methodology is a logical approach to ensure that the hazard is carefully and thoroughly understood in an efficient and cost-effective manner.

K & A Engineering, Inc. provided a first step in the process of a rational methodology that is accepted as the standard of care by qualified geotechnical engineers for similar projects. In the long run, following this process will result in a complete, detailed, and rational evaluation of slope stability that meets the needs of all parties involved.

Our level I review is appropriate for undeveloped areas and its use in the determination of the likely nature of slope stability in the current condition and if further study is needed for ground disturbing development. The whole point of the Level review was to determine if the proposed action would significantly heighten landslide hazard and require extreme measures for mitigation.

Road Access

Our understanding is that a question has arisen as to landslide hazards attributed or related to road access to the project site, including the primary access road, R. R. Baker Road, and the proposed driveway extending from R. R. Baker Road to the proposed building site.

R. R. Baker Road

As noted in our letter to the owners regarding tax lot 507 dated October 31, 2019, we observed areas of localized soil creep on the south side of the R. R. Baker Road which are most likely the result of over-steepened road cut embankments. This is a common condition observed for many low volume roads traversing sloped terrain and, in this case, slope movement impact is typically limited to the area from the road ditch to the top of the cut embankment. Furthermore, we note that mapping indicates that the R. R. Baker Road had existed at least since the 1950's and has not been the source of or impacted by large-scale deep-seated landslides or debris flows. *The instability noted is limited to the roadway cut embankment and the hazard is limited to routine road maintenance. There is no evidence that this localized creep presents a hazard that would impact areas outside of the road prism.*

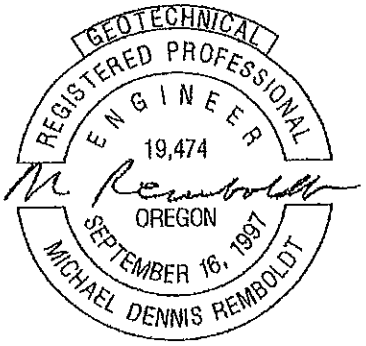
Driveway to Proposed Building Site

Survey sketches for project site development indicate include the location of a proposed access driveway starting at R. R. Baker Road and trending northwest to the proposed building pad. The proposed driveway essentially falls "normal" to the slope – in other words the road does not parallel contours and therefore requires a minimum number of cuts and fills. Cut and fill heights are furthermore limited by the narrow, single-lane width of the driveway. *Based on our experience with the design and construction of low volume roads[2] it is our opinion that the proposed driveway location does not inherently present a significant landslide hazard.*

We recommend that a qualified geotechnical engineer provide quality assurance inspection of driveway access road construction to provide on-site recommendations for road construction.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

[2] (17) years of experience as a geotechnical engineer with the USDA Forest Service\dealing mainly with low volume road design, evaluation, and construction.

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

December 2, 2019 **Project: 19060**

Mr. Jim Belknap
Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

Subject: Response to Appellant Comments
Lane County PA19-05298
Nimpkish, LLC Template Test Dwelling Special Use Permit
Tax Lots 506 and 507, Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. Belknap,
At your request, we have reviewed comments from appellants in the subject matter and are providing a written response. These comments include those made by Mr. Sean Malone (representing LandWatch Lane County) dated November 21, 2019 and Mr. Andrew Mulkey (representing 1000 Friends of Oregon).

The scope of our review and response is limited to landslide hazard.

Response to Mr. Andrew Mulkey Comments
The recommendations that K & A Engineering, Inc. provided for the subject parcels (dated October 31, 2019 for tax lot 507 and November 13, 2019 for tax lot 506) summarize what is termed a "Level I" evaluation of slope stability for the project site(s). Level I evaluations typically include:

- **Literature Search:** a review of available reports and maps available in the literature for the site describing geology and geologic hazards. We consulted geologic maps of the area, DOGAMI hazard maps, and aerial photography of the site and surrounding areas.
- **Site Review:** Level I evaluations include a visual site inspection. We visited the site and spent time looking for visual indicators that are always present in areas of active slope movement including tension cracks, fresh scarps, sloughing, depositional areas, and ponding. We also inspected road cuts to determine the general nature and depth of subsurface conditions in the area.
- **Preliminary Stability Evaluation:** Based on our field observations and available topographic data we made an evaluation of the general nature of slope stability of the area. There are other parameters that affect slope stability in addition ground slope, such as soil shear strength, soil depth, groundwater, root strength, just to name a few. Basing decisions of stability on ground slope gradient alone is bad science.

Recommendations for further investigation and a more detailed evaluation of slope stability are made based on the findings of the Level I evaluation. In this case, we recommended a Level II geotechnical investigation for these parcels because of their location within or near the DOGAMI high-hazard mapping. The Level II investigation is a detailed study requiring geotechnical borings, laboratory testing, calculation of factors of safety, etc. and will incorporate the specific nature of the proposed structure and grading plans.

This methodology is a logical approach to ensure that the hazard is carefully and thoroughly understood in an efficient and cost-effective manner.

Thus, it is untrue that K & A Engineering, Inc. failed in the evaluation of slope stability. What we did was provide a first step in the process of a rational methodology that is accepted as the standard of care by qualified geotechnical engineers for similar projects. In the long run, following this process will result in a complete, detailed, and rational evaluation of slope stability that meets the needs of all parties involved.

Response to Mr. Sean Malone Comments

- **Substantial Evidence:** Malone, like many others, seems to believe that "substantial evidence" consists of volumes of written documentation. Substantial evidence can be and most often should be very simple and brief in scope.
- **Landslide Scarps:** Scarp sizes, slope gradients, and shapes can vary widely depending on the nature of the slope movement and the age of the slope movement. Steep scarps erode and weather over time, resulting in less-steep slopes and more rounded features. Very old scarps can indeed be difficult to define unless they include zones of harder rock that weather and degrade more slowly than surrounding unconsolidated soil deposits. There is nothing "equivocal" about stating that a location is within or near to a scarp because, as is the case here for very old slope movements, weathering and natural transport of materials downhill eventually result in reduced slope angles.
- **Recent or Ancient:** By recent we mean active landslides or landslides that occurred whereby fresh evidence of movement is visible.
- **"Near the Road:"** The actual proposed length is less than 200-feet, not 300-feet. "Near" is a subjective opinion. This is a convoluted and irrational paragraph that morphs from "near the road" to turnout construction, the land use code, and the feared "chimney effect" – none of which have much, if anything, to do with landslide hazard.
- **"Extensive or Drastic Safeguards:"** Mr. Malone's conclusion is that "it is irrelevant whether any extensive or drastic safeguards may or may not be called for because the issue is whether or not a geotechnical report/evaluation is needed..." The fact is that we are moving forward with a *rational process* of geotechnical evaluation and investigation, with more detailed studies of the impact of development (such as grading, drainage, and foundation loads) required as a result of our Level I evaluation. Making detailed studies at this point makes no sense and does a disservice to the process because it forces limiting assumptions that may or may not exist when the serious details of actual development are determined which usually include things like an actual grading plans, actual foundations (location, depth, type, loads, etc.), real changes to drainage patterns, etc.

  Our level I review is appropriate for undeveloped areas and its use in the determination of the likely nature of slope stability in the current condition and if further study is needed for ground

disturbing development. The whole point of the Level I review was to determine of the proposed action would significantly heighten landslide hazard and require extreme measures for mitigation. Mr. Malone obfuscates the analysis process.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

October 31, 2019 **Project: 19060**

Nimpkish, LLC
Gray and Dorotea Goodman
86690 R. R. Baker Road
Springfield, OR 97478

Subject: Geotechnical Summary of the Nature of Landslide Hazard
Proposed Residential Development
Tax Lot 507 (a.k.a. Parcel 2), Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. and Mrs. Goodman,

Our understanding is that a small portion of the project site, located at the southwest corner near the road, is proposed for development as a single-family residence. At your request, we have reviewed the subject project site for the purpose of making a preliminary determination of the nature of landslide hazard and to present practical recommendations for site development. Our services, to date, have included:

- A visual inspection of the subject 10-acre site,
- Review of landslide hazards mapped for the site by the Department of Geology and Minerals Industries and Geology,
- Review of mapped geology and faulting of the general area,
- Review of current and historic aerial photography of the area, and
- These recommendations.

To summarize our review:

- The project site is located within, or near, the south end of the upper scarp zone of a very large, ancient landslide that moved soils and rock to the west.
- There are no visible indications of recent slope movement on the subject project site or on undisturbed areas on adjacent properties. The DOGAMI mapping of landsliding in this area indicates the approximate extent of the ancient landslide but does not include mapping of any active landslide activity.
- Outside of the project site, we observed areas of localized soil creep on the south side of the R. R. Baker Road which are most likely the result of over-steepened road cut embankments.
- The ground surface gradient at the proposed area for homesite development is low, in the range of approximately 10 to 15-percent. Based on our extensive experience in geotechnical engineering for similar projects in similar areas, the existing or future hazard of landsliding is low and manageable for developments similar to what is being proposed in this geologic setting.

Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement.

To verify subsurface ground conditions, confirm the low probability of any slope movement in the proposed development area, and to ensure that development will be designed and constructed in a manner that will not induce any geotechnical hazards, *we recommend that a qualified professional geotechnical engineer make a geotechnical investigation of the home site prior to foundation design and construction*. This investigation should include:

- Geotechnical probing and/or borings which adequately characterize subsurface conditions,
- A written Report that summarizes site conditions and makes recommendations for:
  - The current nature of slope stability,
  - Suitable foundation types and load capacity,
  - Drainage, and
  - General earthwork and site construction methods.

This geotechnical investigation should be a requirement for obtaining a building permit to construct the proposed residence.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

After Recording Return to:
Leahy Cox, LLP
188 West B Street, Bldg N
Springfield, OR 97477

Until a Change is Requested:
Send All Tax Statements to:
No change.

Lane County Clerk
Lane County Deeds and Records

2019-010337



$122.00

03/21/2019 10:14:58 AM

RPR-ESMT Cnt=2 Pgs=7 Stn=9 CASHIER 06
$5.00 $35.00 $10.00 $11.00 $61.00

PA19-05298
Exhibit 4 to
Reopened Record 12/18/19
Submission Of
Additional Materials

DECLARATION OF EASEMENT AND ROAD MAINTENANCE AGREEMENT

PARTIES:

GRANTORS: Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman, husband and wife (Owners of the Real Property more particularly described and set Forth in Exhibit "A" hereto and incorporated herein by reference.)

GRANTEES: Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman, husband and wife (Owners of the Real Property more particularly described and set forth as Exhibit B (Property #1), Exhibit C (property #2), Exhibit D (Property #3), Exhibit E (property #4) and Exhibit F (Property #5), all attached hereto and incorporated herein by reference.)

FOR VALUABLE CONSIDERATION OTHER THAN MONETARY, including, but not limited to, compliance with the requirements of Lane County, receipt and sufficiency of which is hereby acknowledged, Grantors Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman hereby grant, transfer, and convey to Grantees Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman, husband and wife, their heirs, successors, and assigns, a perpetual, nonexclusive easement to use the entire roadway known as R.R. Baker Road (the Roadway), upon the terms and conditions hereinafter set forth, which Roadway is a strip of land 40 feet in width, the centerline of which is described as follows:

See Exhibit A Attached hereto and incorporated herein by reference.

1. **Appurtenant.** This easement is not personal or in gross but is to be appurtenant to each and every portion of each of the following described respective properties owned by Grantees.

See Exhibits B, C, D, E and F attached hereto and incorporated herein by reference.

2. **Servient Estate.** This easement is granted over and across property owned by Grantors in Lane County, Oregon, described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

3. **Burdened Estate.** The real property burdened by this easement is set forth in Exhibit A attached and incorporated herein by reference.

4. **Benefitted Estate.** The real properties benefitted by this easement are more particularly described and set forth in Exhibits B, C, D, E and F attached hereto and incorporated herein by reference.

5. **Terms.** This Declaration and Grant is made upon the following terms:

5.1 Use. Grantees are granted the right to use the 40 foot easement including the existing roadway, as a means for ingress and egress only to the Real Properties described in Section 1, or any portion thereof. Grantees further are granted the right to use the described Easement for the installation and maintenance of such public utilities as may be needed to serve the Real Properties described in Section 1, or any portions thereof. It is expressly understood that no rights outside the 40 foot easement strip are provided. The Easement shall not be obstructed or impeded by any party.

5.2 Maintenance/Repair. Any party may cause the easement, or any portion thereof, to be maintained, repaired, or reconstructed. The party causing such maintenance, repair, or reconstruction work to be done shall pay for such work, and any party using the Easement other than Grantors Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman shall be liable for contribution based on the relative use proportional to the total roadway use (including in that proportion others not a party to this Agreement); provided, however, heirs, successors, and assigns to Grantors Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman shall be liable for such contribution. Real property taxes shall be paid by the owners of the real property upon which the Easement is located.

5.3 Speed Restriction. Vehicles speed on the road shall not exceed 25 miles per hour.

5.4 Grantors' Rights. Grantor shall, at all times and without restriction, have the right to use the easement property and roadway for purposes not inconsistent with the Grantees' full enjoyment of the rights herein granted.

5.5 Vehicle and Equipment Storage. Grantee shall not utilize the easement for vehicle or equipment storage. Disabled vehicles shall be removed from the easement within 48 hours after placement.

5.6 Perpetual. The grant of this easement is perpetual and non-exclusive and shall run with the land and shall be binding upon and inure to the benefit of the Grantors and Grantees and their heirs, successors, and assigns.

5.7 Indemnification. Each party shall indemnify and save any other of the parties harmless from any liability, loss, or expense resulting from any claim for injury to person or property resulting from that party's use of the Roadway or use of the Roadway by that party's agents and employees, any independent contractor hired by that party, and that

party's permittees, invitees, licensees, and guests, unless that injury is caused in part by any other of the parties' failure to maintain the Roadway.

5.8 Existing Encumbrances. This easement is granted subject to all existing easements, reservations, restrictions, conditions, and encumbrances of record affecting the Roadway.

5.9 Non Merger. It is the intent of this Easement to survive, be perpetual and run with the Land without "merger". This Easement is provided to comply with the requirements of Lane County and as such it is the specific intent and direction of Declarant that it not be subject to the Doctrine of Merger.

IN WITNESS THEREOF, Grantors have executed this Easement and Maintenance Agreement on this _____ day of March, 2019.

GRANTORS:

Gray McKenzie Goodman

Dorotea Elizabeth Chiara Goodman

GRANTEES:

Gray McKenzie Goodman

Dorotea Elizabeth Chiara Goodman

STATE OF OREGON)
) ss.
County of Lane)

The foregoing instrument was acknowledged before me this 20th day of March, 2019 by Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman.

OFFICIAL STAMP
ERIN ANNE DIETER
NOTARY PUBLIC - OREGON
COMMISSION NO. 979070
MY COMMISSION EXPIRES SEPTEMBER 13, 2022

Notary Public for Oregon
My Commission Expires: 9/13/2022

STATE OF OREGON)
) ss.
County of Lane)

The foregoing instrument was acknowledged before me this 20th day of March, 2019 by Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman.

OFFICIAL STAMP
ERIN ANNE DIETER
NOTARY PUBLIC - OREGON
COMMISSION NO. 979070
MY COMMISSION EXPIRES SEPTEMBER 13, 2022

Notary Public for Oregon
My Commission Expires: 9/13/2022

RR Baker Road

A strip of land 40 feet in width the centerline of which is more particularly described as follows:

Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence along said centerline the following courses and distances: North 0°30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° West 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet, North 11° East 75 feet; North 45° East 75 feet; North 74°30' East 290 feet; North 34° East 260 feet; North 04° East 274 feet; North 31° East 775 feet; North 16° East 75 feet; North 14° East 75 feet; North 41° East 75 feet; North 69° East 75 feet; North 86° East 75 feet; South 89°30' East 555 feet; North 60° East 372 feet; North 51°30' East 564 feet; North 70° East 774 feet; North 34° East 43.02 feet to a point on the East line of said Section 11, in Lane County, Oregon.

Note: Description based upon County Survey File No. 25341.

Exhibit A

Exhibit B

Property 1

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road, being the TRUE POINT OF BEGINNING; thence Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; North 89°30' West 85 feet; thence leaving said centerline N23°31'52"W 576.00 feet; thence North 370.80 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 to the true point of beginning, in Lane County, Oregon, TOGETHER with the East ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

Exhibit C

Property 2

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 85 feet to the TRUE POINT OF BEGINNING; thence continuing North 89°30' West 470.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 144.62 feet; thence North 795.65 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 North 89°59'29" East 415.00 feet; thence leaving said North line South 370.80 feet, more or less; thence South 23°31'52" East 576.00 feet to the true point of beginning, in Lane County, Oregon, TOGETHER with the Southerly ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

Exhibit F

Property 5

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence along said 1/4 line N0°16'18"E 553.97 feet; thence leaving said 1/4 line S89°43'42"E 822.67 feet to a point on the centerline of a private road (RR Baker Rd.) described in deed recorded on March 6, 2014, as Instrument No. 2014-007870, Lane County Oregon Deed Records; thence along said centerline S4°00'00"E 202.97 feet; thence S34°00'00"W 260.00 feet; thence S74°30'00"W 290.00 feet; thence S45°00'00"W 75.00 feet; thence S11°00'00"W to a point on the North line of said Claim No. 40; thence Westerly along said Claim line to the point of beginning in Lane County, Oregon, TOGETHER with the East ½ of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described centerline.

ALSO: All of the remainder of the private road (being a strip of land 40 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows: Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence Northwesterly along said centerline the following courses and distances: North 0°30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° West 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 foot private road and extending 224 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).
Commencing at a Lane County Brass Cap monument marking the Northwest corner
of the John Wallace Donation Land Claim Number 40 in Township 18 South, Range 2
ALSO: Commencing at a Lane County Brass Cap monument marking the Northwest corner of the John Wallace Donation Land Claim Number 40 in Township 18 South, Range 2 West, Willamette Meridian; thence along the north line of Donation Land Claim Number 40, North 89°54'43" East a distance of 2051.55 feet to a 5/8" rebar with a yellow plastic cap marked "D.W. Baker PLS 1978" on the North-South centerline of Section 11, Township 18 South, Range 2 West, Willamette Meridian and the TRUE POINT of BEGINNING; thence leaving the North-South centerline of Section 11and continuing along the north line of Donation Land Claim Number 40, Nortih 89°54'43" East a distance of 365.26 feet to the point of intersection of the North line of Donation Land Claim Number 40 and the westerly boundary of a 40 foot wide private road (commonly known as R.R. Baker Road); thence along the westerly boundary of said private road and along the arc of a 95.00 foot radius curve left (chord bears South 30°56'728" West 61.34 feet) an arc distance of 62.46 feet to a point marked by a 1/2" iron pipe set in County Survey File Number 17663 (record calls 5/8" iron pin); thence leaving the westerly boundary of said 40 foot private road and along the north boundary of the property described in a Warranty Deed recorded July 6, 1998 on Reel 2438R, Instrument No. 9852390, Lane County, Oregon Official Records, North 87°20'48" West a distance of 334.35 feet to the intersection of the North-South centerline of Section 11 and said north boundary, as described on Reel 2438R, Instrument No. 9852390, Lane County, Oregon Oficial Records, said intersection point being marked by a found 6" x 6" x 18" Stone set on the North-South centerline of Section 11 in County Survey Number 1102; thence along the North-South centerline of Section 11, North 0°16'18" East a distance of 36.63 feet to the TRUE POINT of BEGINNING, all in Lane County, Oregon.

Exhibit B

Property 1

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road, being the TRUE POINT OF BEGINNING; thence Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; North 89°30' West 85 feet; thence leaving said centerline N23°31'52"W 576.00 feet; thence North 370.80 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 to the true point of beginning, in Lane County, Oregon, TOGETHER with the East ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

Exhibit C

Property 2

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 85 feet to the TRUE POINT OF BEGINNING; thence continuing North 89°30' West 470.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 144.62 feet; thence North 795.65 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 North 89°59'29" East 415.00 feet; thence leaving said North line South 370.80 feet, more or less; thence South 23°31'52" East 576.00 feet to the true point of beginning, in Lane County, Oregon, TOGETHER with the Southerly ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

Exhibit D

Property 3

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian, with the North line of the James A. Wallace Donation Land Claim No. 40, of said Township and Range; thence along said 1/4 line N0°16'18"E 1204.00 feet to the TRUE POINT of BEGINNING; thence continuing along said 1/4 line N0°16'18"E 1209.50 feet, more or less, to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the North line of said South 1/2 of the Northeast 1/4 of said Section 11 N89°59'29"E 426.27 feet; thence leaving said North line of the South 1/2 of the Northeast 1/4 of said Section 11 South 795.65 feet, more or less; thence S43°50'00"E 144.62 feet to a point on the centerline of a private road (RR Baker Rd.) described in deed recorded on March 6, 2014, as Instrument No. 2014-007870, Lane County Oregon Deed Records; thence leaving said West line and along said centerline S69°00'00"W 75.00 feet; thence S41°00'00"W 75.00 feet; thence S14°00'00"W 75.00 feet; thence S16°00'00"E 75.00 feet; thence S31°00'00"E 97.34 feet; thence leaving said centerline N89°43'42"W 465.60 feet to the point of beginning, in Lane County, Oregon, TOGETHER with the Easterly 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

Exhibit E

Property 4

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian, with the North line of the James A. Wallace Donation Land Claim No. 40, of said Township and Range; thence along said 1/4 line N0°16'18"E 553.97 feet to the TRUE POINT OF BEGINNING: thence continuing along said 1/4 line N0°16'18"E 650.03 feet; thence leaving said 1/ 4 line S89°43'42"E 465.60 feet to a point on the centerline of a private road (RR Baker Rd.) described in deed recorded on March 6, 2014, as Instrument No. 2014-007870, Lane County Oregon Deed Records; thence along said centerline S31°00'00"E 677.66 feet; thence S4°00'00"E 71.03 feet; thence leaving said centerline N89°43'42"W 822.67 feet to the point of beginning, in Lane County, Oregon, TOGETHER with the Easterly 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

Hendrickson Well Drilling
77483 S 6th St Cottage Grove, OR 97424
541-942-0843
CCB #68857 DEQ #36884

PA19-05298
Exhibit 5 to
Reopened Record 12/18/19
Submission Of
Additional Materials

Jim Belknap
Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

Re: R. R. Baker Road reconstruction

December 5, 2019

Dear Jim:

I understand from our conversation that the Appellants in the two Special Use Permit applications you are processing, PA19-05298 and PA19-05299, have suggested some question as to our capability to complete the modifications proposed for R. R. Baker Road. You indicated some concern was voiced over the name of our business, Hendrickson Well Drilling, and how our business might be in the road construction business.

Hendrickson Well Drilling originally was established in 1991 as Hendrickson Construction and Well Drilling. We had purchased a well drilling operation from Tom May and incorporated it into our general construction work which included road excavation, site preparation, land clearing, crushing, trucking and general contracting. Shortly after we organized another contractor started in business in the Springfield area doing business under the name "Jeff Hendrickson Construction." We were totally unrelated to that business, though my first name is Jeff. Confusion followed and we repeatedly were being contacted by customers and suppliers of Jeff Hendrickson Construction. Eventually it became clear something had to change and we dropped the word "Construction" from our business name about 1995. Suffice to say my life became a bit easier with that change.

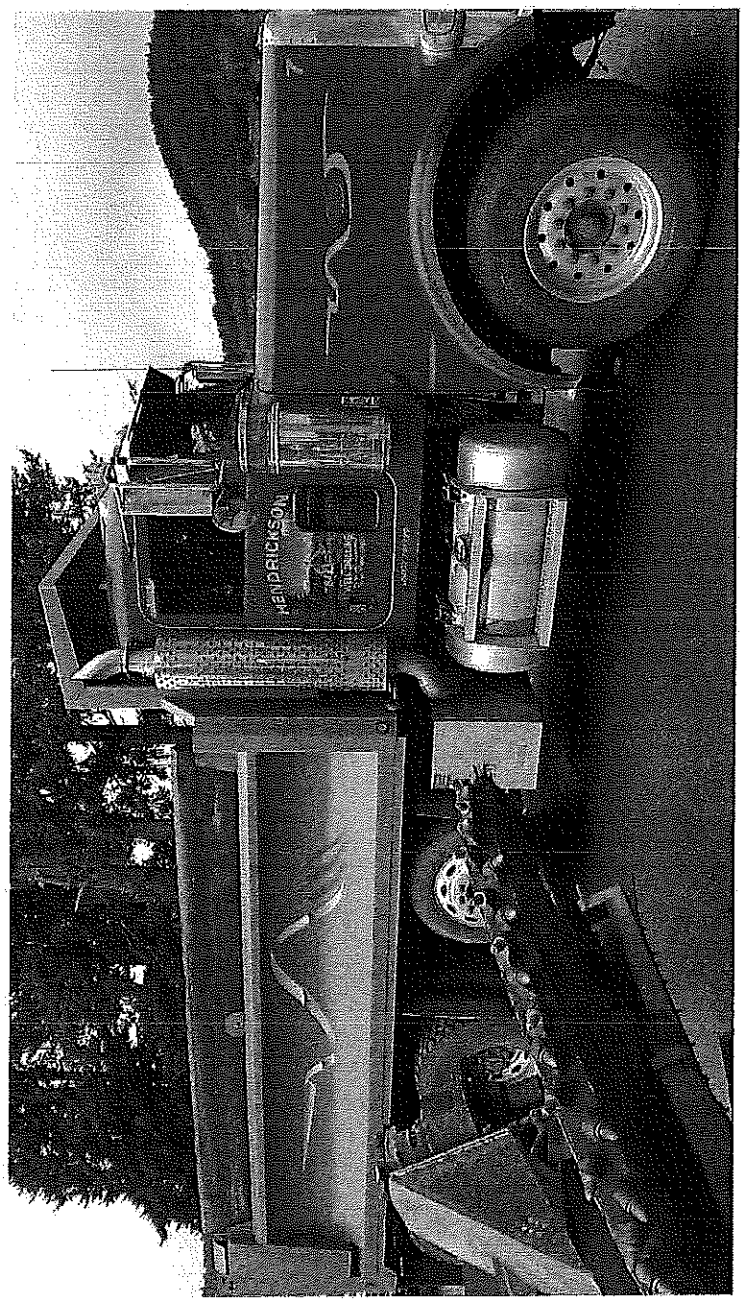
For approximately 25 years we have operated as Hendrickson Well Drilling. We operate two crews, one that does well construction and pump placement, the other crew is primarily involved with general excavation work to include drilling and blasting, crushing, road construction, grading, site excavation, septic system construction and general contracting. For whatever purpose you may choose to use them I have included a few photographs of some of our equipment. I think you will acknowledge our equipment certainly extends outside that usually found with well drilling companies.

I want to reiterate, our company is prepared to complete the reconstruction of R. R. Baker Road to include the widening of the improved road surface and the construction of the turn-around points as they are depicted in the road plan you have provided for us.

Thank you for the opportunity to clear up any questions about our company.

Sincerely,

Jeff Hendrickson, Owner


HENDRICKSON

PA19-05298
Exhibit 6 to
Reopened Record 12/18/19
Submission Of
Additional Materials

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

Lane County
and
Rural Portion of Eugene/Springfield Metro Plan
Goal 2--Nonresource Lands, Goal 5, Goal 15

Response from Denial Order of November 6, 1981
and from Continuance Order of November 6, 1981

DATE RECEIVED:
March 15, 1984

DATE OF COMMISSION ACTION:
August 17, 1984

REQUEST

The County has requested that its comprehensive plan and implementing measures be acknowledged as in compliance with the Statewide Planning Goals for areas outside adopted urban growth boundaries. Also, the County and the Cities of Eugene and Springfield request acknowledgment of compliance for the rural portions of the Eugene/Springfield Area General Plan.

SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission continue Lane County's request to allow amendments to the plan to comply with Statewide Planning Goals 2, 5, and 15. The Commission should hear testimony on these issues July 19, 1984, but not take final action until the August hearing.

Recommends the Commission continue the request to allow amendments to the Eugene/Springfield Metro Area General Plan under Goals 2, 5, and 15. The Commission should not take final action on this until the August Commission hearing.

FIELD REPRESENTATIVES: Bob Rindy/Glen Hale (Coastal)

LEAD REVIEWERS: Mike Rupp (Goals 2--Nonresource Lands
Claire Puchy (Goals 5 and 15)
Phone: 378-4926

COORDINATOR: Gary Darnielle
Phone: 687-4283

Date of Report: July 19, 1984

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

This Goal 5 report is divided into two major parts. The first part is the review for all areas of Lane County outside the Metro Plan Boundary. The second part is for those areas inside the Metro Plan Boundary, but outside the Metro Area UGB.

PART I--AREAS OUTSIDE THE METRO PLAN BOUNDARY

Introduction

All Goal 5 resource categories are applicable to Lane County, and are addressed in separate subsections of this report.

According to Section 660-16-025 of the Goal 5 Administrative Rule (OAR 660-6-000 through 660-16-025), the Goal 5 Rule requirements apply to jurisdictions under denial orders as of the date the adoption of the Rule (June 1981). Lane County was issued a denial order in March of 1981. Therefore, the Goal 5 Rule has been used during this review for purposes of judging compliance.

In the following discussion, the numbers and letters in parentheses refer to sections of the Goal 5 Administrative Rule (e.g., (1A), (1B), (1C), (2A), (3A), (3B), (3C)). It should be noted, however, that these are the citations used by the Commission in its June 1981 adoption of the Rule. Since that time, the Secretary of State's office has recodified the Rule and has assigned different numbers and letters to its various subsections. The references in this report are to the Commission's 1981 version, since it is the one with which most readers are familiar. A copy of this Rule is attached to this report for reference.

Goals 16 and 17 establish more specific inventory and protection requirements for some Goal 5 resources that are located in estuarine or coastal shorelands areas.

Lane County's plan and implementing measures were acknowledged as being in compliance with the Coastal Goals in July, 1983. Therefore, this Goal 5 review does not address the following Goal 5 resources in those areas:

	Addressed Under	
Goal 5 Resource	Goal 16	Goal 17
Open Space	X	
Mineral and Aggregate Resources		
Energy Sources		

Fish and Wildlife	X	X (only "riparian," "major marshes and significant wildlife habitats")
Ecologically Significant Natural Areas	X	X
Scientifically Significant Natural Areas	X	
Outstanding Scenic Views and Sites		X (where the quality is primarily derived from or related to the association with coastal water areas)
Watersheds		
Groundwater Resources		
Wetlands	X	X (only "major marshes," "significant wildlife habitat," and wetlands with "exceptional aesthetic quality")
Historic/Archaeological Sites		X
Wilderness	X	X
Oregon Recreation Trails		
Wild and Scenic Rivers and Waterways		

Land Needed or Desirable for Open Space

Inventory

Lane County's Recreational Resources Working Paper contains a section addressing open space (pp. 4-5). The County discusses the various kinds of open space, and the benefits of preserving open space. The County indicates that it considers "all lands designated for agricultural or forest use, or for other clearly similar resource-production use" to be open space (p. 5). Additionally, the County concedes that recreational

areas, including parks, and significant or scientific natural areas also contain open space qualities. Because of "its broad nature, open space is not mapped as a site-specific, separate resource item. Instead...other designations with open space qualities are mapped..." (p. 5). Please refer to the Goal 3, 4, 9, 15 and other Goal 5 portions of this report for more detailed information about Lane County's inventories of lands possessing open space values. See also the July 1983 staff report adopted by the Commission for a discussion of compliance with inventory requirements of Goals 16-18.

Policies

Lane County has adopted one policy which addresses open space resources, per se (Open Space and Scenic Areas Policy 1, Plan, p. 16):

> Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall predominate on these lands. Where proposals are developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

In addition, the County has adopted numerous policies regarding agricultural and forest lands, a variety of Goal 5 resources which possess open space values, the Willamette Greenway recreation areas, and coastal resources. Please refer to the Goal 3, 4, 8, 15 and remaining Goal 5 sections of this report for details. See also the July, 1983 Commission action for a discussion of policies addressing Goals 16-18.

Implementing Measures

As noted in the Goal 3 and 4 sections of this report, Lane County has several resource zones which it has applied throughout the County. It has also adopted and applied a Greenway Permit ordinance to lands within the Willamette Greenway (see the Goal 15 section of this report for details). However, these Goals have not yet been fully satisfied, nor have some Goal 2 exceptions been justified. Several coastal zones have been developed and applied in coastal shorelands, estuarine, and beaches and dunes areas (see the July, 1983 staff report adopted by the Commission regarding compliance with Goals 16-18).

Finally, as noted in the remaining subsections of the Goal 5 section of this report, the County has adopted several implementing measures for the protection and/or resolution of conflicts with Goal 5 resource sites containing open space values.

In particular, the County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213), which is intended to protect areas having unique and irreplaceable natural resources which are vital elements for a safe, healthful and pleasant environment for human life. The Natural Resource Zone states that it may be applied to public and private lands where the Rural Comprehensive Plan requires natural resource site

protection, but that the zone is not intended to be applied to other types of resource land, such as agricultural land and forest land. This is not to say, however, that the Natural Resource Zone cannot be applied to agricultural and forest lands. If a Goal 5 resource site is located on agricultural or forest land, Natural Resource zoning will be applied after an analysis of the ESEE consequences of conflicting uses has been completed demonstrating the appropriateness of Natural Resource zoning (confirmed by Jim Mann, Senior Planner, personal communication, June 20, 1984).

Emphasis of the Natural Resource Zone will be placed on limiting and regulating human activity in areas where:

(a) The acceptable water quality of streams, lakes, estuaries of the ocean may be endangered;
(b) Watersheds and their streams or lakes are used for domestic water supplies;
(c) Vegetative cover is essential to maintain soil stability and prevent erosion;
(d) Natural conditions are vital for either unique vegetative ecosystems, aquatic or wildlife habitat; and
(e) Scenic quality or vistas or open space is unique and/or irreplaceable.

In the NR Zone, the following uses are allowed outright (Section 16.213(2):

(a) The following recreational facilities and uses owned by a governmental agency of a nonprofit community organization limited to day use.

(i) Exhibitions of the natural conditions of shorelands, dunelands, forested areas, streams and lakes, marshlands, or similar areas of unique and irreplaceable value, and the vegetation and wildlife supported by such lands and waters provided that in no event shall such activity destroy, or endanger the relationships between the natural conditions being exhibited.

(ii) Picnicking areas, day parks and playgrounds.

(iii) Accessory facilities for outdoor recreation activity such as fishing, clam digging and hunting (provided such activity is conducted only in those areas allowed pursuant to Federal, State and Local fish and game regulations) and hiking and horseback riding.

(b) Fish and wildlife habitat management and the propagation of fish and wildlife.

Single family dwellings or mobile homes for residential purposes for a watchman, caretaker or operator in conjunction with a permitted use, in the NR Zone above, are considered "Special Uses" subject to approval by the Planning Director (Section 16.213(3)). The following "Special Uses" are subject to approval by a Hearings Officer (Section 16.213(4)):

(a) Piers and boat houses.
(b) Single-family dwelling or mobile home and accessory structures.
(c) Farm uses as defined by ORS 215.203(2), and any accessory uses.
(d) Forest uses and any accessory uses.

Uses in Section 16.213(4) above are subject to compliance with the following conditional use criteria (Section 16.213(5)):

(a) (i) Evidence is provided supporting reasons why the proposed use should be sited in a natural resource area.
(ii) That the proposed site is on land generally unsuitable for natural resource uses.
(b) That the proposed use will not significantly impact natural resource uses on adjacent and nearby natural resource lands, and will not significantly impact natural resources on the site of the proposed uses;
(c) That the proposed use will not significantly increase the costs of natural resource management on adjacent and nearby resource lands;
(d) That the site is limited in size to that area suitable and appropriate only for the needs of the proposed use;
(e) That, where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby NR zoned lands, and these measures may be established as conditions of approval; and
(f) That the proposed use is consistent with the policies contained in the Rural Comprehensive Plan and the purpose of the NR zone.

Property development standards for all uses allowed in the NR Zone are set forth in Section 16.213(6) and include setbacks from front, side and rear yards.

Specific application of the Natural Resource Zone is discussed in the other Goal 5 sections of this report. A review of the County's zoning maps indicates that the NR Zone has been applied to a number of Goal 5 areas in the County.

Section 16.215 of the Zone Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses outright and conditionally. However, as noted in the Goal 2 Section of this report, the PR Zone allows a number of uses which could conflict with the purpose of the zone. Some of these uses could also conflict with a number of

Goal 5 resources including open space. This issue is dealt with in the Goal 2 portion of this report.

Conclusion--Open Space

Lane County has not inventoried any specific open space areas, per se. However, it considers farm and forest lands, recreation areas as well as natural areas to possess open space values. These have been inventoried as part of other Goal requirements. The County has a policy recognizing all resource lands as open space lands and indicating that resource-related activities shall predominate in these areas. Open space loss will be minimized where development is proposed, according to the County's policy. Resource zoning has been applied to most of the County, along with special zoning districts which help protect open space (e.g., Willamette Greenway, Natural Resource Zones).

Mineral and Aggregate Resources

Inventory

Lane County's inventory of mineral and aggregate resources is contained in its Mineral and Aggregate Working Paper.

Mineral Resources: The Working Paper addresses the following minerals: clay, copper, lead, gold, zinc, silver, mercury, antimony, arsenic, tourmaline, molybdenum, and pumice (pp. 3-5). The general locations of these mineral deposits are shown on a map (Appendix A), and are concentrated in four main areas: Hobart Butte, Bohemia, Fall Creek, and Blue River. The locations of these four areas are shown on the map as well. Information about the general quality, and quantity of these resources is provided. The County has not provided information on the location, quality, and quantity of specific sites, however.

Aggregate Resources: Lane County inventoried its aggregate supplies by examining permit lists from the Department of Geology and Mineral Industries and the Division of State Lands, by conducting telephone searches, taking on-site tours of aggregate-producing areas; and by talking with industry representatives (p. 6). The locations of 30 identified sites appear on a map in Appendix C and are listed by legal descriptions and tax lot numbers in Appendix D. A more extensive list of all tax parcels having any record of previous aggregate extraction is included in Appendices E and F. Appendix D is considered the County's (1C) inventory for lands outside the Metro Planning Area. Appendix E is the (1B) inventory for lands inside the Metro Area. Appendix F is the (1B) inventory for lands outside the Metro Area (confirmed by Mike Copely, Lane County Planner, personal communication, July 16, 1984).

Information on quantity of (1C) sites is presented in cubic yards, but the County cautions that the accuracy of this information is limited. In many cases, individual suppliers had only a cursory knowledge of the extent of their resources (p. 7). Quality of the supplies was not evaluated, due to time and budget constraints as well as the variability of resource materials.

Supply estimates were compiled by region (there are four regions in the County) and then coupled with demand estimates for each region in order to assess localized needs and supply/demand situations (p. 7). Demand forecasts were based on population projections and a per capita consumption figure of 22 tons annually (p. 7). Based on these estimates, cumulative demands for each region were projected. This analysis shows that existing supplies will be sufficient to satisfy demand to the year 2000. This will be particularly true if actual population growth rates are on the low side of the estimates. The available supply for the non-metropolitan area of the County is about three times the figure for projected consumption even when assuming the high population projections (p. 8). However, in terms of the supply/demand situation for each region, the margin of supply over demand for the southern section is relatively small. This is true also (but less so) for the western region. Also, the Metro Area will use some of the County supplies. Similarly, 5 to 10 percent of the U.S. Forest Service and BLM needs are supplied by the private market (p. 9).

Conflicting Uses/ESEE Consequences Analyses

Mineral Resources: Lane County reports that most of the mineral areas are on public lands (either the BLM or U.S. Forest Service). As such, federal laws govern prospecting, claims, and mining activities. Current forest resource designation and zoning for these areas "do not appear to preclude their development potential. Forest management and mining activities are considered to be compatible activites by most authorities" (p. 5).

Aggregate Resources: Each of the 30 inventoried sites was evaluated in terms of the following potential conflicts:

1. Areas of significant natural value contained in the Oregon Natural Heritage Program inventory;
2. Historical resources contained in the Working Paper on Historical Resources;
3. Willamette Greenway;
4. Park and recreation sites contained in the Lane County Parks and Open Space Master Plan;
5. Sensitive fish and waterfowl habitat identified in the Working Paper on Flora and Fauna; and
6. Existing or planned residential development.

Appendix J summarizes the results of the County's analysis. No conflicts were noted for any of the sites. Sites were not evaluated in terms of conflicts with agricultural or forest lands, since all of the sites are existing sites and therefore no longer available for these uses (p. 10).

Policies

A number of mineral and aggregate resources policies have been adopted (Plan, pp. 13-14). These include:

1. Known mineral resource sites within the County, which include those identified in Appendix "D" of the "Mineral and Aggregate Resources Working Paper," shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. Such designation and regulation is to follow the requirements of the Goal 5 rule (OAR 660-16-000 through 660-16-025), which is addressed in Appendix "J" of the "Mineral and Aggregate Resources Working Paper."

2. Exploration for mineral resources (in contrast to actual mining) shall be a permitted activity in the rural portions of the County. Areas designated primarily for residential purposes are to be excluded from this policy as are areas that, having undergone analysis in accordance with OAR 660-16-000, are designated as having some unique natural, historical or cultural value. Exploratory drilling for gas, oil or other hydrocarbons is not within the scope of this policy.

3. Mining operations are regulated by state and federal government agencies. County regulations shall supplement these actions only as necessary to ensure compatibility in the area, or to protect other resources.

4. Conserve and manage land, soil and mineral resources by respecting their physical limitations and environmental assets.

5. Update, in cooperation with local aggregate operations, federal, state and local agencies, past sand and gravel inventories to ensure supply/demand information is current.

6. Protect aggregate deposits from encroachment of incompatible uses and ensure that aggregate material in close proximity to its point of use will be available when needed.

7. Present and future land use controls shall be implemented to allow for the discovery of new mineral and aggregate resources when it is demonstrated that the projected demand for those resources in a given area will exceed available supply and conflict with adjacent uses can be minimized. Conflict analysis and resolution shall follow the methodology set forth in Appendix "J" of the Working Paper: Mineral and Aggregate Resources; however possible impact on agricultural lands, forest lands and residential

development (existing or planned) must also be considered. For sites within the Willamette Greenway or near Goal 5 inventoried resources, notification of the potential conflict shall be sent to the appropriate body (e.g., Pioneer Museum, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, etc.).

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacts during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listed in Appendix "J" of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

10. Sites for which not enough information is presently available to determine quality, quantity and conflicts with other uses which include those sites listed in Appendix "F" of the "Mineral and Aggregate Working Paper," shall be considered "Significant" in terms of OAR 660-16-000 through 660-16-025, but requiring that the Goal 5 evaluation process be delayed (the "1B" option). At such a time as it is clear that these sites will be needed within the County's advance framework, they shall be evaluated per the Goal 5 rule including conflict analysis and implementation of protective measures. Such evaluation will take the form of Plan amendment or revision studies. Notwithstanding the above schedule, all "1B" sites will be evaluated within five years of the date of this Policy adoption. These sites are included herein as Goal #5 Mineral and Aggregate Exhibit A.

11. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with section C.3.i. of the Goal. Major adverse effects of extraction on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, scenic quality, noise and safety are to be minimized, and such values reclaimed where possible. The provisions of the Lane County Willamette Greenway Plan and implementing regulations shall be used to this purpose.

Policy 11 above indicates that significant fish and wildlife habitat areas in the Greenway shall be protected in accordance with Section C.3.i. of Goal 15. Section C.3.i. requires that aggregate extraction be allowed only when "subject to compliance with local regulations designated to minimize adverse effects on water quality,

fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation" (emphasis added). The Goal standard for significant fish and wildlife habitat areas, however, is stronger. It is spelled out in Section C.3.d. of Goal 15, rather than simply Section C.3.i. (This is also addressed in the Goal 15 section of this report).

Implementing Measures

Lane County has adopted a Quarry and Mine Operations Combining (/QM-RCP) Zone to protect major deposits of minerals, rock, and related material resources, and to resolve conflicts with surrounding uses (Lane Code, Section 16.216).

The Quarry and Mine Operations Combining Zone shall be available for use by the County for new or existing operations when requests are received as part of an areawide or legislative rezoning, or a specific property or quasi-judicial rezoning. When property under consideration of /QM zoning is in close proximity to existing and planned uses potentially incompatible with /QM uses, the application of the zone may be limited to a specific portion of a property in order to encourage the compatibility and proper management of land uses.

The Quarry and Mine Operations Combining Zone is intended to be applied only to those operations which have been evaluated through the Goal 5 Administrative Rule process. Other quarry and mining operations of short-term or intermittent duration should be provided pursuant to the special use provisions of the various zones.

In the Quarry and Mine Operations Combining Zone, the following types of buildings and uses are permitted, subject to the provisions of the Quarry and Mining Operation Reclamation Permit and exceptions set forth in the code (Section 16.216(4)).

(a) Uses permitted in the parent zone with which the /QM zone is combined.
(b) Extracting and storing of minerals, including equipment and materials necessary to carry out these functions.
(c) Plants for the processing of minerals from quarry and mine extraction operations.
(d) Sale of products generated from the quarrying and mining operation.
(e) Activities pemitted as part of the reclamation process provided for in the Reclamation Plan.
(f) Structures an buildings used in conjunction with the extracting and storing of minerals.

The zone requires that a surface mining permit first be obtained from the Department of Geology and Mineral Industries (Section 16.216(5). Section 16.216(6) sets forth blasting notice and records requirements.

Section 16.217 of the Lane Code is the County's Sand, Gravel, and Rock Products (SG-RCP) Zone. The SG Zone "shall only be applied to those sites which have been evaluated consistently with the Statewide Planning Goal No. 5 Administrative Rule conflict resolution process (Sec. 16.217(4)). In the SG-RCP Zone, sand and gravel operations are permitted subsequent to the following restrictions: For any property designated in the Eugene-Springfield Metropolitan Plan as significant in terms of OAR 660-16-000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal No. 5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.

A number of uses are allowed in the SG-RCP Zone when conducted in conjunction with a sand and gravel operation (Sec. 16.217), including asphalt paving-mix plant and accessory buildings; cement concrete batching plant; aggregate products fabrication and sale; sand and gravel resource-related equipment storage yard, maintenance and storage buildings, offices and warehouses "appropriate to the uses permitted in this District"; retail or wholesale sales of products related to the use of sand, gravel and related products; agriculture, grazing or timber raising; dwellings for owners, operators or help required; and signs. The zone contains site improvement standards, as well as setback standards, cover, planting, drainage and topsoil standards, and operating standards.

The SG-RCP Zone establishes a Sand and Gravel Review Committee to determine if operating plans or revised plans comply with the requirements of the zone or with "a river plan which may be adopted by the Board." The committee is made up of the Planning Director, the Public Works Director, the Parks and Recreation Director, the Chief Sanitarian, the County Hydrologist, and the County Floodplain Specialist. The Review Committee is notified of all operating plans and revised plans, and has seven days to approve the plan or require modification of the plan.

It appears, from an examination of zoning maps, that the SG Zone has been applied to a number of sites that are not included on any plan inventory of (1C) sites. Yet, contrary to the zone's purpose statements, the County has not applied the Goal 5 process to these sites to justify SG zoning.

Section 16.218 of the Lane Code is the County's Sand, Gravel and Rock Products-Controlled Process (SG-CP-RCP) Zone. The zone is intended to provide more restrictive control of processing activities than the SG-RCP Zone (described above) for the protection of surrounding properties or for greater control over the location and operation of processing activities. The SG-CP-RCP Zone shall apply only to sites which have been evaluated via the Goal 5 Rule process (Sec. 16.216(3)).

The requirements of the SG-CP-RCP Zone are the same as in the SG-RCP Zone except that the Sand and Gravel Review Committee, in its evaluation of operational plans, must evaluate "the location for the erection or enlargement of all processing equipment and activities, including, but not limited to asphalt paving mix and cement concrete batching plants" according to the following "Operational Plan Approval Criteria":

(1) Conformity with the Rural Comprehensive Plan for Lane County.

(2) The location, size, design and operating characteristics of the proposed use:

(a) Will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding vicinity; and

(b) Will not be adversely affected by the development of abutting properties and the surrounding vicinity. (Consideration may be given to harmony in scale, bulk, coverge and density; to the availability of public facilities and utilities; to the harmful effect, if any, upon desirable neighborhood character, to the generation of traffic and the capacity of surrounding streets and roads; and to any other relevant impact of the use.)

(c) Will not be adversely affected by known natural hazards, such as floods, slides, erosion.

(d) Will not create a hazardous natural condition such as erosion, landslide, flooding.

Among the permitted uses in the F-1 Zone are (1) mining and quarrying and processing of rock permitted in accordance with the FPA for forest road construction or other forest related uses, or when used solely in conjunction with a farm use on which the mining or quarrying occurs, and (2) operations conducted for the exploration of aggregate or other mineral and subsurface resources (Lane Code, Section 16.210(2)(c) and (g)). Mining, quarry, and processing of mineral, geothermal and other subsurface resources; and rock mining, quarrying and processing which exceeds the standards in 16.210(2)(c), above, are allowed conditionally subject to a Hearings Official approval. Conditional use criteria in the F-1 Zone have been discussed in the Goal 4 section of this report.

In the F-2 Zone, mining, quarrying, and processing of rock for forest or farm road construction is permitted outright on the same tract as the mining or quarrying occurs (Sec. 16.211(2)(c)), as are operations for the exploration for aggregate or other mineral or subsurface resources (Sec. 16.211(2)(e)). The mining, quarrying, and processing of mineral and other subsurface resources; and rock mining and quarrying and processing that exceeds the standards in Section 16.211(2)(c), above are

considered Special Uses, subject to Hearings Official approval (Sec. 16.211(5)(d)). This is also the case for operations conducted for the exploration, mining and processing of aggregate or other mineral resources or other subsurface resources (Sec. 16.211(5)(k)). Criteria for permitting these uses are found in Section 16.211(6).

In the Exclusive Farm Use Zone, operations for the exploration, mining and processing of aggregate and other mineral resources or other subsurface resources are Special Uses, subject to Hearings Official Approval (Sec. 16.212(4)(b)).

Please refer to the Goal 15 section of this report for a discussion of the County's approach to mineral and aggregate sites located within the Willamette Greenway.

Objections

1. Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the sand and gravel plan and zone designations given to a site known as the Pudding Creek Heronry. Since this site is within the Willamette River Greenway, please refer to the Goal 15 section of this report for details about these objections.

2. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Inasmuch as this site is within the Willamette Greenway Boundary, the objections are presented in greater detail in the Goal 15 section of this report.

3. James Spickerman (on behalf of Leon Funke and Michael Horton) has objected to the zoning of farm lands for sand and gravel extraction and processing uses.

   a. Objectors are specifically concerned about the following parcels:

      17-03-06 TL 400, 500, 300, 201
      17-03-05 TL 300, 1500, 1300, 1900
      16-03-31 TL 901, 500 and 101

      The 455 acres in these parcels are primarily agricultural land and have been zoned SG-RCP according to objectors. Allowed uses include sand and gravel extraction as well as asphalt paving mix plant, concrete batching plant, aggregate products fabrication and sale, and retail or wholesale sales of products. The land was previously designated EFU. Objectors point out that in Westerburg v. Linn County, LUBA held that a Goal 2 exception to Goal 3 was required when a zone change was made from EFU to aggregate extraction and processing where the new zone permitted

manufacturing processes and activities. Objectors believe, therefore, that Lane County should have taken an exception prior to rezoning these parcels.

b. Objectors claim that the County applied SG zoning to parcel 16-03-31 Tax Lot 601 and 602 without the necessary ESEE consequences analysis of conflicts with Goal 3 uses and other Goal 5 uses. Objectors point out that the site has a "long history of documented conflict between the sand and gravel extraction use and adjacent agricultural and residential uses. Objectors further point out that in Olsen et al. vs. Scappoose Sand and Gravel Co., LUBA indicated that the Goal 5 Rule requires that, where conflicting uses have been identified, the Goal 5 resource site (e.g., mining) may itself have an impact on other uses and these impacts must be considered in analyzing the ESEE consequences.

c. Objectors believe that plan policies do not address the Goals adequately because there is no method set forth in the plan for Goal 5 conflict resolution analysis. The plan states that such analysis and resolution of conflicts shall follow the methodology in Appendix J of the Mineral and Aggregate Working Paper. Objectors, however, state that Appendix J contains no such methodology, but only a statement of conclusions regarding particular sites.

d. Objectors point out that the plan policies set forth no method to reconcile Goal 5 and Goal 3 conflicts (specifically, where agricultural soils are underlaid with aggregate resources).

e. Objectors claim that plan policies make no provision for ESEE analysis of conflicting Goal 5 uses.

f. Objectors claim that the plan does not comply with Goal 5 Guideline B9 which states:

> Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization, as well as for the primary use.

g. Objectors claim that, although a number of sites are to be considered under the (1B) process at a later date, the sites are not included on the plan inventory as a "special category," as required by the Goal 5 Rule.

h. Objectors believe the plan is not internally consistent. Specifically, objectors point out that EFU lands are zoned SG-RCP, but there is no basis for this in policies or in working papers. A number of parcels are zoned for sand and gravel extraction, but not all have been designated for such uses.

Objectors also point out that SG-RCP zoning is contrary to agricultural lands policies (to provide maximum protection for agricultural activities by minimizing activities that could conflict with such uses.

i. Objectors point out that no consideration is given to the effects of SG-RCP zoning on the groundwater resources of agricultural lands adjacent to the land designated SG-RCP.

Response to Objections

1. The response to the objections regarding the Pudding Creek heronry is presented in the Goal 15 section of this report.

2. The response to the objections regarding the Confluence Heronry is presented in the Goal 15 section of this report.

3. a. Objectors contend that sites 17-03-06, TL 400, 500, 300, 201; 17-03-05 TL 300, 1500, 1300, 1900; 16-03-31 TL 901, 500, and 1001 were all rezoned from EFU to S-G-RCP without an exception. Objectors cite Westerberg vs. Linn County as requiring this be done where the new zone permits processing activities. This was based on the fact that ORS 215.213 allows processing conditionally, but at the time of Westerberg vs. Linn County, "processing" did not include the batching and blending of aggregate. However, the 1983 Legislature changed the statutory definition of "processing" (ORS 517.750(9)) to include "crushing, washing, milling, screening as well as the batching and blending of mineral aggregate into asphaltic and portland cement concrete product . . .". Therefore, objectors are not correct in suggesting that a Goal 2 exception be taken for such sites. However, this is not to say that the Goal 5 Rule process does not apply. In the case of the parcels cited by objectors, this process has been completed for only 17-03-06 TL 400, 17-03-05 TL 300, 16-03-31 TL 901, and 16-03-31 TL 1001. The Mineral and Aggregate Working Paper (p. 10) indicates that, because these are existing operating sites, these sites are no longer available for agricultural use. No conflicts were found to exist for any of these four sites.

b. Objectors are correct that parcel 16-03-31 TL 601 has not been analyzed according to the Goal 5 process. Site 16-03-31 TL 602, however, is included as Site No. 21 in Appendix D of the County's Mineral and Aggregate Working Paper. No conflicts were found to exist with Site No. 21. Conflicts with agricultural uses for the site were not analyzed because the site is an operating site and it is assumed it is no longer available for agricultural use (Working Paper, p. 10). Objectors are correct, however, that the County did not address conflicts with adjacent agricultural and residential uses. This has not been required except when a new site or expansion of an existing site is

proposed. Policies 7 and 10 require Goal 5 analysis in such circumstances, including analyzing and resolving conflicts with surrounding uses.

c. Objectors are not correct that the County lacks a method for analyzing and resolving conflicts pertaining to (1C) mineral and aggregate resources in Appendix D. The County indicates that there are no conflicting uses for these sites, and therefore either the SG ,/QM or SG/CP zone will apply. It also indicates that sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts (Mineral and Aggregate Policy 9). All (1B) sites require a full Goal 5 evaluation, including conflict resolution and plan amendments or revision studies before extraction activities are allowed, according to Mineral and Aggregate Policy 10.

Objectors are correct that Appendix J is a statement of conclusions about the conflicts with the 30 (1C) sites, and not a methodology for analyzing and resolving conflicts per se. However, the policy should be interpreted as requiring that the same methodology used in producing Appendix J will be used in future conflict/resolution situations (i.e., determining whether there are conflicts with other Goal 5, 8, and 15 resources, or with planned or existing development). The policy would also require consideration of possible impact or agricultural and forest lands in approval of any new site or expansion of an existing site.

d. Objectors are not correct that there is no plan policy method to reconcile conflicts on agricultural lands that contain aggregate resources for those (1B) sites in Appendix F. Specifically, Mineral and Aggregate Policy 10 requires a full Goal 5 Rule evaluation of (1B) sites. This will require a site-by-site analysis of conflicts (including those with agricultural lands), an ESEE consequences determination of those conflicts, and application of measures to resolve conflicts.

e. There is no specific Goal 5 requirement to adopt plan policies which require analysis of ESEE consequences of identified conflicting uses. Rather, such conflicts are to be resolved during the planning process, based on such an analysis which is to be incorporated into the plan. (The exception to this is for (1B) sites. Jurisdictions must adopt policies to apply all applicable steps of the Goal 5 Rule to such sites. Lane County has such a policy for its (1B) mineral and aggregate resources--Mineral and Aggregate Policy 10).

f. Guidelines do not carry the same weight as the Goals, and therefore, this objector's concern is not a Goal requirement. However, objectors do raise an important concern, and the County is urged to plan such sites for interim, transitional and "second" use.

g. Contrary to objector's statements, the County has placed its (1B) sites on a special category inventory--Appendix E and F of the Mineral and Aggregate Resources Working Paper. It also has expressed this in Mineral and Aggregate Policy 10.

h. Objectors are correct that some lands are zoned SG that are not on the (1C) inventory, nor has the Goal 5 process been applied to them to justify SG zoning rather than EFU, or some other zoning.

SG zoning for a particular site may be counter to the County's policy of providing maximum protection for agricultural activities by minimizing activities that could conflict with such uses. However, Goal 5 requires protection of mineral and aggregate resources. These Goal requirements must be balanced. This is done through the Goal 5 process. When analyzing the ESEE consequences of conflicting uses for a particular site, the requirements of other Statewide Goals must be considered and balanced against Goal 5 requirements.

i. Objectors have not provided information demonstrating how SG zoning will have an effect on groundwater resources of adjacent agricultural lands. Other state statutes require that this concern be addressed.

Conclusion--Mineral and Aggregate Resources

Lane County has inventoried its mineral and aggregate resources and has identified 30 specific aggregate sites which are considered (1C) sites. The amount of aggregate contained in these 30 sites is sufficient to satisfy the demand to the year 2000. The County indicates there are no conflicting uses with any of these sites, and has applied QM-RCP, SG-RCP, or SG-CP-RCP zoning to those sites. These zones assure that extraction can occur, subject to appropriate conditions regarding such things as setbacks, drainage, traffic and operation.

The County has identified a number of (1B) sites which will be evaluated according to the Goal 5 process (including plan amendments, where necessary), within the next five years.

A number of sites not in any plan inventory have been zoned for sand and gravel extraction, but have not been justified as such, based on an analysis of ESEE consequences of conflicting uses.

Energy Sources

Inventory

Lane County has adopted an Energy Working Paper which describes energy consumption and both conventional and alternative energy sources. Conventional sources includes electrical energy from seven utility

companies and natural gas and petroleum from out-of-state sources (pp. 7-15). Alternative sources include solar, hydroelectric, biomass, cogeneration, wind, and geothermal energy (pp. 15-29). Of these, the County considers only hydro power and geothermal sites to be site-specific (p. 39).

The Working Paper identifies eight dams currently generating power or having the potential to do so (p. 18), as well as eight existing nonpower dams with hydroelectric generation potentials exceeding 200kW (p. 18). Maps showing the general locations of these sites are on page 19 of the Working Paper. Information about the dam height, hydraulic head and capacity for each site is presented on page 18. Proposed dams with generation potentials exceeding 25MW and those with potentials between 200kW and 25MW are identified on page 21 of the Working Paper and mapped on page 22. Information about dam height (where known), hydraulic head, system head, and capacity is presented (p. 21).

Wind potential in Lane County is through to be highest along the Coast and Coast Range. Eugene Water and Electric Board (EWEB) and 19 public utilities operate an experimental windmill in the Coast Range north of Lane County, and PP&L operates a wind turbine near Coos Bay. Average wind speeds in Lane County, however are too low to power such windmills (p. 26).

There are two known Geothermal Resource Areas (KGRA's), both of which are in the eastern portion of the County on federal land. Both are under study by the Oregon Department of Geology and Mineral Industries (p. 29). The locations of the two KGRA's--Belknap-Foley KGRA and McCredie KGRA--are shown on Map 7 (p. 30). Information regarding their reservoir temperatures, mean reservoir volume, wellhead thermal energy and thermal power, and resource to land distance is presented in Table 11 (p. 31). The Energy Working Paper also describes the stages of geothermal energy development and discusses the constraints upon geothermal power generation (pp. 28-29). Although the potential for geothermal energy development in Lane County is "significant," further information is needed regarding its potential in the two KGRA's and the environmental impacts associated with such development (p. 29).

A cogeneration facility capable of producing 28,000 kilowatts of power exists at the Weyerhaeuser plant in Springfield, and another facility capable of producing 800 kilowatts is being installed in the Lane Plywood Company of Eugene (pp. 25-26).

The Working Paper disucsses the potential for biomass as an energy source in Lane County (pp. 23-25). There are two major sources--forest lands and farm lands. The potential for energy generation from these sources is great, but economic feasibility and environmental impacts are primary constraints to development of these sources at this time (p. 25).

Conflicting Uses/ESEE Consequences Analyses

General, non-site-specific conflicts are discussed for each of the major energy source categories identified (i.e., hydroelectric, biomass, solar, cogeneration, wind).

Regarding hydro sites, the County states:

> Maps have been presented illustrating a number of alternative hydro sites on various rivers in the County. Since these sites are, at present, in the proposal stage, it is premature to evaluate conflicting uses for each one, but the sites need to be acknowledged by designation on Plan Diagrams, and some effort made to ensure their availability when needed. Conflicting uses will be examined and resolved at such a time as the sites are actually being proposed for development; this could probably be done most efficiently as part of the elaborate permitting process hydro power must undergo before approved. In most cases, conflict resolution is a major factor in hydro development even through many of the sites are located on public land, or lands presently set aside for resource uses--especially timber lands. Existing resource-based zoning can do much to prevent them from being subjected to development if energy considerations are incorporated into the zoning requirements. In Goal 5 language, the "1B" option should be taken at this time (p. 39).

Regarding geothermal sites, the County indicates that because they are located on federal lands, they will have to go through a series of state and federal permit approvals. Zoning "only reflects the County's desire that the sites be protected from conflicting uses." Therefore, the County has not conducted an analysis of conflicting uses (p. 39).

Solar access does not appear to be endangered at this time in the rural areas. However, this is not the case in newly developing residential and commercial areas (p. 39).

Policies

Five Energy Resource policies have been adopted by Lane County (Plan, p. 17):

1. Lane County shall identify energy resource areas within the County and protect such areas through the use of existing ordinances and regulations. Such regulations shall address hydroelectirc, geothermal, and wind power sites.

2. Lane County shall encourage the exploration and development by other agencies of renewable energy resources such as geothermal, wind, biomass, hydroelectric and solar, and shall monitor such development to ensure that the development does not cause adverse effects within the County.

3. Lane County will use the work of the L-COG Committee on Energy, and its report, "Lane County Electic Energy Planning Program, Final Report (1983)" as a source of resource identification and site protection measures. This will supplement the County's own measure expressed in Policy and Zoning Statements.

4. The County shall protect the sites of hydroelectric resources through conditional or special use provisions of its resource zones. Sites for which a license has been applied for with federal and state authorities, or for which water impoundments of more than 100 acre-feet are proposed, or which will generate power in excess of 75KW, shall be shown on the Plan as a special designation, an Exception to applicable LCDC Goals taken if necessary, and a special zoning district applied. At that time, the Goal 5 rule conflict analysis shall also be carried out.

5. For additional energy policies see Goal 3.

Implementing Measures

Hydroelecric generating facilities with water impoundments of less than 100 acre-feet are allowed conditionally subject to Hearing Official approval in the F-1 and F-2 Zones (Lane Code, Sections 16.210(4)(g), 16.211(5)(g)).

A hydroelectric generating facility not exceeding 10 acres in size and located at an existing water impoundment which will not be increased in size because of the generating facility is also permitted conditionally (subject to Hearings Official approval) in the F-1 and F-2 zones (Section 16.210(4)(h), 16.211(5)(h)).

The conditional use criteria for approving or denying these hydroelectric facilities are those for other nonforest uses (Sec. 16.210(5)(a) through (f); 16.211(5)(f)(i) through (vi)).

Hydroelectric facilities having impoundments over 100 acre-feet are not permitted outright or conditionally in the Lane Code. Instead, the County shall analyze the conflicts per the Goal 5 Rule, take an Exception to the applicable Goal if necessary, and apply a special zone to those sites, as specified in Energy Policy 4.

As noted in the Working Paper, resource zoning will help prevent possible sites from being developed for other uses.

Conclusion - Energy Sources

Lane County has identified a number of potential energy sources, many of which are on federal land, and all of which are (1B) sites at this time. There is potential for hydroelectric developments on nonfederal land, but the County contends that it is premature to evaluate conflicting uses.

Nevertheless, the County has decided to allow small sites in its F-1 and F-2 Zones conditionally. Larger sites will require plan amendments, along with application of the Goal 5 Rule, exceptions to appropriate goals and possible development and application of a special zone. The County has adopted a policy commitment to this effect. In the meantime, resource zoning will help prevent potential sites from being lost to other uses. (See, however, the Goal 4 section of this report for a discussion of problems with the F-2 Zone.)

Fish and Wildlife Areas and Habitats

Inventory

Information about Lane County's fish and wildlife resources is contained in its Flora and Fauna Working Paper and the addendum to that working paper. Pages 5-10 describe in general each of the 11 major habitat types in the County, along with a discussion of the value of the habitat type to wildlife, and general location of each habitat type. These include:

1. Estuary and Bay
2. Inland Marsh
3. Wet Meadows
4. Lakes and Reservoirs
5. Riparian Vegetation
6. Annual and Perennial Grasslands
7. Coastal Shore Pine/Spruce
8. Douglas Fir/Trailing Blackberry
9. True Fir/Alpine
10. Deciduous Hardwoods
11. Agricultural Lands.

The County prefaces this material by stating that this information "is not considered an inventory and is not accompanied by maps. It is intended merely as background information."

The Working Paper and its addendum contain special sections addressing endangered, threatened, and special concern species, riparian and wetland areas, sensitive fish and waterfowl areas, and big game range. These are discussed separately below.

Endangered, Threatened and Special Concern Species: The Working Paper lists plants and animals which are threatened, endangered, or of special interest (pp. 11-12). Further information is provided for six of these species--northern spotted owl, northern bald eagle, wolverine, silverspot

butterfly, western snowy plover, and American osprey (pp. 12-13). This information does not provide location, quality, or quantity information on any specific habitat areas or sites. However, the County indicates that:

1. No spotted owl or bald eagle nests are known to occur on private property;

2. Wolverine habitat is in high elevation, remote areas and therefore in federal ownership;

3. Snowy plover habitat is within state jurisdiction.

4. Osprey nests are found throughout the County, although not in great numbers. The County indicates the ODFW maps show their locations, but these maps have not been adopted or submitted for review.

5. Silverspot butterfly habitat is found only "along a small section of the Oregon Coast." It is recognized in the Coastal Resource Management Plan of Lane County.

Lane County has indicated that Silverspot butterfly habitat occurs on federal land adjacent to the Big Creek (Reneghan) Exception Area as well as on the Renaghan property itself (Exhibit E--Renaghan Amendment, pp. 27, 31). It should be noted that the Exception document contains one statement (Finding 37e) on page 27 which appears to contradict this. Specifically, finding 37e states there are no sensitive species on the property, and that the Silverspot butterfly habitat is located on adjacent federal land only. The Exception document contains several other statements indicating that such habitat occurs in the northwest corner of the property.

The County provides no information at all regarding great blue heron rookeries or pigeon mineral springs, which are considered sensitive bird habitat areas by the Department of Fish and Wildlife. (The exception to this is for two rookeries in the Willamette Greenway. They are addressed in the Goal 15 section of this report.) The inventory of sensitive bird sites developed by ODFW and provided to the Department of Forestry (DOF) as part of a recent management agreement between those agencies, identifies 15 great blue heron rookeries, 21 osprey nest sites, three pigeon mineral springs, and at least one bald eagle nest site in Lane County, most of which are on nonfederal land. According to Flora and Fauna Policy 15, "currently known pigeon springs, heron and raptor (hawk, osprey, and eagle) nest sites. . . shall be placed in a '1B' category."

Riparian and Wetland Areas: Riparian lands are defined by the County as all lands along both banks of Class I streams in Lane County, to a setback line of 100 feet from ordinary high water (Addendum, p. 7).

The County indicates in its Flora and Fauna Working Paper (p. 16) that all lakes, reservoirs, and Class I streams in Lane County have been mapped, but were not included because of budgetary limitations. They are

available in the Planning Department offices. The Addendum to the Working Paper (p. 6) states that ODFW has provided maps of all Class I streams, as well as major significant wetland areas. Detailed maps are available for review in County offices, and a generalized summary map is included in the Addendum (p. 20).

The Flora and Fauna Working Paper discusses the values associated with wetlands and riparian areas for both fish and other wildlife types (pp. 14-15). The County notes that the U.S. Fish and Wildlife Service has identified a number of wetland types in its National Wetland Inventory. Currently, about half of the County has been mapped, enabling identification of major wetlands. These include:

1. Fern Ridge periphery, exclusive of parkland;
2. Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel;
3. North Fork Siuslaw fresh-water marsh;
4. Maple Creek marsh;
5. Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

The County indicates that these areas are mapped in detail on the Plan Diagram maps. More specific location, quality, and quantity information for each of these five wetland areas is contained in the Working Paper Addendum (pp. 11-13).

The County has not inventoried a wetland south of Sutton Lake and east of Highway 101, or a Darlingtonia bog east of Florence. As noted in the 1983 Coastal Goals review of Lane County (p. 8), these wetland were to be addressed under Goal 5:

> The County notes there are only two Goal 18 resource areas east of Highway 101 which do not fall within the coastal shorelands boundary. They are two wetland habitat areas identified in the coastal resource inventory maps. The County should note that it will have to adequately address these two areas later under Goal 5 when it brings the remainder of the County plan into compliance.

The Darlingtonia bog is addressed in more detail in the Natural Areas section of this report.

Sensitive Fish and Waterfowl Areas: The County notes that this is a subcategory of the previous section, Riparian and Wetland Areas (p. 20). Maps have been provided the County by ODFW showing important waterfowl nesting habitat and streams that receive high use by anglers and/or game fish (p. 20), but were not submitted for review. A large-scale map is available in the County Planning offices (Addendum, p. 5). A

generalized, small-scale map is included on page 20 of the Addendum which shows the locations of important streams and stream reaches. A list of these specific reaches, by basin, is included in the Addendum (pp. 2-4). All identified areas are of high quality and are considered important (Working Paper, p. 21). The extent of riparian vegetation is described in the previous subsection of this report. The County notes that there are native anadramous fish runs in Big Creek within the Big Creek Exception Area (Exhibit E--Renaghan Amendment, p. 44). These include coho salmon, cutthroat trout and steelhead.

Big Game Range: The County notes that ODFW divides big game range in Lane County into three categories--Major, Peripherial, and Impacted. The Major Range supports the majority of big game and, in general, consists of sparcely developed commercial forest lands. Peripheral Range is generally located on foothill areas between commercial forest lands and valley floors. Peripheral Range supports substantial big game populations and serves as wintering areas for animals in severe winters. Impacted Range consists of those areas that have existing levels of development which preclude future wildlife management options for maintaining viable wildlife populations and recreational opportunity, although they frequently contain big game populations.

All three big game range areas are depicted on Lane County Wildlife Inventory Maps, according to the Flora and Fauna Working Paper (p. 23). However, these maps were not submitted for review because of budget constraints. They are available in the Planning Department Office (p. 23). The Working Paper notes that the highest quality big game range is in the Major Range because development is limited. Peripheral Range is important, but has enough development to limit big game use and managment options. Impacted Range is of the lowest quality because of existing development (p. 23). The County provides acreages for these three categories (p. 24).

The County recognizes major elk habitat on a portion of the Big Creek Exception site (Exhibit E-Renaghan Amendment, p. 52).

Conflicting Uses/ESEE Consequences Analyses

Endangered, Threatened and Special Concern Species: As indicated earlier, Lane County knows of no spotted owl or bald eagle nest sites on private land. Similarly, wolverine habitat is on federal land. The County notes that the State Parks Division of ODOT regulates vehicular uses in snowy plover habitat (Working Paper pp. 12-13). Specific conflicts with osprey nest areas are not identified, but the County notes that protective measures in riparian areas (e.g., Willamette Greenway permit requirements, coastal shorelands overlays, riparian and wetland area provisions) will resolve conflicts (Addendum, p. 15).

The Working Paper indicates that the Coastal Resources Management Plan of Lane County recognizes the Silverspot butterfly and applies a prime wildlife managment unit to its habitat (p. 13). Specific conflicts and ESEE consequences are not discussed in the Working Paper, however.

It should be noted that a portion of the critical habitat for the Silverspot butterfly is included in the Rock Creek Federal Wilderness Area, recently approved by Congress. Another portion of the habitat is located within the County's Big Creek Exception Area. That exception indicates that the applicant "will enter into contractual arrangements with the Siuslaw National Forest or Western Oregon State College to take whatever measures are necessary to mitigate any potential conflicts or adverse impacts associated with the development" (Exhibit E--Renaghan Amendment, p. 27). According to the Exception (p. 28), the U.S. Fish and Wildlife Service's Endangered Species Office indicates that this project will have not significant adverse impact on the Silverspot's habitat.

Conflicting uses and ESEE consequences analysis have not been conducted for sensitive bird habitat areas, since these resource sites have been placed in a (1B) category.

Inasmuch as the County failed to inventory a number of nonfederal sites as (1C) resource sites (e.g., great blue heron rookeries, pigeon mineral springs, bald eagle nest, osprey nests), the County has not identified conflicting uses or ESEE consequences of those conflicting uses with these sites. Information does exist for these sites, however, as indicated earlier, enabling the County to conduct such analyses.

Riparian and Wetland Areas: Two major activities conflict with riparian and wetland habitat areas, according to the County's Working Paper (p. 17)--destruction of vegetation for any purpose (e.g., forestry, agriculture, construction, recreation, aggregate extraction), and draining surface or subsurface water which then changes the vegetative structure and generally the habitat value. The County has developed separate ESEE consequence analyses for riparian lands and wetlands.

The riparian lands ESEE consequence analysis is further divided into three categories--(1) resource areas (forest and agricultural lands), (2) rural lands (partially or sparsely developed), and (3) developed and committed lands, including communities (Addendum, pp. 7-10). Based on these analyses, the County decided to develop a (3C) approach in order to limit conflicting uses. ODFW has recommended a 50 foot setback along all class I streams in rural development zones and a 100 foot setback in rural resource zones (Addendum, p. 10).

Separate conflicting uses/ESEE consequences analyses have been conducted for each of the five major wetlands identified (Addendum, pp. 11-13). Based on these analyses, the County has determined that areas owned by the Corps of Engineers (Fern Ridge Reservoir, part of Lower Long Tom, Amazon Canal) have sufficient protection, and furthermore, cannot be regulated by the County since they are in federal ownership. Areas under Coastal Resources Zoning (North Fork Siuslaw, Maple Creek Marsh) are also assumed to be adequately protected. A (3C) approach (e.g., Natural Resource Zoning) is appropriate for all other privately-owned areas (part of Lower Long Tom) (p. 13).

Sensitive Fish and Waterfowl Areas: Removal of riparian vegetation in identified sensitive areas is considered the major conflicting use with these resources (Working Paper, p. 21). The County notes that the ESEE consequences analysis is generally the same as that for riparian areas and wetlands, summarized in the previous section of this report (Working Paper, p. 21). However, the County indicates that since the sensitive fish and waterfowl areas are considered more valuable than others in the County, the effects of vegetation removal can be more significant (p. 21). Based on these analyses, Lane County has chosen a (3C) approach to protect riparian vegetation in such areas "whenever possible" (p. 22). The County notes that ODFW has recommended setbacks of 50 to 100 feet along waterways designated as sensitive fish habitat, plus natural resource zoning for wetlands not within that riparian strip (Addendum, p. 5).

Conflicting uses and ESEE consequences of conflicting uses with fish habitat in the Big Creek Exception Area are addressed on pages 54-56 of the Exception. Based on this analysis, the applicant will be required to protect the anadromous fish through development of a management plan and protection or riparian vegetation (pp. 27, 55).

Big Game Range: The primary conflict with big game range is identified as residential use at densities over one dwelling unit per 40 acres in Peripheral Range, and one unit per 80 acres in Major Range (Working Paper, p. 24). The County indicates that its 80-acre commercial timber zoning is very restrictive in terms of dwelling unit placement, and therefore, "it is unlikely that conflicts will occur" in Major Range areas (Addendum, p. 14). Similarly, the County believes its 40-acre zone will satisfy ODFW's recommended density in Peripheral Range (p. 14). Developed and committed exception areas are considered impacted, and the County has decided that conflicting uses should be permitted in those areas (p. 14).

The conflicts and ESEE consequences of conflicts with major elk habitat in the Big Creek Exception area are discussed on pages 53-54, and 56 of the Exception document. Based on this analysis, the applicant will be required to protect elk winter forage areas (p. 27) and to develop an elk managment plan (p. 32).

Policies

Lane County has adopted numerous policies regarding its fish and wildlife resources (Flora and Fauna Policies, Plan, pp. 14-16). These policies include the following:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "Significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or, that riparian vegetation does actually extend all the way into the 500 foot or 100 foot setback to the location of the proposed improvements.

   Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife.

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per

Goal 5 requirements if it is clearly demonstrated that an unprotected signficiant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process.)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resource zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

13. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met.

14. A group known as the "Lane County Flora and Fauna Committee" is to be established and given permanent status by the Board of County Commissioners. The committee shall represent a wide array of environmental interests and the interests of property owners. Its tasks shall include: evaluation of LCDC Goal 5 concerns and resources, development of information to help the County comply with OAT [sic] 660-16-000/025 ("Goal 5 Rule"), research and provision of resource site data to the County, and response to work in progress. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

15. Currently known pigeon springs, heron and raptor (hawk, osprey and eagle) nest sites shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluation per "1B" requirements within two years of the date of plan adoption. Lane County shall consider enlarging the list of significant nest sites whenever information about additional sites becomes available. The significant nest sites shall be those identified by Jim Greer and Jim Hutchison (Department of Fish and Wildlife biologists) in a 12/20/83 letter to Jim Mann (Senior Planner, Lane County Land Management Division), and these sites shall be incorporated into the Lane County General Plan Policies document as Flora and Fauna Exhibit A.

16. Rare and endangered vascular plants, identified in the 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

17. Lane County recognizes that Douglas fir old growth stands provide valuable and unique wildlife habitat and will encourage the Forest Service and Bureau of Land Management to maintain acreage in this age class sufficient to ensure viable populations of dependent wildlife species.

Policy 22 (Plan. p. 5) states:

> Sites considered 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement

process for the "significant" sites and after sufficient information is available regarding the location, quality and quantity of the "significant" sites.

Lane County's Forest Lands Policy 17 (Plan, p. 10) states:

> Lane County recognizes that the Oregon Forest Practices Act shall be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal 5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal 5. No other findings, assumption, goal policy, or other planning regulation shall be construed as additional regulation of forest management activities.

Implementing Measures

Lane County has adopted the following riparian setback standards and riparian vegetation maintenance standards in its F-1, F-2, E-RCP, ML-RCP, PR-RCP, and DR-RCP Zones (Lane Code, Sections 16.210(7)(a) and (b), 16.211 (9)(b) and (c), 16.212 (8)(b) and (c), 16.214(7)(b) and (c), 16.215(6)(a) and (b), and 16.232(5)(b) and (c), respectively):

> (b) Class I Stream Setbacks. No structure other than a fence or sign shall be located closer than 100 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Comprehensive Plan. A lesser setback may be allowed if:
>
> (i) The Department of Fish and Wildlife is consulted by the Department at least 10 days prior to issuing a permit for a structure; and
>
> (ii) The riparian vegetation does not actually extend all the way into the 100-foot setback to the location of the proposed structure, and the riparian vegetation has not been removed in violation of the below riparian vegetation maintenance standards; or
>
> (iii) An application for a variance to the above setback standard has been approved pursuant to LC 16.256 with findings of compliance to the Comprehensive Plan policies for the protection of Class I streams and riparian vegetation.
>
> (c) Maintenance, Removal and Replacement of Riparian Vegetation. The following standards shall apply for the maintenance, removal and replacement of riparian vegetation along Class I streams designated for riparian vegetation protection by the Comprehensive Plan:
>
> (i) No more of a tract's existing vegetation shall be cleared from the setback and adjacent area than is necessary for a permitted use, accessory buildings, necessary access, septic requirements and fire safety requirements.

(ii) Construction activities in and adjacent to the setback area shall occur in such a manner so as to avoid unnecessary excavation and/or removal of existing vegetation beyond that required for the facilities indicated in LC 16.212(8)(c)(i) above. Where vegetation removal beyond that allowed in LC 16.212(8)(c)(i) above cannot be avoided, the site shall be replanted during the next replanting season to avoid water sedimentation. The vegetation shall be of indigenous species in order to maintain the natural character of the area.

(iii) A maximum of 25 percent of existing natural vegetation may be removed from the setback area.

(iv) The following uses and activities are excepted from the above standards:

(a) Commercial forest practices regulated by the Oregon Forest Practices Act.

(b) Vegetation removal necessary to provide water access for a water dependent use.

(c) Removal of dead or diseased vegetation that poses a safety or health hazard.

(d) Removal of vegetation necessary for the maintenance or placement of structural shoreline stabilization.

In the PF/RCP C-R, RCP, RA-RCP, and RR-RCP Zones (Sections 16.219(4)(b) and (c); 16.223(5)(b) and (c); 16.229(7)(b) and (c); and 16.231(7)(b) and (c), respectively), the setback is 50 feet, rather than 100 feet.

The following zones indicate the Class I Stream and Riparian Vegetation requirements of LC 16.229-35(2) and (3) shall apply: C-1, RCP (Section 16.220); C-2, RCP (Section 16.221); C-3,RCP (Section 16.222); M-1, RCP (Section 16.224); M-2, RCP (Section 16.225); and M-3, RCP (Section 16.226). The RG-RCP Zone (Section 16.230) indicates that Section 16.299(2) and (3) shall apply. However, the Lane Code does not contain any section with the numbers 16.299-35(2) and (3) or 16.229 (2) and (3).

As discussed in the open space section of this report, Lane County has adopted a Natural Resource Zone (NR-RCP) (Lane Code, Section 16.213) which is, in part, intended to protect aquatic and other wildlife habitat areas. Please refer to that section of this report for details. It should be pointed out that the NR zone does not contain riparian setback and vegetative maintenance standards. Although major development in the NR zone is not anticipated, the NR zone permits a variety of structures. These structures should be required to be set back in order to protect riparian vegetation, just as they are in other zoning districts. In fact, since the purpose of the NR zone is to protect wildlife and aquatic habitats, there is even more reason why such setbacks should be required.

A review of the County's zoning maps indicates that the NR Zone has been applied to a number of habitat areas in the County. One of the sites zoned NR is the Big Creek Exception Area, which contains fish and big game habitat, and habitat for the endangered Silverspot butterfly.

According to the Exception (p. 27), no alteration of the riparian vegetation will occur, and the owner has agreed to enter into contractual arrangements to protect elk winter forage areas. The applicant will also take measures that may be necessary to protect the habitat of the Silverspot butterfly.

Contrary to statements contained in the Flora and Fauna Working Paper, Lane County's F-1 (Nonimpacted Forest Lands) Zone establishes a 40-acre (rather than an 80-acre) minimum lot size (Lane Code, Section 16.210(6)), except that (a) a land division to create a parcel of less than 40 acres may be allowed conditionally if it is for separating an existing residence from adjoining forest land, and (b) a common property boundary may be adjusted so long as no additional parcels are created. As noted in the Flora and Fauna Working Paper (p. 24), and as discussed earlier in this report, ODFW's recommended density in Major Big Game Range (which, according to the County, is mostly zoned F-1) is one unit per 80 acres. Inasmuch as the F-1 zone does not allow dwellings, this density standard has less meaning in Lane County's F-1 Zone.

The F-2 (Impacted Forest Lands) Zone (Lane Code, Section 16.211) requires a minimum of 20 acres for creation of a woodlot or farm parcel for growing grapes, berries, or horticultural specialties, and 40 acres for creation of a farm parcel. However, there is no requirement that, in the Big Game Range portions of that zone, densities will not exceed those recommended by ODFW (i.e., one unit per 40 acres in the Peripheral Range, or one unit per 20 acres with clustering and siting standards; one unit per 80 acres in the Major Range, or one unit per 40 acres with clustering and siting standards).

In the Exclusive Farm Use Zone (Lane Code, Section 16.212), a dwelling or mobile home not in conjunction with farm use may be approved if it meets certain criteria; similarly, a division of land may be allowed for a dwelling not in conjunction with farm use if it meets those criteria and does not conflict with the purpose of the zone. However, none of the criteria address ODFW's dwelling density recommendations, and the purpose statement of the zone does not refer to maintaining wildlife habitat values. As noted in the Goal 3 section of this report, minimum lot size is from 20 to 60 acres, depending upon location. As noted in the Flora and Fauna Working Paper (p. 24) and as discussed earlier in this report, ODFW's recommended density in Peripheral Big Game Range (which, according to the County, is mostly zoned Exclusive Farm Use) is one unit per 40 acres. There are no standards in the zone which require lot sizes to be 40 acres or greater in the Peripheral Big Game Range portions of the zone, or alternatively, that require clustering of dwellings (to allow densities as great as one unit per 20 acres.

Lane County has adopted a Marginal Lands (ML-RCP) Zone (Lane Code, Section 16.214) which appears to have been applied to wildlife habitat areas, and could be applied to other areas in the future. (The County did not submit maps showing the locations of its big game habitat areas, so it cannot be determined with certainty whether it has been applied in big game habitat areas). ORS 197.247(8) requires that application of

such a zone satisfy all requirements of other Goals, in this case, Goal 5. The County has not adopted findings demonstrating how the specific applications of the ML zone comply with the Goal 5 Rule. Criteria for approval of future ML zoning (Section 16.214(4)) do not include compliance with Goal 5.

Section 16.215 of the Lane Code is the County's Park and Recreation (PR-RCP) zone which has been applied to a number of sites in the County. The zone permits a number of recreational uses and activities outright, and a number of others if within a built and committed exception area that is designated as nonresource land. The zone also lists uses that are subject to hearings official approval. Section 16.215(5)(e) of the zone contains the following conditional use approval critera:

> When a use is proposed in an area designated as Major Peripheral Big Game Range or as Sensitive Fish and Waterfowl areas as shown on the Lane County Wildlife inventory, the Oregon Department of Fish and Wildlife shall be notified and their comments shall be considered in evaluating the proposed use.

The PR zone allows a number of uses that could conflict with wildlife habitat and other Goal 5 values, and with the purpose of the zone, as noted in the Goal 2 section of this report.

The County has not adopted any implementing measures to protect and/or resolve conflicts with sensitive bird habitat sites.

As noted in previous acknowledgment reviews (e.g., Tillamook County), the Commission has allowed counties to adopt plan policies and ordinance language which clearly expresses the intent to rely on the FPA, Rules, and the March 1984 agreement between the Board of Forestry (BOF) and the Fish and Wildlife Commission (F&WC) to resolve conflicts between timber management activities and sensitive bird sites. Lane County has no such policy commitment, and it has not inventoried all sites on the BOF/F&WC list of sites covered by this agreement. However, even if such a policy is adopted by counties, they are still required to adopt implementing measures to resolve conflicts between other uses (e.g., development) and sensitive bird sites. Lane County has not adopted such measures.

Lane County has not identified sites that are considered to be more important than commercial forest operations based on a Goal 5 ESEE consequences analysis, per Forest Lands Policy 17 (Plan, p. 10), nor has it adopted and applied any implementing mesures to such sites which regulate timber management activities.

Objections

1. The Oregon Department of Fish and Wildlife (ODFW), 1000 Friends of Oregon and the Legue of Women Voters of Central Lane County (LWV) have objected to the County's approach to sensitive bird nesting and use sites. Specifically objectors point out that the Flora and Fauna Working Paper discusses only some of the species considered

sensitive. Missing are designations of heron rookeries and pigeon mineral springs. Policy 15 addresses all sensitive species (bald eagle nests, heron rookeries, snowy plover habitat, spotted owl nests, osprey nests and pigeon mineral springs). Further, objectors point out that Policy 15 places these species in a (1B) category. Both ODFW and 1000 Friends indicate that the County possesses inventory information (including recent ODFW updated information) which is sufficient to complete the Goal 5 process for this resource category. ODFW indicates that the location, quality, and quantity information provided the County is similar to that provided to other counties which have completed the Goal 5 process and which have been acknowledged. The League of Women Voters is concerned that two years is too long for these resource sites to be without protection. Most are not in the Greenway, and therefore do not even receive minimal protection.

1000 Friends also objects to the fact that neither Flora and Fauna Policy 2 or 3 provides adequate protection for these sensitive species. Policy 2 simply indicates the County will recognize existing programs that protect species; it does not bind the County to any particular course of action. 1000 Friends believes the County must make an affirmative commitment to protect threatened and endangered fish and wildlife species. Policy 3 also fails to guarantee protection of sensitive species since it requires the County to seek to minimize adverse impacts through County regulations (including zoning). 1000 Friends suggests that present zoning may be construed to "minimize adverse impacts" but this may not necessarily provide adequate protection for particular sites.

1000 Friends also objects to the use of the definition of "sensitive species" used in Policy 3. Objectors believe it is overly general and could be construed by decision-makers to exclude certain species. Objectors believe that County Policy 3 should reference the list of "species of special concern" that appears in the Working Paper, rather than use a vague term in the policy. Similar comments have been filed by Oregon Forest Industries Council.

2. ODFW and 1000 Friends have objected to Flora and Fauna Policy 11 since it regards densities above ODFW's recommendations in big game areas to constitute a conflict. ODFW regards its recommended densities as the approach to resolve conflicts between dwellings and game range. 1000 Friends states that Policy 11 allows residential densities to exceed ODFW recommendations "if conflicts can be resolved in accordance with OAR 660-16-000." Objectors believe this allows the County to justify density levels which exceed those recommended by ODFW through an analysis of ESEE consequences. Objectors do not believe this exclusion is consistent with the Goal 5 Rule.

3. ODFW objects because, contrary to Policy 11 which adopts ODFW's density recommendations in big game habitat areas, the County's F-1 and F-2 zones do not provide the siting or clustering requirements

that need to accompany the density levels allowed in those zones. Similar objections have been filed by 1000 Friends of Oregon. Objectors point out the the F-1 zone establishes a minimum lot size of 40 acres, but smaller divisions can be made without regard to big game impacts. The F-2 zone establishes minimum lot sizes of 20 and 40 acres for forest and farm uses, which also fail to meet ODFW's recommended densities for Peripheral Range, according to objectors. 1000 Friends points out that the Flora and Fauna Working Paper Addendum and Policy 11 prescribe clustering and siting of standards, but these are not carried out in the F-2 zone. The Addendum (p. 14) also references forest land minimum lot sizes which are no longer current.

4. ODFW and 1000 Friends object because Goal 5 has apparently not been applied in the process of designating marginal and nonresource lands. Objectors are particularly concerned how this affects big game range areas. ODFW contends that the County's plan provisions for lots of record, resource and nonresource-related dwellings, marginal lands, and nonresource lands could allow considerable development in game range. The County's F-1 and F-2 zones do not adequately assure that recommended densities will be maintained. This is further complicated by the fact that it is unclear where marginal and nonresource lands are located, and therefore the extent to which they are in game range areas, since the zone map format and resource inventory map formats are not easily comparable. 1000 Friends points out the Goal 5 must be applied whereever Goal 5 resources occur, even in areas designated marginal or nonresource land.

5. ODFW, 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's treatment of the Pudding Creek Heronry. Objectors point out that the County conducted a Goal 5 ESEE consequences analysis, but that inasmuch as the sand and gravel plan and zone designations have been retained on the site, conflicts have not been resolved. Please refer to the Goal 15 section of this report for further details concerning objections to the zoning of this site.

6. 1000 Friends of Oregon, League of Women Voters of Central Lane County, and Lane County Audubon Society have objected to the County's plan and zone designations for the Big Island (or Confluence) Heronry at the confluence of the McKenzie and Willamette Rivers. Objectors indicate that the County has not adopted a program that is adequate to protect and/or resolve conflicts with the site under Section (3C) of the Goal 5 Rule. Objectors point out that the 1981 LCDC order for the Eugene/Springfield Metro area include a requirement that the ESEE consequences of designating the island for sand and gravel use must be evaluated in the context of regional aggregate supply and demand. The IOTC further required that if the island were to retain a partial sand and gravel designation, the Metro Area Plan and the Lane Code (Section 10.210) must be amended to require that limited aggregate extraction will minimize the impact on scenic and wildlife values.

The IOTC also referenced Goal 15 requirements and IOTCs. Objectors contend that neither the Goal 5 nor Goal 15 IOTCs have been adequately addressed. These objections are also contained in the Goal 15 section of this report.

7. 1000 Friends of Oregon has objected to the fact that Lane County has placed only five noncoastal wetlands in its (1C) inventory, and has placed all others in a (1B) category. 1000 Friends believes the County has sufficient information to be able to classify the others as either (1A) or (1C), since such information was given to the County by ODFW, interested citizens, and the Lane County Flora and Fauna Committee. Objectors indicate that Goal 2 Policy 22 is inadequate for these (1B) sites since it requires only that interim protection be applied at the beginning of the plan refinement process --no sooner. Objectors point out that Goal 15 requires protective measures be applied as soon as their significance has been determined.

   Finally, 1000 Friends indicates that the U.S. Fish and Wildlife Service's National Wetland Inventory is the basis for Lane County's wetland inventory. Flora and Fauna Policy 7 states that this inventory, although incomplete in Lane County, will be used to evaluate (1B) wetlands within two years of the date of plan adoption or when the national inventory is completed. 1000 Friends points out, however, that such an inventory is not scheduled for completion for another 5-10 years, and Lane County is not within a priority inventory area. Objectors believe the County should amend Policy 7 and the Addendum to the Flora and Fauna Working Paper (p. 6) to recognize alternative sources of data shall be used to assess the significance of wetlands and to identify their boundaries.

8. 1000 Friends has objected because the County definition of wetlands in its Working Paper is much narrower than that contained in the Statewide Planning Goals or the U.S. Fish and Wildlife Service, but the County has not justified how such a definition is consistent with Goal 5. The Working Paper states that a wetland is "an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre." Objectors indicate the County has no definition of wetlands in either its plan policy document or in its zoning ordinance.

9. 1000 Friends objects to the fact that Lane County is relying on the FPA to maintain riparian corridors along Class I streams and wetlands, and will take no actions to limit conflicting uses in areas subject to the FPA. Objectors state that there is no analysis in the submittal materials which demonstrates how the FPA and Rules provide protection for riparian resources consistent with Goal 5. Therefore, 1000 Friends objects to LC 16.210(7) and 16.211(9).

10. 1000 Friends objects to the County's failure to apply riparian protection measures around lakes and along Class II streams. Objectors point out that Class II streams regulate water temperature, quality, and quantity of downstream Class I streams.

11. Friends of the Oregon Coast has objected to the County's Renaghan Amendment (Big Creek Exception) for a number of reasons, some of which relate to fish and wildlife concerns. These are as follows:

    a. Objectors believe that many of the findings are "contractory and irrelevant." Objectors cite two examples. The first is that finding 37d (p. 27) conflicts within finding 37e (p. 27). One calls for establishing permanent elk forage areas; the other calls for maintaining the property in forest. Objectors also indicate that the County's claim that there are no sensitive species on the property contradicts findings 40a (5) and 44b(6) which state that the northwest corner of the property contains Silverspot butterfly habitat.

    b. Objectors claim that because the applicant retained a consulting wildlife biologist, his statements in the record should be expected to support the establishment of a destination resort. Objectors believe that his statements are treated by the County as findings of fact although they sometimes "are argumentative of the County's Coastal Sub-Area Plan and of the Oregon Department of Fish and Wildlife's Management plans."

    c. Objectors believe that, although the applicant and ODFW will be required to work together to mitigate adverse impacts on fish and wildlife, these efforts will be "experimental" and therefore cannot justify the resort complex in the the middle of prime and sensitive habitats.

    d. Objectors point out that the Exception recognizes ODFW's concerns about increased fishing pressure on Big Creek as a result of the development, and that potential harm can only be mitigated by regulating sport fishing (through reductions) on the creek. Objectors feel that long-time anglers will therefore be penalized by the development.

Response to Objections

1. Objectors are correct in pointing out deficiencies in the County's inventory of sensitive bird nesting and use sites. Information on location, quality, and quantity is available, yet the County has taken a (1B) approach to several of the species identified. Sufficient information exists for the County to be able to complete the Goal 5 process for this resource category.

   Objectors are also correct that Flora and Fauna Policies 2 an 3, themselves, do not guarantee protection for sensitive species, particularly in light of the absence of implementing measures to provide such protection. The adequacy of these policies can be judged only after the County completes the Goal 5 process for the habitat areas of these species. Lane County has erroneously placed such species in a (1B) category, and has not yet completed the Goal 5

process. Depending upon this analysis, the policies may have to be modified, and implementing measures will have to be adopted. The concern that Policy 3 is unclear as to which species or habitat areas are covered by the policy is valid.

2. Policy 11 states:

> Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program.

Objectors are not correct that this policy violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis. However, as noted previously, the County still needs to adopt measures in its F-2, ML, and EFU Zones which ensure that ODFW's density standards will be achieved.

The second part of the policy requires the County to work with ODFW in preventing conflicts from occurring through land use regulations in resource areas and such things as siting requirement. ODFW is correct that its recommended density standards (if adopted in the ordinance) would constitute an approach to resolve and/or prevent conflicts between dwellings and big game habitat. However, as discussed below, the County has not adopted such standards in its zoning ordinance.

3. ODFW is correct that the County's F-1 and F-2 zones do not incorporate ODFW's development density recommendations, nor do they set forth siting or clustering requirements. Without siting and clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable). This is a problem in the F-2 and EFU zones in particular, but not in the F-1 Zone, since in general, dwellings are not permitted in that zone.

4. Objectors are correct that Goal 5 has not been applied by the County in the process of designating marginal lands. ORS 197.247(8) requires that applications of a marginal lands zone must satisfy all requirements of other Goals, including Goal 5.

5. The response to the objections regarding Pudding Creek Heronry is presented in the Goal 15 section of this report.

6. The response to the objections regarding Big Island is presented in the Goal 15 section of this report.

7. The County has indicated it has sufficient inventory information on only five noncoastal wetlands at this time. 1000 Friends has not provided location, quality, or quantity information on specific wetlands it believes should be (1C) sites, rather than (1B) sites.

   ODFW has not objected to the County's determination that only five wetlands are (1C) and the remainder are (1B) sites. 1000 Friends is correct that Policy 22 calls for protection of (1B) sites only at the beginning of the plan refinement process. However, the Goal 5 Rule does not require any interim protection for (1B) sites.

   Although the incomplete National Wetlands Inventory is the basis for the County's wetlands inventory, 1000 Friends is not correct that the County must wait until the National Inventory is completed before it can apply the Goal 5 process to (1B) sites. Furthermore, Policy 7 does not prevent the County from considering information about other sites not on the national inventory during its plan update process. 1000 Friends, or other parties may supply the County with information about wetlands, and the County would be required to apply the Goal 5 process to those sites. Plan Policy 7 states:

   > Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal; state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the national Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process).

While the policy does not permit the use of alternative sources of information during the update process, 1000 Friends is correct in suggesting that the policy could be improved by actually stating that other sources of information (besides the National Inventory) will be used.

8. 1000 Friends is correct in pointing out that the County's Working Paper definition of "wetlands" is narrower than that contained in the Statewide Planning Goals. Wetlands very often do not have open, standing water present at least six months out of the year. Reliance on the County's definition could result in some wetlands possibly being excluded from the County's (IC) inventory.

9. 1000 Friends is correct that the County is relying on the FPA to resolve conflicts between timber management activities and riparian areas along Class I streams and wetlands, although the County has not made a statement to this effect. It is clear in Forest Lands Policy 17 and in various sections of the Zone Code that the County is not regulating harvest activites. Objectors are also correct that the County has not provided an analysis demonstrating how the FPA and Rules provide protection for the Goal 5 resource. However, it has been Commission practice not to require counties to adopt implementing measures to resolve conflicts between timber management activities and riparian corridors.

10. 1000 Friends is correct that the County has not applied riparian protection measures around lakes or along Class II streams, or otherwise justified not providing such protection, based on an ESEE consequences analysis of conflicting uses. Information in the Flora and Fauna Working Paper (pp. 6 and 15) suggests that these are important Goal 5 resources.

11. The objections of Friends of the Oregon Coast are not sustained with regard to fish and wildlife concerns for the following reasons:

    a. Objectors are correct that the Exceptions document contains some conflicting statements, particularly whether the property contains Silverspot butterfly habitat. Specifically, finding 37e (p. 27) is misleading, since the site does contain Silverspot habitat. In light of the fact that the County's intent is clearly to take whatever actions are necessary to protect the Silverspot butterfly, this inconsistency is not a Goal violation.

       With regard to the Exception documents' statements regarding elk forage, it can be assumed that, although the main intent is to keep the property in forest, portions of the property will be in other uses. These findings are broadly written, and, as such, are not contradictory.

    b. Objectors have not indicated how findings 47d(1) through (13) violate Goal 5, only that they are sometimes "argumentative" of other documents.

c. Objectors have not indicated why they believe ODFW's attempt to mitigate impacts on habitats will be experimental, or otherwise why they cannot suceed in providing adequate protection.

d. Objectors have not indicated how regulating sport fishing on Big Creek to protect the resource long-term violates Goal 5. While it is unfortunate that long-term anglers may be "penalized," this is not a Goal issue.

Comments

Oregon Forest Industries Council (OFIC) and the Lane County Landowners Association have commented that Policy 22's intent is unclear, since it calls for interim protection measures for "significant" Goal 5 resource sites. However, the policy addresses (1B) sites. The association indicates that (1B) applies where some information exists but is inadequate for purposes of identifying a site and determining its significance. Commentors also point out that interim protective measures are neither required nor appropriate for Goal 5 compliance.

Response to Comments

Policy 22 (Plan p. 5) states:

> Sites considerd 'significant' in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the 'significant' sites and after sufficient information is available regarding the location, quality, and quantity of the 'significant sites.

While it is true that Policy 22 is somewhat ambiguous, the policy appears to recognize the fact that certain Goal 5 resource categories have significance (e.g., all eagle nests are significant), although their specific locations may not be known at this time. Therefore a (1B) classification is appropriate. The Goal 5 Rule does not require interim protection measures for (1B) sites. However, the Rule does not prohibit jurisdictions from adopting and applying interim measures to (1B) sites.

Conclusion -- Fish and Wildlife Habitats

Lane County has adopted inventory information for a number of fish and wildlife habitat areas, and has identified conflicting uses and ESEE consequences of those conflicting uses. Implementing measures including riparian setbacks and vegetation maintenance standards and a Natural Resource Zone have been adopted. However, a number of deficiencies still remain and must be corrected before acknowledgement can be granted. These are summarized below.

Lane County has placed all sensitive bird habitat sites in a (1B) category, even though information is currently available and is adequate for completing the Goal 5 Rule process. The County needs to adopt a (1C) inventory for known sites and complete the Goal 5 process.

Implementing measures which carry out ODFW's development density recommendations in Major and Peripheral Big Game Range areas have not been adopted, particularly in the F-2, ML and EFU zones. The County has not applied the Goal 5 process to "nonresource" lands.

The County's three commercial, three industrial, and its garden-apartment zones reference a nonexisting code section for their riparian setback and vegetation maintenance standards. It is obvious that the County intended to apply such standards in those zones but until the zones are amended to either (1) reference the correct section of the code containing those standards, or (2) incorporate such standards themselves, there are no riparian standards in effect in those seven zones. Riparian protection measures have not been applied around lakes, in the Natural Resources Zone, or along Class II streams, or justified as not being necessary, based on an analysis of ESEE consequences of conflicting uses.

The County uses a narrower definition of "wetlands" than in the Goals, and therefore, some wetlands may be left off any future (1C) inventory.

The Parks and Recreation zone allows a number of uses which could conflict with the purpose of that zone, and with Goal 5 resources present (including fish and wildlife habitat values).

A Natural Resources Zone has been developed and applied to lands in the County, but it is unclear which habitat sites have been given NR zoning or whether it has been appropriately applied.

Ecologically and Scientifically Significant Natural Areas

Inventory

The County's Flora and Fauna Working Paper contains the County's inventory information on natural areas (pp. 26-32). This working paper indicates that the County evaluated the 86 sites on the Natural Heritage Inventory and the nine sites identified by the Natural Areas Preserves Advisory Committee. (Note: The Committee is now known as the Natural Heritage Advisory Council). These sites were evaluated by Lane County, first of all, to determine whether there was adequate information on location, quality and quantity. If this was the case, and that information suggested that a site was "significant," it was placed in a (1C) category. If information existed, but the site was determined to be not significant, it was classified (1A). If there was inadequate information, sites were placed in a (1B) category (pp. 26-27).

The County placed six sites in the (1B) category:

1. Booth Island/Siltcoos Lake
2. McKenzie River Island (not be confused with the island at the confluence of the McKenzie and Willamette Rivers)
3. South Fork Gate Creek
4. Swamp Creek
5. Marshall Island Heronry
6. Willamette Valley Quaking Aspen Grove

The County has provided justification why it believes the (1B) classification is appropriate for each of the site sites (pp. 27-28). The Nature Conservancy has indicated it has no updated information for any of the six sites at this time and that a (1B) classification is appropriate (Curt Soper, personal communication, June 15, 1984).

Fifty-six other sites were determined to be in a (1C) category and therefore constitute the County's natural areas inventory (p. 28). The County has grouped these sites according to their ownership. There are 23 sites on U.S. Forest Service land, six on BLM land, four sites within state parks, and 25 that are either in the Willamette Greenway or covered by the Coastal Resources Management Plan (pp. 30-32). Two additional sites (Upper Yachats Elk Pasture and Fern Ridge) are also (1C) sites, but do not fall into the above categories (p. 32).

No information regarding location, quality or quantity of the federally-owned sites is provided in the Working Paper. Information regarding the natural features present in the State park sites and at the 25 Greenway or Coastal sites is summarized (pp. 30-32). All are significant in terms of quality. Locations of these sites have not been provided.

It should be noted that, during the review of the coastal portion of the Lane County plan, a privately-owned Darlingtonia bog, east of Highway 101 and east of the City of Florence, was identified. The bog did not quailify as an ecologically significant natural area under the Coastal Goal requirements. It does, however, possess natural values that could qualify it as a Goal 5 (1C) natural area. However, Lane County has not addressed this site in its Working Paper or other submittal materials.

Conflicting Uses/ESEE Consequences Analyses

Because of their ownership by the U.S. Forest Service or the BLM, the County believes no conflicts exist for the 29 federal sites (Flora and Fauna Working Paper, p. 28).

The County indicates that no conflicts exist for the four state park sites based on uses allowed in zoning districts applied to those sites (p. 29). The Flora and Fauna Working Paper Addendum (p. 15) states, "the State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen." However, as noted in the Goal 2 section of this report, the Parks and Recreation zone which has been applied to these state parks, allows a number of uses which could conflict with natural area values.

No conflicts have been identified for the Coastal or Greenway sites because of programs and zoning districts applied to them (p. 30).

With regard to the two remaining sites (the Elk Pasture and Fern Ridge), the County indicates there are no conflicts. The Siuslaw National Forest and ODFW own the site and have an agreement concerning use of the site as an elk wintering area. Fern Ridge is owned by the Corps of Engineers and, under a 1980 management plan for the reservoir, the natural values present will be protected (p. 32).

It should be pointed out that public ownership, in and of itself, does not necessarily mean there are no conflicting uses, nor does it guarantee site protection. Although several of the U.S. Forest Service and BLM sites are formally protected by those agencies (e.g., wilderness areas, designated research natural areas), others are not. Unless the federal agencies have formal protection programs in place for natural areas, it cannot be assumed that no conflicts exist, nor can they be considered "2A" (protected) Goal 5 resource sites. However, since the Commission has not required counties to complete steps (2) and (3) of the Goal 5 Rule for sites on federal land, it is recommended--but not required--that Lane County correct the statement on page 28 of the Flora and Fauna Working Paper regarding conflicts on federal land.

Policies

Lane County has adopted the following policies regarding natural areas (Flora and Fauna Policies, Plan, pp. 14-16):

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

12. If uses are identified (which were not previously identified in the Plan which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

16. Rare and endangered vascular plants, identified in a 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

Policy 22 (Plan, p. 5) states:

> Sites considerd "significant" in terms of OAR 660-16-000 through 660-16-025 but requiring that the Goal 5 ESEE consequences analysis process be delayed (the '1B' option) shall be protected by Lane County through the application of interim protection measures. Such interim protective measures shall be considered and applied at the beginning of the plan refinement process for the "significant" sites and after sufficient information is available regarding the location, quality, and quantity of the "significant sites".

See also the Goal 15 section of this report and the coastal review of the Lane County Plan for a discussion of other relevant plan policies which address natural area.

Implementing Measures

As indicated by the County, a number of natural area sites are located on federal land, over which the County lacks jurisdiction. A number of other sites are significant natural areas within the Coastal Planning Area and the implementing measures applied to them have been acknowledged as being in compliance with the Coastal Goals. The two Greenway sites are actually riparian areas along the Middle Fork and the Coast Fork of the Willamette River. The County's Greenway Permit ordinance and its riparian setback and maintenance standards provide a degree of protection for these areas. (See, however, the Goal 15 section of this report for a discussion of specific deficiencies in the Greenway ordinance).

The four state parks have been zoned Parks and Recreation. However, as noted in the Goal 2 section of this report, the PR zone allows a number of uses that could conflict with the natural area values of the sites. ODOT has indicated it does not forsee conflicts with the four sites, according to the County. However, there are no management plans for the sites, or letters from ODOT which confirm that this is the case.

Objections

1. The League of Women Voters of Central Lane County (LWV) has objected to the fact that the County has placed rare and endangered plant species in a (1B) category with a two year time delay for their evaluation through the Goal 5 process. The LWV is concerned because it believes two years it too long for these resources to be without protection. Objectors point out that since most of these resources are not within the Willamette Greenway, they will not receive even minimum interim protection.

2. Lane County Audubon Society and 1000 Friends of Oregon have objected because the County has not provided adequate protection to a natural area known as Russel Creek Basin. This objection is described in more detail in Part II of this Goal 5 Report.

Response to Objections

1. Flora and Fauna Policy 16, which requires Lane County to evaluate the (1B) rare and endangered plant species list in two years does not refer to any particular sites containing these species, nor have objectors provided a list of sites which they believe should have been placed in a (1C) rather that a (1B) category. If sites are not known at this time, then a (1B) classification is appropriate, including policy commitment to address them in the future.

2. Objectors are correct that protection and/or conflict resolution measures have not been applied to the Russel Creek Basin natural area, in spite of an ESEE consequences analysis and recommendations regarding protection of the site in the Metro Working Paper. This issue is addressed in greater detail in the Part II section of this Goal 5 report.

Comments

1. Lane County Landowners Association has pointed out that the County's list of rare and endangered plants is simply a list of species and does not address any specific or general sites. Commentors believe, therefore, the Goal 5 Rule does not apply to these species until sites are identified. (Flora and Fauna Policy 16 indicates that certain plants are considered significant and shall be placed in a (1B) category and evaluated with two years).

2. Lane County Landowners Association also comments that, contrary to Flora and Fauna Policy 7, wetland resources cannot be considered "significant" while placed in a (1B) category.

Response to Comments

1. Commentors are correct that Policy 16 refers only to a list of species, and does not address any sites. Therefore, the Goal 5 Rule will apply if and when sites containing these species are identified.

2. Contrary to the commentor's statements, wetlands--as a resource category--can be (and generally are) considered "significant," even through individual sites may be in a (1B) category because of lack of site-specific inventory information.

Conclusion -- Natural Areas

Lane County has identified 62 natural areas, 56 of which it has classified as (1C) sites. The County has provided sufficient justification for the (1B) classification of the other six sites. Most of the 56 (1C) sites are on federal land, within the Coastal Planning area, or the Willamette Greenway. Therefore, the County has found that the sites are either not within its jurisdiction to regulate, or implementing measures have been applied which provide adequate protection.

Four state parks contain natural area values. The County indicates that because of their zoning (Parks and Recreation), they are adequately protected. However, an examination of that zone reveals that a number of uses are allowed in that zone which could conflict with the natural values present. State ownership in and of itself does not guarantee protection of these values, unless the agency has an adopted park managment plan, which requires protection. As noted in Goal 2, state agencies are also subject to Goal compliance and acknowledged plans. This is an issue which should be further explored through State Agency Coordination agreements.

The County has not applied the Goal 5 Administrative Rule to a Goal 5 Darlingtonia bog located east of the City of Florence that is not covered by the Coastal Goals.

Outstanding Scenic Views and Sites

Inventory

The County's scenic views and sites inventory information is contained in the Recreational Resources Working Paper (pp. 5-13). This consists of a discussion of several inventories and rating systems used by other public entities (e.g., Bureau of Land Management, U.S. Forest Service, State Department of Transportation, former Coastal Conservation and Development Commission, several parks and open space plans of Lane County and the City of Eugene) (p. 6). However, the Working Paper contains no location, quality or quantity information for any specific sites, nor are any of the aforementioned inventories adopted by reference. Instead, the County has decided that, given the time and resources available as well as the difficulty, it cannot conduct site-specific inventory (p. 7). The County suggests that this be undertaken before the first plan review/revision

occurs (p. 7). The County describes in some detail how such an inventory could be conducted, including defining the objective, determining what areas or types of scenic types are "critical", establishing an evaluating or rating system, applying a rating system, and implementing decisions made regarding such areas (pp. 6-14).

The County's Exception for the Big Creek area recognizes scenic values on he property, and on surrounding federal lands (Exhibit E--Renaghan Amendment, p. 53).

Conflicting Uses/ESEE Consequences Analyses

Because the County has not conducted an inventory of outstanding scenic reviews and sites, it has not identified conflicting uses with specifies sites or ESEE consequences of those conflicting uses.

Policies

Lane County's policy regarding scenic resources is as follows (Open Space and Scenic Areas Policy 3, Plan, p. 17):

> Initiate a program to identify areas of outstanding scenic value, identify and resolve conflicts after consideration of social, economic, energy and environmental consequences and protect sites for which conflict resolution indicates protection is desirable. This program will be initiated prior to the next scheduled Plan update (five years from adoption of revised Plan). The County is encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this policy.

Implementing Measures

Because Lane County has decided to put off the application of the Goal 5 process for this resource category until a later date, no implementing measures regarding the protection and/or resolution of conflicts with scenic views sites have been adopted or applied.

The scenic values of the Big Creek Exception Area are to be maintained through a combination of measures, including keeping 87 percent of the property in open space; placing development away from Big Creek and east of Highway 101 (so it is not visible from the north and will not interfere with the most viewed coastal areas); designating the site Conservation/Recreation/Open Space; and by imposing site review requirements. The site will be zoned NR, as well (Exhibit E--Renaghan Amendment, p. 56).

Objection

Friends of the Oregon Coast object because they believe the proposed development in the Big Creek Exception Area will not enhance the outstanding scenic view associated with the site, and would, in fact, destroy the "picture-book" setting.

Response to Objection

Objectors have not provided specific information as to why the combination of plan and zone designations for the site, site review and the requirement for 87 percent open space is not sufficient to protect scenic resources associated with the site.

Determining what is sufficient to protect scenic views and sites is more difficult and more subjective than for other Goal 5 resource categories. However, in the absence of more specific information from objectors, the objection cannot be sustained.

Conclusion--Scenic Views and Sites

Lane County has not inventoried outstanding scenic views or sites, nor has it identified conflicting uses and ESEE consequences of conflicting uses. No implementing measures addressing this resource category have been adopted or applied on the ground. Instead, the County has a policy to initiate a program to address this resource category prior to the next plan update (five years from adoption of the revised plan).

Lane County should be commended for the serious thought and consideration it has given to this subject, and for its commitment to initiate a comprehensive program to identify and protect outstanding scenic resources. Understandably, such a program can be complex and time-consuming, particularly as it is outlined in the County's Working Paper. However, the Goal 5 Rule requires counties to develop programs prior to acknowledgment, based on information that is currently available. According to the County's own Working Paper, several inventories already exist. For example, the County recognizes that there are several state scenic highways, sites recognized in its own Parks and Open Space Master Plan, as well as sites within federal wilderness areas or on other federal lands. It should be noted that, in the 1981 denial order for Lane County, there were in-order-to-comply requirements directing the County to inventory scenic resources and to apply Goal 5 to those sites.

Neither the Goal nor the planning process itself requires that new information be generated or that information be perfect before planning decisions are made. If this were to case, nearly all planning decisions would be put off until the post-acknowledgment period. It is recommended that Lane County embark on a comprehensive scenic resources program during post-acknowledgment, as called for in its plan. However, prior to

acknowledgment, the County must, at a minimum, inventory known sites, and complete the Goal 5 process for those sites. This work may be refined during post-acknowledgment as part of the County's more detailed, comprehensive scenic resources program work.

Water Areas, Wetlands, Watersheds and Groundwater Resources

Inventory

Lane County has developed a separate document, Water Resources Working Paper, which contains inventory information, and conflicting uses/ESEE consequences analyses for this Goal 5 topic.

Watersheds: A map showing the locations of Lane County's water basins is contained in the Appendix to the Working Paper (Map 2). The County does not provide quality or quantity information for each individual basin, but rather indicates that quality and size vary (p. 5). The County does note, however, that the Upper Middle Fork Willamette, Mosby Creek, and the entire Siuslaw River have severe sedimentation problems. The remainder of the Willamette and the tributary streams to the Willamette and the Siuslaw have moderate sedimentation problems. According to DEQ, the Siuslaw River basin is a "regional hot spot," (i.e., a considerable portion has a severe problem but is not as important as compared to other hot spots, statewide). DEQ has indicated that 410 miles of streams in Lane County have streambank erosion problems, 67 of them having severe erosion. This is particularly true in the Siuslaw Basin, and in tributary streams to the Willamette and short reaches of the Willamette River itself (p. 4).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's wetlands inventory.

Surface Waters: Lane County streams are shown on Map 2 in the Appendix to the Water Resources Working Paper. More complete mapping of surface water is available in the Planning Department office, however (p. 7). Based on a 1974 Water Quality Report and its 1981 update, the County reports that the quality of water in Lane County is generally quite high (p. 7) However, the Mowhawk, Long Tom, and portions of the Coast Fork and Main Stem of the Willamette have slow, meandering reaches and are affected by extensive development (p. 7). Specific problems along these rivers are discussed briefly (pp. 7-8). The Water Resources Working Paper contains a brief discussion of minimum stream flows, particularly those on the Willamette which are regulated by reservoir releases determined by the Corps of Engineers (pp. 8-9).

The Flora and Fauna Working Paper (p. 16) indicates that all lakes and reservoirs have been mapped and are available in the County Planning Department offices. There are about 300 Alpine Cascade Lakes in the County, varying in size from Waldo Lake (6,420 acres) to Mouse Lake (.05 acres) (Water Resource Working Paper, p. 8).

Groundwater: The principal aquifiers which yield moderate to high volumes of water are located on the coast near Florence in dunal sands, along the lower McKenzie Valley, the lower Middle Fork Willamette Valley, the Lower Coast Fork Willamette Valley, and on the valley floor north of Eugene along the Willamette River (p. 10). Map 3 in the Working Paper shows the quantity of groundwater in Lane County; groundwater quality is depicted on Map 3.

Conflicting Uses/ESEE Consequences Analyses

Watersheds: The County states that the only conflict that is specifically a watershed conflict, and not a surface or groundwater conflict, is contamination or possible contamination of surface water supplies used for domestic purposes. Timber propagation and harvesting activities, particularly herbicide use and erosion caused by ground disturbance can affect municipal water sources (p. 5) Residential development and road construction also cause erosion problems (p. 5). The County notes that resolution of timber harvesting conflicts is beyond its regulatory scope. It also points out that several watersheds used for domestic water supplies are "substantially within federal owernship." The County notes that the watershed for the City of Cottage Grove is almost entirely within federal ownership. The Umpqua National Forest and the U.S. EPA have adopted a plan to address problems, yet these problems continue (p. 5). The County indicates that the potential for similar problems exist for domestic suppies from federally-owned watersheds such as Mapleton, Tide, London Springs, and Eugene's supply, the McKenzie River (p. 5).

The County has not conducted an ESEE consequences analysis because the problem is outside its jurisdiction to resolve. However, the County supports adoption of policies or amendments to state and federal laws (including the FPA) which provide greater levels of protection for watershed (p. 6).

Development -- which is regulated by the County -- could impact the Clear Lake watershed. This watershed serves the Heceta Water District and provides a portion of the water for the City of Florence (p. 6). The County discusses the possibility of designating a "protected watershed" but has decided to take no action until sufficient information is gathered on the sources of pollutants. (p. 6). An intensive study is presently underway in response to a temporary DEQ rule (p. 6).

Wetlands: Please refer to the Fish and Wildlife section of this report for a discussion of the County's conflicting uses/ESEE consequences analysis for wetlands.

Surface Waters: A number of conflicts exist for surface waters of the County, but the County asserts they are not consequences of County actions. Rather, it believes they are the result of federal agency management programs (e.g., reservoirs have certain congressioally authorized uses, but these often do not include some uses that are of importance of the County, such as waste dilution, fish and wildlife and recreation). The Corps of Engineers is in the process of reviewing authorized uses on six reservoirs, and could propose reauthorization (p. 9).

Similarly, certain streams such as the Coast Fork Willamette, Coyote Creek, Long Tom River and Lost Creek, appear to have been overallocated. The County recognizes that the State Water Resources Department (WRD) has responsibility for establishing minimum streamflows. The County believes WRD should initiate adjudication, including establishing minimum streamflows for major waterways (p. 9).

Erosion from forest lands is also a conflict with water quality, but the County points out that it is regulated by the FPA or federal regulations. (p. 9). Agriculturally caused water quality problems are being addressed by DEQ and soil and water conservation districts, although three SWDs in the County have not yet adopted model Best Management Practices by DEQ (p. 9). Outside UGBs, urban runoff is primarily from industrial facilities, especially hazardous materials stored at this sites (p. 9-10). This is also regulated by DEQ.

Groundwater: Two conflicts have been identified for groundwater resources -- development in quantity-limited aquifers, and development in areas where groundwater quality may be polluted. Separate ESEE consequences analyses are presented for these two types of conflicts. The County has concluded that:

1. For a quality-limited aquifer, otherwise acceptable development should be allowed if there is an adequate showing that water will be available for a forseeable period in the future, and that the additional withdrawal will not negatively impact surrounding water users. A number of specific code revisions are recommended to carry out these requirements (p. 12).

2. For groundwater quality problem areas, the County has determined that resolution of conflicts should be different for different types of contaminants (p. 14). These include:

    a. For development in aquifers contaminated by natural means, there should be a system to inform people of potential problems, and to suggest that well drilling and testing take place prior to construcion. Areas of quality limitation could be placed on a computerized land file, and could be checked when a building permit application is reviewed. Similarly, notification would be a matter of public record and would be available to future parties interested in these properties as well.

b. Old and smaller solid waste sites in the County are mapped, but not enough is known about specific leachate problems or groundwater characteristics to designate hazard notification areas around them. The Working Paper recommends inventorying each site, including period of operation, type of wastes deposited, and groundwater characteristics. Based on the information, a hazard notification system should be established (p. 14).

c. Two sensitive aquifers are currently subject to DEQ rules for sewage system installation -- the River Road/Santa Clara area, and the North Florence area. For other developed areas located on sensitive aquifers and which have known or suspected contamination problems (Mapleton, Noti, Elmira, Crow, Coburg, Goshen, Creswell urbanizing area, Saginaw, Marcola, Dexter, Cedar Flats, Walterville, Leaburg, Vida, Blue River, and McKenzie Bridge), current County policy calls for a minimum parcel size of one acre if community water is available, or two acres if individual wells are used. The County points out that this policy does not correct the existing situation, but should prevent aggravation of the situation (p. 15). These quality-limited aquifier areas will be placed on the County computer file, and applicants for building permits involving new wells will be informed of possible sewage contamination in the groundwater.

Policies

The following policies address water resource issues in Lane County (Water Resources Policies, Plan, pp. 17-18):

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and establish priorities among the varous beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For the purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

4. The primary means of evaluating groundwater resources for land use planning purposes shall be through the land division review process. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

Additional policies regarding water resources, including wetlands, are discussed in the Fish and Wildlife section of this report, as well as in the Goal 6 and 11 sections.

Implementing Measures

As noted in the Fish and Wildlife section of this report, the County has adopted riparian setback and vegetation maintenance standards in a number of zoning districts.

A Natural Resources Zone has been applied to several wetlands (confirmed by Mike Copely, County Planner, personal communication, July 16, 1984).

Section 13.050(13) of the Lane Code addresses the provision of water in the County. This section requires lots and parcels to be served by an approved public, community, or individual water system. Aquifer and quality tests are required for public and community systems, and may be required for individual water sytems. These tests are as follows (Section 13.050(13)):

(c) Aquifer and quality tests or geological evaluation may be required by Lane County for any lot or parcel. These requirements may include, but need not be limited to, evaluation of existing well logs and preparation of a geological report on the area, and evaluation of the site by a professional geologist, or engineering geologist or full scale aquifer tests as required. In determining the detail of analysis required, the following apply:

(i) Areas designated by Board order as having problems in the quantity or quality of available water as adopted, documented in Lane Manual and filed in the office of the Department shall meet

the following requirements for all parcesl less than 20 acres in size. The applicant must affirmatively demonstrate, in a manner acceptable to Lane County, that the proposed subdivision/partition is capable of sustaining the devlopment anticipated with sufficient potable water. This demonstration must include, but need not be limited to, aquifer tests. More specifically, the aquifer test shall show coefficient of transmissivity, permeabiltiy, storage and the specific yield. The bacteriology/ chemical tests shall show compliance with standards set by the Oregon State Health Division and Lane County. The test procedure shall utilize standard acceptable practices for aquifer tests using pumped and observation wells and records of static water level, date, clock, elapsed time (in min.), depth of water, drawdown and recovery. Analysis using the non-equilibrium method (or other methods where appropriate) must be performed by a licensed geologist or engineer. A copy of all field notes and test results shall be submitted with the report, together with summary statements which indicate whether the proposed use of the aquifer could adversely impact the neighboring wells or properties or deplete the aquifer and the general impact of the proposed use.

(d) For all areas not designated as problem areas by the procedures documented in LC 13.050(13)(a) above, a pump test report or a well log report shall be supplied, unless determined by Lane County to be not necessary.

Pump test and well log reports shall be prepared according to criteria in the ordinance.

Conclusion -- Water Resources

The County has done a good job of inventorying its water resources and problems associated with those resources. The County has analyzed the ESEE consequences of conflicting uses, and has adopted some excellent implementing measures to help resolve conflicts, particularly riparian setback and vegetation maintenance standards and aquifer and quality requirements.

Wilderness Areas

Inventory

Lane County's inventory of designated wilderness areas is contained in its Recreational Resources Working Paper on a map entitled, Recreational Resources. The locations of three wilderness areas are depicted--Mt. Washington Wilderness, Three Sisters Wilderness, and Diamond Park Wilderness.

Page 4 of the Working Paper describes in general the County's role in managing such areas.

It should be noted that recently, new wilderness legislation was passed by the U.S. Congress, establishing a number of new wilderness areas in Oregon. Several of these are within Lane County. These include Rock Creek, Cummins Creek, Three Sisters Additions, Diamond Peak Additions, and Waldo Lake.

Because of the fact that Congressional action occurred so recently (after Lane County submitted its plan), it is suggested--but not required until first plan update--that the plan be amended to inventory these new areas.

Conflicting Uses/ESEE Consequences Analyses

Because of their federal ownership, remote locations and federal protection for wilderness values, the County indicates that wilderness areas are "free from County-generated conflicts" (p. 4).

Policies

Lane County has one policy addressing wilderness areas (Open Space and Scenic Areas Policy 2; Plan, p. 17):

> Lane County will recommend that no new wilderness areas be designated in the County without a complete analysis of the revenue and employment impacts to Lane County. Where designations are made, negative employment and revenue impacts should be mitigated by increasing allowable timber harvest on other public lands.

Implementing Measures

Forest resource zoning has been applied to wilderness areas. The County explains in its Recreational Resources Working Paper (p. 4) that this zoning "will pay homage to the concept of County 'protection' of them, but in practical fact they are simply out of the relm of County authority."

Conclusion--Wilderness Areas

Lane County has inventoried the three wilderness areas within its boundaries and has adopted a plan policy recommending that no new wilderness areas be designated without an analysis of revenue and employment impacts. The areas have been given forest resource zoning. It is recommended that, by first plan update, the County amend its plan to inventory the recently designated new wilderness areas.

Historic and Cultural Resources

Inventory

The Working Paper identifies each of the approximately 500 sites identified in Lane County on a preliminary inventory and survey of historic and archaeological resources. Each is identified by site number or name, by location (township, range, section) and by map symbol. Each appears on a quad map included in that document. A map symbol for each site indicates whether it is an archaeological site, a transportation site or route, a settlement feature, an agricultural site, a mining site, a logging site, a marine site, an historical site, or a natural feature.

Lane County has adopted an Historical Resources Working Paper which explains the process and criteria used in evaluating the "significance" of the 500 sites identified in the County (Addendum to the Working Paper, pp. 1-2). All sites on the National Register of Historic Places are considered significant and are in the (1C) category of the Goal 5 Rule. All sites or structures still in existence contained in the Statewide Inventory are also considered significant, and where sufficient information is available to carry out a conflicting uses analysis, a (1C) label has been given. Archaeological sites are considered (1B) sites, but the County indicates they should be given special interim protection until a data and a protective program for them are developed. All other sites identified are (1A) sites (pp. 1-2).

In all, the County determined there are 63 (1C) sites. These are listed on pages 3 and 4 of the Working Paper Addendum, along with their locations and map numbers. These sites are mapped on quadrangle maps that are included in the Working Paper. Each site has been given a map code which specifies the "theme" of the site (i.e., archaeological, transportation, settlement features, cemetery, century farm, grange hall, old barn, mining, logging, marine industry, historical site, natural landmark, and hot springs). Further information about each (1C) site that is also on the Statewide Inventory is appended to the addendum to the Working Paper. The Addendum to the Working Paper also summarizes the quality and quantity of these (1C) sites (pp. 5-9).

It should be noted that the County has indicated that several (1C) sites on the historic sites inventory in the Working Paper Addendum (pp. 3-4) were deleted by the Board of Commissioners during final plan adoption, including sites # 32, 34, 39, and 42 (Mike Copely, County Planner, personal communication, June 15, 1984). There is no indication of this in any of the resubmittal materials. Site 34 is within the Creswell UGB. However, there are no reasons presented supporting deletion of sites # 32, 39, or 42 (the Andrew Keeney House, the Paschelke House, and Fall Creek Christian Church, respectively).

Conflicting Uses/ESEE Consequences Analyses

Pages 5-9 of the Addendum to the Working Paper contain the County's conflicting uses identification and ESEE consequences analyses for the (1C) sites. These analyses are presented by category for the following categories: Transportation Sites (bridges), Settlement Features, Barns, Marine Sites, Historical Sites/Landmarks, and Archaeological Sites.

In its Working Paper, the County recognizes destruction of the structural sites as a conflict, but fails to recognize major exterior alteration as a conflicting activity. However, it is clear in the County's zoning ordinance that the County considers major exterior alteration as an activity which could conflict with historic resources. For archaeological sites, the County identifies any land use or activity which damages the integrity of the site as a conflict.

Policies

Lane County has adopted a number of plan policies which address historic and archaeological resources (Plan, pp. 12-13). These include the following:

1. A group known as the "Lane County Historic Resource Committee" is to be established and given permanent status by the Board of County Commissioners. The Committee shall represent a wide array of historical interests and the interest of property owners. Its tasks shall include: general concern with historical matters in the County; to monitor conditions affecting such resources; to devise criteria and methods for the selection of newly-designated historical resources; to advise the staff and officials of the County on proposed new historical sites and structures; to oversee the administration of the Historic Structures or Sites ordinance; and other related tasks and duties. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

2. The County shall administer the "Historic Structures or Sites" section of Lane Code Chapter 10 as a means of protecting historic resources. These regulations shall be applied to all sites contained in [the] list of "Historic Structures or Sites" referenced by the ordinance, which are sites deemed significant by the County, and therefore meriting protection from conflicting uses by a limitation of such conflicting uses.

3. The Goal 5 conflict resolution process (OAR 660-16-000 through 660-16-025) which has been applied in the selection of historical sites and structures contained in the General Plan and implemented through the "Historic Structures or

Sites" ordinance, shall continue to be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or change in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historic sites and resources. A long-term objective shall be in the inclusion of historical sites in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

9. The County shall work with concern local, state and federal agencies to coordinate efforts to identify and protect historical resources.

10. Archeological sites identified in the Historical Resources Working Paper and Addendum to the Historic Resources Working Paper shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. These significant sites shall be incorporated into the Lane County General Plan Policies document as Historical Resources Exhibit A.

Note: Policy 2, above, incorrectly refers to Lane Code Chapter 10, rather than Chapter 16 as its implementing measure for historic sites.

Implementing Measures

Section 16.233 of the Lane County Development Code is the Historic Structures of Sites Combining Zone (/H-RCP), the stated purpose of which is to allow the County to review building and demolition permits to

ensure historic resources are preserved. The Code specifies that "no person may alter or demolish any Historic Structure or Site" unless a permit to do so has been issued. Upon receipt of an application for such a permit, the Planning Director shall notify the Lane County Museum Director and the State Historic Preservation Officer.

A demolition permit shall be approved only if evidence is submitted demonstrating that "every reasonable effort shall be made to maintain the Historic Structure by acquisition, protection, stabilization, rehabilitation, restoration or reconstruction project (a demonstrated lack of private and public funding for maintenance of a structure is sufficient cause to allow demolition)." A permit to alter an historic site or structure shall be approved only upon submission of evidence that (a) any use or change "should be compatible with the historical nature of the property," and (2) only the minimum alteration of the structure or site and its environment necessary to achieve the intended use shall be allowed. Consideration shall be given to four alteration guidelines in satisfying the second criteria, above. These guidelines are as follows:

(1) Only the minimum alteration of the designated historic building, structure or site and its environment necessary to achieve the intended use shall be allowed.

(2) The distinguishing original qualities or character of a designated building, structure or site and its environment should not be destroyed. The removal or alteration of any historical material or distinctive architectural features should be avoided.

(3) All designated buildings, structures and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance should be discouraged.

(4) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected.

It must be noted that the zoning maps do not show that the combining zone has been applied to all 63 inventoried (IC) sites as intended. Specifically, the maps do not show that the combining zone is applied to (IC) sites 1-20, 24, 35, 38, 44, 45, 46, 48, 55, 57, 59 or 61. The ordinance also does not indicate which sites fall within that zone designation. This is also contrary to Historic Policy 2, which states that the zone shall be applied to all sites on a list referenced in the ordinance.

Objections

1. The Oregon Department of Transportation (ODOT) has objected because of a conflict between the historic resources working papers and the ordinance. Specifically, ODOT finds that the historic ordinance applies only to sites and structures on the National Register of Historic Places, and does not cover other (1C) sites identified in the working papers.

2. Friends of the Oregon Coast object because of the failure of Lane County to address cultural and archaeological resources of the Big Creek Exception Area. Specifically, objectors indicate that Goal 5 requires such resources to be inventoried. Yet, according to objectors, the Exception does not address this topic "in any way." Objectors provide information indicating that such resources are common at the mouths of coastal rivers. Due to the probability of Indian graves and/or a significant archeological site at the mouth of Big Creek, and the fact that, based on the County's own definition of conflicting uses, road building, building construction and land clearing for a destination resort are considered conflicting uses, objectors believe that "the new zoning of the Renaghan property is in violation of Goal 5 until an intenstive cultural resources inventory has been conducted and this portion of Goal 5 addressed."

Response to Objections

1. ODOT has misread the Lane Code with regarding to the County's Historic Structures of Sites Combining Zone. ODOT has apparently reviewed the County ordinance which applies inside UGBs. That zone does limit the zone's application to National Register sites. However, ODOT has failed to note that the ordinance which applies outside UGB's (in rural Lane County) is somewhat different. Specifically, the rural zone does not contain language that limits application to National Register sites. Therefore, the objection is not sustained.

2. Objectors are correct that the exception for the Renaghan property does not address historic or cultural resources. However, as pointed out by the objectors themselves, the State Historic Preservation Office knows of no site on the property, nor do anthropoligists at Oregon State University. County's are required, under Goal 5, to rely on whatever information is available in producing comprehensive plans. They are not required to conduct extensive archaeological surveys. Therefore, the County's exception does not violate Goal 5 for cultural or archeological resources. If, in the event, such resources are discovered during site development, the Goal 5 Rule would have to be applied by the County, including possible plan amendments.

Conclusion--Historic Resources

Lane County has adopted an inventory of historic resources and has analyzed conflicts and ESEE consequences of conflicts with these resources. The County has a combining zone which is intended to be applied to historic sites.

The zone provides procedures and criteria for resolving conflicts with inventoried sites, particularly major exterior alterations and demolitions. However, the County has not applied the zone to all 63 (1C) sites identified in its plan, as intended.

Oregon Recreation Trails

Inventory

Lane County's inventory of Oregon Recreation Trails is included in its Recreational Resources Working Paper (p. 15, Recreational Resources Map).

The County describes these trails as follows:

1. Coast Range Trail--not developed. Funding limitations and the desire of the state not to condemn private land for trail development suggests that it will be some time before it is completed. Mapped route is general in nature.

2. TransAmerica Bike Trail--fully signed and marked, with route maps published by the state.

3. Eugene to Pacific Crest Trail--a few portions are developed with work now underway by a local chapter of the Sierra Club. Uses bikeways in Eugene Area.

4. High Divide Trail--proposal only, same as #1 above.

5. Coast Trail--Lane County developed portions occur in Cape Perpetua and Heceta Head recreational areas, with preparations being made for inclusion of Oregon Dunes National Recreation Area lands. No private lands involved at this point.

6. Coast Bicycle Trail--designated, signed and mapped.

7. Pacific Crest Trail--fully developed. No private lands involved in Lane County. Located in Willamette National Forest.

These descriptions are basically accurate. It should be noted that, according to Jack Remington, State Trails Coordinator, ODOT has proposed general routes for the unbuilt portions of the Eugene to Pacific Crest Trail and the Coast Trail. Portions of the High Divide Trail already exist since they follow several other developed trails. However, only general routes have been proposed for the unbuilt portions of the High Divide Trail (personal communication, June 20, 1984).

The general location of each of the seven trails is depicted on the County's Recreational Resources Map in the Working Paper. No specific locations have been provided in either the text or on the map, however, for existing trails. Specific routes for the Pacific Crest Trail, the TransAmerica Bike Trail, the Coast Bike Route, and portions of the High Divide Trail and the Eugene to Pacific Crest Trail are known, since these trails are developed.

Conflicting Uses/ESEE Consequences Analyses

The County has not identified specific conflicting uses with the seven proposed or existing Oregon Recreation Trails.

However, the Coast Bicycle Trail, TransAmerica Bike Trail and the Pacific Crest Trail are fully developed and are either on federal or other public lands or on public rights-of-way, as are portions of Eugene to Pacific Crest Trail and portions of the Coast Trail. Therefore, the County concludes that they are likely to experience few conflicts.

No specific routes for the Coast Range Trail or the unbuilt segments of the Coast Trail, the Eugene to Pacific Crest Trail, or the High Divide Trail have been determined by ODOT. Although most of these proposed trails would cross public lands, segments of these trails are proposed to cross private lands, and conflicts could occur. However, since their locations are only generally known at this time, specific conflicts cannot be determined.

Policies

Lane County's recreational trails policy (Open Space and Scenic Areas Policy 4, Plan, p. 17) is:

> The County shall acknowledge recreational trails which are developed by the Oregon Parks Outdoor Recreation Plan and shall display the routes on its Plan documents.

Lane County lacks a policy to cooperate with ODOT in the protection of existing trails. The County also lacks a policy to coordinate with the Oregon Department of Transportation in applying the steps of the Goal 5 Rule during any future identification or establishment of proposed trails or trail segments.

Implementing Measures

No specific implementing measures have been adopted by Lane County for the protection and/or resolution of conflicts with existing or proposed trails.

Conclusion--Recreation Trails

Lane County has identified the seven existing or potential state recreation trails in its Recreational Resources Working Paper, but has not provided a description or map of the specific locations of existing trails. It has, however, recognized the fact that ODOT has maps of these trails. The County lacks a plan policy to coordinate with ODOT in applying the Goal 5 Rule if and when any of the unbuilt trail segments are identified or proposed for construction or designation. The County also lacks a policy to cooperate with ODOT in the protection of existing trails.

No conflicts exist with developed trails and trail segments, and therefore, special implementing measures are not necessary in those areas. Implementing measures have not been adopted for the protection and/or resolution of conflicts with the proposed trails and trail segments, nor are any appropriate at this time since their specific locations are not yet known.

Potential and Approved Scenic Rivers and Waterways

Inventory

The County's Recreational Resources Working Paper briefly describes both the State Scenic Waterways Program and the Federal Wild and Scenic Rivers Program (p. 16). The County correctly notes that there are no designated federal rivers in Lane County at this time. However, the County fails to note that during the 1983 Legislative Session, a bill was passed (HB 2435) designating Waldo Lake and the North Fork of the Middle Fork of the Willamette River (from Waldo Lake to about one mile upstream from Westfir) as a State Scenic Waterway. The County's working paper incorrectly indicates there are no state designated waterways.

The Working Paper correctly recognizes that five river stretches are on the U.S. Interior Department's inventory of potential scenic rivers (p. 17):

1. Upper McKenzie (from Tamolitch Falls to McKenzie Bridge);

2. Steamboat Creek (from its source to its confluence with the Umpqua River);

3. Alsea (entire length; only a small upper portion in Lane County);

4. Siuslaw (from its source to Lake Creek confluence); and

5. Willamette (from Eugene to Corvallis).

All five of these river segments are shown in a general fashion on the Recreational Resources Map contained in the County's Recreational Resources Working Paper.

The County correctly notes that the Upper McKenzie (from Tamolitch Falls to McKenzie Bridge) is also on the state potential scenic waterways list. However, the County fails to mention that Steamboat Creek and Alsea River (the same stretches as on the federal potential list) are also on the state potential list.

The County recognizes that the area affected along each of the inventoried rivers is one-quarter mile on each side measured from ordinary high water (p. 16).

Policies

The following policy has been adopted regarding wild and scenic rivers (Open Space and Scenic Areas Policy 5, Plan, p. 17):

> The County shall cooperate with appropriate state and federal agencies in the selection of scenic and wild rivers.

This policy does not commit the County to coordinate with those agencies in applying the Goal 5 Rule process in studying rivers for possible state or federal designation and in making such selections.

Conflicting Uses/ESEE Consequences Analyses

Lane County suggests that conflicting uses and ESEE/consequences should be identified at the time a river is studied for designation (pp. 17-18). The County also suggests that resource zoning should provide protection for such rivers (p. 17).

Implementing Measures

Waldo Lake and the stretch of the North Fork of the Middle Fork of the Willamette River that is designated as a State Scenic Waterway are located entirely on federal land (confirmed by Jim Payne, State Rivers Program Coordinator, personal communication, June 14, 1984). The portion of the Alsea River that is on the state and federal potential lists is also in federal ownership. The Willamette River is within the Willamette River Greenway, to which the County has applied a Greenway Development ordinance (see the Goal 15 section of this report for details).

Portions of the McKenzie River, Steamboat Creek, and the Siuslaw River flow through federally-owned lands. However, some stretches are in non-federal, private ownership. Developed and committed exceptions have been taken along all of these stretches of the McKenzie and Siuslaw Rivers and Steamboat Creek, most of which have been found to be valid under the Goal 2 analysis in this report. However, as noted in that report section, exceptions in plats 23, 204, 230 (Siuslaw River), 627, 628, 629, 630 and 631 (McKenzie River) have not been justified. No needs exceptions have been taken along the McKenzie River, Steamboat Creek, or the Siuslaw River. It has been the practice of the Commission to require jurisdictions to analyze the ESEE consequences of taking needs exceptions along potential federal or state scenic rivers and waterways, but not to require such an analysis for built and committed exceptions.

Conclusion--Scenic Rivers and Waterways

Lane County has inventoried five federal potential scenic rivers and one state potential scenic waterway (the McKenzie River) but has failed to note that, besides the McKenzie River, two of the federal potential rivers are also potential state waterways (i.e., the Alsea River and Steamboat Creek). The County has also failed to mention that Waldo Lake and the North Fork of the Middle Fork of the Willamette River are designated State Scenic Waterways.

The County lacks a policy commitment to coordinate with appropriate state and federal agencies in applying the Goal 5 Rule process in studying rivers for possible designation as well as in the actual selection of rivers for designation.

Built and committed exceptions have been taken along all nonfederal lands along state and federal potential scenic rivers, some of which have not been found to be valid under Goal 2. The County needs to either not take these exceptions, or justify them as being built or committed.

PART II--EUGENE/SPRINGFIELD METROPOLITAN AREA OUTSIDE THE METRO UGB

In August, 1982, the Commission reviewed and acknowledged the Eugene/Springfield Metro Area Plan and implementing measures for lands within the Metro UGB. However, the cities of Eugene and Springfield as well as Lane County were granted a continuance for lands outside the UGB but within the Metro Planning Area Boundary in order to comply with Goal 5, (as well as several other Goals). The following section of this report analyzes Lane County's responses to the "in-order-to-comply" requirements contained in the August, 1982 staff report, adopted by the Commission.

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E-Mail: jim.e.belknap@gmail.com

Gary Darnielle
Lane County Hearings Official
C/O Amber Bell, Senior Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

PA19-05298
Exhibit 7 to
Reopened Record 12/18/19
Submission Of
Additional Materials

Original by Personal Delivery, copy to amber.bell@lanecounty.or.gov

Re: 509-PA19-05299

December 17, 2019

Dear Mr. Darnielle:

Amber Bell provided an email dated December 12, 2019 with attachments of submissions from Michael Farthing and Sean Malone. December 12, 2019 was the deadline for additional submissions with regard to the appeal of PA19-05299. While it may be as simple as a typographical error, Mr. Malone's submission is a puzzlement to me. Given the highly charged nature of the allegations being set forth in this appeal I feel the confusion it interjects into our discussion requires a response.

In the subject line of his letter, Mr. Malone references "**PA19-05298 (Goodman).**" Mr. and Mrs. Goodman own Tax Lot 18-02-11-00506, and the Planning Action number for that property is **PA19-05299**, not 05298. As Mr. Malone is aware, adjoining Tax Lot 506 is Lot 507, which is the subject of PA19-05298 and title is held by NIMPKISH, LLC.

As I have noted, the deadline for submissions of PA19-05299 was Thursday, 12/12/19. This leads me to the assumption that Mr. Malone's letter was intended to address PA19-05299, not 05298, which would correspond correctly to the reference to Goodman.

So far, so good, a simple typographical error.

The confusion arises in the second page of Mr. Malone's December 12, 2019 letter. In his next to last paragraph Mr. Malone cites Lane Code 16.211(8)(c)(i) with a reference to the requirement for an owner to provide for a "secondary fuel break on land surrounding the dwelling or manufactured

dwelling that is owned or controlled by the owner..." The reference to code is correct, but then the train goes off the tracks:

> "Because the subject property is not large enough to satisfy the secondary fuel break of 100 feet and because the adjacent property to the south is controlled by the same entities/individuals, the applicant must obtain a secondary fuel break easement on tax lot 508, the property to the south of the subject property."

As seems to be a continuing problem in the appeals filed by LandWatch Lane County, they simply have not reviewed the application materials but are quite willing to interject factually unfounded statements such as the above that require a response from the applicant, and even then continue to sprinkle confusion over the application under review.

Enclosed with this letter at Attachment 1 is the Plot Plan that was submitted for PA19-05299, Tax Lot 506. This plot plan clearly shows that the primary fuel break is contained on Lot 506 and the secondary fuel break is also contained on Lot 506 except to the point where it would extend onto property to the west, formerly Lots 401 and 404, now remapped to be 404 only.

Please note the Plot Plan shows the distance from the proposed dwelling to the south boundary is "628' to Property Line." The primary and secondary fuel breaks extend approximately 180 feet into this distance, but at its outer edge remains approximately 448 feet from the south boundary of the subject property (Lot 506). Goodmans do not own or control any part of Lot 404 and the secondary fuel break does not extend onto any other adjoining property.

Enclosed at Attachment 2 is the Parcel Map displaying the location of the proposed dwelling, noting its proximity to the adjoining parcels in all directions.

As to PA19-05298, applicable to Tax Lot 507 and owned by NIMPKISH, LLC. the proposed secondary fuel break could extend onto Tax Lot 506 if an easement were granted for such purposes. As was discussed in our letter of November 20, 2019 submitted in response to the appeal filed on PA19-05298, the owners of Tax Lot 506, Goodmans, have agreed to grant an easement in favor of NIMPKISH, LLC beneficial to Tax Lot 507 for purposes of a secondary fuel break, if such a requirement is made by the Hearings Official. A map depicting the area that would be subject to an easement for fuel break purposes, beneficial to Tax Lot 507 and encumbering Tax Lot 506 was submitted into the record for PA19-05298. A copy of that map is enclosed at Attachment 3.

As Mr. Malone has referenced his December 12, 2019 letter to PA19-05298 and the record was reopened to the appeal of that application I am providing a copy of this letter to be included in the record in the event my assumption of Mr. Malone's intent is incorrect and for some reason he feels his comments are applicable to Tax Lot 507 and PA19-05298.

Continuing with the review of Mr. Malone's December 12, 2019 letter, the position of LandWatch continues to be that Lane County has operated without an acknowledged Comprehensive Plan since

1996. Mr. Malone makes the statement at the top of page 2 that "the only issues addressed (in 1996) were wetlands, riparian setbacks on class I and II streams, the mineral and aggregate inventory, and sensitive bird habitat." The implication, of course, is that for 23 years Lane County has not had a Comprehensive Plan that addressed the elements of big game habitat reviewed in the Flora and Fauna Working Paper of 12 years prior.

As we have previously discussed on page 22 of their Acknowledgement of Compliance, Lane County, dated September 13, 1984 the Land Conservation and Development Commission offered the following:

> "The strength of their forest lands conservation program is the F-1 zone which prohibits the siting of all dwellings (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.
> The County's F-2 zone is applied to 145,356 acres of privately owned lands which consist, generally, of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands..."

The striking analysis is in the proportion of forestland, 94.4% (2,449,775 / 2,595,131), that prohibits the placement of dwellings. The F2 zoned land encompasses 5.6% of the county's forest lands (145,356 / 2,595,131).

The 2,595,131 acres of forestland, divided by 80 acres (the most restrictive of proposals made by ODFW for residential density), would allow for 32,439 dwellings in the County's forest zoned lands. If that same number of dwellings was then limited to only the F2 zoned lands, which it effectively is as the F2 zoning is the only forest zone that allows for dwellings, the 145,356 acres divided by 32,439 dwellings would allow for one dwelling every 4.48 acres. (145,356 / 31,439 = 4.48)

In other words, Lane County could allow a dwelling on every 4.48 acres of F2 zoned land and still support an overall density standard of only one dwelling on every 80 acres of forest zoned land in the county. If the peripheral big game habitat standard of one dwelling per 40 acres was incorporated into the discussion as it is applicable the number of allowed dwellings would, of course, increase dramatically.

This analysis is simply mathematical, we do not comport to say that such an analysis should be adopted by the county. What is provided is that Lane County applies the Template Test to lawfully created units of land in reviewing the application for a forest zoned dwelling because the overall residential density question was fully resolved in 1984 in the adoption of the F1 zoning and its prohibition of dwellings. It is for that reason no additional discussion has taken place with regards to the game habitat recommendations of overall density in the subsequent reviews of the Comprehensive Plan.

When Lane County's adoption of the F2 zoning was revised to provide for the Template Test standards for dwelling approval the proposed zoning code was reviewed by LCDC and approved as being in

compliance with the County's Comprehensive Plan. Had the zoning code not been in compliance with the Comprehensive Plan the code revision would not have been acknowledged by the State of Oregon. It is inconceivable to even suggest that anything other than that action could have taken place.

I am submitting this letter for the record in response to the submission of additional materials as presented by the Appellants. The deadline for response to those submitted materials is January 9, 2019 and we may well have additional submissions to make prior to that deadline. The reason for my submission of this response is to be able to include it in the record, as it may be applicable, for PA19-05298, the record of which will close on December 19, 2019.

Thank you for your attention to this submission.

Sincerely,

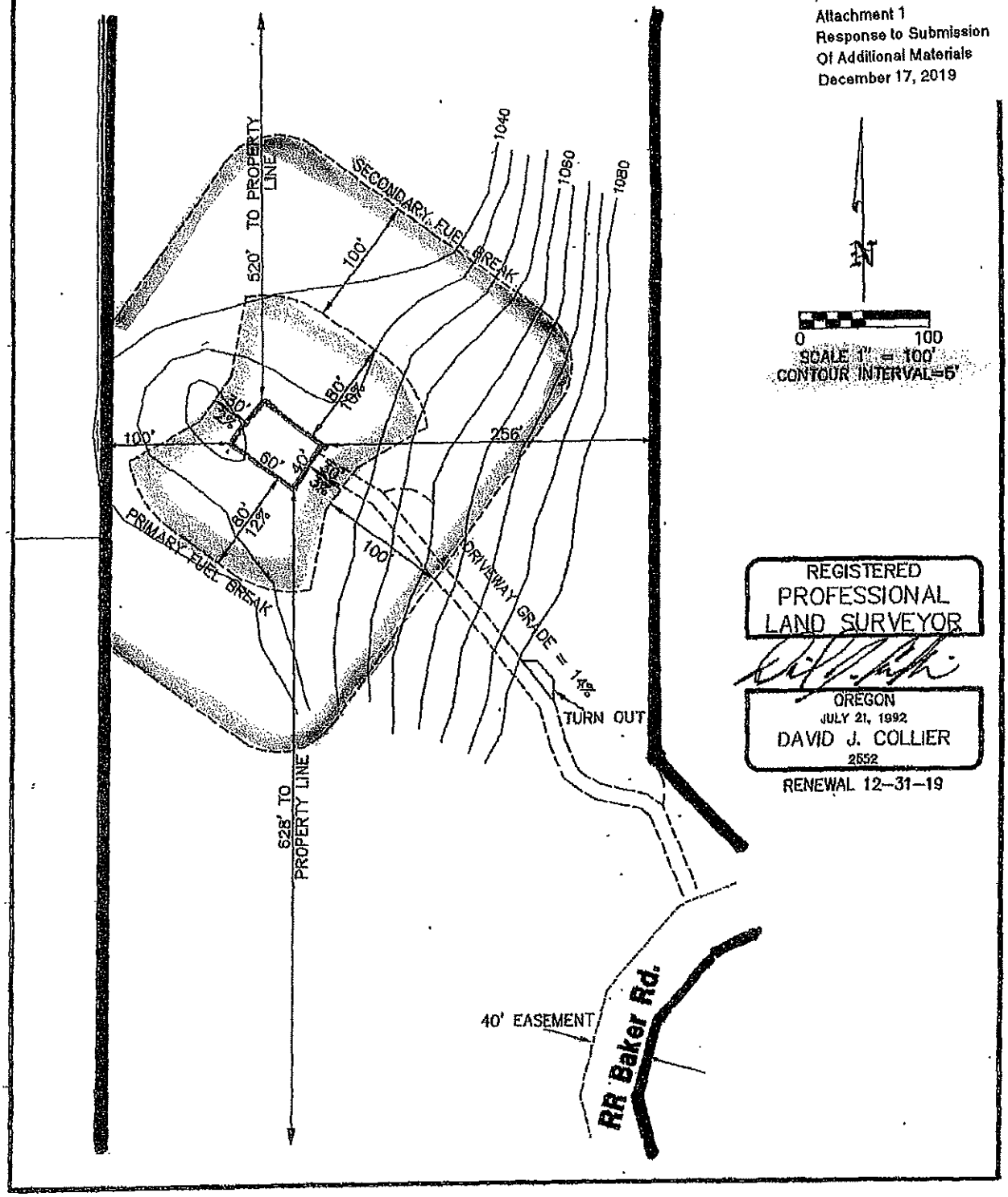
Jim Belknap

Encl: Attachment 1, Site Plan with Fuel Breaks, PA19-05299
Attachment 2, Parcel Plan with Location of Proposed Dwelling
Attachment 3, Map of Possible Fuel Break Easement Beneficial to TL 507

Cc: Gray and Dorotea Goodman
Michael Farthing

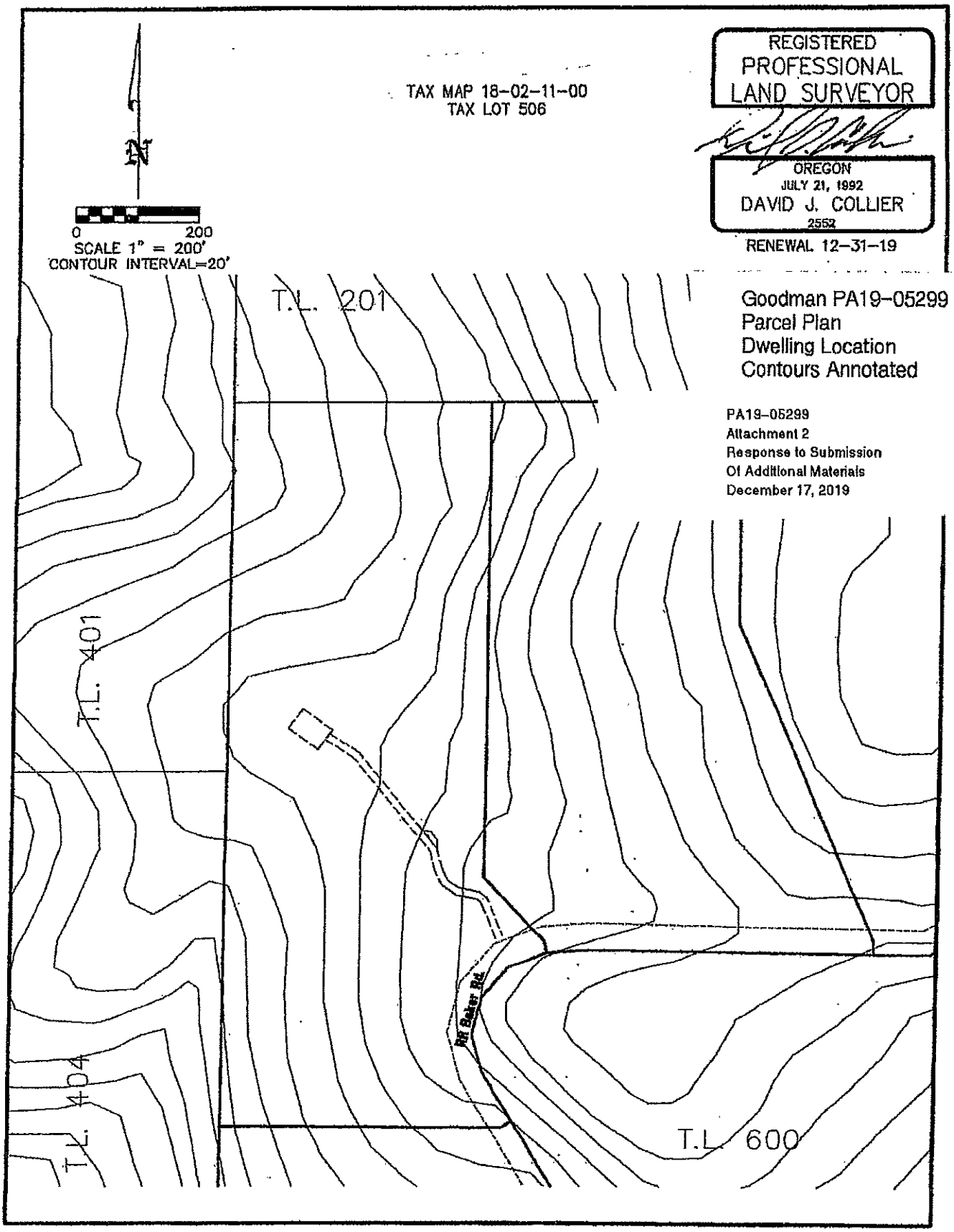
Goodman PA19-0529
Site Plan with
Fuel Breaks

PA19-05299
Attachment 1
Response to Submission
Of Additional Materials
December 17, 2019



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1992
DAVID J. COLLIER
2552
RENEWAL 12-31-19


TAX MAP 18-02-11-00
TAX LOT 506
REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JULY 21, 1992
DAVID J. COLLIER
2552
RENEWAL 12-31-19
0
200
SCALE 1" = 200'
CONTOUR INTERVAL=20'
T.L. 201
T.L. 401
T.L. 404
T.L. 600
Goodman PA19-05299
Parcel Plan
Dwelling Location
Contours Annotated
PA19-05299
Attachment 2
Response to Submission
Of Additional Materials
December 17, 2019

PROPERTY OWNERS:
GRAY AND DORETEA GOODMAN T.L. 506
NIMPKISH, LLC T.L. 507

EXHIBIT C
GOODMAN/NIMPKISH, LLC
TAX MAP 18-02-11-00
TAX LOT 506 & 507

REGISTERED
PROFESSIONAL
LAND SURVEYOR

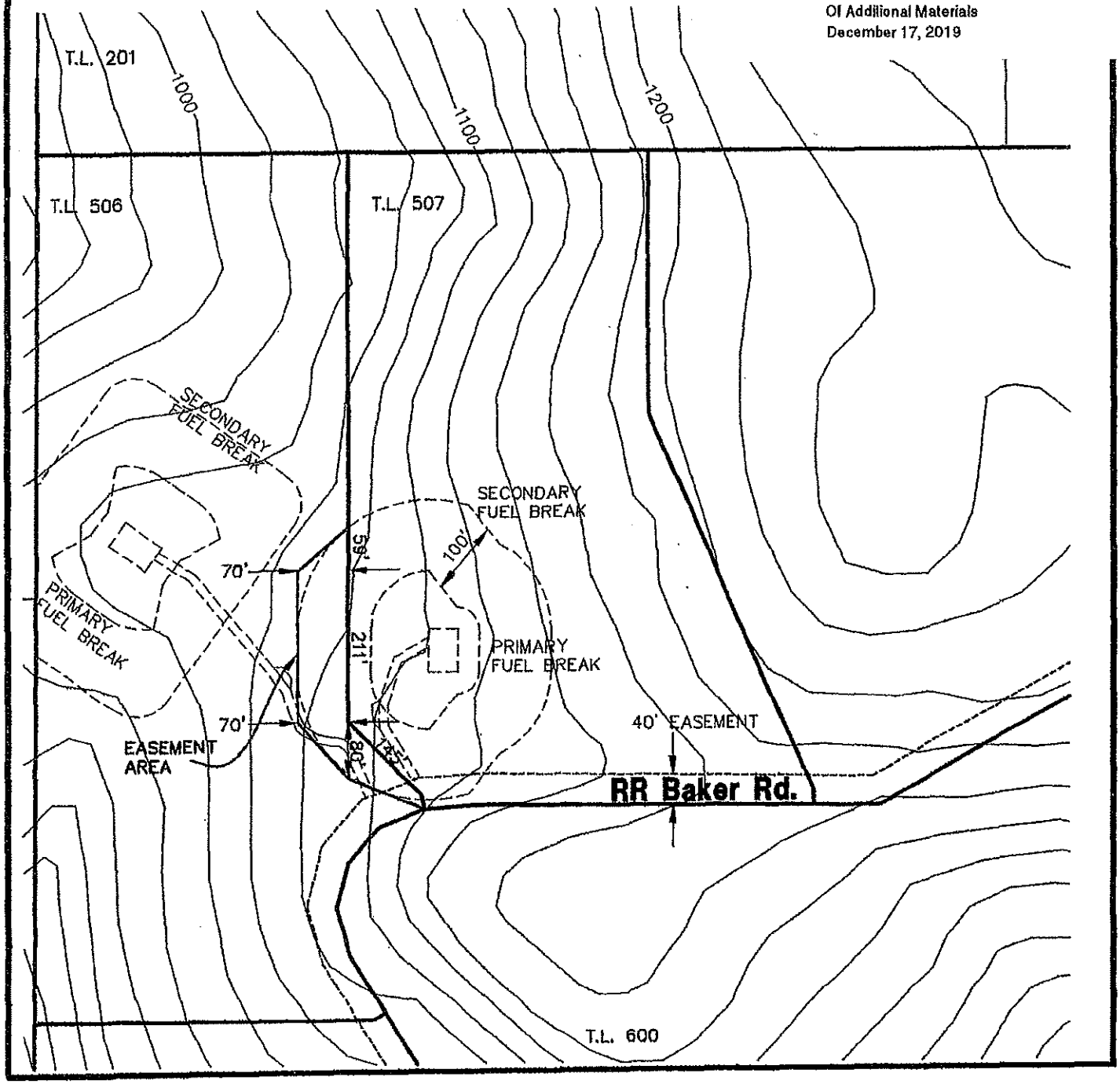
OREGON
JULY 21, 1992
DAVID J. COLLIER
2552

RENEWAL 12-31-19

N

0 200
SCALE 1" = 200'
CONTOUR INTERVAL=20'

PA19-05299
Attachment 3
Response to Submission
Of Additional Materials
December 17, 2019



0377

001076

Additional Information Submitted

Date Stamp: RECEIVED DEC 19 2019

Submitted By: Michael Farthing

Phone Number: 541-683-1950

Email Address: mefarthing@yahoo.com

Project Address:

Permit Number (BP, PA, SP, SI): PA 19-05298 (Nimpkish LLC)

Submittal Description: ATTEN: Kevin Gilbride

→ Applicant's Supplemental Post-Hearing Evidentiary Submission

Type of Submittal:

☑ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other:

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: KEVIN GILLBRIDE Amount Due:

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

svm 12/26/2018

Michael E. Farthing

Attorney at Law

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

Office: 541-683-1950 ◊ Fax: 541-654-5083

email: mefarthing@yahoo.com

December 18, 2019

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Kevin Gilbride, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **PA 19-05298 (Nimpkish LLC)**
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County
Applicant's Supplemental Post-Hearing Evidentiary Submission

Mr. Darnielle,

Thank you for extending the open record period for new evidence. Please enter this letter and attached documents into the record of the above-referenced appeal that I am submitting on behalf of the Applicant and in support of the Director's decision and findings.

At this time, Mr. Belknap and I are submitting County orders, reports, maps and other documents that relate and respond to the various allegations made by Mr. Malone in his testimony and letters and also to Mr. Mulkey's various speculations. I readily acknowledge that Mr. Belknap's letter and exhibits provide the bulk of our evidentiary response as it relates to the siting and road standards as well as other, topics like how does a statement in a 37-year old preliminary planning document have any relevance to a single lot land use application in 2019? I commend Mr. Belknap for his thoroughness and attention to detail.

In sharp contrast to Mr. Belknap's evidentiary offering, neither Mr. Mulkey nor Mr. Malone or anyone else from LandWatch or 1000 Friends have provided any physical evidence, legal analysis or professional opinion or anything credible that might support either of their speculative and baseless allegations. The

policies in the preliminary Flora and Fauna Working Papers, and Policy 11 in particular, were implemented when the F-1 zoning was adopted and acknowledged in 1984 which did not allow residences on over 94% of the County's designated forest land. Those policies do not relate to 2019 forest template dwelling applications in any legal manner.

As further confirmation of this legal conclusion, I am enclosing copy of a November 25, 2019 Hearings Official decision **(PA 18-05913, Green)** that affirmed the Director's decision approving a forest template dwelling application on a 10-acre parcel outside of Cottage Grove. *See* Exhibit "A". In that decision, Ms. Davies rejected LandWatch's identical Goal 5 argument in a lengthy analysis (p 8-13) in which she concluded:

> ". . . For the reasons discussed above, Policy 11 does not apply directly as mandatory approval criteria to the subject forest template dwelling application."

Id at 12. After that, she provides additional rationale to support her conclusion. In fact, the entire decision is relevant, timely and very comprehensive.

Lane County and Goal 5

After the public hearing, we set out to find how Lane County reacted to the new Goal 5 rule, OAR 660-023, adopted in 1996 by LCDC. Mr. Mann researched County records and uncovered the following documents which we are now submitting into the record of this appeal. They include:

(1) **BOARD ORDER NO. 96-4-10-1**
In the Matter of Approving a Work Program for the Periodic Review of the Rural Comprehensive Plan. *See* attached as Exhibit "B".

This Order dated April 10, 1996, established a five-project Periodic Review Work Program for the Rural Comprehensive Plan which included a Goal 5 update (#4) and review of the F-2 zone (#5). Both of those projects were excluded from the Work Program at the time of its adoption.

(2) BOARD MINUTES (April 10, 1996)

These are the minutes of the Board's public hearing and deliberations prior to adoption of the Periodic Review Work Program. *See* attached as Exhibit "C".

(3) BOARD ORDER NO. 97-10-21-3
In the Matter of adopting amendments to the timelines for the approved work program for the periodic review of Lane County Rural Comprehensive Plan project 1 work plans: Goals 11 and 14. *See* attached as Exhibit "D".

(4) BOARD ORDER NO. 00-6-27-5
In the Matter of adopting amendments to the timelines for the approved work program for the periodic review of the Lane County Rural comprehensive Plan. *See* attached as Exhibit "E".

These two Orders modified the Periodic Review Work Program but had no affect or impact on the Goal 5 update project.

(5) ORDINANCE NO. 5-02
In the Matter of amending chapter 16 of Lane County to modify farm and forest zone classifications and regulations (LC 16.090, LC 16.100, LC 16.211 and LC 16.212) and declaring an emergency.

Selected portions of this ordinance are provided relating to the new F-2 zoning district which included a template dwelling provision that is essentially the version that is now in effect. *See* Exhibit "F". The County's findings indicate the reason for the change is for "consistency" with State law (ORS 215.750) and LCDC regulations (OAR 660-006-0027).

As for what happened to the Goal 5 update project, there is no consensus among those who were present when the Periodic Review Work Program was unfolded in 1996 as to what happened over the next decade and beyond. There is a belief that it was not a mandate from DLCD/ LCDC and that because of budget constraints, it was never moved forward in the planning program and budget discussions. Whatever happened, the lack of Goal 5 update had no impact on the

County finally enacting a template dwelling provision in 2002 that mirrored State and LCDC versions.

For now, the attached materials provide a partial look at Goal 5 in Lane County. Certainly, until recently, not much attention has been devoted to Goal 5 beyond its implementation in 1984. For PAPA's, Goal 5 has relevance as described in *Cattoche* but not so for template dwellings. We look forward to whatever evidence LandWatch is able to produce that will provide some support for their allegations.

Sincerely,

Michael E. Farthing

Enclosure

c: Gary Darnielle (via email)
Kevin Gilbride (via email)
Nimpkish LLC (via email)
Jim Belknap (via email)
Sean Malone (via email)
Andrew Mulkey (via email)

LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F-2 DISTRICT

Application Summary

On December 6, 2018, the applicant submitted a request to establish a dwelling in the Impacted Forest Lands (F-2) zone to Lane County Land Management Division. The application materials were reviewed by staff and the application was deemed incomplete on December 28, 2018. Additional information was received from the applicant on January 4, 2019, and on February 11, 2019, the application was deemed complete.

On March 29, 2019, referral responses were solicited from affected agencies, service providers and surrounding property owners. In order to allow time to obtain comments from the Oregon Department of Aviation, a Waiver of Statutory Timelines was provided on June 17, 2019. Referral comments from the Oregon Department of Aviation was received on July 3, 2019, and final processing this application commenced. On July 18, 2019, the Director issued a determination that the subject property complied with the applicable standards and criteria for the Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners, and on July 30, 2019, a timely appeal was submitted by LandWatch Lane County. The Director reviewed the appeal and elected to reconsider the decision, based mainly on the appellant's assertion that the wrong approval criteria had been applied.

A reconsidered decision approving the proposal was issued on August 2, 2019. On August 14, 2019, LandWatch Lane County again submitted a timely appeal of the Director's reconsidered decision.

Parties of Record

LandWatch Lane County	Connie and Charles Green
Don Nickell	Michael Farthing

Application History

Hearing Date: October 24, 2019

Decision Date: November 25, 2019

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(5)&(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 301, assessor's map 20-03-21, approximately one mile north of the City of Cottage Grove's Urban Growth Boundary and west of Highway 99 off of Abbott Lane.

   The subject property is approximately 10.28 acres in size and is currently vacant. Elevation of the property ranges from approximately 850 feet MSL in the southeast corner to 950 MSL in the northwest corner. County LiDAR resources show that slopes range from 5% to 30% with the most gentle slopes on the southern half of the subject property and steeper slopes on the northern half. Open pasture land makes up the southern one-third of the property with the northern two-thirds in timber.

   The subject property is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2, RCP), consistent with that plan designation.

2. The property abuts Impacted Forest Lands (F-2) zoned properties to the north, east and south. The property to the west is zoned Exclusive Farm Use (E-40). The surrounding area can generally be characterized as a mix of forest, farm, and rural residential uses. The property does not contain floodplain, a Class 1 stream, or mapped wetlands, but does contain the Airport Safety Combining Zone for the Cottage Grove Airport.

3. Other dwellings are located some distance to the northeast and the southwest of the property.

4. The subject property is made up primarily of soils that are productive for forestry.

5. The property is crossed by a road running east/west approximately one third of the distance of the length of the property from the southern property line.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 18-05913) BY CONNIE GREEN FOR A TEMPLATE FOREST DWELLING ON TAX LOT 301, ASSESSOR'S MAP 20-03-21 IS AFFIRMED.

Justification for the Decision

The subject property is zoned F–2 Impacted Forest Land. The applicant is requesting approval to construct a single–family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160–acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case, the applicant has chosen to request approval under Lane Code 16.211(5)(c)(iii), which is the most rigorous of the three tests, applicable to lots or parcels that are predominantly composed of soils capable of producing 85 cubic feet per acre per year of wood fiber. That test requires a showing that all or part of at least 11 other lots or parcels that existed prior to January 1, 1993, lie within a 160–acre square centered on the subject property (tract). It also requires that at least three dwellings existed on January 1, 1993, and continues to exist, on those other lots or parcels.

The allegations of error raised by the Appellant in its appeal are as follows:

1. ***The Planning Director erred in applying the wrong version of LC 16.211.***

The appellant is correct that the wrong approval criteria were initially applied to the application. The application was submitted on December 6, 2018, prior to the adoption of Ordinance No. 18-08, which amended Lane Code Chapter 16 resource zones. Therefore, Lane Code Chapter 16.211(5) and (6) apply to the application instead of the newly adopted and now remanded Lane Code 16.211(3)(o), (q), and (r), and subsections (5) and (6). This wrong approval criteria were evaluated in the initial Director's decision and the reconsidered decision. Therefore, staff subsequently evaluated the correct approval criteria and provided those findings for the Hearing's Official.

This allegation of error is moot.

2. ***The Planning Director erred in relying on evidence from unrelated planning actions, for a different tax lot, that is not part of the record.***

In its initial appeal, appellant raised the issue of non-compliant access to the subject property. In response, staff introduced into the record two Verification of Condition applications for template dwelling approvals on adjacent lots. They are department file No. 509-PA02-05797 and 509-PA03-05055. Staff was aware of information that contradicted appellant's assertion, and it was not error for that information to be introduced to demonstrate to the decision maker that it is feasible that the access can meet the applicable road standards of Lane Code 16.211(8)(e), given that the same access has already been inspected twice for compliance with the same standard.

This allegation of error is denied.

3. ***The applicant failed to provide evidence regarding slope, and the Planning Director erred in processing a reconsideration as a means of providing that evidence.***

Staff had access to contour and LiDAR information that was relevant to an issue raised in appellant's initial appeal. This information was provided as exhibits of the Planning Director's decision. It was the Planning Director's prerogative to reconsider the decision to bolster inadequate findings of the initial decision alleged in the initial appeal.

This allegation of error is denied.

4. ***The applicant's site plan fails to indicate the boundaries of the subject property, setbacks from contiguous property boundaries, the development area in relation to the subject property, or the proposed turnouts and turnarounds.***

After the initial appeal was filed, it was determined that the application lacked certain evidence sufficient to satisfy all of the applicable approval criteria. The Planning Director reconsidered the decision following receipt of additional evidence, including a site plan that showed property boundaries and required setbacks. The Planning Director determined, based on past planning actions approving the same access for two template dwellings located south of the subject property, that it was feasible that the requirements regarding turnarounds and turnouts could be satisfied.

This allegation of error is denied.

5. ***The dwelling site is not consistent with the requirements of LC 16.211(8) because it requires the applicant to unnecessarily intrude into forest lands.***

Dwelling Siting Requirements

LC 16.211(8) provides the siting standards for dwellings in the F-2 zone. Subsection (a) addresses setbacks, subsection (b) provides that forest lands used to site access roads, service corridors, and structures shall be minimized, subsection (c) provides fire siting standards for dwellings and structures, and subsection (e) provides fire siting standards for roads and driveways. The standards in subsections (a) and (b) are to be weighed together with the requirements in subsections (c) and (e) to identify the building site. Most of the requirements and standards or not absolutes, but the considerations must be weighed to arrive at a defensible siting location.

The appellant raises the following specific allegations of error related to the approval of the dwelling siting.

- ***The proposed dwelling site requires the applicant to unnecessarily intrude into forest lands***

- *The proposed dwelling site is not sited near existing roads*
- *The proposed north/south driveway requires slopes greater than 20 percent*
- *It is unnecessary to extend the driveway through steep slopes and a forested area*

Appellant relies heavily on LC 16.211(8)(a)(i), which provides that dwellings *shall* be sited "[n]ear dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent." (emphasis added). As explained above, while subsection (8)(a)(i) uses the mandatory language "shall," the standards are not absolutes, and the siting of the dwelling must take into account all of the considerations, which are designed to make these non-forest uses "compatible with forest operations and agriculture" and to "conserve values found on forest lands."

Appellant asserts that the dwellings should be sited on the most level portion of the property south of the access road on the eastern portion of the property. The applicant explains that that portion of the property is planted pasture, is used for grazing cattle, and has been changed to farm deferral. LC 16.211(8) provides that the siting standards are to make proposed dwellings compatible with agriculture as well as forest operations, and to conserves values found on forest lands. The Hearings Official concludes that "values found on forest lands" are often farm values, not just forest values. Accordingly, the choice not to site the dwelling on land use for grazing is justified.

Appellants also assert that the dwelling should be sited adjacent to the existing access road, and should not be sited off of the roadway, thus requiring a driveway that necessitates removal of additional trees, and the use of higher rated soils. With regard to the quality of the soils, the applicant asserts that the site for the dwelling includes a bare section that has not historically been productive for the growth of trees. Appellant counters that assertion, relying on the soils mapping and eight aerial photographs of the property. All but one of those photographs depict, relatively clearly, a bare spot where the proposed dwelling site is to be located. While the soils map does not indicate any less productive soil at this location, the Hearings Official concludes that the aerial photographs support applicant's assertion that the proposed dwelling site is a less productive area than others on the property.

As to whether that spot is more or less level than others on the property, the record reflects that, if the spot is level, it is because the applicant played some role in leveling it. There is evidence in the record that a passage was recently cleared along the path of the proposed driveway in order to clear downed trees as a result of winter storms. The applicant then used that opportunity to clear and/or level the area. Whether such activity was permitted is not within the scope of this hearing. The Hearings Official's determination to approve this location is based largely on the photographic evidence supporting applicant's assertion that this location was determined based on the historic absence of growth of trees on this spot. The fact that the proposed location may not be

the most level spot on the property is outweighed by the fact that the proposed location will require a minimum amount of tree removal because it is already bare.

LC 16.211(8)(a)(i) favors locating dwelling near existing roads. Appellant asserts that, whether the proposed driveway is 100 feet or longer, siting the dwelling away from the existing road violates the siting standards. Appellant also asserts the dwelling should be located on the eastern side of the property, near existing dwellings. The Hearings Official determines that the obvious choice of this proposed location based on historic anemic growth patterns and preservation of farm uses to the south of the road is sufficient to outweigh the other factors, and is sufficient to support the proposed location.

Fuel Breaks

LC 16.211(8)(c)(i) requires primary and secondary fuel breaks for proposed dwellings. The primary fuel break must extend 30 feet in all directions around the dwelling. Where a dwelling is constructed on slopes, an additional primary fuel break downslope is required. The Planning Director determined that the downslope direction of the development site is from northwest to southeast at somewhere between 3% and 12% slope. The Planning Director thus determined that an additional 50 feet of primary fuel break was required in the downslope direction.

Appellant alleges that the Planning Director erred "in finding an additional 5' of primary fuel break [is] only required in the NE to SW direction." The Hearings Official disagrees that the Planning Director required an additional primary fuel break in the NE to SW direction. Rather, the Planning Director required an additional primary fuel break to the southeast of the development site, as depicted on the applicant's site plan. Condition of Approval #7 is consistent with this finding.

However, the site plan also shows the secondary fuel break (100 feet beyond the primary fuel break) beyond the western property boundary. LC 16.211(8)(c)(i) requires the secondary fuel break to be located on land owned or controlled by the owner. Accordingly, COA 7 is revised as follows:

"Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c). **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the additional 50 feet of Safety Zone Down Slope, as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner. Where the secondary fuel break required extends beyond the boundaries of the subject property, the applicant shall provide recorded documentation that she is authorized to maintain the fuel break on the adjacent property."

This allegation of error is denied.

6. The challenged decision fails to address LC Chapter 15 driveway spacing requirements.

Lane County Transportation Planning referral comments are included in the record. Based on those comments, the Planning Director imposed conditions of approval 4 and 5. The comments provide findings for the relevant Chapter 15 requirements, and those findings are adopted by reference in support of this decision. As conditioned, compliance with LC Chapter 15 is satisfied.

Appellant also addresses the LC Chapter 16 requirements for roads and driveways, which are discussed below.

The subject property is traversed by an east/west access easement that has been determined adequate in two prior land use proceedings. At the appeal hearing, the parties discussed the distinction between a road and a driveway. For purposes of LC 16.211(8)(e), the term "road" means "a way of access used for more than one use and accessory uses dwelling or manufactured dwelling." The term "driveway" means "a way of access used for only one dwelling or manufactured dwelling."

Turnarounds

LC 16.211(8)(e)(ii) requires turnarounds spaced not more than 500 feet apart for dead end roads over 200 feet in length. The record is not clear whether the road is a dead end road. However, appellant asserts that it is, and the applicant proposes turnarounds that comply with this requirement. The proposal would require turnarounds be constructed on the property to the east, tax lot 300. Any easement created or modified to provide access to the subject property would require language that includes the ability to provide these proposed turnarounds. Condition of Approval #4 is modified as follows to accommodate that requirement:

"Private access easements serving the subject property must comply with Lane Code 15.055 and specifically provide for required turnarounds."

Turnouts

Turnouts are the driveway's counterpart to turnarounds for roads. LC 16.211(8)(e)(vi) requires turnouts (20-foot long by 8-foot wide passage space; six inches gravel) for any driveway that exceeds 200 feet. The proposed driveway measures approximately 228 feet, and will include a turnout. The driveway slope is estimated to be approximately 8% grade at its steepest. However, LC 16.211(8)(e)(iv) allows grades up to 16% and up to 20% for up to 100 feet in certain circumstances. Any grades in excess of 8% require documentation from the applicable fire protection district or a licensed engineer.

The record includes a letter dated October 23, 2019 from South Lane County Fire & Rescue. It acknowledges that a portion of the driveway exceeds 10% grade, but that "we have driven it and if *road* is maintained at current condition we can access it." (Emphasis

added). Opponent again attempts to make the distinction between a road and driveway, and that the letter's use of the term "road," where italicized above, means that the fire district had not acknowledged the safety of the driveway. The Hearings Official agrees that the letter's use of the two terms is confusing. However, it appears clear that the fire district letter intended to acknowledge the safety of both the road and the driveway. Condition of Approval #6 ensures compliance with these requirements.

This allegation of error is denied.

7. ***The challenged decision violates RCP Goal 5, Flora and Fauna Policy 11.***

Appellant argues that the County's Flora and Fauna Working Paper and RCP Goal 5, Flora and Fauna Policy 11 require a Goal 5 analysis of the conflicts between dwellings and Big Game Habitat in the context of this forest template dwelling application.

Initially, appellant relies on OAR 660-006-0025(6) for its position that RCP policies addressing Goal 5 protections are applicable to this application. OAR 660-006-0025 is the administrative rule that provides the uses that are required to be allowed (subsection (2)), uses that may be allowed outright (subsection (3)), and uses that may be allowed conditionally (subsection (4)). OAR 660-006-0027 provides the requirements for dwellings in forest zones. OAR 660-006-0025(6) provides: "Nothing in this rule relieves governing bodies from complying with other requirements contained in comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands."

The Hearings Official agrees with appellant that, under OAR 660-006-0025(6) and other applicable rulings, relevant Goal 5 comprehensive plan policies, and relevant implementing ordinances, can supplement the specific forest template dwelling approval criteria set forth in LC 16.211(5). However, the Hearings Official disagrees with appellant that OAR 660-006-0025(6) can be used to bootstrap a Goal 5 analysis where it would otherwise be precluded.

As a general rule, the Statewide Planning Goals do not apply directly to the processing of a land use application where the comprehensive plan and implementing regulations are acknowledged. Specifically, "The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations." OAR 660-023-0250(1). Of course, relevant and applicable comprehensive plan policies that are written and intended to apply as mandatory approval criteria (see discussion below) are applicable.

Appellant relies on RCP Goal 5 Flora and Fauna Policy 11 in support of its legal theory. Policy 11 provides:

> "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that

limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

Relying on this language, and language from the Flora and Fauna Working Paper, appellants assert that the proposed residential density that would result from the approval of the subject forest template dwelling is a conflict with Big Game Habitat and either (1) requires the county to conduct an ESEE analysis or (2) requires denial of the application for failure to comply with Policy 11.

Appellants also rely on a recent LUBA case, *Cattoche v. Lane County*, ___ Or LUBA ___ (LUBA No. 2018-109, May 22, 2019), in support of its position. In that case, LUBA took a deep dive into Lane County's comprehensive plan policies and regulations regarding Big Game Habitat. Unlike the subject application in this case, which involves a request for approval of a forest template dwelling, the challenged decision in *Cattoche* was a request for a comprehensive plan designation amendment from Forest to Non-Resource and zone change Impacted Forest Land (F-2) to Rural Residential 5-acre Minimum (RR-5).

The *Cattoche* case correctly held that the Goal 5 analysis applied in that instance; i.e., a plan amendment / zone change application. It also correctly held that where the Goal 5 analysis applies, if a conflict with an inventoried Goal 5 resource is identified, the county must conduct a full blown Goal 5 ESEE analysis. LUBA held that a county errs in simply imposing a condition of approval limiting the number of dwellings allowed, without going through the Goal 5 ESEE analysis. It is at the point of determining mitigating factors to the conflicts in the context of the ESEE analysis that the county determines what condition is appropriate to mitigate the identified conflict.

The *Cattoche* case does not address the issue presented in this case; *i.e.*, whether RCP Goal 5 Flora and Fauna Policy 11 establishes a maximum residential density that applies in the context of a forest template dwelling application. Appellant's assertion that the RCP establishes residential density maximums that are applicable to this permit application is based on numerous flawed bases, as set forth below.

A. Working Papers not adopted

Appellant asserts that it is settled law that the RCP imposes a residential density standard borrowed from the ODFW recommendations of one dwelling unit per 80 acres for Major Big Game Habitat. *See* Malone letter dated October 31, 2019, page 5. The Hearings Official assumes this conclusion is taken from language in the *Cattoche* case.

It is the Flora and Fauna Working Paper that contains the alleged "Residential Density Standard" that is discussed at length in *Cattoche*. The Lane Rural Comprehensive Plan,

however, makes clear that the Working Papers are *not* adopted as policies: "The background information, including the Working Papers, is to be used to help interpret and understand General Plan approaches but is not itself designed to be adopted as legislative law."[1] It is only the adopted comprehensive plan policies themselves that are adopted "legislative law." Contrary to appellant's assertion, LUBA did not make a legal conclusion that the Working Papers, and thus the Residential Density Standard, was adopted approval criteria. Rather, LUBA relied on the parties' concession on that point. *See Cattoche*, slip op. 16 n.4 ("parties agree that the Flora and Fauna Working Paper policies provide applicable criteria in the designated Peripheral Big Game Range."). The concession was, quite simply, wrong, as it conflicts with the above quoted language in the comprehensive plan. The question, then, remains whether Goal 5 Flora and Fauna Policy 11 imposes a maximum residential density that applies directly to a forest template dwelling application.

B. Policy 11 is general planning directive to county, not mandatory approval criterion applicable to subject forest template dwelling application

Oregon's land use system is set up in such a way that local governments adopt local comprehensive plans and land use ordinances that implement the statewide planning Goals. Once those plans and regulations are acknowledged as in compliance with the statewide planning goals, the goals fall away and do not apply as relevant standards or approval criteria. Similarly, local ordinances are adopted to implement the acknowledged comprehensive plan. In many contexts, once the implementing ordinances are adopted to comply with the comprehensive plan and statewide planning goals, the comprehensive plan policies do not generally apply directly to a discrete land use application. See discussion above. The appellants in this case contend that Policy 11 applies as an approval criterion.

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[1] Part I.C. (HISTORY OF THE POLICIES DOCUMENT) provides, in full:

"The Policies contained in this document were developed during a period of more than a year, beginning in early 1983. A process was devised at the beginning of the period to utilize existing working papers and to prepare a series of new working papers which, along with other sources, were to serve as the technical data based for the Policies. The Working Papers were written and published from mid-1981 to early 1984. Each Working Paper contained information on a given topic or topics, and a number of them contained preliminary Policies which were drawn from the information in the Papers and which were presented for initial discussion purposes.

Hearings were held on the Papers as they were published. Each Planning Commission reported to the Board of County Commissioners containing its reaction to the Paper and draft Policies. Often the Policy statements drew on sources other than the Working Papers-existing County Plan information (such as special-purpose plans or technical studies), comments or testimony of individuals or groups appearing at the hearings, the judgment and views of Planning Commission members and so on-and so represented a broad array of perspectives and attitudes. Each Planning Commission Report cited information used in Policy development, in order to provide a firm basis for Policy use. The background information, including the Working Papers, is to be used to help interpret and understand General Plan approaches but is not itself designed to be adopted as legislative law. The Board formally adopted the Policies in February of 1984."

LUBA has had the opportunity to address this issue countless times:

> "[L]ocal and statutory requirements that land use decisions be consistent with the comprehensive plan do not mean that all parts of the comprehensive plan necessarily are approval standards. *McGowan v. City of Eugene*, 24 Or LUBA 540, 546 (1993); *Neuenschwander v. City of Ashland*, 20 Or LUBA 144, 154 (1990); *Bennett v. City of Dallas*, 17 Or LUBA 450, 456, *aff'd* 96 Or App 645, 773 P2d 1340 (1989). Local governments and this Board have frequently considered the text and context of cited parts of comprehensive plans and concluded that the alleged comprehensive plan standard was not an applicable approval standard. *Stewart v. City of Brookings*, 31 Or LUBA 325, 328 (1996); *Friends of Indian Ford v. Deschutes County*, 31 Or LUBA 248, 258 (1996); *Wissusik v. Yamhill County*, 20 Or LUBA 246, 254-55 (1990). Even if the comprehensive plan includes provisions that can operate as approval standards, those standards are not necessarily relevant to all quasi-judicial land use permit applications. *Bennett v. City of Dallas*, 17 Or LUBA at 456." *Save our Skyline v. City of Bend*, 48 Or LUBA 192, 209-10 (2004) (footnote omitted).

RCP Goal 5 Flora and Fauna Policy 11 is not drafted as an approval criterion that would apply directly to the subject application. Rather, it directs the county how to determine "overall" residential densities in different regions of the County. It then directs the County to work with ODFW to prevent conflicts between residential development and Big Game Range Habitat "through land use regulation[s] in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program." Much like the policy reviewed in *Wissisik*, Policy 11 is a broad county goal which is intended, and indeed was, implemented through adoption of implementing land use regulations. *See Wissisuk, supra* (plan policies that contain aspirational language regarding goals to be implemented through adoption of land use regulations are not mandatory approval criteria for individual permit applications).

Lane County planning staff never did divide the County into regions, as anticipated by this policy. However, the Big Game Habitat was inventoried, and the County did eventually adopt that inventory, by adopting maps of the Major/Peripheral/and Impacted Big Game Habitat categories. *See Save TV Butte v. Lane County*, ___ Or LUBA ___ (LUBA No. 2017-031, January 8, 2018) slip op. 27 ("the county erroneously determined that its adopted inventory of big game habitat is not 'an acknowledged list of significant resources * * * for which the requirements of Goal 5 have been completed at the time the PAPA [in that case was] initiated,' within the meaning of OAR 660-023-0180(5)(b)(D)."). Lane County's regulations were subsequently acknowledged as in compliance with Goal 4 and Goal 5. As explained in LUBA's decision in *Save TV Butte, supra*, Lane County adopted an F-1 zone where dwellings were prohibited. LC 16.210. It also adopted a minimum parcel size of 80 acres in the F-2 zone. LC 16.211(10). Further, as discussed below, conditions to allowing additional dwellings included requirements to restrict future development. See LC 16.211(5)(e)[2]; OAR 660-006-0027(6)(c).[3]

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[2] LC 16.211(5)(e) provides: "Prior to land use clearance of a building permit for the dwelling, when the lot or parcel on which the dwelling will be located is part of a tract, the remaining

For the reasons discussed above, Policy 11 does not apply directly as mandatory approval criteria to the subject forest template dwelling application.

C. OAR implementing Goal 4 supports interpretation

The Oregon Administrative Rules Implementing Goal 4 (OAR 660-006-000 et seq.) support the foregoing interpretation of RCP Policy 11 as well as the interpretation of the significance OAR 660-006-0025(6), set forth above. Goal 4 (Forest Lands) is designed to protect forest lands. However, the Goal recognizes the countering interests, and state statute, the Goal and implementing regulations provide for the allowance of dwellings on forest lands in some instances. OAR 660-006-0025 set forth uses authorized on forest lands generally. It begins with five general categories of uses that are allowed on forest lands. See OAR 660-006-0025(1)(a)-(e). Subsection (d) lists dwellings authorized by ORS 215.705 to 215.755 as authorized uses in the Forest zones. ORS 215.750 is the statute that authorizes counties to adopt regulations that allow for the approval of forest template dwellings on forest lands. OAR 660-006-0025, however, does not provide the criteria for approval of template dwellings. Those criteria are found in OAR 660-006-0027 (Dwellings in Forest Zones). Subsection (3) of that rule provides that a governing body or its designate "may" allow template dwellings under certain prescribed circumstances and subject to specific criteria set forth therein.

D. Legislative actions support interpretation of Policy 11

The 1993 legislature adopted HB 3661. That bill allowed several different types of dwellings on forest land, including lot of record dwellings, large tract dwellings, and template dwellings. The large tract dwellings, in western Oregon, could be allowed as

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portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(7), 'Exhibit A,' shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

(i) Shall be irrevocable, unless a statement of release is signed by the Director;
(ii) May be enforced by the Department of Land Conservation and Development or by Lane County;
(iii) Shall, together with a map or other record depicting any tract that does not qualify for a dwelling, be maintained in the Department records and be readily available to the public; and
(iv) The failure to follow the requirements of LC 16.211(5)(e) above shall not affect the validity of the transfer of property or the legal remedies available to the buyers of the property that is the subject of the covenants, conditions and restrictions required by LC 16.211(5)(e) above."

[3] OAR 660-006-0027(6)(c) provides: "A proposed 'template' dwelling under this rule is not allowed: (c) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (7) of this rule for the other lots or parcels that make up the tract are met."

long as the subject "tract" was larger than 160 contiguous acres. ORS 215.740. The lot of record dwelling could be approved on a lot that had been in the same ownership since 1985. ORS 215.705. The template dwelling approval was based on the amount of development (dwellings and parcels) within a 160-acre square template. ORS 215.750. The minimum required amount of development for the template dwellings depended on the quality of the soils of the subject lot or parcel—the higher the quality of soils, the more parcels and dwellings were required to fall within the template.

Subsection (1)(f) of ORS 215.705 (lot of record dwelling) required the siting of a dwelling to consider the impact of the proposed dwelling on the density standards upon which the big game habitat acknowledged inventory was based.[4] The other newly authorized forest dwellings, including the template dwelling, did not require the same showing. If the legislature had intended to impost the same requirement for forest template dwellings, it would have done so. The Lane Code provisions allowing for template dwellings merely adopted virtually *ver batim*, the statute and OAR language. Those statutes and rules considered the impacts to Big Game and determined that Goal 4 was complied with.

The rationale of the template dwellings was to cluster dwellings in a way that would leave remaining lands vacant. To require that template dwellings comply with a 40 or 80 dwelling per acre standard is completely contradictory to that rationale.

This assignment of error is denied.

8. The challenged decision violates RCP Goal 7, Policy 2.

Appellant asserts that RCP Goal 7, Policies 1, 2, and 3.[5] Policy 2 requires that development be commensurate with the type and degree of any natural hazard present and that appropriate safeguards be assured. Appellant alleges that a portion of the property appears on a DOGAMI hazards map for high landslide susceptibility. The DOGAMI map shows only a small portion of the property in the northeast corner colored

[4] ORS 215.705(1)(f) requires the following demonstration: "When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling shall be consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based."

[5] RCP Goal 7, Policies 1, 2 and 3 provide:
"1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate.
2. Development shall be commensurate with the type and degree of any natural hazards(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to the sole means of safeguard against natural hazards.
3. When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact, (including financial and economic considerations) of such safeguards on the environment and the public shall be considered."

orange, with the remainder of the property colored yellow. The DOGAMI map submitted in the record does not contain a legend, so it is not clear what hazards the map intends to identify. If the orange mapping indicates a higher risk of landslide, the Hearings Official does not see that such evidence triggers the application of Policy 2. The colored area is in the northeast corner of the property, and based on contour evidence in the record, the proposed dwelling site in the opposite direction of where any landslide would occur. Further, appellants do not assert that the DOGAMI map has in any way been adopted by the County as a means of identifying natural hazards for purposes of RCP Goal 7.

RCP Goal 7, Policy 1 adopts a natural hazard inventory, as contained in the 1982 Natural Hazards Working Paper. Although that Working Paper was not submitted into the record, it was adopted by Policy 1, and therefore, the Hearings Official determines that she may take official notice of it. The development suitability maps and development constraint maps in the subarea plans constitute the natural hazard inventory for purposes of RCP Goal 7. See Natural Hazards Working Paper at 3-4. The Hearings Official concludes that the record does not support a conclusion that any natural hazards on the property, if any, present a risk to the proposed development that require the imposition of safeguards, as required by Policy 2.

This assignment of error is denied.

Conclusion

The conditions of approval attached to the Planning Director's reconsidered decision referenced some of the inapplicable code provisions. Accordingly, attached as Exhibit A to this appeal decision is a list of the conditions of approval, as modified herein.

The application complies with the applicable approval criteria in LC 16.211(5) and the siting standards set forth in LC 16.211(8).

Respectfully Submitted,

Anne C. Davies
Lane County Hearings Official

EXHIBIT A

CONDITIONS OF APPROVAL

509-PA18-05913

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of **509-PA18-05913** is valid for a four-year period from the date of final approval unless an extension is granted in accordance with Lane Code Chapter 14 provisions.

   An extension may be granted if:

   a. An applicant makes a written request with the required fee and the request complies with LC 14.090(6) and (7);

   b. The request is submitted prior to the expiration of the approval period; and

   c. The request is submitted not sooner than six months before the expiration date.

Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

2. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* (Exhibit I) with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office).

3. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. The applicant shall provide a copy of the stocking survey to Land Management Division with evidence of receipt from the Assessor. Also see **Condition 19.**

4. Private access easements serving the subject property must comply with Lane Code 15.055 and specifically provide for required turnarounds.

5. Construct the access road and driveway to the minimum standards of Lane Code 16.211(8)(e) and the applicable standards of Lane Code Chapter 15. For roads greater than 8% slope, road and drainage plans shall be prepared by an engineer licensed by the State of Oregon or certified for compliance with the rural fire protection district providing fire protection to the subject property.

6. Submit written verification from South Lane County Fire & Rescue, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, private roads, private access easements, and driveways comply with the construction standards in Lane Code 16.211(8)(e) and fire district standards.

7. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c). **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the additional 50 feet of Safety Zone Down Slope, as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner.

8. The dwelling must be located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

9. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). This can be satisfied by providing a copy of the Well Log for the property. The well must comply with the groundwater appropriation standards of ORS 537.545(1)(d) and have a sustained yield of five gallons per minute for a duration of not less than five hours of continuous pumping as required by Lane Manual 9.160.

10. Upon completion of **conditions #2 through #9**, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. **Attach to this form a copy of:**

    - Signed, notarized, and recorded *Farm Use and Forest Management Agreement* and description of property, along with all required exhibits;
    - Forest stocking survey with evidence of receipt from the County Assessor;
    - Recorded access easement demonstrating legal access to the property consistent with Lane Code 15.055;
    - Well log or well constructor's report;
    - Verification letter from South Lane County Fire & Rescue, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route; and
    - Approved Site Development Plan, or a plot plan that conforms with the approved plans, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These final plans shall include the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(6)(c) and this approval.

11. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in **conditions #5 and #7** have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(c) and (e) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the discretion of the Planning Director.

12. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

13. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the approved site development plan, unless modification is authorized by the Planning Director. Modification to the approved site plan may require an application for Modification of Conditions with the required processing fee, at the discretion of the Planning Director.

14. **As per Oregon Department of Aviation Findings:** Within five days after the structure reaches its greatest height, the proponent is required to file an FAA form 7460-2, Actual Construction notification, at the OE/AAA website (http://oeaaa.faa.gov). This actual construction notification will be the source document detailing the site location, site elevation, structure height, and date structure was built for the FAA to map the structure on aeronautical charts and update the national obstruction database.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

15. The proposed dwelling shall meet the following requirements, to be verified by the Lane County Building Official:

    a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.

    b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

    (Please contact a Lane County plans examiner at 541-682-4651 with questions about building code requirements).

16. The applicant shall provide documentation of Oregon Department of Aviation (ODA) concurrence for the proposed dwelling that is current as of the date of building permit issuance and current as of the date of final occupancy approval. A new letter of concurrence will be required if the proposed dwelling is not located as shown in **Exhibit C**, is taller than 30 feet, or if building permits or a certificate of occupancy is issued after the January 3, 2021 expiration for the July 3, 2019, determination. Except as otherwise addressed in the determination letter, all development must comply with the Airport Safety Combining Zone (/AS) provisions of LC 16.246 as applicable.

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

17. Areas of the subject property, according to DOGAMI, are designated as "High" landslide susceptibility. This designation may require a geotech report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 for more information.

18. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

19. The applicant is responsible for complying with any applicable local, state, and federal laws.

20. In accordance with Lane Manual 15.515, stormwater runoff from private property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by roadways themselves.

21. The approval is valid for four years as stated in condition one. An extension, if sought and granted in compliance with Lane Code Chapter 14, is limited to a single 2-year extension unless State law or Lane Code amendments allow otherwise.

22. The owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(e). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County).

23. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

> "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.

BOOK 157 PAGE 1623

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY

ORDER NO. 96-4-10-1

) IN THE MATTER OF APPROVING A WORK
) PROGRAM FOR THE PERIODIC REVIEW
) OF THE RURAL COMPREHENSIVE PLAN

FILED

APR 12 1996

COUNTY CLERK
BY Pam DeWille

WHEREAS, on December 12, 1995, Lane County submitted its Periodic Review evaluation of the Rural Comprehensive Plan to the Department of Land Conservation and Development; and

WHEREAS, prior to April 10, 1996, adequate opportunities for citizen involvement and input into the development of the Periodic Review work program were provided as described in page 1 of the attached Exhibit "A"; and

WHEREAS, on April 10, 1996, the Board of County Commissioners conducted a joint public hearing with the West Lane Planning Commission and the Lane County Planning Commission to receive public testimony on the work program for the Periodic Review of the Rural Comprehensive Plan; and

WHEREAS, all of the public testimony received at the April 10, 1996, public hearing was responded to by the Board of County Commissioners; and

WHEREAS, OAR 660-25-090(1) requires a Periodic Review work program to be, "approved by the governing body"; now, therefore, it is hereby

ORDERED that the Board of County Commissioners approves the Periodic Review work program for the Rural Comprehensive Plan as described in page 2 and Appendices A, B, and C of the attached Exhibit "A".

Adopted this 10th day of April, 1996.

BOARD OF COUNTY COMMISSIONERS
LANE COUNTY, OREGON

By: _____
Chair

APPROVED AS TO FORM

Date 4-2-96 Lane County
OFFICE OF LEGAL COUNSEL

Exhibit "B" Page 1

0401

001100

EXHIBIT "A"

BOOK 157 PAGE 1624

TO

ORDER/In The Matter of Approving a Work Program for the Periodic Review of the Rural Comprehensive Plan

LANE COUNTY RURAL COMPREHENSIVE PLAN

PERIODIC REVIEW WORK PROGRAM

BOOK 157 PAGE 1625

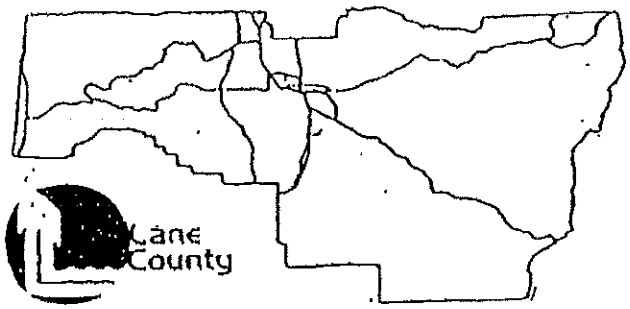


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March 26, 1996

LANE COUNTY RURAL COMPREHENSIVE PLAN
PERIODIC REVIEW WORK PROGRAM

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Introduction

On December 12, 1995, Lane County completed a Periodic Review evaluation of the Rural Comprehensive Plan (RCP) and implementing ordinances. The evaluation identified five land use planning projects, mentioned below, for inclusion in a Periodic Review work program.

1. Develop and adopt unincorporated community plans, to define 'rural' uses and densities for developed and committed exception areas outside and amend the RCP and implementation measures to comply with Statewide Planning Goals 11 and 14, and the Unincorporated Community Rules.
2. Develop and adopt coordination agreements with rural service districts that will comply with Senate Bill 122 as codified in ORS Chapter 195;
3. Update the Coastal Resources Management Plan to comply with changes to coastal goals and to assure adequate shoreland sites in conjunction with the update of the Siuslaw River Dredged Material Disposal Sites plan.
4. In order to comply with Statewide Planning Goal 5, update certain natural resource inventories, address the impacts of residential housing densities on big game habitat areas, and make any related changes to the RCP and implementation measures.
5. Amend the General Plan Policies document and Lane Code Chapter 16 for the F-2 zone to comply with the minimum area requirements of the Goal 4 Rule.

Lane County has excluded two of the five projects mentioned above from the Periodic Review work program. The project for Goal 5 resources is excluded until after LCDC completes its hearings and adopts any changes to Goal 5 and the Rule. The objective for the F-2 zone minimum area requirements is excluded, because Lane County is now working on changes to the F-1 and F-2 zones and policies, and expects these changes to be considered at hearings in June and later in 1996.

The Periodic Review work program timelines for completing work tasks and submitting this work to the Department of Land Conservation and Development are described on page 2. The work plan with objective and task details are attached as Appendices A, B and C.

In preparation for the April 10, 1996, hearing on the Periodic Review work program, Lane County held 6 public information meetings to inform interested persons about the proposed work program and about their opportunities for input. Copies of the work program or work program summaries were provided to interested persons. The public information meetings were advertised in the Registered-Guard and the Siuslaw News. Notice of the meetings and the April 10, 1996, public hearing was sent to a list of fifty interested persons. A special bulletin announcing the information meetings was developed by staff and the West Lane Planning Commission, and posted in western Lane County by West Lane Planning Commission members.

PERIODIC REVIEW WORK PROGRAM TIMELINES

OAR 660-25-020(4) requires Lane County to indicate the date by which each work task in its Periodic Review work program will be submitted to the Department of Land Conservation and Development (DLCD) for review. In order to comply with this requirement, the dates indicated below are Lane County's dates by which tasks will be submitted to DLCD for review. Lane County will make one submittal for each project, by the date indicated below, which will occur after the work on all of the tasks in that project has been completed.

Project 1 Submittal Date to DLCD: June 30, 1999. The work on this project will occur, as summarized below, in the three phases over a three year period. The tasks and timelines for this work plan are described in more detail in the work plans for this project which are attached as Appendix A. June 30, 1999, is the date by which the work on all of the tasks in this work project will be completed and by which Lane County submit the completed work tasks to DLCD.

7/1/96 - 6/30/97: Goals 11 & 14 inventory work;
7/1/97 - 6/30/98: Goals 11 & 14 analysis of issues & citizen involvement;
7/1/98 - 6/30/99: Goals 11 & 14 plan/code changes, citizen involve. & adoption;

Project 2 Submittal Date to DLCD: December 31, 2000. The work to complete the tasks in this project will be completed over an 18 month time period and is described in more detail in the work plans for this project which are attached as Appendix B. December 31, 2000 is the date by which the work on all of the tasks in this work project will be completed and by which Lane County will submit the completed work tasks to DLCD.

Project 3 Submittal Date to DLCD: December 31, 2000. The work to complete the tasks in this project will be completed over an 18 month time period and is described in more detail in the work plans for this project which are attached as Appendix C. December 31, 2000 is the date by which the work on all of the tasks in this work project will be completed and by which Lane County will submit the completed work tasks to DLCD.

APPENDIX "A"

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WORK PLAN 1. LANE COUNTY PERIODIC REVIEW WORK PROGRAM

Purpose. The purpose of this work plan is to develop and adopt unincorporated community plans, to define 'rural uses' and 'rural densities' for developed and committed areas outside of unincorporated communities, and to amend the Rural Comprehensive Plan and implementation measures to comply with Statewide Planning Goals 11 and 14, and the Unincorporated Community Rules.

A. Introduction. This work plan explains how, during Periodic Review, Lane County intends to perform the work to revise and update the plans and zoning for 35 unincorporated communities and for developed and committed areas outside the unincorporated community boundaries. This work plan identifies general work objectives, specific work tasks and general timelines for doing the work. But, it does not prescribe what the substance should be for any changes in the Rural Comprehensive Plan land use policies or implementation measures. The appropriate time to consider such changes will be after the work program is adopted and the planned work is done.

The work in this work plan will be done in three phases, over a three year period:

Phase 1: 7/1/96 to 6/30/97 - Objectives 1 - 2, General & Specific Land Use Inventory
Phase 2: 7/1/97 to 6/30/98 - Objectives 3 - 6, Analysis, Citizen Involvement, meetings & Board Policy Direction
Phase 3: 7/1/98 to 6/30/99 - Objectives 7 - 8, Plan & Code Development, Citizen Involvement, Hearings & Adoption

The work in this work plan will address many issues. Statewide Planning Goals 11 and 14, and Oregon case law interpreting these Goals, require counties in their land use planning to limit future land uses and densities in rural areas to 'rural' uses and densities. For unincorporated community areas, the Oregon Administrative Rules for Goals 11 and 14 provide some clear direction for acceptable levels of 'rural' residential, commercial and industrial development. However, for developed and committed areas outside of the boundaries of unincorporated communities, there clear direction is lacking. Therefore, Lane County must develop a justification for the levels of 'rural' uses and densities that it allows in the Rural Comprehensive Plan and then justify these in terms of compliance with Statewide Planning Goals 11 and 14. Given these issues, how should Lane County proceed in its work program to address these issues?

To address these issues, the work in the work plan begins by developing a relevant factual base upon which sound land use policy decisions can eventually be made. For residential densities, the potential parcelization and build-out allowed under existing Lane County land

use policies would be analyzed. Little work will be required for many of the developed and committed areas where these areas are already developed to their maximum residential densities, except for a small amount of infilling. For other developed and committed areas, where changes in zoning densities may occur, additional and relevant land use information will be gathered. Information about the potential parcelization and build-out allowed under current Lane County land uses policies would be developed. Part of the information would identify if there are any water supply, sewerage and environmental limitations to allowing the projected parcelization and residential build-out. For lands zoned for commercial and industrial uses, the work would develop more information about the kinds of uses that occur in these areas and what uses the property owners have planned for the future. Then, work from this information base would be done to develop a justification for 'rural' commercial and industrial uses.

B. Effected Properties. Effected properties comprise a total of approximately 65,000 acres: 7,900 acres in communities and 57,100 acres outside of communities. These properties are included in 770 exception areas dispersed throughout Lane County. Within these areas, there are approximately 20,000 tax lots, 17,450 dwellings and 2,500 vacant tax lots.

C. Regional Work Plan Approach. In order to manage the work for the first phase of this work plan, the work will be performed on a regional basis. Lane County's 35 communities and nearby developed and committed areas are organized into five regions, and the inventory work will be done a region at a time. The regional approach will also help Lane County to focus on identifying issues which may be unique to the communities and areas within each region. The five regions are:

Region 1, Coastal: Mapleton, Glenada, Cushman, Swisshome & Deadwood
Region 2, McKenzie River: Blue River, Leaburg, Marcola, McKenzie Bridge, Nimrod, Rainbow, Vida, Walterville
Region 3, Highway 58: Goshen, Pleasant Hill, Jasper, Fall Creek, Trent & Dexter
Region 4, Southern: 6 southern Lane County area communities: 4 communities in the South Lane 45J school district: Dorena, Culp Creek , Saginaw, & London, 2 communities in the Crow-Applegate-Lorane school district: Crow and Lorane
Region 5, Northern: 3 communities in the Fern Ridge 28J school district: Walton , Noti, Elmira; 3 communities in the Blachly 90 school district: Greenleaf, Triangle Lake, and Blachly; 3 communities in the Junction City school district: Lancaster, Cheshire, & Franklin; and 1 community in the Bethel 52 school district: Alvadore

WORK PLAN #1. OBJECTIVES, TASKS AND TIMELINES

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Objective 1. Develop a summary report on Lane County's developed and committed exception areas, based on an analysis using existing exception data and reports. This report will include an evaluation for each of Lane County's 35 unincorporated communities to determine which kind of community it is under the definitions of "Community" in LCDC's UNINCORPORATED COMMUNITIES" Rule, OAR 660-22-010(1). This report will also include a general description of existing and potential levels of development for developed and committed areas outside of communities.

a. Product to be produced: Summary Report for Lane County's Developed and Committed Exception areas.

b. Beginning work date: July 1, 1996

c. Ending work date: August 30, 1996

Task 1. Communities.

a. Prepare a booklet with the latest, adopted developed and committed exception data for each community. This information should include the data that was adopted by Lane County to obtain acknowledgment from LCDC for each community and any other exception data about a community that was done as part of an approved land use application for the exception area.

b. Obtain and use a copy of the plan diagram map for the tentative boundaries of each community.

c. Using the four the different definitions of 'community' in OAR 660-22-010(1), prepare a "Community Classification Report" form to analyze the exception data from Task 1. and to determine the classification of each community.

d. Using the data from Tasks 1a. and 1b. above, and the form from Task 1c.. above, complete the Community Classification Report for each community.

Task 2. Exception Areas Outside Communities.

a. Prepare a booklet with the latest, adopted developed and committed exception data for each exception area. This information should include the data that was adopted by Lane County to obtain acknowledgment from LCDC and may include any other exception data that was developed to support a change in zoning density approved by Lane County.

b. Tabulate for each exception area and from the exception data: total acreage in each zoning district and the total number of vacant and built upon tax lots in each zoning district.

c. Tabulate for all exception areas combined, the total acreage in each zoning district and the total number of vacant and built upon tax lots in each zoning district.

Task 3. Summary Report. Using the information developed in Tasks 1 and 2 above, complete a summary report describing Lane County's developed and committed areas and their general potential for future development. Combine this report into a booklet form with the information developed in Tasks 1 and 2 above.

APPENDIX "B"

March 26, 1996

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WORK PLAN 2.
LANE COUNTY RURAL COMPREHENSIVE PLAN PERIODIC REVIEW
To develop and adopt coordination agreements with rural service districts that will comply with Senate Bill 122 as codified in ORS Chapter 195.

1. **Issues or Problems.** Lane County must enter into coordination agreements with each special district that provides one of the following services for areas outside of urban growth boundaries: sanitary sewers, water, fire protection, parks, open space, recreation, mass transit, streets and roads. The agreements must describe how the county will involve the special district in comprehensive planning, including plan amendments, periodic review and amendments to land use regulations. The agreements must also establish the role and responsibility of the county with the special district interests, including where applicable, water sources, capital facilities and real property including right of way and easements.

   How should Lane County proceed to develop these agreements? Then, how should Lane County proceed to obtain the formal adoption of the agreements?

2. **Work Program Goal.** The Goal and purpose of this work plan is to describe how Lane County should proceed to do the work necessary to address the above mentioned issues. This work plan estimates what the tasks, timelines and costs of the work will be. This work plan does not discuss what the content and form of the coordination agreements will be. The content and form of the coordination agreements will be developed as a result of doing the work outlined in the work plan.

3. **Affected Special Districts.** Lane County must enter into coordination agreements with nearly 40 special districts. Lane County will determine the exact number and identify all of the special districts prior to beginning the work in the work program.

4. **Work Plan Timelines.** The work in this work plan will begin on July 1, 1999 and end 18 months later on December 31, 2000. It is possible that the work in this work plan could begin sooner than July 1, 1999 if special funding became available. The chart on the next page illustrates the estimated monthly sequence (months are denoted with an "M") for completion of the work on each objective.

5. **Work Cost Estimate - $45,000.** 1/3 of a full time employee's time in an Associate Planner position over an eighteen month period would be required to complete the work in this work plan. The cost of funding the work at the Associate Planner position level is based on the current $46.333/yr. salary and an added 94.55% of the salary to account for benefits, overhead & indirects which brings the total yearly cost of the position to $90,140. One third of this amount over an eighteen month period would equal $45,000.

APPENDIX "C"

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WORK PLAN 3.

LANE COUNTY RURAL COMPREHENSIVE PLAN PERIODIC REVIEW

To update the Lane County Coastal Resources Management Plan and to assure adequate shoreland sites in conjunction with the update of the Siuslaw River Dredge Material Disposal Plan.

1. **Issues or Problems.** The Land Conservation and Development Commission ("LCDC") adopted amendments to the coastal Statewide Planning Goals. Lane County's Coastal Resources Management Plan ("CRMP") needs to be updated in order to comply with some of the changes to the coastal Goals.

   How should Lane County proceed to develop the changes to the CRMP? Then, how should Lane County proceed to obtain the formal adoption of the changes?

2. **Work Plan Purpose** The purpose of this work plan is to describe how Lane County should proceed to do the work necessary to address the above mentioned issues. This work plan estimates what the tasks, timelines and costs of the work will be. This work plan does not discuss what the content and form of the changes will be. The content and form of the changes will be developed as a result of doing the work outlined in the work plan.

3. **Work Plan Timelines.** The work in this work plan will begin on July 1, 1999 and end 18 months later on December 31, 2000. It is possible that the work in this work plan could begin sooner than July 1, 1999 if special funding became available.

5. **Work Cost Estimate - $90,000.** 2/3 of a full time employee's time in an Associate Planner position over an eighteen month period would be required to complete the work in this work plan. The cost of funding the work at the Associate Planner position level is based on the current $46.333/yr. salary and an added 94.55% of the salary to account for benefits, overhead & indirects which brings the total yearly cost of the position to $90,140. Two thirds of this amount over an eighteen month period would equal $90,000.

Approved May 15, 1996

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MINUTES

Joint Public Hearing
Board of County Commissioners, West Lane and
Lane County Planning Commissions
Harris Hall--125 East 8th Avenue

April 10, 1996
6:30 p.m.

PRESENT: Steve Cornacchia, Bobby Green, Ellie Dumdi, Cindy Weeldreyer, Lane County Commissioners; Margaret Holemar Thumel, Gordon Howard, Arthur Gardener, Clay Myers, Dianne Burch, Lane County Planning Commissioners; Dianne Burch, Fred Beisse, Brian Cole, West Lane Planning Commissioners; Bill Van Vactor, Jim Mann, Steve Vorhees, Lane County staff.

ABSENT: Jerry Rust, Lane County Commissioner; Stephen Moe, Robert Greuner, Lane County Planning Commissioners; Richard Micklewright, Michael Sleight, West Lane Planning Commissioners.

I. WORK PROGRAM FOR THE PERIODIC REVIEW OF THE RURAL COMPREHENSIVE PLAN

Commissioner Green opened the meeting of the Lane County Commissioners. Ms. Thumel opened the meeting of the Lane County Planning Commission. Ms. Burch opened the meeting of the West Lane Planning Commission.

Mr. Mann reviewed the process for the public hearing, noting that responses would be provided to all testimony raised in the public hearing. Following testimony, Mr. Mann said the planning commissions could deliberate and offer a recommendation to the County Commission.

Mr. Mann then reviewed the citizen involvement opportunities to date on this issue, including five public information meetings in March and April, distribution of copies of the work plan, and several work sessions with the planning commissions. In addition, Mr. Mann said there had been six information sessions and public hearings last fall related to the review evaluation. Mr. Mann informed the commissioners that there was opposition to the

Rural Comprehensive Plan, but that the periodic review process was not intended to address those concerns.

Mr. Mann then provided a summary of the work program, using overhead projections to illustrate it. He noted that two items had been excluded from the work program: 1) changes to forest zones, and 2) Goal 5 resource items. Mr. Mann explained that the reason for excluding the forest zone changes was that this item represented a big change and he recommended bringing proposals back to the Board separately in the summer. Mr. Mann said that the reason for delaying work on Goal 5 was because the Department of Land Conservation and Development (DLCD) was considering changes to the Goal 5 rule and it would be prudent to wait for the outcome prior to reviewing it.

Mr. Mann provided an overview of the three phases of the plan as follows:

- Phase 1: an inventory by geographic area resulting in a report
- Phase 2: inventory analysis, citizen involvement, meetings and policy direction from the commissions
- Phase 3: Plan and Code development, including citizen involvement, public hearings, and adoption of changes.

Commissioner Green opened the public hearing.

Paul Atkinson, 26884 Powell Road, Eugene, resubmitted his request that the County produce a soils map with a parcelization overlay to allow officials and the public to see where prime soils are. He also said there was a need for a cost of services study similar to the Fodor study.

Jane Novick, 84881 Harry Taylor Road, Eugene, testified that the information provided was "incomprehensible" and she expressed concern about adequate notification before changes are made.

Marriner Orum, no address given, representing the Sierra Club, testified that any changes to the plan could weaken land use planning in Oregon. Mr. Orum said the Sierra Club opposed any changes that would contribute to "urban sprawl."

Curtin Mitchell, 27300 Siuslaw River Road, Lorraine, encouraged commissioners to inventory the best farmland forestlands and shelter them from development. Mr. Mitchell asked that the vision of small towns with large areas of open space in between be kept intact. He spoke against any development on F1 lands.

John Bianco, 82741 Clayton Road, testified that he had witnessed an "epidemic" growth of clear-cutting over the last four years. He stated that any development should be tied to stewardship of the land. Mr. Bianco also supported the development of soil maps and a cost of growth study.

Lisa Davis, PO Box 271, Creswell, spoke against opening F1 lands to further development.

Jerry Ritter, 1865 Yolanda Avenue, representing Neighbors United Against Annexation, opposed any changes that would allow annexation without a vote. He urged the commission to retain its opposition to S195 annexations, and asked members to consider floodplain issues.

Ruth Duemler, 1745 Fircrest, Eugene, reiterated the need for better public notification and more citizen involvement in the process. She spoke for the need for soil mapping, preservation of farmland from development, and said that dry wells point to the need to map for water usage.

Scott Frazier, 30550 Isaac Walton Road, asked the County to define the words "park" and "intensive use" so that developers are not able to use "loopholes" as was the case with the paintball development.

Alice Doyle, 78185 Ratch Creek Road, Cottage Grove, asked a number of questions, referring to the use of the term "capacity of land" as an important phrase in decision making.

There were no other requests to testify. Commissioner Green closed the public hearing.

Commissioner Green asked how responses to the public hearing would be made. Mr. Mann responded to some of the testimony by stating that soils would be reviewed as part of the work under Goals 11 and 14, although the study would be limited to developed and committed areas. As a point of clarification, Mr. Mann said that most of the County is zoned forest and farm, but Periodic Review does not concern itself with these lands. Mr. Mann said that a soil map would be available as the first project is undertaken; however, it would not include a parcelization overlay. Mr. Mann said the rest of the testimony would be answered in writing.

Commissioner Cornacchia clarified that there had been no discussion on the Board of Commissioners to open F1 land to residential development. He said some confusion may have arisen from the inclusion of this item on the lists on the wall. Mr. Mann clarified that the lists reflected concerns raised at public meetings. However, Mr. Mann reported that Lane County was the only county in Oregon that prohibits dwellings on F1 lands, and that a proposal to allow residential development with restrictions could be prepared, although there was no indication from the Board that it would be supported.

Commissioner Weeldreyer asked about the development of soil maps. Commissioner Dumdi indicated that her conversation with Kent Howe had concluded that the development of a

parcelization overlay was prohibitively expensive. She noted that Mr. Atkinson had mentioned working with the Farm Bureau for potential funding.

Commissioner Green turned the discussion to the Lane County Planning Commission.

Commissioner Howard indicated that, having received testimony, conducted public hearings, and reviewed the issues, he was prepared to take action. Mr. Gardener agreed.

The discussion was then turned to the West Lane Planning Commission. Mr. Beisse noted that updating the comprehensive plan was a legal requirement, and that the work program provided a "skeleton" to be filled in with details. He expressed support for a positive recommendation. Mr. Cole stated that the testimony contained important comments, but that many did not pertain to Goals 11 and 14. Ms. Burch said that public notification was a top priority for the WLPC, and welcomed suggestions for improving it.

> Mr. Beisse moved for the West Lane Planning Commission, seconded by Mr. Cole, to recommend adoption of the work program to the Board of County Commissioners. The motion carried unanimously, 3:0.
>
> Mr. Howard moved for the Lane County Planning Commission, seconded by Mr. Gardener, to recommend adoption of the work program to the Board of County Commissioners. The motion carried unanimously, 4:0.

The discussion then turned to the Lane County Board of Commissioners. Commissioner Dumdi clarified that the Lane County Board and Mr. Mann's work on the rural comprehensive plan was bound by State statute. She noted that the restrictions concerning F1 lands had been eased by the administrative agency, the DLCD, not the Lane County Board. She clarified that she did not believe the Board was in favor of expanding development on F1 lands.

Commissioner Cornacchia clarified that the current process was a required periodic review, not an update. He emphasized that Lane County had cut its budget five years in a row, and was not in a position to fund everything it would like. Commissioner Cornacchia shared the frustration of lack of public participation, noting the small number of applications for open planning commission seats. In regard to the work program, Commissioner Cornacchia called it "ambitious relative to the task and resources available" and urged support.

Commissioner Weeldreyer asked whether the soil maps discussed could be produced with appropriate private funding. Mr. Mann responded that they could, although it could be difficult to recreate parcels as they were in 1984 as requested.

Commissioner Green echoed the sentiment of other Board members not to allow development on F1 lands.

Commissioner Dumdi moved, seconded by Commissioner Cornacchia, that the Board of County Commissioners accept the recommendation of the Lane County and the West Lane Planning Commissions and adopt the periodic review work program. The motion carried unanimously, 4:0.

The meeting adjourned at 8:00 p.m.

(Recorded by Hannah Bradford)
lcpc10.046


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IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER 97-10-21-3

) IN THE MATTER OF ADOPTING AMENDMENTS
) TO THE TIMELINES FOR THE APPROVED WORK
) PROGRAM FOR THE PERIODIC REVIEW OF THE
) LANE COUNTY RURAL COMPREHENSIVE PLAN,
) PROJECT 1 WORK PLANS: GOALS 11 AND 14
) COMPLIANCE.

WHEREAS, on April 10, 1996, the Board of County Commissioners adopted Board Order No. 96-4-10-1 that approved a work program for the Periodic Review of the Rural Comprehensive Plan; and

WHEREAS, on October 21, 1997, the Board of County Commissioners conducted a public hearing with the Lane County Planning Commission and the West Lane Planning Commission to consider timeline and process changes to the adopted Periodic Review work program for the Rural Comprehensive Plan, as described in the attached Exhibit "A"; and

WHEREAS, OAR 660-25-090(1) requires a Periodic Review work program to be, "approved by the governing body"; now, therefore, it is hereby

ORDERED that the timeline and process changes to the Periodic Review work program of the Rural Comprehensive Plan in the attached Exhibit "A" are approved.

DATED this 21 day of October, 1997.

Cindy Weeldreyer, Chairperson, Lane County Board of Commissioners
Steve Cornacchia, Vice-Chair, Lane County Board of Commissioners

FILED
NOV 06 1997
COUNTY CLERK
BY M Balding

APPROVED AS TO FORM
Date 10-10-97 Lane County
OFFICE OF LEGAL COUNSEL

Attachment "A"

REVISIONS TO LANE COUNTY'S PERIODIC REVIEW WORK PROGRAM:

PROJECT 1 WORK PLANS: GOALS 11 & 14 COMPLIANCE

October 21, 1997

A. Background.

On April 10, 1996, Lane County approved its periodic review work program that included a three year timeline, from 7/1/97 to 6/30/00, to complete community plans and zoning for all 35 of Lane County's unincorporated rural communities. This work also included addressing Goal 11 and 14 'rural' verses 'urban' use & residential density issues for developed and committed areas outside of communities. The work program included a from-the-top-down work approach to help minimize LMD costs and insure getting the work done on time. In April of 1996, the LMD had the funding it needed for the positions that would perform the periodic review work, including funding for: a full time Associate Planner position; a significant portion of the Senior Planner position; and a small portion of the Planning Director's position. However, in the LMD FY 97/98 budget, funding for the Associate Planner position (along with five other positions) was eliminated.

During the first year of implementing this work program, from 7/1/96 to 6/30/97, Lane County completed work on Project 1 objective 1 and Project 1 objective 2 tasks 1-4 and a portion of task 5. This work primarily involved gathering and analysis of data for Lane County's developed and committed exception areas in a rural residential zoning designations. Some basic inventory work remains to be done under objective 2 task 5 for Lane County's developed and committed areas in park and recreation, commercial and industrial designations. The next phases of the work plans for Project 1 will include citizen involvement, more specific analysis of identified issues and alternatives, and the drafting and adoption of community plans and land use regulations for developed and committed areas outside of communities.

Creative modifications to the timelines and work process of the adopted periodic review work program are included herein to help Lane County work within its evolving budget limitations and to still meet its periodic review obligations. It will be necessary to adopt these changes by Board order, because Original periodic review work program was adopted by Board order on April, 10, 1996. .

B. Detailed Work Plan Timeline Changes

Project 1 (Goals 11 & 14 Compliance) completion and adoption timelines are proposed that do not involve changes to the work tasks and that separate the completion and adoption of the community plans into 5 watershed area groupings.

Project 2 (SB 122 Coordination Agreements) completion and adoption timelines are proposed that involve creating and adopting the coordination agreements concurrently with the project 1 work and timelines for the community plans.

Project 3 (Coastal Goals Compliance) completion and adoption timelines are proposed that involve completing this project work concurrently with the project work for the Siuslaw watershed and coastal areas. This work combination accounts for the three year, rather than 2 year, timeline to complete the community plans for the Siuslaw River watershed and coastal areas.

The timeline changes and process changes to the adopted Periodic Review work program are identified below in a legislative and adopted format. A single underline denotes added or new timeline and process requirements. A ~~strikethrough~~ denotes work plan timeline requirements being deleted. The portions of the approved work program that are changed remain in full effect and force.

Legislative Format

Project 1 Work Plans: Goals 11 and 14 Compliance Timelines

Phase 1: ~~7/1/96 to 6/30/97 Objectives 1 2, General & Specific Land Use Inventory~~

Completed: Objective 1 Summary Report - Completed
7/1/97 to 6/30/98: Objective 2 Detailed Land Use Inventory Data & Report

Phase 2: ~~7/1/97 to 6/30/98 Objectives 3 6, Analysis, Citizen Involvement, meetings, & Board policy direction~~

7/1/97 to 6/30/99: Completion and adoption of 8 community plans and implementing measures for the McKenzie River watershed area (Blue River, Leaburg, Marcola, McKenzie Bridge, Nimrod, Rainbow, Vida, Walterville).

7/1/99 to 6/30/02: Completion and adoption of 10 community plans and implementing measures for the Siuslaw River watershed area and coastal area (Mapleton, Glenada, Cushman, Swisshome, Deadwood; Greenleaf, Triangle Lake; Blachly, Walton and Lorane).

7/1/01 to 6/30/04: Completion and adoption of 7 community plans and implementing measures for the Long Tom River watershed area (Lancaster, Cheshire, Franklin, Alvador, Elmira, Noti, Crow).

7/1/99 to 6/30/06: Completion and adoption of community plans and implementing measures for the five communities of the Middle Fork of the Willamette River watershed area (Pleasant Hill, Jasper, Trent, Fall Creek, Dexter) and for the 5 communities of the Coast Fork of the Willamette watershed area (Culp Creek, Dorena, London, Saginaw, Goshen).

The sequence in which the land use planning work will be done on the above mentioned watersheds, except for the Mc Kenzie watershed, may be modified by the Lane County Planning Director without formal action by the Board..

Phase 3: ~~7/1/98 to 6/30/99 - Objectives 7 - 8, Plan & Code Development, Citizen Involvement, Hearings & Adoption~~

7/1/97 to 6/30/06: Completion and adoption of amendments to the Rural comprehensive plan and implementation measures for areas outside of communities to comply with Goals 11 and 14.

Project 2 Work Plans: SB 122 Coordination Agreements Timelines

~~December 31, 2000.~~

7/1/97 to 6/30/99: Completion and adoption for the McKenzie River watershed area.

7/1/99 to 6/30/02: Completion and adoption for the Siuslaw River watershed area.

7/1/01 to 6/30/04: Completion and adoption for the Long Tom River watershed area.

7/1/99 to 6/30/06: Completion and adoption for the Willamette River watershed area and for the Coast Fork of the Willamette watershed area.

Project 3 Work Plans: Coastal Goals Compliance

~~December 31, 2000.~~

7/1/99 to 6/30/02: Completion and adoption for the Siuslaw River watershed area.

Adopted Format

Project 1 Work Plans: Goals 11 and 14 Compliance Timelines

Phase 1: Completed: Objective 1 Summary Report - Completed

7/1/97 to 6/30/98 Objective 2 Detailed Land Use Inventory Data & Report

Phase 2: 7/1/97 to 6/30/99: Completion and adoption of 8 community plans and implementing measures for the McKenzie River watershed area (Blue River, Leaburg, Marcola, McKenzie Bridge, Nimrod, Rainbow, Vida, Walterville).

7/1/99 to 6/30/02: Completion and adoption of 10 community plans and implementing measures for the Siuslaw River watershed area and coastal area (Mapleton, Glenada, Cushman, Swisshome, Deadwood; Greenleaf, Triangle Lake; Blachly, Walton and Lorane).

7/1/01 to 6/30/04: Completion and adoption of 7 community plans and implementing measures for the Long Tom River watershed area (Lancaster, Cheshire, Franklin, Alvador, Elmira, Noti, Crow).

7/1/99 to 6/30/06: Completion and adoption of community plans and implementing measures for the five communities of the Middle Fork of the Willamette River watershed area (Pleasant Hill, Jasper, Trent, Fall Creek, Dexter) and for the 5 communities of the Coast Fork of the Willamette watershed area (Culp Creek, Dorena, London, Saginaw, Goshen).

The sequence in which the land use planning work will be done on the above mentioned watersheds, except for the Mc Kenzie watershed, may be modified by the Lane County Planning Director without formal action by the Board..

Phase 3: 7/1/97 to 6/30/06: Completion and adoption of amendments to the Rural comprehensive plan and implementation measures for areas outside of communities to comply with Goals 11 and 14.

Project 2 Work Plans: SB 122 Coordination Agreements Timelines

7/1/97 to 6/30/99: Completion and adoption for the McKenzie River watershed area.

7/1/99 to 6/30/02: Completion and adoption for the Siuslaw River watershed area.

7/1/01 to 6/30/04: Completion and adoption for the Long Tom River watershed area.

7/1/99 to 6/30/06: Completion and adoption for the Willamette River watershed area and for the Coast Fork of the Willamette watershed area.

Project 3 Work Plans: Coastal Goals Compliance

7/1/99 to 6/30/02: Completion and adoption for the Siuslaw River watershed area.

PASSED

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER
00-6-27-5

) IN THE MATTER OF ADOPTING AMENDMENTS
) TO THE TIMELINES FOR THE APPROVED WORK
) PROGRAM FOR THE PERIODIC REVIEW OF THE
) LANE COUNTY RURAL COMPREHENSIVE PLAN.

WHEREAS, on April 10, 1996, the Board of County Commissioners adopted Board Order No. 96-4-10-1 that approved a work program for the Periodic Review of the Rural Comprehensive Plan; and

WHEREAS, on October 21, 1997, the Board of County Commissioners adopted Board Order No. 97-10-21-3 that approved amendments to the work program for the Periodic Review of the Rural Comprehensive Plan; and

WHEREAS, OAR 660-25-090(1) requires a Periodic Review Work Program to be, "approved by the governing body"; and

THEREFORE, BE IT ORDERED the timeline and process changes to the Periodic Review Work Program of the Rural Comprehensive Plan in the attached Exhibit "A" are approved.

DATED this 27th day of June, 2000.

Peter Sorenson, Chairperson, Lane County Board of Commissioners

APPROVED AS TO FORM
Date 6-20-2000 Lane County
OFFICE OF LEGAL COUNSEL

Exhibit "A"

For Task 1, the task completion deadline is changed in the approved work program summary from June 30, 1999, to December 31, 2000.

For Task 2, with one exception, the task completion deadline is changed in the approved work program summary from June 30, 1999, to December 31, 2000. The work program would be changed so that work to be done for Goal 18 would be done concurrently with other coastal work in Task 4.

For Task 3, the Goal 11and 14 compliance work to update Lane County's plan policies and zoning for Rural Residential developed and committed areas located outside of communities is integrated into and will be done as part of the Tasks 4-6, Goal 11 and 14 compliance work for each watershed. Tasks 4-6 are changed in the approved work program summary accordingly to incorporate this work.

For Tasks 4–6, the completion deadlines are changed to be completed six months earlier than indicated in the approved work program.

Included as part of Exhibit "A" is the attached LANE COUNTY RURAL Periodic Review Work Program Approved Summary. The changes mentioned above apply to this document.

LANE COUNTY RURAL
Periodic Review Work Program Approval Summary

DLCD Field Representative and Team Leader:
Ronald Eber (503) 373-0090
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DLCD Technical Assistance:
Doug White (503) 373-0083 (Goal 14/Communities)
email: doug.white@state.or.us
Emily Toby (503)373-0096 (Coastal Program)
email: emily.toby@state.or.us
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Lane County Contact:
Jim Mann (541) 682-3958
Email: james.mann@co.lane.or.us
FAX: (541) 682-3947

Work Program Actions

Work Program Approved:
May 24, 1996
Order No. 00614

Work Program Modified by Watersheds:
March 19, 1998
Order No. 00901

Final Work Program Completion Date:
June 30, 2006

Task	Wk. Pro. Ref.	Action & Product	Submittal Date
1	Co. Work Plan 1, Obj. 2, 3, 4, 5, 6, 7 and 8; and Co. Work Plan 2, Obj. 1 and 2 (McKenzie)	*For lands within the McKenzie River Watershed take the following actions:* *1. Develop a detailed Land Use Inventory Data and Summary Report that inventories and analyzes the existing land uses within each exception area and within and adjacent to each unincorporated community where significant levels of new development may occur;* *2. Complete a Preliminary OAR Compliance Report for each community addressing the factors in OAR 660-22-030;* *3. Complete a Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report for the existing developed and committed uses and densities and for those that would be allowed under the current Lane County zoning and land use policies;* *4. Complete a survey of the desires and opinions of people in each unincorporated community about what they would like their community to be and look like;* *5. Hold community information meetings and workshops, and obtain citizen input;* *6. Prepare the draft land use plans and implementing ordinances;* *7. Conduct meetings and hearings, and adopt the land use plans, implementing ordinances and provisions to Lane Manual to establish a formal community land use advisory group for the study area;* *8. Produce a generic coordination agreement between county and rural service districts in compliance with SB 122 as codified in ORS Chapter 195; and* *9. Complete the coordination agreements by obtaining their adoption.* *For lands within the McKenzie River Watershed submit the following products:* *1. Land Use Inventory Data and Summary Report;* *2. OAR Compliance Report for each community;* *3. Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report;* *4. Community Desires and Opinions Survey and Summary Results Report;* *5. Citizen involvement, and planning commission and Board meetings, and a summary report;* *6. Hearings and Adopted Land Use Diagram and Zoning Maps, Policies and Implementation Ordinances;* *7. Generic coordination agreement; and* *8. Negotiations and adopted coordination agreements.*	Dec. 31, 1999

2	(part of) Co. Work Plan 3, Obj. 1 and 2 (CRMP, phase 1).	*Update the Coastal Resource Management Plan (CRMP) as follows:* *1. Add Goal 16 dredge and fill standards to Development and Natural Estuary policies and zones to match those added to Conservation Estuary in 1991. Update Definitions in Lane Code to include new definitions added to the Coastal Goals in 1985.* *2. As required by Goal 17's "implementation Requirements", item 6, amend the CRMP to include an inventory of existing public access points, and in conjunction with Oregon Parks and Recreation Department, identify areas where improvements to access or new access is needed. Describe in policy terms within the CRMP a program for providing increased public access and otherwise implementing the Goal amendment. Amend County regulations to meet Goal objectives.* *3. As required by Goal 18's "Implementation Requirements," item 7, inventory sand dune areas to determine if grading or sand movement within them should be allowed by means of a foredune grading plan which meets Goal criteria; modify the CRMP and implementation regulations to provide for grading plans. Subject areas include developed and committed lands and lands within the Florence UGB. Coordination with the City of Florence will be needed for lands within the UGB.*	June 30, 1999
3	Co. Work Plan 1, Obj. 2, 3, 4, 5, 6, 7 and 8; and Co. Work Plan 2, Obj. 1 and 2 (Rural Industrial, Commercial and Park Recreation).	*For lands in Lane County take the following actions:* *1. Develop a detailed Land Use Inventory Data and Summary Report that inventories and analyzes the existing land uses within each exception area planned and zoned for industrial, commercial, and park/recreation uses and located outside of unincorporated communities where significant levels of new development may occur;* *2. Complete a Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report for the existing developed and committed uses and for those uses that would be allowed under the current Lane County zoning and land use policies;* *3. Prepare the draft land use plan and implementing ordinances;* *4. Conduct meetings and hearings, and adopt the land use plans, implementing ordinances.* *For lands in Lane County submit the following products:* *1. Land Use Inventory Data and Summary Report;* *2. Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report;* *3. Draft land use diagram and zoning maps, draft land use policies, and draft zoning regulations;* *4. Hearings and Adopted Land Use Diagram and Zoning Maps, Policies and Implementation Ordinances.*	June 30, 2001

4	Co. Work Plan 1, Obj. 2, 3, 4, 5, 6, 7 and 8; Co. Work ~~Plan~~ 2, Obj. 1 and 2; and (part of) Co. Work Plan 3, Obj. 1 and 2 (Siuslaw & CRMP Phase 2)	*For lands within the Siuslaw River Watershed take the following actions:* *1. Develop a detailed Land Use Inventory Data and Summary Report that inventories and analyzes the existing land uses within each exception area and within and adjacent to each unincorporated community where significant levels of new development may occur;* *2. Complete a Preliminary OAR Compliance Report for each community addressing the factors in OAR 660-22-030;* *3. Complete a Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report for the existing developed and committed uses and densities and for those that would be allowed under the current Lane County zoning and land use policies;* *4. Complete a survey of the desires and opinions of people in each unincorporated community about what they would like their community to be and look like;* *5. Hold community information meetings and workshops, and obtain citizen input;* *6. Prepare the draft land use plan and implementing ordinances;* *7. Conduct meetings and hearings, and adopt the land use plans, implementing ordinances and provisions to Lane Manual to establish a formal community land use advisory group for the study area;* *8. Produce a generic coordination agreement between county and rural service districts in compliance with SB 122 as codified in ORS Chapter 195;* *9. Complete the coordination agreements by obtaining their adoption; and* *10. For those items not addressed above under Task 2, begin update of Coastal Resource Management Plan:* *a. Complete necessary comprehensive plan inventories, analyses of these inventories and a report that summaries the results of the inventory work, and* *b. Complete necessary amendments to the comprehensive plan and implementing measures, conduct information meetings and hearings, and adopt the changes.* *For lands within the Siuslaw Watershed submit the following products:* *1. Land Use Inventory Data and Summary Report;* *2. OAR Compliance Report for each community;* *3. Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report;* *4. Community Desires and Opinions Survey and Summary Results Report;* *5. Citizen involvement, and planning commission and Board meetings, and a summary report;* *6. Hearings and Adopted Land Use Diagram and Zoning Maps, Policies and Implementation Ordinances;* *7. Generic coordination agreement;* *8. Negotiations and adopted coordination agreements; and* *9. Coastal Resource Management Plan: Land Use Inventories; Summary Report; and Preparation and adoption of amendments to the comprehensive plan and implementing ordinances and citizen involvement.*	**June 30, 2002**

5	Plan I, Obj. 2, 3, 4, 5, 6, 7 and 8; and Co. Work Plan 2, Obj.-Land 2 (Long Tom).	*For lands within the Long Tom River Watershed take the following actions:* *1. Develop a detailed Land Use Inventory Data and Summary Report that inventories and analyzes the existing land uses within each exception area and within and adjacent to each unincorporated community where significant levels of new development may occur;* *2. Complete a Preliminary OAR Compliance Report for each community addressing the factors in OAR 660-22-030;* *3. Complete a Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report for the existing developed and committed uses and densities and for those that would be allowed under the current Lane County zoning and land use policies;* *4. Complete a survey of the desires and opinions of people in each unincorporated community about what they would like their community to be and look like;* *5. Hold community information meetings and workshops, and obtain citizen input;* *6. Prepare the draft land use plans and implementing ordinances;* *7. Conduct meetings and hearings, and adopt the land use plans, implementing ordinances and provisions to Lane Manual to establish a formal community land use advisory group for the study area;* *8. Produce a generic coordination agreement between county and rural service districts in compliance with SB 122 as codified in ORS Chapter 195; and* *9. Complete the coordination agreements by obtaining their adoption.* *For lands within the Long Tom River Watershed submit the following products:* *1. Land Use Inventory Data and Summary Report;* *2. OAR Compliance Report for each community;* *3. Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report;* *4. Community Desires and Opinions Survey and Summary Results Report;* *5. Citizen involvement, and planning commission and Board meetings, and a summary report;* *6. Hearings and Adopted Land Use Diagram and Zoning Maps, Policies and Implementation Ordinances;* *7. Generic coordination agreement; and* *8. Negotiations and adopted coordination agreements.*	**June 30, 2004**

6	Co. Work Plan 1, Obj. 2, 3, 4, 5, 6, 7 and 8; and Co. Work Plan 2, Obj. 1 and 2 (M.F. Willamette & C.F. Willamette).	*For lands within the Middle Fork of the Willamette River and the Cost Fork of the Willamette River Watersheds take the following actions:* *1. Develop a detailed Land Use Inventory Data and Summary Report that inventories and analyzes the existing land uses within each exception area and within and adjacent to each unincorporated community where significant levels of new development may occur;* *2. Complete a Preliminary OAR Compliance Report for each community addressing the factors in OAR 660-22-030;* *3. Complete a Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report for the existing developed and committed uses and densities and for those that would be allowed under the current Lane County zoning and land use policies;* *4. Complete a survey of the desires and opinions of people in each unincorporated community about what they would like their community to be and look like;* *5. Hold community information meetings and workshops, and obtain citizen input;* *6. Prepare the draft land use plans and implementing ordinances;* *7. Conduct meetings and hearings, and adopt the land use plans, implementing ordinances and provisions to Lane Manual to establish a formal community land use advisory group for the study area;* *8. Produce a generic coordination agreement between county and rural service districts in compliance with SB 122 as codified in ORS Chapter 195; and* *9. Complete the coordination agreements by obtaining their adoption.* *For lands within the Middle Fork of the Willamette River and the Cost Fork of the Willamette River Watersheds submit the following products:* *1. Land Use Inventory Data and Summary Report;* *2. OAR Compliance Report for each community;* *3. Preliminary Goal 11 and 14 Compliance Analysis and Recommendations Report;* *4. Community Desires and Opinions Survey and Summary Results Report;* *5. Citizen involvement, and planning commission and Board meetings, and a summary report;* *6. Hearings and Adopted Land Use Diagram and Zoning Maps, Policies and Implementation Ordinances;* *7. Generic coordination agreement; and* *8. Negotiations and adopted coordination agreements.*	June 30, 2006

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PASSED

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. 5-02	IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO MODIFY FARM AND FOREST ZONE CLASSIFICATIONS AND REGULATIONS (LC 16.090, LC 16.100, LC 16.211 AND LC 16.212) AND DECLARING AN EMERGENCY

The Board of County Commissioners of Lane County ordains as follows:

Chapter 16 of Lane Code is hereby amended by removing, substituting and adding new sections as follows:

REMOVE THESE SECTIONS	INSERT THESE SECTIONS
16.090 as located on pages 16-11 though 16-20 (a total of 10 pages)	16.090 pages 16-11 though 16-20 (a total of 10 pages)
16.100 as located on pages 16-37 and 16-38 (a total of 2 pages)	16.100 as located on pages 16-37 and 16-38 (a total of 2 pages)
16.211 pages 16-53 through 16-72 (a total of 20 pages)	16.211 pages 16-53 through 16-73 (a total of 21 pages)
16.212 pages 16-73 through 16-89 (a total of 17 pages)	16.212 pages 16-89a through 16-89gg (a total of 33 pages)

Said sections are attached hereto and incorporated herein by reference. The purpose of these substitutions and additions is to modify farm and forest zoning classifications and regulations. (LC 16.090, LC 16.100, LC16.211 and LC 16.212)

While not part of this Ordinance, findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this decision.

An emergency is hereby declared to exist and this Ordinance, being enacted by the Board in the exercise of its police power for the purpose of meeting such emergency and for the immediate preservation of the public peace, health and safety, shall take effect immediately upon adoption.

ENACTED this 28TH day of August 2002.

Chair, Board of County Commissioners

Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date 7/29/2002 Lane County

OFFICE OF LEGAL COUNSEL

IMPACTED FOREST LANDS ZONE (F-2, RCP) RURAL COMPREHENSIVE PLAN

16.211 Impacted Forest Lands Zone (F-2, RCP).

(1) Purpose. The purposes of the Impacted Forest Lands Zone (F-2, RCP) are:

(a) To implement the forest land policies of the Lane County Rural Comprehensive Plan and the forest land policies of the Eugene/Springfield Metro Area General Plan; and

(b) To conserve forest land for uses consistent with Statewide Planning Goal #4, OAR 660-006 and ORS 215.700 through .755.

(2) Permitted Uses. The uses and activities in LC 16.211(2)(a) through (i) below are allowed without the need for notice and the opportunity for appeal, subject to compliance with the general provisions and exceptions prescribed by this chapter of Lane Code. A determination by the Director for whether or not a use fits within the classification of uses listed in LC 16.211(2) below may constitute a "permit" as defined by ORS 215.402(4), "...discretionary approval of a proposed development of land..." For such a determination, an owner of land where the use would occur may apply in writing to the Director to provide mailed notice of the determination to nearby owners pursuant to LC 14.100(3) and (4) with the opportunity for appeal pursuant to LC 14.500. The burden of proof in the application shall be upon the owner of land to demonstrate that the proposed use fits within the classification. The Director shall provide a disclosure statement regarding this option for notice and the opportunity for appeal to owners of land applying for land use compatibility statements or permits with Lane County for the uses listed in LC 16.211(2) below.

(a) Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of forest tree species, application of chemicals, and disposal of slash.

(b) Temporary onsite structures which are auxiliary to and used during the term of a particular forest operation.

(c) Physical alteration to the land auxiliary to forest practices including, but not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities. "Auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(d) Farm use (see the definition of "Farm Use" in LC 16.090).

(e) Private hunting and fishing operations without any lodging accommodations.

(f) Towers and fire stations for forest fire protection.

(g) Water intake facilities, canals and distribution lines for farm irrigation and ponds.

(h) Caretaker residences for public parks and fish hatcheries subject to compliance with the siting criteria in LC 16.211(8) below. Land use approval of a permit described in LC 16.211(2)(h) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(5)(d)(ii) and (iii), an application for a two-year extension of the timelines for the permit approval described in LC 16.211(2)(h) above may be made and approved pursuant to LC 14.700(2).

(i) Exploration for and production of geothermal, gas, oil, and other associated hydrocarbons, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the well head.

(j) Disposal site for solid waste that has been ordered established by the Environmental Quality Commission under ORS 459.049, together with the equipment, facilities or buildings necessary for its operation.

(k) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under LC 16.211(3)(f-f) below.

(l) A wildlife habitat conservation and management plan pursuant to ORS 215.804.

(m) Widening of roads within existing rights-of-way as described in LC Chapter 15 or the following public road and highway projects:

(i) Climbing and passing lanes within the right-of-way existing as of July 1, 1987;

(ii) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result;

(iii) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed; or

(iv) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(3) Special Uses - Director Review. The uses in LC 16.211(3)(a) through (f-f) below are allowed subject to compliance with the general provisions and exceptions in LC Chapter 16 and with the specific requirements in LC 16.211(3) below. Each use in 16.211(3)(a) through (f-f) below shall require submittal of an application pursuant to LC 14.050, and review and approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal. A use in LC 16.211(3)(a) through (s), (z) and (a-a) through (f-f) excluding LC 16.211(3)(q)(iv) below may be allowed if it will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands and excluding LC 16.211(f-f) below if it will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. A use in LC 16.211(3)(t) through (y) below may be allowed if there is adequate information demonstrating that the use fits the use classification in LC 16.211(3)(t) through (y) below. A condition for approval of a use in LC 16.211(3)(c), (j), (n), (o) and (r) below shall be a written statement recorded with the deed or written contract with Lane County is obtained from the landowner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules.

(a) Permanent logging equipment repair and storage.

(b) Log scaling and weigh stations.

(c) Private parks and campgrounds that comply with these requirements:

(i) Except on a lot or parcel contiguous to a lake or reservoir, campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR 660, Division 4;

(ii) A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground;

(iii) A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites;

(iv) Campsites may be occupied by a tent, travel trailer or recreational vehicle;

(v) Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites;

(vi) Campgrounds authorized by LC 16.211(3)(c) above shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations; and

(vii) Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(d) Public parks including those uses specified under OAR 660-034-0035.

(e) Television, microwave, and radio communication facilities and transmission towers. In addition to the requirements in LC 16.211(3) above, a communication facility that is a telecommunications facility as defined by LC 16.264(2) shall comply with LC 16.264.

(f) Fire stations for rural fire protection.

(g) Utility facilities for the purpose of generating power that do not preclude more than ten acres from use as a commercial forest operation unless an exception is taken pursuant to OAR 660, Division 4.

(h) Aids to navigation and aviation.

(i) Water intake facilities, related treatment facilities, pumping stations, and distribution lines.

(j) Reservoirs and water impoundment.

(k) Cemeteries.

(l) New electric transmission lines with right-of-way widths of up to 100 feet as specified in ORS 772.210; and new distribution lines (e.g., electrical, gas, oil, geothermal, telephone, fiber optics cables) with rights-of-way 50 feet or less in width.

(m) Temporary asphalt and concrete batch plants as accessory uses to specific highway projects. Within 30 days of the temporary asphalt and concrete batch plants no longer being used as accessory uses to specific highway projects, the site shall be restored to its condition prior to placement of the temporary asphalt and concrete batch plants.

(n) Home occupations that comply with these requirements:

(i) Shall be operated by a resident of the property on which the business is located;

(ii) Shall employ on the site no more than five full-time or part-time persons;

(iii) Shall be operated substantially in the dwelling, or other existing buildings normally associated with uses permitted by LC 16.211(2) above;

(iv) No structure shall be constructed for the home occupation that would not otherwise be allowed by LC 16.211(2) above;

(v) Shall not unreasonably interfere with uses permitted by the zoning of nearby lands or with uses allowed by LC 16.211(2) above;

(vi) Shall comply with sanitation and building code requirements;

(vii) Shall not be used as a justification for a zone change;

(viii) Shall comply with any additional conditions of approval established by the Approval Authority; and

(ix) Approved applications for home occupations shall be valid until December 31 of the year following the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided in LC 16.212(3)(n)(ix) below. Prior to December 31 of the year that the approval expires, the property owner or applicant who received initial approval, or a renewal pursuant to LC 16.212(3)(n)(ix), shall provide the Director with written request for renewal of the home occupation and written information sufficient to allow the Director to determine if the Conditions of Approval and other approval criteria have been satisfied. The Director shall review this information for each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a two-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval, or for which a request for renewal is not received pursuant to this section, shall not receive extended approval by the Director, and the Director shall mail written notice of the decision not to extend the approval to the owner of the property upon which the home occupation is located.

(o) One manufactured dwelling or park model recreation vehicle in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the resident or a relative of the resident subject to compliance with these requirements:

(i) As used in LC 16.211(3)(o) above, "hardship" means, "a medical hardship or hardship for the care of an aged or infirm person or persons;"

(ii) As used in LC 16.211(3)(o) above, "relative of the resident" means, "a child, parent, stepparent, grandchild, grandparent, step grandparent, sibling, stepsibling, niece, nephew or first cousin of the existing residents;"

(iii) The manufactured dwelling or park model recreation vehicle shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling.

(iv) The temporary manufactured dwelling or park model recreation vehicle will comply with Oregon Department of Environmental Quality review and removal requirements;

(v) Except as provided in LC 16.211(3)(o)(vi) below, approval of a temporary manufactured dwelling or park model recreation vehicle permit shall be valid until December 31 of the year following the year of original permit approval and may be renewed once every two years until the hardship situation ceases or unless in the opinion of the Lane County Sanitarian the on-site sewage disposal system no longer meets DEQ requirements;

(vi) Within 90 days of the end of the hardship situation, the manufactured dwelling or park model recreation vehicle shall be removed from the property or demolished; and

(vii) A temporary manufactured dwelling or park model recreation vehicle approved under LC 16.211(3)(o) above shall not be eligible for replacement under LC 16.211(4) below.

(p) Expansion of lawfully existing airports.

(q) Public road and highway projects described as follows:

(i) Construction of additional passage and travel lanes requiring the acquisition of right-of-way but not resulting in the creation of new land parcels;

(ii) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels;

(iii) Improvement of public roads and highway-related public facilities such as maintenance yards, weigh stations and rest areas, where additional property or right-of-way is required but not resulting in the creation of new land parcels;

(iv) Adoption by the Board of an exception to Goal 4, Forest Lands, and to any other applicable goal with which the facility or improvements does not comply; or

(v) As allowed by OAR 660, Division 12, subject to the conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(r) Private accommodations for fishing occupied on a temporary basis may be allowed provided the Oregon Department of Fish and Wildlife (hereafter ODF&W) is consulted by the Planning Director at least ten working days prior to the initial permit decision. Approval of the seasonal use and facility shall comply with LC 16.211(8) below, and these requirements:

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;

(ii) Only minor incidental and accessory retail sales are permitted;

(iii) Accommodations are occupied temporarily for the purpose of fishing during fishing seasons authorized by the Oregon Fish and Wildlife Commission; and

(iv) Accommodations are located within 1/4 mile of fish bearing Class I waters.

(s) Forest management research and experimentation facilities as defined by ORS 526.215 or where accessory to forest operations.

(t) Uses to conserve soil, air, and water quality and to provide for wildlife and fisheries resources.

(u) Local distribution lines (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provide service hookups, including water service hookups.

(v) Temporary portable facility for the primary processing of forest products.

(w) Exploration for mineral and aggregate resources as defined in ORS Chapter 517.

(x) Uninhabitable structures accessory to fish and wildlife enhancement.

(y) Temporary forest labor camps.

(z) Permanent facility for the primary processing of forest products that shall not significantly conflict with the existing uses on adjacent and nearby lands.

(a-a) Disposal site for solid waste approved by the Lane County Board of Commissioners or a city council or both for which the Oregon Department of Environmental Quality has granted a permit under ORS 459.245, together with equipment, facilities or buildings necessary for its operation and that shall not significantly conflict with the existing uses on adjacent and nearby lands.

(b-b) Mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520, and not otherwise permitted under LC 16.211(2)(i) above (e.g., compressors, separators and storage serving multiple wells), and mining and processing of aggregate and mineral resources as defined in ORS Chapter 517 that shall not significantly conflict with the existing uses on adjacent and nearby lands.

(c-c) Firearms training facility that shall not significantly conflict with the existing uses on adjacent and nearby lands.

(d-d) Private seasonal accommodations for fee hunting operations may be allowed subject to LC 16.211(8), and these requirements:

(i) Accommodations are limited to no more than 15 guest rooms as that term is defined in the Oregon Structural Specialty Code;

(ii) Only minor incidental and accessory retail sales are permitted;

(iii) Accommodations are occupied temporarily for the purpose of hunting during game bird and big game hunting seasons authorized by the Oregon Fish and Wildlife Commission; and

(iv) Shall not significantly conflict with the existing uses on adjacent and nearby lands.

(e-e) Any gathering, and any part of which is held in open spaces, of more than 3,000 persons which continues or can reasonably be expected to continue for more than 120 hours within any three-month period subject to compliance with the following requirements:

(i) The application has or can comply with the requirements for an outdoor mass gathering permit set out in ORS 433.750;

(ii) The proposed gathering is compatible with existing land uses;

(iii) The proposed gathering shall not materially alter the stability of the overall land use pattern of the area; and

(iv) The provisions of ORS 433.755 shall apply to the proposed gathering.

(f-f) A youth camp that complies with LC 16.211(11) below. A "youth camp" is a facility either owned or leased, and operated by a state or local government, or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience primarily for the benefit of persons twenty-one (21) years of age and younger. Youth camps do not include any manner of juvenile detention center or juvenile detention facility. The provisions of LC 16.211(11) below do not apply to youth camps established prior to June 14, 2000.

(4) Alteration, Restoration Or Replacement Of A Lawfully Established Dwelling Or Manufactured Dwelling.

(a) The alteration, restoration, or replacement of a lawfully established dwelling or manufactured dwelling is an allowed use without the need for notice and the opportunity for appeal subject to compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(8) below and with these requirements:

(i) The property owner provides:

(aa) Building permit or land use application records from the Lane County Land Management Division indicating that the existing dwelling or manufactured dwelling was lawfully constructed or placed on the subject property; or

(bb) Records from the Lane County Assessment and Taxation Office indicating that the structure has existed on the property and been taxed on a continuous, annual basis from a date that, as determined by the Director, predates the zoning of the subject property.

(ii) The dwelling or manufactured dwelling has:

(aa) intact exterior walls and roof structure;

(bb) indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(cc) interior wiring for interior lights; and

(dd) a heating system.

(iii) An alteration or replacement of a dwelling or manufactured dwelling allowed by LC 16.211(4)(a) above shall be located on the same site as the existing dwelling or manufactured dwelling. For the purpose of LC 16.211(4)(a)(iii) above, "the same site" is defined as a square with dimensions of 200 feet which is centered on the footprint of the established dwelling or manufactured dwelling;

(iv) For a replacement, the dwelling or manufactured dwelling to be replaced shall be removed, demolished, or converted to an allowable nonresidential use

within three months of the completion of the replacement dwelling or manufactured dwelling;

(v) Land use approval of a permit described in LC 16.211(4)(a) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(4)(a)(v) above may be made and approved pursuant to LC 14.700(2);

(vi) A temporary manufactured dwelling or park model recreation vehicle approved under LC 16.211(3)(o) above shall not be eligible for replacement under LC 16.211(4)(a) above; and

(vii) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(b) The alteration, restoration, or replacement of a lawfully established dwelling or manufactured dwelling that does not meet the requirements in LC 16.211(4)(a)(i) or (iii) above is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(8) below and with these requirements:

(i) There is objective evidence demonstrating that the existing dwelling or manufactured dwelling was lawfully placed on the subject property. The burden of proof is upon the applicant to provide this evidence to the Director;

(ii) The dwelling or manufactured dwelling has:

(aa) intact exterior walls and roof structure;

(bb) indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(cc) interior wiring for interior lights; and

(dd) a heating system.

(iii) For a replacement, the dwelling or manufactured dwelling to be replaced shall be removed, demolished, or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling or manufactured dwelling;

(iv) Land use approval of a permit described in LC 16.211(4)(b) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(4)(b)(iv) above may be made and approved pursuant to LC 14.700(2);

(v) A temporary manufactured dwelling or park model recreation vehicle approved under LC 16.211(3)(o) above shall not be eligible for replacement under LC 16.211(4)(b) above; and

(vi) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(5) Template Dwelling. One single-family dwelling or manufactured dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to

provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) The tract upon which the dwelling or manufactured dwelling will be located has no other dwellings or manufactured dwellings on it. As used in LC 16.211(5), "tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

(b) The lot or parcel upon which the dwelling or manufactured dwelling will be located was lawfully created.

(c) The lot or parcel upon which the dwelling or manufactured dwelling will be located:

(i) Is predominantly composed of soils that are capable of producing 0 to 49 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least three other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(i)(aa) above.

(bb) At least three dwellings or manufactured dwellings existed on January 1, 1993, on the other lots or parcels described in LC 16.211(5)(c)(i)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(i)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings or manufactured dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle; or

(ii) Is predominantly composed of soils that are capable of producing 50 to 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least seven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that

is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(ii)(aa) above.

(bb) At least three dwellings or manufactured dwellings existed on January 1, 1993, on the other lots or parcels described in LC 16.211(5)(c)(ii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(ii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings or manufactured dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle; or

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least eleven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(iii)(aa) above.

(bb) At least three dwellings or manufactured dwellings existed on January 1, 1993, on the other lots or parcels described in LC 16.211(5)(c)(iii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(iii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings or manufactured dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle.

(d) Approval of a dwelling or manufactured dwelling shall comply with the requirements in LC 16.211(5)(d)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

(e) Prior to land use clearance of a building permit for the dwelling or manufactured dwelling, when the lot or parcel on which the dwelling or manufactured dwelling will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(6), "Exhibit A," shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

(i) Shall be irrevocable, unless a statement of release is signed by the Director;

(ii) May be enforced by the Department of Land Conservation and Development or by Lane County;

(iii) Shall, together with a map or other record depicting any tract which does not qualify for a dwelling, be maintained in the Department records and be readily available to the public; and

(iv) The failure to follow the requirements of LC 16.211(5)(e) above shall not affect the validity of the transfer of property or the legal remedies available to the buyers of the property which is the subject of the covenants, conditions and restrictions required by LC 16.211(5)(e) above.

(f) Land use approval of a permit described in LC 16.211(5) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(5)(f) above may be made and approved pursuant to LC 14.700(2).

(g) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(6) Lot of Record Dwelling. One single family dwelling or manufactured dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(6)(a) through (j) and LC 16.211(8) below.

(a) "Owner" includes wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or combination of these family members.

(b) "Tract" means "One or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway."

(c) "Commercial tree species" means "trees recognized under rules adopted under ORS 527.715 for commercial production."

(d) The lot or parcel on which the dwelling will be sited was:

(i) Lawfully created; and

(ii) Acquired and owned continuously by the present owner since prior to January 1, 1985, or acquired by devise or by interstate succession from a person who acquired the lot or parcel prior to January 1, 1985.

(e) The tract on which the dwelling will be sited does not include a dwelling.

(f) If the lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, then no dwelling exists on another lot or parcel that was part of that tract.

(g) The dwelling will be located on a tract that:

(i) Is composed of soils not capable of producing 5,000 cubic feet per year of commercial tree species;

(ii) Is located within 1,500 feet of a public road that is maintained and either paved or surfaced with rock and that meets the following requirements:

(aa) A "Public Road" means, "a road over which the public has a right of use that is a matter of public record;"

(bb) Shall not be a United States Bureau of Land Management road; and

(cc) Shall not be a United States Forest Service road unless the road is paved to a minimum width of 18 feet, there is at least one defined lane in each direction and a maintenance agreement exists between the United States Forest Service and landowners adjacent to the road, a local government or a state agency.

(h) If the lot or parcel where the dwelling will be located is part of a tract, then prior to land use clearance of the permit for the dwelling on this tract, the tract shall be consolidated into a single lot or parcel.

(i) Approval of a dwelling shall comply with LC 16.211(6)(i)(i) through (iv) below.

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

(j) Land use approval of a permit described in LC 16.211(6) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two-year extension of the timelines for the permit approval described in LC 16.211(6)(j) above may be made and approved pursuant to LC 14.700(2).

(k) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(7) Large Tract Dwelling. One single family dwelling or manufactured dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(7)(a) through (f) and LC 16.211(8) below.

(a) "Tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less that the required acreage because it is crossed by a public road or waterway.

(b) Is sited on a tract that does not contain a dwelling or manufactured dwelling.

(c) Is sited on a tract that:

(i) Contains at least 160 contiguous acres; or

(ii) Contains at least 200 acres in one ownership that are not contiguous but are in the same county or adjacent counties and zoned for forest use.

(d) Prior to land use clearance of a building permit for the dwelling or manufactured dwelling, when the lot or parcel where the dwelling or manufactured dwelling will be located is part of a tract, the covenants, conditions and restrictions form adopted as Exhibit A in OAR 660-006-027(6)(a) shall be completed and recorded by the property owner in Lane County Deeds and Records and a copy of the recorded instrument provided to the Director. The covenants, conditions and restrictions in the deed restriction:

(i) Shall be irrevocable, unless a statement of release is signed by the Director;

(ii) May be enforced by the Department of Land Conservation and Development or by Lane County; and

(iii) Shall, together with a map or other record depicting any tract which does not qualify for a dwelling, be maintained in the Department records and be readily available to the public. The failure to follow the requirements of LC 16.211(7)(d) above shall not affect the validity of the transfer of property or the legal remedies available to the buyers of the property which is the subject of the covenants, conditions and restrictions required by this subsection.

(e) Approval of a dwelling or manufactured dwelling shall comply with the requirements in LC 16.211(7)(e)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

(f) Land use approval of a permit described in LC 16.211(7) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(7)(f) above may be made and approved pursuant to LC 14.700(2).

(g) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(8) Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h) and (j), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. ResidencesDwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 and at least 30 feet from the adjoining lines of property zoned F-2 or EFU; and

(iv) The riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met; and

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the planned right of way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 20 feet from an existing right-of-way of a state road, County road or a local access public road; and

(cc) 30 feet from all other property lines; and

(dd) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:

(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone

could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house.

As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. If the dwelling or manufactured dwelling are not within a FPD, the applicant shall provide evidence that the applicant has submitted a written request for a long term services contract with the nearest FPD and to be annexed into the FPD boundaries. If the FPD and the Planning Director determine that inclusion within a FPD or contracting for residential fire protection is impracticable, the Planning Director shall require as a condition of approval for the dwelling or manufactured dwelling that the property owner implement and maintain a Fire Protection Plan as an alternative means for protecting the dwelling or manufactured dwelling from fire hazards, consistent with the following standards:

(aa) Implementation and maintenance in perpetuity of a 100-foot wide primary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures in compliance with the standards in LC 16.211(c)(i)(aa) above; and

(bb) An external, fire protection system as a component to the equivalent Fire Protection Plan to mitigate the threat to the dwelling and residential structures by a seasonal wildfire or the threat to the forest resource base from a fire originating on the parcel in compliance with the following standards:

(A) Provide a minimum of two all-weather, one-inch valve, fire hydrants and two fire hose reels with sufficient length of fire suppression hose at each hydrant to reach around fifty percent of the exterior of the dwelling and residential accessory structures. The hose reels shall be installed between 50-75 feet from the structure foundations. The minimum fire hose interior diameter shall be one-inch;

(B) Provide a fire nozzle with each fire hose with multiple settings to allow stream, spray and fog applications of water on the exterior of the structures and landscape;

(C) Provide and annually maintain a water supply and pumping system connected to the fire hydrants in compliance with the following minimum requirements: a swimming pool, pond, lake or similar body of water that at all times contains a minimum of 4,000 gallons of water; or a stream that has a continuous year-round flow of at least one cubic foot per second; or a 1,500-gallon storage tank, e.g., concrete septic tank connected to an operating groundwater well for refilling; or a high-yield groundwater well with a minimum yield of 30 gallons per minute for one hour; and a pump system capable of maintaining 80 psi line pressure to the two fire hydrants.

(cc) The property owner shall provide verification from the Water Resources Department that any permits or registrations required for water diversions have been obtained or that such permits or registrations are not required under state law for the use; and

(dd) Road or driveway access to within 15 feet of the water supply shall be provided for pumping units. The road or driveway access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to

compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not less than 500 feet. Turnarounds shall comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from a engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not

to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

(9) Other Development Standards.

(a) Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian setback area. Maintenance, removal and replacement of indigenous vegetation within the riparian setback area along Class I streams designated for riparian vegetation protection by the Comprehensive Plan must comply with the provisions of LC 16.253(2).

(b) Signs.

(i) Signs shall not extend over a public right-of-way or project beyond the property line.

(ii) Signs shall not be illuminated or capable of movement.

(iii) Signs shall be limited to 200 square feet in area.

(10) Area. The minimum area requirement for the division of land is 80 acres subject to compliance with the requirements of LC Chapter 13 for submission, review and approval of preliminary and final partition or subdivision plans except as follows:

(a) A parcel containing less than 80 acres may be allowed to facilitate a forest practice as defined in ORS 527.620 subject to compliance with the following requirements:

(i) There are unique property specific characteristics present in the proposed parcel that require an amount of land smaller than 80 acres in order to conduct the forest practice;

(ii) The parcel shall not be eligible for siting a new dwelling;

(iii) The parcel shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

(iv) Shall not result in a parcel of less than 35 acres, except:

(aa) Where the purpose of the land exchange is to facilitate an exchange of lands involving a governmental agency; or

(bb) Where the purpose of the land division is to allow transactions in which at least one person has a cumulative ownership of at least 2,000 acres of forest land located in Lane County or a county adjacent to Lane County;

(v) If associated with the creation of a parcel where a dwelling or manufactured dwelling is involved, the parcel containing the dwelling or manufactured dwelling shall contain at least 80 acres;

(vi) Shall not, as the result of the land division, be used to justify the re-designation or rezoning of resource lands; and

(vii) A landowner allowed a land division under LC 16.211(10)(a) above shall sign a statement that shall be recorded with the Lane County Clerk declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

(viii) LC Chapter 13 for submission, review and approval of preliminary and final partition or subdivision plans.

(b) New land divisions less than the 80 acre parcel size required by LC 16.211(10) above are allowed for the uses listed in LC 16.211(2)(i) and (j), LC 16.211(3)(a) through (k) and LC 16.211(3)(a-a) through (d-d) above, in compliance with these requirements:

(i) Such uses have been approved pursuant to LC 16.211(2)(i) and (j), LC 16.211(3)(a) through (k) and LC 16.211(3)(a-a) through (d-d) above;

(ii) The parcel created for such use is the minimum size necessary for the use;

(iii) A landowner allowed a land division under LC 16.211(10)(b) above shall sign a statement that shall be recorded with the Lane County Clerk declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use;

(iv) LC Chapter 13 for submission, review and approval of preliminary and final partition or subdivision plans.

(c) A division of a lot or parcel for an existing dwelling or manufactured dwelling subject to compliance with these requirements:

(i) The parcel established for the existing dwelling or manufactured dwelling shall not be larger than five acres, except as necessary to recognize physical features such as roads or streams, in which case the parcel shall not be larger than 10 acres;

(ii) The dwelling or manufactured dwelling lawfully existed prior to June 1, 1995;

(iii) The remaining parcel not containing the dwelling or manufactured dwelling shall:

(aa) contain at least 80 acres; or

(bb) be consolidated with another parcel, and together the parcels contain at least 80 acres.

(iv) An application for the creation of a parcel pursuant to LC 16.211(10)(c) above shall provide evidence that a restriction on the remaining parcel, not containing the dwelling or manufactured dwelling, has been recorded with Lane County Deeds and Records. The restriction shall allow no dwellings or manufactured dwellings unless authorized by law or goal on land zoned for forest use except as allowed under LC 16.211(10)(c) above. This restriction shall be irrevocable unless a statement of release is signed by the Planning Director indicating that the Lane County Rural Comprehensive Plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals pertaining to agricultural land or forest land;

(v) A landowner allowed a land division under LC 16.211(10)(c) above shall sign a statement that shall be recorded with Lane County Deeds and Records declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use;

(vi) LC Chapter 13 for submission, review and approval of preliminary and final partition or subdivision plans; and

(vii) The Planning Director shall maintain a record of parcels that do not qualify for the siting of a new dwelling or manufactured dwelling under restrictions imposed by LC 16.211(10)(c) above. The record shall be readily available to the public.

(d) A division of a lot or parcel for at least two existing dwellings or manufactured dwellings subject to compliance with these requirements:

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

(ii) Each dwelling or manufactured dwelling complies with the requirements for a replacement dwelling or manufactured dwelling in LC 16.211(4)(a) or (b) above;

(iii) Except for one lot or parcel, each lot or parcel created under LC 16.211(10)(d) above is between two and five acres in size;

(iv) At least one dwelling or manufactured dwelling is located on each lot or parcel created under LC 16.211(10)(d) above;

(v) The land owner of a lot or parcel created under LC 16.211(10)(d) above shall provide evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with Lane County Deeds and Records. This restriction shall be irrevocable unless a statement of release signed by the Planning Director indicating that the Lane County Rural Comprehensive Plan or land use regulations applicable to the property have been changed in such a manner that the parcel is no longer subject to statewide planning goals protecting forest land or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use; and

(vi) The Planning Director shall maintain a record of parcels that do not qualify for the siting of a new dwelling or manufactured dwelling under restrictions imposed by LC 16.211(10)(d)(v) above. The record shall be readily available to the public.

(11) Youth Camps. The purpose of LC 16.211(11) below is to provide for the establishment of a youth camp that is generally self-contained and located on a parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the forest environment. A "youth camp" is a facility either owned or leased, and operated by a state or local government, or a nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational experience primarily for the benefit of persons twenty-one (21) years of age and younger. Youth camps do not include any manner of juvenile detention center or juvenile detention facility. The provisions of LC 16.211(11) below do not apply to youth camps established prior to June 14, 2000. An application for a youth camp shall comply with these requirements:

(a) The number of overnight camp participants that may be accommodated shall be determined by the Approval Authority based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp. Except as provided by LC 16.211(11)(b) below, a youth camp shall not provide overnight accommodations for more than 350 youth camp participants, including staff;

(b) The Approval Authority may allow up to eight (8) nights during the calendar year when the number of overnight participants may exceed the total number of overnight participants allowed under LC 16.211(11)(a) above;

(c) Overnight stays for adult programs primarily for individuals over twenty-one years of age, not including staff, shall not exceed 10% of the total camper nights offered by the youth camp;

(d) A campground as described in ORS 215.213(2)(c) above shall not be established in conjunction with a youth camp;

(e) A youth camp shall not be allowed in conjunction with an existing golf course;

(f) A youth camp shall not interfere with the exercise of legally established water rights on adjacent properties;

(g) A youth camp shall be located on a lawful parcel that is:

(i) Suitable to provide a forested setting needed to ensure a primarily outdoor experience without depending upon the use or natural characteristics of adjacent and nearby public and private land. This determination shall be based on the size, topography, geographic features and any other characteristics of the proposed site for the youth camp, as well as, the number of overnight participants and type and number of proposed facilities. A youth camp shall be located on a parcel containing at least 40 acres;

(ii) Suitable to provide a protective buffer to separate the visual and audible aspects of youth camp activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation, topographic or other natural features as well as structural setbacks from adjacent public and private lands, roads, and riparian areas. The structural setback from roads and adjacent public and private property shall be 250 feet unless the governing body, or its designate sets a different setback based upon the following criteria that may be applied on a case-by-case basis:

(aa) The proposed setback will prevent conflicts with commercial resource management practices;

(bb) The proposed setback will prevent a significant increase in safety hazards associated with vehicular traffic; and

(cc) The proposed setback will provide an appropriate buffer from visual and audible aspects of youth camp activities from other nearby and adjacent resource lands.

(iii) Suitable to provide for the establishment of sewage disposal facilities without requiring a sewer system as defined in OAR 660-011-0060(1)(f). Prior to granting final approval, the Approval Authority shall verify that a proposed youth camp will not result in the need for a sewer system.

(h) A youth camp may provide for the following facilities:

(i) Recreational facilities limited to passive improvements, such as open areas suitable for ball fields, volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horse back riding or swimming that can be provided in conjunction with the site's natural environment. Intensively developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is located on the subject property or immediately available for youth camp use;

(ii) Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters, the governing body, or its designate, may allow secondary cooking and eating facilities in one or more buildings designed to accommodate other youth camp activities. Food services shall be limited to the operation of the youth camp and shall be provided only for youth camp participants. The sale of individual meals may be offered only to family members or guardians of youth camp participants;

(iii) Bathing and laundry facilities except that they shall not be provided in the same building as sleeping quarters;

(iv) Up to three camp activity buildings, not including primary cooking and eating facilities;

(v) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets, but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be provided only for youth camp participants and shall not be offered as overnight accommodations for persons not participating in youth camp activities or as individual rentals;

(vi) Covered areas that are not fully enclosed;

(vii) Administrative, maintenance and storage buildings; permanent structure for administrative services, first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the applicant;

(viii) An infirmary may provide sleeping quarters for the medical care provider, (e.g. Doctor, Registered Nurse, Emergency Medical Technician, etc.);

(ix) A caretaker's residence may be established in conjunction with a youth camp if no other dwelling exists on the subject property.

(i) A proposed youth camp shall comply with the following fire safety requirements:

(i) The fire siting standards in LC 16.211(8)(c) and (e) above;

(ii) A fire safety protection plan shall be developed for each youth camp that includes the following:

(aa) Fire prevention measures;

(bb) On site pre-suppression and suppression measures; and

(cc) The establishment and maintenance of fire safe area(s) in which camp participants can gather in the event of a fire.

(iii) Except as determined under LC 16.211(11)(i)(iv) below, a youth camp's on-site fire suppression capability shall at least include:

(aa) A 1,000-gallon mobile water supply that can access all areas of the camp; and

(bb) A 30-gallon-per-minute water pump and an adequate amount of hose and nozzles; and

(cc) A sufficient number of fire fighting hand tools; and

(dd) Trained personnel capable of operating all fire suppression equipment at the camp during designated periods of fire danger.

(iv) An equivalent level of fire suppression facilities may be determined by the Approval Authority. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF) Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies, and consultation with ODF personnel if the camp is within an area protected by the Oregon Department of Forestry and not served by a local structural fire protection provider;

(v) The provisions of LC 16.211(11)(i)(iv) above may be waived by the Approval Authority if the youth camp is located in an area served by a structural fire protection provider and that provider informs the governing body in writing that on-site fire suppression at the camp is not needed.

(j) The Approval Authority shall require as a condition of approval of a youth camp, that the land owner of the youth camp sign and record in the deed records for the county a document binding the land owner, or operator of the youth camp if different from the owner, and the land owner's or operator's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(12) Telecommunication Facilities. Telecommunication facilities are allowed subject to compliance with the requirements of LC 16.264 and with applicable requirements elsewhere in LC Chapter 16 including but not necessarily limited to: the riparian vegetation protection standards in LC 16.253; Floodplain Combining Zone (LC 16.244); Willamette Greenway Development Permits (LC 16.254); the Coastal Resource Management Combining Zones (LC 16.234, 16.235, 16.236, 16.237, 16.238, 16.239, 16.240, 16.241, 16.242, or 16.243); Federal or State of Oregon inventories and regulations applicable to delineated wetlands and waters of the nation or state; the Commercial Airport Safety Combining Zone (LC 16.245) and the Airport Safety Combining Zone (LC 16.246); and the Sensitive Bird Habitat protection Standards and Criteria in LC 16.005(4). *(Revised by Ordinance 7-87, Effective 6.17.87; 18-87, 12.25.87; 12-90, 10.11.90; 11-91A, 8.30.91; 10-92, 11.12.92)*

Ord. No. 5-02 Findings Exhibit "B"
Attachment 2

"Table of Cross References from the Proposed Requirements in LC 16.211 indicated in **bold print** to the Corresponding Requirements in the State Laws For Lands in Lane County Zoned Impacted Forest Land (F-2, RCP) indicated in {brackets}"

(1) **Purpose**. {changed for consistency with OAR 660-006 & ORS 215.700-.755}

(2) **Permitted Uses**. {Uses permitted outright in forest zones: OAR 660-006-0025(2)}
- **(a)** {no change, consistent with OAR 660-006-0025(2)(a)}
- **(b)** {no change, consistent with OAR 660-006-0025(2)(b)}
- **(c)** {changed for consistency with OAR 660-006-0025(2)(c)&(d)}
- **(d)** {no change, consistent with OAR 660-006-0025(3)(b) & ORS 215.203(2)(a)}
- **(e)** {no change, consistent with OAR 660-006-0025(3)(f)}
- **(f)** {no change, consistent with OAR 660-006-0025(3)(g)}
- **(g)** {no change, consistent with OAR 660-006-0025(3)(i)}
- **(h)** {changed for consistency with OAR 660-006-0025(3)(j), Enrolled SB 724}
- **(i)** {no change, consistent with OAR 660-006-0025(3)(m)}
- **(j)** {no change, consistent with OAR 660-006-0025(3)(o)}
- **(k)** {added for consistency with OAR 660-006-0025(3)(q)}
- **(l)** {added for consistency with Enrolled HB 3564 Sec. 9, "ORS 215.802")
- **(m)** {changed for consistency with OAR 660-006-0025(3)(h), ORS 215.213(1)(m)-(p)}

(3) **Special Uses** {OAR 660-006-0025(4)-(5)}
- **(a)** {no change, consistent with OAR 660-006-0025(4)(b)}
- **(b)** {no change, consistent with OAR 660-006-0025(4)(c)}
- **(c)** {changed for consistency with OAR 660-006-0025(4)(f)}
- **(d)** {changed for consistency with OAR 660-006-0025(4)(f)}
- **(e)** {changed for consistency with OAR 660-006-0025(4)(h) & Proposed LC 16.264}
- **(f)** {no change, consistent with OAR 660-006-0025(4)(i)}
- **(g)** {changed for consistency with OAR 660-006-0025(4)(j)}
- **(h)** {no change, consistent with OAR 660-006-0025(4)(k)}
- **(i)** {no change, consistent with OAR 660-006-0025(4)(l)}
- **(j)** {no change, consistent with OAR 660-006-0025(4)(m)}
- **(k)** {no change, consistent with OAR 660-006-0025(4)(o)}
- **(l)** {changed for consistency with OAR 660-006-0025(4)(q)}
- **(m)** {no change, consistent with OAR 660-006-0025(4)(r)}
- **(n)** {changed for consistency with OAR 660-006-0025(4)(s), ORS 215.448}
- **(o)** {changed for consistency with OAR 660-006-0025(4)(t), ORS 215.213(1)(e)(B), Enrolled HB 3810}
- **(p)** {no change, consistent with OAR 660-006-0025(4)(u)}
- **(q)** {changed for consistency with OAR 660-006-0025(4)(v), ORS 215(2)(q)-(s)}

(r) {changed for consistency with OAR 660-006-0025(4)(w), OAR 660-006-0029, OAR 660-006-0035}
(s) {no change, consistent with OAR 660-006-0025(4)(x)}
(t) {no change, consistent with OAR 660-006-0025(3)(a)}
(u) {changed for consistency with OAR 660-006-0025(3)(c)}
(v) {no change, consistent with OAR 660-006-0025(3)(d)}
(w) {no change, consistent with OAR 660-006-0025(3)(e)}
(x) {no change, consistent with OAR 660-006-0025(3)(k)}
(y) {no change, consistent with OAR 660-006-0025(3)(l)}
(z) {no change, consistent with OAR 660-006-0025(4)(a)}
(a-a) {changed for consistency with OAR 660-006-0025(4)(d)}
(b-b) {no change, consistent with OAR 660-006-0025(4)(g)}
(c-c) {no change, consistent with OAR 660-006-0025(4)(n)}
(d-d) {no change, consistent with OAR 660-006-0025(4)(p)}
(e-e) {added for consistency with OAR 660-006-0025(4)(y), ORS 433.763}
(f-f) {added for consistency with OAR 660-006-0031}

(4) (a) Lawfully Existing Dwelling {added for consistency with OAR 660-006-0025(1)(d), ORS 215.755(1)}
  (i) {added for consistency with ORS 215.402(4)}
  (ii) {added for consistency with ORS 215.755(1)(a)-(d)}
  (iii) {added for consistency with ORS 215.402(4) (not a "permit" or "discretionary")}
  (iv) {added for consistency with ORS 215.755(1)(e)}
  (v) {added for consistency with Enrolled SB 724 Sec. 2}
  (vi) {added for consistency with OAR 660-006-0025(4)(t)}
(b) (i) {added for consistency with ORS 215.402(4)}
  (ii) {added for consistency with ORS 215.755(1)(a)-(d)}
  (iii) {added for consistency with ORS 215.755(1)(e)}
  (iv) {added for consistency with Enrolled SB 724 Sec. 2}
  (v) {added for consistency with OAR 660-006-0025(4)(t)}

(5) Template Dwelling. {added for consistency with OAR 660-006-0027(1)(f), ORS 215.750}
(a) {added for consistency with OAR 660-006-0027(1)(i), ORS 215.750, OAR 660-006-0027(5)(a)}
(b) {added for consistency with OAR 660-006-0027(1)(f), ORS 215.750}
(c) {added for consistency with OAR 660-006-0027(f)}
  (i) added for consistency with {added for consistency with OAR 660-006-0027(1)(f)(A), ORS 215.750(1)(a), OAR 660-006-0027(1)(h), ORS 215.750(3), OAR 660-006-0027(2), ORS 215.750(5)}
  (ii) {added for consistency with OAR 660-006-0027(1)(f)(B), ORS 215.750(1)(b), OAR 660-006-0027(1)(h), ORS 215.750(3), OAR 660-006-0027(2), ORS 215.750(5)}

(iii) {added for consistency with OAR 660-006-0027(1)(f)(C), ORS 215.750(1)(c), OAR 660-006-0027(1)(h), ORS 215.750(3), OAR 660-006-0027(2), ORS 215.750(5)}

(d) {added for consistency with OAR 660-006-0027(4)(b), OAR 660-006-0029(5)(a)-(d), ORS 215.730(1)(a)(B)}

(e) {added for consistency with OAR 660-006-0027(4)(c) & ORS 215.705(1)(g)}

(f) {added for consistency with Enrolled SB 724 Sec. 2}

(g) {added for consistency with OAR 660-006-0029(5)(e) & ORS 215.293}

(6) **Lot of Record Dwelling.** {added for consistency wit OAR 660-006-0027(1) & ORS 215.705 & .720}

(a) {added for consistency with OAR 660-006-0027(1)(b)}

(b) {added for consistency with OAR 660-006-0027(5)(a) & ORS 215.010(2)}

(c) {added for consistency with OAR 660-006-0027(5)(b) & ORS 215.720(2)}

(d) {added for consistency with OAR 660-006-0027(1)(a)(A) & ORS 215.705(1)(a)}

(e) {added for consistency with OAR 660-006-0027(1)(a)(B) & ORS 215.705(1)(b)}

(f) {added for consistency with OAR 660-006-0027(1)(a)(C)}

(g) {added for consistency with OAR 660-006-0027(1)(c)(A), ORS 215.720(1)(a), ORS 368.001(5)}

(h) {added for consistency with OAR 660-006-0027(1)(d)(B)}

(i) {added for consistency with OAR 660-006-0027(4)(b), OAR 660-006-0029(5)(a)-(d), ORS 215.730(1)(a)(B)}

(j) {added for consistency with Enrolled SB 724 Sec. 2}

(k) {added for consistency with OAR 660-006-0029(5)(e) & ORS 215.293}

(7) **Large Tract Dwelling.** {added for consistency with OAR 660-006-0027(1) & ORS 215.730 & .740}

(a) {added for consistency with OAR 660-006-0027(1) & ORS 215.705 & .720} OAR 660-006-0027(5)(a), ORS 215.010(2)}

(b) {added for consistency with OAR 660-006-0027(1) & ORS 215.705 & .720} OAR 660-006-0027(1)(e), ORS 215.740}

(c) {added for consistency with OAR 660-006-0027(1) & ORS 215.705 & .720} OAR 660-006-0027(1)(e)(B) & (5)(a), ORS 215.740}

(d) {added for consistency with OAR 660-006-0027(1) & ORS 215.705 & .720} OAR 660-006-0027(1)(e)(B) & (6), ORS 215.740(c)}

(e) {added for consistency with OAR 660-006-0027(1) & ORS 215.705 & .720} OAR 660-006-0027(4)(b), OAR 660-006-0029(5)(a)-(d), ORS 215.730(1)(a)(B)}

(f) {added for consistency with OAR 660-006-0027(1) & ORS 215.705 & .720} Enrolled SB 724 Sec. 2}

(g) {added for consistency with OAR 660-006-0029(5)(e) & ORS 215.293}

(8) **Siting Standards for Dwellings, Structures and Other Uses.** {Modified as indicated below and overall consistent with OAR 660-006-0035 & -0040, Ord 12-90 (Finding 4E), Ord. 11-91A (Findings 1-5), Ord. 17-91 (Finding 3)}

(a) Setbacks.
  (i) {changed for consistency with OAR 660-006-0029(2) & 660-006-0035(5)}
  (ii) {no change, consistent with OAR 660-006-0029(1)(c)}
  (iii) {changed for consistency with OAR 660-006-0029(1)(a)-(b) & LC 16.211(8)(c)}
  (iv) {no change, consistent with Goal 5 until periodic next review}
  (v) {changed for consistency with LC 16.211(8)(a)-(d)}
(b) {no change, consistent with OAR 660-006-0029(1)(c)}
(c) {minor word changes for consistency with OAR 660-006-0035}
  (i) {change for consistency with OAR 660-006-0035(3), ORS 215.730(1)((b)(G)}
    (aa) {change for consistency with OAR 660-006-0035(5)}
    (bb) {no change}
  (ii) {added for consistency with OAR 660-006-0035(1) & ORS 215.730(1)&(2)}
    (aa) {added for consistency with OAR 660-006-0035(1) & ORS 215.730(1)&(2)}
    (bb) {added for consistency with OAR 660-006-0035(1) & ORS 215.730(2)(a), (b)}
    (cc) {added for consistency with OAR 660-006-0035(1), ORS 215.730(1)(b)(C)}
    (dd) {added for consistency with OAR 660-006-0035(1) & ORS 215.730(2)(b)}
  (iii) {changed for consistency with OAR 660-006-0035(4)&(6) & ORS 215.730(1)(b)(A)&(F)}
(d) {changed for consistency with OAR 660-006-0029(3)}
(e) {minor changes for consistency with OAR 660-006-0035(2) & (3), OAR 660-006-0040}
  (i) {no changes, consistent with OAR 660-006-0035(2) & (3), OAR 660-006-0040}
  (ii) {housekeeping changes consistent with practice and OAR 660-006-0035(2) & (3), OAR 660-006-0040}
  (iii) {housekeeping changes consistent with practice and OAR 660-006-0035(2) & (3), OAR 660-006-0040}
  (iv) {housekeeping changes consistent with practice and OAR 660-006-0035(2) & (3), OAR 660-006-0040}
  (v) {no changes}
  (vi) {housekeeping changes consistent with practice and OAR 660-006-0035(2) & (3), OAR 660-006-0040}
  (vii) {housekeeping changes consistent with practice and OAR 660-006-0035(2) & (3), OAR 660-006-0040}

(9) **Other Development Standards.** {No changes, Goal 5 until next periodic review}

(10) Area. {Revised completely to comply with OAR 660-006-0026(1)(a), ORS 215.780(1)(c)}

(a) {OAR 660-006-0026(2)(c), ORS 215.780(2)(d)}

(i) {added for consistency with OAR 660-006-0026(2)(c)},

(ii)-(v) {added for consistency with OAR 660-006-0026(2)(c) , ORS 215.780(2)(d)(A),(B)&(D)}

(vi) {added for consistency with ORS 215.780(2)(d)(C)}

(vii) {added for consistency with OAR 660-006-0026(4) & ORS 215.780(5)}

(viii) {added for consistency with ORS 92.012}

(b) {added for consistency with OAR 660-006-0026(2)(a), OAR 660-060-0025(5)}

(i) {added for consistency with OAR 660-006-0026(2)(a)}

(ii) {added for consistency with OAR 660-006-0026(2)(a)}

(iii) {added for consistency with OAR 660-006-0026(4) & ORS 215.780(5)}

(iv) {added for consistency with ORS 92.012}

(c) {added for consistency with OAR 660-006-0026(2)(b)(A), ORS 215.780(2)}

(i) {added for consistency with OAR 660-006-0026(2)(b)(B), ORS 215.780(2)(b)(A)}

(ii) {added for consistency with OAR 660-006-0026(2)(b)(B), ORS 215.780(2)(b)(B)}

(iii) {added for consistency with OAR 660-006-0026(2)(b)(C)(i)-(ii), ORS 215.780(2)(b)(C)}

(iv) {added for consistency with OAR 660-006-0026(3)(a)&(b), ORS 215.780(2)(D) & (4)(a)-(b)}

(v) {added for consistency with OAR 660-006-0026(4), ORS 215.780(5) }

(vi) {added for consistency with ORS 92.012}

(vii) {added for consistency with OAR 660-006-0026(3)(c), ORS 215.780(4)(c)}

(d) {added for consistency with Enrolled SB 715 Section 1: "ORS 215.780(2)(e)(A)"}

(i) {added for consistency Enrolled SB 715 Section 1: "ORS 215.780(2)(e)(A)"}

(ii) {added for consistency Enrolled SB 715 Section 1: "ORS 215.780(2)(e)(B)"}

(iii) {added for consistency Enrolled SB 715 Section 1: "ORS 215.780(2)(e)(C)"}

(iv) {added for consistency Enrolled SB 715 Section 1: "ORS 215.780(2)(e)(D)"}

(v) {added for consistency Enrolled SB 715 Section 1: "ORS 215.780(2)(e)(E)"}

(vi) {added for consistency Enrolled SB 715 Section 1: "ORS 215.780()(e)(E)"}

(11) Youth camps. {added for consistency with OAR 660-006-0031(1)-(4)}

(a) {added for consistency with OAR 660-006-0031(4)(a)}
(b) {added for consistency with OAR 660-006-0031(4)(b) & OAR 660-06-0025(5)(a)}
(c) {added for consistency with OAR 660-006-0031(4)(c)}
(d) {added for consistency with OAR 660-006-0031(4)(e)}
(e) {added for consistency with OAR 660-006-0031(4)(f)}
(f) {added for consistency with OAR 660-006-0031(4)(g)}
(g)
(i) {added for consistency with OAR 660-006-0031(5)(B)}
(ii) {added for consistency with OAR 660-006-0031(5)(b)}
(iii) {added for consistency with OAR 660-006-0031(5)(c)}
(h)
(i) {added for consistency with OAR 660-006-0031(6)(a)}
(ii) {added for consistency with OAR 660-006-0031(6)(b)}
(iii) {added for consistency with OAR 660-006-0031(6)(c)}
(iv) {added for consistency with OAR 660-006-0031(6)(d)}
(v) {added for consistency with OAR 660-006-0031(6)(e)}
(vi) {added for consistency with OAR 660-006-0031(6)(f)}
(vii) {added for consistency with OAR 660-006-0031(6)(g)}
(viii) {added for consistency with OAR 660-006-0031(6)(h)}
(ix) {added for consistency with OAR 660-006-0031(6)(i)}
(i)
(i) {added for consistency with OAR 660-006-0031(7)(a)}
(ii) {added for consistency with OAR 660-006-0031(7)(b)}
(iii) {added for consistency with OAR 660-006-0031(7)(c)}
(iv) {added for consistency with OAR 660-006-0031(7)(d)}
(v) {added for consistency with OAR 660-006-0031(7)(e)}
(j) {added for consistency with OAR 660-006-0031(8)}

(12) **Telecommunication Towers** {adopted April 10, 2002 by Ordinance No. 4-02, includes minor housekeeping changes}

SERSLEV Rachel

From:	Jim Belknap <jim.e.belknap@gmail.com>
Sent:	Thursday, December 5, 2019 8:09 AM
To:	SERSLEV Rachel; Michael E. Farthing; Gray Goodman
Subject:	509-PA19-05298 Reopened
Attachments:	NIMPKISH PA19-05298, Request for 45 Day Extension.pdf

[EXTERNAL ☐]

Rachel,
Attached is a request to Extend the Statutory Timeline Requirements for 45 days with regards to PA19-05298.
Please let me know if you have any questions.
Jim

--
Jim Belknap
Principal Broker
Belknap Properties, LLC
P. O. Box 362
Cottage Grove, OR 97424
541-954-2944 Cell
541-942-1653 Fax

LAND MANAGEMENT DIVISION

Waiver/Extension of Statutory Timeline Requirements

Instructions: To waive or extend the statutory timeline requirements applicable to your land use application, please complete, sign, date, and return this form to the address listed below.

I, James E. Belknap, as owner or authorized representative of the owner of
Applicant (Print Name)

the property known as Assessor's Map and Tax Lot(s) 509-PA19-05298

that is the subject of the land use application Department File Number _____

and is the subject of this request, do hereby voluntarily waive or extend **(Check Only One Box):**

☐ the statutory timeline requirements of ORS 215.427 and the associated right to seek mandamus as provided for by ORS 215.429(1) are hereby **waived**.

☒ the statutory timeline requirements of ORS 215.427 are **extended** for

Forty-five (45) days[1] in order to submit additional information.

(Enter Number of Calendar Days)

James E Belknap
Signature (Applicant/Owner)

12/2/19
Date Signed

Return to: **Lane County – Public Works**
Land Management Division
3050 N. Delta Hwy.
125 E. 8th Avenue
Eugene, OR 97408

[1] Per ORS 215.427(5), the total period of time an application can be put on hold and final action timeline extended by an applicant may not exceed 215 days.

(Version 3/2013)

SERSLEV Rachel

From: SERSLEV Rachel
Sent: Tuesday, December 3, 2019 9:02 AM
To: DARNIELLE Gary L; SEGEL-VACCHER Lauri (SMTP); Jim Belknap; FARTHING Michael (SMTP); Gray Goodman; Sean Malone; GERI BETZ; michael@kaengineers.com; Andrew Mulkey
Subject: RE: Nimpkish PA19-05298 Open Record Response

FYI - The record has been re-opened and will close for new evidence on December 19, will close for response to new evidence on January 16, and will close for final rebuttal by the applicant on January 23.

Thank you,
Rachel

From: DARNIELLE Gary L [mailto:GDARNIELLE@lcog.org]
Sent: Tuesday, December 3, 2019 8:25 AM
To: SERSLEV Rachel; SEGEL-VACCHER Lauri (SMTP); Jim Belknap; FARTHING Michael (SMTP); Gray Goodman; Sean Malone; GERI BETZ; michael@kaengineers.com; Andrew Mulkey
Subject: RE: Nimpkish PA19-05298 Open Record Response

[EXTERNAL]

Parties to PA 19-05298:

Apologies for this late response. I have approved the requested extension in the record in this matter. Mr. Farthing's submission will not be considered as his final argument.

Gary Darnielle
Lane County Hearings Official

From: SERSLEV Rachel <rachel.serslev@lanecountyor.gov>
Sent: Thursday, November 21, 2019 4:20 PM
To: SEGEL-VACCHER Lauri (SMTP) <fourhope@comcast.net>; Jim Belknap <jim.e.belknap@gmail.com>; FARTHING Michael (SMTP) <mefarthing@yahoo.com>; Gray Goodman <ghyrax@gmail.com>; Sean Malone <seanmalone8@hotmail.com>; GERI BETZ <landplancon@comcast.net>; michael@kaengineers.com; Andrew Mulkey <andrew@friends.org>
Cc: DARNIELLE Gary L <GDARNIELLE@lcog.org>
Subject: Nimpkish PA19-05298 Open Record Response

Dear parties of record,

Please find attached the submittals for the open record response period closing today at 4pm for dept. file no. 509-PA19-05298, Nimpkish.

Thank you,

Rachel Serslev, Planner, CFM
Lane County Land Management Division

3050 N. Delta Hwy, Eugene, OR 97408
541-682-6903 | rachel.serslev@lanecountyor.gov

Additional Information Submitted

Date Stamp
RECEIVED
DEC 02 2019

Submitted By: Michael Farthing
Phone Number: 541-683-1950
Email Address: mefarthing@yahoo.com
Project Address: _____

Permit Number (BP, PA, SP, SI): _____
Submittal Description: APPLICANTS FINAL REBUTTAL

PA19-05298
ATTEN: Rachel Sersler

Type of Submittal:

☐ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other: _____
☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: RACHEL SERSLEV- BY REQUEST, DEANNA HAS BEEN WORKING ON THIS TOO THOUGH Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swm 12/26/2018

Michael E. Farthing

Attorney at Law

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

Office: 541-683-1950 ◊ Fax: 541-654-5083

email: mefarthing@yahoo.com

December 2, 2019

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **509-PA-05298 (Nimpkish LLC)**
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County
Applicant's (Nimpkish LLC) Final Rebuttal

Mr. Darnielle,

Please enter this letter into the record of the above-referenced appeal that I am submitting on behalf of the applicant, Nimpkish LLC., and in support of the Director's decision and findings.

The appellant, Landwatch, through its attorney, Sean Malone, submitted a letter with exhibits, dated November 21, 2019, as its final response to the Nimpkish template dwelling application. On the same date, Andrew Mulkey, staff attorney for 1000 Friends of Oregon, also submitted a letter with exhibits as its final response to the Nimpkish application. I will respond to both letters and their various exhibits. Mr. Belknap, in a separate submission, has responded to these letters.

It should be noted that the Hearings Official has denied our request that the record be reopened to allow additional evidence, including, but not limited to, County and LCDC records relating to Lane County's Goal 5 Acknowledgment of Compliance. We object to that denial on the ground that the record had closed to new evidence when this issue was first raised by LandWatch.

Overview

To introduce my final response to LandWatch's and 1000 Friends objections to this application, it is important to point out that those most recent arguments have very little to do with the template dwelling criteria set forth in LC 16.211(5) and (8) as well as the corresponding provisions in ORS and LCDC regulations. Mr. Malone has moved far afield and is now openly speculating that perhaps after LCDC's acknowledgment of the County's comprehensive plan, including the highlighted Goal 5 and Goal 7 policies, in 1984, that thereafter, none of Lane County's subsequent land use decisions have been in conformity with new regulations, like OAR 660-023. From that unsubstantiated claim, Mr. Malone proceeds to elevate dicta in a LUBA decision to a definitive statement about why your *Evans/Betz* decision is no longer valid. After a puzzling reference to the Cerro Gordo experience, he relapses into another long discussion of Goal 5's 1984 Flora and Fauna Policy 11 and how that somehow relates to overall residential density. This is followed by a criticism of Mr. Remboldt's report. The template dwelling criteria and siting standards are not mentioned.

Mr. Mulkey makes no attempt to address the template criteria either but, instead, cites *Cattoche v Lane County*, (LUBA No. 2018-109, Opinion May 22, 2019) and LUBA comments in that decision about Policy 11. He concludes with a confusing explanation of slopes that is troubled, to say the least, as Mr. Balknap explains in detail.

What is most apparent after carefully reading these missives is that neither gentleman cites any meaningful or relevant authority for their various objections and claims. The *Cattoche* decision is the closet thing to relevant caselaw only because it discusses Policy 11, but even then only tangentially as it related to the main issue, which involved the shortcomings of the County's ESEE analysis. *Cattoche* at 23-24. That analysis has nothing to do with a site-specific land use decision, like the Nimpkish template dwelling application, that starts and ends with a single lawfully-created unit of land. Aside from that, they do not offer any legal precedent or authority to support their various positions. It is unconstrained speculation about how these organizations would like the law to be rather than how it actually is.

Malone Letter (11-21-19)

At the outset, it is important to note what neither Mr. Malone nor Mr.

Mulkey is addressing to which is our previous response to the "tract" argument that was laid out in Mr. Mulkey's November 7 letter. That argument is missing from these final responses perhaps, in part, because they could not conjure up any additional rationale and, also, because our November 7 responses (mine and Mr. Belknap's) were so conclusive that they have elected not to go any further on that topic.

As we stated in our earlier submissions, there is a significant legal difference between "owner"/"ownership" and "under the control of". "Owners" sign deeds and other legal documents that relate to or require fee ownership of real property. The term "under the control of" can include many more legal or non-legal (permissive) arrangements that generally relate to some ~~should~~ right to WREF. participate in the management of an area of real property. It might be based on some form of ownership, deeded or otherwise, or it could be some form of oral agreement that has been confirmed with conduct and longevity. Whatever "under the control of" is in a particular circumstance, it does not equate to "owner" in the real property and legal sense.

With that reminder, I would also like to commend and adopt, as my own, Mr. Belknap's detailed final response to Mr. Malone's and Mr. Mulkey's letters. It is thorough and personal and accentuates the desperation of LandWatch's and 1000 Friends' arguments.

Several matters he addressed provided context and perspective to what Lane County did back in 1984 to receive Acknowledgment from LCDC for its comprehensive plan, including Goal 5, Flora & Fauna Policy 11. His analysis of the acreages that were assigned F-1 and F-2 zoning highlighted some significant facts. First, and perhaps must startling, is that 84% of Lane County is zoned F-1 and residences are prohibited. This single fact, alone, addresses any and all concerns that Mr. Malone and Mr. Mulkey have attempted to raise regarding ODFW's overall density recommendations. Beyond that, the same F-1 zoning that prohibits residences is applied to 94.4% of <u>all</u> of Lane County's designated forest land. Using these numbers, which he acknowledges are just numbers, but they are ODFW's numbers (one unit per 80 acres for Major Big Game Range), and the F-1 prohibition on residences, more than 32,000 residences could be placed in the F-2 zone. Is this what LandWatch is suggesting should occur? In fact, as it stands now, the F-2 template dwelling criteria does cluster new residences in existing areas of limited residential development within the F-2 zone.

It was also good for Mr. Belknap to provide his local input regarding Mr.

Malone's Cerro Gordo reference. That development was unique for innumerable reasons but all based on Mr. Canfield's conduct and blatant disregard for the law and, in particular, County and State land use laws. Thankfully, things were eventually resolved in the courts and on the ground. For this appeal, Cerro Gordo offers no guidance or relevance.

Finally, Mr. Belknap's discussion of the difference between degrees and percentages for slope calculations was very helpful. I did not understand what Mr. Mulkey was attempting to argue but now, with Mr. Belknap's explanation, I know that "percent of grade" is what we use for template dwellings, not "angle of slope".

Again, Mr. Belknap's response provides a complete look at how this building site was selected and evaluated within the F-2 template dwelling and siting standards criteria. A licensed geotechnical engineer was hired to provide a preliminary assessment and he found no significant landslide hazard for the development site. There is nothing more to analyze until a specific structure is proposed.

With all that introduction, I will address Mr. Malone's uncaptioned letter roughly in the order it was presented with my own headings and a reference to the corresponding page in Mr. Malone's letter.

OAR 660-16-000 v. OAR 660-023-0000 (p 1)

Mr. Malone's first argument in his final response is:

> "Again, it is an open issue as to whether the comprehensive plan has been acknowledged to comply with the administrative rules implementing the current version of Goal 5 and the forest template dwelling statute."

p1. This is after Mr. Malone chastises me for overlooking the fact that the Goal 5 administrative rules that were referenced in LCDC's 1984 Acknowledgment Order were set forth in OAR 660-16-000 and then were replaced in 1996 with new Goal 5 rules in OAR 660-023-0000.

In direct response to Mr. Malone's quoted statement, No!, it is not an "open issue" as to whether Lane County's Goal 5 policies, not to mention the Goal 5

policies for the other thirty-five counties in Oregon, have been acknowledged to be consistent with the "new" Goal 5 rules in OAR 660-023-0000. ORS 197.245 outlines a process for new regulations to be addressed by local governments when a new rule is adopted by LCDC. The statute requires LCDC to identify how the new rule might affect land use decisions and a timetable whereby the new rule must be addressed by the local government. This statute, in some form, has been in place since 1973 and most recently amended in 1995. It was followed by Lane County and DLCD when the new Goal 5 rules were adopted in 1996 because if it had not, there would have been obvious and public notice, in some form or another, that Lane County was not following the law.

The point is that there are long-time, well-established statutory procedures whereby all of Oregon's local governments are required to address and possibly react, i.e. adopt new land use ordinances, to address new or amended goals and regulations that are adopted by LCDC. The new Goal 5 rule in OAR 660-023-0000 was adopted in 1996 and has not been amended since according to the legislative history in the rule. That means Lane County and the other thirty-five counties and all the cities in Oregon had to at least recognize the adoption of the new rules and react, even if that was to not react because the new rule did not apply. Certainly, the new Goal 5 rules applied to Lane County and I am certain Lane County reacted in the manner required by LCDC rules and ORS after which LCDC, primarily through its staff, responded to whatever Lane County said or did.

At this point, and for this appeal, Mr. Malone is raising this issue for the first time. We believe it is, at best, groundless and careless speculation. We believe it is a certainty that Lane County properly and legally addressed the new rules eventually receiving whatever "acknowledgment" the then-required process produced. We (Mr. Belknap and I) offered to reopen the record in order to go through Lane County and LCDC/ DLCD records to produce for this record the County's statutory consideration of the new Goal 5 rules adopted in 1996. Again, that request was denied and we believe that denial is procedural error that denies us the ability to respond to new allegations of error. Please open the record so all parties may sift through the relevant records.

We do not believe that is necessary, however, because we believe there is a presumption that you, as Hearings Official, can make which is that Lane County, DLCD and LCDC all performed their statutorily-required functions and legally and completely addressed the new Goal 5 rules in 1996. In turn, this means Lane County Goal 5 policies and procedures have been acknowledged to be in compliance with LCDC's 1996 Goal 5 rules as all of Lane County Chapter 16 was

acknowledged, including the forest template provisions in LC 16.211(5) and (8). Mr. Malone offers nothing that contradicts this conclusion.

OAR 660-066-0025(6) (p 1-2)

Mr. Malone begins this paragraph with his earlier argument that OAR 660-006-0025(6) somehow requires 1984 Goal 5, Flora & Fauna Policy 11 to apply directly to this application and further require that the application be denied. As has been stated in earlier submissions and no doubt will be repeated in the future, that argument is preposterous. Mr. Malone does not attempt to provide any additional support for this "interpretation" of Policy 11, but does manage to refer to the Oregon Supreme Court decision that confirmed Lane County's plan acknowledgment *1000 Friends v. LCDC (Lane County)* 752 P2d 271 (1988). There is no apparent or relevant reason for Mr. Malone to cite this case other than to say the decision did not say something it was not required to address.

***Evans/Betz* (p 2)**

Mr. Malone then segues into an assertion that the *Evans/Betz* decision about Goal 5 is no longer relevant because of LUBA's brief reference to Policy 11 in *Cattoche*. Of course, we previously noted that *Cattoche* involved a plan amendment and not a template dwelling permit which Mr. Malone now readily acknowledges. Instead, he has now changed his reliance on *Cattoche* to LUBA's dicta when it briefly addressed Policy 11 in the Goal 5 Working Paper. Like other arguments he makes, he does not provide any rationale or analysis for why *Cattoche* is still important but instead, criticizes me for not addressing his new, nuanced argument about why *Cattoche* is important. In the end, your rationale in *Evan/Betz*, that is supported by the Howe and Mann statements, gives the clearest and most complete response to LandWatch's and 1000 Friend's claims about the applicability of Policy 11 to template dwelling applications.

Howe and Mann Letters (p 2-3)

Not to be dissuaded, Mr. Malone then provides a quick critique of the Howe and Mann letters including a personal jab at Mr. Howe's credibility (fn1, p2) that is most likely based on LandWatch's inability to convince Mr. Howe when he was Director, that their interpretations of Lane Code should be implemented. Those statements stand uncontradicted and establish the context in which and by which Lane County's Goal 5 policies were acknowledged by LCDC to be in compliance with Statewide Planning Goals in September, 1984. Lane County did so by

prohibiting residences on 84% of Lane County and the Howe and Mann statements explain Lane County's justification and rationale for doing so at that time. As I asserted in a previous letter, it was a safe harbor before there were safe harbors because it resulted in so much of the County being prohibited from having residences.

Mr. Malone does not say anything relevant or meaningful in his reference to the Howe and Mann letters. P2-3. His reference to "Policy II" is surely a misprint and is readily clarified by Mr. Howe's reference to Flora and Fauna Policies 9, 10 and 11. The generalized ODFW density recommendations were the subject of the Howe and Mann letters at all times.

Cerro Gordo (p 3)

On page 3, Mr. Malone refers to a portion of the 1984 LCDC Acknowledgment Order that gave acknowledgment to the 600-acre Cerro Gordo development. Mr. Belknap's response to this discussion is especially accurate coming from someone who was in the community at the time Cerro Gordo was unfolding. It was a special set of circumstances that could only be finally resolved, as Mr. Belknap notes, in circuit court. It has no relevance to this appeal or the Nimpkish application because, if for no other reason, it involved the creation of additional lots much like the plan amendment in *Cattoche*. Creation of new lots for residences is significantly different than permitting residences on existing lots as is the case with template dwellings. LandWatch continues to struggle with this concept.

Policy 11 (p 4)

Mr. Malone concludes this portion of his response by quoting the now famous Policy 11 and, claims it restricts all new residences within Major and Peripheral Big Game Ranges in Lane County to compliance with the 40 or 80 acre minimum densities recommended by ODFW. Again, Policies 9, 10 and 11 were completely addressed with what I believe could be referred to as the "Grand Cluster" compromise that prohibited new residences on 94.4% of Lane County's designated forest land. With that, even within the F-2 zoning district both before and after the enactment of the forest template dwelling provisions, clustering of residences has been required. The date of reckoning for counting a lawful lot and dwelling for the template dwelling standards is still January 1, 1993. There can be no expansion of F-2 template dwelling clusters. The amount of lots and dwellings

in the F-2 zone is fixed as of that date. In other words, the density is finite unless something occurs, e.g. plan amendment and zone change, which seeks to increase the number of residential lots.

Goal 5 ESEE Process (p 4-5)

At the bottom of page 4, Mr. Malone begins a new tack in which he assumes we are correct about the template provisions providing the only applicable criteria for template dwellings, after which he begins a rambling and disjointed argument that is based on his ungrounded and unsupported assertion (if that is the correct word) that Lane County's template dwelling criteria and siting standards are not in compliance with Goal 5. His assertion has nothing to do with what actually happened in 1984 as reflected by the Howe and Mann letters and the simple fact that Lane County's Goal 5 program was acknowledged because residences were only allowed on a small portion of the County's designated forest land.

In the end, Mr. Malone's analysis doesn't make any sense but more importantly it goes off on tangents that gets further and further away from explaining how and why thirty-five year old Goal 5 policies, that were acknowledged by LCDC in 1984, have suddenly sprung to life and apply to a site specific land use application that makes no reference to any comprehensive plan policies, including Goal 5 Flora & Fauna policies relating to protection of Big Game Habitat.

After this rambling and extended paragraph that swirls around and through the 1984 Acknowledgment Order, and the adoption of the forest template dwelling statute in 1993, Mr. Malone concludes in the following paragraph:

> "Here, because minimum residential density is exceeded . . .".

Again, Mr. Malone throws out a conclusion about "minimum residential density" for which he has provided no evidence, legal analysis or even an opinion to support such a statement. A single residence is being approved on an existing legal lot that existed prior to January 1, 1993. Nothing has been increased or expanded, and particularly not the residential density. As stated previously LandWatch either doesn't understand this critical distinction or simply denies its existence.

Finally, this issue about the template dwelling provisions being in

compliance with the 1996 amended Goal 5 regulations in OAR 660-023-0000, is now being raised for the first time. As stated earlier, we are more than willing to agree to a limited extension of the record being left open so that Mr. Belknap and I, the LandWatch crew and staff can explore the records to establish the new Goal 5 rule's applicability in Lane County and particularly with regard to the template dwelling criteria.[1] It is obvious LandWatch has not made any attempt, to date, to locate the records addressing this issue. We do not believe it is relevant but again will defer to the Hearings Official for direction.

November 7, 2019 Staff Memo re: Goal 7 (p 5-6)

Beginning at the bottom of page 5, Mr. Malone takes issue with Staff's description of how they evaluate applications for construction in the identified hazard areas. This is what has occurred in this circumstance. There will be multiple decisions that eventually result in a residence being placed on Tax Lot 507. The decision to zone the property F-2 was what identified this property and the area it is located within as Impacted Forest Land as suitable for additional residences on existing legal lots.

The November 7 staff memo confirms that a specific residential proposal will trigger the Building Code's process for possibly requiring more than the preliminary evaluation that Mr. Remboldt provided. This is how Goal 7 should work in these identified high landslide hazard areas and this is what Ms. Serslev succinctly and clearly explains in the November 7 memo. Goal 7 has been and will be addressed completely when a more "specific" building proposal is presented at the building permit stage. Again, LandWatch has received, in the form of Mr. Remboldt's preliminary report, an opinion as to the feasibility of constructing a residence within the identified building site. There is nothing more to do at this stage of the process.

Remboldt Report (p6)

Mr. Malone's comments about Mr. Remboldt's October 31 report and conclusion are strained and inconsequential. Mr. Remboldt is a qualified, licensed

[1] In a brief phone conversation with Mr. Mann about the new 1996 Goal 5 rules, he said he recalled them being addressed without requiring too much change other than with regard to aggregate resources. His general recollection of the County's process was consistent with my earlier general description of how new LCDC rules are addressed by local government.

geotechnical engineer who has concluded that the "future hazard of landsliding is low and manageable" for this site. There's nothing more to evaluate at this time until a "specific" building is proposed with a building permit application. Mr. Belknap provides a detailed response to Mr. Malone's comments about Mr. Remboldt's report that concludes, based on the substantial evidence in the record, that we have fully complied with the siting standards for the template dwelling including appropriate and professional consideration of on-site soil and grade conditions. There are no landslide hazards "in a near the proposed building site."

MSF. significant

Mulkey November 21 Letter

Mr. Mulkey's November 21 letter on behalf of 1000 Friends of Oregon addresses the Goal 5 and Goal 7 issues one more time. In doing so, he ventures into slope descriptions and calculations to which Mr. Balknap provides a clarifying response. I will address each topic separately.

Goal 5

Mr. Mulkey, once again, latches on to the *Cattoche* decision and that decision's comments, in dicta, about density and Policy 11 (*Cattoche* 16-24). The subassignment of error in which this dicta appeared was actually sustained on the ground that the County's Goal 5 ESEE analysis did not satisfy the requirements of OAR 660-023-0250 as it examined conflicting uses to Goal 5 resources, i.e. Big Game habitat. Id at 23. LUBA's discussion about the Flora and Fauna Working Paper is based on whatever record and argument was before them at that time.

It is important to remember, however, that LUBA is addressing Policy 11 and Lane County's Goal 5 Flora and Fauna Working Paper <u>because</u> the subject of the appeal in that case was Lane County's approval of a plan amendment and zone change (Forest/F-2 to Non-resource/RR-5). As with Mr. Malone, Mr. Mulkey skips over that critical first step which is to explain how Policy 11, that was adopted by Lane County and acknowledged by LCDC in 1984 to have complied with Goal 5, can now be a decision criteria for a template dwelling application. Policy 11 (ODFW recommendations. . . shall be used to determine the allowable number of units within regions of the County) was considered and implemented by Lane County at the eleventh hour in the summer of 1984. The Howe and Mann letters provide the legislative history as to why the F-1 and F-2 zoning districts were drafted to exclude residences from such a significant area of the County. Neither Mr. Mulkey nor Mr. Malone have any contrary explanation as to why that occurred in 1984.

Policy 11 and the Goal 5 Flora and Fauna Working Paper have been fully implemented.

Goal 7

There's nothing more for me to say beyond Mr. Belknap's detailed and informative response.

Conclusion

This property meets and satisfies all of the applicable forest template dwelling criteria. LandWatch and 1000 Friends offer no credible analysis or evidence as to why this application should be denied. We urge you to affirm the Director's decision.

Sincerely,

Michael E. Farthing

Enclosure

c: Gary Darnielle (via email)
Rachel Serslev (via email)
Nimpkish LLC (via email)
Jim Belknap (via email)
Sean Malone (via email)
Andrew Mulkey (via email)

Additional Information Submitted

Date Stamp
RECEIVED
DEC 0 2 2019

Submitted By: Jim Belknap
Phone Number: 541-954-2941
Email Address: jim.e.belknap@gmail.com
Project Address:

Permit Number (BP, PA, SP, SI): ~~BP~~ 509-PA19-05298
Submittal Description: Final Rebuttal

Type of Submittal:

☐ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other:

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: RACHEL SEERSLEV Amount Due:

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swm 12/26/2018

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Gary Darnielle
Lane County Hearings Official
c/o Rachel Serslev, Planner
3050 North Delta Highway
Eugene, OR 97408

November 27, 2019

Personally Delivered December 2, 2019

Re: PA19-05298, Applicant's Final Rebuttal

Dear Mr. Darnielle:

A dozen years ago, or so, I had the opportunity to participate with a group of "stakeholders" in a committee to review our county's land use process. The group consisted of 15 people selected by our five County Commissioners and was comprised of land use attorneys, representatives of LandWatch Lane County and 1000 Friends of Oregon, oddly, a representative of a group called the Goal 1 Coalition who did not reside in Lane County, a representative of a major landholder and several land use consultants. At one of our meetings former County Commissioner Steve Cornacchia looked across the table at Robert Emmons, the President of LandWatch, and said, "Look me in the eye, Bob, and tell me your objective is anything other than a complete halt to the construction of houses in F2 zoned land."

Mr. Emmons crossed his arms, looked away, and said nothing.

That objective has been unchanged and the march to that goal has been unabated.

Now we are told that despite its use for 35 years, or 23 years depending on when one wants to start the calendar, "it is an open issue as to whether the comprehensive plan has been acknowledged to comply with the administrative rules implementing the current version of Goal 5 and the forest template dwelling statute."

Mr. Malone asserts that what escapes Mr. Farthing (counsel for the Applicant) "is that densities to protect big game were not incorporated into zoning..."

Gary Darnielle
PA19-05298
Applicant's Final Rebuttal
November 27, 2019

Mr. Malone disregards the precise wording from the Land Conservation and Development Commission in page 22 of their Acknowledgement of Compliance, dated September 13, 1984 (Exhibit A to my letter of November 6, 2019), the following:

> "The strength of their forest lands conservation program is the F-1 zone which prohibits the siting of all dwellings (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.
> The County's F-2 zone is applied to 145,356 acres of privately owned lands which consist, generally, of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands..."

While Mr. Mann and Mr. Howe note that the F-1 zoning is applied to 84% of the county's total land base, a more striking analysis is the proportion of forestland, 94.4% (2,449,775 / 2,595,131), that prohibits the placement of dwellings. The F2 zoned land encompasses 5.6% of the county's forest lands (145,356 / 2,595,131).

Mr. Malone asserts there has been no evidentiary showing of this data. To the contrary, we note that the numbers used are cited from Page 22 of the Land Conservation and Development Commission Acknowledgement of Compliance, Lane County, Dated September 13, 1984, again, Exhibit A to my letter of November 6, 2019. Mr. Malone chooses to ignore this submission as it tears at the underpinnings of his argument.

The 2,595,131 acres of forestland, divided by 80 acres (the most restrictive of proposals made by ODFW for residential density), would allow for 32,439 dwellings in the County's forest zoned lands. If that same number of dwellings was then limited to only the F2 zoned lands, which it effectively is as the F2 zoning is the only forest zone that allows for dwellings, the 145,356 acres divided by 32,439 dwellings would allow for one dwelling every 4.48 acres. (145,356 / 31,439 = 4.48)

In other words, as Mr. Malone likes to say, Lane County could allow a dwelling on every 4.48 acres of F2 zoned land and still support an <u>overall</u> density standard of only one dwelling on every 80 acres of forest zoned land in the county. If the peripheral big game habitat standard of one dwelling per 40 acres was incorporated the number of allowed dwellings would, of course, increase dramatically.

This analysis is simply mathematical, we do not comport to say that such an analysis should be adopted by the county, though Mr. Mulkey in his response attempts to gain some traction in trading on the Cattoche case with the comment from LUBA that "We observe that the F-2 zone does not provide a general residential density standard." That statement is, of course, factual. Lane County applies the Template Test to lawfully created units of land in reviewing the application for a forest zoned dwelling because the <u>overall</u> residential density question was fully resolved in 1984 in the adoption of the F1 zoning and its prohibition of dwellings.

Gary Darnielle
PA19-05298
Applicant's Final Rebuttal
November 27, 2019

It defies explanation to conclude that Lane County has not incorporated zoning protections for big game by limiting the number of dwellings in its forest zoned lands.

Having lived in the Cottage Grove area for the past 42 years I have watched with something of a morbid curiosity the development of the Cerro Gordo community. Mr. Malone tries to incorporate a discussion of the exhaustive measures taken by Lane County to work with the developer, Chris Canfield, and the Cerro Gordo Cooperative and Charter. This development was little more than a Ponzi scheme that brought in dozens of well-intentioned people hoping to invest in a utopian environmental community only to find their dreams dashed against the greed of a reckless developer that endured countless lawsuits and ultimately a finding of a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) laws which brought triple damages against Cerro Gordo and their accountant and an end to the fleecing. Along the way Cerro Gordo was extended special attention and consideration to legitimize a number of dwellings that were already initiated prior to the County adopting its Comprehensive Plan. Notably, in the decision made regarding Cerro Gordo as many as 60 lots were to be permitted in the 600 acre property with a significant portion of the land being zoned Rural Residential. The discussion of the activities of Cerro Gordo dating to the early 1970s in light of the issues at hand offers little direction to a resolution of the current matter but does provide an interesting distraction.

"**Overall**" is the word Mr. Malone consistently chooses to ignore in the full discussion of the ODFW recommendations. At no point does the ODFW recommendation of one residence per 40 acres in Peripheral Big Game Habitat and one residence per 80 acres in Major Big Game Habitat drill down to a specific parcel by parcel limitation. To the contrary the term consistently used is "overall residential density." Overall dictates an examination of "the big picture" – how is the county addressing the number of dwellings to be considered in a total review of all of its forest zoned land.

Mr. Malone attempts to make some point that Lane Code 16.211 specifically does not discuss big game habitat, peripheral or major. That is a factual statement because it does not need to be included in the evaluation of a dwelling application. Lane Code 16.211 was adopted to carry out the acknowledged Comprehensive Plan, within which the issue of limiting residential encroachment into big game habitat was thoroughly considered and implemented with the adoption of the F1 zone.

Mr. Malone seeks to make the point that a site specific evaluation by a Registered Professional Land Surveyor is not needed when "contour mapping is readily available." This is a totally self-serving and shallow statement. It is most typically LandWatch that has demanded additional professional evaluation of properties for no other reason than to pile expenses onto an applicant in a hope to dissuade them from pursuing a land use application. I will acknowledge that contour mapping provides a good "first blush" look at the lay of the land, but I spent enough time as an Infantry officer, and later a contractor of logging operations and road construction, to tell you it is "boots on the ground" that will establish the measured and calculated actual grades, indentations, rock outcroppings, drainage requirements and the true surface of the earth at the subject property.

Mr. Malone provides a footnote to his discussion on Page 6 stating:

> "Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate."

The drawings and grade annotations provided by David J. Collier, Registered Professional Land Surveyor, and the site assessment made by Michael Remboldt, Professional Engineer and Geotechnical Engineer, fully meet the criteria Mr. Malone seeks to establish. The problem, of course, is he doesn't like the results.

Mr. Malone takes notice of Mr. Remboldt's assessment that the proposed dwelling site is located within or near the south end of the upper scarp zone of a very large, ancient landslide that moved soils and rock to the west. In our conversation with Mr. Remboldt his opinion was the landslide occurred something in the area of 5,000 years ago, though notably that was not mentioned in his report, deferring to the conclusion "there is not a significant landslide hazard in the proposed homesite development area." I must ask the question: How much clearer a statement can that be?

Mr. Remboldt's review of the property was a generally accepted "Level One" geotech report. The DOGAMI listing, as we have previously noted, is a massive broad stroke of the brush taking in thousands of acres. The K & A Engineering report, written by Mr. Remboldt, attempts to reduce that broad stroke to a specific site evaluation of landslide susceptibility. Again, Mr. Malone does not like the results of the report.

Mr. Malone uses the definition of "scarp" as a "very steep bank or slope." The report of the Registered Surveyor is the grade surrounding the proposed dwelling site is virtually level to the north, east and south and approaches an 18% grade to the west. At the risk of belaboring the point, the on-site evaluation made by the Registered Surveyor far exceeds the value of whatever hyperbole Mr. Malone seeks to introduce to this discussion. As I opined in my response to LandWatch's objections to our application, the definition of the term "steep," like beauty, seems to be in the eye of the beholder. Of perhaps even greater significance is the map prepared by Mr. Colllier showing the contour interval overlay in the area of the proposed building site and the relatively gentle grade continuing to the east and south from the site. We will acknowledge the area at the north end of the parcel, approximately 600 feet north of the building site, is a steeper grade. No excavation with the proposed building or road construction will take place anywhere near this area and any soil movement that might occur would be from the east downhill to the northwest, as depicted quite clearly in the contour map, not to the south where the dwelling will be located some 600 feet away. See Exhibit 2 to this letter.

The Appellants have failed to grasp what was accomplished in the review of the subject property by K&A Engineering and have engaged in a word play of critiquing selections of Mr. Remboldt's report failing to examine the overall discussion of potential landslide susceptibility. Moreover, Mr. Malone

has specifically misrepresented elements of the application that were discussed at the public hearing and are displayed in the various attachments to the application and supplements.

On Page 6 of Mr. Malone's November 21, 2019 letter he states the engineer's review "did not consider the access (300 +/- foot long driveway),.." This is a complete fabrication. Exhibit 3 to the original application, Exhibit C to the Supplement to the Application and Exhibit 3 to the Notice of Pending Land Use Decision, annotated as "Proposed Site Plan," all show the location of the dwelling and driveway proposed on the subject property. To emphasize this point again, I am attaching at Exhibit 1 to this letter the "Proposed Site Plan" with the annotation of "509-PA19-05298." This map is at a scale of 1" = 100', the dwelling is shown as a 40' X 60' footprint and is located approximately 180 feet from the south boundary of the subject property and is accessed by a driveway approximately 240 feet in length as it descends in grade from R. R. Baker Road.

Mr. Darnielle, you may recall we had a specific discussion at the September 26, 2019 hearing where you asked us to explain the "discrepancy" of the quoted length of the driveway at 240 feet but the location of the dwelling was only 180 feet from the property line. I noted the building is anticipated to be approximately 60 feet in length and the difference was found in whether the driveway approached the building at the north end, as we displayed, or the south end. My interpretation of our discussion at the hearing was that this made sense to you. The grade is approximately 14% as it leaves R. R. Baker Road but then quickly levels out and is essentially at level grade for approximately 170 feet as it approaches the building site. I am enclosing at Exhibit 2 to this letter a copy of the contour map prepared by David Collier, the Registered Professional Land Surveyor, which was Exhibit E to the Response to Appeal dated September 21, 2019. This map is a scale of 1" to 200' but depicts well the level construction of the driveway for its preponderance of length.

I shared the letters prepared by Mr. Malone and Mr. Mulkey with Michael Remboldt, the Professional Engineer, to solicit his response to their criticism. Mr. Remboldt has prepared a letter dated December 2, 2019, which I am attaching to this correspondence as Exhibit 3. In this letter Mr. Remboldt explains the nature of his evaluation of the subject property, describing this report as a Level 1 evaluation. Mr. Malone goes on to discuss what is described as a Level 2 evaluation, noting that such an evaluation is associated with the actual building proposal and will take in such matters as construction style, weight load of the building, drainage that is proposed, foundation design and a myriad of matters that will be unique to the structure. It is from this standpoint that Lane County directs the landslide susceptibility to be evaluated in the building permit process.

Mr. Remboldt summarizes his evaluation process as follows:

> "This methodology is a logical approach to ensure that the hazard is carefully and thoroughly understood in an efficient and cost effective manner.

Thus, it is untrue that K & A Engineering, Inc. failed in the evaluation of slope stability. What we did was provide a first step in the process of a rational methodology that is accepted as the standard of care by qualified geotechnical engineers for similar projects. In the long run, following this process will result in a complete, detailed and rational evaluation of slope stability that meets the need of all parties involved."

In our application and in the subsequent submissions I provided copies of the Soil Conservation Service (now NRCS) Soils Mapping for Lane County for the area surrounding the subject property and the proposed homesite. See Exhibits 5a and 5b to the original application, and Exhibits C and D to my letter dated September 20, 2019. As we noted, the area to the north of the parcel is Soil Type 113G, Ritner cobbly silty clay loam, displaying slopes between 30% and 60%. Again, the steeper sloping portion of this soil type is approximately 600 feet to the north of the proposed building site, and also, notably, do not approach the upper end of the range of 30% to 60% grade. As we previously noted, the area around the proposed building site is a Soil Type 107C, Philomath cobbly silty clay with a grade range of 3% to 12%. In Mr. Collier's on-site evaluation he confirmed the grades in and around the building site to be what would have been expected based only on the evaluation of the Soils Mapping.

We have displayed the contour mapping for the parcel, we have displayed the soils mapping for the parcel, we have provided an on-site evaluation by a Registered Professional Surveyor and we have provided an on-site evaluation by a Professional Engineer and Geotechnical Engineer. The conclusion reached in any reasonable review of this information is that no landslide hazard exists in or near the proposed building site.

I am compelled to address Mr. Mulkey's letter on behalf of 1000 Friends of Oregon, though much of a detailed response would only be a rehash of my review of Mr. Malone's letter as the points the Appellants are attempting to make are simply the same weak argument. At issue is the ODFW position of overall residential density. The Appellants are unable or unwilling to grasp that concept.

Mr. Mulkey introduces a new document in his letter, a reference to "SLIDO," which, while not defined, I believe is the Statewide Landslide Information Database for Oregon. In a poorly structured presentation Mr. Mulkey tells us there are reported to be 10,335 deep landslides that are mapped in Oregon. I am doing my darndest to not say something to the effect of "so what." This is a "Gee Whiz" statement simply thrown into the discussion for its incendiary and attention gathering emotional jab. Oregon is comprised of approximately 63,018,000 acres. Perhaps some context needs to be introduced to the notion of 10,335 landslides being spread over more than 63 million acres. Perhaps of even more importance is some discussion needs to be had as to how many hundreds (thousands?) of years transpired over which this number of landslides has occurred.

Mr. Mulkey goes on to talk about mean slope angles of "27 degrees" and "95% of the deep slope landslides occur on 10-45 degree slopes." While I have no direct knowledge of this claim, I rather

suspect there is at least some truth to it. What Mr. Mulkey fails to note, and of critical importance in this review, is the "angle" of slope is distinctly different than the "percent of grade." The two terms are simply not synonymous.

Angle is the geometric measurement of two intersecting lines and leads to several mathematical "laws" and "theorems." (For instance, the sum of the three angles of a triangle will always equal 180 degrees.) Slope, as measured by "grade" is the calculation of "rise over run" and is calculated by percent, not degrees. An elevation change of, say, 10 feet over a distance of 100 feet is slope measuring at a 10% grade.

The term slope is used in functions where engineering or surveying practices will be employed and is incorporated into our statutes and code. For example, ORS 215.730(1)(b)(B) "The dwelling will not be located on a **slope of greater than 40 percent.**" This same evaluation practice is carried forward into Lane County Code as referenced in LC16.211(5)(a) "Residences, dwellings, and structures must be sited as follows: (i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or **slope greater that 40 percent** (40%);"

For purposes of our discussion it would seem appropriate to continue the evaluation of the terrain of the subject property in terms of slope and percent of slope.

Without wishing to be beating this to death, but hopefully to rein in the emotional hyperbole, please take a moment to review the graph included with this letter at Exhibit 4. This graph depicts the correlation of degrees of angle and percent of grade. A slope angle of 45 degrees is equal to a percent of grade of 100%. A 10 degree angle of slope is equivalent to an approximate 17.6% slope. So while the claim is made that 95% of the landslides occur in the range of 10 degrees to 45 degrees, as shown in the drawing at Exhibit 1, there is a huge range of grade to be covered in this spread.

I well suspect that 95% of the deep slope landslides actually do occur on grades in the range of 10 degrees to 45 degrees, virtually all of that range substantially exceeds the area proposed for the placement of the dwelling. I must note again, the area surrounding the proposed dwelling site is virtually level, the downslope from the site to the west is measured at 18%, the bottom of the range of concern noted by Mr. Mulkey when 10 degrees is shown as correlating to a slope of approximately 17.6%.

The issue of landslide hazard is not solely defined by the grade of the terrain. Mr. Mulkey throws out raw numbers in support of his position, but fails to consider the important issues of precipitation and soil type. A review of the landslide susceptibility of any grade in the west slope of the Coast Range, that may receive upwards of 100 inches of rain a year, is going to be totally different than a review of a grade in the foothills of the Cascades where precipitation will typically amount to less than half that number.

Gary Darnielle
PA19-05298
Applicant's Final Rebuttal
November 27, 2019
Mark Twain said it best:

"There are three kinds of lies - Lies, damn lies and statistics."

The introduction of the SLIDO report at this point of the appeals process is at best questionable, but any consideration given to the carefully selected statistics Mr. Mulkey is putting forth needs to be disregarded until they are accompanied by a more thorough overall picture of the various interactions of grade, weather and soil. The objections of the Appellants do not include this critical information.

Thank you for your attention to my thoughts in this matter.

Sincerely,

Jim Belknap

Jim Belknap

Encl. Exhibit 1, Approved Site Plan (6/25/19), 1" = 100' Scale, length of driveway depicted
Exhibit 2, Parcel Map with contour overlay
Exhibit 3, K & A Engineering discussion of evaluation process in Level 1 study
Exhibit 4, Graph Displaying Correlation of Angle vs. Grade

Cc: NIMPKISH, LLC, w/encl
Michael E. Farthing w/encl

,09-PA19-05298

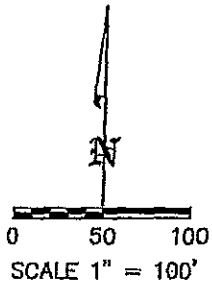
EXHIBIT C

Approved RS 6/25/19

SITE PLAN

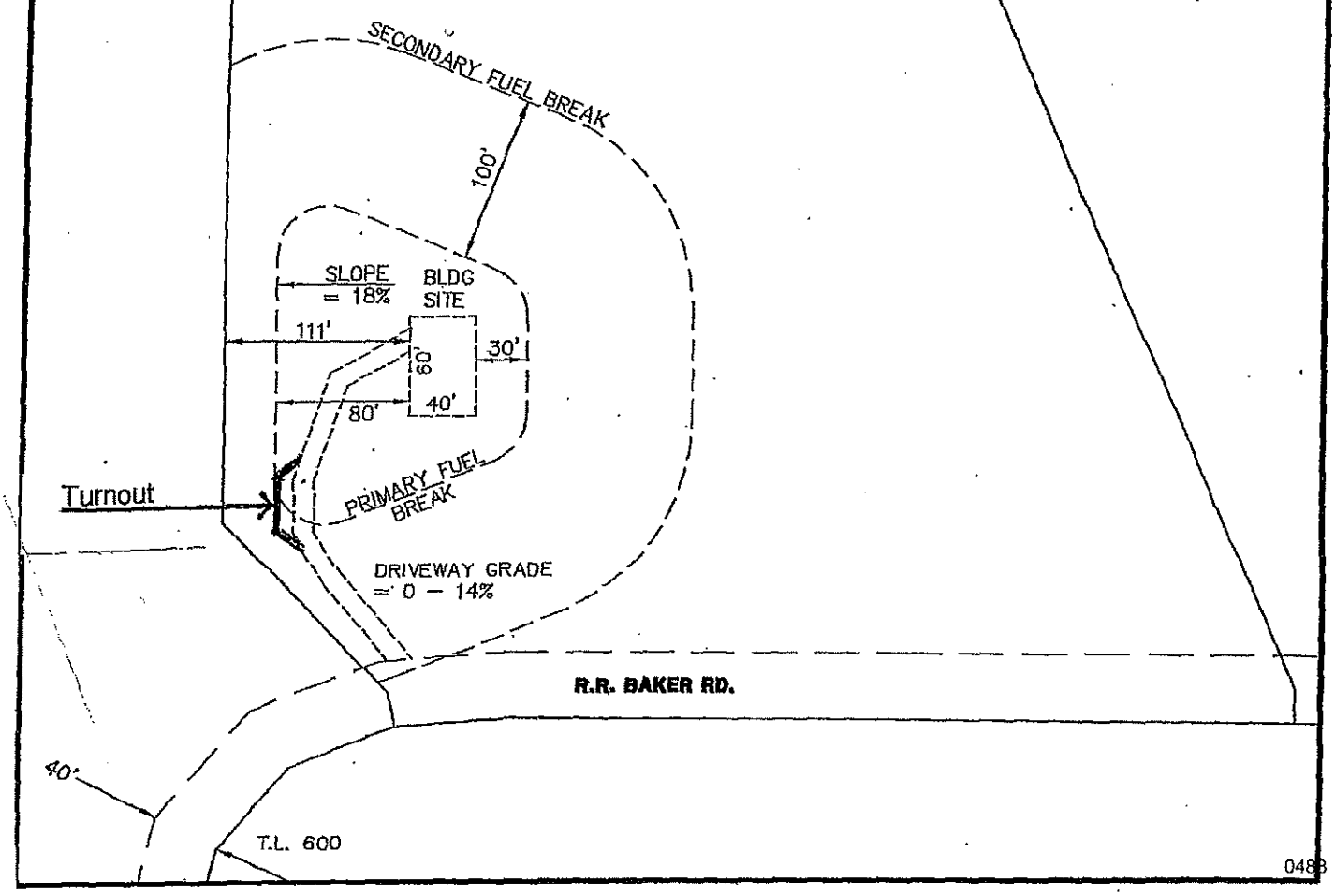
TAX MAP 18-02-11-00
(PORTION OF TAX LOT 506)

Exhibit 1
PA19-05298 Final Rebuttal
November 27, 2019



REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1992
DAVID J. COLLIER
2552
RENEWAL 12-31-19



0488

Exhibit E
PA19-05298
Response to Appeal
September 20, 2019

Property Owner:
Gray Goodman
86690 R.R. Baker Road
Springfield, OR 97478

GOODMAN
Tax Map 18-02-11-00
Tax Lot 507

REGISTERED
PROFESSIONAL
LAND SURVEYOR

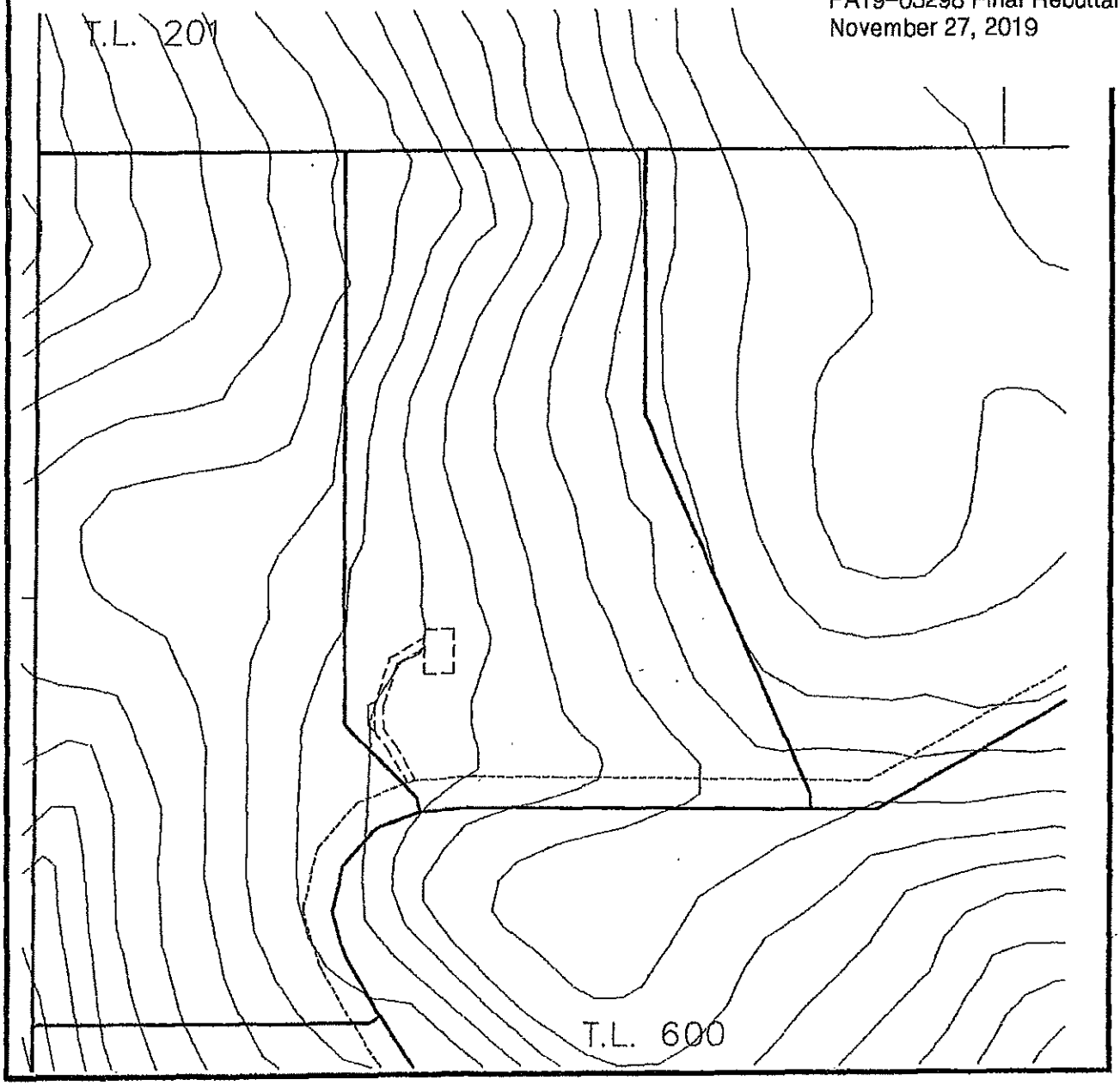
OREGON
JULY 21, 1992
DAVID J. COLLIER
2552

RENEWAL 12-31-19

N

0 200
SCALE 1" = 200'
CONTOUR INTERVAL=20'

Exhibit 2
PA19-05298 Final Rebuttal
November 27, 2019



K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

December 2, 2019 **Project: 19060**

Exhibit 3
PA19-05298 Final Rebuttal
November 27, 2019

Mr. Jim Belknap
Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

Subject: Response to Appellant Comments
Lane County PA19-05298
Nimpkish, LLC Template Test Dwelling Special Use Permit
Tax Lots 506 and 507, Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. Belknap,
At your request, we have reviewed comments from appellants in the subject matter and are providing a written response. These comments include those made by Mr. Sean Malone (representing LandWatch Lane County) dated November 21, 2019 and Mr. Andrew Mulkey (representing 1000 Friends of Oregon).

The scope of our review and response is limited to landslide hazard.

Response to Mr. Andrew Mulkey Comments
The recommendations that K & A Engineering, Inc. provided for the subject parcels (dated October 31, 2019 for tax lot 507 and November 13, 2019 for tax lot 506) summarize what is termed a "Level I" evaluation of slope stability for the project site(s). Level I evaluations typically include:

- **Literature Search:** a review of available reports and maps available in the literature for the site describing geology and geologic hazards. We consulted geologic maps of the area, DOGAMI hazard maps, and aerial photography of the site and surrounding areas.
- **Site Review:** Level I evaluations include a visual site inspection. We visited the site and spent time looking for visual indicators that are always present in areas of active slope movement including tension cracks, fresh scarps, sloughing, depositional areas, and ponding. We also inspected road cuts to determine the general nature and depth of subsurface conditions in the area.
- **Preliminary Stability Evaluation:** Based on our field observations and available topographic data we made an evaluation of the general nature of slope stability of the area. There are other parameters that affect slope stability in addition ground slope, such as soil shear strength, soil depth, groundwater, root strength, just to name a few. Basing decisions of stability on ground slope gradient alone is bad science.

Recommendations for further investigation and a more detailed evaluation of slope stability are made based on the findings of the Level I evaluation. In this case, we recommended a Level II geotechnical investigation for these parcels because of their location within or near the DOGAMI high-hazard mapping. The Level II investigation is a detailed study requiring geotechnical borings, laboratory testing, calculation of factors of safety, etc. and will incorporate the specific nature of the proposed structure and grading plans.

This methodology is a logical approach to ensure that the hazard is carefully and thoroughly understood in an efficient and cost-effective manner.

Thus, it is untrue that K & A Engineering, Inc. failed in the evaluation of slope stability. What we did was provide a first step in the process of a rational methodology that is accepted as the standard of care by qualified geotechnical engineers for similar projects. In the long run, following this process will result in a complete, detailed, and rational evaluation of slope stability that meets the needs of all parties involved.

Response to Mr. Sean Malone Comments

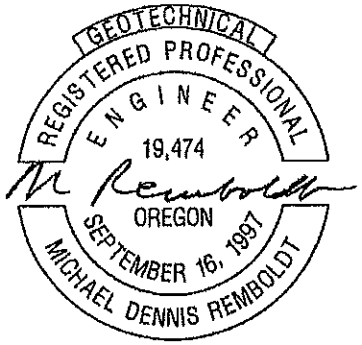
- **Substantial Evidence:** Malone, like many others, seems to believe that "substantial evidence" consists of volumes of written documentation. Substantial evidence can be and most often should be very simple and brief in scope.
- **Landslide Scarps:** Scarp sizes, slope gradients, and shapes can vary widely depending on the nature of the slope movement and the age of the slope movement. Steep scarps erode and weather over time, resulting in less-steep slopes and more rounded features. Very old scarps can indeed be difficult to define unless they include zones of harder rock that weather and degrade more slowly than surrounding unconsolidated soil deposits. There is nothing "equivocal" about stating that a location is within or near to a scarp because, as is the case here for very old slope movements, weathering and natural transport of materials downhill eventually result in reduced slope angles.
- **Recent or Ancient:** By recent we mean active landslides or landslides that occurred whereby fresh evidence of movement is visible.
- **"Near the Road:"** The actual proposed length is less than 200-feet, not 300-feet. "Near" is a subjective opinion. This is a convoluted and irrational paragraph that morphs from "near the road" to turnout construction, the land use code, and the feared "chimney effect" – none of which have much, if anything, to do with landslide hazard.
- **"Extensive or Drastic Safeguards:"** Mr. Malone's conclusion is that "it is irrelevant whether any extensive or drastic safeguards may or may not be called for because the issue is whether or not a geotechnical report/evaluation is needed..." The fact is that we are moving forward with a *rational process* of geotechnical evaluation and investigation, with more detailed studies of the impact of development (such as grading, drainage, and foundation loads) required as a result of our Level I evaluation. Making detailed studies at this point makes no sense and does a disservice to the process because it forces limiting assumptions that may or may not exist when the serious details of actual development are determined which usually include things like an actual grading plans, actual foundations (location, depth, type, loads, etc.), real changes to drainage patterns, etc.

  Our level I review is appropriate for undeveloped areas and its use in the determination of the likely nature of slope stability in the current condition and if further study is needed for ground

disturbing development. The whole point of the Level I review was to determine of the proposed action would significantly heighten landslide hazard and require extreme measures for mitigation. Mr. Malone obfuscates the analysis process.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

Exhibit 4
PA19-05298 Final Rebuttal
November 27, 2019

NIMPKISH
PA19-05298
Exhibit 4
Angle vs. Slope
Final Rebuttal

0493

SERSLEV Rachel

From: SERSLEV Rachel
Sent: Wednesday, November 27, 2019 3:21 PM
To: 'Jim Belknap'; Sean Malone
Cc: GERI BETZ; michael@kaengineers.com; Lauri Segel-Vaccher; Gray Goodman; DARNIELLE Gary L; Michael E. Farthing; Andrew Mulkey
Subject: RE: Open Record Request PA19-05298

If I understand, the request is that the record be fully reopened to allow for new evidence, response to that evidence and rebuttal closing on December 12, December 26 and January 2 respectively. Therefore, it seems a 30 day timeline waiver is appropriate since the record is being extended from December 2 to January 2.

Do I have this right?

Thanks,
Rachel

From: Jim Belknap [mailto:jim.e.belknap@gmail.com]
Sent: Wednesday, November 27, 2019 3:13 PM
To: Sean Malone
Cc: SERSLEV Rachel; GERI BETZ; michael@kaengineers.com; Lauri Segel-Vaccher; Gray Goodman; DARNIELLE Gary L; Michael E. Farthing; Andrew Mulkey
Subject: Re: Open Record Request PA19-05298

[EXTERNAL ☐]

Rachel,
I'm sure you have the calendar on all of this, would you tell me how long an extension would be appropriate. I'll fill it out and email it to if you can give me a number of days that would be appropriate.
Thanks,
Jim Belknap

On Wed, Nov 27, 2019 at 2:59 PM Sean Malone <seanmalone8@hotmail.com> wrote:

> LandWatch is fine with re-opening to allow new evidence, response evidence, and if necessary a final rebuttal.
>
> I am out of state on vacation with my family from Dec. 26 to Jan 5, so I would appreciate any deadlines to not fall within that time period. In light of that and not knowing any others' holiday plans, I would suggest the following dates for open, response, and final rebuttal: Dec 19, Jan 10, and Jan 17.
>
> Thank you,
>
> Sean Malone
> Attorney at Law
> 259 E. Fifth Ave.
> Suite 200-C
> Eugene, OR 97401

ph. 303.859.0403
seanmalone8@hotmail.com

From: SERSLEV Rachel <rachel.serslev@lanecountyor.gov>
Sent: Wednesday, November 27, 2019 1:54 PM
To: GERI BETZ <landplancon@comcast.net>; michael@kaengineers.com <michael@kaengineers.com>; Lauri Segel-Vaccher <fourhope@comcast.net>; Gray Goodman <ghyrax@gmail.com>
Cc: DARNIELLE Gary L <GDARNIELLE@lcog.org>; Michael E. Farthing <mefarthing@yahoo.com>; Jim Belknap <jim.e.belknap@gmail.com>; Sean Malone <seanmalone8@hotmail.com>; Andrew Mulkey <andrew@friends.org>
Subject: FW: Open Record Request PA19-05298

Just to cover our bases, I am forwarding this request and response to all of the parties of record.

Thanks,

Rachel

From: DARNIELLE Gary L [mailto:GDARNIELLE@lcog.org]
Sent: Wednesday, November 27, 2019 1:35 PM
To: SERSLEV Rachel; FARTHING Michael (SMTP)
Cc: Jim Belknap; Sean Malone; Andrew Mulkey
Subject: Re: Open Record Request PA19-05298

[EXTERNAL ☐]

Mr. Farthing,

I have no objection to your request although I want to hear from the Appellants before I reopen the record. Also, I would need a written timeline waiver to cover the extended record period. I will get back to you after I have heard from the Appellants.

Gary Darnielle

Lane County Hearings Official

From: Michael E. Farthing <mefarthing@yahoo.com>
Sent: Wednesday, November 27, 2019 11:28 AM
To: SERSLEV Rachel <rachel.serslev@lanecountyor.gov>; DARNIELLE Gary L <GDARNIELLE@lcog.org>
Cc: Jim Belknap <jim.e.belknap@gmail.com>; Sean Malone <seanmalone8@hotmail.com>; Andrew Mulkey <andrew@friends.org>
Subject: Re: Open Record Request PA19-05298

Ms. Serslev and Mr. Darnielle,

In preparing my final rebuttal for 05298 (Nimpkish) and discussing the same with Mr. Belknap, there is more than one reference in Mr. Malone's final response that suggests that Lane County's Goal 5 acknowledgment compliance is in question particularly with regard to the forest template dwelling provisions in LC 16.211(5) and (8). Since this issue will no doubt be raised in subsequent appeals, including PA19-05299 for an adjoining parcel, we would request that the record be left open in this matter for a limited time and purpose to allow all parties to submit County and DLCD records pertaining to Lane County's Goal 5 Acknowledgment including but not limited to before 1984 and on through to the present. This would allow all parties to review and submit documents relating to Lane County's response to the amended Goal 5 rules adopted in 1996 (OAR 660-023-0000 et seq). Since the open record period deadline in 05299 is 4:00PM, December 12, we would propose the same for this appeal. Thereafter, each party would have two weeks to comment on the new evidence, December 26, and we would then have until Thursday, January 2, to submit our final overall rebuttal. Because of the Holidays, we are very receptive to any changes in this schedule to accommodate all parties. Of course, if the extension is granted, we would agree to a corresponding extension for the County's final decision due date.

Michael Farthing

On Monday, November 25, 2019, 3:01:45 PM PST, SERSLEV Rachel <rachel.serslev@lanecountyor.gov> wrote:

Parties of record,

Please see below the hearings official's decision to extend the rebuttal period for PA19-05298.

Thank you,

Rachel

From: DARNIELLE Gary L [mailto:GDARNIELLE@lcog.org]
Sent: Monday, November 25, 2019 2:34 PM
To: SERSLEV Rachel
Subject: Re: Open Record Request PA19-05298

[EXTERNAL ⊟]

Ms. Serslev,

I will treat your email as a request to move the final rebuttal period in the Nimpkish template dwelling appeal (PA9-05298) back to December 2. Please notify the parties that this request has been approved.

Gary Darnielle

Lane County Hearings Official

From: SERSLEV Rachel <rachel.serslev@lanecountyor.gov>
Sent: Monday, November 25, 2019 9:49 AM
To: FARTHING Michael (SMTP) <mefarthing@yahoo.com>
Cc: DARNIELLE Gary L <GDARNIELLE@lcog.org>
Subject: RE: Open Record Request PA19-05298

I think you are probably correct. Regardless, I have sent a request to the hearings official so that the revision can get in the record.

Thanks,

Rachel

From: Michael E. Farthing [mailto:mefarthing@yahoo.com]
Sent: Monday, November 25, 2019 9:29 AM
To: SERSLEV Rachel
Cc: DARNIELLE Gary L; Lauri Segel-Vaccher; Jim Belknap; Gray Goodman; Sean Malone; GERI BETZ; michael@kaengineers.com; Andrew Mulkey
Subject: Re: Open Record Request PA19-05298

[EXTERNAL ☐]

Rachel and all,

Upon further reflection and given that your office is closed on Friday, November 29, I believe LC 14.020(4) requires December 2 to be the proper deadline. Correct?

Mike F.

On Monday, November 25, 2019, 9:02:55 AM PST, SERSLEV Rachel <rachel.serslev@lanecountyor.gov> wrote:

If the hearings official and parties of record (CC'ed here) are amenable to this, then it will be revised to December 2nd.

-Rachel

From: Michael E. Farthing [mailto:mefarthing@yahoo.com]
Sent: Monday, November 25, 2019 8:55 AM
To: SERSLEV Rachel
Cc: DARNIELLE Gary L; Lauri Segel-Vaccher; Jim Belknap; Gray Goodman; Sean Malone; GERI BETZ; michael@kaengineers.com; Andrew Mulkey
Subject: Re: Open Record Request PA19-05298

[EXTERNAL ☐]

Rachel,

Our preference is Monday, December 2. Thank you.

Mike F.

On Monday, November 25, 2019, 8:47:14 AM PST, SERSLEV Rachel <rachel.serslev@lanecountyor.gov> wrote:

Thank you for bringing this to my attention. Our office is closed on November 28th and 29th.

Therefore, the final rebuttal deadline needs to be either moved forward to Nov. 27th or extended to December 2nd. Please indicate what your preference is.

Thank you,

Rachel

From: Michael E. Farthing [mailto:mefarthing@yahoo.com]
Sent: Monday, November 25, 2019 8:37 AM
To: SERSLEV Rachel
Cc: DARNIELLE Gary L; Jim Belknap; Sean Malone; Andrew Mulkey
Subject: Re: Open Record Request PA19-05298

[EXTERNAL ☐]

Rachel,

Since our final rebuttal is due on Thanksgiving, I assume it can be filed on the following day, Friday, November 29, 2019. Please confirm.

Michael Farthing

On Tuesday, October 8, 2019, 7:58:25 AM PDT, SERSLEV Rachel <rachel.serslev@co.lane.or.us> wrote:

Dear Parties of Record,

Hearings Official Darnielle has approved a request to extend the open record period from October 10th to November 7th.

Therefore, the open record deadlines are as follow:

- New information by **November 7, 2019**
- Response to new information by **November 21, 2019**
- Applicant Rebuttal by **November 28, 2019**

Please let me know if you have any questions or concerns.

Thank you,

Rachel Serslev, Planner, CFM

Lane County Land Management Division

3050 N. Delta Hwy, Eugene, OR 97408

541-682-6903 | rachel.serslev@co.lane.or.us

--

Jim Belknap
Principal Broker
Belknap Properties, LLC
P. O. Box 362
Cottage Grove, OR 97424
541-954-2944 Cell
541-942-1653 Fax

SERSLEV Rachel

From:	SERSLEV Rachel
Sent:	Monday, November 25, 2019 9:23 AM
To:	DARNIELLE Gary L
Cc:	Lauri Segel-Vaccher; Jim Belknap; Gray Goodman; Sean Malone; GERI BETZ; michael@kaengineers.com; Andrew Mulkey; 'Michael E. Farthing'
Subject:	Request for Extension PA19-05298

Mr. Hearings Official Darnielle,

The applicant has requested that the final rebuttal for PA19-05298 be extended from November 28, 2019 to December 2, 2019 due to the closure of our offices on November 28 and 29th. As of today, the application is on day 31 of the 150 day timeline.

Thank you for your consideration.

Rachel Serslev, Planner, CFM
Lane County Land Management Division
3050 N. Delta Hwy, Eugene, OR 97408
541-682-6903 | rachel.serslev@lanecountyor.gov

Additional Information Submitted

Date Stamp
RECEIVED
NOV 22 2019

Submitted By: LWLC

Phone Number: 541-517-4459

Email Address: foxhope@comcast.net

Project Address: N/A

Permit Number (BP, PA, SP, SI): PA 1905298

Submittal Description: RESPONSE

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

www 12/26/2018

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-C
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

November 21, 2019

Via Hand Delivery

Lane County Hearings Official
c/o Lane County Planning Department
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-4065

Re: LandWatch responsive testimony in opposition to Request for Template Dwelling in the F-2 zone, 509-PA19-05298 (Nimpkish).

On behalf of LandWatch Lane County, please accept this testimony in support of the appeal and in opposition to the application described above.

In response to Mr. Farthing's November 7, 2019, letter, where he attempts to provide the "legislative context in which Lane County's Goal 5 policies were adopted in 1984," LandWatch presents the following responses. First, an issue overlooked by Mr. Farthing is that the administrative rules for Goal 5 were amended subsequent to that time, as indicated by the erroneous reference to "OAR 660-16-000," which is the previous location of Goal 5 before the amendment that placed Goal 5 provisions in OAR 660-023-0000 through -0250. In other words, it is an open question as to whether the Lane County comprehensive plan has been acknowledged to comply with Goal 5, as amended. The same is true of the administrative provisions implementing the forest template dwelling statute, which occurred subsequent to applicant's focus on the "legislative context in which Lane County's Goal 5 policies were adopted in 1984." Again, it is an open issue as to whether the comprehensive plan has been acknowledged to comply with the administrative rules implementing the current version of Goal 5 and the forest template dwelling statute. The applicant has ignored these subsequent wrinkles in its testimony.

Next, the Farthing letter also takes issue with the applicability of OAR 660-006-0025(6). If those provisions were not enough, three additional provisions of statute and rule also raise the prospect of the applicability of comprehensive plans to template dwellings. *see also* ORS 215.416(4)(a), (8)(a); OAR 660-006-0027(6)(a) ("A proposed 'template' dwelling under this rule

is not allowed ... if it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, or other provisions of law."). Despite the plain language of provisions cited above, Mr. Farthing alleges that they do not apply to policies "that are in the form of providing direction to the County who, as is discussed later herein, responded to that direction by adopting the F-1 zone that prohibits residences and then applied that zone to 84% of the County's designated forest land." Mr. Farthing's attempt to explain that provision is not straightforward and resorts to an unsupported theory that designating 84% of the county as F-1 was done to protect a Goal 5 resource, specifically big game resources. In fact, the 1988 Supreme Court Decision in *1000 Friends of Oregon v LCDC (Lane County)*, 752 P2d 271 (1988), which preceded and directed the County's adoption of an 80-acre minimum parcel size for the F1 zone, is silent on the issue of the zone protecting any goal 5 resources.

Mr. Farthing's citation to the Evans/Betz matter is irrelevant in light of the *Cattoche* analysis because the *Cattoche* case rebuts the characterization of the Flora and Fauna working paper in the Betz/Evans matter. In addition, Evans/Betz was a Hearings Official decision which carries no legal authority over subsequent applications. What has escaped Mr. Farthing is that *densities to protect big game were not incorporated into zoning, which was the assumption of the Betz/Evans matter*. LandWatch has readily conceded that *Cattoche* was a plan amendment case. The focus when reading *Cattoche* is the difference in how the Hearings Official and LUBA read the Flora and Fauna working paper. The failure to focus on the issue is not helpful to Mr. Farthing's argument.

Mr. Farthing then moves on to the Howe and Mann letters, alleging that they are "first-hand accounts of how and why the RCP Goal 5, Flora and Fauna Policies ... were addressed during the 1984 RCP adoption and acknowledgment process." Any factual information contained in those letters *must* be supported by something more than a bare allegation.[1] Aside from a reference to a 1984 LCDC Acknowledgment of Compliance, there is no other evidentiary support, and that support was subsequently amended by LCDC in 1988 following the 1988 Supreme Court decision noted above. More specifically, the allegations by Howe and Mann assert the adoption of the F-1 zoning that prohibited residences was some grand compromise. The problem is that neither of these experts point to any evidence to support that theory. If there is evidence, bring it forth. If not, there is no support for relying on their allegations.

At the heart of the allegations from Howe and Mann is that "clustering requirements" or presumably siting standards were imposed on residential development in peripheral and major big game areas in the F-2 zone in order to protect big game. The first problem with that theory is that the excerpt pointed to specifically aims "too [*sic*] carry out the intent of the Flora and Fauna Policy II." Looking to the Flora and Fauna Policy II, however, relates to "recogniz[ing] existing

[1] For example, Mr. Farthing, Howe, and Mann continually refer to 84% of Lane County as zoned F-1 but there has been no evidentiary showing. Appellant also takes issue with the bluster that "Mr. Howe's credentials and expertise about Lane County's RCP acknowledgement process are impeccable...." To the contrary, Appellant believes Mr. Howe's tenure at Lane County has been rather controversial.

federal and state programs protecting threatened or endangered fish and wildlife species." Comprehensive Plan Policy 2. The Howe and Mann letters do not specify what the "Flora and Fauna Policy II" is if they consider it something other than was indicated in the aforementioned quote. That is an important issue that the Howe and Mann letters gloss over.

Elsewhere in the 1984 LCDC Acknowledgment of Compliance, at page 10-11 of 45, the commission notes the policy of Lane County in big game range areas in the context of an attempt to reduce the acreage for a particular development referred to as Cerro Gordo:

> Requirement
>
> 11. Amend the plan to justify the potential one dwelling unit per 5-acre density authorized for Cerro Gordo's 600 acres in view of ODFW's accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (See also Goal 2's cluster development issue.)
>
> Response
>
> The County's policy is to abide by ODFW's density recommendations unless the entire Goal 5 process is applied and a decision to exceed these recommendations is justified. Lane County has adopted supplementary findings (Order No. 84-9-11-23) and has revised its ESEE consequences analysis and wildlife habitat management plan for Cerro Gordo to justify development in a recognized big game habitat area, in excess of ODFW's recommended density standards. A meeting was held on August 14, 1984, with ODFW, Cerro Gordo and DLCD representatives to discuss this issue. It was determined that, in this case, ODFW density recommendations do not have as much bearing on the acceptability of the development as do other factors. These factors include the overall number and location of dwellings and roads, as well as mitigating measures incorporated into the development. The following factors in the revised Cerro Gordo proposal are particularly relevant (Order No. 84-9-11-23):
>
> 1. There is an overall "cap" on the number of lots which could be developed (i.e., 60 lots).
> 2. No more than one-third of the residences will be located north of the BLM road (the habitat area considered more sensitive to human disturbances).
> 3. Wildlife corridors from 600 to 1800 feet in width shall be provided along streams.
> 4. Residential development will be confined to a band 2,400 feet in width along an existing BLM road.
> 5. Residences must be clustered.
> 6. Goal 2 cluster subdivision requirements shall apply (see the Goal 2 section of this report for details).
> 7. Cerro Gordo is either adjacent to or near large tracts of federal and private forest land.
> 8. Lane County will provide ODFW with the opportunity to review and comment on the preliminary subdivision application to assure mitigation measures are achieved through proper clustering.
> 9. Road development will be minimized and private roads within forested areas will be closed to vehicular use except for emergencies, maintenance, and forest management activities.
> 10. A Cerro Gordo Design Committee as well as the Cerro Gordo Cooperative itself shall review and monitor actions and changes in wildlife conditions on an ongoing basis.
> 11. Pets shall be limited.

Because of these and other factors addressed in the County's amended findings, the impacts on big game range are thought to be acceptable by ODFW. Allowing such conflicts to occur, but with restrictions outlined above, is a (3C) decision under the Goal 5 Administrative Rule. The County has justified this decision.

Conclusion

The requirement has been met.

What this tells us is that, first, ODFW's clustering requirement *was* included in the density recommendations, here for peripheral at one dwelling per 40 acres: "in view of ODFW's accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres." Moreover, it shows that the "County's policy is to abide by ODFW's density recommendations unless the entire Goal 5 process is applied and a decision to exceed these recommendations is justified." In that case, the minimum density of one dwelling per 40 acres was exceeded, so it was necessary to revise its ESEE analysis and come up with additional siting standards, presumably as the "program to achieve goal 5." In other words, because the residential density recommendations are exceeded, an ESEE analysis must occur to determine whether to allow, allow in part, or prohibit the conflict and to propose a program to achieve goal 5. That is, in essence, what is required by Flora and Fauna Policy 11, where any density above what is recommended in the working paper would require an ESEE analysis:

> "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

(emphasis added). The working paper presents those recommendations, as noted in prior testimony:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. * * * to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range * * * conflicts with habitat for big game." Flora and Fauna Draft Working Paper, Page 24.

Because this template dwelling application is proposing a density that exceeds 80 acres per dwelling in an area designated as Major Big Game, the comprehensive plan requires that the ESEE analysis be adhered to, including a determination of whether to allow, allow in part, or prohibit the use, as well as a program to achieve goal 5.

Wholly disregarding the 40- and 80-acre recommendations for argument's sake, and assuming the applicant is correct that the siting standards are the *only* applicable provision to

achieve goal 5 for template dwellings, there is a further problem. The template dwelling rule (which originated in statute) was adopted in 1993 and the Goal 5 ESEE analysis was significantly revised in 1996, both occurring after the 1984 Acknowledgment of Compliance. As such, it is questionable as to how those siting criteria apply to a use not contemplated at the time and apply under a regime not in place at the time. As LUBA has noted, "acknowledgment is limited to compliance with the statewide planning goals and *administrative rules in effect when the local ordinance was acknowledged.* Pursuant to ORS 197.646(3), subsequent goal or rule amendments apply directly until a local government amends its land use code to implement post-acknowledgment goal or rule amendments." *White v. Lane County*, __ Or LUBA __ (LUBA No. 2013-063, Dec. 12, 2013) slip op at 13. The applicant has not demonstrated that the clustering or siting criteria alleged to resolve an issue in 1984 are applicable to template dwellings and the amended Goal 5 ESEE process. More specifically, current Goal 5 ESEE provisions require that the program to achieve goal 5 be couched in "clear and objective" terms. *See* OAR 660-023-0050(2) ("When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards."). OAR 660-023-0050(2) goes on to list examples of such standards, none of which mesh with the obviously subjective criteria that are listed in the 1984 Acknowledgment of Compliance. For example, the words and phrases "near," "minimal intrusion," and "where possible" are subjective criteria. It should also be noted that where there were specific criteria in Lane Code for Big Game between 1984 and 1992, there is nothing in the current code that specifically purports to apply to big game range (whether peripheral or major) in the F-2 zone. *See* LC 16.211.

Here, because minimum residential density is exceeded, pursuant to the plain terms of the comprehensive plan and the working paper, an ESEE analysis is necessary to resolve the conflict. In circumstances where the minimum residential density standard is not exceeded, siting criteria can be used to as the program to ensure compliance with Goal 5. There is also the unresolved problems pertaining to whether the comprehensive plan has ever been determined to comply with the template dwelling provisions in rule and the amendments to the Goal 5 ESEE analysis process.

In response to the November 7, 2019, staff memo, staff appears to conflate and misconstrue the excerpts cited from the RCP, Goal 7 Policies in stating that "according to the policies a land use decision should use the Natural Hazards Working Paper as a *guide* and be based upon inventory and on-site or other evaluations of hazards." The footnoted excerpt from the Lane County Rural Comprehensive Plan does not support that interpretation; what it actually says is that there are two categories of land use decisions and that the category 'general land use decisions' "shall be guided by the NHWP", and that 'specific land use decisions' "shall be based upon inventory and upon on-site or other evaluation as appropriate."[2] It is readily apparent that

[2] "GOAL SEVEN: AREAS SUBJECT TO NATURAL DIASTERS AND HAZARDS

1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions.

this application is a specific land use decision. County counsel has provided no basis for his interpretation that "the Goal 7 policies should not be applied as approval criteria" and staff's assertion that the "land use decision considers DOGAMI inventory of landslide hazards fails to specify in what manner the DOGAMI mapping has been considered.

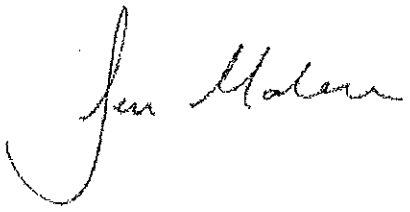
The "site specific survey" staff notes as "demonstrating the slopes of the subject property" is not evidence of soil stability nor is there a need for paid "Professional Registered Land Surveyor" to "demonstrate slopes" when contour mapping is readily available and accessible; land slide susceptibility is a function of multiple factors, including but not limited to slope, drainage, soil types, and physical disturbance from excavation and grading.

In response to the K&A submission, dated October 31, 2019, the letter addresses the development area and states "our understanding is that a small portion of the project site, located at the SE corner near the road is proposed for development as a single family residence." This statement shows that the review, for which no substantial evidence has been provided, did not consider the access (300 +/- foot long driveway), or accessory developments such as garages and other similar structures. Moreover, the letter is equivocal, stating that the "project site is located within, or near, the south end of the upper scarp zone of a very large, ancient landslide that moved soils and rock to the west." There is a substantial difference as to whether the development would occur within a scarp or near a scarp, and the conflation of the two are questionable. A scarp is defined as a "very steep bank or slope; an escarpment." If proposal is within the scarp, that is significantly different than if it is near the scarp, whatever is meant by "near." The letter also fails to distinguish between "recent slope movement" and "ancient" slides when concluding without so much as a test pit or other form of subsurface exploration that the slide is "ancient." It also raises the issue of whether an older slide, when construction occurs on it, can result in geotechnical hazards. In other words, without more, it is not apparent that only recent slides will cause geotechnical hazards. If that is not the case, the applicant has not provided any information to support its position.

The letter also states that the 'project site' is "near the road"; this is a subjective statement without evidence or context. In land use parlance, near the road usually refers to proximity to a public county road, rather than an access easement road through forest land as is the case here; in addition, a 300 foot long driveway from the access easement road to the development site is not necessarily 'near' a road, and the engineer failed to consult the land use code for information about turnout and turnaround construction standards, including the issue of chimney-effect across slopes. The letter concludes that "extensive or drastic safeguards are NOT needed to ensure safety on or off the property . . . "; it is irrelevant whether any extensive or drastic safeguards may or may not be called for because the issue is whether or not a geotechincal report/evaluation is needed that would ostensibly establish what safeguards might be necessary considering the general area and the entirety of the subject property are mapped as having severe landslide susceptibility.

Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate "

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

WORKING PAPER:

Flora & Fauna

DRAFT

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COMPREHENSIVE PLAN REVISION

LANE COUNTY, OREGON

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Jim Mann: In case there were spelling glitches in my last letter, all names should be correct here.
Rhoda L

FLORA AND FAUNA EXHIBIT "B"

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January 8, 1984

PROPOSED LANE COUNTY RARE & ENDANGERED VASCULAR PLANTS

The plants which the Native Plant Society of Oregon suggests for protection in Lane County at the present time are:

Aster curtus

Aster vialis

Darlingtonia californica

Draba aureola

Erigeron cascadensis

Erigeron decumbens var. decumbens

Eriogonum umbellatum var. hausknechtii (research needed)

Frasera umpquaensis

Gentiana newberryi

Howellia aquatilis (research needed)

Lathyrus holochlorus

Lomatium bradshawii

Montia diffusa (research needed)

Microcala quadrangularis

Microseris bigelovi (research needed)

Ophioglossum vulgatum

Pellaea andromedaefolia

Phacelia verna

Pityopus californica

Pleuricospora fimbriolata (research needed)

Romanzoffia thompsonii

Sagittaria latifolia (research needed)

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Scoliopus hallii (research needed)

Sidalcea campestris

Sidalcea hendersonii (research needed)

Sidalcea nelsoniana

Smelowskia ovalis

REFERENCES

1979, Interim Report: Rare, Threatened and Endangered Vascular Plants in Oregon by Siddall, Chambers & Wagner

1982, Threatened and Endangered Vascular Plants of Oregon: An Illustrated Guide, U. S. Fish & Wildflife Service, Portland

1983, Rare, Threatened and Endangered Plants and Animals of Oregon, the Oregon Natural Heritage Data Base, Portland

I wish to thank Charlene Simpson, Native Plant Society member and Chairperson of the Rare and Endangered Plant Committee for the Emerald Chapter of NPSO for preparing this list.

Dr. Rhoda M. Love, President
Native Plant Society of Oregon
393 FulVue Drive
Eugene, Oregon 97405
345-6241

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FLORA & FAUNA EXHIBIT "A"

COOPERATIVE AGREEMENT

BETWEEN

OREGON STATE BOARD OF FORESTRY

and

OREGON STATE FISH AND WILDLIFE COMMISSION

This agreement made and entered into upon the dates hereinafter indicated, by and between the Oregon State Board of Forestry, hereinafter referred to as OSBF, and the Oregon State Fish and Wildlife Commission, hereinafter referred to as OF&WC.

PREAMBLE

Whereas, the policy of OSBF as required by ORS 527.630 is to encourage forest practices that maintain and enhance the multiple forest benefits and resources while recognizing various forest conditions; and,

Whereas, the policy of OF&WC as required by ORS 496.012 is to maintain all species of wildlife at optimum levels and prevent the serious depletion of any indigenous species, and

Whereas, the various counties, under the provisions of ORS 197.175, are required to provide for protection of certain resources under Goal 5 and 17 of the Statewide Planning Goals and Guidelines, and may use the Oregon Forest Practices Act to implement the Goals; and

Whereas, Goal 5 identifies the need to protect and manage critical wildlife habitat and streamside wildlife habitat; and

Whereas, Goal 17 requires protection of major marshes, critical wildlife habitat, and riparian habitat in coastal shoreland areas:

Now, therefore, it is hereby understood and agreed by and between OSBF and OF&WC to implement the following process:

1. The OF&WC will furnish to the OSBF a current list of critical wildlife habitat sites (which will include major marshes in the coastal shoreland area) situated on lands subject to the provisions of the Forest Practices Act. The list will be updated as needed considering new information including those sites inventoried in local comprehensive plans.

2. The OSBF will recognize the list furnished by OF&WC as critical wildlife habitat to be protected through administration of the Forest Practices Act.

3. The OF&WC will provide OSBF with the current policies and standards used by OF&WC to identify the quality, quantity, and location of critical habitat sites.

4. The OSBF will classify any operation near or within a listed critical wildlife habitat site as a high priority operation requiring a joint inspection between OSBF and OF&WC prior to commencement of the operation on the sites.

5. The OSBF, OF&WC, and landowner/representative will jointly inspect the site to determine if the planned use of the site is a conflict. If no conflict is identified, the operation is to be limited only be current Forest Practice Rules.

6. If the planned use of the site is identified as a conflict between the operation and the wildlife habitat, OSBF will require a plan to resolve the conflict. The plan will determine reasonable measures sufficient to resolve the conflict on the site by limiting conflicting practices. Reasonable measures may include limiting conflicting forest operations during the time of the year wildlife need the site, limiting operations to meet other wildlife needs or excluding forest operations on the site.

7. The OSBF and OF&WC will cooperate in the development of standards and procedures for streamside protection and management including riparian habitat within coastal shore land areas, to be applied in administration of the Forest Practices Act on commercial operation. The OSBF will apply these procedures during administration and enforcement of the Forest Practices Act, consistent with the Forest Practices Act and Forest Practices Rules.

8. This Cooperative Agreement shall become effective upon execution of the parties hereto and shall be operative until terminated by either party by written notice to the other party and to DLCD and those local jurisdictions relying on the agreement for compliance to Goal 5. The notice to terminate shall be submitted at least thirty (30) days prior to the termination date.

HISTORIC RESOURCES EXHIBIT "A"

Agriculture	
Century Farms	F
Grange Halls	G
Old Barns	B
Mining	M
Logging	L
Marine Industry	W
Historical Sites	H
Natural Features	
Natural Landmarks	N
Hot Springs	S

LISTING-HISTORIC RESOURCE SITES

ARCHAEOLOGICAL SITES MAP SYMBOL A

Site numbers and Unit names are provided by sources listed in Historic Preservation Preliminary Survey Notebook I, located at the Lane County Planning Division Office.

Map Symbol #	Location (Township, Range & Section)	Site # or Name	Quad Sheet
1	16-2-25	Mohawk Unit AR090 33	Marcola
2	16-3-14	Mohawk Unit AR090 34	Eugene
3	16-3-27	35 LA 216-Beebe Site	Eugene
4	16-3-33	35 LA 44-Hurd Site	Eugene
5	16-4-13	35LA 71 (East of River)	Eugene
6	16-4-13	35 LA 72 (970' East of River)	Eugene
7	16-5-27	35 LA 41-42-Benjamine Site	Elmira
8	16-5-28	35 LA 80 (Near Long Tom River - 2 mi. N. of Fern Ridge)	Elmira
10	18-2-7	35 LA 95	Marcola
11	18-2-26	35 LA 63	Lowell
12	18-2-29	35 LA 64 Stuzsite	Lowell
13	18-2-16/21	35 LA 63Derysite	Lowell-Marcola
14	18-2-28	35 LA 61Lowell	
15	18-2-28	35 LA 60 Pleasant HillLowell	
16	18-2-30	35 LA 144	Lowell
17	18-2-33	35 LA 59	Lowell
18	18-2-33	35 LA 56	Lowell
19	18-2-33	35 LA 94	Lowell
20	18-2-32	35 LA 57 Pleasant Hill Area	Lowell
23	18-3-12	35 LA 133	Marcola
24	18-3-34	35 LA 113	Cottage Grove

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25	18-5-33	Lorane Unit AR 090 49	Crow
26	18-5-33	Mohawk Unit AR 090 48	Crow
27	19-2-1	35 LA 58-Middle Fork Willamette	Lowell
28	19-2-4	35 LA 96-Seller Butte (SE)	Lowell
29	19-2-16	35 LA 116 Simions Site	Lowell
30	19-2-7	35 LA 117	Lowell
31	19-2-7	35 LA 118-Creswell Area near Bear Creek	Lowell
32	19-2-3	35 LA 123	Lowell
33	19-2-10	35 LA 124	Lowell
34	19-2-9	35 LA 125	Lowell
35	19-2-18	35 LA 135	Lowell
36	19-2-16	35 LA 193	Lowell
37	19-3-2	35 LA 91-Camas Swal Area	Cottage Grove
38	19-3-1	35 LA 121	Cottage Grove
39	19-3-8	35 LA 102	Cottage Grove
40	19-3-13	35 LA 120	Cottage Grove
41	19-3-12/13	35 LA B1	Lowell
42	19-3-13	35 LA 132	Cottage Grove
43	19-3-13	35 LA 134	Lowell
44	19-3-8	35 LA 136	Cottage Grove
45	19-3-18	35 LA 122	Cottage Grove
46	19-3-24	35 LA 119	Cottage Grove
47	19-3-24	35 LA 112	Lowell
48	19-3-26	35 LA 111	Cottage Grove
49	19-3-23	35 LA 104	Cottage Grove
50	19-3-16	35 LA 103	Cottage Grove
51	19-3-18	35 LA 101	Cottage Grove
52	19-3-24	35 LA 93 (S.E. of Creswell)	Lowell
53	19-3-17	Camas Swale Area	Cottage Grove
54	19-3-24	35 LA 127	Cottage Grove
55	19-3-25	35 LA 128	Cottage Grove
56	19-3-35	35 LA 129	Cottage Grove
57	19-3-35	35 LA 109	Cottage Grove
58	19-4-12	35 LA 20	Cottage Grove
59	19-4-12	35 LA 69	Cottage Grove
60	19-4-13	35 LA 114	Cottage Grove
61	19-3-35	35 LA 110	Cottage Grove
62	19	35 LA 99	Cottage Grove
63	19-4-14	Lorane Unit AR 090 47	Cottage Grove
64	19-5-22	Lorane Unit AR 090 50	Crow
65	20-6-1	35 LA 173 Siuslaw Falls Site	Crow
66	20-6-1	Lorane Unit AR 090 32	Crow
67	16-1-15	35 LA 236	Marcola
68	16-1-31	35 LA 235	Marcola
69	16-1-31	Mohawk Unit AR 090 45	Marcola
70	17-1-5	Mohawk Unit AR 090 46	Marcola

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71	17-1-9	35 LA 248	Marcola
72	18-1-25	Mohawk Unit AR 090 35	Lowell
73	18-1E-30	Mohawk Unit AR 090 25	Lowell
74	18-1E-31	Mohawk Unit AR 90 26	Lowell
75	18-1E-31	35 LA 244	Lowell
76	18-4E-1	35 LA 194-Indian Ridge Site	Fairview Peak
77	19-2-16	35 LA 194	Lowell
77	19-1E-31	35 LA 30-38-Fall Creek	Hardesty Mtn.
78	20-1-3	BLM # Dorena District AR 090 18	Lowell
79	20-1-3	BLM # Dorena District AR 090 19	Lowell
80	20-1-11	BLM # Dorena District AR 090 8	Lowell
81	20-1-11	BLM # Dorena District AR 090 9	Lowell
82	20-1-11	BLM # Dorena District AR 090 10	Lowell
82	20-1-11	BLM # Dorena Limit AR 090 10	Lowell
83	20-1-11	BLM # Dorena Limit AR 090 11	Lowell
84	20-1-31	BLM # Dorena Limit AR 090 30	Lowell
85	20-3-14	35LA 106	Cottage Grove
86	20-3-14	35LA 107	Cottage Grove
87	20-3-4	35LA 105	Cottage Grove
88	20-3-13	35LA 100	Lowell
89	20-3-11	35LA 130	Cottage Grove
90	20-5-14	Lorane Unit AR 909 21	Crow
91	21-1-31	BLM # Dorena Unit BAP 090 15	Culp Creek
93	21-2-15	BLM # Dorena Unit AP 090 22	Lowell
94	23-2-10	BLM # Dorena Unit AP 090 13	Culp Creek
95	22-2-32	BLM # Dorena Unit AP 090 23	Culp Creek
96	23-1-16	BLM # Dorena Unit AP 090 51	Culp Creek
97	23-2-4	BLM # Dorena Unit AR 090 31	Culp Creek
98	21-4E-19	35LA 53 Baby Rock Shelter #2	Oakridge
99	21-4E-19	35LA 54 Baby Rock Shelter #1	Oakridge
100	20-4E-10	35LA 55 Summitt Huckleberry Mtn.	Sardine Butte

101	16-5-33	Virgin Ranch Site	Elmira
102	17-5-14	Smithfield	Elmira
103	17-05-33	Perkins	Elmira
104	18-12-3	Mohawk Unit 35LA 25	Siltcoos Lake
105	16-12-34	Mohawk Unit 35LA 25 Devil's Elbow St. Park	Heceta Head
106	Somewhere just east of Fern Ridge; contact State Historic Preservation Office	Franklin Site of Flanagan Site (on National Register)	
107	19-1-16	35LA 68 Dexter Park	Lowell

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FLORA AND FAUNA WORKING PAPER

INTRODUCTION

Oregon's wildlife and fish resources are varied and abundant. Lane County alone with its large land area and highly diverse landscape from snow level to sea level provides numerous specialized habitat areas for more than 290 species of birds, 70 mammal, 13 reptile, 17 amphibian and over 50 fish species. This diversity also is apparent in the vegetation of the County from coastal salt spray meadows inland to the treeless crests of the Cascade range.

Inventories of fish and wildlife species were compiled from Oregon Department of Fish and Wildlife information, various environmental assessment or impact statements and the Eugene-Springfield Metropolitan Area Wildlife Study. These lists are presented in the appendix to this report.

Inventories of habitat types are presented on USGS maps at a scale of one inch equaling one mile (15-minute series). This shows unique, endangered or threatened sites such as eagle nests, snowy plover sites, heron rookeries, band-tailed pigeon mineral springs, osprey snags and northern spotted owl sites. Further, major and Peripheral Big Game Range and general riparian vegetation around Class I streams are shown on these maps. Noncoastal wetlands and Sensitive Fish and Waterfowl areas are depicted on other maps.

The USGS maps also show general locations of Nature Conservancy sites and sites inventoried by the Oregon Natural Area Preserves Advisory Committee (NAPAC) which are in Lane County's Inventory.

Statewide Planning Goal #5 - Open Spaces, Scenic and Historic Areas, and Natural Resources - requires consideration of numerous resources, among them fish and wildlife habitat, ecologically and scientifically significant natural areas and wetlands.

Wetlands are considered here as fish and wildlife habitat. Although they have many valuable functions, their habitat value is a primary one. The original list of ecologically and scientifically significant areas included 86 sites from the Nature Conservancy Inventory and 12 sites from the Natural Area Preserves Advisory Committee. These are further refined in this paper.

Several deficiencies in Lane County's treatment of fish and wildlife habitats and natural areas were noted by LCDC. These were:

1. Updated inventory information required for sensitive fish and waterfowl areas and noncoastal wetlands.

2. Provide more specific information on Nature Conservancy Inventory sites.

3. Adopt mandatory policies regarding the protection of natural areas and noncoastal wetlands and clarify this with existing policies that encourage drainage projects.

4. Adopt implementing measures for the protection and/or resolution of conflicts with noncoastal wetlands, natural areas and the following types of fish and wildlife habitat: big game range, riparian areas and sensitive fish and waterfowl areas.

After these orders to comply were written, LCDC adopted administrative rule 660-16-00 which gives very specific procedures for evaluating Goal 5 resources. The administrative rule applied to Lane County due to the continuance status of the County. Therefore, this paper addresses the items set out in the orders to comply and does so in the format of OAR 660-16-00. Specifically, this rule requires that when conflicts to Goal 5 resources can be anticipated in the plan, the economic, social, environmental and energy (ESEE) consequences of the conflict are analyzed and resolution to the conflict proposed. In cases where a resource is considered significant but conflicts cannot be anticipated, procedures are established to analyze conflicts as they are identified.

The contents of this paper are as follows:

A. General Findings. Concise statements summarizing facts on Lane County's flora and fauna resource and potential impacts of certain land use activities.

B. Habitat Types. A description of the 12 habitat types found in Lane County.

C. Endangered or Threatened and Special Concern Species. A listing of the threatened or endangered species found in the County and special habitat requirements for some of them.

D. Habitats of Particular Concern. Location, quality and quantity information and conflict analysis for the following types of habitat:

Riparian vegetation
Noncoastal wetlands
Sensitive fish and waterfowl
Big game range

E. Natural Areas. Location, quality and quantity of the sites on the Nature Conservancy and NAPAC lists determined to be significant, including conflict analysis.

F. Policy Recommendations.

G. Appendices. Includes lists of species.

FINDINGS

1. Lane County's fish and wildlife resource is highly varied. Diverse habitats, ranging from coastal to alpine, support nearly 400 vertebrate species. Status of individual species extends from common to endangered.

2. Four physiographic provinces - coast, coast range, western interior valleys and western Cascades - are found in Lane County. Each province represents differences in climate, substrate, topography and other physical

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and chemical variables. Each is distinct and represents a unique diversity, supporting flora and fauna which are adapted to the region.

3. Twelve distinct wildlife habitats are found in Lane County: estuary and bay (includes subtypes coastal salt marsh, tidelands and eelgrass), inland marsh, lakes and reservoirs, wet meadows, annual and perennial grasslands, riparian vegetation, coastal shore pine/spruce, Douglas fir/trailing blackberry, true fir/alpine, deciduous hardwoods, agricultural lands and cities.

4. Lane County's fish and wildlife resource provides substantial social, economic and ecological values.

5. A diversity of habitats is required to maintain Lane County's fish and wildlife fauna. Distribution of many species is limited by specialized habitat requirements.

6. Coordination between Lane County and state and federal agencies is necessary to properly harmonize wildlife needs and other resource values.

7. There will be a continuing need to review and update fish and wildlife inventory information.

8. Numerous land use activities have the potential to diminish the quality and quantity of fish and wildlife habitat. Habitat losses for a broad spectrum of fish and wildlife continue to occur. Sound resource management is necessary to minimize this loss.

9. Lack of biological information for many species handicaps the development of management procedures such as habitat guidelines.

10. Species not presently endangered or threatened may become so if their habitats are not adequately protected.

11. Examples of habitats of special value to fish and wildlife include high quality riparian and wetlands areas, estuaries, Major and Peripheral Big Game Ranges and other sensitive, fragile or unique areas.

12. Protecting water quality and quantity is vital to fish and wildlife resources.

13. A majority of certain habitat types and major watersheds lie within federal ownerships in Lane County. Therefore, public land managers have prime responsibility for protection of these habitats and watersheds. Where private lands support certain habitats, County land use planning needs to take into consideration wildlife needs, Statewide Planning Goal objectives and the rights and management objectives of the private landowner.

14. Land use activities which could negatively impact fish and wildlife habitat if uncontrolled include:

    a. Conversion of agricultural and forest lands to other uses;

b. Division of large tracts of farm and forest lands to small parcels;

c. Field burning, fencerow clearing, wetland drainage and certain other agricultural practices;

d. Careless or unplanned road construction;

e. Gravel extraction from streambeds.

f. Logging and road building activities which do not conform strictly to the Oregon Forest Practices Act.

15. Designated natural areas in Lane County provide examples of unique or outstanding habitat or species assemblages.

WILDLIFE HABITATS

The following descriptive information on Lane County habitat types is derived primarily from Oregon Department of Fish and Wildlife materials. This material is not considered an inventory and is not accompanied by maps. It is intended merely as background information.

1. Estuary and Bay (includes salt marsh, tidelands and eelgrass)

   a. Description

      That area from the mouth of a bay or river inland to the mean high tide line. Within this type will occur coastal salt marsh, tideland, eelgrass and open water. Includes all salt, brackish and freshwater area below the mean high tideline. Climate basically mild winters and cool summers. Precipitation is heavy, about 40 inches.

   b. Value to Wildlife

      A very important type to wildlife species. Estuaries and bays support thousands of waterfowl, waterbirds and shorebirds. The shallow tidal areas are critical feeding areas for many species because of the abundance of small food organisms. Eelgrass beds in certain coastal bays are the most important black brant feeding areas. Coastal salt marsh is valuable feeding and nesting area for waterfowl, snipe, yellowlegs, plover, godwits, rails, etc. Mud flats, in addition to being important for many shorebirds, waterfowl and water birds may also serve as haul-out grounds for seals. Raccoons are common foragers in this type. Band-tailed pigeons use the tide flats and salt marsh channels in specific areas for drinking and often concentrate in large numbers at these places.

   c. Location

      Siuslaw River and minor estuaries.

2. Inland Marsh

   a. Description

      This type is a shallow water area, not including coastal bay marsh, with water remaining year-around. Usually vegetated throughout or with patches of open water. Tules and cattails are common indicator plants of this type. Further discussion of this important habitat is found in the Riparian and Wetlands section of this report and under Sensitive Fish and Waterfowl Areas.

   b. Value to Wildlife

      Contains some of the most important waterfowl and waterbird nesting and wintering areas. This is critical habitat because of the limited acreage of this type in Lane County. Muskrats are common mammals found

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in this type. Redwing and yellow-headed blackbirds use this type for nesting. Amphibians and reptiles such as frogs, toads, salamanders, turtles and certain snakes are found in this type.

c. Location

Fern Ridge Reservoir and numerous smaller sites.

3. Wet Meadows

a. Description

Boggy or damp areas with many small springs or bisected by slow-moving streams. Contain sedges, monkey flower, skunk cabbage, false hellebore, aspen, cone flowers or similar species. May be found throughout the County from low foothill areas to high elevations in the Cascade Mountains. These are generally seasonal wetlands. Further discussion of wetlands is found in the Riparian and Wetlands section of this report.

b. Value to Wildlife

A very important vegetation type. Provides summer, fall and sometimes winter forage to big game. Utilized as wallows by bear and elk. Important to amphibians such as toads and frogs. This type is usually important for watering area. Can be excellent beaver habitat. Beaver ponds and slow-moving streams in this type can be excellent fish-producing area also because of the abundant food supply.

c. Location

Numerous sites Countywide from low foothills to high Cascades.

4. Lakes and Reservoirs

a. Description

All open fresh-water areas in the County. Borders sometimes vegetated with water-tolerant forbs, shurbs and trees. There are 11 major reservoirs in Lane County. Lowland and coastal lakes total 10 and 27 respectively. High lakes are abundant in the Cascade Mountains with approximately 250 located in Lane County.

b. Value to Wildlife

The value of these areas varies with type and location. Most offer resting, nesting and limited feeding areas to waterfowl. Many of the large, deep reservoirs are of low value because of continuous water level fluctuation. Some of the wildlife species present in these bodies of water are: furbearing animals--otter, beaver, muskrat, nutria; waterfowl--ducks, geese, swans, coots, rails, grebes and loons; amphibians and reptiles--frogs, toads, snakes, turtles and salamanders.

c. Location

Countywide.

5. Riparian Vegetation

a. Description

This type occurs along streams, rivers and slough banks. Vegetation is usually in a dense, narrow band. Species of plants identifying this type are those dependent on water such as willow, cottonwood, alder and aspen. Further discussion is found in the Riparian and Wetlands section and the Sensitive Fish and Waterfowl section of this report.

b. Value to Wildlife

An important wildlife habitat type. The riparian vegetation is a concentration point for a great variety of game and nongame species, providing food and cover. This vegetation renders the more open grassland and agricultural areas suitable for wildlife feeding areas by providing the necessary cover. The riparian strip also acts as a food supply for beaver and muskrat and can provide nesting cover, including snags for cavity-nesting birds. Valuable for maintaining good water quality for aquatic organisms.

c. Location

Countywide.

6. Annual and Perennial Grasslands

a. Description

This type contains the annual and perennial grassland areas of the County. Species of forbs and grasses differ with the geophysical area.

In Western Oregon the type may typically be found in small acreages but may be in large tracts of several hundred acres which are commonly called prairies. Many species of native and domestic grasses may be found in this type. In the Cascades and Coast Range this type occurs on shallow soils. Bracken fern may be a common plant on these sites also.

b. Value to Wildlife

A very important type for elk, deer, grouse, turkey, mountain quail, moles, gophers, ground squirrels, hawks and owls and many smaller species of wildlife. This type is heavily used on winter range and summer range by deer and elk. Grouse and quail use the prairies for feeding on insects which are a vital part of the young birds' diet in the summer.

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c. Location

Countywide.

7. Coastal Shore Pine/Spruce

a. Description

A narrow belt along the coast from the beach inland to the coastal foothills. Shore Pine and spruce are the main trees with salmonberry, red elderberry, salal, alder and thimbleberry being other species present. The coastal sand dunes and beach grass areas are also included in this type.

b. Value to Wildlife

Mature, dense stands of spruce and shore pine are of limited food value to big game species, but are necessary for the protection, shelter, travel lanes, etc., that they provide. Areas that have been burned, logged or otherwise disturbed produce good black-tailed deer, Roosevelt elk, black bear, blue and ruffed grouse and band-tailed pigeon habitat. Numerous species of small birds, shore birds and mammals are associated with this habitat type.

The coastal sand dunes near Florence provide an important area for whistling swans during the winter months.

c. Location

Narrow coastal strip.

8. Douglas Fir/Trailing Blackberry

a. Description

Trees are Douglas fir, western hemlock, red and Port Orford cedar, big-leafed and vine maple, red alder, trailing blackberry, salmonberry, salal and other similar species. Douglas fir and hemlock are the most abundant. Brush species are present in wildfire burn, logged and other disturbed sites. This is the largest habitat type in Lane County.

b. Value to Wildlife

Mature dense stands of Douglas fir are of limited food value to most species of big game; however, they are necessary for the shelter, protection, etc., that they afford. Many species of birds and mammals, however, spend their entire life dependent upon these mature stands of vegetation (ex. northern spotted owl, pileated woodpecker, flying squirrels). With logging and fires these timbered areas are opened to produce abundant foods in the form of berries, forbs, browse and grasses.

Big game species associated with this habitat type are the black-tailed deer, Roosevelt elk, black bear and mountain lion. Upland game species

include the blue and ruffed grouse, mountain quail and the band-tailed pigeon.

Numerous species of small birds and mammals are associated with this habitat type, including several important furbearers.

c. Location

Valley foothills, coast range and Cascade range.

9. True Fir/Alpine

a. Description

This type occurs primarily in the Cascades above the Douglas fir-trailing blackberry area. Noble fir, Engelmann spruce, white fir, grand fir, mountain hemlock and mountain alder are the most common species. High elevation areas are densely covered with huckleberry, a preferred browse plant for many species of animals.

This habitat type contains numerous small lakes and meadow areas that are extremely important to wildlife.

b. Value to Wildlife

This habitat type is important summer range for black-tailed deer and Roosevelt elk. Some mule deer also spend the summer months in this area. This area contains the pine martin, fisher, wolverine, coyote and pikas. The black bear is also found in this habitat type.

Game bird species present are the blue grouse and occasionally band-tailed pigeon.

Many small birds and mammals are associated with this type.

This type contains numerous meadow and prairie areas that are very important to wildlife species and every effort must be made to preserve them. These meadows are important for resting, feeding, calving areas for elk and during most winters a place for animal survival. Many wet meadows remain open during deep snows and thus provide an important wintering area for animals.

c. Location

High elevations of Cascades - primarily in federal ownership.

10. Deciduous Hardwoods

a. Description

This forest type consists of white oak and black oak, with undergrowth of poison oak, ceanothus sp. and grasses. May also contain scattered or small clumps of Douglas fir or pines. Found primarily in the Willamette Valley and along the foothills.

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b. Value to Wildlife

This area is the year-around habitat of the black-tailed deer, black bear, bobcat, coyote and silver gray squirrel. Upland game species include the ruffed grouse, valley and mountain quail and in many areas the ring-necked pheasant. The mourning dove and band-tailed pigeon also use this habitat. Other species include many types of song birds, small mammals, hawks and owls.

This habitat type value varies with its location, but most of it offers resting, feeding and nesting for many species of wildlife.

Its location along the valley foothills provide cover for species that utilize the agricultural areas for food. Some of the best black-tailed deer habitat in Lane County is found in this habitat type.

c. Location

Numerous sites primarily on valley foothills.

11. Agricultural Lands

a. Description

Includes the irrigated and nonirrigated agricultural forage and croplands and dry land seeded pastures.

b. Value to Wildlife

This land type provides important upland game and waterfowl habitat. The black-tailed deer is also found using these areas, but mainly for food, as long as adjacent land types are available for cover.

Many furbearing species such as the beaver, muskrat, mink, etc., are found in the waterways associated with this land type.

Several hundred species of song birds, small and large mammals, hawks and owls are dependent upon this habitat type. The availability of food provided by this habitat type also attracts many species of wildlife from the adjacent habitats.

c. Location

Willamette Valley and assorted small valley floors.

12. Cities

Not applicable to rural Lane County.

ENDANGERED, THREATENED AND SPECIAL CONCERN SPECIES

Both plant and animal species which have been identified by the state or federal government as endangered or threatened are present in Lane County. Some species not presently threatened or endangered may become so if their habitat is further altered by man's influence and present practices.

It is important to note that many of these species are found on public lands. Those management agencies have prime responsibility for conservation and protection of the species on their lands.

No deficiencies were noted by LCDC during compliance review for threatened and endangered species. Two policies regarding threatened, endangered, and special interest species are presently part of the Lane County Plan. These policies are:

- Recognize and support existing federal and state programs protecting threatened or endangered fish and wildlife species.

- Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

The following definitions apply:

Endangered Species - Those likely to become extinct if present trends continue.

Threatened Species - Those whose population trends indicate that endangerment is forthcoming if present trends continue.

Special Interest Species - Those rare and uncommon species because of numbers or trends. Designations tend to be rather subjective and are therefore generally unofficial.

Endangered Animals and Plants

Columbian white-tailed deer
California brown pelican
American peregrine falcon
Gray wolf
Oregon chub
Bradshaw's desert parsley
Meadow sidalcea
Wayside aster (suggested as endangered)
Pacific fleabane (suggested as endangered)
Howellia (suggested as endangered)

Threatened Animals and Plants

Sea otter
Wolverine
Western spotted frog
Northern spotted owl
Western snowy plover
Silver spotted butterfly
Northern bald eagle
Wapato, broadleaf arrowhead
Darlingtonia, California pitcher plant

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Special Interest or Protected Animal and Plant Species

Mary's Peak salamander
Sharp-tailed snake
Western rattlesnake
American osprey
Northern purple martin
Red tree vole
Cony (pika)
Short horned lizard
Oregon slender salamander
Tailed frog
Marine mammals

Allium amplectons
Aster hallii (curtus)
Cypripedium californicum
Draba aureola
Erigeron cascadensis
Eriogonum umbellatum
Gentiana newberryi
Ledum groenlandicum
Montia diffusa
Pellaea andromedaefolia
Phacelia verna
Phlox peckil (Phlox diffusa)
Pleuricospora fimbriolata
Scoliopus hallii
Sidalcea nelseniana
Silene douglasii var. monantha
Sinclowskia calycina
Sullivantia oregona
Vaccinium oxycoccus var. intermedium
Viola adunca var. bellidifolia

Specific Species Requirements

1. Northern spotted owl. Recent recommendations to an Interagency Spotted Owl Task Force from research in Oregon suggests maintaining 1,000 acres of old growth timber within 1-1/2 miles of the nesting tree of a pair of spotted owls. An Oregon Interagency Spotted Owl Management Plan has been drafted. This plan recommends a minimum nesting pair quota in Oregon of 400 pairs. Of these 400, 290 pairs should be located on US Forest Service land, 90 pairs on BLM land and the remaining 20 pairs on "other lands." Other lands include, but are not limited to state, county, national park, and private lands. Protection is not required on private lands by any state or federal laws.

   The major economic loss to a private landowner which would result from maintaining 1,000 acres of old growth timber for the purpose of one pair of spotted owls does not seem justified when 98 percent of the quota of owls is proposed for federal lands. A restriction on harvesting 1,000 acres of old growth from private property would be excessive and would very possibly constitute a "taking" under the law.

   No known spotted owl nests occur on private property in Lane County at this time. Because of the unreasonable burden protection of this species would place on a private landowner, no special provisions are recommended for any nests which may be found or constructed on private property.

   Maintaining a viable population of this species is recognized as an important goal by the County. As part of their multiple purpose mandate, the Forest Service and the Bureau of Land Management are encouraged in their efforts to protect this species on public lands in Oregon.

2. Northern Bald Eagle. This nationally threatened species requires buffer areas around nest sites with restricted activities during nesting seasons. Federal land management policies provide protection for this bird on federal lands. No nests on private land are presently known in Lane County. If nest sites are identified on private land, an ESEE analysis should be done on conflicts which would either destroy the nest site or inhibit fledgling viability. The County should then work with the Oregon Department of Forestry to make them aware of the location of these areas and implementation methods adopted by the County for conflict resolution.

3. Wolverine. This threatened species requires remote, high elevation areas of the Cascades free of logging and intensive human activities. These areas are in federal ownership and therefore not under County jurisdiction.

4. Silverspot butterfly. This species is on the National list of Threatened and Endangered species. It requires undisturbed salt spray meadows and adjacent upland brush and treeline areas. It is only found along a small section of the Oregon coast. The Coastal Resources Management Plan of Lane County recognizes this species and applies a Prime Wildlife Management Unit to its habitat.

5. Western snowy plover. This species, threatened in Oregon, requires undisturbed areas of dry sand along the beach between the highest tide line and the vegetation line. The Oregon Department of Transportation, State Parks Division, regulates activities including vehicular use of this area. The Oregon Department of Fish and Wildlife is currently preparing a state management plan for the snowy plover. This plan will probably include recommendations for areas closed to vehicles either year round or seasonally to protect the habitat of this bird and other important shorebirds.

   Since the habitat is within state jurisdiction, Lane County proposes no direct action, but does support state activities to protect this species.

6. American osprey. This bird is a special interest species because its very specific nesting requirements in timber areas make it susceptible to population losses from habitat modification. The bird is neither threatened nor endangered and is found throughout the County, although not in great numbers. Some protection is already provided around coastal lakes and in the Willamette River Greenway. No special zoning provisions will be adopted by the County for osprey nesting sites. Nest sites are shown on the Wildlife Inventory maps. If these sites are confirmed by ODFW, their maintenance will be a consideration in land divisions and special use permits.

RIPARIAN AND WETLAND AREAS

LCDC Orders to Comply mandate updated inventory information on the location, quality and quantity of noncoastal wetlands and implementation measures for the protection and/or resolution of conflicts with these wetlands and with riparian habitat areas. The discussion in this section does not distinguish between coastal and noncoastal wetlands. Although many coastal wetlands are protected by Goal 17, many are not and should be considered along with wetlands on a Countwide basis.

Several areas within the County presently have regulations dealing with riparian vegetation. These are the Willamette River Greenway, the Siuslaw River Estuary, and coastal lakes. Also, lands zoned for timber production are regulated by the Oregon Forest Practices Act which considers buffer strips around streams. The County is not attempting to preempt state authority in forestry zoned areas. The discussion on conflicts and conflict resolution, therefore, does not apply to those areas.

It is difficult to separate discussions of wetlands and riparian (streamside) vegetation. Conditions which give rise to both are very similar and habitat values are similar. Riparian vegetation is that vegetation alongside streams and lakes which is structurally and physiologically adapted to living in saturated conditions.

Defining a wetland is more difficult and must be considered as a continuum of conditions not in direct relation to a lake or stream. There are many different definitions of wetlands - open water may or may not be present, the area may be seasonally or permanently wet, different vegetation types may occur. For purposes of this paper, a wetland is an area in which open, standing water is present for at least six months out of the year and is a minimum size of one acre. Vegetation types can range from grasslands to areas with mature, water-loving trees (Oregon white ash, cottonwood, alder and willow). The wetland must be large enough to be important for wildlife feeding and watering. The one-acre minimum size is intended to exclude small, backyard wet areas, and to give an indication of the type of areas intended to be covered by this definition of wetland. In a case of dispute over whether an area is important for wildlife and should be considered a wetland, the ODFW's recommendations will be relied upon.

For areas of the County covered by the National Wetland Inventory, that Inventory shall be considered the maximum number of sites which may possibly be considered wetlands. If sites occur there, though, which are streams or do not have open water present, they will not be considered a wetland by this definition.

These wetlands correspond to the Inland Marshes discussed in the Habitat Types section of this paper, rather than the Wet Meadows.

Riparian and wetland ecosystems are characterized by the combination of high species diversity, high species densities and high productivity. Continuous interactions occur between riparian and wetland ecosystems and adjacent uplands by transfer of energy, food and species.

Riparian habitats have been recognized as one of the most important and valuable land types in Oregon for several reasons: (1) they play an essential role in determining the quality of fish habitat; (2) they provide a vegetative buffer for streambank stability; (3) they offer seasonal and year-long habitat to the greatest numbers and diversity of terrestrial wildlife populations than any other habitat type; (4) they accommodate and attract important recreational activities such as hunting, fishing, boating, camping and hiking; (5) their aesthetic value is high because of the pleasing combination of land and water, attractive and unique vegetation types, and abundant animal life; (6) their ability to control pollution by filtration; and (7) their ability to assist in flood control by water containment.

Fishery habitat is directly related to the conditions in the surrounding watershed, especially the adjacent riparian zone. Riparian vegetation provides a number of important features to aquatic habitat: (1) streambank stabilization and erosion control which reduces sedimentation and helps maintain an oxygen supply to eggs and juvenile fish; (2) a natural filter to settle out sediments and reduce downstream siltation; (3) shade to maintain suitable water temperatures for aquatic life; (4) organic debris to feed aquatic insects which are essential to the diets of many fish; (5) bank stability to minimize stream damage from torrential floods; (6) overhanging bank cover from the roots of trees, shrubs, and other vegetation to provide fish with protective cover and terrestrial insects; and (7) groundwater recharge by its ability to absorb water. When a riparian zone is adversely affected by human activities, the quality and quantity of fish production will be affected.

Riparian vegetation likewise plays a vital role for wildlife. The habitat is a gradation between aquatic habitat of the stream and surrounding terrestrial habitat. The riparian zone usually provides all four basic habitat components: water, food, cover and space. The habitat is generally more diverse than upland plant communities, and therefore supports greater wildlife diversity and higher numbers of individuals. Certain fish and wildlife species are totally dependent on the riparian ecosystem, other species use the area as a travel corridor, or for feeding, roosting, nesting or watering. The significance of riparian habitat to game and nongame wildlife, both within and in the vicinity of the area, surpasses that of any other habitat type (American Fisheries Society, 1980).

Very similar statements can be made for wetland ecosystem species diversity and habitat importance as for riparian areas. Their variety of habitats, and often their inaccessibility, make them very important for many species. Wetlands which occur in agricultural or developed areas take on an even greater degree of significance as they are often a refuge for animals which have been displaced and can provide some of the only available living space for many forms of wildlife.

Administrative Rule 66-16-000 requires examination of the location, quality and quantity of Goal 5 resources, including wetlands and fish and wildlife habitat. Riparian vegetation, being an important habitat type, was distinguished in the Orders to Comply as needing better implementing procedures for protection or resolution of conflicts.

After examination of location, quality and quantity, a decision must be made whether the resource sites are significant. If so, conflicting uses must be

identified. An analysis of ESEE consequences must be done, then a program developed for resolution of conflicts. The resolution can take three courses: a) preserve the resource site; b) allow the conflicting use fully; or c) specifically limit conflicting use.

Location

Although the total amount of riparian and wetland vegetation is much reduced from the amount prior to human habitation of Lane County, these habitat types still exist all around us. Unless the water regime which supports the area changes, areas which have been cleared will revert to riparian or wetland vegetation without constant upkeep.

All lakes, reservoirs and Class I streams in Lane County have been mapped. These maps are not included here for budgetary purposes, but are available in the Planning Department offices. Class I is a designation used by the Oregon Forestry Department and the Oregon Department of Fish and Wildlife to indicate streams important for fish life. Class I streams are those valuable for domestic use, important for angling or other recreation, and/or used by significant numbers of fish for spawning, rearing or migration routes. Stream flows may be either perennial or intermittent during parts of the year. Unless in a disturbed state, riparian vegetation will exist around all of these. Certain areas of stream and lake banks have been designated as "sensitive fish and waterfowl habitat," and will be discussed and analyzed later in this report. This section, then, deals only with riparian areas outside of the "sensitive" areas.

In the northwest quarter of the County, wetlands have been mapped by the US Fish and Wildlife Service. The maps, called the National Wetland Inventory, are very detailed and use an intricate classification system to show types of wetland vegetation. Most of the mapping is done at a scale of 1" = one mile, with the area close to Eugene at a scale of 1" = 2000'. Neither of these scales work well for most site specific uses. They give general ideas about where within a section wetland vegetation occurs, but field examination would be necessary to determine exactly where the wetland occurs.

This mapping should eventually be completed for all of the County, but lack of federal funding may extend that effort. Mapping for the southwest quarter of the County should be released in draft form by summer, 1982. As mentioned earlier, where this Inventory exists, it will be considered the maximum number of sites which will be considered wetlands. Where this mapping is not yet completed, only the earlier definition of a wetland will be used to identify sites.

Quality

For the most part, quality of riparian and wetland areas is discussed as it relates to quality for fish and wildlife habitat, as this is considered one of their prime functions. The "sensitive fish and waterfowl" areas designated by the ODFW are a subunit of riparian and wetland areas. These areas, discussed in the next section, are the most important and highest quality riparian and wetland areas.

The many other riparian and wetland areas in the County range from undisturbed, very diverse areas to fringe marshes and riparian zones in urban areas. Often the small marshes and riparian zones in agricultural and urban areas take on a greater degree of importance due to their scarcity. They may provide a refuge for species whose habitat has been destroyed elsewhere.

Quality can be degraded in different ways. Certainly, removal of vegetation most immediately destroys most habitat value of an area. This can be done either directly by tearing out plants or by draining away water so that wetland or riparian vegetation can no longer survive. Human presence can drive off some forms of wildlife, but if not in large numbers will not generally degrade habitat values too much. Intense activities, such as recreation sites, will have a greater effect on habitat values and should be closely examined in view of this prior to approval.

Another activity which can greatly damage riparian and wetland areas, but which is only a minor problem in Lane County, is livestock grazing. The continual disturbance of streambanks can retard vegetation and can cause severe erosion.

Quantity

No good inventory exists on the quantity of riparian habitat in Lane County. Mapping of riparian habitat around Class I streams gives only a general indication of its location, but no figures on depth of the zone from the waterbody or cleared areas. The Willamette River Greenway and coastal lakes and rivers have the best mapping of riparian vegetation, often by aerial photography on large-scale maps, but these areas already have mechanisms to protect riparian vegetation.

The National Wetland Inventory maps will shortly cover about one-half of the County. General location of wetlands is given but no quantification of acreage by wetland type (and no indication of wetland quality). This mapping system, prepared by US Fish and Wildlife Service, will eventually cover the entire County.

Conflicting Uses

Two major activities conflict with preservation of riparian and wetland habitat areas:

1. Destruction of vegetation for any purpose; forestry, agriculture, construction, recreation, aggregate extraction, etc.; and

2. Draining surface or subsurface water which then changes the vegetative structure and generally the habitat value.

The end result of both of these activities is reduction in habitat value, flood control, water pollution control, and stability along streambanks for riparian vegetation.

An ESEE analysis for loss of riparian and wetland areas from either direct destruction or drainage follows.

ESEE Analysis

Economic Consequences

1. Since wetland and riparian vegetation decrease water velocity and damage from floods, removal of this vegetation could increase economic damage from flooding.

2. Merchantable timber removed from riparian and wetland areas is a source of employment, income and revenue in Lane County, although most species growing there have low economic value compared to some other species of timber.

3. Lands cleared for agricultural use could increase economic activity from that source.

4. Lands disturbed for aggregate extraction could increase economic activity from that source.

5. Removal of riparian and wetland vegetation could result in a loss of revenue from hunting which could result from a decrease in game species of fish and wildlife.

Social Consequences

1. Decline in wildlife diversity can be an important factor for many persons who enjoy living in proximity to watchable wildlife.

2. Regulations aimed at maintaining riparian and wetland vegetation, not just requiring building setbacks from those areas, would result in a much greater degree of governmental restrictions on most lands than presently exist. The sort of enforcement effort it would require to regulate vegetation removal in riparian and wetland areas Countywide would be truly massive. The payoff from this sort of effort must be particularly questioned since a majority of the County is timberland which is regulated by the State Forest Practices Act, not County regulations for riparian and wetland areas.

3. The question of aesthetics varies greatly with the viewer. Some persons prefer the look of natural vegetation along a water body, others find an artificial park-like setting preferable. A law requiring maintenance of riparian vegetation would force one perspective on a landowner.

4. The greater erosion potential when riparian and wetland vegetation is removed could result in more turbid water. This could have an effect on downstream recreational uses.

Environmental Consequences

1. Removal of riparian and wetland vegetation would result in decreased wildlife habitat, with a decrease in wildlife diversity.

2. Bank stability would be decreased with removal of vegetation. This causes more erosion, dirtier water and negative effects on aquatic life.

3. Water holding capacity is decreased with removal of vegetation in wetlands and riparian areas.

4. Water purification through filtration is a function of riparian and wetland vegetation which would be missing if the vegetation were removed.

5. The values of floodwater retention and decrease in floodwater velocity would be missing with removal of riparian and wetland vegetation.

Energy Consequences

1. If riparian vegetation is removed, bank erosion can increase. This causes more turbid water which may be more expensive and require more energy to treat downstream.

Conflict Resolution

After examination of the conflicts to riparian and wetland vegetation, and the ESEE consequences of those conflicts, the decision must be made as to preserving the resource totally, allowing the conflicting use totally, or specifically limiting the conflicting use. The third option, specifically limiting the conflicting use, seems the only prudent course of action. To disregard the value of riparian and wetland vegetation and not even consider it in permit applications does not make sense, when the valuable functions of the areas are taken into account. On the opposite end of the spectrum, to have a program which requires the County to be involved in any activity, no matter how minor, in riparian and wetland areas, also does not make sense. A program which recognizes the value of wetlands and riparian areas by way of strong policy statements, requires reasonable setbacks from Class I streams and wetlands so construction will not occur in the wetland or riparian zone, requires a balancing of wetland and agricultural values before drainage projects are undertaken, and which carefully considers input from the Oregon Department of Fish and Wildlife prior to approval of Special Use Permits and land divisions will ensure that these important areas receive the evaluation and attention they deserve.

SENSITIVE FISH AND WATERFOWL AREAS

LCDC Orders to Comply required implementation measures for the protection and/or resolution of conflicts for fish and wildlife habitats in general, and sensitive fish and waterfowl habitats in particular. Lane County's previous plan discussed riparian areas around all Class I streams. The Oregon Department of Fish and Wildlife (ODFW) objected to this being too broad brush. Correspondingly, LCDC required that the category of sensitive fish and waterfowl areas be called out.

This category is a subset of the riparian and wetland areas discussed above. Maps have been provided by ODFW showing important waterfowl nesting habitat and streams which receive high use by anglers and/or game fish. Streams which are consistently used by large numbers of anglers are considered to contain large numbers of game fish, even though creel censuses have not been done in each of the areas. These identified areas are considered the highest quality fish and waterfowl habitat in Lane County.

Location

Certain of the areas identified by ODFW already receive a high degree of protection for the surrounding riparian vegetation. These are the Willamette River within the Greenway and coastal lakes and marshes covered by management units under the Coastal Resources Management Plan.

Other of the areas fall under the jurisdiction of the Oregon Forest Practices Act. In areas zoned for the primary purpose of timber production, state rules take precedence over County regulations. Buffer strips and critical wildlife and aquatic habitat are considered by the Oregon Department of Forestry prior to approving harvest plans.

Still other of the areas identified by ODFW are within federal lands where the County has no jurisdiction.

Instead of providing a map in this text (at a scale which is difficult to interpret) a list of the areas involved will be provided. The map is available in the Planning Division office for review.

Portions of the following streams are sensitive fish habitats:

Tenmile Creek	McKenzie River
Big Creek	Gate Creek
Cape Creek	Blue River
Sutton Creek	South Fork McKenzie River
North Fork Siuslaw	Horse Creek
Siltcoos River	Lost Creek
Woahink Creek	Middle Fork Willamette
Maple Creek	Fall Creek
Fiddle Creek	Little Fall Creek
Sweet Creek	Winberry Creek
Siuslaw River above Mapleton	North Fork, Middle Fork Willamette
Lake Creek	Salmon Creek

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Indian Creek
Deadwood Creek
Whittaker Creek
Esmond Creek
Wildcat Creek
Wolf Creek
Long Tom River
Willamette River Main Stem
Mohawk River
Salt Creek
Hills Creek
Steamboat Creek
Coast Fork Willamette
Row River
Mosby Creek
Sharps Creek
Brice Creek
Layng Creek

All or portions of the following areas are considered sensitive waterfowl habitat:

Fern Ridge periphery exclusive of parks
Old Long-Tom channel below Fern Ridge
Main Long-Tom channel below Fern Ridge
Amazon Canal where not riprapped
North Fork Siuslaw Freshwater marsh
Maple Creek marsh
Siltcoos Lake/Westlake marsh

Quality

Since these are the areas identified as important, sensitive fish and waterfowl areas, they can all be considered high quality for that purpose.

Quantity

Most of the major rivers and creeks in the County are designated Sensitive Fish and Waterfowl areas, but not the many miles of smaller, less significant Class I streams.

Conflicts

Maintenance of natural vegetation in waterfowl nesting areas is of prime importance to those species. Maintaining riparian vegetation around sensitive fish areas is essential to water quality and aquatic life. Removal of riparian vegetation in these areas is considered a conflict, whatever the purpose.

ESEE Consequences

ESEE consequences for Sensitive Fish and Waterfowl areas is generally the same as for Riparian and Wetlands, with a few additions. Since the areas in this category are considered more valuable for fish and waterfowl habitat than others in the County, the effects of vegetation removal can be more significant.

Economic consequences

Same as for Riparian and Wetland areas.

Social consequences

Same as for Riparian and Wetland areas plus the following:

1. Sensitive Fish and Waterfowl areas are important for recreational purposes, both private and public. They also influence nearby recreational values. For instance, severe erosion from one property can influence fishery values downstream.

Environmental consequences

Same as Riparian and Wetland areas plus the following:

1. Sensitive Waterfowl areas serve as important resting and feeding areas for migratory birds. Destruction of this habitat causes effects which reach far beyond Lane County.

Energy consequences

Same as Riparian and Wetland areas.

Conflict Resolution

To repeat the procedure, after examination of ESEE consequences of potential conflicts, a decision must be made to preserve the resource fully, allow the conflicting use fully, or to specifically limit the conflicting use. In this case, preserving the resource fully would be to completely protect riparian vegetation in the identified waterfowl nesting areas and adjacent to the identified streams. Allowing the conflicting use fully would mean that no implementation requirements would exist protecting that riparian vegetation. The third option is a compromise between the two.

The third option, limiting the conflicting use, is the most appropriate, with the limitation weighed in favor of maintenance of the vegetation. Since these areas are the most important fish and waterfowl areas in the County, the riparian vegetation should be maintained whenever possible. As with Riparian and Wetland areas, a 50-foot building setback from the high water mark of the waterway shall be required. But within these Sensitive areas a 30-foot strip of indigenous vegetation shall be left along the waterway. Exceptions to this requirement shall be very limited and will include areas necessary for water-dependent uses, and areas which are now unvegetated and developed.

Regulations for riparian vegetation maintenance will be similar to those currently existing in the coastal shoreland overlay zones. One example, from the Residential Development Combining District (LC 10.255-30(3)):

"Within the setback area . . . all indigenous vegetation except that removed to provide paths to the water body shall be retained within an area 30 feet in width measured at right angles from the mean high water line of the water body. For the remainder of the required setback area brush may be removed but trees shall be retained."

Policy statements pertaining to Riparian and Wetland areas are also applicable here.

BIG GAME RANGE

LCDC Orders to Comply required implementing measures for the protection and/or resolution of conflicts with Big Game Range. The County must clarify the types of uses which conflict with big game habitat, and would therefore be reviewable by the County under any implementing measures developed. The primary conflicting use mentioned by LCDC is residential use at certain densities.

Location. The Oregon Department of Fish and Wildlife (ODFW) has divided big game range in Lane County into three categories as follows:

Major Big Game Range - That portion of the County which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.

Peripheral Big Game Range - Foothill areas of the County generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals in severe winters.

Impacted Big Game Range - Those areas of the County that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

These areas are mapped on Lane County Wildlife Inventory maps. As a general depiction, Major Big Game Range occurs on federal lands, large timber company holdings, and some private lands which are sparsely developed. Peripheral Big Game Range encompasses primarily foothills and smaller valleys. Impacted Range includes cultivated fields and developed areas, often on valley floors.

Because of the large amount of undeveloped timberland in Lane County, the majority of the County is Major Big Game Range. But, due to scattered ownership patterns, many areas within the Major Range are small, private parcels. Peripheral Range often falls along small valley floors which are privately owned and often fairly extensively developed. For example, most of the Fall Creek, Mohawk and Lorane valleys are within Peripheral Range, as well as large tracts of land west of Elmira.

Wildlife Inventory maps have not been included in this Working Paper due to budget constraints, but are available for review in the Planning Department office.

Quality. The majority of big game use occurs on Major Range. This can be considered the highest quality habitat as man's intrusion with developments is the least. Peripheral Range is also important habitat, and can be particularly crucial in severe winters, but has enough development to limit big game use and management options. Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.

One other category of lands should be mentioned here. Outside Urban Growth Boundaries, areas exist which are committed to nonresource use. Exceptions for these areas will be taken as "Built Upon and Committed Lands" and acknowledged by LCDC. These small pockets of development within Major or Peripheral Range are essentially Impacted areas due to their level of use by man. They were not large enough, generally to include on the Big Game maps as Impacted. These areas will be treated as Impacted areas for implementation purposes.

Quantity. Areas of of Major, Peripheral and Impacted Big Game Range have not been computed. Figures for acreage of some other categories of land may be useful, though, for illustrative purposes.

Total amount of land in Lane County	2,959,400 acres
Commercial forest land (primarily Major Range)	1,813,228 acres
Other public lands (primarily Major Range, some Peripheral Range)	735,112 acres
Farms (primarily Impacted Range)	255,712 acres

Over 61 percent of the County is considered commercial forest land, a category with essentially no residential development. Including other public lands, such as the Dunes National Recreation Area, Oregon State lands, Corps of Engineers lands and County parks, approximately 85 percent of the County is not available for residential use. A good portion of the remaining acreage is farmland, a category very difficult to justify as available for residential use, but also not prime big game habitat.

Conflict Identification

The clearing of natural vegetation for agricultural purposes decreases an area's habitat value for big game. But since important, existing agricultural lands are already considered Impacted Big Game Range, this is not an issue now. Impacted Range has essentially been "written off" for big game management.

Management of land for timber production does not conflict with big game habitat. With proper forest management techniques, big game habitat can be significantly enhanced. The forage provided to deer and elk in clear-cut areas is very important, but the combination of areas in various successional stages is probably the vital factor in enhancing numbers of deer and elk. Lands zoned for the primary purpose of timber production are subject to the requirements of the Oregon Forest Practices Act. For our purposes, timber harvesting activities do not constitute a conflict to Big Game Range.

The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.

The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning

by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.

The County will be divided into regions convenient for planning purposes. These have not yet been determined, but will probably result in 10-20 regions in the County.

Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.

Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process.

As a final note regarding residences in Big Game Range, damage to landscaping and gardens is a common problem around these residences. For new residential building permits within Major and Peripheral Range, the applicant will be notified that compatibility problems with big game may exist.

Several recommendations in the Policies Section of this Working Paper relate to the method the County will use to protect Big Game Range.

NATURAL AREAS

Lane County's original work on natural areas included just a listing of sites from the Oregon Natural Heritage Program (ONHP) and the Governor's Natural Area Preserves Advisory Committee (NAPAC). A very brief narrative was included with the NAPAC sites, but only site names for the 86 ONHP sites. LCDC's review mentions 12 NAPAC sites; in fact, there are only nine sites in this category.

In its review of Lane County's plan, LCDC noted that adequate quality, quantity and locational data existed for the NAPAC sites. The 86 sites from the Nature Conservancy Inventory, though, required more specific information on location, quality and quantity.

The Goal 5 Administrative Rule (66-16-000), adopted after LCDC's review of Lane County's plan, contains procedures for more detailed review of Goal 5 resources. Accordingly, both the ONHP and NAPAC sites are re-examined and divided into three categories as laid out in the rule:

1A: Available information on location, quality and quantity indicates resource site not important; not included on plan inventory.

1B: Some information available but inadequate to identify resource site; included on plan inventory with special status; plan statement to address resource site when information available.

1C: Information on location, quality and quantity indicate site is significant; conflicting uses, if any, identified; ESEE analysis of conflicting uses; conflict resolution proposed.

Criteria for Evaluation

For those sites with adequate information on location, quality and quantity, it was necessary to determine if the site was "significant." If so, it fell in an 1C category; if not, in a 1A category. This decision required criteria upon which to base that judgment. Six questions were answered for each site or group of similar sites. These were:

1. Uniqueness?
2. Number of examples limited?
3. Site unusual due to size?
4. Rare or endangered species present?
5. Site already protected by County zones?
6. Examples already protected on public lands?

In some cases final decisions were necessarily subjective and were judgment calls. In other cases, the decision was based on other plan policies. For instance, one of the sites determined not to be significant was the Noti Osprey nest. The portion of this Working Paper on Endangered, Threatened and Special Interest Species stated that no special zoning measures will be taken in Lane County for Osprey nests.

Sites placed in the 1B category had inadequate information on location, quality and quantity to allow use of these criteria. When information is available, the

same method will be used to place them in either a 1A or 1C classification. Moving a site out of the 1B category will be considered a plan amendment.

1B Category

Six sites have been placed in this category. These are:

1. Booth Island/Siltcoos Lake
2. McKenzie River Island
3. South Fork Gate Creek
4. Swamp Creek
5. Marshall Island Heronry
6. Willamette Valley Quaking Aspen Grove

These sites are individually discussed below. No specific timetable is set for dealing with the first four sites. When information is presented to this department which will allow a determination of significance of the site, it will be analyzed and placed in either a 1A or 1C category, based on the criteria mentioned above. Site #5, Marshall Island Heronry, will be field inspected by ODFW later this year. Based on the results of their investigation, the site will be placed in a 1A or 1C category later this year. Site #6 will also be placed in a 1A or 1C category within 1982. Field inspection of the site by knowledgeable botanists is essential here.

a. Booth Island--Siltcoos Lake (ONHP #82). ODFW is unaware of a band-tailed pigeon mineral spring on this island.

b. McKenzie River Island (ONHP #52). ONHP Inventory states "Good riparian habitat and river island." No further data is available.

c. South Fork Gate Creek (NAPAC #12). No way to locate this site any more specifically. Defined only as "old Douglas fir, western hemlock and relatively steep slopes . . . patches of red alder and vine maple."

d. Swamp Creek (ONHP #49). This unsurveyed, unverified ONHP site is described in their Inventory only as "small stream, riparian vegetation."

e. Marshall Island Heronry (ONHP #113). This heronry is on a parcel divided by state and private ownership. Logging on large cottonwoods in the private ownership in 1980 may have destroyed the rookery. ODFW plans flights of the Willamette this spring to inspect heronrys, followed by field surveys later in the spring. If the heronry exists, this site will be placed in a 1C category; if not, in a 1A category. If in 1C, the nest trees and a buffer around them should be protected with a Natural Resource Zone. If the heronry turns out to exist on private property, the Parks Department or the Fish and Wildlife Department are urged to acquire this property.

f. Willamette Valley Quaking Aspen Grove (ONHP #2). This site is reported as a one-acre stand of Quaking Aspen located west of Elmira along Highway 126. The site is a remnant, native stand of trees. Conflicting directions to the site listed in the Nature Conservancy file have made it impossible to locate this site to date. Botanists from the Nature Conservancy and the University of Oregon are very interested in assisting the County to find this site, if it still exists.

The ONHP report states: "Very rare, relict remnant stand of Quaking Aspen. Very rare in the WV [Willamette Valley] of extreme botanical interest due to long separation from the major Aspen gene pool and because of its novelty and rarity in the Willamette Valley."

If the trees still exist, the site will be placed in a 1C (significant) category. A full ESEE analysis will be done at that time, which will include information and recommendations from botanists. The following items should be considered when and if a full ESEE analysis is prepared:

Under economic consequences, the possibility of reduction of income to the private property owner if the land cannot be converted to another use. Also the fact that the property owner may gain tax advantages if an NR zone is applied and an open space tax deferral approved.

Under social consequences, the loss of a rare site such as this is inherently displeasing to many persons, even though the site is on private property and not open to the public.

Under environment consequences, the fact that the tree is very abundant in other parts of the US. Also that the long separation from the major Aspen gene pool could result in valuable research opportunities.

No energy consequences can be anticipated at this time.

1C Category

Fifty-six sites fall within this category. These sites have been divided into four groups and will be discussed in this order:

1. Sites owned by USFS and BLM
2. Sites which are State Parks
3. Sites covered by the Coastal Resources Management Plan or the Willamette River Greenway
4. Others

- -

1. Sites Owned by USFS or BLM

No additional research has been done on these 29 sites. Available information from the Nature Conservancy on location, quality and quantity indicates these resource sites are significant, and therefore are placed in a 1C category. Because they are in US Forest Service and BLM ownership, however, no conflicts exist based on uses allowed in zoning districts. Lane County does not have jurisdiction on federal lands. Although, as a matter of policy, zoning districts are applied to federal lands in the County, these zones have no effect unless the land is converted to nonfederal ownership. Besides the issue of lack of jurisdiction, the Forest Service

and BLM are required by federal law to consider natural areas as part of their multiple-use mandate.

Inventory of Resource Sites Owned by the US Forest Service

1. Bob Creek (ONHP #55) 15-11, 15-12
2. Buck Creek (ONHP #99) 18-45-4,5
3. Cox Rock (ONHP #16) 17-12-10
4. Diamond Peak Wilderness Area (ONHP #124) 24-55,65
5. Fossil Beds (ONHP #137) 21-1E-30
6. French Pete Wilderness Area (ONHP #140) 17,18-5E,6E
7. Gold Lake Bog RNA (ONHP #95) 22-6E-20,29
8. Hagan-Block Proposed Research Natural Area (ONHP #148) 16-4E,11-15
9. H. J. Andrews Experimental Forest (ONHP #105) 16-5E,6E
10. Karnowsky Creek Bald Eagle Nest (ONHP #119) 18-11-22
11. Lamb Butte Scenic Area (ONHP #126) 17-6E22
12. Lily Lake (ONHP #4) 17-12-15
13. Lost Creek Headwaters (ONHP #54) 16-6E-19, 17-6E-24
14. Lowder Mountain Geological Area (ONHP #127) 17-6E-19
15. Mount Washington Wilderness (ONHP #123) 15-7E
16. Olallie Ridge Research Natural Area (ONHP #96) 17-6E
17. Parrot Rock (ONHP #115) 17-12-4
18. Quaking Aspen Swamp (ONHP #129) 17-6E-28
19. Rebel Rock Geological Area (ONHP #128) 18-6E-30
20. Siuslaw South Jetty Area (ONHP #68) 18-12-21
21. Three Sisters Wilderness (ONHP #122) 15-19-6E-9E
22. Torry Charlton Forest (ONHP #149) 20,21-6E
23. Yankee Mountain Scenic Area (ONHP #125) 17-5E-26

Inventory of Resource Sites Owned by BLM

1. Dorena Heronry (ONHP #111) 20-2-31
2. Eagle Rock (ONHP #1) 17-3E-10
3. Hula Creek Headland Forest (ONHP #101) 17-8-N1/2 NW1/4 6
4. Long Tom River (ONHP #6) 16-5
5. Poodle Creek Heronry (ONHP #112) 17-7-13
6. Shaw Creek Heronry (ONHP #110) 20-5-6

2. Sites Within State Parks

These sites, owned by the State of Oregon, are within the State Parks and Highways System. There is no question as to the significance of these sites, that is why they have been set aside as State Parks and Waysides. The sites are placed in a 1C category. No conflicts exist based on uses allowed in zoning districts. The sites are all zoned in Public Reserve Zones and are presently being managed by the State Parks Division and the Oregon Department of Transportation.

a. Ben and Kay Dorris State Park (NAPAC #11) 16-2E-36. Douglas fir-alder vegetation. Existing recreational use does not negatively impact this vegetation.

b. Darlingtonia State Wayside (ONHP #109) 17-12-35. Unique plant protected in this wayside.

c. Dexter Island and Dexter Dam State Park (ONHP #108) 19-1-5,8,9. Riparian vegetation and heron rookery. The approved Master Plan for this park (now called Elijah Bristow State Park) indicates that the rookery and riparian vegetation areas will not be negatively affected.

d. Washburne Memorial State Park (ONHP #58) 16-12-22. Unique vegetation complexes, including an unusual sphagnum moss bogs, are protected in this park.

e. Washburne Wayside (ONHP #40 and NAPAC #4) 15-5-12. Douglas fir and white oak vegetation. Minimal development in this wayside.

3. Sites Within the Coastal Resources Management Plan or Willamette River Greenway Plan

Information on the location, quality and quantity of these sites indicates that they are all significant and are being placed in a 1C category. Two special purpose plans, the Coastal Resources Management Plan (CRMP) and the Willamette River Greenway Plan, have been adopted by the County. Different parts of these plans cover the 21 sites listed here.

Because of the degree of protection already afforded these sites, and the amount of planning which has already gone into them, no conflicts are determined to exist with use of these sites as they are presently zoned.

During development of Management Units within the Coastal Resources Management Plan, natural values of the area were a major factor. Those same values are the basis of the Greenway Plan. Detailed information on these plans, and the Management Units, is available in the Planning Division office.

a. Big Creek (ONHP #45) CRMP--Management Unit (MU) 45, Prime Wildlife Area.

b. Big Creek, Rock Creek and Tenmile Creek. Silverspot Butterfly sites (ONHP #5,56,130). CRMP--MUs 38,45, Prime Wildlife Area for this nationally threatened species.

c. Butterfly, Grass, Reed and Jernigan Islands (ONHP #83). CRMP--Siltcoos Lake MU 1, Significant Natural Area. The riparian vegetation on these islands provides excellent wildlife, particularly bird, habitat.

d. Camp Baker (Boy Scout Camp) (ONHP #46) CRMP--Siltcoos Lake MUs 5 and 6. A Prime Wildlife Area MU extends 150 feet inland from the shore of the lake to cover riparian vegetation and marshy areas; the remainder of the site is in a Natural Resources Conservation MU.

e. Coast Fork Willamette River (ONHP #93). Greenway Plan. Riparian vegetation, the important value listed at this site, is protected by Greenway Development permit requirements.

f. Cox Island (ONHP #65) CRMP-MUTI, Natural. This island is owned and managed by the Nature Conservancy.

g. Duncan Slough and Marsh (ONHP #61) CRMP--MU N, Natural. A unique marsh complex and a band-tailed pigeon mineral spring are protected by this MU.

h. Heceta Beach Dunes (ONHP #37) CRMP--Beaches and Dunes section and Beaches and Dunes Combining District of the zoning ordinance guide development in dunal areas.

i. Heceta Head/Conical Rock (ONHP #53,114) CRMP--MU 48, Significant Natural Area. Conical Rock is part of the Oregon Islands National Wildlife Refuge. Heceta Head is an important bird nesting area, as well as being an outstanding scenic site.

j. McCarty Marsh Heronry (ONHP #62) CRMP--MU 25, Prime Wildlife Area. The private property owner has an agreement with ODFW to protect this rookery.

k. Mercer Lake (ONHP #145) CRMP--Mercer Lake MUs. Several MUs are used to surround the shoreline of this lake, protecting its natural values.

l. Middle Fork Willamette River (ONHP #91) Greenway Plan. The valuable riparian vegetation here is protected by the Greenway Plan and Development Permit.

m. Miller Arm/Maple Creek Marsh (ONHP #81) CRMP--Siltcoos Lake MU 4, Prime Wildlife Area. This MU protects an uncommon canary grass/tule marsh.

n. North Fork Siuslaw River Marsh (ONHP #60) CRMP--MU H, Natural. The proximity of four marsh types and the extent of the marshes make this site unusual. The Natural designation provides protection for this area.

o. Siboco Slough and South Inlet Pigeon Springs (ONHP #63,132) CRMP--MU I, Natural. These marsh areas and the mineral springs are protected by the Natural designation.

p. Siltcoos Lake (ONHP #85) CRMP--Siltcoos Lake MUs. The Lane County portion of Siltcoos Lake's shoreline is surrounded by MUs which recognize the importance of the riparian vegetation and the marshlands.

q. Siltcoos Lake Dunes (ONHP #84) CRMP--Beaches and Dunes Section. This section of the Plan, as well as a Beaches and Dunes Zoning District guide development in dunal areas and preserve the important values of the dunes.

r. Siuslaw River Estuary (ONHP #67) CRMP. The entire estuary portion of the CRMP is designed to recognize and preserve the various values of the estuary and its shoreline.

s. Sutton Lake Marsh (ONHP #20) CRMP--Sutton Lake MU 4, Significant Natural Area. This MU covers an important willow, sedge and bullrush marsh.

t. Woahink Lake Bog (ONHP #14) CRMP--Woahink Lake MU 2, Prime Wildlife Area. An uncommon plant is protected by this MU.

4. Others

1. Upper Yachats Elk Pasture (ONHP #146). A portion of this site, previously in private ownership, has been purchased by ODFW. The remainder is in the Siuslaw National Forest. SNF and ODFW have an agreement concerning use of the site as an elk wintering area. The site is zoned FM - no conflicts exist.

2. Fern Ridge (ONHP #8). The reservoir itself is owned by the Corps of Engineers and operated under a management plan done in 1980. This plan recognizes the vital role of Fern Ridge to wildlife, particularly waterfowl. The ODFW manages wildlife in the area, including plots south of the reservoir being farmed for wildlife utilization only. The reservoir is considered "sensitive fish and waterfowl habitat," discussed earlier in this report. As such, riparian vegetation around the reservoir is protected. No conflicts exist.

POLICY DISCUSSION

Several existing policies relate to flora and fauna. These are:

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize and support existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies shall be encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall be encouraged to investigate and utilize fee acquistions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement these policies.

While these policies are adequate as far as they go, there are other areas discussed in this Working Paper for which policies have not been developed. The general areas with policy gaps will be mentioned and examples of possible policies given.

- Policy gap: Riparian and wetland vegetation. Examples of policies are:

    1. Riparian and wetland vegetation is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and wetlands, and consideration of the areas in other land use activities such as Special Use Permits and Zone Changes.

    2. Drainage of wetland areas will not be promoted by Lane County. Any drainage project over which Lane County has permit authority shall be approved only after analysis of the ESEE consequences of such an action.

- Policy gap: Sensitive Fish and Waterfowl areas. An example of a policy is:

    1. Sensitive Fish and Waterfowl areas are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

- Policy gap: Big Game Ranges. Some policy examples are:

    1. Residential building permits issued within Major or Peripheral Big Game Range shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

    2. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range.

3. ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.

- Policy gap: Conflicts not anticipated or identified in the plan. Example of policy:

1. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-00 will be followed.

APPENDIX A

WILDLIFE OF LANE COUNTY

1. Birds

Approximately 305 species are thought to occur in Lane County. Frequency of occurrence may range from common to rare or accidental; further, some occurrences are seasonal only. This inventory is as complete as current resources allow. Updating and further verification is anticipated, as populations are not static but dependent upon habitat, nesting occurrence, threatened or endangered species, etc.

Common Loon
Arctic Loon
Red-Throated Loon
Horned Grebe
Eared Grebe
Western Grebe
Pied-Billed Grebe
Red-Necked Grebe
Black-Footed Albatross
Fulmar
Pink-Footed Shearwater
Sooty Shearwater
Slender-Billed Shearwater
Leach's Storm Petrel
Fork-Tailed Petrel
White Pelican
Brown Pelican
Double-Crested Cormorant
Brandt's Cormorant
Pelagic Cormorant
Common Egret
Black-Crowned Night Heron
Great Blue Heron
Green Heron
Great Egret
Snowy Egret
American Bittern
Whistling Swan
Trumpeter Swan
Canada Goose
White-Fronted Goose
Snow Goose
Black Brandt
Mallard
Gadwall
Northern Pintail
Green-Winged Teal
Blue-Winged Teal
Cinnamon Teal
European Widgeon
Harlequin Duck
White-Winged Scoter
Red-Breasted Merganser
Surf Scoter
Ruddy Duck
Hooded Merganser
Turkey Vulture
White-Tailed Kite
Goshawk
Sharp-Shinned Hawk
Cooper's Hawk
Red-Tailed Hawk
Swainsen's Hawk
Rough-Legged Hawk
Ferruginous Hawk
Golden Eagle
Bald Eagle
Marsh Hawk
Osprey
Prairie Falcon
Peregrine Falcon
Pigeon Hawk
Merlin
American Kestrel (Sparrow Hawk)
Blue Grouse
Ruffed Grouse
California Quail
Mountain Quail
Ring-Necked Pheasant
Sandhill Crane
Virginia Rail
Sora
American Coot
Black Oystercatcher
Semipalmated Plover
Snowy Plover
Killdeer
American Golden Plover
Black-Bellied Plover
Surfbird

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American Widgeon
Northern Shoveler
Wood Duck
Redhead
Ring-Necked Duck
Canvasback
Greater Scaup
Lesser Scaup
Common Goldeneye
Bufflehead
Old Squaw
Knot
Pectoral Sandpiper
Baird's Sandpiper
Least Sandpiper
Dunlin
Short-Billed Dowitcher
Long-Billed Dowitcher
Stilt Sandpiper
Semipalmated Sandpiper
Western Sandpiper
Sanderling
American Avocet
Red Phalarope
Northern Phalarope
Pomarine Jaeger
Parasitic Jaeger
Long-Tailed Jaeger
Glaucous Gull
Western Gull
Herring Gull
Thayer's Gull
California Gull
Ring-Billed Gull
Mew Gull
Bonaparte's Gull
Heermann's Gull
Black-Legged Kittiwake
Sabine's Gull
Forster's Tern
Arctic Tern
Common Tern
Caspian Tern
Black Tern
Common Murre
Pigeon Guillemot
Marbled Murrelet
Ancient Murrelet
Cassin's Auklet
Parakeet Auklet
Rhinoceros Auklet
Horned Puffin
Tufted Puffin
Band-Tailed Pigeon

Ruddy Turnstone
Black Turnstone
Godwit
Spotted Sandpiper
Common Snipe
Long-Billed Curlew
Solitary Sandpiper
Wandering Tattler
Willet
Greater Yellowlegs
Lesser Yellowlegs
Long-Eared Owl
Short-Eared Owl
Saw-Whet Owl
Poor-Will
Common Nighthawk
Vaux's Swift
Anna's Hummingbird
Rufous Hummingbird
Calliope Hummingbird
Belted Kingfisher
Yellow-Shafted Flicker
Red-Shafted Flicker
Common Flicker
Pileated Woodpecker
Acorn Woodpecker
Lewis' Woodpecker
Yellow-Bellied Sapsucker
Hairy Woodpecker
Downy Woodpecker
Eastern Kingbird
Western Kingbird
Traill's Flycatcher
Hammond's Flycatcher
Ash-Throated Flycatcher
Say's Phoebe
Willow Flycatcher
Dusky Flycatcher
Western Flycatcher
Western Wood Pewee
Olive-Sided Flycatcher
Horned Lark
Violet Green Swallow
Tree Swallow
Bank Swallow
Rough-Winged Swallow
Barn Swallow
Cliff Swallow
Purple Martin
Steller's Jay
Gray Jay
Scrub Jay
Black-Billed Magpie
Common Raven

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Rock Dove
Mourning Dove
Barn Owl
Screech Owl
Great Horned Owl
Snowy Owl
Pygmy Owl
Burrowing Owl
Norther Spotted Owl
Great Gray Owl
House Wren
Winter Wren
Bewick's Wren
Long-Billed Marsh Wren
Rock Wren
Northern Mockingbird
Sage Thrasher
American Robin
Varied Thrush
Hermit Thrush
Swainsen's Thrush
Western Bluebird
Mountain Bluebird
Townsend's Solitaire
Golden-Crowned Kinglet
Ruby-Crowned Kinglet
Water Pipit
Bohemian Waxwing
Cedar Waxwing
Northern Shrike
Loggerhead Shrike
Common Starling
Hutton's Vireo
Solitary Vireo
Red-Eyed Vireo
Orange-Crowned Warbler
Yellow Warbler
Yellow-Rumped Warbler
Black-Throated Gray Warbler
Myrtle Warbler
Audubon's Warbler
Townsend's Warbler
Hermit Warbler
MacGillivray's Warbler
Yellow Throat
Yellow-Breasted Chat

Common Crow
Clark's Nutcracker
Black-Capped Chickadee
Mountain Chickadee
Common Bushtit
White-Breasted Nuthatch
Red-Breasted Nuthatch
Brown Creeper
Wrentit
Dipper
Wilsen's Warbler
House Sparrow
Western Meadowlark
Yellow-Headed Blackbird
Red-Winged Blackbird
Northern Oriole
Brewer's Blackbird
Brown-Headed Cowbird
Western Tanager
Black-Headed Grosbeak
Lazuli Bunting
Evening Grosbeak
Purple Finch
House Finch
Gray-Crowned Rosy Finch
Pine Siskin
American Goldfinch
Lesser Goldfinch
Red Crossbill
Rufous-Sided Towhee
Savannah Sparrow
Grasshopper Sparrow
Vesper Sparrow
Dark-Eyed Junco
Slate-Colored Junco
Oregon Junco
Chipping Sparrow
Harris' Sparrow
White-Crowned Sparrow
Golden-Crowned Sparrow
White-Throated Sparrow
Fox Sparrow
Lincoln's Sparrow
Swamp Sparrow
Song Sparrow
Chestnut-Collared Longspur

NOTE: Species list compiled from:

a. Environmental Assessment of Siuslaw-Umpqua-Smith Rivers, 1974 by Dames and Moore.

2878
0858

001254

b. Eugene-Springfield Metropolitan Area Inventory by Steve Gordon.

B. MAMMALS

Pacific Shrew
Vagrant Shrew
Marsh Shrew
Trowbridge Shrew
Pacific Mole
Shrew-Mole
Dusky-Shrew
Water Shrew

Little Brown Myotis
Fringed Myotis
California Myotis
Long-Legged Myotis
Long-Eared Myotis
Yunca Myotis
Hoary Bat
Silvery-Haired Bat
Big Brown Bat
Western Big-Eared Bat
Pika
Snowshoe Hare
Brush Rabbit

Mountain Beaver
Sierra Nevada Golden-Mantled Ground Squirrel
Beechey Ground Squirrel
California Ground Squirrel
Townsend Chipmunk
Northern Flying Squirrel
Yellow Pine Chipmunk
Western Gray Squirrel
Beaver
Douglas Squirrel
Northern Flying Squirrel
Mazama Pocket Gopher

Deer Mouse
Bushy-Tailed Woodrat
White-Footed Vole
Red Tree Mouse

California Red-Backed Vole
Townsend Vole
Longtail Vole
Oregon Vole
Muskrat
Western Red-Backed Mouse
Water Rat
Pacific Jumping Mouse
Porcupine
Yellow-Bellied Marmot
Gray Fox
Coyote
Red Fox
Cougar
Black-Bear

Raccoon
Nutria
Marten
Mink
Long-Tailed Weasel
Short-Tailed Weasel
Striped Skunk
Spotted Skunk
River Otter

Mountain Lion
Bobcat

Steller Sea Lion
California Sea Lion
Harbor Seal

Roosevelt Elk
Black-Tailed Deer
Mule Deer

3. AMPHIBIANS AND REPTILES

Northwestern Salamander
Pacific Giant Salamander
Olympic Salamander
Rough-Skinned Newt
Dunn's Salamander
Western Red-Backed Salamander
Oregon Slender Salamander

Northern Alligator Lizard
Rubber Boa
Northwestern Garter Snake
Common Garter Snake
Western Fence Lizard
Western Skink
Short-Horned Lizard

Clouded Salamander
Ensatina
Western Toad
Pacific Tree Frog
Red-Legged Frog
Bullfrog
Yellow-Legged Frog
Tailed Frog
Cascade Frog
Western Pond Turtle

Western Ring-Necked Snake
Western Racer
Gopher Snake
Sharp-Tailed Snake
Common Kingsnake
Western Rattlesnake

4. FISH

Anadromous

Coho Salmon
Fall & Spring Chinook Salmon
Winter Run Steelhead
Sea Run Cutthroat Trout
Brown Trout
Cutthroat Trout
Dolly Varden Trout
Golden Trout
Brook Trout
Rainbow Trout

Warmwater, Rough and Other

Western Brook Lamprey
Pacific Lamprey
White Sturgeon
Green Sturgeon
American Shad
Pacific Herring
Kokanee
Mountain Whitefish
Chiselmouth
Goldfish
Carp
Oregon Chub
Peamouth
Northern Squawfish
Dace

Redside Shiner
Large-Scale Sucker
Mountain Sucker
Black Bullhead
Yellow Bullhead
Brown Bullhead
Channel Catfish
Three-Spined Stickleback
Mosquito Fish
Sand Roller
Warmouth
Pumpkinseed
Bluegill
Smallmouth Bass
Largemouth Bass
White Crappie
Black Crappie
Yellow Perch
Sculpins
Greenling and Ling Cod
Rock Fishes
Sole and Starry Flounder
Sea Perches
Striped Bass
Columbia River Smelt

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ADDENDUM TO WORKING PAPER:

FLORA & FAUNA

November, 1983

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001257

MEMORANDUM

lane county

TO Interested Persons and Groups

FROM Land Management Division

SUBJECT Revision of General Plan Working Papers DATE November 1983

In order to fully comply with the requirements of Oregon statewide planning Goals as promulgated by the Oregon Land Conservation and development Commission, Lane County must revise certain elements of its rural General Plan. Following the revision action, the Plan must be submitted to LCDC for acknowledgement.

Part of the revision effort is directed toward improving the information base and Policy suggestions of the Working Papers. These documents were originally intended to serve as technical foundations (by pulling together information and in some cases indicating where it was already available) for Plan development. The actual Plan was to take the form of Policies and a Plan Diagram, both of which were completed and, in the case of the Policies, adopted. Working Papers were to serve as reference material.

To bring the Plan into better compliance with state Goals, all three elements -- Working Papers, Policies and Plan Diagram -- need some revision. Since the Policies are generated from information in the Working Papers, it follows that new Policy statements must be founded in the form of Working Paper revisions.

Attached for your review and comment are revisions to one of the existing Working Papers. It is the intention of the County to follow essentially the same process of public review that was followed when the Working Paper were originally published. Bear in mind that in some instances, revisions pre-empt or modify or add to material now in the Working Papers.

After action is completed on all Working Paper revisions, the Policy statements generated by this procedure will be compiled and brought before the public and County officials for adoption as amendments to the General Plan Policies document. When the Plan Diagram is made available for similiar action, it too will contain pertinent directives of this and the other Working Papers.

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REVISIONS TO "FLORA AND FAUNA WORKING PAPER"

I. Introduction

The "Flora and Fauna Working Paper" was published by Lane County in March, 1982. It was brought before both County Planning Commissions in a public hearing format in March and April, with testimony taken and responses given. In May, 1982, both Planning Commissions issued formal reports to the Board of County Commissioners, recommending tentative Policies to be formulated from both the Working Paper and the testimony received about it. The tentative Policies were reviewed and adopted by the Board of County Commissioners in December 1982.

In early 1983, staff of the DLCD reviewed the Working Paper and identified some aspects of it that needed to be adjusted before it would comply with statewide planning Goal requirements. The purpose of this Revision report is to correct those deficiencies.

Changes to the "Flora and Fauna Working Paper" take the form of technical data additions, and of Policy statements. Only the Policy statements are intended to be formally adopted as part of the Plan.

II. Working Paper Revisions

A. ADD the following language to page 5 of the Working Paper, directly following the first (leading) paragraph of the section entitled, "Wildlife Habitats":

The description of a habitat type in the following section is intended to provide a setting for identification of more specific resource types and sites. Because several of the following habitat types are so prominent in the County (e.g, "Douglas Fir/Trailing Blackberry", "Deciduous Hardwoods"), mapping the information would be of little value. Likewise, it is not practical to make Plan designations of these types, thereby eliminating the need for the "Goal 5 Rule" application. It is assumed that existing land use regulations (such as forest land zoning) will properly protect these habitat types, allowing the County to focus its regulator efforts on specific types (such as riparian lands) discussed later in this Working Paper.

B. DELETE the list of "sensitive fish habitats" which appears on pages 20 and 21 of the Working Paper, and ADD the more detailed list below:

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MIDDLE FORK WILLAMETTE BASIN

Middle Fork Willamette	Dexter Reservoir to Confluence of Coast and Middle Forks Hills Creek Reservoir to Lookout Point Reservoir Staley Creek to Hills Creek
North Fork of Middle Fork Willamette	East Boundary of 19-65-26 to Middle Fork Willamette
Salmon Creek	Black Creek to Middle Fork Willamette
Salt Creek	East Boundary of 22-55-21 to Middle Fork Willamette
Hills Creek	Warfield Creek to Hills Creek Reservoir
Fall Creek	Fall Creek to Middle Fork Willamette Gold Creek to Fall Creek Reservoir
Little Fall Creek	West Boundary of 18-25-07 to Fall Creek
Winberry Creek	South Fork Winberry Creek to Fall Creek Reservoir

COAST FORK WILLAMETTE BASIN

Coast Fork Willamette	Cottage Grove Reservoir to Confluence of Coast and Middle Fork Willamette
Big River	East Boundary of 23-25-17 to Cottage Grove Reservoir

SIUSLAW RIVER BASIN	
Siuslaw River	Confluence of North and South Forks Siuslaw to Coastal Resource Management Plan (CRMP) Management Units (MU's)
North Fork Siuslaw River	Hawley Creek to Siuslaw River
South Fork Siuslaw River	Tucker Creek to Siuslaw River
Esmond Creek	County Line to Siuslaw River
Wolf Creek	Panther Creek to Siuslaw River
Whitacker Creek	County Line to Siuslaw River
Wildcat Creek	South Line of 18-07-13 to Siuslaw River
Lake Creek	East Boundary of 15-07-15 to Triangle Lake Triangle Lake to Siuslaw River
Deadwood Creek	Panther Creek to Lake Creek
Indian Creek	North Fork Indian Creek to Lake Creek
Sweet Creek	South Boundary of 18-10-33 to CRMP MU's
North Fork Siuslaw	West Boundary of 16-10-30 to CRMP MU's
SILTCOOS BASIN	
Maple Creek	East Boundary of 19-11-12 to CRMP MU's
Fiddle Creek	East Line of 19-11-36 to County Line
Woahink Creek	Woahink Lake to Siltcoos Lake Exclusive of CRMP MU's
COASTAL DRAINAGES	
Tenmile Creek	Wildcat Creek to CRMP MU's
Big Creek	East Boundary of 16-11-21 to CRMP MU's
Cape Creek	East Boundary of 16-11-31 to Pacific Ocean
Sutton Creek	Sutton Lake to Pacific Ocean Exclusive of CRMP MU's Mercer Lake to Sutton Lake Exclusive of CRMP MU's

Row River	Dorena Reservoir to Coast Fork Willamette Layng Creek to Dorena Reservoir
Layng Creek	South Boundary of 21-15-24 to Row River
Brice Creek	South Boundary of 22-25-29 to Row River
Sharps Creek	Clark Creek to Row River
Mosby Creek	Tom Creek to Row River
MAIN STEM WILLAMETTE BASIN	
Springfield Mill Race	Middle Fork Willamette to Main Stem Willamette
Main Stem Willamette	Confluence of Coast and Middle Forks Willamette to County Line
MC KENZIE RIVER BASIN	
McKenzie River	County Line to Main Stem Willamette
Mohawk River	Drury Creek to McKenzie River
Gate Creek	Minney Creek to McKenzie River
Blue River	Blue River Reservoir to McKenzie River County Line to Blue River Reservoir
South Fork McKenzie River	Cougar Reservoir to McKenzie River Roaring River to Cougar Reservoir
West Fork Horse Creek	Horse Creek to McKenzie River
Horse Creek	Separation Creek to McKenzie River
Lost Creek	South Boundary of 16-65-13 to McKenzie River
UMPQUA BASIN	
Steamboat Creek	Horse Heaven Creek to County Line

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C. DELETE the sixth paragraph on page 20 (concerning a map) and ADD the following:

A small-scale map of the streams identified below appears in this Working Paper. Streams listed have been called out by ODFW, and reaches noted by agency staff. A large-scale map is also available for review in County planning offices.

D. DELETE the text under "Quantity" (page 21), and ADD the following:

Several hundred miles of waterway are involved, all of it subject to the Riparian Lands setback requirements discussed in that section of the Working Paper. Since fish habitat is confined to the streams themselves, all such habitat is automatically included in riparian land designations. Waterfowl nesting areas extend beyond the water surface, normally in Wetland areas as identified in that section of the Working Paper.

Although occuring in all parts of the County, sensitive fish habitat has very similiar characteristics throughout -- it is highly dependant on the existence of riparian vegetation. Such vegetation is the subject of recommended protective measures (setback and vegetation management provisions) along Class I waterways.

Because of the vast quantity of waterway designated sensitive fish habitat, and the unifying requirement of riparian vegetation, it is not useful to attempt site-specific conflict analysis. Conflict analysis for waterfowl nesting areas coincides with that for wetlands.

E. DELETE the last three sentences in paragraph 2 of the section entitled "Conflict Resolution" on page 22 (beginning with, "As with Riparian...."). ADD the following language:

The Oregon Fish and Wildlife Department has recommended building setbacks of 50 to 100 feet (depending on zone, which in turn reflects location) along waterways designated as sensitive fish habitat, and the use of a NR zone for wetlands not falling into the riparian strip. These setbacks can be the same rules as have been proposed for Class I streams (see previous section of the Working Paper). Since sensitive fish habitat consists of specified portions of Class I waterways, the riparian land management program should effectively protect such habitat. The NR zone should be applied to wetlands not protected by Coastal zoning or federal ownership.

F. DELETE paragraph 5 on page 14 of the Working Paper (in section entitled, "Riparian and Wetland Areas"), and ADD the following:

For areas of the County covered by the National Wetland Inventory, wetlands shall be defined through a program of consultation with fish and wildlife experts of the Oregon Fish & Wildlife Department and its federal counterpart. For interim purposes of this section, streams and areas of open water shall not be considered wetlands.

G. DELETE the first two sentences of paragraph 1, page 16 of the Working Paper (under section entitled, "Location"), and ADD the following:

The Oregon Fish and Wildlife Department has assisted the County in providing maps of all Class I streams, as well as major significant wetland areas. Attached to this Working Paper is a summary map of those areas, and detailed maps are available for review in County offices.

H. DELETE last two paragraphs under section entitled "Location" on page 16 of the Working Paper, and ADD the following:

A vast array of wetland types has been identified from air photo analysis by the U.S. Fish and Wildlife Service. That agency's product, known as the National Wetland Inventory, includes wetland types from open water to small, seasonal marshes. The scale of the maps is at 1"=62,500 feet (scale of USGS quadrangles) and 1"=24,000 feet. Such a scale, although permitting total coverage of the County, requires much supplementary interpretation and field checking before specific Plan designations and regulations can be placed on the sites.

Presently, about half the County (from the Willamette Valley to the Coastal Zone) has been so mapped, and it is expected that the rest of the County will be completed within a year or two. Although it is not possible -- because of the interpretation requirements mentioned above and of incomplete County coverage -- to designate a large number of minor wetlands, the maps have been useful in identifying "major wetlands." These major wetlands are considered by ODFW staff as being sufficient in size and value to merit County identification. They are located in the following areas:

- Fern Ridge periphery exclusive of parkland;
- Old Long Tom River channel below Fern Ridge dam, including lands between it and new channel.
- North Fork Siuslaw freshwater marsh;
- Maple Creek marsh;
- Amazon Canal at its confluence with the waters of Fern Ridge Reservoir.

Staff of the ODFW indicate that protection of the above major wetlands will enable the County to meet basic Goal 5 requirements, and the later interpretation and application of NWI mapped data will completely fulfill such requirements.

The areas listed above are mapped in detail on the County's Plan Diagram maps. Additionally, a small-scale map showing their general location is attached to this Working Paper. They are discussed in more detail in the "ESEE Analysis" section.

The County should take the Goal 5 Rule "1B" option on interpreting and applying the NWI data, within a timetable of one or two years (or when complete County coverage finally occurs).

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I. DELETE both paragraphs of the section entitled, "Quantity" on page 17 of the Working Paper, and ADD the following:

The quantity of riparian and wetland areas is difficult to estimate in terms of acres or square miles. For purposes of this analysis, "quantity" of riparian lands is defined as all lands along both banks of Class 1 streams in Lane County, to a setback line 100 feet from ordinary high water. This area may or may not contain riparian vegetation; uses of it vary depending on location.

Major wetlands as previously defined vary in size from a few to several hundred acres. Each wetland is discussed individually in the "conflict analysis." The quantity of wetlands on the National Wetlands Inventory probably measures in hundreds of square miles; until a full analysis is done per the Goal 5 rule "1B" option, there is no way of knowing.

J. DELETE the section entitled, "ESEE Analysis" on pages 18 and 19 of the Working Paper. ADD the following material to replace it:

Riparian Lands

For purposes of conflict analysis, riparian lands are divided into the following categories:

- Resource Areas (forested and agricultural);
- Rural Lands (partially/sparsely developed);
- Developed & Committed areas (including communities).

The analysis is carried out for each category.

1. Resource Areas

a) Economic Impacts:

1) Merchantable timber removed from riparian areas is a source of employment and revenue in the County.

2) Use of riparian areas for farming purposes increases available land for farming; usually, riparian lands consist of soils types suitable for agriculture.

3) Riparian lands used for aggregate production increase the economic benefits of that resource.

4) Loss of riparian vegetation destroys fish and waterfowl habitat, increases flood risks, and destroys the river-bank itself, all of which produce net costs to the area.

b) Social Impacts:

1) Loss of income from reduced forest and farming activities adversely affects Land County residents, and could require relocation, etc.

2) Regulations to restrict activities in the riparian strip may conflict with the Forest Practices Act, and in any case will increase the burden on the landowner. Enforcement of such regulations in Resource Areas would be difficult.

3) The social consequences of reduced water quality, flooding, and fish/wildlife quantity, stemming from loss of riparian lands could be significant, especially for those oriented toward outdoor recreation and those living in flood-prone areas.

c) Environmental Impacts:

1) Loss of riparian vegetation would have a significant adverse impact on the riverine environment, as already discussed, and on the wildlife species dependent on that environment.

2) Reduced bank stability, more turbid water, flooding, etc., has generally negative impacts on downstream environments. Flood control would be more difficult to achieve, water purification would be necessary for jurisdictions using surface water for municipal supply, and the risk of health hazards from poorer water quality and/or flooding would increase.

d) Energy Impacts:

1) Reduction of agricultural or forestry production would require a greater investment of energy to more intensively manage unaffected areas and/or obtain the resource products from other areas.

2) Loss of riparian vegetation and a reduction in environmental quality could result in increased downstream energy costs (water treatment, greater travel in search of suitable outdoor recreational sites, flood cleanup)

2. Rural Lands

a) Economic Impacts:

1) Riparian land development restrictions can decrease the availability/usability of Rural Lands, thus increasing land costs.

2) In much the same manner as with Resource Areas, loss of riparian areas for noncommercial forestry, farming, etc., can increase landowner costs and reduce income.

3) Reduced riparian land quality can reduce property values and increase costs to landowners through flood risk, higher insurance costs, less wildlife, and poorer water quality.

b) Social Impacts:

1) Rural residents who desire high-quality riparian environments would be adversely impacted by loss of riparian land and associated consequences.

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2) Restrictions on building and land use in the riparian strip would adversely impact landowners through reduction of their options for building siting, etc.

c) Environmental Impacts:

1) In rural areas, riparian environments often contrast to open lands used for pasture, or once covered with timber, or cleared for homesites. Loss of such lands would damage those environments and thus the quality of the overall community or area.

2) The quality of surface and groundwater, upon which rural landowners depend, would be adversely impacted.

d) Energy Impacts:

1) Energy costs to landowners would be higher if riparian restrictions forced them to live elsewhere. Costs would be lower if riparian restrictions preserved water quality, provided natural flood control, and so forth.

3. Developed and Committed Areas

a) Economic Impacts:

1) Especially on small parcels, the preservation of riparian vegetation through County use restrictions could have serious impacts on the owner.

2) Siting of structures, riparian land use, and vegetation management would all be affected by riparian regulations, possibly increasing costs to landowners.

3) Loss of riparian vegetation through no management would decrease the desirability of the local environment and adversely impact property values. Physical damage to the riverbank through loss of riparian vegetation could cause bank erosion which in turn would increase costs to the landowner to combat it, or because of damages to structures and other improvements.

b) Social Impacts:

1) Within developed areas, riverbanks are often valued for both public and private recreational purposes. Usually, riparian land has a higher social value than equivalent nonriparian land. Loss of that resource would be detrimental to such qualities.

2) The burden of riparian use restrictions on the landowner would amount to another layer of regulation, and could be difficult to enforce.

c) Environmental Impacts:

1) The adverse impacts of flooding, bank erosion, loss of wildlife and fish habitat, reduced water quality and increased runoff would be significant if riparian vegetation was not protected in some manner.

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2) Excessive restrictions on riparian lands within developed and committed areas could result in an aesthetic environment which would displease those who prefer manicured, park-like community settings to more wild, natural settings.

d) Energy Impacts:

1) Restrictions on riparian land use could increase energy costs to those forced to find other land upon which to build.

2) Public service costs in areas not subject to flooding or other adverse impacts of destroyed riparian areas, including the energy costs of those services, would be controlled.

Conflict Resolution

Following the analysis of conflicts, a decision must be made whether to 1) preserve the resource totally, 2) allow unlimited conflicting uses, or 3) limit the conflicting uses. Such limitation should be in the form of regulations and similiar implementing measures.

Considering the value of riparian vegetation to the County's ecosystem, and the impacts of its loss, option 2) above is not prudent. On the other hand, a complete limitation of all activities-- option 1)-- in the 100-foot riparian area is equally unfeasible. As with most resources, a compromise is the most practical -- the third option.

In Goal 5 Rule language, a "3C" decision should be made. This should take the form of Policies and land use regulations which accomplish the following:

1. Requires building setbacks* from all Class 1 streams. (The actual setback should be 50 feet in rural development zones and 100 feet in rural resource zones. According to ODFW officials, these setbacks are justifiable, and have been used in other Oregon counties. Specific language should be introduced to each zoning district to this end.)

2. Provides for vegetation management within the riparian setback strip. (ODFW officials have provided the County with suggested vegetation management regulations, based in part on the County's Coastal Resources Management Plan shoreland provisions, to be applied within the riparian strip. The actual area of application should be 30 feet for the 50-foot strip, and 50 feet for the 100-foot strip. See the County's "Natural Resources Conservation" shoreland overlay for fuller justification and explanation.)

3. Provides for flexibility. (It must be recognized that situations will occur where the above regulations are overly burdensome. A provision for landowner appeal for a relaxation of the standards needs to be written into each zoning district along with the other standards suggested above. Upon such appeal, the vegetative

*for non-water dependent uses.

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management area -- as well as the wider riparian setback area itself -- could be modified upon consultation with, and approval by, officials of the ODFW.)

4. Does not conflict with the provisions of the Forest Practices Act. (Presently, it has not yet been resolved in Oregon whether or not Goal 5 concerns take precedence over activities regulated by the FPA -- an example being timber cutting along a Class 1 stream. Until and if that issue is resolved in favor of Goal 5 concerns, County action to limit conflicting uses should not be applied to lands subject to FPA regulation.)

5. Uses existing regulations wherever practical. (Both the Willamette Greenway Permit and the Coastal Resources Zoning regulate activites in the riparian zones of respective waterways. There is no need for an additional layer of regulation on lands already subject to such regulation. In fact, those standards should be used as a basis for management of riparian lands in areas beyond WGP or CRZ jurisdiction.)

Wetlands

The Major Wetlands listed earlier can each be evaluated seperately for Goal 5 Rule conflict analysis.

1. Fern Ridge Reservoir

a) Location: Marshy areas on perimeter of the Reservoir, including lands to southeast of Reservoir (see map).

b) Quality: High. The major fresh water wetland of the County. Contains freshwater marsh, warm water game fish, submerged & emergent vegetation, fur bearers, and many species of waterfowl, shorebirds, song birds and small mammals.

c) Quantity: Several hundred acres of land, most of it owned by the U.S. Army Corps of Engineers, some of which is managed by ODFW under an interagency agreement.

d) Conflicting Uses: Any use which would result in destruction of vegetation or drainage of surface/subsurface water.

e) ESEE Analysis:

1) Economic: The principal value of the area is for its present use. Alternative uses, such as development, would require expensive land alteration. As a focal point for outdoor, water-related recreation in central Lane County, Fern Ridge Reservoir and its wetlands provide a significant economic benefit. Maintenence of the Reservoir also provides valuable flood control benefits to downstream landowners.

2) Social: Social consequences of protecting the resource parallel the economic ones -- generally beneficial.

3) Environmental: The site provides a highly valuable area for a variety of life-forms. Destruction of the wetlands would destroy the habitat values, and would probably degrade the quality of the Reservoir and adjacent lands for flood control and recreational purposes.

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4) Energy: Destruction of the wetland resource could result in greater energy expenditures for those wishing to locate a more distant, and similiar, area for recreational purposes. Since wetlands act as sponges, flood control costs (including energy outlay) could also increase (more riprapping, etc.).

2. Lower Long Tom

a) Location: Immediately below the dam and ponds on the north side of the Reservoir, between the old river channel and the new one, and on the east side of the old channel.

b) Quality: High. A large, natural wetland containing many of the same attributes as the area to the south. "Representative" habitat.

c) Quantity: about 300 acres, owned by the Corps and by private individuals.

d) Conflicting Uses: See above entry.

e) Conflict Analysis: See above entry.

3. North Fork Siuslaw

a) Location: On the North Fork about two miles north of the main channel (18-11-19). See map.

b) Quality: High. An old salt water marsh converted to freshwater marsh by existence of a tidegate. Contains sedges, emergent vegetation, various waterfowl and furbearers.

c) Quantity: About 50 acres, in private ownership.

d) Conflicting Uses: See first entry, above.

e) Conflict Analysis:

1) Economic: Similiar to Fern Ridge Reservoir, although because of smaller size and non-flood control function, less significant.

2) Social: Impacts of destruction would eliminate a distinct habitat type from being available to persons in the area for wildlife study, etc. Maintainence would appear to have little additional impact since area is presently subject to major restrictions under Coastal Zoning overlay of "Significant Natural Shorelands Combining".

3) Environmental: This, like any major wetland, provides valuable habitat for fish and wildlife, and serves as a natural flood control facility. Impacts of destruction would be significant; impacts of maintenence, negligible, since it is now a natural system.

4) Energy: Possible flooding impacts.

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4. Maple Creek Marsh

a) Location: Maple Creek where it meets northeast extent of Siltcoos Lake (19-11-30). See map.

b) Quality: High. One of the largest freshwater marshes in the area. Major use by water birds, beaver, furbearers, salmonids, shorebirds, emergent grasses, canary grass, sedges.

c) Quantity: About 30 acres, in private ownership.

d) Conflicting Uses. Same as entry #3.

e) Conflict Analysis: Same as entry #3. Also in a similiar manner, this site is under the protection of Coastal Resources zoning. The area is presently zoned with an overlay district of "Prime Wildlife," which is intended to maintain its existing character. A base zone of Exclusive Farm Use additionally restricts potentially conflicting uses.

5. Amazon Canal

a) Location: Amazon Canal for about the first ¼-mile from its confluence with the waters of Fern Ridge Reservoir.

b) Quality: High. Part of the Fern Ridge wetland system, although more open water than marsh. Water level varies. Provides habitat for various bird and acquatic animal species.

c) Quantity: About 200 yards of water and banks. Owned by Corps.

d) Conflicting Uses: Same as entry #1.

e) Conflict Analysis: Same as entry #1, although site plays less of a sponge function and more of a flood control function.

Conflict Resolution

Conflict resolution for wetlands should be much the same as for riparian lands: limit the conflicting uses (the "3C" option). Those areas which are owned by the Corps of Engineers can be considered to have sufficient protection from conflicting uses without the futile effort of County regulation of federally-controlled resources. Areas presently under the jurisdiction of Coastal Resource Zoning can also be assumed to have adequate protection, since the fundamental purpose of the County's Coastal Zoning was to restrict activities that posed a threat to Coastal resources -- shorelands, estuarine areas, and beaches and dunes. Areas not in either of the above categories should be designated with a "Natural Resource" land use category and appropriately zoned. As with most zones, it should contain language permitting flexibility when merited -- without the violation of Goal 5 purposes.

001271

J. DELETE text beginning with the last paragraph on page 24 of the Working Paper through the remainder of text on page 25, and ADD the following in its place:

Although this is a useful index, officials of the ODFW stress the fact that a mere "numbers game" is not the optimum manner to deal with conflicts to the Big Game Range resource. While overall densities are important indicators of conflict, the manner in which these densities occur can either create worse conflict or reduce that which already exists.

A prime example is that of "clustering" dwelling units in Peripheral or Major Range areas -- siting dwellings on large tracts of timber or agricultural land near lot lines, near roads, and near one another. This leaves the balance of the land unimpacted.

The means to prevent conflict is appropriate zoning and siting regulations. As a general rule, the County's 80-acre forest land zone will satisfy the requirements of Major Range, and the 40-acre zone will satisfy the requirments of Peripheral Range. Since commercial timber zoning is very restrictive of dwelling unit placement, it is unlikely that conflicts will occur.

Within Developed and Committed areas, ODFW officials are examining the utility of continuing to designate some of these lands as either Peripheral or Major Range. Developed and Committed areas should be considered as Impacted, and conflicting uses permitted.

The County should continue to work with the ODFW to resolve the issue of Big Game Range designation and protection in a mutually acceptable manner -- including the involvement of that agency in land use regulation development. If the zoning procedure described above does not succeed in pre-empting conflicts with the resource, it will be necessary for the County to go through the ESEE process and determine new ways of dealing with conflicts. The process should follow the Goal 5 Rule format, and center on weighing the relative benefits of dwelling unit construction against those of Big Game Range maintenence.

Policies concerning this issue are proposed in the concluding section of this Working Paner.

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K. DELETE the first full paragraph on page 27 (following the list of "1B" sites) in "Natural Areas" section, and ADD the following:

The six sites are individually discussed below. Since proper evaluation of each of them requires field inspection and reporting by knowledgable experts (biologists, botanists, etc.), and such staff capability is not presently available to the County, the County should commit itself to a timetable of developing the necessary information to satisfy the Goal 5 Rule, for each of of these sites. It is proposed that they be fully evaluated, and placed in "1A" or "1C" categories, within two years of the adoption of the Plan Policies, or equivalent statements, proposed in this Working Paper.

L. DELETE item "a" at the top of page 30 (Ben & Kay Dorris State Park), and re-letter the following four items "a" through "d"; ADD the following statement in a paragraph to conclude the listing:

The State of Oregon Parks and Recreation Division has, in a letter to Lane County, stated that the natural area values of these parks are being and will be protected, and that no conflicts with the resource are foreseen.

M. DELETE the third full sentence in item 6. on page 13 of the Working Paper ("American Osprey"), and ADD the following in place of it:

Through protection of the vegetative fringe along waterways, the habitat requirements of the osprey are protected by existing County regulations (e.g., Willamette Greenway Permit, Coastal Shoreland zoning overlays) and are expected to be further protected by new zoning restrictions intended to fulfill the County's responsibility for protection of riparian and wetland resources (see later sections of this Working Paper).

N. DELETE the material on pages 33 and 34 under "Policy Discussion." ADD the following in that location:

Following the publication of the first draft of this Working Paper, a number of Policies were adopted -- drawing in part on suggestions made in the Working Paper -- and placed in the General Plan Policies document (itself adopted December 1982). These Policies are duplicated at the conclusion of this section, for reader reference.

In order to comply with LCDC directives, and to implement proposed resource management programs discussed on the preceding pages, a few of the adopted Policies need to be revised, and some new ones added. These are proposed in the following paragraphs.

1. Revise existing Policy 3 as follows:

"3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification)."

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2. Revise existing Policy 6 as follows:

"6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be considered "significant" "1C" areas (in the language of OAR 660-16-000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner. Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife."

3. Revise existing Policy 7 as follows:

"7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal/state ownership; where these do not occur, the "Natural Resources" zone shall be applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction."

4. Revise existing Policy 8 as follows:

"8. The County shall not establish restrictions, based on Goal 5 objectives, on timber management activities subject to the Forest Practices Act which are more severe than the requirements of the Act itself. Goal 5 resources which are not dealt with by the Act shall be protected by the County per Goal 5 and OAR 660-16-000/025 requirements."

5. Revise existing Policy 9 as follows:

"9. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision to the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statements."

6. To existing Policies 10 and 11, add the following words (underlined):

   "...the 1982 Lane County Working Paper on Flora and Fauna, as revised and updated in 1983...."

7. Add to existing Policy 12 the following statement:

   "The County shall work with ODFW officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resource zoning program."

8. Add a new Policy 14 as follows:

   "14. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones) to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met."

Existing (December 1982) Policies are duplicated on the following two pages of this document. They do not include the changes proposed above.

III. Conclusion and Necessary Action

The preceding pages of material is intended to meet LCDC requirements and thereby assist the County in complying with statewide planning Goal 5 requirements. It is recommended that the Planning Commissions and the Board of County Commissioners

- Receive the material and review it as technical supportive data,

- Consider the proposed Policy revisions in light of the new data,

- Carry the proposed Policy revisions -- or modified versions thereof -- forward to public hearings and adoption as amendments to the General Plan Policies document.

Ordinance language intended to implement the Policy proposals is now being prepared and will be brought before the Planning Commissons and Board as a part of the Lane Code revision effort. Changes to the Policies will possibly require parallel changes to the proposed ordinance language.

###

001275

EXISTING FLORA AND FAUNA POLICIES from GENERAL PLAN POLICIES Document....

Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Provide special consideration to protection of sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County is encouraged to investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Maintenance of this vegetation shall be encouraged with setbacks from Class I streams and shall be a consideration in Special Use Permits and Zone Changes.

7. Because of the inadequate inventory in Lane County, freshwater wetlands are being placed in a 1B category (insufficient data existing, per Goal 5 requirements, to decide on preserving the resource or not). When National Wetland Inventory (or equivalent) maps are available for all private lands in the County, these wetlands will be evaluated for quality and quantity as per the Goal 5 administrative rule (OAR 660-16-000). If the wetlands are determined to be significant, they will be evaluated against the rule's standardized set of ESEE (Environmental-Special-Economic-Energy) factors and conflict resolution proposed. This action will take place within one plan update period after the maps are available.

8. Lane County shall rely on the Oregon Forest Practices Act for protection of wildlife habitats and areas on lands zoned for the primary use of commercial growing and harvesting of forest tree species. Such habitats and areas shall include sensitive fish and waterfowl areas, riparian vegetation, wetlands areas, and big game ranges.

9. Sensitive Fish and Waterfowl Areas, as identified in the 1982 Lane County Working Paper on Flora and Fauna, are recognized as the most valuable habitat of their type in the County. Maintenance of riparian vegetation shall be a prime consideration in zoning districts in these areas.

001276

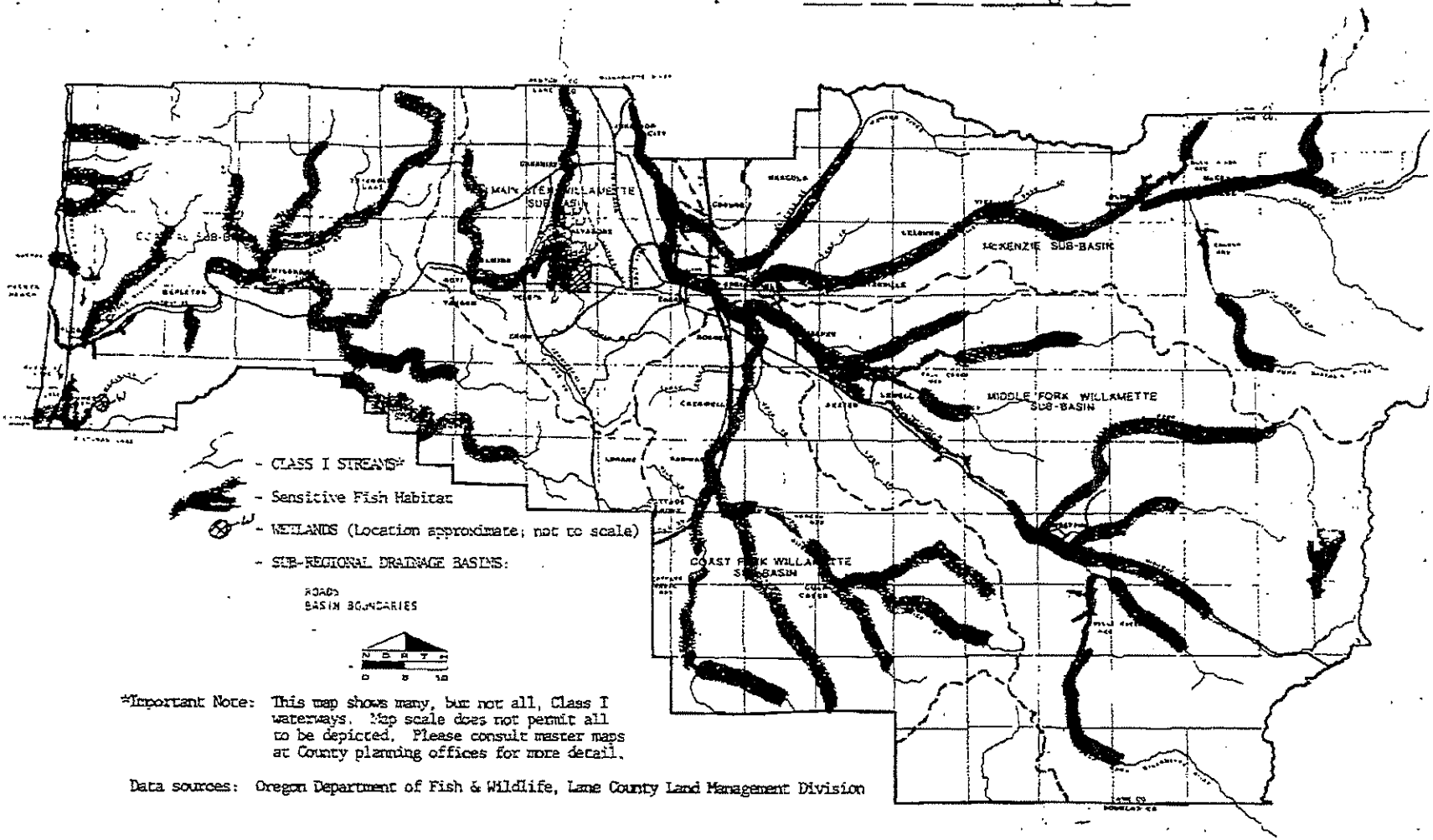
10. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

11. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna.

12. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000.

13. If uses are identified (which were not previously identified in the plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

HABITAT DATA SUMMARY: "Revision Report to Flora and Fauna Working Paper"



*Important Note: This map shows many, but not all, Class I waterways. Map scale does not permit all to be depicted. Please consult master maps at County planning offices for more detail.

Data sources: Oregon Department of Fish & Wildlife, Lane County Land Management Division

Additional Information Submitted

Date Stamp

RECEIVED

NOV 21 2019

Submitted By: Jim Belknap

Phone Number: 541-954-2944

Email Address: jim.e.belknap@gmail.com

Project Address: _____

Permit Number (BP, PA, SP, SI): 509-PA19-05298

Submittal Description: Additional submittal

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: PA Basket Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swu 12/26/2013

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Gary Darnielle
Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Original by Hand Delivery, copy by email to Rachel.serslev@co.lane.or.us

November 20, 2019

Re: PA19-05298, NIMPKISH, LLC Template Test Dwelling Special Use Permit, Tax Lot 18-02-11-00-00507

Dear Mr. Darnielle:

I have had the opportunity to review the Additional Material submitted by the Appellants, LandWatch Lane County, and their legal counsel, Mr. Malone in his letter dated November 7, 2019. I have also reviewed the submission by Andrew Mulkey, Rural Lands Staff Attorney for 1000 Friends of Oregon, dated November 7, 2019, offered in support of the appeal made by LandWatch.

Please let me start with addressing the submission of Mr. Malone which fails to introduce anything of substance in the way of additional information worthy of consideration of the appeal.

Mr. Malone offers the overlay map produced from Lane County ArcGis showing that the property, outlined in red, is designated Major Big Game. See his Exhibit A. We do not dispute the inclusion of the subject property in the area designated by Oregon Department of Fish and Wildlife (ODFW) as Major Big Game habitat. The vast majority of F2 zoned land in Lane County falls into some classification of big game habitat as identified by ODFW.

Gary Darnielle
PA 19-05298
Response to Submission of Additional Material by Appellant
November 20, 2019

The issue of protective measures taken for Major and Peripheral Big Game habitat, as discussed in the Flora and Fauna Working Paper and considered in the preparation of the Lane County Comprehensive Plan, which was acknowledged by the Land Conservation and Development Commission (LCDC) in 1984, has been discussed in detail in our previous submissions.

1. Lane County, in adopting the F1 zoning which prohibits the placement of residential improvements, and which encompasses 2,449,775 acres of the total 2,595,131 acres of forest zoned lands in the county, provides a remarkable level of protection for big game habitat. This statistic is cited by LCDC in their acknowledgement of the Comprehensive Plan, previously provided in our submissions. This proposal was met in the acknowledgement process as satisfying the issues raised by ODFW of recommended overall forest density standards of 40 acre and 80 acre minimum parcel sizes in the Peripheral and Major Big Game Habitat recommendations.
2. The provisions of Lane County Code that allow for placement of a dwelling under the strict rules of the Template Test fully comply with the requirements of the acknowledged Comprehensive Plan and acknowledged land use regulations.
3. The consideration of the 40/80 acre recommendations for Peripheral/Major Big Game Habitat are applicable in a request for an amendment to the Comprehensive Plan and a change in zoning that will result in greater density of parcels and dwellings, not in the application of the Template Test for approval of a single dwelling. The Appellants, relying on the Cattoche Case, fail to make this distinction.

With regards to Mr. Malone's concerns over the DOGAMI overlay showing the subject property as being within a "Very High" landslide susceptibility area, his letter of November 7, 2019 effectively defuses the basis of his argument. To quote Mr. Malone:

> "The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a **guide** for general land use decision. Specific land use decisions shall be based upon inventory and upon **on-site or other evaluation as appropriate.**"
>
> "Here, because this is a specific land use decision, the application must include '**on-site or other evaluation as appropriate.**'... It is therefore, incumbent upon the applicant to **provide expert testimony** to demonstrate that the above comprehensive plan criteria have been satisfied."

My emphasis added

Mr. Malone ignores the testimony offered at the hearing on September 26, 2019 by Michael Remboldt, a Professional Engineer and Geotechnical Expert and principal with K&A Engineering. Mr. Remboldt's on-site inspection of the property and his testimony is summarized in his letter dated October 31, 2019, concluding with the following:

> "Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement."

Mr. Remboldt's testimony at the September 26, 2019 hearing, reiterated in his letter of October 31, 2019, meets at every level of inspection the demands made by Mr. Malone for "on-site or other evaluation" and "expert testimony."

The memorandum dated November 7, 2019, authored by Rachel Serslev, Planner with Lane County Land Management Division, makes the concise and accurate assessment of the Goal 7 issue:

> "According to the policies, a land use decision should use the Natural Hazards Working Paper as a *guide* and be based upon inventory and on-site or other evaluations of hazards. For the purpose of evaluation the Oregon State Building Code can be the sole means of safeguard against natural hazards."

Mr. Malone offers as his Exhibit B a slope map that, as he discusses, shows slopes on the subject property exceeding 40%. Mr. Malone refers to these as "steep slopes." In my original response to the objections raised by LandWatch in the opportunity for public comment I noted the term steep is something akin to beautiful, it's in the eye of the beholder. We have acknowledged that there are portions of the property at the north end, substantially removed from the proposed building site, that are in the area of 40% slope.

As noted in the application, the soils of the subject property in the area of the proposed building site are 107C, Philomath silty clay, with slopes that vary from 3% to 12%. These slopes are borne out in the on-site evaluation made by David J. Collier, a registered professional land surveyor in the State of Oregon, where he notes the slopes in the immediate area around the proposed building site as virtually level traversing a downward slope as one moves from the building site to the western boundary of the property where the grade is measured at 18% along that course. This grade results in an increase of the primary fuel break safety zone from 30 feet around the dwelling to 80 feet, as shown in the site plan.

The issue is Lane Code 16.211(5) Siting Standards, Subsection (a): Residences, dwellings and structures must be sited as follows:

> (i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent (40%).

LC16.211(5)(i) is taken from ORS 217.750(1)(b)(B) "the dwelling will not be sited on a slope of greater than 40%."

Simply put, there are no slopes greater than 40% within 30 feet of the proposed building site. Mr. Malone's letter is the continuing attempt at obfuscation for the application at hand.

The letter dated November 7, 2018 from Andrew Mulkey, and the 47 pages found in his attachments at Exhibit 2 and Exhibit 3 display an incredible lack of knowledge of basic real estate law. Mr. Mulkey argues that the ownership of the subject property in PA19-05298, NIMPKISH, LLC, is the same as the ownership of adjoining parcels by Gray and Dorotea Goodman as husband and wife, title being vested in a tenancy by the entirety. I am enclosing at Attachment A to this letter an informational summary provided by Cascade Title Company, one of the longest standing title insurance companies in Oregon. This summary page offers a concise discussion of the vesting of title to real property. The first three discussion points summarize the ways title can be held by in individual. At the end of the discussion is the summary of "Limited Liability Company (LLC):"

> "This form of ownership is a legal entity and is similar to both the corporation and the partnership. The operating agreement will determine how the LLC functions and is taxed. Like the corporation **its existence is separate from its owners**."

Emphasis added.

While this is a very rhetorical question, would Mr. Mulkey wager his Bar membership on a recommendation to a client to accept a deed for real property executed by individuals, for example, John Smith and Susan Smith, husband and wife, where title to the property is held by Smith Properties, LLC? The obvious answer is "no" as the deed would not convey fee title to his clients. No title insurance company in Oregon would insure the vesting of title executed in such a manner, no reputable escrow company would prepare such a flawed deed.

Mr. Mulkey's position is simply a wish that things should be so, but there is no basis in law for his position. I would expect a first year law school student to be able to make the distinction in

vesting. For Pete's sake, someone seeking to obtain a real estate salesperson's license is expected to have a deeper understanding of title law than that displayed by Mr. Mulkey.

Once the fallacious position that there is a common ownership of the adjoining properties is addressed and set aside the balance of Mr. Mulkey's letter continues to fall apart. Mr. Mulkey asserts "The proposed site plan fails to show the minimum primary and secondary fuel breaks required by state law and lane (sic) code." This is simply untrue. Please review Attachment 2 to the Supplement to PA19-05298. The attachment is the proposed site plan with the overlay of the primary and secondary fuel breaks. Noted on this plan are the grades surrounding the proposed building site and the appropriate fuel break requirements set out in Lane County Code. This site plan is attached at "Exhibit C, Site Plan Approved 6/25/19" to the Notice of Pending Land Use Decision by the Lane County Planning Director, dated 8/2/19, for 509-PA19-05298.

Mr. Mulkey offers the recitation that "fuel breaks must be on land 'owned or controlled by the owner in accordance with the provisions in Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads.'... " The proposed, and accepted, site plan with the fuel break overlay precisely meets this requirement. The fuel breaks depicted are on land owned or controlled by the owner.

Mr. Mulkey goes on to state:

> "A homeowner cannot maintain the vegetation within the fuel breaks to the appropriate standards if the fuel break extends off the property and beyond the owner's control. For that reason the provisions required the landowners to establish fuel breaks on land they either own of control."
>
> – So far, so good. Then Mr. Mulkey's train leaves the tracks. –
>
> "If they do not own the land, the law requires landowners to obtain an easement to ensure their control over the minimum distances."

No, it doesn't.

Mr. Mulkey, I'm going to need to see chapter and verse to support that claim. The law makes no such requirement. To the contrary, the law is quite clear: "fuel breaks must be on land owned or controlled by the owner." There is no requirement to force an adjoining landowner to grant an easement for fuel break measures, nor is there a requirement of a landowner proposing a forest dwelling to obtain such an easement.

Mr. Mulkey attaches at his Exhibit 7, Page 2, the Conditions of Approval made by Lane County in Planning Action 02-5486. In that document he notes a requirement from Lane County for a landowner to "Physically establish the primary and secondary fuel breaks as depicted on the approved Detail Development Plan, Exhibit C and as necessary on the adjoining property in accordance with recorded instrument #2002-031079." He then attaches at his Exhibit 7, Page 6, a copy of that recorded instrument.

While the standards of approval applied by Lane County in 2002 may have required a landowner to obtain an easement from a neighboring landowner for establishment of a fuel break, Mr. Mulkey fails to recite the County Code or Oregon Revised Statute provision that in fact "requires" a landowner to obtain such an easement. That is because no such requirement exists today.

I mention this false statement as I am opposed to such a requirement being established by precedent in this planning action. If Mr. Mulkey can establish the code or statutory requirement for such an easement then we may consider such for future applications as being appropriate, but short of that our objection needs to be noted.

Without wishing to belabor the point, the adjoining landowners, Gray Goodman and Dorotea Goodman (owners of Tax Lot 506), have agreed to grant an easement on their Tax Lot 506 beneficial to Tax Lot 507, the subject property, for establishment of 100 foot secondary fuel break as it may extend onto Tax Lot 506. If the Hearings Official determines that the secondary fuel break is required to extend onto Tax Lot 506 we will have an easement prepared to allow for such an extension, with the provisions of the secondary fuel break appearing similar to that shown in the map at Attachment B to this letter.

Mr. Mulkey makes a statement that is either a total misrepresentation of the code and policy of Lane County or is intended to mislead the reader:

> "The conditions of approval paraphrase the code and give ultimate discretion of how to establish the fuel breaks in compliance with those provisions (LC16.211(8)(c) to the **building department**. Applying the fuel break standards requires a degree of judgment and discretion. The county cannot defer the task of determining the fuel break distances to a future, non-public decision-making process.

My emphasis added.

Mr. Mulkey displays a complete ignorance of how the fuel break provisions are established in the application review process and the final inspections carried out by Lane County, though his

Exhibit 7 is a complete summary of the process in the 2002 application to which he attempts to refer.

In the application process the applicant shows their proposed site plan and depicts fuel breaks around the dwelling that conform to the standards of County Code and State Statute. If the proposal meets such standards, and a multitude of other requirements, the staff issues a conditional approval of the application. Among the conditions of approval is:

> "Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(6)(c) and as depicted on the applicant's site plan. These fuel breaks shall be maintained in perpetuity. The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope, as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner." –
>
> See Condition #6 of "Exhibit A Conditions of Approval 509-PA19-05298" attached to the "Notice of Pending Land Use Decision by the Lane County Planning Director" dated 8-2-19.

The Conditions of Approval follow with:

> "9. Upon completion of conditions #2 through #8, the applicant shall complete and submit a Land Use Application form to Verify Compliance with conditions of Approval, with the required processing fee."
>
> Notably, an example of this is Page 4 of Exhibit 7 to Mr. Mulkey's letter.

The Conditions of Approval then (as shown in the subject application, PA19-05298) follow with:

> "10. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field **inspected by Planning Office staff** to verify that requirements stated in conditions #4 and #6 have been met...."

My emphasis added

> #11. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling with the appropriate deposit fee."

Again to Mr. Mulkey's statement:

> "The conditions of approval paraphrase the code and give ultimate discretion of how to establish the fuel breaks in compliance with those provisions to the **building department.**"

My emphasis added. And again, no they do not.

Contrary to Mr. Mulkey's assertion, at no point is "the task of determining the fuel break distances (deferred) to a future, non-public decision-making process." That is a total fabrication of 1000 Friends of Oregon.

The process of establishing the fuel break distances is made on-site by the applicant in his or her assessment of the grade of the subject property and in the initial phases of preparing their plot plan and in determining if the various elements of County Code can be fulfilled. In the case of PA19-05298 the assessment of grade was further confirmed and described by a Registered Professional Surveyor in the State of Oregon.

The site plan with the specific notations of grade and the appropriate fuel break distances was submitted to the County staff for review. Public notice and opportunity for comment was made and eventually public notice of the intent to approve the plan was made and we arrive at where we are today.

When the fuel break provisions are completed by the landowner a representative of the County Land Management Division staff will conduct an on-site inspection of the property to confirm that the conditions of approval have been met (as shown clearly in Mr. Mulkey's Exhibit 7). There is no subjectivity to this final inspection, the fuel break standards as conditionally approved are either met or they are not. 30 feet is 30 feet, 100 feet is 100 feet, this is not a "subjective" evaluation, no interpretation or judgement is being applied at this point. Then, and only then, can the landowner proceed with submitting their application for a building permit and the process of further inspections (such as for foundations and framing, etc.) transfers from the planning staff to the building department officials.

One or more of several things is happening in Mr. Mulkey's letter:

1. Despite his many years of legal representation of LandWatch Lane County and the opportunity to review and evaluate numerous Template Test Dwelling applications in Lane County, Mr. Mulkey fails to understand the process of application, staff review, public notice, decision and verification of conditions by County Staff.

2. Mr. Mulkey chooses to not read or has simply ignored the Conditions of Approval set forth in PA19-05298.
3. Mr. Mulkey is pandering to the Land Use Board of Appeals in misinterpreting their decision in Eng v. Wallowa County (LUBA No. 2018-085) in stretching that decision to somehow imply that Lane County is deferring to some "future, non-public decision making process" the on-site inspection by County Land Management Division Staff in their verification of conditions of approval, an approval that is only achieved after extensive public notice has been provided. This inspection process is not left to an "interpretation or judgment." To the contrary, the physical on-site inspection is carried out with staff members holding measuring tapes and precisely calculating if the fuel break provisions have been met.

If Mr. Mulkey's interpretation of the Eng v. Wallowa County decision is correct, then the question must be asked: Is LUBA saying that when the landowner has completed their fuel break conditions another public hearing must be held to allow public input as to whether the conditions have been met? Is the public to be invited to every parcel of private land to conduct their own site inspection and offer testimony as to whether they believe the standards of approval are satisfied? If this is the box that is being opened, how do we deal with aspects of privacy, safety, liability for injuries, damage to private roads, etc.? Should the "public inspectors" be required to sign indemnity agreements for when their wanderings about and taking of measurements leads them into a ground dwelling hornet's nest, a batch of Poison Oak or a trip over a tree branch leading to a broken arm? While my question moves into the theater of the absurd, I believe this is the position Mr. Mulkey is attempting to make.

The county staff is paid a substantial fee to evaluate an application, solicit public input and prepare an approval or denial, based on the standards of County Code and State Statute with the opportunity for public hearing. In the event of approval a variety of conditions will be made by the planning staff which shall fall to the landowner to complete. When the landowner believes they have satisfactorily completed those conditions another fee will be paid and a member of the planning staff will conduct an on-site inspection to confirm that the conditions have been met, or to deny the verification of conditions and to send the landowner back to the task at hand. That process is depicted in Mr. Mulkey's Exhibit 7 and his discussion of a deferring the "task of determining fuel break distances to a future, non-public decision making process" is simply a figment of his imagination.

Gary Darnielle
PA 19-05298
Response to Submission of Additional Material by Appellant
November 20, 2019

The final decision made by the county that the "applicable wildfire standards are satisfied," is an evaluation of the performance of the applicant to the conditions of approval, not a deferment to a future process that must allow public participation.

Mr. Mulkey concludes his letter with:

> "1000 Friends requests that the hearings official issue conditions of approval that require compliance with an approved site plan that demonstrates compliance with the minimum fuel break standards."

Mr. Darnielle, there is no need for you to issue such conditions of approval, they have already been set forth by the Lane County Land Management Division Staff and the applicant concurs in those conditions.

Thank you for your attention to my comments.

Sincerely,

Jim Belknap

Jim Belknap

Encl: Attachment A, Information Sheet from Cascade Title Insurance Company on Vesting of Title
Attachment B, Drawing of Tax Lots 506 and 507 showing agreement reached between the parties for establishing an easement area for the secondary fuel break, if required by the Hearings Official

Cc: NIMPKISH, LLC w/encl
Michael Farthing, w/encl

Attachment A
PA19-05298 Response To
Submission of
Additional Material

CASCADE TITLE CO.

Title Vesting

Methods of Holding Title in Oregon

Tenancy by the Entirety

Tenancy by the entirety is a form of ownership recognized in Oregon that is available only to legally married husband and wife. The law sees the husband and wife as one person. Therefore, they do not own one-half interests in the property, but each own the entire property. When either spouse dies, the survivor doesn't inherit the decedent's interest, but continues to own the entire property. A tenant cannot will his interest in the property to someone else. If a married couple divorces, they would then automatically hold title as tenants in common, unless their divorce decree stated otherwise.

Tenancy in Common

A tenancy in common is created when two or more people each have an undivided interest in the same property. To have an undivided interest is to be a partial owner of the whole property, not the sole owner of a separate piece of the property. Co-owners have equal rights of possession, but might or might not have equal interests (percentages of ownership. Tenancy in common does not include rights of survivorship. Co-owners can sell or otherwise dispose of their share of the property without regard to the other co-owners.

Not as Tenants in Common, But With Rights of Survivorship

As the wording implies, this creates a survivorship between the vested owners. In the event of one owners death, the property vests in the surviving owner.

Trust*

A trust is an arrangement whereby legal title to the property is transferred by the grantor to a person called a trustee, to be held and managed by that person for the benefit of the people specified in the trust agreement, called beneficiaries.

Partnership*

A partnership is an association of two or more persons who can carry on business for profit as co-owners, as governed by the Uniform Partnership Act. A partnership may hold title to real property in the name of the partnership.

Corporation*

A corporation is a legal entity, created under state law, consisting of one or more shareholders but regarded under law as having an existence and personality separate from such shareholders.

Assumed Business Name*

The term "assumed business name" means one or more words or numerals (or a combination of words or numerals) that a person uses to identify a business or conducts a business under, where the person does not conspicuously disclose the "real and true name" (surname and initials) or each person who is carrying on or conducting the business. If property is held in this manner it must state both the party doing business and the entity, ie, John Q. Smith dba Smith and Sons Realty.

Limited Liability Company (LLC)*

This form of ownership is a legal entity and is similar to both the corporation and the partnership. The operating agreement will determine how the LLC functions and is taxed. Like the corporation its existence is separate from its owners.

Remember: How title is vested has important legal consequences. You may wish to consult an attorney to determine the most advantageous form of ownership for your particular situation.

*In cases of corporate, partnership, LLC or trust ownership, required documents may include corporate articles and bylaws, partnership agreements, LLC operating agreement and trust agreements and/or certificates.

PROPERTY OWNERS:
GRAY AND DORETEA GOODMAN T.L. 506
NIMPKISH, LLC T.L. 507

EXHIBIT C
GOODMAN/NIMPKISH, LLC
TAX MAP 18-02-11-00
TAX LOT 506 & 507

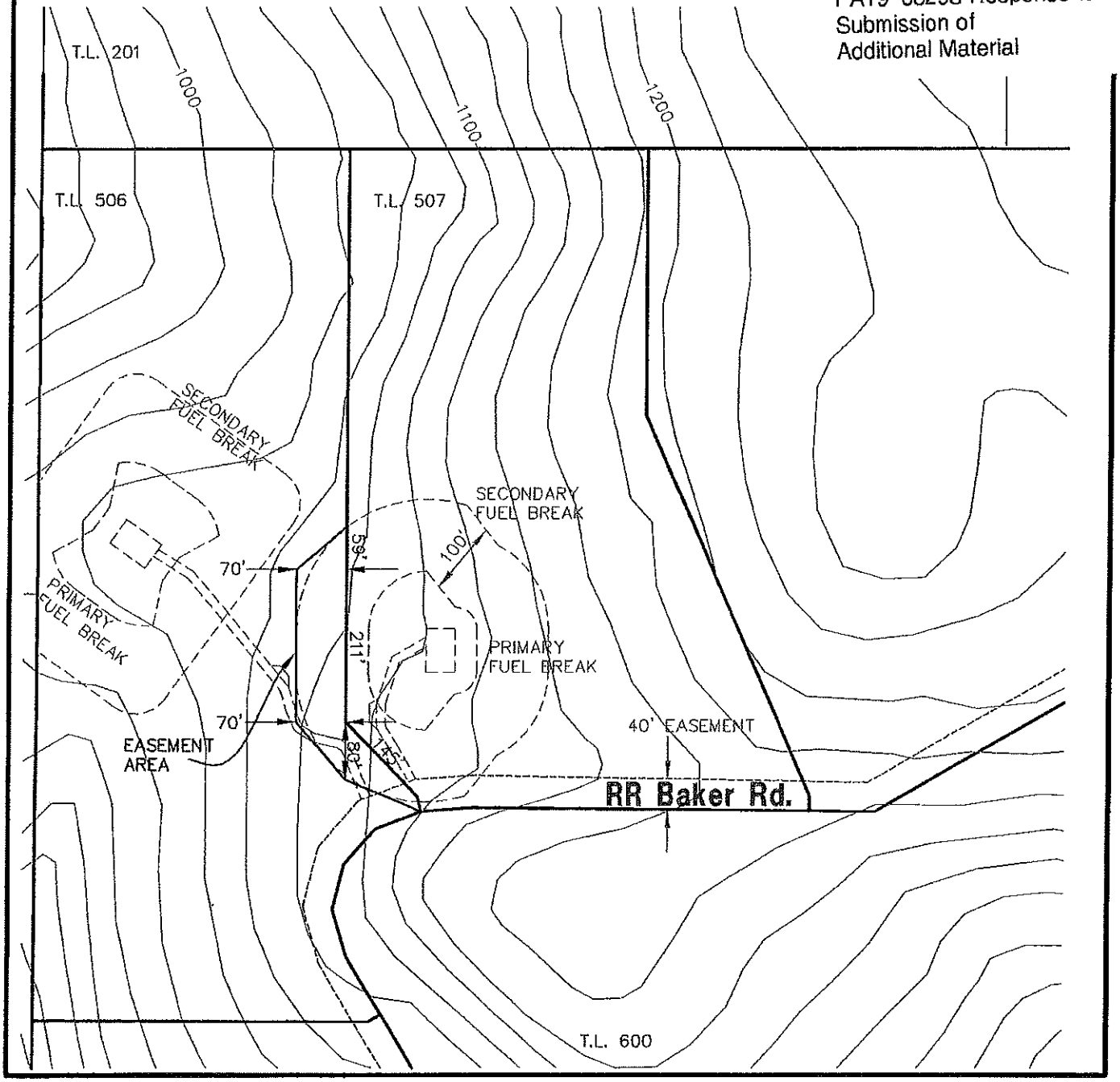
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1992
DAVID J. COLLIER
2552
RENEWAL 12-31-19

N

0 200
SCALE 1" = 200'
CONTOUR INTERVAL=20'

Attachment B
PA19-05298 Response to
Submission of
Additional Material



0592

SERSLEV Rachel

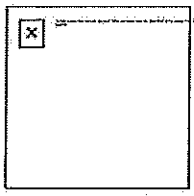
From:	Andrew Mulkey <andrew@friends.org>
Sent:	Thursday, November 21, 2019 3:59 PM
To:	SERSLEV Rachel
Subject:	Nimpkish response
Attachments:	20191121_Response_Comments_1000_Friends_Nimpkish_PA19-05298.pdf

[EXTERNAL ☐]

Please accept the attached testimony for record in the NIPKISH application.

Please confirm receipt. Thank you.

Andrew Mulkey
Rural Lands Attorney
Pronouns: he/him
1000 Friends of Oregon
503.497.1000 x138



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

November 21, 2019

By electronic mail

Gary Darnielle, Hearings Official
c/o Rachel Serslev
Land Management Division
3050 N Delta Highway
Eugene, OR 97408
Rachel.serslev@co.lane.or.us

RE: Response Statement in 509-PA19-05298, Nimpkish application for a forest template dwelling

Please accept the following statement for the record on behalf of 1000 Friends of Oregon in the Nimpkish application (509-PA19-05298) for a forest template dwelling on tax lot 507 (map no. 18-02-11-00). Ex 1. Please include 1000 Friends in any subsequent notice of decision and any further correspondence related to this application.

Goal 5

The applicant fails to demonstrate that the code provisions for siting dwellings in the F-2 zone comply with the county's comprehensive plan flora and fauna policy 11 or the minimum density standards described in the Flora and Fauna working paper. ORS 215.750(4)(a); OAR 660-006-0027(6)(a), 660-006-0025(6). The applicant lacks support for its argument that Goal 5 density standards are addressed through zoning. Many parcels within the F-2 zone are less than the 80-acre minimum parcel size (ORS 215.780), and minimum parcel sizes for the zone are not the same residential density standards. Lane County's code does not contain a minimum parcel size for dwellings. *Cattoche v. Lane County*, (LUBA No 2018-109, Opinion, May 22, 2019) (slip op at 18) (slip op at 20) ("We observe that the F-2 zone does not provide a general residential density standard.").

As LUBA explained in *Cattoche*, "[t]he Flora and Fauna Working Paper states that the county will be divided into regions and the county will determine the number of existing residences and the[] 'additional number of residences allowable to still fall within the overall density level.'" (slip op at 19) (quoting Flora and Fauna working paper). The County must either determine a "residential carrying capacity" or rely on the ODFW density standards "whichever is lesser." *Id.* In this case, the county never defined the applicable regions or determined a "residential carrying capacity" figure. If the allowable density "is exceeded, then there is a

conflict and an ESEE analysis is required." *Id.* The recommended ODFW density standards for major big game habitat that is one dwelling for 80 acres.

The comprehensive plan policy 11 applies directly to decisions allow additional dwellings: "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County." And "[a]ny density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000," referring outdated Goal 5 requirements. OAR 660-023-0000 *et seq*. The applicant has not shown that the additional dwellings allowed on the subject properties and nearby properties comply with the one dwelling per 80-acre ODFW density standards for major big game, nor has the applicant gone through the required ESEE analysis.

The applicant's reference to clustering requirements does not demonstrate compliance with the comprehensive plan density standards referenced in Flora and Fauna policy 11. First, the presence of a clustering provision in the code does not address overall density standards. Nothing the applicant cites indicates that the clustering provisions supplant the density requirements in the comprehensive plan.[1] LC 16.007. The applicant fails to demonstrate that its proposed dwelling does not cause a Goal 5 conflict. Second, the applicant's assertion that creation of the F-1 zone addressed ODFW's concerns about big game is not supported by substantial evidence in the record. Nothing in the comprehensive plan or the zone demonstrates that dwellings in the F-2 zone do not have to comply with the density standard in Flora and Fauna policy 11. As explained in *Cattoche*, Lane County has "adopted an implied interpretation of the Residential Density Standard as requiring only consideration of the subject property." *Cattoche*, (LUBA No 2018-109, Opinion, May 22, 2019) (slip op at 18). If a property in the F-2 zone does not meet the required size for one dwelling per 80-acres, then the fact that the F-1 zone does not allow dwellings does not address the Goal 5 conflict. The applicant cannot ignore the language of the comprehensive plan.

Goal 7

The applicant failed to adequately address landslide hazard. DLCD's recent report on landslide hazards notes that "according to SLIDO 3.4 data (Burns, 2017), 10,335 *deep* landslides have been mapped in Oregon. The mean slope angle is 27 degrees, and 95% of these deep

[1] The applicant also does not address the fact that LCDC's acknowledgement of the 1984 version of the comprehensive plan was appealed, reversed, and remanded. *1000 Friends of Oregon v. Land Conservation and Development*, 305 Or 384 (1988).

landslides occur on 10–45 degree slopes." And, "[a]lso according to SLIDO 3.4, 4,904 *debris flow* type landslides have been mapped in Oregon (Burns, 2017). The mean slope angle is 13 degrees, and 95% of these debris flow type landslides occur on slopes less than 26 degrees." The applicant's review of the landslide potential for the subject property does not address the potential for landslides on slopes greater than 10 percent. The applicant ignores the potential for landslides above the proposed dwelling site, and the applicant ignores the fact that the DOGAMI maps indicate that the existing landslide susceptibility for the property is "Very High." The applicant did not do any type of soils analysis to determine that the DOGAMI landslide potential is wrong.

Sincerely,

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

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

Enclosures:
Ex 1, Vicinity maps for subject property
Ex 2, Business entity filing records for Nimpkish, LLC
Ex 3, Tax lot records and deed for Goodman tract
Ex 4, Tax Map 18021100
Ex 5, Application and decision notices for dwellings on tax lots 506, 508, and 509
Ex 6, 1991 ODF Fire Siting Standards
Ex 7, Fuel break easements and excerpts of dwelling approval conditions of approval

Additional Information Submitted

Date Stamp
RECEIVED
NOV 2 ; 2018

Submitted By: Michael Faerhing
Phone Number: 541-683-1950
Email Address: metaerhing@yahoo.com
Project Address:

Permit Number (BP, PA, SP, SI): 509-PA-05298 (Nimpkish)
Submittal Description: Applicants Post-hearing Response
ATTEN: Rachel Serusley

Type of Submittal:

- ☐ Additional Information
- ☐ Response to Plan Review Comments
- ☐ Revisions to Approved Plans
- ☒ Other:
- ☐ Deferred Submittal
- $ _____ Value of deferred work:

Office Use Only: Route to: Rachael Guerrero Amount Due:

- ☐ Approved
- ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swm 12/28/2018

Michael E. Farthing

Attorney at Law

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

Office: 541-683-1950 ◊ Fax: 541-654-5083

email: mefarthing@yahoo.com

November 21, 2019

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **509-PA-05298 (Nimpkish LLC)**
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County
Second Post-Hearing Response Submission

Mr. Darnielle,

Please enter this letter into the record of the above-referenced appeal that I am submitting on behalf of the applicant, Nimpkish LLC., and in support of the Director's decision and findings.

The appellant, Landwatch, through its attorney, Sean Malone, submitted a letter with exhibits, dated November 7, 2019, in opposition ro the Nimpkish template dwelling application. On the same date, Andrew Mulkey, staff attorney for 1000 Friends of Oregon, also submitted a letter with exhibits in opposition to the Nimpkish application. I will respond to both letters and their various exhibits, Mr. Belknap, in a separate submission, has provided a comprehensive response to both letters.

Malone Letter (11-07-19)

Mr. Malone submitted three maps as exhibits with his letter. Exhibit A shows the subject property as being located within Lane County's acknowledged Goal 5 Big Game Range. (Exhibit A). We already know that. Exhibit B depicts the slopes on the property and Exhibit C shows it to be within a County-designated landslide hazard area. Again, we know all about the slopes and the

generalized DOGAMI landslide hazard maps.

Mr. Malone does not provide any new information or analysis. Instead, he launches into LandWatch's well-worn argument that Goal 7 Natural Hazards policies apply directly to this template dwelling application and that ". . . [T]he application must include 'on-site or other evaluation as appropriate'." What Mr. Malone does not acknowledge or mention is that Mr, Remboldt, a registered professional engineer, testified at the hearing on September 26 and followed with a letter dated October 31, 2019, that was submitted as part of our first post-hearing record submission for new evidence.

Therefore, apparently when he wrote his October 7 letter, Mr. Malone had forgotten about Mr. Remboldt's hearing testimony and had not read Mr. Remboldt's October 31 letter which confirmed his September 26 oral testimony at the public hearing that Mr. Malone attended with Ms. Segel. In his letter, Mr. Remboldt concluded:

> "*Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope meovement.*"

Mr. Malone's response to Mr. Remboldt's September 26 testimony and October 31 letter is to state that it is "incumbent upon the applicant to provide expert testimony" and that "[I]n the absence of a qualified geotechnical report . ." and that "the application [be] denied."

After this sequence of events, it impossible to determine what Mr. Malone is trying to argue when he ignores facts and testimony. Did he not read and hear Mr. Remboldt's conclusion, i.e. there is not a landslide hazard in the vicinty of the proposed homesite? Does Mr. Malone reject Mr. Remboldt's opinion and that is why he claims there is an "absence of a qualified geotechnical report"? What is LandWatch's rationale for rejecting Mr. Remboldt's testimony?

At this point, Mr. Malone and LandWatch have got what they asked for, a "qualified geotechnical report". Mr. Remboldt is qualified by degree, license and

experience. If the Goal 7 policies have any applicability to this application, a point that we do not agree with, then they have been fully addressed and satisfied by Mr. Remboldt's report. The building phase is when a specific proposal will be evaluated pursuant to Conditions 11-14 at which time the County Building Department can require an additional geotech report. *See* Attachment 3 to September 19, 2019 Staff Report.

Finally, in footnote 1, Mr. Malone claims that the County's template dwelling provisions are unacknowledged. Mr. Malone does not offer any explanation for this law-defying fact that he claims Lane County was able to accomplish; that being to adopt new forest zoning regulations without obtaining LCDC's blessing in the well-worn acknowledgment process. Again, Mr. Malone and LandWatch are engaging in idle speculation and wishful thinking rather than thoughtful legal analysis. Mr. Malone's letter offers nothing of substance.

Mulkey Letter (11-07-19)

Mr. Mulkey submitted seven exhibits (1-7) with his letter ranging from maps and real property records for the subject property and adjacent properties to a 1991 ODF Fire Siting Standards pamphlet. There is nothing in these documents that relates specifically to the relevant criteria in LC 16.211(5) and (8). The property records confirm what we already know: Nimpkish, LLC owns Tax Lot 507, the subject property, and no other contiguous property. Mr. Mulkey also confirmed the lawful existence of Nimpkish, LLC and that its two members are Gray and Dorotea Goodman.

Using this information, Mr. Mulkey asserts: (1) "The County cannot approve multiple forest template dwellings on a tract" and (2) "The County cannot ignore the minimum fuel break standards." I will address each allegation separately.

"The County cannot approve multiple forest template dwellings on a tract"

Standing alone, Mr. Mulkey's statement is true since it simply reflects ORS 215.750(4)(c) and (d). Mr. Mulkey goes further however, and argues that a "tract" exists in these circumstances because it includes the Nimpkish-owned parcels (Tax Lots 507 and 508) and those owned by Gray and Dorotea Goodman, individually, (Tax Lots 501, 506 and 509). Mr. Mulkey cites the definition of "Tract" in ORS

215.010(2) as:

> ". . . one or more contiguous lots are parcels under the same ownership."

Mr. Mulkey's unsubstantiated and vacuous conclusion does not address basic real property law or the difference between "under the same ownership"as used in the definition of "tract" and "controlled by the owner" as used in Lane Code fuel break siting standards. LC 16.211(8)(c)(i) (". . . owners . . . Shall maintain . . . fuel break on land surrounding the dwelling . . . that is owned or controlled by the owner . . ." emphasis supplied). "Under the same ownership" and controlled by "owner" are two very distinctive legal positions.

"Owner", for purposes of real property law and without any additional qualifer, is the person or entity that received a deed for the dirt, i.e. fee simple title.[1] In this case, Nimpkish, LLC, was granted fee title to the subject property by a deed signed by Gray and Dorotea Goodman. *See* Attachment 1. In order for Nimpkish to convey fee title for the subject property, Nimpkish LLC would have to be the grantor, not Gray and Dorotea Goodman. The Goodmans, individually, cannot convey fee title to the subject property because they do not "own" the dirt. Instead, they "own" paper (articles of organization) that establishes they own a legal entity, Nimpkish, LLC, that does own fee title to the dirt in the subject property. ORS 63.239. It is personal property. Id.

There are no qualifiers like for the term "ownership" as used in the definition of "tract". Ownership can only be fee title ownership of the dirt. It is the full "bundle of sticks" that Nimpkish owns while the Goodmans own the Nimpkish basket into which that bundle is placed. The Goodmans own the Nimpkish basket, not the bundle of ownership sticks that are placed in that basket. Pardon the analogy but there is a very real legal difference in who the owner is as between an LLC and individuals.

---

[1] Chapter 16 does not define "owner" or "ownership" and in the absence of such, relies on *Webster's Third International Dictionary of the English Language*, Unabridged, Copyright 1981, Principal Copyright 1961. That dictionary defines "owner", in part, as: "one that owns: one that has the legal or rightful title whether the possessor or not".. "ownership" is the noun and is "the fact of being the "owner".

(2) "The County cannot ignore the minimum fuel break standards"

Neither the County nor the applicant are ignoring the fuel break standards. Rather, they are being meticulously followed and graphically displayed by Mr. Collier on the applicant's site plan. Mr. Belknap's accompanying letter goes to great length in refuting Mr. Mulkey's arguments in this section and I will not repeat those here.

The important part is that the Goodmans, as the adjoining owner, have agreed to grant a secondary fuel break easement for the benefit of the subject property that is owned by Nimpkish, LLC. We do not believe "under the control" legally requires the Goodmans to grant such an easement as it extends on to Tax Lot 506 but they have elected to do voluntarily.

Finally, Mr. Mulkey cites several cases beginning with *Eng v. Wallowa County*, ____Or LUBA ____ (LUBA No. 2018-085, Sl Op, May 7, 2019) for the proposition that determining the fuel break distances at a "future, non-public decision-making process is inappropriate." We would agree except that Mr. Mulkey has before him the fuel break area that is measured, scaled and identified on a site plan. Mr. Mulkey does not dispute those facts but, instead, apparently believes a public hearing should be held when the County staff goes on to the subject property to measure the distances and view the site clearing.

That, of course, is ridiculous because those tasks are routinely performed by the staff after a public process has been provided to determine whether compliance with the conditions is "feasible". *Rhyne v. Multnomah County*, 23 Or LUBA 442-447 (1992). In stark contrast to the present case, in *Eng*, the county blatantly acknowledged that compliance with its wildfire standards would be satisfied at a future, non-public date. *Eng* at 36. Unlike *Eng*, we are determining compliance with fuel break standards at this time.

LandWatch and 1000 Friends do not challenge our site plan and identified setback areas. Condition 6 requires the applicant to "[P]hysically establish the primary and secondary fuel breaks" as depicted on the site plan and including the area of the secondary fuel break located on the adjacent property owned by the Goodmans. These fuel breaks will be field verified by County staff before a building permit is issued. The condition is clear and objective. There is no

discretion. *See Gould v Deschutes County*, 227 Or App 601, 612 (2209); *Northgreen Property LLC v City of Eugene*, 65 Or LUBA 83 (2012).

Conclusion

To date, neither LandWatch or 1000 Friends have offered any substantive facts, arguments or legal analysis to support reversal of the Director's approval and conditions. Their blatant disregard of testimony provided by the applicant is confirmation of the emptiness of their position. We urge you to affirm that decision.

Sincerely,



Michael E. Farthing

Enclosure

c: Gary Darnielle (via email)
Rachel Serslev (via email)
Nimpkish LLC (via email)
Jim Belknap (via email)
Sean Malone (via email)
Andrew Mulkey (via email)

After Recording Return To:

Leahy Cox, LLP
188 West B Street, Building N
Springfield, OR 97477

Until Requested Otherwise,
Send Tax Statements To:

Nimpkish, LLC
86690 RR Baker Road
Springfield, Oregon 97478

Lane County Clerk
Lane County Deeds and Records **2019-011322**

\$92.00

03/27/2019 11:42:48 AM

RPR-DEED Cnt=1 Pgs=2 Stn=1 CASHIER 06
\$10.00 \$11.00 \$61.00 \$10.00

BARGAIN AND SALE DEED

Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman, Husband and Wife, Grantor, conveys, bargains and sells to NIMPKISH, LLC, Grantee, the following real property situated in Lane County, Oregon, and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

Subject to Easements, Reservations and Restrictions of Record and Specifically including, but not limited to, that certain Declaration of Easement and Road Maintenance Agreement dated 3/20/2019, received 3/21/2019, Reception No. 2019-10257, Lane County Deeds and Records.

The true consideration of this conveyance is other than monetary.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this 20 day of March, 2019.

Gray McKenzie Goodman

Dorotea Elizabeth Chiara Goodman

STATE OF OREGON)
) ss.
County of Lane)

This instrument was acknowledged before me on March; 2019, by Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman.

Erin Anne Dieter
Notary Public for Oregon

OFFICIAL STAMP
ERIN ANNE DIETER
NOTARY PUBLIC - OREGON
COMMISSION NO. 979070
MY COMMISSION EXPIRES SEPTEMBER 13, 2022

Exhibit A

Property 2

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 85 feet to the TRUE POINT OF BEGINNING, thence continuing North 89°30' West 470.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 144.62 feet; thence North 795.65 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 North 89°59'29" East 415.00 feet; thence leaving said North line South 370.80 feet, more or less; thence South 23°31'52" East 576.00 feet to the true point of beginning, in Lane County, Oregon, TOGETHER with the Southerly ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

RECEIVED

NOV 08 2019

Additional Information Submitted

Date Stamp RECEIVED NOV 08 2019

Submitted By: L W L

Phone Number: 541 & 517 4459

Email Address: fourhper@comcast.net

Project Address: n/a

Permit Number (BP, PA, SP, SI): PA19-05298

Submittal Description: _____

RECEIVED NOV 08 2019 LANE COUNTY OREGON

Type of Submittal:

☐ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: Deanna Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fees be paid? ☐ In person ☐ Online ☐ By phone

slvin 12/26/2018

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-C
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

November 7, 2019

Via Hand Delivery

Lane County Hearings Official
c/o Lane County Planning Department
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-4065

Re: LandWatch testimony in opposition to Request for Template Dwelling in the F-2 zone, 509-PA19-05298 (Nimpkish).

On behalf of LandWatch Lane County, please accept this testimony in support of the appeal and in opposition to the application described above.

Attached is an overlay map produced from Lane County ArcGIS showing that the property, outlined in red, is designated as Major Big Game. *See* Exhibit A.

As indicated by Exhibit B (slopes map) and Exhibit C (landslide susceptibility map), the subject property contains steep slopes (exceeding 40%) and the property is entirely within the "very high" landslide susceptibility category, as represented by the dark red on the map. Pursuant to OAR 660-006-0025(6) and ORS 215.750(4)(a) the applicant must satisfy relevant comprehensive plan criteria for Goal 7. *See* OAR 660-006-0025(6) ("[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinance such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands."); ORS 215.750(4)(a) (template dwelling not permitted "[i]f it is prohibited by or will not comply with the requirements of an acknowledged comprehensive plan and acknowledged land use regulations or other provisions of law"). Lane County Rural Comprehensive plan policies related to hazardous areas include Goal 7 policies 1, 2, and 3, which provide as follows:

> "1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decision.

Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate.

2. Development shall be commensurate with the type and degree of any natural hazard(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to [be] the sole means of safeguard[ing] against natural hazards.

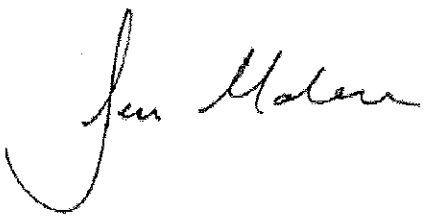
3. When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact, (including financial and economic considerations) of such safeguards on the environment and the public shall be considered."

Here, because this is a specific land use decision, the application must include "on-site or other evaluation as appropriate." Moreover, the development should be limited to the degree it is "commensurate with the type and degree of any natural hazard(s) present and appropriate safeguards against … landslides, land slippage, erosion or other natural hazards applicable shall be assumed." Finally, because of the steep slopes and the highest rated landslide susceptibility, it is apparent that "extensive or drastic safeguards must be employed in conjunction with development proposals. It is, therefore, incumbent upon the applicant to provide expert testimony to demonstrate that the above comprehensive plan criteria have been satisfied.[1]

In the absence of a qualified geotechnical report, as well as compliance with all other relevant criteria, I respectfully request that the decision of the Planning Director be reversed and the application denied.

[1] It is also relevant that Lane County's Rural Comprehensive Plan was last updated in 1984 and the template dwelling statute was promulgated in 1993. This means that, as it relates, to template dwelling approvals, the County Comprehensive Plan has not been acknowledged. As such, Goal 7 should apply directly, including the requirement that "[w]hen reviewing development requests in high hazard areas, local government should require site-specific reports, appropriate for the level and type of hazard (e.g., hydrologic reports, geotechnical reports or other scientific or engineering reports) prepared by a licensed professional. Such reports should evaluate the risk to the site as well as the risk to the proposed development may pose to other properties." Goal 7, Implementation Policy 4.

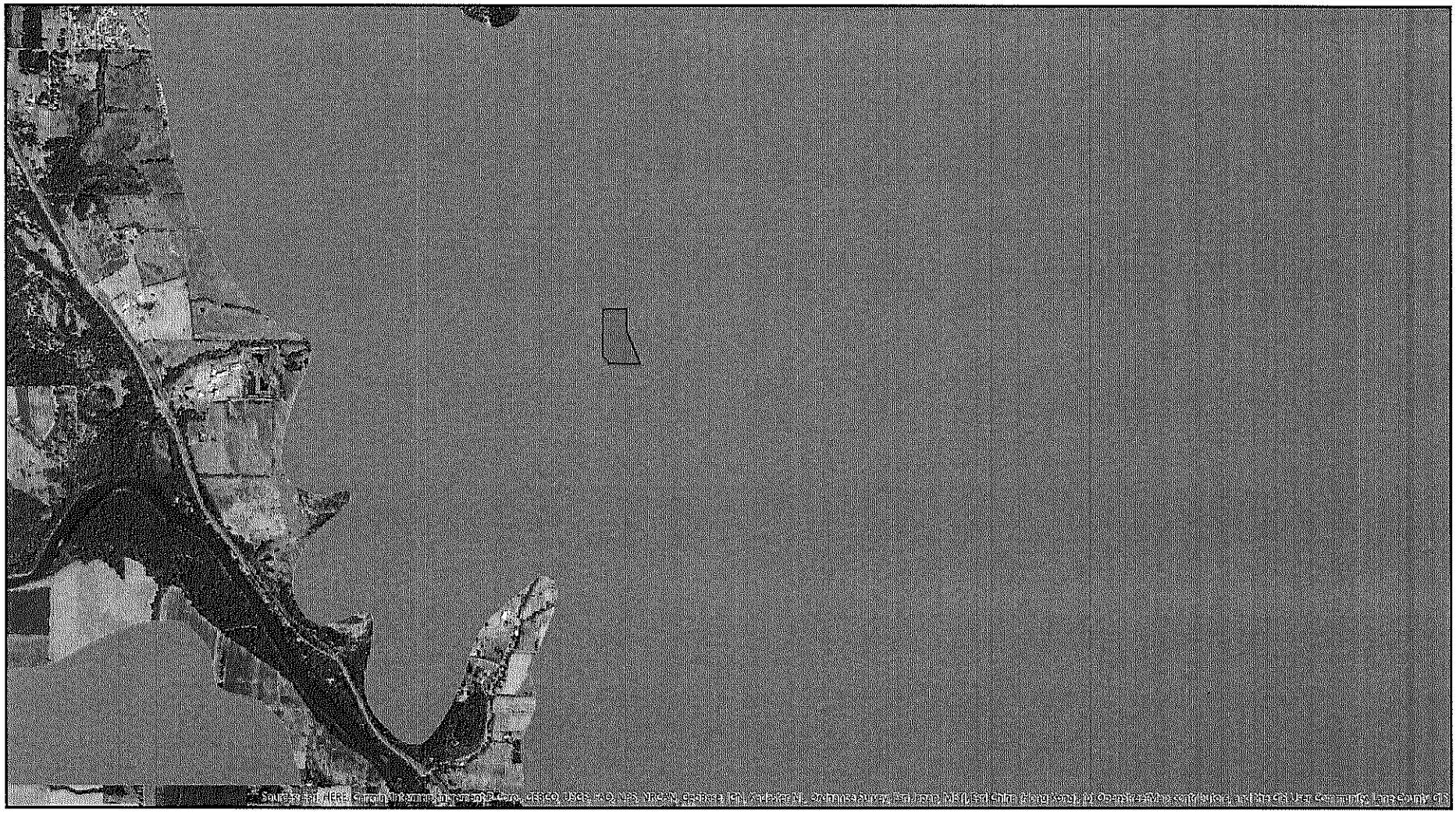
Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

Exhibit A



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

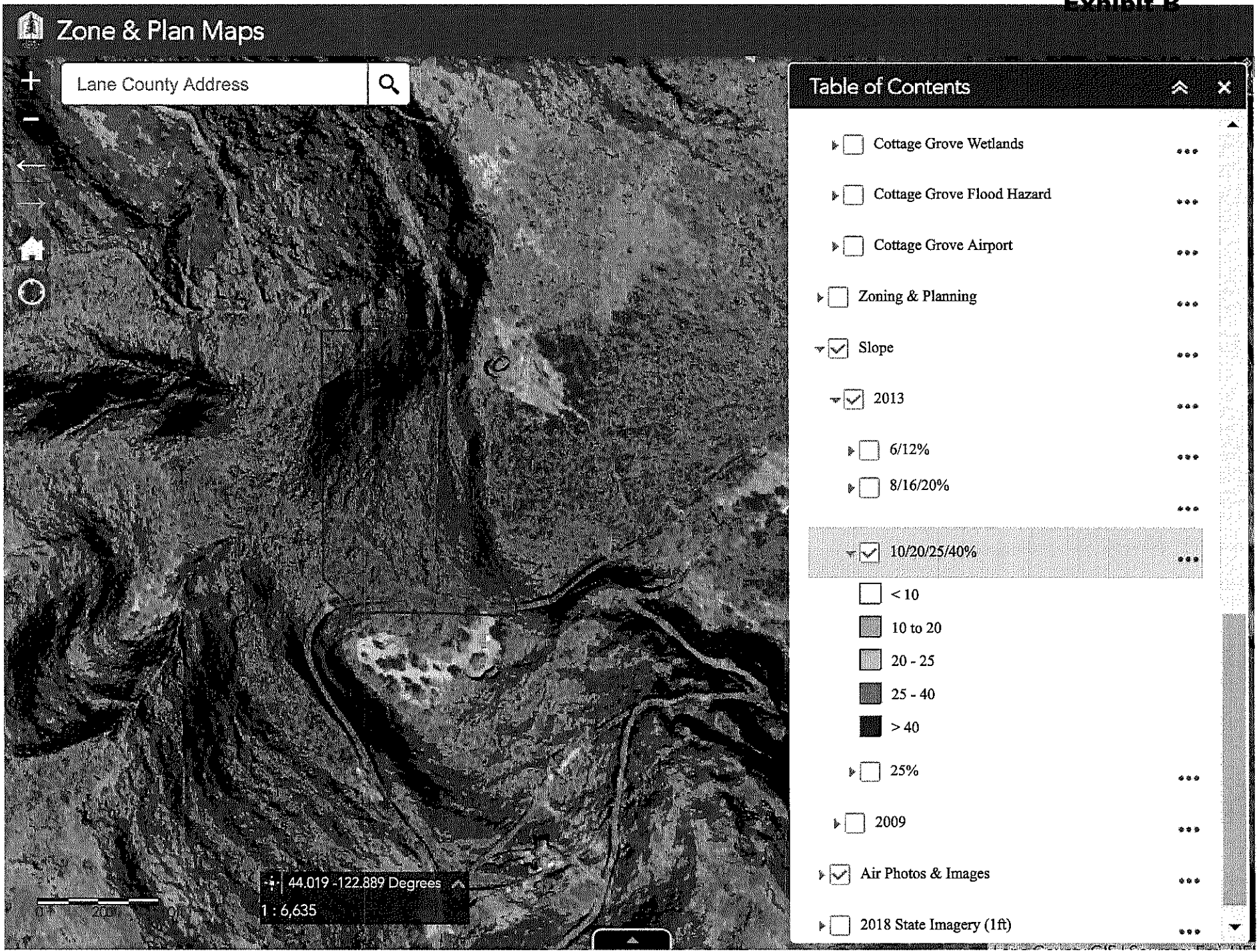
0 1,000 2,000 4,000
Feet

ArcGIS Web Map

Lane County, Oregon

0510

Exhibit B



001310

Exhibit C



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 500 1,000 2,000 Feet

ArcGIS Web Map

Lane County, Oregon

0612

001311

MEMORANDUM

To: Gary Darnielle, Lane County Hearings Official

From : Rachel Serslev, Planner

Date: November 7, 2019

Re: Appeal of Application File No. 509-PA19-05298

As staff expressed in their report to the Hearings Official (dated September 19, 2019), Rural Comprehensive Plan (RCP) Goal 7 does not apply directly to a template dwelling approval. Staff's understanding of the approval criteria is that Lane Code 16.211(5) and (8) apply to template dwelling approvals and these code sections do not explicitly require compliance with RCP Goal 7 policies.

According to the policies, a land use decision should use the Natural Hazards Working Paper as a *guide* and be based upon inventory and on-site or other evaluations of hazards. For the purpose of evaluation, the Oregon State Building Code can be the sole means of safeguard against natural hazards.[1]

To the extent that the RCP Goal 7 policies are relevant, it is staff's position that the land use decision process adequately addresses and satisfies these policies without them being explicit approval criteria of the land use decision. Staff did consult with County Counsel regarding this position and Counsel concurred that the Goal 7 policies should not be applied as approval criteria.

Specific to department file No. 509-PA19-05298, the land use decision considers Department of Oregon Geology and Mineral Industries (DOGAMI) inventory of landslide hazards. The applicant also provided a site specific survey completed by a Professional Registered Land Surveyor demonstrating the slopes of the subject property. Based on the inventory and the site specific survey, staff notified the applicant through an informational condition of approval that a geotechnical engineer's report may be necessary when a building permit for the structure is sought. At the time of building permit, the decision to require a geotechnical report is based on clear and objective standards regarding slopes that are located in the Oregon State Building Code.

The Oregon Structural Specialty Code (OSSC) provides the authority to assess the soils and slopes at the building site, and to require a geotechnical report if necessary. **Attachment 3** of staff's report to the Hearings Official provides guidance regarding when a geotechnical report is required in conjunction with building permit submittals.

---

[1]Excerpt from the Lane County Rural Comprehensive Plan:

GOAL SEVEN: AREAS SUBJECT TO NATURAL DIASTERS AND HAZARDS

1. The Natural Hazards Inventory, as contained in the 1982 Natural Hazards Working Paper and associated materials, shall be used as a guide for general land use decisions. Specific land use decisions shall be based upon inventory and upon on-site or other evaluation as appropriate.
2. Development shall be commensurate with the type and degree of any natural hazards(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to the sole means of safeguard against natural hazards.

Additional Information Submitted

RECEIVED
Date Stamp
NOV 07 2019

Submitted By: Jim Belknap
Phone Number: 541-954-2944
Email Address: jim.e.belknap@gmail.com
Project Address: None
Permit Number (BP, PA, SP, SI): PA 19-05298
Submittal Description: Submission of additional materials on appeal.

LANE COUNTY OREGON

RECEIVED
NOV 07 2019

Type of Submittal:

☒ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other:

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fees be paid? ☐ In person ☐ Online ☐ By phone

slwb 12/26/2018

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
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Cottage Grove, OR 97424
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Gary Darnielle
Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Original by Hand Delivery, copy by email to Rachel.serslev@co.lane.or.us

November 6, 2019

Re: PA19-05298, NIMPKISH, LLC Template Test Dwelling Special Use Permit, Tax Lot 18-02-11-00-00507

Dear Mr. Darnielle:

I am writing to address a number of points raised by the Appellant, LandWatch Lane County, and their attorney, Sean Malone, with regards to the appeal of the above referenced Planning Action.

On October 3, 1984 the Lane County Comprehensive Plan was acknowledged by the Land Conservation and Development Commission (LCDC). Incorporated into the acknowledgement of the Comprehensive Plan were Goals 5 and 7, referenced by Mr. Malone in his letter dated September 26, 2019 with specific reference to the Flora and Fauna Working Paper, upon which portions of the Comprehensive Plan were based.

At the acknowledgement of Lane County's Comprehensive Plan in 1984 was the establishment of two specific classifications of forestland zoning: The F1 zoned land was defined as "Non-Impacted" forestland, and had no provisions for placement of a dwelling, the F2 zoned land was defined as "Impacted" forestland and allowed dwellings under a variety of approval processes. At the time of the Comprehensive Plan Acknowledgement the specific minimum parcels sizes in the F2 zoned area varied from 20 acres to 64 acres based on a soils analysis process.

Gary Darnielle
PA 19-05298
Submittal of Additional Information
November 6, 2019

With the passage of House Bill 3661 in 1993 the minimum parcel size of 80 acres was adopted for all forestland zoned designations and that standard remains in place today. This 80 acre standard is applicable to all proposed divisions of forestland zoned tracts, a distinct difference from the approval criteria for placement of a dwelling.

What must be considered is that the F2 zoning replaced a previous effort on the part of Lane County to manage smaller tracts of mixed agricultural and forestland uses, that zoning was identified as Farm-Forest 20 (FF-20), having a minimum parcel size of 20 acres. With a virtual all-encompassing stroke of the brush, acknowledged by LCDC, land that had been previously zoned FF-20 became zoned F2. While there were notable exceptions with a very few parcels being zoned Rural Residential (RR), a slightly larger number of parcels zoned Exclusive Farm Use (EFU) and additional lands re-zoned to F1, the application of the F2 zoning was sweeping across the former FF-20 zoned lands.

Attached at Exhibit A is the "Land Conservation and Development Commission Acknowledgement of Compliance, Lane County, Dated September 13, 1984." It is this document, the acknowledgement of the Lane County Comprehensive Plan, that establishes the framework for the Lane County Code and meets the criteria set by the State of Oregon for land use decisions.

Under Goal 4: Forest Lands, Requirement 3, the State sets forth on page 19 to 20:

"Amend the County zoning map by rezoning private non-industrial ownerships capable of commercial forest management (including forested portions of commercial farm-forest operations) currently zoned F-2 with an appropriate resource zone. An acceptable forest zone is the F-1 zone or forest zone containing a minimum lot size of at least 80 acres as justified by the County's 'Forest Working Paper Addendum.'

Also, where the County can justify such a decision, the County may apply the marginal lands zone or rural residential zones to 'committed' or nonresource lands."

The acknowledgement document goes on with the Lane County Response on page 20:

"(b) To substantially limit any adverse impacts upon commercial forest management which might result from land **divisions** and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the **division** of large forest tracts:

(i) Zoned F-2
(ii) Containing at least 160 acres
(iii) For the creation of lots or parcels adjacent to F-1, RCP zone lands"

Emphasis added

The Conclusion of Section 3 as set forth in the acknowledgement document is:

"Lane County has satisfied this requirement.

The County has amended its zoning map, through the rezoning of some lands previously zoned F-2, in a manner consistent with this requirement. With the elimination of 56,080 acres from the F-2 zone, the County's current application of the F-2 Zone is more representative of the ownership patterns within areas where non-commercial forest management and other non-resource activities occur."

The effect of the acknowledgement of the F2 zoning and the eventual adoption of the 80 acre minimum parcel size was to essentially "lock in place" the number of parcels that existed on October 3, 1984. While provisions existed to partition or subdivide F2 zoned land, the reality was for any lawful division to take place the originating base parcel would have to exceed 160 acres as statute and code prohibited the creation of a substandard parcel, i.e. less than 80 acres in size. This standard remains in place today and the actual event of partitioning or subdividing F2 zoned land is a rare occurrence; as it has occurred no parcel smaller than 80 acres has been created.

As the term "density" is being used in this discussion, perhaps it is appropriate to consider the meaning of that term.

> Density: "The quantity per unit volume, unit area, or unit length: as **a**: the mass of a unit of a substance per unit volume **b**: the average number of individuals or units per space unit." Webster's Seventh New Collegiate Dictionary, 1969.

In the discussion of density, as it is applicable to Lane County, it must be considered that the "unit area" is all forestland zoned lands of the county. The number or quantity of "units" within that space area is the number of parcels that exist.

In making this statement I use the term "parcel" as synonymous with that of "lawfully created unit of land" as that term is defined in Oregon Statute:

> *(1) The terms defined in ORS 92.010 shall have the meanings given therein, except that "parcel":*
>
> *(a) Includes a unit of land created:*
>
> *(A) By partitioning land as defined in ORS 92.010;*
>
> *(B) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or*
>
> *(C) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.*
>
> *(b) Does not include a unit of land created solely to establish a separate tax account.*

In Lane County the term "Legal Lot" is used in describing a lawfully created unit of land. The definition of a Legal Lot, or lawfully created unit of land, is relevant to the discussion of the elements

of this appeal in that ORS 92.017 sets forth "A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law."

Lane County recognizes three areas as being subject to "applicable planning, zoning or partitioning ordinances or regulations" those areas being the Eugene-Springfield Urbanizing area having an effective date of May 2, 1962; the Cottage Grove Urbanizing area, having an effective date of July 3, 1970; and the remainder of Lane County having an effective date of March 26, 1975.

In effect, the lawfully created units of land that existed on October 3, 1984, the date of acknowledgement of the Comprehensive Plan, were those that existed for most of Lane County in 1975. To that number one can add the addition of parcels that were created by partition or subdivision until 1993 to arrive at the number of individual units that exist within the F1 and F2 zoned area of Lane County. Certainly, this is the case for the subject property and the surrounding area. In the F2 zoned areas such lawfully created units of land became subject to the approval criteria in place under the Comprehensive Plan as it allowed for residential improvement.

The significance of the chronology of events is the number of parcels we see today in F2 zoned land is effectively the same number of parcels that were in existence in 1993 when the 80 acre minimum parcel size was adopted. The matter of density, the quantity per unit volume, was established and approved by LCDC with the acknowledgement of the County's Comprehensive Plan.

It must be noted that the criteria for placing a residential improvement was distinctly different in 1984 than it is today, that change occurring with the adoption of the Template Dwelling Test in 1993 as outlined in ORS 215.750.

To this point, it was in 1983 when the Oregon Department of Fish and Wildlife (ODFW) submitted their comments to the Lane County Flora and Fauna Working Committee, recommending the establishment of 40 acre or 80 acre minimum parcels, based, respectively, for area within the Peripheral or Major Big Game Habitat. The recommendations made by ODFW were clearly based on the belief that every parcel could be approved for placement of a dwelling and a presumption that such an event would happen. Again, the approval process for a dwelling was substantially different than that found after 1993 with the adoption of the Template Test process.

Referring again to the attached Exhibit A, the "Land Conservation and Development Commission Acknowledgement of Compliance, Lane County, Dated September 13, 1984," Goal 5, Open Spaces,

Scenic and Historic Areas, and Natural Resources, it is notable to review on page 25 and page 26 the Requirement:
"2. Fish and Wildlife Habitat:

d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy 11. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas."

The Response from Lane County was as follows:
"Lane County has added the following new language to both the F-2 and EFU Zones:

'(a) The Approval Authority shall balance the setback standards of LC211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU"

The Land Conservation and Development Commission responded with the following:

"Conclusion
Requirement 2d has been met."

These standards remain in Lane Code and are applicable to any party wishing to seek approval of a dwelling in the F2 Dwelling Template Test development process. The application form for such a dwelling requires the applicant to address these exact criteria.

Before I conclude my discussion of the "Land Conservation and Development Commission Acknowledgement of Compliance, Lane County, Dated September 13, 1984" I would like to draw attention to page 22, "Conclusion – Goal 4"
"Lane County complies with Goal 4.

Lane County's approach to conserving forest lands contains some plan policy and ordinance provisions unique to Lane County. **The strength of their forest lands conservation program is the F-1 zone which prohibits the siting of all dwellings** (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.

Emphasis Added

The County's F-2 zone is applied to 145,356 acres of privately owned lands which consist generally of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands. Lands zoned F-2 are generally located adjacent to or near developed urban or rural areas and well travelled transportation routes; all of which have an impact on the commercial management of forest lands.

In the F-2 Zone, the County requires that before a permanent dwelling is sited on forest land, assurances are obtained that forest production on the lot will be enhanced by active forest management."

This final statement predated the adoption of the Template Test requirements now found in ORS 215.750 and related to a dwelling approval process involving the demonstration of an "accessory and necessary" standard for dwelling placement. Again, the "accessory and necessary" standard has long since been abandoned in Lane County.

The essence of this quoted passage on page 22 is the comparison of the total forestland base of 2,595,131 acres (2,449,775 + 145,356 = 2,595,131), establishing the "unit area," for a density evaluation of lands that are zoned for forest uses. The evaluation of density is then completed in the application of the F2 zoning to 145,356 acres, and the lawfully created units of land within that 145,356 acres (the "number of units within the unit area") where a dwelling may be placed if all other criteria are met. It is within this analysis that the discussion of "density" needs to occur. The Appellants fail to make this analysis.

The adoption of the Template Test is applicable only in F2 zoned land. Michael Farthing, legal counsel for the applicants in PA 19-05298, has provided letters from James Mann, former Principal Planner for Lane County, dated October 16, 2019 and Kent Howe, former Lane County Director of Planning, dated October 14, 2019, discussing the adoption of the F2 zoning in the final approval of the Lane County Comprehensive Plan. In Mr. Howe's letter it is noted that the area of F1 zoning comprised 84% of the lands in Lane County, a zoning that prohibited the placement of residential improvements. Contrary to the assertions made by the Appellants in this matter, the adoption of the Lane County Comprehensive Plan fully conforms to the recommendations of ODFW and the provisions of Goal 5.

Gary Darnielle
PA 19-05298
Submittal of Additional Information
November 6, 2019

The Appellants argue that the approval of PA19-05298 violates Section 11 of Goal Five of the adopted Comprehensive Plan for Lane County:

"Oregon Department of Fish and Wildlife recommendations on ***overall*** residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County."

Emphasis added

As discussed in detail, the overall residential density was intended to be considered for all forestland zoned areas of Lane County, inclusive of lands that were ultimately zoned F1 and F2.

The final adoption of the F1 and F2 zoning in 1984, and its acknowledgement by LCDC, addressed the concern by ODFW that every forestland parcel would be approved for residential improvement. In reality, as discussed by James Mann and Kent Howe, 84% of the zoned lands in Lane County, being zoned F1, specifically disallows placement of a dwelling. The remaining 16%, zoned F2, had provisions that allowed for dwellings with requirements for clustering of such dwellings "near residences on other tracts" and "with minimal intrusion into forest areas undeveloped by non-forest uses." As the Template Test process was adopted in 1993 those standards remained applicable and have continued in place in Lane County for 35 years, and were applicable and adhered to in PA19-05298. The rigid standards of the Template Test have eliminated the ability of many F2 zoned tracts to qualify for dwelling approval, though such parcels might have readily qualified prior to 1993.

The issue of "density" as the Appellant attempts to argue, conflates the number of residences with the number of parcels in a specific area. Again, this conflation stems from the original ODFW position that every forestland zoned tract of land would be assumed to allow for placement of a dwelling. As has been noted in previous decisions by the Lane County Hearings Official (notably the Betz decision in PA 17-05951) the consideration today of the Flora and Fauna Working Paper, and it's adoption into Goal 5 supporting the 40 acre/80 acre standard of Peripheral/Major Big Game Habitat, is applicable to a request for a change in zoning to allow smaller parcels and greater density of units of land as well as the outright approval for residential improvements. The presumption being made that each unit of land will qualify for placement of a residence, a presumption that cannot stand the application of the Template Test standards.

The Appellants fail to establish that the addition of dwellings as allowed in the Template Test requirements and limited to F2 zoned lands violates the density, the number of parcels with approved dwellings per the total of all forestland zoned tracts within the county. No evidence is submitted by the Appellants that the total of all forestland zoned property within Lane County, broken down to Major Big Game habitat and Peripheral Big Game habitat, with each respective area

then divided by the number of parcels with dwellings, is in violation of the ODFW recommendations and the findings of the Flora and Fauna Working Paper as to density. Certainly the Appellants present no evidence that the approval of a single additional dwelling, as has been made in PA19-05298, violates the density recommendations of ODFW in the overall residential density of all forestland in Lane County.

The Appellants rely heavily on a Land Use Board of Appeals (LUBA) decision, Cattoche v. Lane County, LUBA No. 2018-109, May 22, 2019, that reviewed critically the approval by Lane County of a Plan Amendment and Zone Change to rezone land from F2 to Rural Residential, and an accompanying change in parcel density that would result from a change of a minimum parcel size of 80 acres (F2) to 5 acres (RR). Without arguing the merits or deficiencies of the decision in LUBA No. 2018-109, the comparison of that decision to the one being made in the approval of PA19-05298 is flawed.

In the approval of PA19-05298 no new parcels have been created, no greater density of units has been established, the "lawfully created unit" of land that existed on March 26, 1975 remains that today, the criteria for placement of a dwelling meets the rigorous standards of the Template Test and those standards comply with the density recommendations for protection of big game as discussed in Section 11 of Goal Five of the Lane County Comprehensive Plan.

The objections raised by the Appellant in the opposition to PA19-05298 based on a violation of Goal 5 and a breach of the density objectives set forth by ODFW in forestland zoned areas of Lane County are without merit and the conclusion must be to deny any finding of error on the part of the Lane County Land Management Division staff.

In addition to the objections raised under Goal 5 of the Comprehensive Plan the Appellants also argued the approval of PA19-05298 violated Goal Seven: Areas Subject to Natural Disasters and Hazards, specifically Section 2 –

"Development shall be commensurate with the type and degree of any natural hazard(s) present and appropriate safeguards against flooding, ponding, landslides, land slippage, erosion or other natural hazards applicable shall be assured. For purposes of evaluation and in the absence of any specific proposal, the provisions of the Oregon State Building Code shall be assumed to be the sole means of safeguard against natural hazards."

At the hearing on September 26, 2019, it was pointed out the approval of PA19-05298 by Lane County included the following comment:

"The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

14. The entire property, according to DOGAMI, is within a 'Very High' landslide susceptibility area and contains landslide deposits. These designations may require a geotech report with the submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 for more information."

At that hearing we argued that the requirement by Lane County to provide a geotech report with the submittal of a building permit application met the criteria set forth in Section 2 that the provisions of the Oregon State Building Code adequately safeguarded against natural hazards.

As was noted at the hearing, this comment was considered lacking, though testimony by Michael Remboldt, a professional engineer specializing in geotechnical engineering, was offered to discuss the implication of the DOGAMI listing. It was suggested that Mr. Remboldt's comments, or other testimony from a geotechnical engineer, geologist or other expert be put into writing and submitted into the record. Enclosed at Exhibit B is a letter dated October 31, 2019 from Michael Remboldt, PE, GE, principal engineer for K & A Engineering, Inc. It must be noted that Mr. Remboldt summarizes his evaluation of the subject property with the following:

"Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement."

Addressed at the September 26, 2019 hearing was an additional objection raised by the Appellant: A factually untrue statement that a dwelling did not exist on Tax Lot 18-02-11-00-00601 on January 1, 1993. This objection has been previously raised in an earlier appeal of a Template Dwelling (PA17-05951). In the appeal of that Planning Action the county staff noted the dwelling in question had originally been placed in 1982 under Mobile Home Placement Permit 81-2367. Subsequently the dwelling was replaced under a Verification of Replacement Rights approved in PA98-05159. The appeal of PA17-05951 was denied. In the application that is the subject of the current appeal, the applicant noted these permits in establishing the qualification of the dwelling on Tax Lot 601 to be considered in the dwelling count of the Template Test.

Additionally, we are reiterating the point made at the September 26, 2019 hearing that the Staff Report confirmed a total of five (5) dwellings as being located within the template. While not conceding in any way that the dwelling on Tax Lot 601 does not meet the "existing on January 1, 1993" standard, a finding of such would not preclude the subject property from meeting the 3 dwelling requirement of the Template Test.

Gary Darnielle
PA 19-05298
Submittal of Additional Information
November 6, 2019

The allegation of error on the part of the Lane County Staff must be denied.

At the outset of the hearing regarding this appeal it was noted the appeal process is a "quasi-judicial" event. This letter does not attempt to set forth a judicial argument; that work will be left to the legal counsel for the applicant. Rather, this letter attempts to establish the course of events that occurred over 35 years ago in the acknowledgement of the Lane County Comprehensive Plan and the adoption of zoning code that has carried out that plan, noting the significant change that occurred with the incorporation of the Template Test for the approval process of obtaining a dwelling in F2 zoned land.

This letter follows the chronological flow of events from the adoption of the Comprehensive Plan, the consistent application of the zoning code and the logical conclusion that the application under appeal does not violate the goals of the Comprehensive Plan.

Thank you for your attention to these comments.

Sincerely,

Jim Belknap

Jim Belknap

Encl: Exhibit A. Land Conservation and Development Commission Acknowledgement of Compliance, Lane County, Dated September 13, 1984,
Exhibit B. K & A Engineering Letter dated October 31, 2019

Exhibit A
PA19-05298
Submission of
Additional Material

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE
Lane County
(Rural Portion, Excluding Eugene Metro Area)
Supplement to Staff Reports of June 29, 1984 and July 19, 1984 as Amended

DATE RECEIVED:
August 16, 1984 through September 13, 1984

DATE OF COMMISSION ACTION:
September 13, 1984

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff

Recommends the Commission acknowledge the rural portion of Lane County's plan and land use regulations to be in compliance with Statewide Planning Goals 1-14.

FIELD REPRESENTATIVES: Bob Rindy, Glen Hale
Phone: 378-4095

LEAD REVIEWER: Doug White, Mike Rupp, Claire Puchy
Phone: 378-4926

PLANNING DIRECTOR: Roy Burns
Phone: 687-3958

Date of Supplemental Report: September 12, 1984

III. BACKGROUND INFORMATION

On June 29, 1984, the Department issued a staff recommendation for Goals 1-4, 6-14, in response to Lane County's request for acknowledgment. The Commission took testimony but did not take final action on the request at the July 19, 1984 meeting. Also, on July 19, 1984, the Department issued a staff recommendation regarding Goals 5 and 15, and Goal 2 nonresource lands. At their August 17, 1984 meeting, the Commission again postponed final action on the June 29, 1984 report, and on the July 19, 1984 report, except for the portions pertaining to the rural areas in the Eugene/Springfield Metro Plan. These areas were granted a continuance to October 11, 1984.

In the period following the issuance of the Department recommendations, Lane County has made numerous revisions to their comprehensive plan and implementing ordinances in response to the Department's recommended in-order-to-comply requirements. These amendments were made under the provisions of the Expedited Notice Procedure for Acknowledgment (OAR 660-03-033). According to County Notices (July 19, 1984 and August 23, 1984), commentors and objectors were notified and provided opportunities for review and comment on these amendments prior to County adoption.

Section IV below summarizes the DLCD proposed requirements from the June 29 and July 19 reports and summarizes the County's response to each requirement. These are intended as supplemental findings, rather than as amendments to the previous DLCD recommendations.

Submitted Documents

Document	Ordinance	Adoption
Revisions to Development Code (Chapter 16)	9-84; 11-84	8-9-84; 9-12-84
Amendments to Plan Policies and Comprehensive Plan	889; 892	8-9-84; 9-12-84
Revisions to Development Code (Chapters 13 and 14)	10-84	8-9-84
Amendments to Comprehensive Plan	888	9-12-84
Supplemental Findings for Exceptions, Maringal Lands and Non-Resource Areas	84-9-11-22 (Order) 84-9-11-23 (Order)	9-12-84 9-12-84
Revised Comprehensive Plan Map and Zoning Map	891; PA 884	9-12-84

IV. FINDINGS

GOAL 2: LAND USE PLANNING

Requirement

1. Provide legible maps for all rural lands showing adopted plan categories.

Response

Lane County adopted a set of revised plan maps (ORD. No. 884). These plan maps replace previously submitted plan maps. The plan designations are site specific following legally identifed boundaries. Each plan designation is identified by a specific code symbol and defined in the County's plan.

Conclusion

The requirement has been met.

Requirement

2. Clearly define which zones are intended to implement each plan category.

Response

The County's plan was amended (ORD. 889) to include the following plan policy (Goal 2, Policy 26):

"Each of the land use designations applied to the Plan Diagram shall be implemented by one or more zoning districts as follows:

Plan Designation(s)*	Zone Classification
Forest land	Nonimpacted Forest Lands
Forest Land	Impacted Forest Lands
Agriculture Land	Exclusive Farm Use
Natural Resource	Natural Resource
Marginal Land	Marginal Lands
Park and Recreation	Park and Recreation
Natural Resource	Quarry and Mining Operations Combining
Natural Resource	Sand, Gravel and Rock Products
Natural Resource	Sand, Gravel and Rock Products Processing
Public Facility, Community	Public Facility
Commercial, Community	Limited Commercial
Comercial, Community	Neighborhood Commercial
Commercial, Community	Commercial
Rural Commercial	Rural Commercial
Industrial, Community	Limited Industrial

Industrial, Community	Light Industrial
Industrial, Community	Heavy Industrial
Rural, Community	Suburban Residential
Rural, Community	Garden Apartment Residential
Rural, Community	Rural Residential
Destination Resort	Destination Resort
Historical Structure/Site	Historic Structures or Sites Combining
Natural Estuary	Natural Estuary
Conservation Estuary	Conservation Estuary
Development Estuary	Development Estuary
Sign. Natural Shorelands	Significant Natural Shorelands Combining
Prime Wildlife	Prime Wildlife Shorelands Combining
Natural Resources Consv.	Natural Resources Conservation Combining
Residential Development	Residential Development Shorelands Combining
Shorelands Mixed Develop.	Shorelands Mixed Development Combining
Dredge Material/Mitigation	Dredge Material/Mitigation Site Combining
Beaches & Dunes	Beaches and Dunes Combining
	Floodplain Combining
Airport	Commercial Airport Safety District
Airport	Airport Safety District
Airport	Airport Operation
Nonresource	Rural Residential

* Note: The 'Community' Plan Designation is implemented by various zoning districts as indicated, zones which also implement specific Plan designations other than 'Community'."

Conclusion

The requirement has been met.

Requirement

3. Delete the provision in Sections 16.015 and 16.252 which permit legislative zone amendments to be adopted by order rather than by ordinance.

Response

Lane County's Development Code (Section 16.015) was amended (Ord. 9-84) to require that only quasi-judicial zone amendments be adopted by order. The section in the County Code which permits adoption by order applies to the County Board, Planning Commission and Hearings Official. An adoption by Ordinance is required for all legislative amendments.

Conclusion

The requirement has been met.

Requirement

4. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone these lands identified in the Goal 2 Exception with the appropriate resource zone.

Response

Early in the review of the County's built and committed exceptions areas, Department staff identified certain areas that were not justified. In response to these noted deficiencies, the County adopted the first set of supplemental findings prior to issuance of the DLCD June 29, 1984 report (Order No. 84-6-19-16). These findings were reviewed in that report and found to address most of the deficiencies identified by Department staff. However, the Commission did not accept and approve these findings at their July 19, 1984 meeting because the County had not complied with the Expedited Notice Procedures for Acknowledgment (OAR 660-04-033) (See Lane County Acknowledgment Report, June 29, 1984, p. 26). To correct the oversight, the County followed the Expedited Notice Procedures leading up to the adoption of the second set of supplemental findings and provided oportunities for commentors and objectors to review the first set of supplemental findings. As a result of compliance with OAR 660-03-033, the first set of supplemental findings (Order No. 84-6-19-16) along with the other revisions can be affirmed.

In response to IOTC (4), Lane County redesignated 870 acres to an appropriate resource desigation (ORD. No. 891). For the remaining areas, the County adopted the second set of supplemental findings (Order No. 84-9-11-23) to justify the areas as committed. These findings provide additional information on recent partitions and subdivision activities along with information on more recent development. This information was not provided in the earlier submittal because of outdated maps and ownership listings. Address maps showing location of dwellings, mobile homes and recent road development provide most of the information addressing the deficiencies noted earlier. In addition, specific findings provide reasons why it is impracticable to apply a resource goal to areas that are not built upon but are irrevocably committed to nonresource uses.

Conclusion

The requirement has been met.

Based on the information contained in the County's original exception document and supplemental findings (Order No. 84-6-19-16 and Order No. 84-9-11-23), the County has provided substantial evidence consistent with OAR 660-04-025 and OAR 660-04-028 to support the conclusion that all areas, for which the County has taken a Goal 2 exception are no longer available for resource use and are irrevocably committed in their entirety.

Requirement

5. Amend the plan to clearly identify areas zoned PR which are within built and committed exception areas. For those areas within an exception area, provide for information addressing OAR 660-04-025 requirements or exclude those lands from areas designated as a built and committed exception area.

Response

The plan was amended (Ord. No.889) to include a list of tax lots zoned PR that are within built and committed exception areas. This action satisfies the first part of the above requirement. Information addressing the exception criteria can be found in the County's original exception document (Ord. No. 884) and the two sets of supplemental findings (Order No. 84-6-19-16 and Order No. 84-8-11-23). The adequacy of these findings is discussed under Goal 2 requirement 4 of this report.

Conclusion

The requirement has been met.

Requirement

6. Amend the PR-RCP Zone to include standards for uses permitted outright (consistent with ORS 215.213(2)). Note: These should not include review of minor betterment activities as described in ODOT's State Agency Coordination Program.

Response

The PR-RCP Zone was amended (ORD. 9-84) to require that uses authorized under ORS 215.213(2)(G) be subject to Director approval consistent with ORS 215.213(2)(LC 16.215(3)). Minor betterments and general improvement of existing parks or recreational facilities are permitted outright (LC 16.215(2)(d)).

Conclusion

The requirement has been met.

Requirement

7. Amend the zoning code to exempt maintenance and improvments in Jennie B. Harris State Park and Squaw Creek State Wayside from conditional use procedures. This is most easily accomplished by zoning all of these parks to PR.

Response

The County plan and zoning maps were amended (Ord. No. 898) redesignating Jennie B. Harris State Park and Squaw Creek State Wayside as Park and Recreation (PR).

Conclusion

The requirement has been met.

Requirement

8. In conjunction with compliance requirements under Goal 11 of this report, the County must (1) clearly define uses, densities, unit quantity, and levels of service appropriate to rural "cluster" subdivisions, and (2) adopt appropriate ordinance amendments implementing these standards. Densities exceeding those appropriate for rural areas shall additionally require a Goal 14 exception.

Response

The County has amended the plan to contain a policy which insures that urban levels of development will not occur in rural areas under the Cluster Subdivision Standards. The policy contains language parallel to the Commission's administrative rule on establishing new urban uses in rural areas (OAR 660-14-040). Prior to approving a cluster subdivision, with more than 20 units and which includes any lots less than 5 acres, the County must make findings similar to those required for an exception under Goal 14. These amended requirements are as follows (Ordinance PA 889):

> "Cluster subdivisions shall be deemed appropriate to a rural area when the following criteria are satisfied:
> 1. Consistent with the intent and requirements of OAR 660-14-040(2) and (3), a showing must be made that the development will not represent an urban population or demand an urban level of facilities and services. For purposes of meeting this standard, affirmative findings must be made addressing the following:
> a. The level of development represented by the development cannot be reasonably accommodated through the expansion of an existing urban growth boundary or by intensification oif development at an existing rural center.
> b. The long-term environmental, economic, social and energy consequences resulting from the development, considering measures designed to mitigate negative impacts, are appropriate to the rural area. Factors to be considered include whether the size of the development is appropriate to the proposed rural area and whether the air, water, energy and land resources of the surrounding area are adequate to serve and not adversely affected by the development.
> c. The proposed development is compatible with or can be made compatible with adjacent uses considering:

(1) Whether the development detracts from the ability of existing cities and service districts to provide services, and
(2) Whether the potential for continued resource management of the land at present levels surrounding and nearby the development is assured.

d. An appropriate level of rural facilities and services are available or can be provided in a timely and efficient manner.
e. The approval of the development is coordinated with affected jurisdictions and is consistent with the comprehensive plans of the affected jurisdictions and the Lane County Rural Comprehensive Plan.

2. The development will not:
   a. Generate traffic which will exceed the carrying capacity, as defined by Lane Code Chapter 15, of adjacent public and private roads.
   b. necessitate a higher level of police service than presently provided to the surrounding area.
   c. Occur within one mile of an existing urban growth boundary and/or share any urban service provided within a neighboring urban growth boundary.
   d. On the whole require an urban level of service.
3. Reasonable assurances must be provided that the cluster shall not generate students in excess of the capacity of affected facilities within the appropriate school district.
4. The development represents a concentration of people who generally reside and work in the area.
5. Deed restrictions which ensure that commucnity water and sewer systems shall remain viable and under private ownership shall be required. Cluster subdivisions which propose to form or use a public water or sewer system shall not be allowed.
6. Cluster subdivsions shall be limited to residential use. No commercial or industrial uses will be allowed within existing or proposed cluster subdivisions.
7. All cluster subdiviions must be within an existing Rural Fire Protection District.
8. No other identifiablke substantial increase of a public service shall be necessitated by the approval of a cluster subdivision."

The cluster development standards also contain provisions to assure their application to a series of small cluster developments (i.e., less than 20 units and therefore, exempt from standards 1 through 8 above).

Conclusion

The requirement has been met.

The Lane County cluster development standards contain the same standards as OAR 660-014-040. These standards assure that urban development will not occur in rural areas except where OAR 660-14-040 criterion are met.

Requirement

9. Amend Lane Code Chapter 16 to correct inconsistencies in the cross-referencing system, where subsections are referred to within the same section of the ordinance.

Response

The County Rural Zoning Ordinance (Chapter 16) has been codified eliminating cross referencing from the older Zoning Ordinance (Chapter 10). As a result, all inconsistencies previously identified have been corrected.

Conclusion

The requirement has been met.

Requirement

10. Amend the plan (a) to include additional findings justifying the claim that Goals 3 and 4 do not apply to property known as Dillard Highland's 2nd Addition, or (b) justify an exception to Goals 3 and 4, or (c) rezone the subject property with a suitable resource zone. If the County chooses option (a) or (b), Goal 5 wildlife habitat issues must also be addressed.

Response

Lane County amended its nonresource findings for Dillard Highland's Second Addition to include additional findings supporting the claim that Goals 3 and 4 do not apply as well as information indicating that the Goal 5 wildlife habitat issue has been resolved. The contents of the County's supplementary findings includes the following information: (1) amended soils information, introduced by soil scientist Joel A Norgren, PHD, which concludes that (a) 99.5 acres (65 percent) of the 154-acre parcel consists of SCS agricultural capability classes VI, and (b) 85.5 acres (56 percent of the 154-acre parcel consist of soils with no woodland site class; and (2) findings indicating why it is impractical to apply Goals 3 and 4 to this property. Reasons supporting these findings include the following:

"a) The Dillard Highlands is located on the east side of Dillard Road and the south hills ridgeline approximately one-third of a mile southeast of the Eugene city limits and the urban growth boundary.

It is within an area of very poor soils as indicated by the Soil Conservation Service maps. It is surrounded by a sloping terrain and a 'Developed and committed' area to the west, a 'developed and committed' area and a major BPA powerline to the north, a 'developed and committed' 260 feet power line and natural gas easement to the east, and an approved 'Non-Resource' area to the south. Although man-created boiundaries, they make it impracticable to apply the resource goals to he subject property (Dillard Highland's 2nd Addition; Supplemental Findings, August 24, 1984, pp. 15, 16).

b) Dillard Highland's status as a significant wildlife habitat has already experienced significant impacts because of existing urban and rural residential development in the area. Areas with 'built and committed' exceptions and this level of existing conflict are defined as 'Impacted Big Game Range' by Lane County's Flora & Fauna working paper (March 1982). These are areas 'that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity...the subject property is already impacted as big game habtat..." (Dillard Highlands, 2nd Addition, Supplemental Findings, August 24, 1984, pp. 18-19).

Conclusion for Dillard Highland's Second Addition

The claim that Goals 3 and 4 do not apply to Dillard Highland's Second Addition is sustained.

Substantial evidence has been provided by the County indicating that the 154 acres of Dillard Highland's Second Addition is not composed of predominantly SCS Class I-IV agricultural soils or soils with a cubic foot site index capable of producing commercial forest species.

In addition, the County indicates that the property is considered "impacted" big game habitat because of surrounding development activities and that, issues regarding Goals 4 and 5's habitat requirements are therefore resolved.

The supplemental findings of August 24, 1984, when combined with the findings previously discussed in the Departments' July 19, 1984 (addressing the "other lands" tests contained in Goal 3's definition and the remaining aspects of Goal 4's definition) are adequate to support the position that Goals 3 and 4 do not apply.

Requirement

11. Amend the plan to justify the potential one dwelling unit per 5-acre density authorized for Cerro Gordo's 600 acres in view of ODFW's

accepted wildlife habitat density standard for cluster developments of one dwelling unit per 40 acres. (See also Goal 2's cluster development issue.)

Response

The County's policy is to abide by ODFW's density recommendations unless the entire Goal 5 process is applied and a decision to exceed these recommendations is justified. Lane County has adopted supplementary findings (Order No. 84-9-11-23) and has revised its ESEE consequences analysis and wildlife habitat management plan for Cerro Gordo to justify development in a recognized big game habitat area, in excess of ODFW's recommended density standards. A meeting was held on August 14, 1984, with ODFW, Cerro Gordo and DLCD representatives to discuss this issue. It was determined that, in this case, ODFW density recommendations do not have as much bearing on the acceptability of the development as do other factors. These factors include the overall number and location of dwellings and roads, as well as mitigating measures incorporated into the development. The following factors in the revised Cerro Gordo proposal are particularly relevant (Order No. 84-9-11-23):

1. There is an overall "cap" on the number of lots which could be developed (i.e., 60 lots).

2. No more than one-third of the residences will be located north of the BLM road (the habitat area considered more sensitive to human disturbances).

3. Wildlife corridors from 600 to 1800 feet in width shall be provided along streams.

4. Residential development will be confined to a band 2,400 feet in width along an existing BLM road.

5. Residences must be clustered.

6. Goal 2 cluster subdivision requirements shall apply (see the Goal 2 section of this report for details).

7. Cerro Gordo is either adjacent to or near large tracts of federal and private forest land.

8. Lane County will provide ODFW with the opportunity to review and comment on the preliminary subdivision application to assure mitigation measures are achieved through proper clustering.

9. Road development will be minimized and private roads within forested areas will be closed to vehicular use except for emergencies, maintenance, and forest management activities.

10. A Cerro Gordo Design Committee as well as the Cerro Gordo Cooperative itself shall review and monitor actions and changes in wildlife conditions on an ongoing basis.

11. Pets shall be limited.

Because of these and other factors addressed in the County's amended findings, the impacts on big game range are thought to be acceptable by ODFW. Allowing such conflicts to occur, but with restrictions outlined above, is a (3C) decision under the Goal 5 Administrative Rule. The County has justified this decision.

Conclusion

The requirement has been met.

Requirement

12. Remove the AO zoning from all privately owned parcels within the Mahlon Sweet Airport Exception Area consistent with Transportation Policy 11 and apply an appropriate resource zone to these lands.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

13. Amend the Committed Lands Exception to provide additional information addressing OAR 660-04-025 requirements or rezone TL 1600 in the Royal Avenue Exception area with the appropriate resource zone.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Requirement

14. Amend the zoning code to exempt maintenance and improvements in Armitage State Park from conditional use procedures. This is most easily accomplished by zoning all of this park to PR.

Response

This requirement pertains to the Eugene-Springfield Metro plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 2

Lane County complies with Goal 2 for the rural portions of the County, excluding the Metro Plan area.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 2.

GOAL 3: AGRICULTURAL LANDS

Requirement

1. Amend the EFU Zone to require disqualification from farm tax deferral of parcels prior to final building permit approval for nonfarm dwellings pursuant to ORS 197.236.

Response

Lane County's Development Code was amended (ORD. 9-84) to include a provisions requiring compliance with ORS 215.236 regarding the establishment of nonfarm dwellings in the EFU Zone (LC 16.215(4)(j)(IV)).

Conclusion

The requirement has been met.

Requirement

2. Adopt a plan policy requiring a plan amendment to the County Plan when designating land as Marginal Lands.

Response

The County plan was amended (ORD 889) to include the following plan policy (Goal 2, Policy 25):

> "Outside of designated 'Community' areas, all changes to Plan Diagram designations shall be evaluated through the County's Plan Amendment procedure (LC 16.400) and approval based upon fulfillment of criteria therein."

Conclusion

The requirement has been met.

Although this policy might imply that plan amendments are not necessary to change designations in community aras, in fact there is only one category--"community"--that can be applied to community areas. The policy should be clarified in the future to indicate that it is zoning within community areas that maybe changed without a plan amendment.

Requirement

3. Amend the plan to include adequate findings and reasons for applying the marginal lands zone to the Merz/603, Harrison, Peters, Hledik, G.E. Credit Corp., and KVAL properties and provide the required information to determine compliance with ORS 197.247. If the information provided shows that the land does not qualify as marginal land under ORS 197.247, plan and rezone the properties with appropriate resource designations and implementing zones.

Response

The County's plan was amended (Order No. 84-9-11-23) to include additional findings and reasons for applying marginal lands to the Merz/602, Harrison, Mathers and G.E. Credit Corp. properties. The County has also amended the plan and adopted an additional marginal land area known as the Moshofsky property (Order No. 84-19-11-22). The Peters, Hledix, and KVAL properties have been redesignated an appropriate resource designation (Ord. No. 898).

Information regarding the five marginal land areas is described below (Source: Order No. 84-9-11-22 and 84-9-11-23 (Moshofsky)):

Merz/603 - 70 acres

57.3 acres - SCS Class VIII (Dune Land)
12.7 acres - SCS Class III/Forest Site Class 3

Harrison - 45 acres

13.5 acres - SCS Class III
7. acres - SCS Class IV
49.5 acres - SCS Class VI
No woodland suitability

Mathers - 111 acres

4.7 acres - SCS Class III/Forest Site Class 3
13.7 acres - SCS Class IV/Forest Site Class 3
92.6 acres - SCS Class VI

G.E. CREdit - 20 acres

20 acres - SCS Class VI
No woodland suitability

Moshofsky - 68 acres

14.5 acres - SCS Class III
8.7 acres - SCS Class IV
42.6 acres - SCS Class VI
2.1 acres - SCS Class VII

MOSHOFSKY SOIL CALCULATIONS
AS PER F-2 WOODLAND SITE CLASS STANDARDS

Woodland Site Class	Acreage Needed Disqualification	Acreage Found Moshofsky	Percentage Of Standard
2	17	8.7	51.1%
3	24	0	0%
4	34	14.5	42.6%
5	43	2.1	4.8%
None		42.65	

Percentage Total = 98.5%

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Conclusion

The requirement has been met.

The previous findings found lacking for these properties have now been corrected as is required under ORS 197.247.

Based on the evidence submitted, and along with the findings in the previous staff recommendations, the following areas qualify as marginal lands under ORS 197.247:

Mertz/603
Harrison
Mathers
G.E. Credit Corp
Moshofsky

Requirement

4. Amend the Plan Map and Zoning Map for the Cuddeback and Rodman properties to an appropriate resource designation and implementing zone.

Response

The Cuddeback and the Rodman properties have been redesignated Impacted Forest Lands (Ord. No. 898).

Conclusion

The requirement has been met.

Conclusion - Goal 3

Lane County complies with Goal 3.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 3.

GOAL 4: FOREST LANDS

Requirement

1. Amend the Forest Working Paper and addendum to:

   a. Provide justification for the F-1 Zone's 40 acre minimum.

   b. (1) include information on the pattern of contiguous ownerships (either map or statistical) in support of a decision to retain current F-2 zoning. Such information must show that the minimum lot size is representative of the ownership pattern of the area

and that the zone actually limits further opportunity for development; or (2) include information justifying an alternative approach consistent with Goal 4 taken to resolve issues raised regarding the F-2 Zone.

c. Amend the Forest Working Paper Appendix 1--Lane County Forest Soils--to include "all commercial forest soils" in a manner consistent with an appropriate definition of commercial forest lands.

Response

1. a. Lane County has adopted additional information supporting its decision for assigning a 40-acre minimum lot size in the F-1 Zone. Specifically, the County has included as findings, two letters from Carl Ehlen (Lane County Landowners Assoc. and Rex Timber Co.) regarding the viability of a 40-acre parcel to be commercially managed as a forest parcel and Exhibit "D" from Ordinance No. PA 889 which cites the following findings:

"1) In support of the proposed Comprehensive Plan developed in 1982 the Lane County Landowners Association provided written testimony that the minimum land division size of 40 acres in the F-1 Zone represented an acreage that could be an operationally and economically manageable unit within the industry. At that time, the F-1 Zone proposal allowed dwellings on parcels down to the minimum size. (See attached letter dated November 23, 1982)

2) The Addendum to the Forest Lands Working Paper dated November 1983, justifies the 40 acre minimum land division from the data which show a significant number of parcels and amount of acreage that represent that size class within the industrial forest land ownership.

The following excerpt is from Suggestion Policy XI. 1) of the Addendum to the Forest Lands Working Paper:

'92% of the Industrial forest land acreage that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to 80 acres, with approximately 25% of that area occuring at the 40 acre parcel size category.'

'75% of the number of parcels in the Industrial owned forest land that lies on parcels less than 80 acres in size occurs on parcel sizes between the range of 40 to

80 acres, with approximately 28% of the number of parcels occuring within that range at the 40 acre parcel size category.'

3) The letter received June 21, 1984, from the Lane County Landowners Association reiterates their former position in support of the 40 acre minimum land division standard noting that under the current proposal the F-1 Zone excludes residences. (See copy attached.)

4) In addition, preliminary data from the computerized zoning file of the current F-1 proposal indicates that of the parcels zoned F-1 that are between 40 and 80 acres in size, 27% of the acreage occurs on parcels of the 40 acre size class which represents 39% of the number of parcels between 40 and 80 acres in size."

The County has indicated further that the County's decision establishing the 40-acre minimum lot size in the F-1 Zone is supported because:

> "Commercial forest representatives in Lane County requested 40 acres as a minimum lot size in the F-1 Zone based upon 40 acres being a commonly acquired, managed and exchanged unit of commercial forest land in Lane County."

Because Lane County's F-1 Zone does not allow dwellings, the price of forest land will reflect forest land values instead of rural residential values and conflicts with forest management activities will be minimal. Thus, a small minimum lot size conducive to commercial forest management, such as the F-1's 40-acre minimum is appropriate.

b. Lane County has rezoned approximately 56,080 acres of land from F-2 to F-1 and EFU in accordance with requirement "1.b(1)." Lands for which the F-2 zone was retained generally exhibit one or more of the characteristics for impacted forest lands presented in the response to requirement "2a." In addition, the County's revised Goal 4 Policy 12 provision (discussed under Goal 4 Response 3 of this report) presents additional limitations on divisions of resource land by establishing a 80-acre minimum lot size for all forest parcels which are (1) 160 acres in size, (2) zoned F-2, and (3) adjacent to F-1 zoned lands.

c. Lane County has amended, through Ordinance No. PA 889 (p. 6), their definition of commercial forest land to be 50 cubic feet per acre per year. By adopting a single commercial forest lands definition in its forest lands working paper rather than relying

on inconsistent references to 20 cubic feet, 50 cubic feet or the list of forest soils contained in Appendix 1, a consistent standard for inventorying forest lands and evaluating nonresource lands is established.

Conclusion

Lane County satisfies this requirement.

Requirement

2. Amend the comprehensive plan to:

   a. Include a Forest Policy which establishes precise criteria for applying the F-1 and F-2 Zones. (At a minimum, criteria for applying the F-1 Zone must include ownerships of a size capable of being managed as commercial forest lands.)

   b. Amend the four characteristics discussed under the Goal 4 conclusion for policies to establish criteria which apply only to lands appropriately zoned F-2 as per the examples discussed under "application;" or

   c. Include a policy which requires a plan amendment to rezone lands from F-1 to F-2.

   d. Delete the following from Forest Policy 11(a) "if adjacent to other nonimpacted forest lands.

Response

2a. In response to the above requirement, Lane County revised the criteria for applying the Non-Inpacted (F-1) and Impacted (F-2) Zone designations to eliminate the specific "vague" criteria discussed in the June 29, 1984 review. The revised criteria can be used to more specifically determine the proper zone designation. Ordinance No. P. 899 (p. 5, Item 10) adds Goal 4, Policy 19 which reads as follows:

"Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

'a. A conclusion that characteristics of the land correspond more closely to the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

'b. Non-impacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantely ownerships not developed by residences or nonforest uses.
'ii. Predominantely contiguous ownerships of 80 acres or larger in size.
'iii. Predominantely ownerships contiguous, to other lands utilized for commercial forest or commercial farm uses.
'iv. Accessed by arterial roads or roads intended primarily under commercial forest management.

'c Impacted Forest Land Zone (F-1, RCP) Characteristics

'i. Predominantly ownerships developed by residences or nonforest uses.
'ii. Predominantely ownerships 80 acres or less in size.
'iii. Ownerships generally contiguous to tracts containing less than 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.
'iv. Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences."

In addition, nonforest uses authorized under the F-1 Zone (LC 16.2104) can not be used as the basis for supporting a zone change from F-1 to F-2; the criteria established in LC 16.210(5) require as a condition of approval that findsigs be provided indicating such uses do not significantly impact forest uses. Thus, establishment of such nonforest uses in an F-1 Zone can not be the basis for a zone change to F-2 under the "impacted" criteria adopted by Lane County.

2b. or c.

Lane County revised its plan to delete the four vague characteristics used in applying the F-1 and F-2 zones. As indicated in the conclusion to "2a," the revised criteria successfully address the issue.

2d. On page 4 of Lane County Ordinance "No. PA 889, #8," the County states: "Goal No. 4, Policy No. 11a--delete if adjacent to other nonimpacted forest lands."

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend the County zoning map by rezoning private non-industrial ownerships capable of commercial forest management (including forested portions of commercial farm-forest operations) currently zoned F-2 with an appropriate resource zone. An acceptable forest zone is the F-1 Zone or forest zone containing a minimum lot size of

at least 80 acres as justified by the County's "Forest Working Paper Addendum."

Also, where the County can justify such a decision, the County may apply the marginal lands zone or rural residential zones to "committed" or nonresource lands.

Response

Lane County has rezoned 24,075 acres of land from F-2 to F-1 and rezoned 32,005 acres from F-2 to EFU. Generally, ownerships greater than 120 acres in size capable of being managed as a farm unit were rezoned to EFU. Ownerships of 160 acres or greater capable of being managed as commercial forest lands were rezoned to F-1. Some large ownerships were zoned with more than one zone depending on adjacent land uses and impacts. Also, the F-2 zone was retained on a few large ownerships, where soils information indicated that non-commercial forest soils predominate.

In order to reduce potential conflicts between authorized land uses in the F-2 Zone and commercial forest management activities occuring on F-1 lands, Lane County adopted a new version of Goal 4 Policy 12 (Ordinance No. PA 889, p. 4, Item 9) which contains the following provision:

> "(b) To substantially limit any adverse impacts upon commercial forest management which might result from land divisions and subsequent residential development (accessory and necessary to commercial forest management) a minimum area of 80 acres shall be required for the division of large forest tracts:
> '(i) zoned F-2
> '(ii) containing at least 160 acres
> '(iii) for the creation of lots or parcels adjacent to F-1, RCP zoned lands."

Conclusion

Lane County has satisfied this requirement.

The County has amended its zoning map, through the rezoning of some lands previously zoned F-2, in a manner consistent with this requirement. With the elimination of 56,080 acres from the F-2 Zone, the County's current application of the F-2 Zone is more representative of the ownership patterns within areas where non-commercial forest management and other non-resource activities occur.

Requirement

4. Amend LC 16.210(4)(i) of the F-1 Zone and LC 16.211(5)(ii) to require that "lodges" be evaluated against the "generally unsuitable test" in addition to the other review standards already applied to this specific use.

Response

Lane County through the adoption of Ordinance No. 9-84 amended LC 16.210(4)(i) and LC 16.211(5)(ii) to require under LC 16.210(4)(i) and LC 16.211(5)(r) that in addition to other review criteria, lodges will be required to locate on land generally unsuitable for forest uses in the F-1 and F-2 Zones or an exception to Goal 4 would be necessary.

The County also adopted Plan Policy No. 27 which requires an exception to resource Goals for transmission lines with right-of-way widths in excess of 50 feet (Ord. No. PA 889, p. 4). In addition, the County has limited farm equipment maintenance to that "incidental to a forest repair" (Ord. No. 9-84, p. 16-29).

Conclusion

Lane County satisfies this requirement.

Requirement

5. Amend the F-2 zoning provisions as follows:

   a. In 16.211(3)(b), adopt informational requirements for the "detailed forest management plan." At a minimum, such provisions must require sufficient information to establish adequate findings that a proposed "forest" dwelling is "necessary" and "incidental and subordinate to" the primary forest management activities described in the forest management plan.

   b. Include in LC 16.211(3)(b) a "floor" or minimum parcel size requiring parcels below 10 acres to be assessed against the nonforest dwelling or lot of record provisions.

   c. Amend 16.211(7)(b) to apply to all commercial forest grazing operations zoned F-2 the larger size (120 acres) for extensive animal grazing as required by LC 16.212(6)(d).

Response

5a. Lane County has amended LC 16.211(3)(b), through the adoption of Ordinance NO.9-84, to include specific requirements for preparing an acceptable forest management plan. Included within the revised LC 16.211(3)(b) is the following additional requirement:

> "(iii) The forest management plan shall specify how the following practices, when applicable, are to be addressed: road and fire trail construction and maintenance, site preparation, reforestation, stand conversion, planting of nonstocked openings, competition reduction/release, precommercial thinning, harvest scheduling/rotation and special site treatments for topography and other concerns."

Because active forest management is required to retain forest land taxation rates and failure to implement the forest management plan is a violation of LC 15.211(3)(b). The combination of the above requirements for forest related dwellings in the F-2 Zone assures that active forest management must occur on forest lands in order to establish a forest related dwelling; thus, satisfying the accessory and necessary test. These requirements for approving a forest related dwellings in Lane County's F-2 Zone are similar to the provisions contained in Benton County's acknowledged secondary forest zone.

5b. Through the adoption of Ordinance No. 9-84, Lane County amended LC 16.211(3)(b) of the F-2 Zone to include a "10 acre" floor which will be used for assessing "forest" dwelling applications. Applications for dwellings on parcels zoned F-2 which are less than 10 acres will be reviewed as nonforest dwellings.

5c. Upon further review of LC 16.211(7)(c) regarding the F-2 zone's minimum lot size requirements for farm unit size requirements for commercial grazing operations, it was determined that this provision's 40-acre minimum "farm unit size" requirement is identical to the County's EFU Zone minimum farm unit size requirement. For specific uses, such as dwellings, LC 16.212(2)(f) of the EFU Zone must be satisfied before approval can be granted.

Conclusion

The County satisfies this requirement.

Conclusion - Goal 4

Lane County complies with Goal 4.

Lane County's approach to conserving forest lands contains some plan policy and ordinance provisions unique to Lane County. The strength of their forest lands conservation program is the F-1 Zone which prohibits the siting of all dwellings (other than those required to be authorized by state statutes). This zone is applied to 2,449,775 acres of Lane County's forest lands.

The County's F-2 Zone is applied to 145,356 acres of privately owned lands which consist generally of large lot rural residential parcels, nonproductive or marginally productive resource lands, or underutilized resource lands. Lands zoned F-2 are generally located adjacent to or near developed urban or rural areas and well travelled transportation routes; all of which have an impact on the commercial management of forest lands.

In the F-2 Zone, the County requires that before a permanent dwelling is sited on forest land, assurances are obtained that forest production on the lot will be enhanced by active forest management. The requirements associated with the siting of dwellings in the F-2 Zone are similar to those provisions approved by the Commission in Benton County's acknowledgment with recent changes to the County's forest policies and

ordinance provisions. The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 4.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

Requirement

1. Mineral and Aggregate Resources: Apply the Goal 5 process to sites zoned SC which are not included on the County's (1C) inventory and, based on an analysis of the ESEE consequences of conflicting uses, either (1) add them to the (1C) inventory if justified, or (2) rezone the sites for other uses.

Response

In responding to this IOTC, Lane County discovered that not only were there sites zoned SG which were not on its (1C) inventory, but that there were other errors on its inventory. Therefore, the County revised its (1C) inventory as well as its (1B) inventory. Supplemental findings to Ord. No. PA 892 state:

> "The IOTC to correct the zoning citations was the stimulus for a complete review of sites listed in Appendix D vs. zoned sites. Several of those in the original Appendix D have been deleted--none of which carried SG or QM zoning. No "unzoning" will be necessary. Most of those deleted are also reflected in Appendix F of the Working Paper, which is the "pool" for later evaluation under the Goal 5 Rule "1B" option. Thus, any sites deleted in this effort are not lost from consideration, merely set aside for more detailed examination later on. All but one of the sites of Appendix D correspond with on-the-ground zoning of SG or QM."

The one site referred to in the last sentence of the previous quote (site #21) is an active site. The County completed all steps of the Goal 5 Administrative Rule for the site, and subsequently zoned it QM (Ord. No. PA 891). These findings are now part of the County's Mineral and Aggregate Resources Working Paper.

The County's three Mineral and Aggregate Resources inventories--Appendices D, E, and J--have been revised as follows: Appendix D has been reorganized to read more clearly, the Conflict Analysis (Appendix J) expanded to deal with new sites per the IOTC, and a third map (Appendix E) created to display the sites on new Appendix D. The original Appendix E--a listing of sites in the Metro Area--has been deleted since it was inconsistent with the list contained in the Metro Plan.

Conclusion

Requirement 1 has been met.

Requirement

2. Fish and Wildlife:

a. Amend the Natural Resource Zone to include riparian setback and vegetation maintenance standards.

Response

Lane County has amended its Natural Resource Zone to include riparian setback and vegetation maintenance standards similar to those in other resource zones (Ord. No. 11-84).

Conclusion

Requirement 2a has been met.

Requirement

2. Fish and Wildlife Habitats:

b. Amend the C-1, C-2, C-3, M-1, M-2, M-3, and RG zones to either (1) include riparian setback and vegetation and maintenance standards, or (2) incorporate by reference anothr section of the Lane Code which contains such standards.

Response

Lane County has amended the above zoning districts to include appropriate riparian setback and vegetation maintenance standards as required (Ord. No. 9-84).

Conclusion

Requirement 2b has been met.

Requirement

2. Fish and Wildlife Habitats:

c. Apply riparian setback and vegetation maintenance requirements along lakes and Class II streams, or otherwise justify not providing such protection, based on an ESEE consequences analysis of conflicting uses.

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(l)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

Department which sufficiently identify the location, nature and scope of the proposed use or activity.

(c) Referral. Upon receipt of the plan identified in LC 16.005(4)(b) above, the Department shall refer a copy of the plans to the Oregon Department of Fish and Wildlife (ODFW).

(d) ODFW Review. Upon receipt of the plans identified in LC 16.005(4)(b) above, the ODFW shall review the proposed use or activity and make a determination of whether or not the use or activity would affect a sensitive bird habitat. In making this review and determination, the ODFW shall consult with the affected landowner(s) and appropriate state agencies, and shall address the standards in LC 16.005(4)(d)(i) and (ii) below. The basis for the determination shall be stated in writing, completed within seven working days of receipt, and then submitted to the Department (Lane County).

(i) A sensitive bird habitat will be considered affected by a use or activity if the use or activity is located within 660 feet of an eagle or osprey site or within 300 feet of a heron rookery or pigeon mineral spring.

(ii) A sensitive bird habitat may also be considered affected by a use or activity if the use or activity is located a greater distance than specified in LC 16.005(4)(d)(i) above, considering unique conditions of topography to the individual habitats of the bird(s).

(e) No Affects Determined. If the ODFW determines that the senstive habitat area will not be affected, then the ODFW will give the Department written notice of its determination, and Lane County may proceed with authorization o the use or activity, or with the processing of any other required applications.

(f) Affects Determined and Protection Plan. If the ODFW determines that the sensitive habitat area will be affected, the ODFW shall work with the affected landowner(s) in the development of a site specific habitat protection plan. The plan shall consider the proposed use or activity and its interrelationship to and affects upon nesting trees, perch trees, critical nesting period roosting sites and/or buffers for wind, vision and noise. The plan must contain a statement of reasons, supported by facts, explaining why the sensitive bird habitat would not be adversely affected by the proposed use or activity. The plan shall then be submitted to the Department.

(g) Director Approval. The proposed uses or activities identified in the habitat protection plan shall be reviewed by the Director pursuant to LC 14.100 and shall be allowed if in conformance with the following approval criteria:

(i) The proposed use or activity would not adversely impact a sensitive wildlife habitat.

(ii) Conditions placed upon the approval of the habitat protection plan would avoid or eliminate any adverse impacts upon a sensitive wildlife habitat. Conditions may include setbacks, limitations upon the time period for the operation of the use or activity and/or prohibition of conflicting uses.

(h) LC 16.005(4)(a)-(g) do not apply to the protection of sensitive bird habitat from forest practices as regulated by the Forest Practices Act and as regulated by the COOPERATIVE AGREEMENT BETWEEN OREGON STATE BOARD OF FORESTRY AND OREGON STATE FISH AND WILDLIFE COMMISSION as adopted by Lane County in Rural Comprehensive Plan Goal 5 Flora and Fauna Policy 17."

The following new Policy 17 has been adopted to replace old Flora and Fauna Policy 15 (Ord. No. PA 892):

"The Cooperative Agreement between Oregon State Board of Forestry and Oregon State Fish and Wildlife Commission shall constitute Lane County's means of protecting sensitive bird habitat sites from conflicts which may result from forest practices as regulated by the Forest Pracices Act. Within two years of the date of acknowledgment of the Rural Comprehensive Plan, Lane County shall evaluate the effectiveness of the use of this agreement in providing actual protection to sensitive bird habitat sites, and if necessary, shall consider the adoption of more effective means of protecting sensitive bird habitat sites. This agreement is incorporated into the Lane County General Plan Policies as Flora and Fauna, Exhibit 'A'."

The following new Flora and Fauna policy has also been adopted (Ord. No. PA 892):

"18. Owners of property designated as a sensitive bird habitat and as identified in Lane Manual 11.400 shall be encouraged to develop a management plan in conjunction with the Oregon Department of Fish and Wildlife prior to beginning any development which may adversely affect the habitat. Such management plans shall consider nesting trees, perch trees, critical nesting period, roosting sites and buffer zones, and shall demonstrate how the proposed development will not adversely affect the sensitive bird habitat site. The policy shall not apply to forest practices covered by the above Flora and Fauna Policy 17."

Conclusion

Requirement 2e has been met.

Requirement

2. Fish and Wildlife Habitats:

f. Modify the definition of "wetlands" used in the Flora and Fauna Working Paper to be consistent with the definition contained in the Statewide Planning Goals.

Response

Lane County has replaced its definition of "wetland" with the following definition (Ord. No. PA 892):

> "For purposes of County management, wetlands should be defined as land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands."

This new definition is consistent with that contained in the Statewide Planning Goals.

The Working Paper has also been amended to contain the following explanation:

> "For purposes of County management, principal concern shall be given to wetlands of an acre or greater in size, to exclude small 'backyard' areas, unless the future County evaluation of the National Wetlands Inventory and/or information from ODFW indicate that specified wetlands smaller than one acre in size require the same level of protection as their larger counterparts."

Conclusion

Requirement 2f has been met.

Requirement

2. Fish and Wildlife Habitats:

g. Amend the Flora and Fauna Working Paper to identify the Goal 5 wetland area east of Highway 101 and south of Sutton Lake. Apply all applicable steps of the Goal 5 Rule to this site.

Response

The County examined this site ("Blueberry Acres") and documented its location, quality and quantity. Conflicting uses were identified, and an ESEE consequences analysis was performed by the County. Based on this analysis, the County determined that the wetland required additional protection. It, therefore, has applied its Natural Resource Zone to the site. The Addendum to the Flora and Fauna Working Paper has been amended to contain background information and findings regarding application of the Goal 5 process to "Blueberry Acres" (Ord. No. PA 892).

Conclusion

Requirement 2g has been met.

Requirement

2. Fish and Wildlife Habitats:

h. Amend the ML Zone to require compliance with the Goal 5 Administrative Rule in future applications of the zone. For those sites currently zoned ML, identify the Goal 5 resources present, identify conflicting uses and ESEE consequences, and develop a program to achieve the Goal, consistent with the Goal 5 Rule.

Response

Section 13.050(1) of the Lane Code requires conformity with the Comprehensive Plan (including all plan policies) when considering partition or subdivision plans.

Also, Policy 14 (Goal 3) has been amended so as to require compliance with Goal 5 policies 11 and 12 in the future application of the ML Zone. Policy 11 requires conformance to ODFW density recommendations, unless justified through a separate Goal 5 analysis. Policy 12 requires a Goal 5 analysis if conflicting uses are identified that were not contemplated in the Plan.

Findings have been added to the Flora and Fauna Working Paper Addendum (p. 14) which discuss application of current ML zoning in Goal 5 resource areas. Goal 5 conflicts with many of these sites are primarily with big game habitat. The County has analyzed the ESEE consequences of conflicting uses for these areas and has decided to apply the ML Zone in spite of the conflicts.

Conclusion

Requirement 2h has been met.

Requirement

3. Natural Areas: Amend the Flora and Fauna Working Paper to include inventory information on the Goal 5 Darlingtonia natural area east of the City of Florence. Apply all applicable steps of the Goal 5 Rule to this site.

Response

Supplementary Findings to Ordinance No. PA 892 adopted by Lane County provide the following explanation:

> "This site is shown on the Coastal Resources Inventory maps as being located east of North Fork Road, near the Chief Drew historical site. It was field-checked by County and ODFW staff. Neigher effort could locate Darlingtonia, although a small bog existed in the approximate area of the site. A larger bog to the north (within the Florence UGB) may be the one referred to in the Inventory, but has been partially filled by structures and is not within the concern of the Rural Comprehensive Plan--the Florence plan having been acknowledged in 1983. It too was found to contain no Darlingtonia.
>
> Thus, it appears that no rezoning action will be necessary to preserve the reported bog."

Page 27 of the Flora and Fauna Working Paper has been amended to include the following new paragraph:

> "1A Category
>
> One site--identified on the Coastal Resources Inventory as a significant natural area--has been placed in the '1A' category because it was either erroneously identified in the Inventory or because conditions have changed since the Inventory was done which have destroyed the feature that first caused its inclusion. This area is noted as "unique Darlingtonia habitat" east of North Fork Road in 18-12-24. Because DLCD raised the issue of preservation of this resource under Goal 5 Rule requirements, field checks were conducted by both County staff and staff of the Oregon Fish & Wildlife Department. Neither effort could locate any Darlingtonia. A bog north of the one shown on the inventory map (excerpt attached) may have been the one referred to, but that particular bog has been partially filled and is also located within the UGB of Florence

which has an acknowledged Plan. Even assuming the Plan should be changed, that northern bog (at the intersection of Munsel Lake and North Fork Roads) is not significant enough Darlingtonia area to merit further action by the City/County. In sum, the area should be deleted from the Plan inventory as a '1A' site, with no further action required on it."

Conclusion

Requirement 3 has been met.

Requirement

4. Scenic Views and Sites: Inventory known scenic views and sites and apply all applicable steps of the Goal 5 Administrative Rule to those sites.

Response

Lane County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892) which contains an inventory of scenic resources in the County, including the coastal strip, the Willamette River Greenway, Coburg Ridge, McKenzie River Valley, Willamette Highway/Salt Creek Valley Corridor, and ODOT-identified scenic areas. Each is described and location, quality and quantity documented. Each is evaluated in terms of conflicting uses and ESEE consequences. Based on these analyses, the County has determined that existing coastal zoning is sufficient protection for the coastal zone, and that the County Greenway Plan and Permit process should be the implementing measure in the Willamette Greenway. No conflicts were identified with ODOT scenic areas. Coburg Ridge is essentially undeveloped and partly in BLM ownership or in ranchland. Slopes exceed 100 percent in many places. Therefore, conflicts appear to be limited primarily to forestry activities, which are regulated by the FPA. Most of the McKenzie Valley and the Willamette Highway/Salt Creek Corridor is within the Willamette National Forest.

Conclusion

Requirement 4 has been met.

Requirement

5. Historic Sites:

   a. Amend the zoning maps to show that the Historic Structures of Sites Combining Zone has been applied to all (1C) sites identified in the Working Paper, and amend the Zoning Code to make it clear that the combining zone applies to all (1C) sites.

Response

The County has ensured that all (1C) sites appear on zoning maps with the "/H" symbol, except for 20 covered bridge sites (Supplementary Findings to Ord. No. PA 892). The County indicates that these are not on maps because they are bridges and are not keyed to tax lot citations. This prevents the digitized Plan Diagram maps from properly displaying them. However, all are publicly-owned, and are covered by the /H Combining Zone (Ord. No. 892).

Lane County has added a definition of "Historic Structure or Site" to the definition section of its ordinance. This definition specifically includes property which had been identified by Lane County in its adopted Rural Comprehensive Plan findings as historically significant. (This list includes the 20 covered bridges as well as all other (1C) sites.)

Conclusion

Requirement 5a has been met.

Requirement

5. Historic Sites:

   b. Justify deletion of sites 32, 39, and 42 from the inventory of historic sites, and amend the Historic Sites Working Paper to reflect these deletions; or apply the Historic Sites Combining Zone to those sites.

Response

Lane County has deleted sites 34 and 57 as well as sites 32, 39 and 42 from its historic sites inventory, and has amended the Addendum to its Historical Resources Working Paper as follows:

> "From the above list, five sites have been deleted by County action: sites 32, 34, 49, 42 & 57. Sites 34 and 57 are not within the purview of the Rural Comprehensive Plan and thus are the responsibility of other planning efforts. Site 32 (Keeney House) is no longer considered historically significant because the structure has been relocated on its site and has been remodeled both inside and outside. Site 39 (Paschelke House) is incorrectly represented in the State Inventory and has been extensively remodeled. Site 42 (Fall Creek Christian Church) has been remodeled several times from its original use as a school building, and is being expanded. These sites should be exempted from the Historical Combining District which is being applied to the other sites on the above list."

Conclusion

Requirement 5b has been met.

Requirement

6. Oregon Recreation Trails:

a. Amend the Recreational Resources Working Paper to provide more detailed locational information (text or maps) for all the existing trails and trail segments.

Response

Lane County has amended the Recreational Resources Working Paper (p. 15) by inserting a new paragraph indicating that ODOT has supplied the County with detailed maps of trail segments. Such information is included as Appendix A to the Working Paper (Ord. No. PA 892).

Conclusion

Requirement 6a has been met.

Requirement

6. Oregon Recreation Trails:

b. Adopt policies to:

(1) Cooperate with ODOT in the protection of existing trails; and

(2) Coordinate with ODOT in applying the Goal 5 Rule during any future identification, or establishment of proposed trail segments.

Response

Goal 5 (Policy 4) has been replaced with the following new policy (Ord. No. PA 892):

"The County shall recognize and acknowledge existing and potential recreational trails designated by the Oregon Parks Outdoor Recreation Plan, shall cooperate with the Oregon Department of Transportation in the identification of specific routes for potential trails, and in the completion of applicable steps of OAR 660-160-000/025. Existing developed trails shall be displayed on the County's planning documents."

Conclusion

Requirement 6b has been met.

Requirement

7. Scenic Rivers and Waterways:

a. Amend the Recreational Resources Working Paper to recognize that:

(1) Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir are within the designated State Scenic Waterway system; and

(2) The portions of the Alsea River, and Steamboat Creek that are on the federal potential list are also on the state list of potential scenic waterways.

Response

The County has adopted an Addendum to its Recreational Resources Working Paper (Ord. No. PA 892). This addendum recognizes Waldo Lake and the North Fork of the Middle Fork of the Willamette River to about one mile upstream from Westfir as within the State Scenic Waterway system (p. 8). It also recognizes portions of the Alsea River and Steamboat Creek that are on the federal and state potential lists (p. 9).

Conclusion

Requirement 7a has been met.

Requirement

7. Scenic Rivers and Waterways:

b. Amend Open Space and Scenic Areas Policy 5 (p. 17) to also indicate that the County will coordinate with appropriate state and federal agencies in applying all applicable steps of the Goal 5 Administrative Rule in studying rivers for possible designation and in actually selecting wild and scenic rivers for designation.

Response

Policy 5 has been replaced with the following policy language:

"The County shall cooperate with appropriate state and federal agencies in the selection of wild and scenic rivers, and will cooperate with these agencies in the completion of applicable steps of OAR 660-16-00/025 in making such selections" (Ord. No. PA 892).

Conclusion

Requirement 7b has been met.

Requirement

8. Adopt implementing measures to resolve conflicting uses for the area known as Russel Creek Basin, based on the ESEE consequences analysis and conflicting-resolution recommendations contained in the Metro Plan Update Working Paper.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Conclusion - Goal 5

Lane County complies with Goal 5.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

Requirement

1. Amend the Development Code to require review of any proposed development within known geologic hazard areas.

Response

Lane County Development Code was amended (ORD. 9-84) to include the following provision (LC 16.005):

> "(2) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for either road and/or development purposes may be restricted or regulated by the Approval Authority either at the time of approval of a development permit or of an application if there is a finding that such grading or clearing presents a real threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose."

Conclusion

The requirement has been met.

The County Development Code has been amended to require a review of any proposed development that is found to present a threat to life and property.

Requirement

2. Adopt standards which will be applied to development in known geologic hazardous areas.

Response

Lane County Development Code was amended (Ord. 9-84) to include the following standards pursuant to LC 16.005(2) cited previously under Goal 7, Requirement 1 (LC 16.005):

"(3) Conditions. The following conditions may be imposed at the time of approval of a development for which a permit or application is required and for which a finding has been made as required in LC 16.005(2) above in order to ensure site and area stability:

(a) Maintain vegetation and eliminate widespread destruction of vegetation.

(b) Carefully design new roads and buildings with respect to:

(i) Placement of roads and structures on the surface topography.

(ii) Surface drainage on and around the site.

(iii) Drainage from buildings and road surfaces.

(iv) Placement of septic tank disposal fields.

(c) Careful construction of roads and buildings:

(i) Avoid cutting toeslopes of slump blocks.

(ii) Careful grading around the site, especially avoiding oversteepened cut banks.

(iii) Revegetating distubed areas as soon as possible.

(d) Certification by a geologist or engineer that the above conditions have been complied with and/or that a hazard does not exist."

Conclusion

The requirement has been met.

Lane County has adopted appropriate standards which will be applied to development in geologic hazard areas.

Conclusion - Goal 7

Lane County complies with Goal 7.

The findings contained in this supplemental report and those contained in the Department's June 29, 1984 review support the decision that Lane County complies with Goal 7.

GOAL 11: PUBLIC FACILITIES AND SERVICES

Requirement

1. Adopt a plan policy which specifies the appropriate levels of service for rural areas, including unincorporated minor development centers and rural service centers. Note: This IOTC can be satisfied by adopting a policy identifying land classifications and service levels similar to those contained in the Public Facilities and Service Working Paper--Appendix B. If Appendix B is used, the classification titles must be amended to correspond with "current" classification titles (Example: Forest Lands I is now called Non-Impacted).

Response

Through the adoption of Ordinance No. PA 889 (Item 13), Lane County deleted Goal 11 Policies 1 and 2 and replaced them with the following:

"Lane County shall provide an orderly and efficient arrangement for the provision of public facilities, services and utilities. Designation of land into any given use category, either initially or by subsequent plan amendment, shall be consistent with the minimum level of services established for that category."

The County also adopted Policy No. 6 which references descriptions of their plan designations and service levels which are as follows:

Forest Land

Nonimpacted (F-1):

"Service Level: No minimum level of services is established for this category as it is intended primarily for resource management and not for habitation."

Impacted (F-2):

"Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur space population patterns are expected."

Agricultural Land

Exclusive Farm Use:

"Service Level: No minimum level of services is established. The category is intended primarily for resource management and although some degree of habitation will occur, sparce population patterns are expected."

Natural Resource

Mineral:

"Service Level: No minimum level of services is established. Category is intended for resource management and not habitation."

Rural Residential:

"Service Level: Schools, on-site sewage disposal, individual water supply systems, electrical service, telephone service, rural level fire and police protection, reasonable access to solid waste disposal facility."

Community:

"Service Level: Schools, on-site or community sewage disposal, individual or community water supply, electrical service, telephone service, rural level of fire and police protection, reasonable access to solid waste disposal facility."

Rural Commercial:

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Industrial (outside community designation):

"Service Level: The same as required for Rural Residential (outside Community Designations)" (Ord. No. PA 892, Goal 11, Appendix 4).

Park or Recreation:

"Service Level: No minimum level of services is established for Park or Recreation areas outside committed areas. Service level for Park or Recreation areas inside committed areas shall be consistent with that level required for the Community or committed area outside of a Community."

Marginal Lands:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation."

Nonresource:

"Service Level: Consistent with service levels for Rural Residential outside a Community designation. The service level for cluster subdivisions of nonresource shall be consistent with Goal 2 policy 24."

Conclusion

Lane County satisfies this requirement.

Requirement

2. a. By policy or zoning provisions, limit development (in a manner consistent with Goal 11 (and the County's decisions regarding rural sewage systems) within unincorporated rural communities with known or suspected sewerage problem (Chesire, Elmira, Heceta, Goshen, Mapleton, Marcola and Vaughn); or

   b. Provide additional information which justifies in a manner consistent with the discussion under Goal 11, the county's decisions regarding development in rural communities with known or suspected sewerage problems.

Response

With the adoption of Ordinance 9-84, Lane County amended Chapter 16.004(5) of their Development Code to address IOTC 2a by including the following:

> "Prior to the zoning or rezoning of land under this Chapter, for lands situated within the designated community areas listed below, an affirmative conclusion stating the reasoning and facts relied upon, must be made that densities allowed by the proposed rezoning are low enough to provide reasonable assurance that any existing sewage problems will not be further aggrevated by development of the subject property:
>
> (a) Cheshire
> (b) Elmira
> (c) Goshen
> (d) Heceta
> (e) Mapleton
> (f) Marcola
> (g) Vaughn"

In addition, LC 13.050(12)(b), which established the County's requirements for obtaining individual sewage disposal systems, requires "reasonable proof that each prosposed parcel or lot can accommodate an individual sewage disposal system and at least one acceptable replacement area which meets the criteria established by OAR Chs.340-71-005 to 45." The above requirement provides adequate assurance that additional development in the seven referenced communities with existing or potential sewage problems will not aggrevate the sewerage situation.

Conclusion

Lane County satisfies this requirement.

Requirement

3. Amend Sections 13.050(12) and 13.050(13) to indicate that the establishment of rural sewage or water systems must be consistent with the appropriate of levels of service policies required by Goal 11, IOTC 1.

Response

Ordinance 10-84 amends Chapter 13.010(12) and (13) of Lane County's Development Code to require that the establishment of rural sewerage facilities and water systems shall be consistent with RCP Goal 2 Policy 24 and RCP Goal 11 Policies, including level of service definitions. Lane County also indicates the following:

> "With this ordinance, Land County has amended Sections 13.050(12) and (13) to provide that the

establishment of rural sewerage and water facilities must be consistent with RCP Goal 2 Policy #24, provision of services to cluster subdivisions in the rural area, and RCP Goal 11 policies. By requiring consistency between the provision of services in the rural areas and the above-mentioned policies, Lane County is ensuring the 'timely, orderly and efficient provision of services' to new development approved within the rural areas. Sections 13.050(12) and 13.050(13) now require community sewer or community water systems be established only in a manner consistent with public facility and service policies (including appropriate levels of service for rural areas)" (Ordinance 10-84, Exhibit A, p. 2).

Conclusion

Lane County satisfies this requirement.

Conclusion - Goal 11

Lane County complies with Goal 11. Lane County's Public Facilities Working Paper, Goal 11 Plan Policies and Development Code requirements as well as specific amendments which include: (1) level of service definitions for each plan designation, (2) a requirement to examine proposed zone changes in suspected rural "sewerage" problem areas to insure that any existing problems will not be aggrevated through an intensification of density, and (3) policy and ordinance requirments that rural development consistent with the specified rural level of service definitions, all contribute to the orderly provision of public facilities and services in rural Lane County.

GOAL 15: WILLAMETTE RIVER GREENWAY

Requirement

1. Amend zoning maps 304, 304A, 305, 330, 332, 347, 396, 411, 417, 418, 425, 437, 440, 448, 471, 528, 1005, 1006, 1008, 1010, 1011, 1012, and 1013 to display the correct LCDC-approved Greenway Boundary.

Response

The County has amended the zoning maps listed above that apply to areas outside the Eugene/Springfield Metro Area so as to display the correct LCDC-approved Greenway Boundary. Changes to maps 347, 396, 411, 437, 528, 1005, 1006, 1008 and 1012 will be corrected in conjunction with the Eugene/Springfield Metro Area continuance.

Conclusion

The requirement has been met.

Requirement

2. Amend the Greenway ordinance to clearly require protection of significant fish and wildlife habitats, agricultural lands, and identified scenic qualities and viewpoints, per Sections C.3.d., a., and c. of the Goal.

Response

Lane County has eliminated the term "guidelines" from the Greenway Development Permit Approval section of its Greenway Ordinance (Section 16.254(4)) and has added the following as criteria for permit approval:

"(i) Preservation and maintenance of land inventoried as 'agriculture' in the adopted Willamette River Greenway Plan for farm use and minimize interference with the long-term capacity of lands for farm use.

(ii) Protection, conservation or preservation of significant scenic areas, viewpoints and vistas...

(xiv) Protection of significant fish, wildlife habitat and natural areas."

A decision to approve a Greenway Development Permit must require findings that the proposed intensification, change of use or development conforms to these (as well as other) criteria, according to Section 16.254(4) of the Greenway Ordinance.

Conclusion

The requirement has been met.

Requirement

3. Amend Section 16.254(2)(k) of the Greenway Ordinance to eliminate all language following the phrase, "or personal noncommercial use."

Response

Section 16.254(2)(k) of the Greenway Ordinance has been amended to eliminate all language following the phrase, "or personal noncommercial use." This was done so that only the propagation or cutting of timber for public safety or personal noncommercial use is exempt from local Greenway Permit review, consistent with Goal 15.

Conclusion

The requirement has been met.

Requirement

4. Amend Section 16.254(c) of the Lane Code to ensure that only water-dependent and water-related uses themselves are exempt from the 100-foot Greenway setback requirement.

Response

Section 16.254(b) has been amended (Ord. No. 11-84) so as to eliminate the phrase "those in conjunction with." Therefore, the Code exempts only water-dependent and water-related uses themselves from the Greenway setback requirement.

Conclusion

The requirement has been met.

Requirement

5. Amend Section 16.254(6) of the Lane Code to require notification of ODOT of actions taken on applications for intensification, change of use or development in the Willamette Greenway.

Response

Section 16.254(6) of the Code has been amended to require notification of ODOT of actions taken on applications for a Greenway Permit, as required.

Conclusion

The requirement has been met.

Requirement

6. Amend Section 16.254(2)(a) of the Greenway Ordinance to require either:

   a. Greenway permits in areas designated "urban" beyond 150 feet of the ordinary low water line, or

   b. Some other mechanism which ensures protection of Greenway values in these areas.

(Note: This could also be accomplished by LCDC amendment of the ODOT Greenway Plan by changing the designation of the area south of the Cottage Grove UGB from "urban" to "rural.")

Response

Section 16.254(2)(a) has been deleted from the Greenway Ordinance. This has the effect of requiring Greenway permits in areas designated "urban" beyond the 150-foot line.

Conclusion

The requirement has been met.

Requirement

7. Adopt implementing measures that protect the Pudding Creek Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan, which has been segmented and continued until October 11, 1984.

Requirement

8. Either adopt findings which explain how the current zone designations for Big Island protect the Confluence Heronry, or adopt other implementing measures that protect the Confluence Heronry.

Response

This requirement pertains to the Eugene/Springfield Metro Plan which has been segmented and continued until October 11, 1984.

Requirement

9. Modify Mineral and Aggregate Resources Policy 11 to also reference Section C.3.d. of Goal 15 to ensure protection and significant fish and wildlife habitats in the Willamette Greenway.

Response

Lane County has amended Mineral and Aggregate Policy 11 to also reference Section C.3.d. of Goal 15 (Ord. No. PA 892).

Conclusion

This requirement has been met.

Conclusion - Goal 15

Lane County complies with Goal 15.

The findings contained in this supplemental report and those contained in the Department's July 19, 1984 review support the decision that Lane County complies with Goal 15.

DW/MJR/CP:mg
0559D/517A

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM

October 31, 2019 **Project: 19060**

Nimpkish, LLC
Gray and Dorotea Goodman
86690 R. R. Baker Road
Springfield, OR 97478

Exhibit B
PA19-05298
Submission of
Additional Material

Subject: Geotechnical Summary of the Nature of Landslide Hazard
Proposed Residential Development
Tax Lot 507 (a.k.a. Parcel 2), Tax Map 18-02-11; Lane County
R. R. Baker Road, Springfield, Oregon

Dear Mr. and Mrs. Goodman,

Our understanding is that a small portion of the project site, located at the southwest corner near the road, is proposed for development as a single-family residence. At your request, we have reviewed the subject project site for the purpose of making a preliminary determination of the nature of landslide hazard and to present practical recommendations for site development. Our services, to date, have included:

- A visual inspection of the subject 10-acre site,
- Review of landslide hazards mapped for the site by the Department of Geology and Minerals Industries and Geology,
- Review of mapped geology and faulting of the general area,
- Review of current and historic aerial photography of the area, and
- These recommendations.

To summarize our review:

- The project site is located within, or near, the south end of the upper scarp zone of a very large, ancient landslide that moved soils and rock to the west.
- There are no visible indications of recent slope movement on the subject project site or on undisturbed areas on adjacent properties. The DOGAMI mapping of landsliding in this area indicates the approximate extent of the ancient landslide but does not include mapping of any active landslide activity.
- Outside of the project site, we observed areas of localized soil creep on the south side of the R. R. Baker Road which are most likely the result of over-steepened road cut embankments.
- The ground surface gradient at the proposed area for homesite development is low, in the range of approximately 10 to 15-percent. Based on our extensive experience in geotechnical engineering for similar projects in similar areas, the existing or future hazard of landsliding is low and manageable for developments similar to what is being proposed in this geologic setting.

Therefore, it is my professional opinion that there is not a significant landslide hazard in the proposed homesite development area, and extensive or drastic safeguards are NOT needed to ensure safety on or off the property with respect to hazards associated with slope movement.

To verify subsurface ground conditions, confirm the low probability of any slope movement in the proposed development area, and to ensure that development will be designed and constructed in a manner that will not induce any geotechnical hazards, *we recommend that a qualified professional geotechnical engineer make a geotechnical investigation of the home site prior to foundation design and construction*. This investigation should include:

- Geotechnical probing and/or borings which adequately characterize subsurface conditions,
- A written Report that summarizes site conditions and makes recommendations for:
  - The current nature of slope stability,
  - Suitable foundation types and load capacity,
  - Drainage, and
  - General earthwork and site construction methods.

This geotechnical investigation should be a requirement for obtaining a building permit to construct the proposed residence.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



EXPIRES: DECEMBER 31, 2020

Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.

Additional Information Submitted

Date Stamp

Submitted By: 1000 Friends of Oregon

Phone Number: (503) 497-1000

Email Address: andrew@friends.org

Project Address: 0

Permit Number (BP, PA, SP, SI): PA 1405218

Submittal Description: Open record

LANE COUNTY OREGON

RECEIVED

NOV 07 2018

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fees be paid? ☐ In person ☐ Online ☐ By phone

0672

001371

November 7, 2019

By electronic mail

Gary Darnielle, Hearings Official
c/o Rachel Serslev
Land Management Division
3050 N Delta Highway
Eugene, OR 97408
Rachel.serslev@co.lane.or.us

RE: Open Record Statement in 509-PA19-05298, Nimpkish application for a forest template dwelling

Please accept the following statement for the record on behalf of 1000 Friends of Oregon in the Nimpkish application (509-PA19-05298) for a forest template dwelling on tax lot 507 (map no. 18-02-11-00). Ex 1. Please include 1000 Friends in any subsequent notice of decision and any further correspondence related to this application.

The County cannot approve multiple forest template dwellings on a tract

The subject property does not qualify for a forest template dwelling because it is part of a tract that already contains a dwelling and dwelling approvals. Ex 1 (showing existing dwelling sites); Ex 5 (dwelling applications and dwelling approvals). The template dwelling statute does not allow the siting of a template dwelling on a tract that already contains a dwelling. ORS 215.750(4)(c). A tract is "one or more contiguous lots or parcels under the same ownership." ORS 215.010(2). The subject property, tax lot 507, is part of a tract owned by Gray and Dorotea Goodman. The Goodmans own tax lots 501, 506, 507, 508, and 509. Ex 2; Ex 3. Those five tax lots are contiguous. Ex 4. The Goodmans own 507 and 509 as the sole owners and members of Nimpkish, LLC. Ex 2; Ex 3 at 22, 32. For that reason, the Goodmans have sole ownership and control of all five parcels. The tax lots are "under the same ownership," and constitute a single tract.

One of the parcels within the tract already contains a dwelling, and two have dwelling approvals. Tax lot 501 contains an existing dwelling at 86690 RR Baker Road. Ex 3 at 1, Ex 1 at 2. The county has approved tax lots 508 and 509 for dwellings. Ex 5. The Goodman's cannot hide their ownership of the tract behind an entity for the purpose of obtaining multiple forest template dwellings. ORS 215.750(4)(c), 215.010(2).

The County cannot ignore the minimum fuel break standards

The proposed site plan fails to show the minimum primary and secondary fuel breaks required by state law and lane code. OAR 660-006-0035(3); LC 16.211(8)(c). The conditions of approval paraphrase the code, and give ultimate discretion of how to establish the fuel breaks in compliance with those provisions to the building department. Applying the fuel break standards requires a degree of judgment and discretion. The county cannot defer the task of determining the fuel break distances to a future, non-public decision-making process. *Eng v. Wallowa County*, ___ Or LUBA ___ (LUBA No 2018-085, Opinion, May 7, 2019) (slip op at 37); *see Van Dyke v. Yamhill County* (City of Carlton), ___ Or LUBA ___ (LUBA No 2019-047, Opinion, Oct 11, 2019) (slip op at 43-45) (discussing "punting" of discretionary decisions to a later decision); *see also*, *Wachal v. Linn County*, ___ Or LUBA ___ (LUBA No 2018-034, Opinion, Sept 28, 2018) (slip op at 12-13).

State law requires landowners to "maintain a primary fuel-free break area surrounding all structures" and "maintain a secondary fuel-free break" on land surrounding dwellings. OAR 660-006-0035(3). The fuel-free breaks must be on land "owned or controlled by the owner in accordance with the provisions in 'Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads'...," published by the Oregon Department of Forestry (ODF). *Id.*

The ODF standards recommend a primary safety zone "extending a minimum of 30 feet in all directions around structures." Ex 6 at 2. Similarly, the standards recommend a secondary fuel break "extending a minimum of 100 feet in all directions around the primary safety zone." *Id.* at 2-3. The primary fuel break distance increases "[a]s slope increases... parallel to the slope and down the slope[.]" *Id.* at 2. To that end, the ODF standards provide a table that shows the "Feet of Additional Safety Down Slope" that corresponds to down slope slopes of 10 percent or greater. *Id.* at 3.

In accordance with the ODF standards required by OAR 660-006-0035(3), Lane Code 16.211(8)(c) reproduces the ODF language. Lane Code requires a "primary safety zone... extending a *minimum* of 30 feet in all directions around dwellings." LC 16.211(8)(c)(i)(aa) (emphasis added). The code requires a secondary fuel break "extending a *minimum* of 100 feet in all directions around the primary safety zone." *Id.* (8)(c)(i)(bb) (emphasis added). And dwelling owners are required to maintain the primary and secondary fuel breaks "on land surrounding the dwelling... that is owned or controlled by the owner in compliance with these requirements." *Id.* (8)(c)(i); *see* OAR 660-006-0035(3) (stating same). The code also requires additional primary

safety zone as the slope increase away from and down the slope from the dwelling or structure. *Id.* (8)(c)(i)(aa).

The current site plan fails to show the secondary fuel break extending a minimum of 100 feet in all directions around the primary safety zone. Instead, the secondary fuel break in the site plan stops at the edge of the parcel boundary and does not extend the required minimum of 100 feet. For that reason, the approved site plan and fuel breaks violates state law and the county's code.

A homeowner cannot maintain the vegetation within the fuel breaks to the appropriate standards if the fuel break extends off the property and beyond the owner's control. For that reason, the provisions require the landowners to establish fuel breaks on land they either own or control. If they do not own the land, the law requires landowners to obtain an easement to ensure their control over the minimum distances. The county has previously required developers to comply with this requirement. Ex 7 (requiring fuel breaks to be established to minimum distances, whether on the subject property or through an easement). The language of the code has not changed since that time, and for that reason, the county's about face is inexplicable and arbitrary and capricious.

The county's failure to require the applicant to establish the required minimum fuel break distances fails to give effect to the language in the 1991 ODF siting standards cited by OAR 660-006-0035(3) and the language in the county's own code. The county's interpretation allows landowners to establish fuel breaks that are less than the required minimum distance. Fuel breaks are an important component of ensuring the safety of residents who live in the wildland urban interface and first responders. Adequate fuel breaks are meant to protect people and property in the event of a wildfire. The county cannot override state law and impose a standard that is less protective of health, safety, and welfare than the state requirement.

In this case, the Goodmans own and control the adjacent parcel, tax lot 506. Ex 3 at 30. The county has no basis for failing to extend secondary fuel break to the minimum 100-foot distance. And the county has no basis for failing to require the Goodmans to establish an easement for the fuel break onto tax lot 506 so that any future owner of tax lot 507 can maintain the fuel break for as long as the dwelling remains on the property.

Conclusion

1000 Friends asks that the hearings official to deny the applicant's request for a forest template dwelling. The applicants' tract already contains a dwelling, and the county cannot approve a second forest template dwelling. In the alternative, the applicant must submit a site

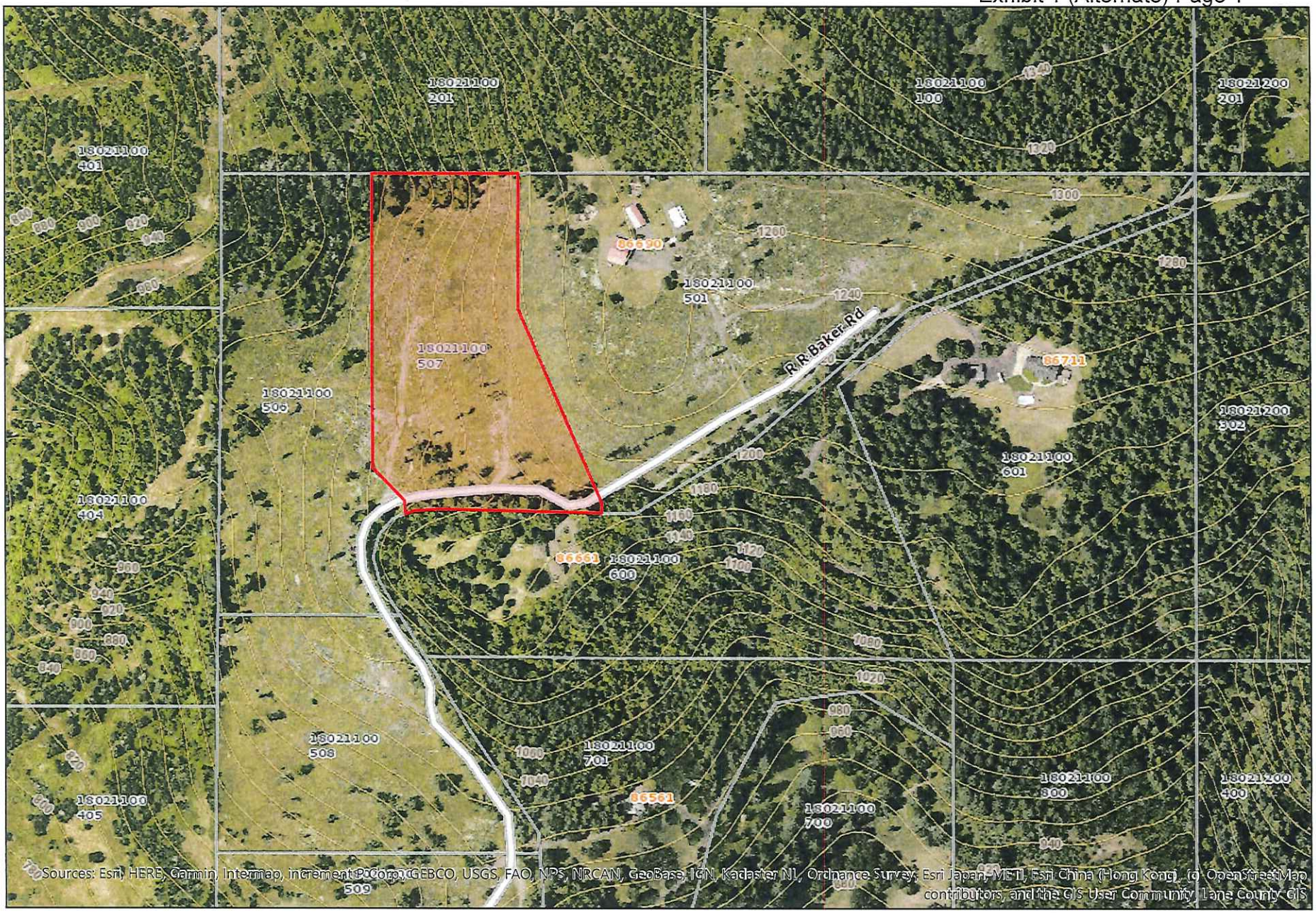
plan that includes the minimum secondary fuel break distance required by law (and accompanying easement to establish control over the entirety of the fuel break if necessary). 1000 Friends requests that the hearings official issue conditions of approval that require compliance with an approved site plan that demonstrates compliance with the minimum fuel break standards. The county cannot defer ultimate review of the site plan and evaluation of whether the site plan complies with the applicable code provisions to a non-public proceeding.

Sincerely,

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

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

Enclosures:
Ex 1, Vicinity maps for subject property
Ex 2, Business entity filing records for Nimpkish, LLC
Ex 3, Tax lot records and deed for Goodman tract
Ex 4, Tax Map 18021100
Ex 5, Application and decision notices for dwellings on tax lots 506, 508, and 509
Ex 6, 1991 ODF Fire Siting Standards
Ex 7, Fuel break easements and excerpts of dwelling approval conditions of approval



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

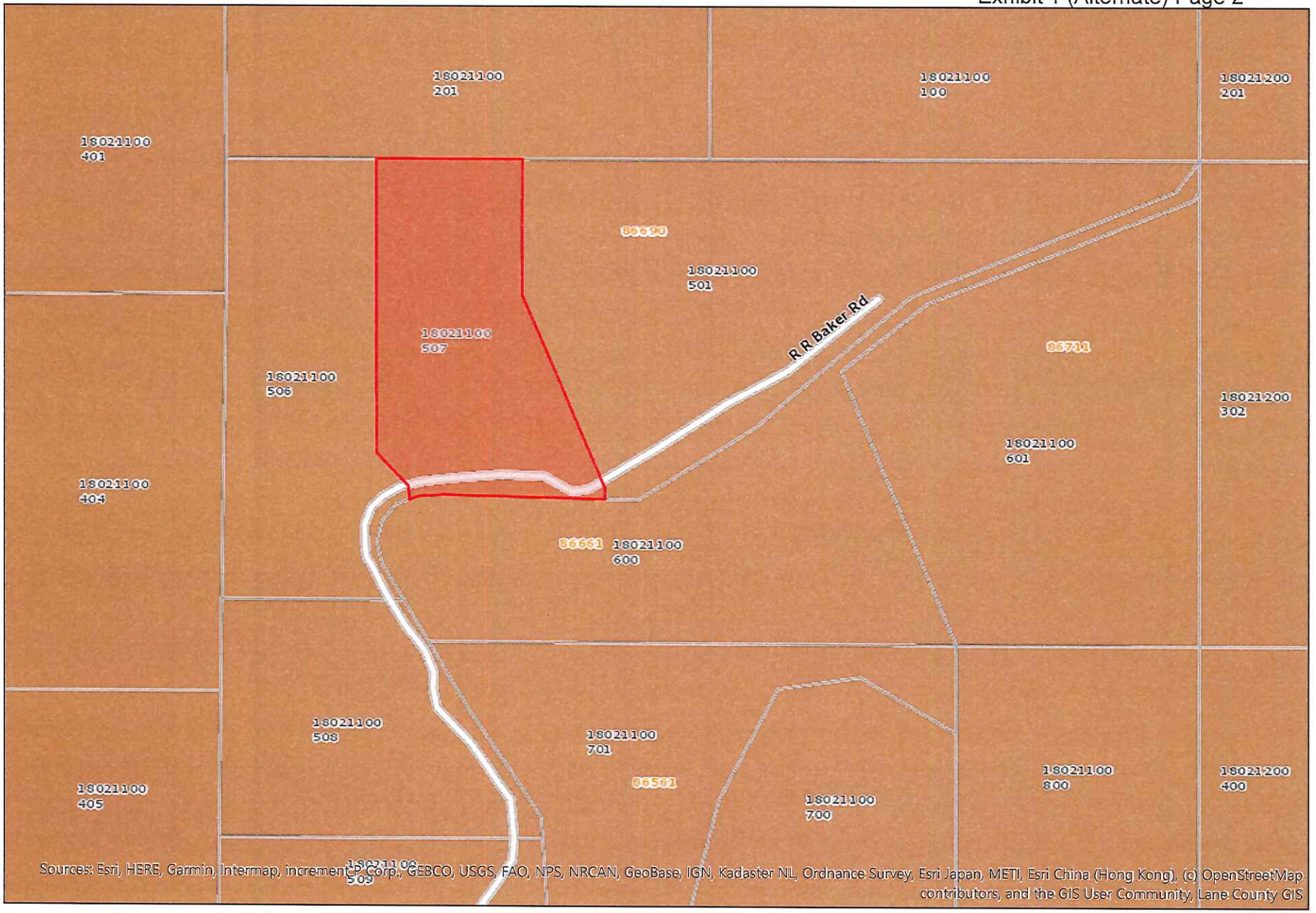
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0 245 490 980
Feet

ArcGIS Web Map

Lane County, Oregon

0677



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

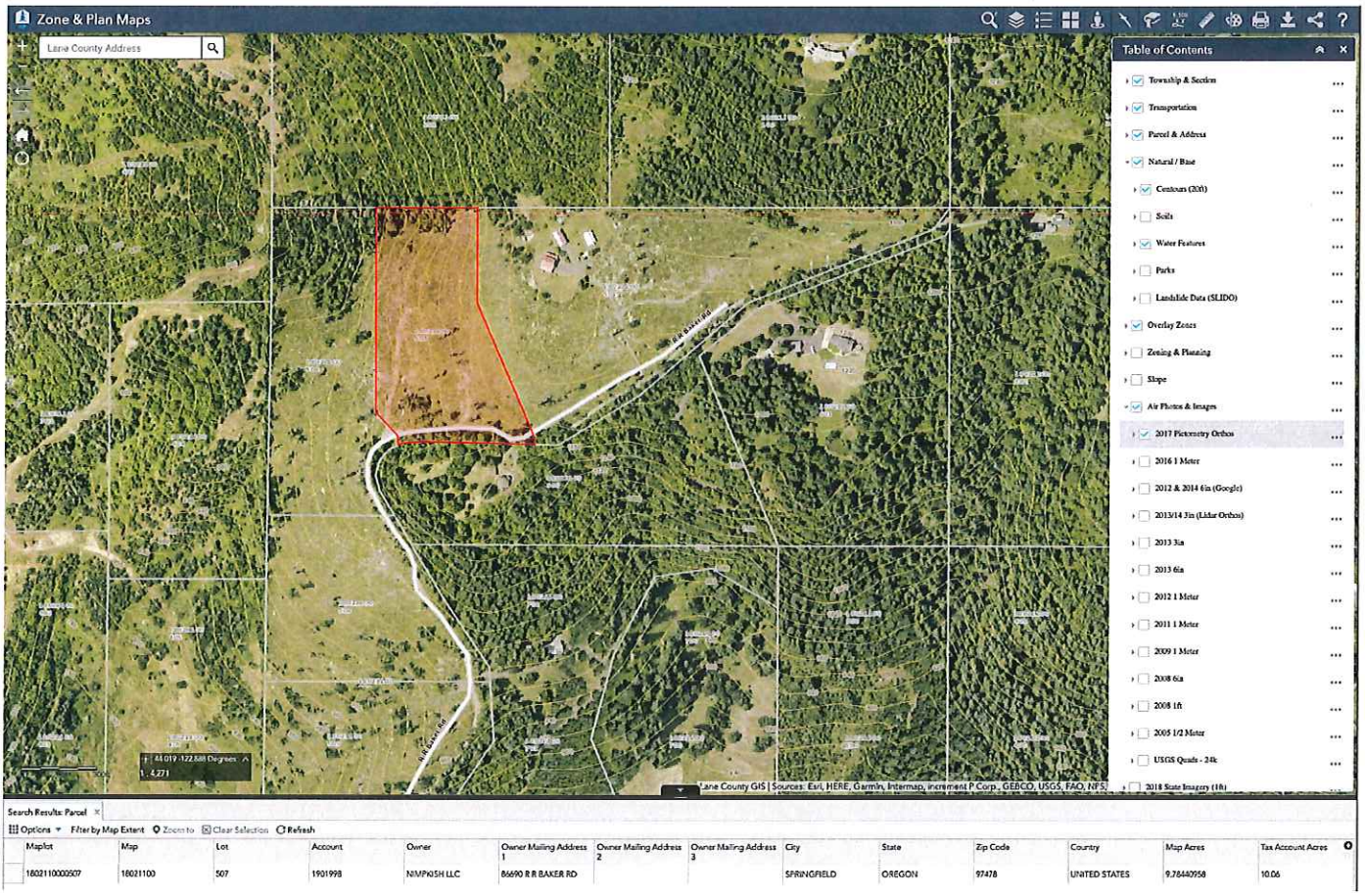
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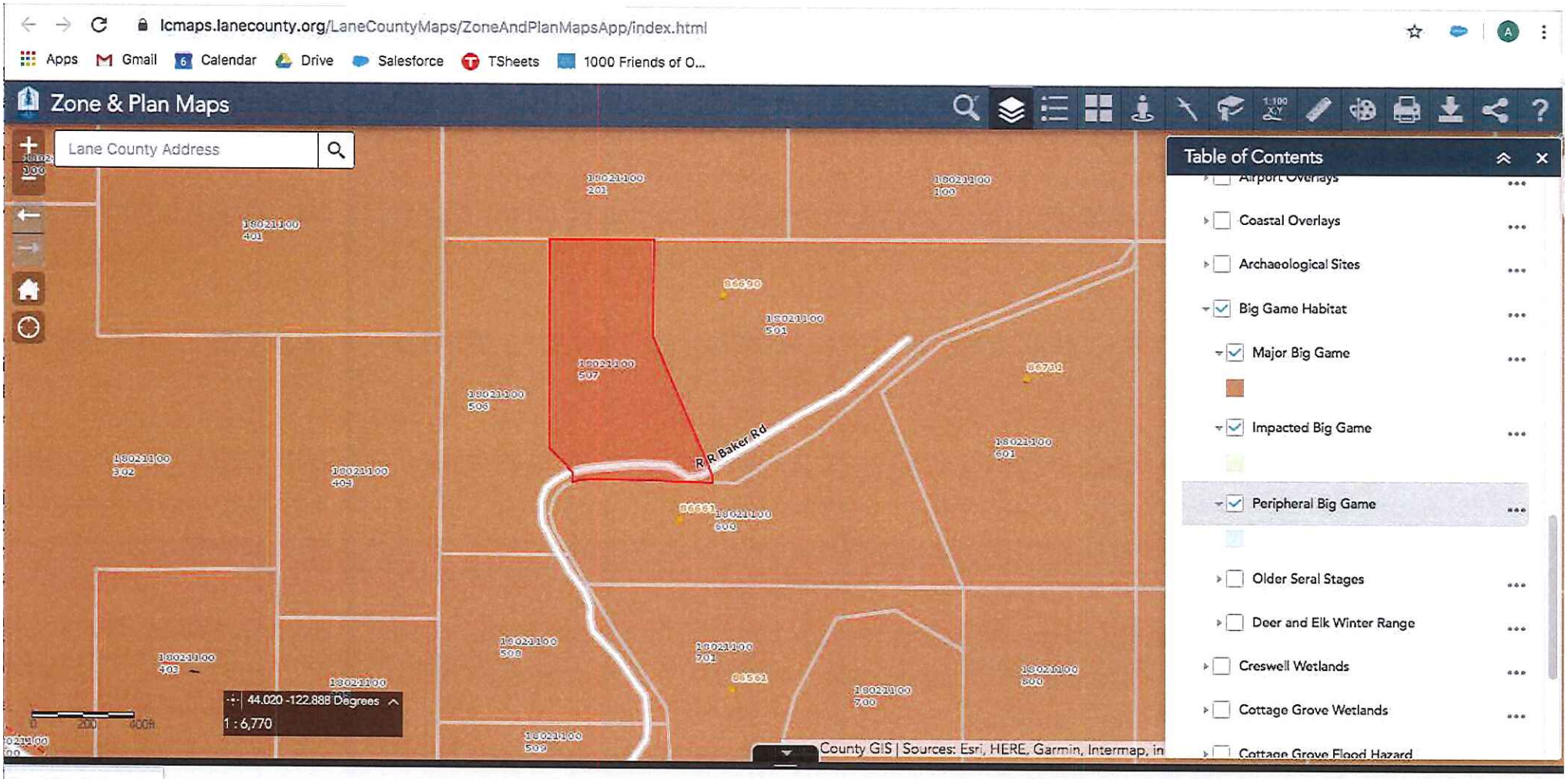
Major Big Game Overlay (shown in orange)

Lane County, Oregon

0678



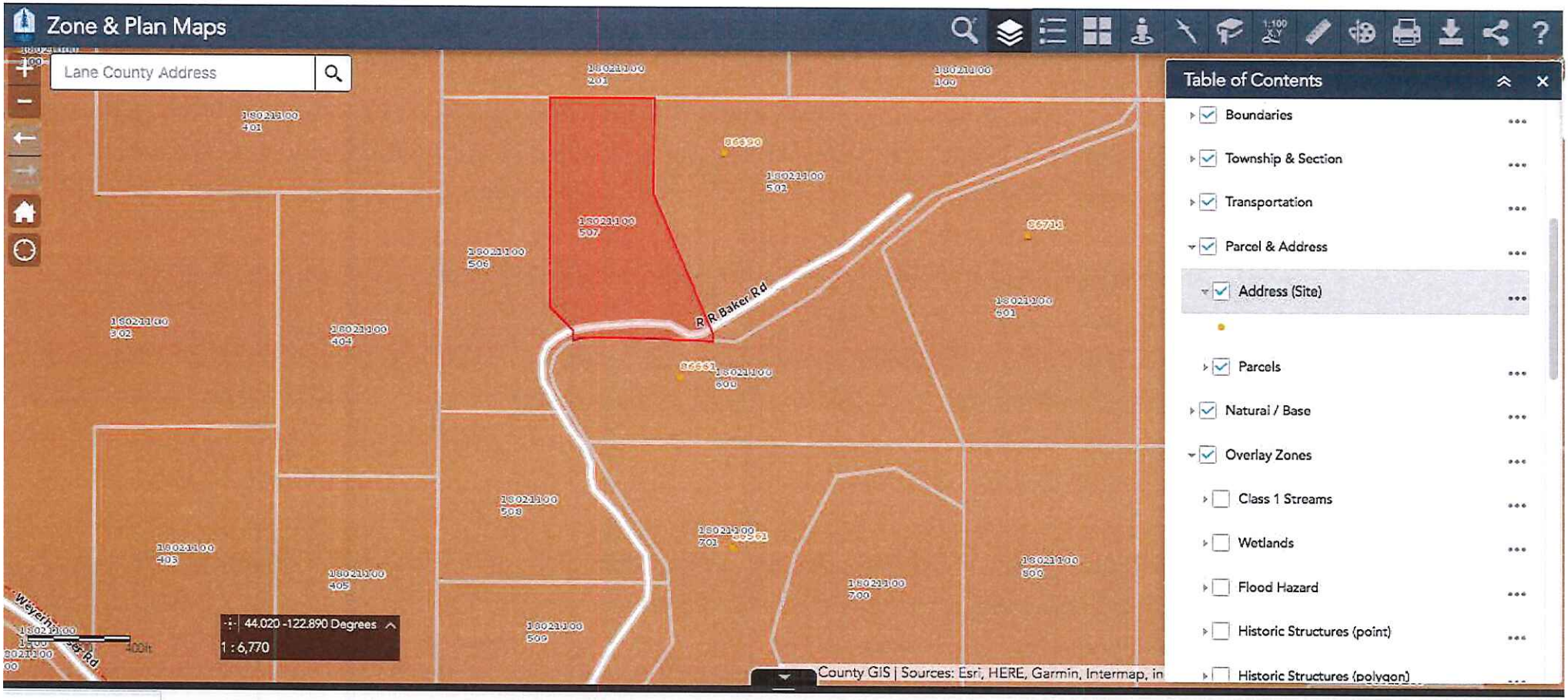
Maplot	Map	Lot	Account	Owner	Owner Mailing Address 1	Owner Mailing Address 2	Owner Mailing Address 3	City	State	Zip Code	Country	Map Acres	Tax Account Acres
1802110000507	18021100	507	1901998	NIMPKISH LLC	86690 R R BAKER RD			SPRINGFIELD	OREGON	97478	UNITED STATES	9.78440958	10.06



Search Results: Parcel

Options | Filter by Map Extent | Zoom to | Clear Selection | Refresh

Maplot	Map	Lot	Account	Owner	Owner Mailing Address 1	Owner Mailing Address 2	Owner Mailing Address 3	City	State	Zip Code	Country	Map Acres	Tax Account Acres
1802110000507	18021100	507	1901998	NIMPKISH LLC	86690 R R BAKER RD			SPRINGFIELD	OREGON	97478	UNITED STATES	9.78440958	10.06



Search Results: Parcel

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1802110000507	18021100	507	1901998	NIMPKISH LLC	86690 R R BAKER RD			SPRINGFIELD	OREGON	97478	UNITED STATES	9.78440958	10.06

Business Name Search

New Search Printer Friendly

Business Entity Data

11-06-2019 15:47

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
1530329-91	DLLC	ACT	OREGON	03-11-2019	03-11-2020	
Entity Name	NIMPKISH, LLC					
Foreign Name						

New Search Printer Friendly

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS		
Addr 1	86690 RR BAKER RD			
Addr 2				
CSZ	SPRINGFIELD	OR	97478	Country: UNITED STATES OF AMERICA

Please click here for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	03-11-2019	Resign Date	
Name	GRAY		GOODMAN			
Addr 1	86690 RR BAKER RD					
Addr 2						
CSZ	SPRINGFIELD	OR	97478	Country: UNITED STATES OF AMERICA		

Type	MAL	MAILING ADDRESS		
Addr 1	86690 RR BAKER RD			
Addr 2				
CSZ	SPRINGFIELD	OR	97478	Country: UNITED STATES OF AMERICA

Type	MEM	MEMBER		Resign Date	
Name	GRAY		GOODMAN		
Addr 1	86690 RR BAKER RD				
Addr 2					
CSZ	SPRINGFIELD	OR	97478	Country: UNITED STATES OF AMERICA	

Type	MEM	MEMBER		Resign Date	
Name	DOROTEA		GOODMAN		
Addr 1	86690 RR BAKER RD				
Addr 2					

CSZ	SPRINGFIELD	OR	97478		Country	UNITED STATES OF AMERICA

New Search Printer Friendly

Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
NIMPKISH, LLC	EN	CUR	03-11-2019	

Please read before ordering Copies.

New Search Printer Friendly

Summary History

Image Available	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
	ARTICLES OF ORGANIZATION	03-11-2019		FI	Agent	

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For comments or suggestions regarding the operation of this site,
please contact : corporation.division@state.or.us

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Articles of Organization - Limited Liability Company

Secretary of State - Corporation Division - 255 Capitol St. NE, Suite 151 - Salem, OR 97310-1327 - sos.oregon.gov/business - Phone: (503) 986-2200

FILED
MAR 11 2019
OREGON
SECRETARY OF STATE

[redacted]

[redacted]

REGISTRY NUMBER: 1530329-91

In accordance with Oregon Revised Statute 192.410-192.490, the information on this application is public record. We must release this information to all parties upon request and it will be posted on our website.

For office use only

Please Type or Print Legibly in Black Ink. Attach Additional Sheet if Necessary.

1. **NAME OF LIMITED LIABILITY COMPANY:** (Must contain the words "Limited Liability Company" or the abbreviations "LLC" or "L.L.C.")

NIMPKISH, LLC

2. **DURATION:** (Please check one.)

● Duration shall be perpetual.

○ Latest date upon which the Limited Liability Company is to dissolve is _____

3. **PRINCIPAL OFFICE:** (Must be a physical street address)

86690 RR BAKER ROAD
SPRINGFIELD OR 97478

4. **REGISTERED AGENT:** (Individual or entity that will accept legal service for this business)

GRAY GOODMAN

5. **REGISTERED AGENT'S PUBLICLY AVAILABLE ADDRESS:** (Must be an Oregon Street Address, which is identical to the registered agent's office.)

86690 RR BAKER ROAD
SPRINGFIELD OR 97478

6. **ADDRESS WHERE THE DIVISION MAY MAIL NOTICES:**

86690 RR BAKER ROAD
SPRINGFIELD OR 97478

7. **HOW WILL THIS LIMITED LIABILITY COMPANY BE MANAGED?**

● This LLC will be member-managed by one or more members.

○ This LLC will be manager-managed by one or more managers.

8. **IF RENDERING A LICENSED PROFESSIONAL SERVICE OR SERVICES, DESCRIBE THE SERVICE(S) BEING RENDERED:** ORS 58.015(5)(m)

9. **OPTIONAL PROVISIONS:** (Attach a separate sheet if necessary.)

○ **BENEFIT COMPANY:** The Limited Liability Company is a benefit company subject to sections 1 to 11 of chapter 269, Oregon Laws 2019. (additional requirements apply)

● **INDEMNIFICATION:** The company elects to indemnify its members, managers, employees, agents for liability and related expenses under ORS 63.160 - 63.170.

○ SEE ATTACHED

10. **NAME AND ADDRESS OF EACH PERSON WHO IS FORMING THIS BUSINESS:** (ORGANIZER)

GRAY GOODMAN
DOROTEA GOODMAN
86690 RR BAKER ROAD
SPRINGFIELD OR 97478

LIST MEMBERS AND/OR MANAGERS NAMES AND ADDRESSES (MAY BE REQUIRED BY YOUR BANK)

11. **OWNERS: (MEMBERS)** (Names and Addresses)

GRAY GOODMAN
DOROTEA GOODMAN
86690 RR BAKER ROAD
SPRINGFIELD OR 97478

12. **MANAGERS: (MANAGERS)** (Names and Addresses)

13. **INDIVIDUAL WITH DIRECT KNOWLEDGE** (Name and Address) List the name and address of at least one individual who is a member or manager of the LLC or an authorized representative with direct knowledge of the operations and business activities of the LLC.

GRAY GOODMAN
86690 RR BAKER ROAD
SPRINGFIELD OR 97478

14. **EXECUTION/SIGNATURE OF EACH PERSON WHO IS FORMING THIS BUSINESS:** (Organizer)

I declare as an authorized signer, under penalty of perjury, that this document does not fraudulently conceal, fraudulently obscure, fraudulently alter or otherwise misrepresent the identity of the person or any members, managers, employees or agents of the limited liability company. This filing has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete. Making false statements in this document is against the law and may be penalized by fines, imprisonment or both.

SIGNATURE:	PRINTED NAME:	TITLE:
	GRAY GOODMAN	MEMBER

CONTACT NAME: (To resolve questions with this filing)
JOSEPH J LEAHY - ATTY OSB 700835

PHONE NUMBER: (Include area code)
541-746-9621

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NIMPKISH, LLC

153032991-19814463 NEWORG 684

Articles of Organization - Limited Liability Company 11/17

Detailed Property Report

Site Address	86690 R R Baker Rd Springfield, OR 97478-9542	**Property Owner 1**	Goodman Gray McKenzie & Dorotea E C 86690 R R Baker Rd Springfield, OR 97478
Map & Taxlot#	18-02-11-00-00501		
SIC	N/A		
Tax Account#	0567683		Tax account acreage 5.00 Mapped taxlot acreage† 20.65

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Code Split - Other land tax account(s) associated with this taxlot 1570066

Map & Taxlot # 18-02-11-00-00501



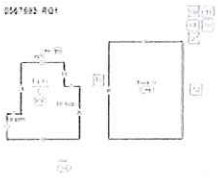
Improvements

Dwelling 1 / Building Type » Class 3 dwelling

Assessor Photo Assessor Sketch



Click to enlarge photo



Inspection Date	08/26/2013	Bedrooms	1	Roof Style	Gable
Building Class	3+	Full Bath(s)	1	Roof Cover	Metal
Year Built	2006	Half Bath(s)	0	Masonry Fireplace(s)	Yes
Effective Year Built	2006	Depreciation	9%	Percent Complete as of Jan 1st	100 %
				Heat	Wall units

Floor Characteristics

	Base Sq Ft	Finished Sq Ft	Exterior
1st Floor	979	979	Composition siding
Basement	1564	0	Composition siding
Total Sq Ft	2543	979	

Other Square Footage

Detached Garage	N/A	Attached Garage	N/A
Basement Garage	1564	Carport	N/A
Paved Patio	1152	Paved Driveway	N/A

Other Photos & Sketches for Tax Account



Site Address Information

86690 R R Baker Rd
Springfield, OR 97478-9542

House #	86690	Suffix	N/A	Pre-directional	N/A
Street Name	R R Baker	Street Type	Rd	Unit type / #	N/A
Mail City	Springfield	State	OR	Zip Code	97478
Zip + 4	9542				

Land Use 1111 Single Family Housing
USPS Carrier Route R001

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Goodman Gray McKenzie & Dorotea E C	86690 R R Baker Rd	Springfield, OR 97478

Taxpayer

Party Name	Address	City/State/Zip
Goodman Gray McKenzie & Dorotea E C	86690 R R Baker Rd	Springfield, OR 97478

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

Sale Date	Sale Price	Doc #	Image	Analysis Code	Multiple Accts?	Grantor(s)	Grantee(s)
12/09/2015	$0	2016-2988		**B**	Yes	Goodman Gray McKenzie & Dorotea E C	Goodman Gray McKenzie & Dorotea E C
03/06/2014	$0	2014-7870		**6**	Yes	Goodman Gray McKenzie	Goodman Gray McKenzie & Dorotea E C
06/10/2010	$0	2010-27921		**8**	Yes	Goodman Ward Council	Goodman Gray McKenzie
01/03/1994	$0	1994-542		**6**	data not available	Goodman, Irwin Lee & Grace E H&W	data not available
12/14/1993	$0	1993-82769		**6**	data not available	Goodman, Irwin Lee & Grace E H&W	data not available
12/14/1993	$0	1993-82768		**6**	data not available	Goodman, Irwin Lee	data not available
01/06/1993	$0	1994-3645		**6**	data not available	Goodman, Irwin Lee & Grace E H&W	data not available

Data source: Lane County Assessment and Taxation

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Nov 6, 2019

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 1802110000501
Status Active

Current Parcel/Account	Current TCA
0567683	00113
1570066	00103

Document #	Type	Date	Effective Year	Tax Lot Acres
2019-011320	Lot Line Adjustment	03/27/2019	2019	21.24
Comments:	Lot Line Adjustment with TL 00501 & TL 00507			
2017-062866	Segregation	12/22/2017	2018	22.50
Comments:				
2016-002988	Court Order	12/09/2015	2016	63.50
Comments:	List Only			
2014-007870	Bargain and Sale Deed	03/06/2014	2014	63.50
Comments:				
	Description Card			63.50
Comments:				

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

CODE NO.

MAP NO. 18-02-11 | TAX LOT NO. 501 | SECTION 11 | TOWNSHIP 18 S. | RANGE 2W. W.M. | AERIAL PHOTO

ACCOUNT NUMBER

LOT NO. | BLOCK NO. | ADDITION | CITY

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
		1963	R199/77334	
		1964	R237/44920 /44921	
		1967	R342/81490 R342/81489	

Beg. at the intersection of the ¼ line running North & South through Sec. 11,Twp.18S,R.2W,WM. with the North line of the James A. Wallace DLC. 40,of said Twp.& Range, thence N'ly along said ¼ line to the NW. corner of the S½ of NE¼ of said Sec. 11, thence E'ly along the North line of the S½ of the NE¼ of said Sec. 11 to an iron pipe set on the center line of a private road, thence

SW'ly along the center line of the private road the following courses & distances:

S.34°W.	101.0 ft.
S.70°W.	774.0 ft.
S.51°30'W.	564.0 ft.
S.60°W.	372.0 ft.
N.89°30'W.	555.0 ft.
S.86°W.	75.0 ft.
S.69°W.	75.0 ft.
S.41°W.	75.0 ft.
S.14°W.	75.0 ft.
S.16°E.	75.0 ft.
S.31°E.	775.0 ft.
S.04°E.	274.0 ft.
S.34°W.	260.0 ft.
S.74°30'W.	290.0 ft.
S.45°W.	75.0 ft. and
S.11°W.	to a point on the North line of said claim #40; thence

W'ly along said claim to the POB. in LCO.

Together: with the E½ of said private road, being a strip of land 20 ft. wide lying adjacent to & East of the above described center line.

Also: All of the remainder of the private road (being a strip of land 40 ft. in width) extending from the above mentioned intersection of the center line thereof with the N'ly line of said claim #40, in a SE'ly direction to the N'ly line of County Road #421 the center line of which is more particularly desc. as follows:

Beg. at the SE. corner of Sec.11,Twp.18S,R.2W,WM., thence

West 1199.5 ft. and

North 816.5 ft. to an iron pipe set on

CANCELLED

CANCELLED

Continues...

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OLD NUMBER — OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON — CODE NO.

MAP NO. 18-02-11 ACCOUNT	TAX LOT NO. 501 NUMBER	SECTION 11	TOWNSHIP 18 S.	RANGE 2W W.M.	AERIAL PHOTO
LOT NO.	BLOCK NO.	ADDITION		CITY	

INDENT EACH NEW COURSE TO THIS POINT — LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
the N'ly line of County Road #421 as now located through said Sec. 11, & marking the True POB., thence NW'ly along said center line the following courses & distances, N.00°30'W. 470.0 ft. thence N.12°W. 75.0 ft. N.26°W. 75.0 ft. N.52°W. 75.0 ft. West 200.0 ft. N.74°W. 145.0 ft. S.77°W. 590.0 ft. N.89°W. 75.0 ft. N.37°W. 75.0 ft. N.11°E. to its intersection with the North line of said claim #40 & the most S'ly point on the centerline of the private road as described above. Also: A strip of land 20 ft. in width lying adjacent to & East of the East line of said 40 ft. private road & extending 224 ft N'ly from the intersection of the East line of said 40 ft. private road with the N'ly line of County Road #421 (being 40 ft. in width)			
Total acres m/l			63.50
*(R237/44920 & 44921 refer to ownership and desc. does not read the same as above as it includes more)			
Beginning at the intersection of the ¼ line running North and South through Section 11, T18S, R2W, of the WM., with the N line of the James A. Wallace DLC #40 of said Township and Range; thence Northerly along said ¼ line to the NW corner of the South ½ of the NE¼ of said Section 11; thence Easterly along the North line of the S¼ of the NE¼ of said Section 11 to an iron pipe set on the centerline of a private road; thence Southwesterly along the center of the private road the following courses and distances; S34°W 101.00 ft.; thence S70°W 774.00 " S51°30'W 564.00 "	1968	R342/81489	
CONTINUED - - Over			

CANCELLED

0689

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 567.683

MAP NO. 18-02-11 | TAX LOT NO. 501 | ACCOUNT NUMBER | SECTION 11 | TOWNSHIP 18 S. | RANGE 2W W.M.

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION · Page -3-

DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING

CONTINUED from Page -2-

n	S60°W	372.00	feet, thence	1976 R780/5768
	N89°30'W	555.00	" "	1968 R342/81489
	S86°W	75.00	" "	
	S69°W	75.00	" "	
	S41°W	75.00	" "	
	S14°W	75.00	" "	
	S16°E	75.00	" "	
	S31°E	775.00	" "	
	S04°E	274.00	" "	
	S34°W	260.00	" "	
	S74°30'W	290.00	" "	
	S45°W	75.00	" "	

S11°W to a point on the N line of said Claim No. 40; thence

Westerly along said Claim line to the point of beginning, in Lane County, Oregon.

Containing more or less 63.50

Beginning at the intersection of the ¼ line running North and South through Section 11, T18S, R2W of the WM. with the N line of the James A. Wallace DLC #40 of said Township and Range; thence — 1968 R342/81490

Northerly along said ¼ line to the NW corner of the S½ of the NE¼ of said Section 11; thence — 1988 CIRCUIT COURT CASE #508608908 / 1993 BS R1905/9382768 / 1993 BS R1405/9382769

Easterly along the North line of the S½ of the NE¼ of said Section 11 to an iron pipe set on the center line of a private road; thence — 1994 bs R1910/9400542

Southwesterly along the center of the private road the following courses and distances; — 1994 bs R1913/9403645*

S34°W	101.00	ft.
S70°W	774.00	"
S51°30'W	564.00	"
S60°W	372.00	"
N89°30'W	555.00	"
S86°W	75.00	"
S69°W	75.00	"
S41°W	75.00	"
S14°W	75.00	"
S16°E	75.00	"
S31°E	775.00	"

2010 bs 2010-027921

CONTINUED OVER

* RIGHT OF SURVIVORSHIP

CANCELLED 2018

CANCELLED

0690

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES
OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

MAP NO. 18-02-11	TAX LOT NO. 501	SECTION 11	TOWNSHIP 18 S.	RANGE 2W W.M
ACCOUNT NUMBER				

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION Page -4-

DEED RECORD: DATE OF ENTRY | DEED NUMBER

ACRES REMAINING

Continued from Page -3-

S04°E 274.00 Ft.
S34°W 260.00 "
S74°30'W 290.00 "
S45°W 75.00 "
S11°W to a point on the North line of said Claim #40; thence
Westerly along said Claim line to the point of beginning, in Lane County, Oregon.

TOGETHER WITH the E½ of said private road, being a strip of land 30 feet (20.00 ft.) in width lying adjacent to and East of the above described center line.

ALSO: All of the remainder of the private road (being a strip of land 40.00 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said claim #40, in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows:

Beginning at the SE corner of Section 11, T18S, R2W of the WM.; thence
West 1199.30 ft. and (1199.5 ft.)
North 816.30 ft. (816.5 ft.) to an iron pipe set on the Northerly line of County Road No. 431(421) as now located through said Section 11, and marking the True Point of Beginning, thence
NW'ly along said centerline the following courses and distances:
N00°39'W 470.00 ft.;
N12°W 75.00 ft.
N26°W 75.00 "
N52°W 75.00 "
West 200.00 "
N74°W 145.00 "
S77°W 390.00 " (590.00 ft.)
N69°W 75.00 "
N11°E to itsintersection with the N line of said Claim No. 40 and the Most Southerly point on the centerline of theprivate road as described above.

ALSO: a strip of land 20.00 ft. in width lying adjacent to, and East of the East line of said

CONTINUED on Page - 5 -

CANCELLED 2018

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES
OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

MAP NO. 18-02-11	TAX LOT NO. 501	SECTION 11	TOWNSHIP 18 S.	RANGE 2W W.M.
ACCOUNT NUMBER				

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION Page -5-	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	Continued from Page -4-			
	40.00 feet private road extending 234.00 feet Northerly from the intersection of the East (s/b 224.00') line of said 40.00 foot private road with the Northerly line of County Road No. 421 (being 40.00 feet in width)			
	Containing more or less			63.50
	CANCELLED 2018			
	EXCEPT: 41.00 ac to New Tax Lot 00506 by 2017-062866 for 2018 (new description on following page)			
	Containing more or less			22.50

Continues.....

New Description
2017-062866

ND 501

Exhibit A

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road, being the TRUE POINT OF BEGINNING; thence Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; North 89°30' West 315 feet; thence leaving said centerline North to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 to the point of beginning, in Lane County, Oregon, TOGETHER with the East ½ of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described centerline.

Contains m/l 22.50 ac 2019

ACRE Correction by 2019-011320 for 2019 CONTAINS M/L 22.86 AC

EXCEPT: 1.62 AC to TL 00507
by 2019-011320 for 2019

CONTAINS M/L 21.24 AC

CANCELLED

CONTINUED...

2019-011320
NEW DESCRIPTION

Exhibit A ND TL 501

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road, being the TRUE POINT OF BEGINNING; thence Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; North 89°30' West 85 feet; thence leaving said centerline N23°31'52"W 576.00 feet; thence North 370.80 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 to the true point of beginning, in Lane County, Oregon, TOGETHER with the East ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

CONT INS 21 2 C

Division of Chief Deputy Clerk
Lane County Deeds and Records
2010-027921

$47.00

01154301201000279210020021

06/15/2010 10:50:43 AM

RPR-DEED Cnt=1 Stn=15 CASHIER 04
$10.00 $11.00 $16.00 $10.00

After Recording Return To:
Leahy, Van Vactor & Cox, LLP
188 West B Street, Building N
Springfield, OR 97477

Until Requested otherwise,
send all tax statements to:
Ward C. Goodman
34649 Devonshire Drive
Eugene, OR 97405

BARGAIN AND SALE DEED

Ward Council Goodman, Grantor, conveys to Gray McKenzie Goodman, Grantee, the following real property situated in Lane County, Oregon, and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

The true consideration of this conveyance is other than monetary.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.101, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.201 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

DATED this 10 day of June, 2010.

WARD C. GOODMAN

STATE OF OREGON)
) ss.
County of Lane)

This instrument was acknowledged before me on June 10, 2010, by Ward C. Goodman.

OFFICIAL SEAL
LINDA J CRAIG
NOTARY PUBLIC - OREGON
COMMISSION NO. 433698
MY COMMISSION EXPIRES OCTOBER 26, 2012

Notary Public for Oregon
My Commission Expires: 10-26-2012

EXHIBIT A

BEGINNING at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A. Wallace Donation Land Claim No. 40 of said Township and Range; thence, Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence, Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road; thence, Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51° 30' West 564 feet; South 60° West 372 feet; North 89° 30' West 555 feet; South 86° West 75 feet; South 69° West 75 feet; South 41° West 75 feet; South 14° West 75 feet; South 16° East 75 feet; South 31° East 775 feet; South 04° East 274 feet; South 34° West 260 feet; South 74° 30' West 290 feet; South 45° West 75 feet and South 11° West to a point on the North line of said Claim No. 40; thence, Westerly along said Claim line to the point of beginning in Lane County, Oregon, TOGETHER with the east 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described center line.

ALSO: All of the remainder of the private road (being a strip of land 40 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows: Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence, West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence, Northwesterly along said centerline the following courses and distances: North 0° 30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° west 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 foot private road and extending 224 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).

EXHIBIT A

After Recording Return To:
Leahy, Van Vactor, Cox & Melendy, LLP
188 West B Street, Building N
Springfield, OR 97477

Until Requested otherwise,
send all tax statements to:
Gray and Dorotea Goodman
P.O. Box 2113
Jasper, OR 97438

Lane County Clerk
Lane County Deeds and Records
2014-007870
$52.00
01422482201400078700020022
03/06/2014 03:12:27 PM
RPR-DEED Cnt=1 Stn=15 CASHIER 11
$10.00 $11.00 $21.00 $10.00

BARGAIN AND SALE DEED

Gray McKenzie Goodman, Grantor, conveys, bargains and sells to Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman, Husband and Wife, Grantees, the following real property situated in Lane County, Oregon, and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

[Map and Tax Lot 18-02-11-00-00501; Tax Account No. 0567683]

The true consideration of this conveyance is other than monetary.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this 6TH day of March, 2014.

Gray McKenzie Goodman

STATE OF OREGON)
) ss.
County of Lane)

This instrument was acknowledged before me on March 6, 2014, by Gray McKenzie Goodman.

OFFICIAL SEAL
KIMBERLY A FICEK
NOTARY PUBLIC - OREGON
COMMISSION NO. 461317
MY COMMISSION EXPIRES OCTOBER 16, 2015

Kimberly A Ficek
Notary Public for Oregon
My Commission Expires: 10-16-15

EXHIBIT A

BEGINNING at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A. Wallace Donation Land Claim No. 40 of said Township and Range; thence, Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence, Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road; thence, Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51° 30' West 564 feet; South 60° West 372 feet; North 89° 30' West 555 feet; South 86° West 75 feet; South 69° West 75 feet; South 41° West 75 feet; South 14° West 75 feet; South 16° East 75 feet; South 31° East 775 feet; South 04° East 274 feet; South 34° West 260 feet; South 74° 30' West 290 feet; South 45° West 75 feet and South 11° West to a point on the North line of said Claim No. 40; thence, Westerly along said Claim line to the point of beginning in Lane County, Oregon, TOGETHER with the east 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described center line.

ALSO: All of the remainder of the private road (being a strip of land 40 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows: Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence, West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence, Northwesterly along said centerline the following courses and distances: North 0° 30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° west 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 foot private road and extending 224 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).

EXHIBIT A

AFTER RECORDING RETURN TO:

15CV26890

Gray Goodman
PO Box 2113
Jasper, OR
97438

Lane County Clerk
Lane County Deeds and Records
2016-002988
$77.00
01555156920160002988008007O
01/26/2016 01:06:21 PM
RPR-TRAN Cnt=1 Stn=15 CASHIER 05
$35.00 $10.00 $21.00 $11.00

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

GRAY McKENZIE GOODMAN and DOROTEA E.C. GOODMAN,

Plaintiffs,

vs.

ROBERT G. REYNOLDS, ALMA REYNOLDS, LOUIE T. REYNOLDS, and unknown heirs, devisees, successors and assigns of RUSSELL O. REYNOLDS and VERNA MAE REYNOLDS,

Defendants.

Case No. 15CV26890

GENERAL JUDGMENT (DECLARATORY)

THIS MATTER came on before the Court on the motion of Plaintiffs for an order of default against Defendants ROBERT G. REYNOLDS, ALMA REYNOLDS, LOUIE T. REYNOLDS, and unknown heirs, devisees, successors and assigns of RUSSELL O. REYNOLDS and VERNA MAE REYNOLDS; it appearing from the records that Defendants were served with true copies of the Summons and Complaint in Lane County, Oregon on or before October 19, 2015, and that Defendants have not answered nor made any appearances herein, although the time provided therefore has now since expired;

IT FURTHER appearing that Defendants are not or were not at the time of service or at any time during the pendency of these proceedings members of the military of the United States or any of its allies; nor are the Defendants minors, nor are any of the Defendants incapacitated persons;

LEAHY & KIERAN
Attorneys At Law
223 A Street
Suite D
Springfield Oregon
(541) 746-9621
Fax:(541)746-4109

The Court having entered an order of default against the Defendants and finding generally in favor of Plaintiffs and against Defendants in regards to Plaintiffs' complaint; **NOW, THEREFORE;**

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs have judgment against Defendants ROBERT G. REYNOLDS, ALMA REYNOLDS, LOUIE T. REYNOLDS, and unknown heirs, devisees, successors and assigns of RUSSELL O. REYNOLDS and VERNA MAE REYNOLDS as detailed below.

1. Plaintiffs are hereby declared to be the owner in fee simple of the real property described as Tract 1 in the Complaint, as shown in attached Exhibit A, more particularly described with the legal description as follows:

> BEGINNING at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A. Wallace Donation Land Claim No. 40 of said Township and Range; thence, Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence, Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road; thence, Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51° 30' West 564 feet; South 60° West 372 feet; North 89° 30' West 555 feet; South 86° West 75 feet; South 69° West 75 feet; South 41° West 75 feet; South 14° West 75 feet; South 16° East 75 feet; South 31° East 775 feet; South 04° East 274 feet; South 34° West 260 feet; South 74° 30' West 290 feet; South 45° West 75 feet and South 11° West to a point on the North line of said Claim No. 40; thence, Westerly along said Claim line to the point of beginning in Lane County, Oregon, TOGETHER with the East 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described center line.
>
> ALSO: All of the remainder of the private road (being a strip of land 40 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows: Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence, West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence, Northwesterly along said centerline the following courses and distances: North 0° 30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° West 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

LEAHY & KIERAN
Attorneys At Law
223 A Street
Suite D
Springfield Oregon
(541) 746-9621
Fax:(541)746-4109

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 foot private road and extending 224 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).

2. Plaintiffs are hereby declared to be the owner in fee simple of the real property described as Tract 2 in the Complaint, as shown in attached Exhibit A attached hereto for identification, more particularly described with the legal description as follows:

Commencing at a Lane County Brass Cap monument marking the Northwest corner of the John Wallace Donation Land Claim Number 40 in Township 18 South, Range 2 West, Willamette Meridian; thence along the north line of Donation Land Claim Number 40, North 89°54'43" East a distance of 2051.55 feet to a 5/8" rebar with a yellow plastic cap marked "D.W. Baker PLS 1978" on the North-South centerline of Section 11, Township 18 South, Range 2 West, Willamette Meridian and the **TRUE POINT of BEGINNING**; thence leaving the North-South centerline of Section 11 and continuing along the north line of Donation Land Claim Number 40, North 89°54'43" East a distance of 365.26 feet to the point of intersection of the North line of Donation Land Claim Number 40 and the westerly boundary of a 40 foot wide private road (commonly known as R.R. Baker Road); thence along the westerly boundary of said private road and along the arc of a 95.00 foot radius curve left (chord bears South 30°56'28" West 61.34 feet) an arc distance of 62.46 feet to a point marked by a 1/2" iron pipe set in County Survey File Number 17663 (record calls 5/8" iron pin); thence leaving the westerly boundary of said 40 foot private road and along the north boundary of the property described in a Warranty Deed recorded July 6, 1998 on Reel 2438R, Instrument No. 9852390, Lane County, Oregon Official Records, North 87°20'48" West a distance of 334.35 feet to the intersection of the North-South centerline of Section 11 and said north boundary, as described on Reel 2438R, Instrument No. 9852390, Lane County, Oregon Official Records, said intersection point being marked by a found 6" x 6" x 18" Stone set on the North-South centerline of Section 11 in County Survey Number 1102; thence along the North-South centerline of Section 11, North 0°16'18" East a distance of 36.63 feet to the **TRUE POINT of BEGINNING**, all in Lane County, Oregon and containing 15,530 square feet.

3. Plaintiffs are entitled to possession of Tract 1 and 2, as described above, thereof, free of any estate, title , claim, lien, or interest.

4. It is hereby declared that title is quieted in the premises of Plaintiffs as Tract 1 and 2.

//

/

LEAHY & KIERAN
Attorneys At Law
223 A Street
Suite D
Springfield Oregon
(541) 746-9621
Fax:(541)746-4109

5. It is hereby declared that Defendants and any others claiming under Defendants are enjoined from asserting any title, estate, claim, lien or interest in Tract 1 and 2 or any portion thereof;

6. It is further declared that Defendants have no adverse claims as to Plaintiffs' ownership in fee simple of the real property described as Tract 1 and 2; and

7. Plaintiffs shall bear all costs for this action and the recording of, survey and legal description for Tract 1 and 2. Plaintiffs are responsible for their own attorney fees, costs and assessments.

8. This General Judgment may be recorded at Lane County Deeds and Records at Plaintiff's expense.

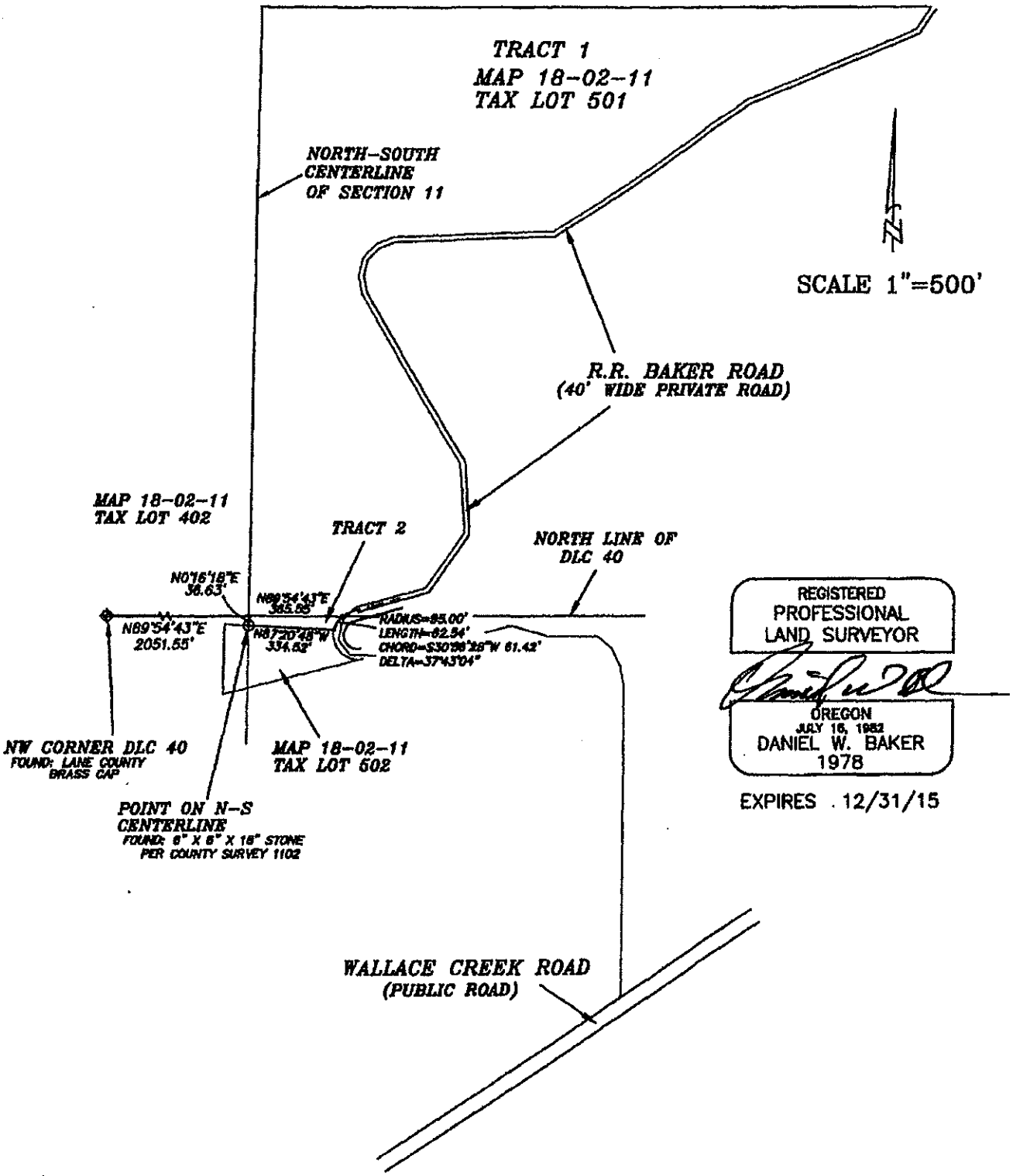
Signed: 12/9/2015 02:57 PM

Clara L. Rigmaiden, Circuit Court Judge

Prepared and Submitted by:
Matthew J. Cox, OSB No. 98200
Of Attorneys for Plaintiffs

LEAHY & KIERAN
Attorneys At Law
223 A Street
Suite D
Springfield Oregon
(541) 746-9621
Fax:(541)746-4109

EXHIBIT A


TRACT 1
MAP 18-02-11
TAX LOT 501
NORTH-SOUTH CENTERLINE OF SECTION 11
SCALE 1"=500'
R.R. BAKER ROAD
(40' WIDE PRIVATE ROAD)
MAP 18-02-11
TAX LOT 402
TRACT 2
NORTH LINE OF DLC 40
N0°16'18"E 36.63'
N89°54'43"E 365.09'
N89°54'43"E 2051.55'
N87°20'48"W 334.52'
RADIUS=95.00'
LENGTH=62.54'
CHORD=S30°38'25"W 61.42'
DELTA=37°43'04"
NW CORNER DLC 40
FOUND: LANE COUNTY BRASS CAP
MAP 18-02-11
TAX LOT 502
POINT ON N-S CENTERLINE
FOUND: 6" X 6" X 18" STONE PER COUNTY SURVEY 1102
WALLACE CREEK ROAD
(PUBLIC ROAD)
REGISTERED
PROFESSIONAL
LAND SURVEYOR
OREGON
JULY 16, 1982
DANIEL W. BAKER
1978
EXPIRES : 12/31/15

* * * * * * * * *

CERTIFICATE OF SERVICE

I certify that on December 8, 2015, I served the foregoing **General Judgment (Declaratory)** on each of the parties below by depositing in United States Post Office at Springfield, Oregon for each, an exact and complete copy thereof, enclosed in a sealed envelope, with postage paid, addressed to the respective attorney for each party, as shown below, at that attorney's regular office address:

Alma Reynolds
4901 Winterset Drive
Las Vegas, NV 89130
Pro Se Defendant

Robert G. Reynolds
5117 Cedar Lawn Way
Las Vegas, NV 89130
Pro Se Defendant

Louie Reynolds
4133 Longmeadow Way
Fort Worth, TX 76133
Pro Se Defendant

LEAHY, VAN VACTOR, COX & MELENDY, LLP

By: _____
Matthew J. Cox, OSB No. 98200
Of Attorneys for Plaintiff

LEAHY & KIERAN
Attorneys At Law
223 A Street
Suite D
Springfield Oregon
(541) 746-9621
Fax (541) 746-3106

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL DOCUMENT CONSISTING OF 6 PAGES, WHICH IS FILED IN THIS OFFICE AND OF WHICH I AM THE LEGAL CUSTODIAN.
DATED 1-26-16
Circuit Court
Lane County, Oregon
By J. Nadine Pratt
J. Nadine Pratt
Court Clerk



Detailed Property Report

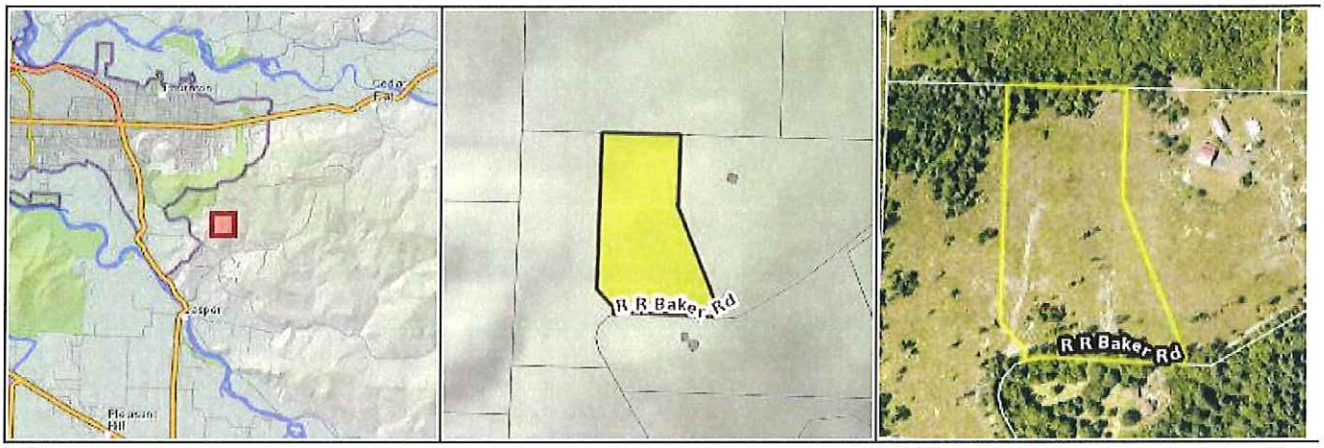
Site Address N/A
Map & Taxlot# 18-02-11-00-00507
SIC N/A
Tax Account# 1901998

Property Owner 1
Nimpkish LLC
86690 R R Baker Rd
Springfield, OR 97478

Tax account acreage 10.06
Mapped taxlot acreage† 9.78

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 18-02-11-00-00507



General Taxlot Characteristics

▫ Geographic Coordinates

X 4291666 **Y** 866920 (State Plane X,Y)
Latitude 44.0206 **Longitude** -122.8937

▫ Zoning

Zoning Jurisdiction Lane County
Lane County

Parent Zone	F2	Impacted Forest
Overlay	BD	Beaches & Dunes

▫ Land Use

General Land Use

Code	Description
data not available	data not available

Detailed Land Use

Code	Description
data not available	data not available

Taxlot Characteristics

Incorporated City Limits	none
Urban Growth Boundary	none
Year Annexed	N/A
Annexation #	N/A
Approximate Taxlot Acreage	9.78
Approx Taxlot Sq Footage	426,017
Plan Designation	Forest
Eugene Neighborhood	N/A
Metro Area Nodal Dev Area	No
Septic	data not available
Well	data not available
Landscaping Quality	data not available
Historic Property Name	N/A
City Historic Landmark?	No
National Historical Register?	No

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Nimpkish LLC	86690 R R Baker Rd	Springfield, OR 97478

Taxpayer

Party Name	Address	City/State/Zip
Nimpkish LLC	86690 R R Baker Rd	Springfield, OR 97478

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Nov 6, 2019

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot 1802110000507
Status Active

Current Parcel/Account	Current TCA
1901998	00103

Document #	Type	Date	Effective Year	Tax Lot Acres
2019-011322	Bargain and Sale Deed	03/20/2019	2019	10.06
Comments:				
2019-011321	Lot Line Adjustment	03/27/2019	2019	10.06
Comments:	Lot Line Adjustment with TL 00507 & TL 00506			
2019-011320	Lot Line Adjustment	03/27/2019	2019	11.92
Comments:	Lot Line Adjustment with TL 00507 & TL 00501			
2018-034401	Segregation	07/24/2018	2019	10.30
Comments:	NEW TAX LOT			
	Description Card			
Comments:				

2018-034401

NEW TAX LOT

Exhibit A TL 507

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 315 feet to the TRUE POINT OF BEGINNING, said point being on the West boundary of that land described in Exhibit A of that deed recorded December 22, 2017, as Instrument No. 2017-062866, Lane County Oregon Deed Records, said point also being the centerline of a private road; thence along the center of the private road North 89°30' West 240.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 303.43 feet; thence North 666.20 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 East 525.00 feet to the Northwest corner of that property described in Exhibit A of said Instrument No. 2017-062866; thence along the West line of said property South 885.30 feet, more or less, to the point of beginning, in Lane County, Oregon, TOGETHER with the Southerly ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

CANCELLED 2019

CONTAINS M/L 10.30 AC

ALSO: 1.62 ac from TL 00501
by 2019-011320 for 2019

CONTIANS M/L 11.92 AC

CONTINUED...

2019-011320
NEW DESCRIPTION

Exhibit B ND TL 507

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 85 feet to the TRUE POINT OF BEGINNING, thence continuing North 89°30' West 470.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 303.43 feet; thence North 681.08 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 North 89°59'29" East 525.00 feet; thence leaving said North line South 370.80 feet, more or less; thence South 23°31'52" East 576.00 feet to the true point of beginning, in Lane County, Oregon, TOGETHER with the Southerly ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

CONTAINS M/L 11.92 AC

EXCEPT: 1.86 ac to TL 00506
by 2019-011321 for 2019

CONTAINS M/L 10.06 AC

CANCELLED 2019

2019-011321
NEW DESCRIPTION

Exhibit A ND TL 507

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 85 feet to the TRUE POINT OF BEGINNING, thence continuing North 89°30' West 470.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 144.62 feet; thence North 795.65 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 North 89°59'29" East 415.00 feet; thence leaving said North line South 370.80 feet, more or less; thence South 23°31'52" East 576.00 feet to the true point of beginning, in Lane County, Oregon, TOGETHER with the Southerly ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

CONT INS 10 0 C

After Recording Return To:

Leahy Cox, LLP
188 West B Street, Building N
Springfield, OR 97477

Until Requested Otherwise,
Send Tax Statements To:

Nimpkish, LLC
86690 RR Baker Road
Springfield, Oregon 97478

Lane County Clerk
Lane County Deeds and Records

2019-011322

01774787201900113220020029

$92.00

03/27/2019 11:42:48 AM

RPR-DEED Cnt=1 Pgs=2 Stn=1 CASHIER 05
$10.00 $11.00 $61.00 $10.00

BARGAIN AND SALE DEED

Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman, Husband and Wife, Grantor, conveys, bargains and sells to NIMPKISH, LLC, Grantee, the following real property situated in Lane County, Oregon, and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

Subject to Easements, Reservations and Restrictions of Record and Specifically including, but not limited to, that certain Declaration of Easement and Road Maintenance Agreement dated 03/20/2019, received 03/21/2019, Reception No. 2019-10357, Lane County Deeds and Records.

The true consideration of this conveyance is other than monetary.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this 20 day of March, 2019.

Gray McKenzie Goodman

Dorotea Elizabeth Chiara Goodman

STATE OF OREGON)
) ss.
County of Lane)

This instrument was acknowledged before me on March, 2019, by Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman.

Notary Public for Oregon

OFFICIAL STAMP
ERIN ANNE DIETER
NOTARY PUBLIC - OREGON
COMMISSION NO. 979070
MY COMMISSION EXPIRES SEPTEMBER 13, 2022

Exhibit A

Property 2

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 85 feet to the TRUE POINT OF BEGINNING, thence continuing North 89°30' West 470.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 144.62 feet; thence North 795.65 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 North 89°59'29" East 415.00 feet; thence leaving said North line South 370.80 feet, more or less; thence South 23°31'52" East 576.00 feet to the true point of beginning, in Lane County, Oregon, TOGETHER with the Southerly ½ of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

Detailed Property Report

Site Address N/A
Map & Taxlot# 18-02-11-00-00506
SIC N/A
Tax Account# 1889094

Property Owner 1
Goodman Gray McKenzie & Dorotea E C
86690 R R Baker Rd
Springfield, OR 97478

Tax account acreage 12.17
Mapped taxlot acreage† 11.83

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 18-02-11-00-00506



General Taxlot Characteristics

▫ Geographic Coordinates

X 4291218 **Y** 866812 (State Plane X,Y)
Latitude 44.0203 **Longitude** -122.8954

▫ Zoning

Zoning Jurisdiction Lane County
Lane County

Parent Zone	F2	Impacted Forest
Overlay	BD	Beaches & Dunes

▫ Land Use

General Land Use

Code	Description
data not available	data not available

Detailed Land Use

Code	Description
data not available	data not available

Taxlot Characteristics

Incorporated City Limits	none
Urban Growth Boundary	none
Year Annexed	N/A
Annexation #	N/A
Approximate Taxlot Acreage	11.83
Approx Taxlot Sq Footage	515,315
Plan Designation	Forest
Eugene Neighborhood	N/A
Metro Area Nodal Dev Area	No
Septic	data not available
Well	data not available
Landscaping Quality	data not available
Historic Property Name	N/A
City Historic Landmark?	No
National Historical Register?	No

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Goodman Gray McKenzie & Dorotea E C	86690 R R Baker Rd	Springfield, OR 97478

Taxpayer

Party Name	Address	City/State/Zip
Goodman Gray McKenzie & Dorotea E C	86690 R R Baker Rd	Springfield, OR 97478

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

Detailed Property Report

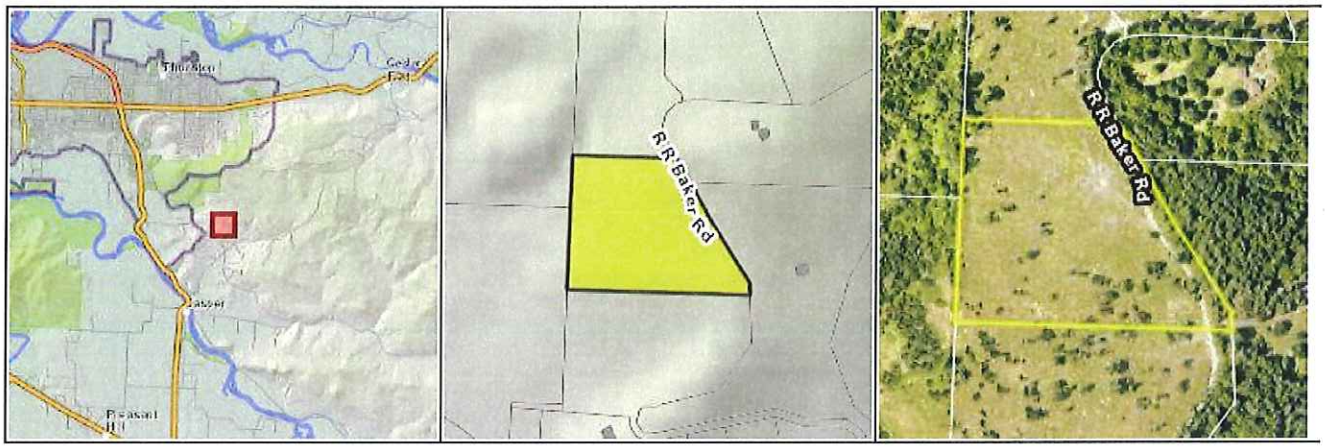
Site Address N/A
Map & Taxlot# 18-02-11-00-00508
SIC N/A
Tax Account# 1902004

Property Owner 1
Nimpkish LLC
86690 R R Baker Rd
Springfield, OR 97478

Tax account acreage 10.30
Mapped taxlot acreage† 10.48

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 18-02-11-00-00508



General Taxlot Characteristics

▫ Geographic Coordinates

X 4291326 **Y** 865865 (State Plane X,Y)
Latitude 44.0177 **Longitude** -122.8949

▫ Zoning

Zoning Jurisdiction Lane County
Lane County

Parent Zone	F2	Impacted Forest
Overlay	BD	Beaches & Dunes

▫ Land Use

General Land Use

Code	Description
data not available	data not available

Detailed Land Use

Code	Description
data not available	data not available

Taxlot Characteristics

Incorporated City Limits	none
Urban Growth Boundary	none
Year Annexed	N/A
Annexation #	N/A
Approximate Taxlot Acreage	10.48
Approx Taxlot Sq Footage	456,509
Plan Designation	Forest
Eugene Neighborhood	N/A
Metro Area Nodal Dev Area	No
Septic	data not available
Well	data not available
Landscaping Quality	data not available
Historic Property Name	N/A
City Historic Landmark?	No
National Historical Register?	No

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Nimpkish LLC	86690 R R Baker Rd	Springfield, OR 97478

Taxpayer

Party Name	Address	City/State/Zip
Nimpkish LLC	86690 R R Baker Rd	Springfield, OR 97478

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Nov 6, 2019

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot	1802110000508	**Current Parcel/Account**	**Current TCA**
Status	Active	1902004	00103

Document #	Type	Date	Effective Year	Tax Lot Acres
2019-010338	Bargain and Sale Deed	03/20/2019	2019	10.30
Comments:				
2019-008388	Segregation	03/06/2019	2019	10.30
Comments:	10.20 acres to new tax lot 00509			
2019-008387	Segregation	03/06/2019	2019	20.50
Comments:	NEW TAX LOT			
	Description Card			
Comments:				

2019-008387

NEW TAX LOT

Exhibit B NTL 508

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road; thence Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; North 89°30' West 555 feet; South 86° West 75 feet; South 69° West 75 feet; South 41° West 75 feet; South 14° West 75 feet; South 16° East 75 feet; South 31° East 775 feet; South 04° East 274 feet; South 34° West 260 feet; South 74°30' West 290 feet; South 45° West 75 feet and South 11° West to a point on the North line of said Claim No. 40; thence Westerly along said Claim line to the point of beginning in Lane County, Oregon, TOGETHER with the East ½ of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described centerline.

CANCELLED 2019

ALSO: All of the remainder of the private road (being a strip of land 40 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows: Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence Northwesterly along said centerline the following courses and distances: North 0°30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° West 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 foot private road and extending 224 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).

LESS: Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along

said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road, being the TRUE POINT OF BEGINNING; thence Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; North 89°30' West 315 feet; thence leaving said centerline North to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 to the point of beginning, in Lane County, Oregon, TOGETHER with the East ½ of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described centerline.

CANCELLED 2019

ALSO LESS: Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A Wallace Donation Land Claim No. 40 of said Township and Range; thence Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe; thence Southwesterly the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51°30' West 564 feet; South 60° West 372 feet; and North 89°30' West 315 feet to the TRUE POINT OF BEGINNING, said point being on the West boundary of that land described in Exhibit A of that deed recorded December 22, 2017, as Instrument No. 2017-062866, Lane County Oregon Deed Records, said point also being the centerline of a private road; thence along the center of the private road North 89°30' West 240.00 feet; thence South 86° West 75.00 feet; thence leaving said centerline North 43°50'00" West 303.43 feet; thence North 666.20 feet, more or less, to the said North line of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the said North line of the South 1/2 of the Northeast 1/4 of said Section 11 East 525.00 feet to the Northwest corner of that property described in Exhibit A of said Instrument No. 2017-062866; thence along the West line of said property South 883.30 feet, more or less, to the point of beginning, in Lane County, Oregon, TOGETHER with the Southerly 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and Southerly of the above described centerline.

ALSO LESS: Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian, with the North line of the James A. Wallace Donation Land Claim No. 40, of said Township and Range; thence along said 1/4 line N0°16'18"E 1204.00 feet to the TRUE POINT of BEGINNING; thence continuing along said 1/4 line N0°16'18"E 1209.50 feet, more or less, to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence along the North line of said South 1/2 of the Northeast 1/4 of said Section 11 N89°59'29"E 316.28 feet to the Northwest corner of the property described as Exhibit A in property line adjustment recorded on July 7, 2018, as

Instrument No. 2018-034401, Lane County Oregon Deed Records; thence leaving said North line of the South 1/2 of the Northeast 1/4 of said Section 11 and along the West line of said property South 681.08 feet, more or less, to a point; thence S43°50'00"E 303.43 feet to a point on the centerline of a private road (RR Baker Rd.) described in deed recorded on March 6, 2014, as Instrument No. 2014-007870, Lane County Oregon Deed Records; thence leaving said West line and along said centerline S69°00'00"W 75.00 feet; thence S41°00'00"W 75.00 feet; thence S14°00'00"W 75.00 feet; thence S16°00'00"E 75.00 feet; thence S31°00'00"E 97.34 feet; thence leaving said centerline N89°43'42"W 465.60 feet to the point of beginning, in Lane County, Oregon, TOGETHER with the Easterly 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

CANCELLED 2019

CONTAINS M/L 20.50 AC

EXCEPT: 10.20 ac to NTL 00509
by 2019-008388 for 2019

2019-008388
NEW DESCRIPTION

Exhibit A ND TL 508

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian, with the North line of the James A. Wallace Donation Land Claim No. 40, of said Township and Range; thence along said 1/4 line N0°16'18"E 553.97 feet to the TRUE POINT OF BEGINNING: thence continuing along said 1/4 line N0°16'18"E 650.03 feet; thence leaving said 1/ 4 line S89°43'42"E 465.60 feet to a point on the centerline of a private road (RR Baker Rd.) described in deed recorded on March 6, 2014, as Instrument No. 2014-007870, Lane County Oregon Deed Records; thence along said centerline S31°00'00"E 677.66 feet; thence S4°00'00"E 71.03 feet; thence leaving said centerline N89°43'42"W 822.67 feet to the point of beginning, in Lane County, Oregon, TOGETHER with the Easterly 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

CONTAINS M/L 10.30 AC

After Recording Return To:

Leahy Cox, LLP
188 West B Street, Building N
Springfield, OR 97477

Until Requested Otherwise,
Send Tax Statements To:

Nimpkish, LLC
86690 RR Baker Road
Springfield, Oregon 97478

Lane County Clerk
Lane County Deeds and Records

2019-010338

$92.00

01773650201900103380020022

03/21/2019 10:14:58 AM

RPR-DEED Cnt=1 Pgs=2 Stn=9 CASHIER 06
$10.00 $11.00 $61.00 $10.00

BARGAIN AND SALE DEED

Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman, Husband and Wife, Grantor, conveys, bargains and sells to NIMPKISH, LLC, Grantee, the following real property situated in Lane County, Oregon, and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by reference.

Subject to Easements, Reservations and Restrictions of Record and Specifically including, but not limited to, that certain Declaration of Easement and Road Maintenance Agreement dated 03/20/2019, received 03/21/2019, Reception No. 2019-10337, Lane County Deeds and Records.

The true consideration of this conveyance is other than monetary.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this 20 day of March, 2019.

Gray McKenzie Goodman

Dorotea Elizabeth Chiara Goodman

STATE OF OREGON)
) ss.
County of Lane)

This instrument was acknowledged before me on March 20, 2019, by Gray McKenzie Goodman and Dorotea Elizabeth Chiara Goodman.

OFFICIAL STAMP
ERIN ANNE DIETER
NOTARY PUBLIC - OREGON
COMMISSION NO. 979070
MY COMMISSION EXPIRES SEPTEMBER 13, 2022

Notary Public for Oregon

Exhibit A

Property 4

Beginning at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian, with the North line of the James A. Wallace Donation Land Claim No. 40, of said Township and Range; thence along said 1/4 line N0°16'18"E 553.97 feet to the TRUE POINT OF BEGINNING: thence continuing along said 1/4 line N0°16'18"E 650.03 feet; thence leaving said 1/ 4 line S89°43'42"E 465.60 feet to a point on the centerline of a private road (RR Baker Rd.) described in deed recorded on March 6, 2014, as Instrument No. 2014-007870, Lane County Oregon Deed Records; thence along said centerline S31°00'00"E 677.66 feet; thence S4°00'00"E 71.03 feet; thence leaving said centerline N89°43'42"W 822.67 feet to the point of beginning, in Lane County, Oregon, TOGETHER with the Easterly 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and Easterly of the above described centerline.

Detailed Property Report

Site Address	N/A
Map & Taxlot#	18-02-11-00-00509
SIC	N/A
Tax Account#	1901980

Property Owner 1
Goodman Gray McKenzie & Dorotea E C
PO Box 2113
Jasper, OR 97438

Tax account acreage 10.20
Mapped taxlot acreage† 12.51

† Mapped Taxlot Acreage is the estimated size of a taxlot as derived from the county GIS taxlot layer, and is not to be used for legal purposes.

Map & Taxlot # 18-02-11-00-00509



General Taxlot Characteristics

▫ Geographic Coordinates

X 4291449 **Y** 865229 (State Plane X,Y)
Latitude 44.0160 **Longitude** -122.8944

▫ Zoning

Zoning Jurisdiction Lane County
Lane County

Parent Zone	F2	Impacted Forest
Overlay	BD	Beaches & Dunes

▫ Land Use

General Land Use

Code	Description
data not available	data not available

Detailed Land Use

Code	Description
data not available	data not available

Taxlot Characteristics

Incorporated City Limits	none
Urban Growth Boundary	none
Year Annexed	N/A
Annexation #	N/A
Approximate Taxlot Acreage	12.51
Approx Taxlot Sq Footage	544,936
Plan Designation	Forest
Eugene Neighborhood	N/A
Metro Area Nodal Dev Area	No
Septic	data not available
Well	data not available
Landscaping Quality	data not available
Historic Property Name	N/A
City Historic Landmark?	No
National Historical Register?	No

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
Goodman Gray McKenzie & Dorotea E C	PO Box 2113	Jasper, OR 97438

Taxpayer

Party Name	Address	City/State/Zip
Goodman Gray McKenzie & Dorotea E C	PO Box 2113	Jasper, OR 97438

Data source: Lane County Assessment and Taxation

Sales & Ownership Changes

No sales or ownership change data available.

Data source: Lane County Assessment and Taxation

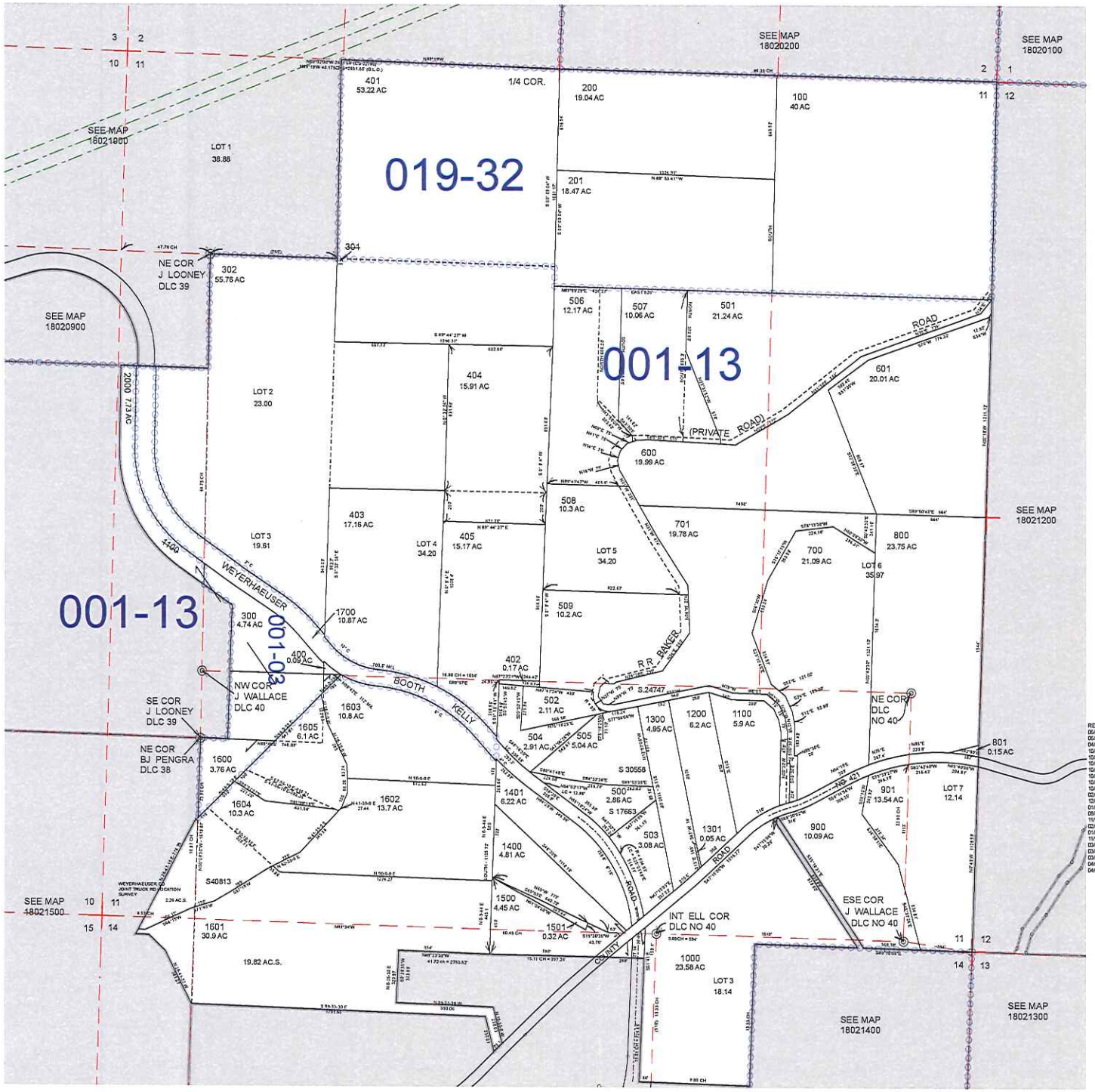
FOR ASSESSMENT AND TAXATION ONLY

SECTION 11 T.18S. R.2W. W.M.
Lane County
1" = 400'

18021100
SPRINGFIELD

LCATSKP - 2019-04-04 11:40

CANCELLED
1604
1602
301



REVISIONS
06/07/2006 - LCAT130 - CONVERT MAP TO GIS
06/07/2006 - LCAT130 - SEG 1601-1605 O.O. 1600
04/24/2007 - LCAT142 - DIV. 201 O.O. 200
10/29/2007 - LCAT155 - NTL& 421 & 404 OUT OF 400
10/29/2007 - LCAT155 - LLA BETWEEN 200 & 201
10/29/2007 - LCAT155 - NTL& 402 & 403 OUT OF 401
10/29/2007 - LCAT155 - LLA BETWEEN 401 & 300
10/29/2007 - LCAT155 - LLA PTN OF 300 TO NTL 18021000001100
10/29/2007 - LCAT155 - NTL 301 OUT OF 300
10/29/2007 - LCAT155 - LLA BETWEEN 200 & 201
02/01/2008 - LCAT155 - 2000 REMAPED FROM 18021000001100
12/11/2007 - LCAT130 - LLA 1601, 1604 & 1605
01/25/2011 - LCAT174 - LLA BETWEEN TL 404 AND TL 402
05/11/2011 - LCAT113 - CORR TL 1400, 1401
11/21/2013 - LCAT142 - MAP COR TLS 1400 & 1700
02/01/2016 - LCAT174 - SPATIAL ADJUST TLS 502, 504, 501
01/10/2018 - LCAT155 - NTL 506 OUT OF 501
11/21/2018 - LCAT148 - NTL 507 OUT OF TL 506
03/21/2019 - LCAT148 - NTL 405 OUT OF TL 402
03/29/2019 - LCAT148 - NTL 508 OUT OF TL 506
03/29/2019 - LCAT148 - NTL 509 OUT OF TL 508
04/04/2019 - LCAT148 - LLA BETWEEN TL 501 & TL 505
04/04/2019 - LCAT148 - LLA BETWEEN TL 506 & TL 507

SPRINGFIELD
18021100

001425

Date Received:

RECEIVED APR 18 2019

LAND MANAGEMENT DIVISION

TYPE II APPLICATION - Forest Dwelling: Template Dwelling

509-PA19-05299

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only: *FILE #* *FEE:*

Applicant (print name): Gray Goodman and Dorotea Goodman

Mailing address: 86690 R. R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Applicant Signature: Gray Goodman

Applicant Signature: Dorotea Goodman

Agent (print name): James E. (Jim) Belknap

Mailing address: 77898 Chisholm Trail Drive Cottage Grove, OR 97424

Phone: 541-954-2944 Email: jim.e.belknap@gmail.com

Agent Signature: James E Belknap

Land Owner (print name): Gray Goodman and Dorotea Goodman

Mailing address: 86690 R. R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: Gray Goodman

Land Owner Signature: Dorotea Goodman

LOCATION

18S 02W 11 00 00506 (Part of)
Assessor's Map and Taxlot Number

None
Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

Version 2/2019

DO NOT SEPARATE PACKET

13

CERTIFICATE OF MAILING

509-PA19-05299
GOODMAN/BELKNAP
06/07/2019

This is to certify that I, Amber Wolles, mailed Notification of

Referral Notice

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: JUN 0 7 2019

End of Comment Period: JUN 2 4 2019

Appeal Deadline:

Hearing Date:

AMBER WOLLES

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

Referral Notice and Opportunity to Comment On a Land Use Application for a Development

LAND MANAGEMENT DIVISION
http://www.lanecounty.org

Date: JUN 07 2019

Department File: 509-PA19-05299
Applicant: GRAY GOODMAN
Owner: GOODMAN GRAY MCKENZIE & DOROTEA E C
Agent: JAMES BELKNAP
Assessor's Map & Taxlot: 18-02-11-00-00506
Contiguous Property: None
Base Zone: F2
Combining Zone: /NONE

Proposal: A request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4, (3), (5) and (6).

The purpose of this notice is to acquaint you with the proposed development, to gather information you may have about the project, and provide an opportunity to comment and express concerns related to the approval criteria, prior to the Planning Director's decision to approve or deny the proposal.

The application and related materials are available for inspection at the Lane County Land Management Division at no cost and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact concerning this application is Shawna Adams, 541-682-8904, or Shawna.ADAMS@co.lane.or.us.

Approval criteria are found in the section(s) of Lane Code cited above. The criteria may be obtained or viewed at the Land Management Division or at the internet address below. You may submit information in the spaces provided on the last page and return this document to the attention of Shawna Adams, Lane County Land Management Division, 3050 N. Delta Hwy., Eugene, OR 97408, Fax to ATTN: Shawna Adams, (541) 682-3947, or email to Shawna.ADAMS@co.lane.or.us. Please be sure to reference the department file number shown above, and submit your comments by **4:00 P.M.** on JUN 24 2019.

Concerns/comments submitted in writing will be considered in making the decision as they relate to the criteria under which the proposal must be evaluated.

Your comments are important and will greatly improve the decision making process, but please note that you will not receive an individual response to information submitted. By law, comments received that are not related to the approval criteria may not be considered. General planning information is available by calling 541/682-3577, or by visiting the Public Works Customer Service Center at 3050 N. Delta Hwy. weekdays between 9 a.m. and 4:00 p.m.

Links to applicable law are available through our Planning homepage:

http://www.lanecounty.org/Departments/PW/LMD/LandUse/Pages/default.aspx

Mailed copies of the approval criteria are also available, at cost, by calling Land Management Division Staff at 541/682-6917. Please allow one week for mailing.

Date Received:
RECEIVED MAR 21 2019

LAND MANAGEMENT DIVISION

TYPE II LAND USE APPLICATION – Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only: FILE # 509-PA19-05198 *FEE:* 2600.00

Applicant (print name): NIMPKISH LLC

Mailing address: 86690 R.R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Applicant Signature: manager

Applicant Signature: Member

Agent (print name): James E. (Jim) Belknap

Mailing address: 77898 Chisholm Trail Drive Cottage Grove, OR 97424

Phone: 541-954-2944 Email: jim.e.belknap@gmail.com

Agent Signature: James E Belknap

Land Owner (print name): NIMPKISH LLC

Mailing address: 86690 R.R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Through applying for this application I authorize the Lane County Planning Director, designee, or hearings official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: manager

Land Owner Signature: Member

LOCATION

18 S	02 W	11	~~506~~ 508 (Part of)
Township	Range	Section	Taxlot(s)

None
Site address

PROPOSAL: A request for Director Approval of a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the "template test" provisions of Lane Code 16.211(5).

0731

DO NOT SEPARATE PACKET

21

CERTIFICATE OF MAILING

509-PA19-05198
NIMPKISH/BELKNAP
8/1/2019

This is to certify that I, ~~Amber Wolles~~ Lindsey Eichner, mailed Notification of

Notice of Decision

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: 8-1-19

End of Comment Period:

Appeal Deadline: 8-13-19

Hearing Date:

~~AMBER WOLLES~~
Lindsey Eichner

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

EMAILED:
TRANSPORTATION PLANNING

ASSESSMENT & TAXATION

NOTICE OF PENDING LAND USE DECISION

BY THE LANE COUNTY PLANNING DIRECTOR

Date:	8-1-19
Department File:	**509-PA19-05198**
Owner / Applicant:	Nimpkish LLC
Agent:	James E. Belknap
Map & Tax Lot:	18-02-11-00-00508
Address:	No Site Address
Size:	10.21 acres
Base Zone:	Impacted Forest Land (F-2)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A Request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4

Enclosed is a vicinity map and site plan showing the proposed location of the template dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. You can contact the Lane County Land Management Division representative **Rachel Serslev** at **(541) 682-6903** or **rachel-serslev@co.lane.or.us** to obtain more information about this notice.

This decision will become final at **4:00 PM** on 8-13-19 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the County LMD. **This application form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information and attach it along with the appeal fee, materials, and information required on the appeal form.

2. Submit the completed appeal to the Planning Director so that the Planning Director receives it prior to the date and time that the decision becomes final (see above deadline). The Planning Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.

3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

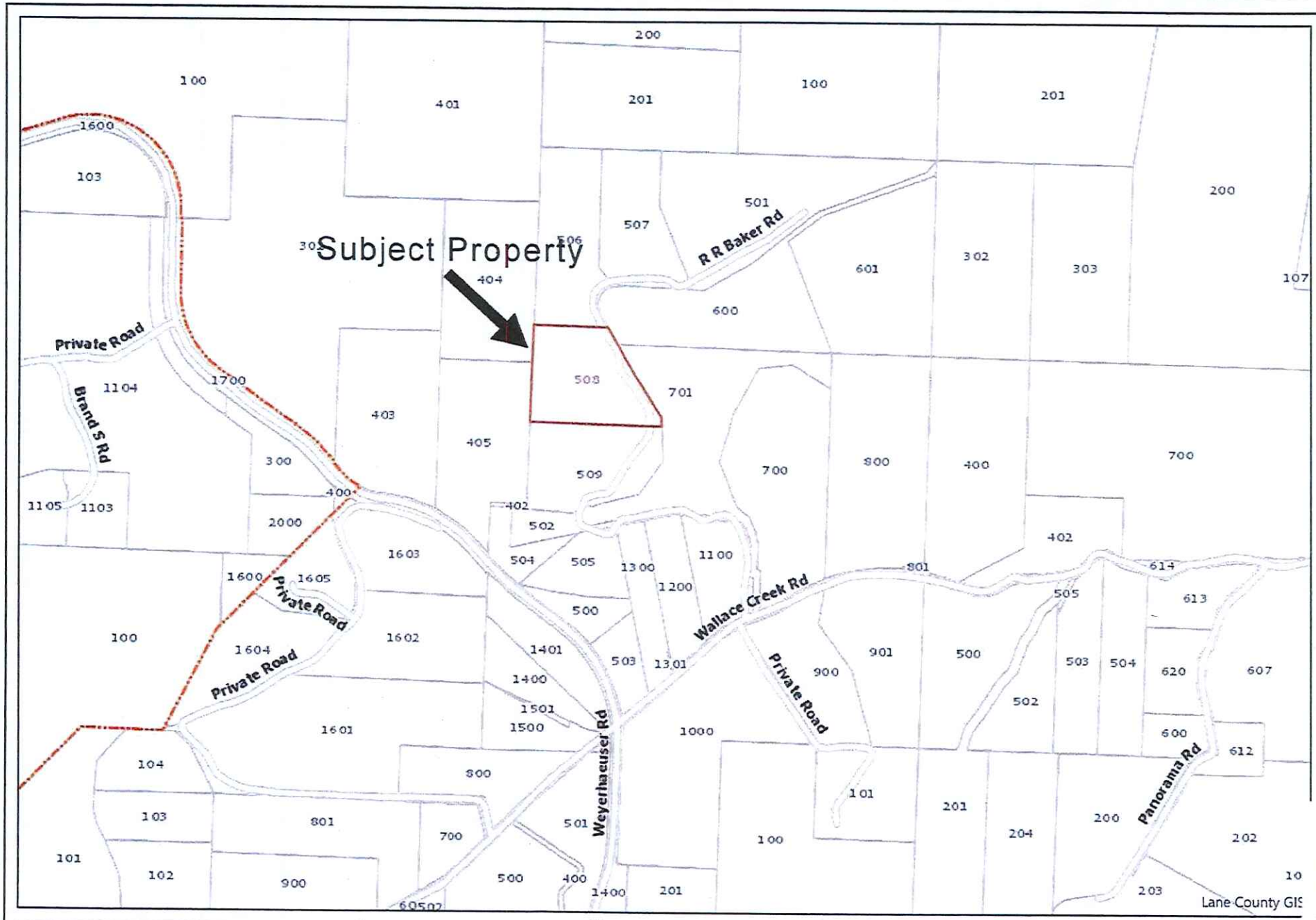
Prepared by: _____ **Date:** 8-1-19
Rachel Serslev, Planner

Authorized by: _____ **Date:** 8-1-19
Amber Bell, Interim Planning Supervisor
For Keir Miller, Division Manager

EXHIBITS
Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Note: The following Exhibits are available upon request from Planning Department; please contact administrative office staff at 541-682-6917 for copies.

Exhibit D: Staff Report
Exhibit E: Contour Map of Subject Property and Contour Map of Homesite
Exhibit F: Lane County Transportation Planning Comments, d. 4/23/2019
Exhibit G: Farm Use and Forest Management Easement
Exhibit H: LandWatch Lane County Referral Comments, d. 5/6/2019
Exhibit I: Applicant's Response to Referral Comments, d. 5/15/2019
Exhibit J: Applicant's Access Site Plan



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 425 850 1,700 Feet

Vicinity Map

Lane County, Oregon

0735

001434

Exhibit 5, Page 9

Date Received:

LAND MANAGEMENT DIVISION

TYPE II LAND USE APPLICATION – Forest Dwelling: Template Dwelling

RECEIVED MAR 21 2019

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only: *FILE #* 509-PA19-05199 *FEE:* $2600 SA

Applicant (print name): Gray Goodman and Dorotea Goodman

Mailing address: 86690 R.R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Applicant Signature: _____

Applicant Signature: _____

Agent (print name): James E. (Jim) Belknap

Mailing address: 77898 Chisholm Trail Drive Cottage Grove, OR 97424

Phone: 541-954-2944 Email: jim.e.belknap@gmail.com

Agent Signature: James E Belknap

Land Owner (print name): Gray Goodman and Dorotea Goodman

Mailing address: 86690 R.R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Through applying for this application I authorize the Lane County Planning Director, designee, or hearings official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: _____

Land Owner Signature: _____

LOCATION

18 S	02 W	11	509 ~~306 (Part of)~~
Township	Range	Section	Taxlot(s)

None
Site address

PROPOSAL: A request for Director Approval of a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the "template test" provisions of Lane Code 16.211(5).

DO NOT SEPARATE PACKET

CERTIFICATE OF MAILING

509-PA19-005199
GOODMAN/BELKNAP
8-16-19

This is to certify that I, CHERYL HALL, mailed Notification of

DECISION

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: 8/16/19

End of Comment Period:

Appeal Deadline: 8/28/19

Hearing Date:

CHERYL HALL

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION

BY THE LANE COUNTY PLANNING DIRECTOR

Date:	August 16, 2019
Department File:	**509-PA19-05199**
Owner / Applicant:	Gray & Dorotea Goodman
Agent:	James E. Belknap
Map & Tax Lot:	18-02-11-00-00509
Address:	No Site Address
Size:	11.58 acres
Base Zone:	Impacted Forest Land (F-2)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A Request for Director Approval Type II permit for dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4

Enclosed is a vicinity map and site plan showing the proposed location of the template dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. You can contact the Lane County Land Management Division representative **Deanna Wright** at **(541) 682-4082** or **deanna.wright@co.lane.or.us** to obtain more information about this notice.

This decision will become final at **4:00 PM** on August 28, 2019 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the County LMD. **This application form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information and attach it along with the appeal fee, materials, and information required on the appeal form.

2. Submit the completed appeal to the Planning Director so that the Planning Director receives it prior to the date and time that the decision becomes final (see above deadline). The Planning Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.

3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

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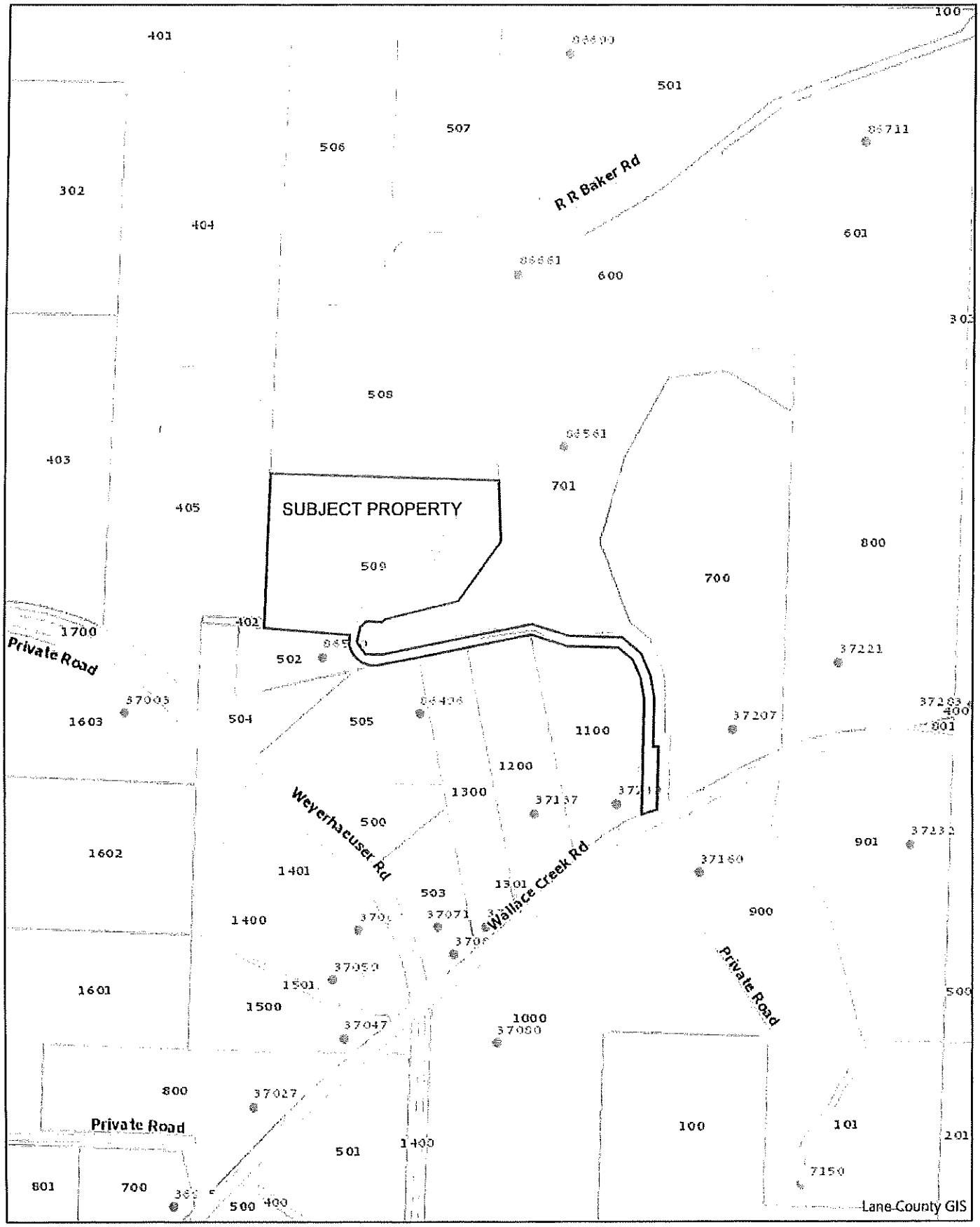
Prepared by: Deanna Wright **Date:** 8/16/19
Deanna Wright, Associate Planner

Authorized by: Lindsey Eichner **Date:** 8/16/19
Lindsey Eichner, Interim Planning Supervisor
For Keir Miller, Division Manager

EXHIBITS
Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Note: The following Exhibits are available upon request from Planning Department; please contact administrative office staff at 541-682-6917 for copies.

Exhibit D: Staff Report
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Exhibit F: Lane County Transportation Planning Comments, d. 4-21-2019
Exhibit G: Farm Use and Forest Management Easement
Exhibit H: LandWatch Lane County Referral Comments, d. 5-6-2019
Exhibit I: Applicant's Responses to Incomplete Letter, d. 4-22-2019 and Referral Comments, d. 7-10-2019
Exhibit J: Applicant's Access Site Plan
Exhibit K: Lane County LIDAR map



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 120 240 480 Feet

VICINITY MAP 509-PA19-05199

Lane County, Oregon

EXHIBIT B 0740

LAND USE PLANNING NOTES

"STEWARDSHIP IN FORESTRY"

NUMBER 1 • MARCH 1991

PURPOSE: This technical bulletin has been developed jointly by the Department of Forestry and structural fire protection agencies in Oregon as technical guidance and recommended minimum standards to meet the requirements of new administrative rules, OAR 660-06-035 (fire siting standards for dwellings and structures) and OAR 66006-040 (fire safety design standards for roads) adopted by the Land Conservation and Development Commission for forest land zones (Goal 4 lands). Counties are encouraged to adopt stricter rules in forest zones where these recommendations might not adequately address a particular hazard or risk.

RULE REQUIREMENTS:

OAR 660-06-035 (Fire Siting Standards for Dwellings and Structures) requires that:

"[T]he following fire siting standards or their equivalent apply to new dwelling or structures in a forest or agriculture/forest zone:

"(l) If a water supply is available and suitable for fire protection, such as a swimming pool, pond, stream, or lake, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

"(2) Road access to the dwelling shall meet road design standards described in OAR 660-06-040.

"(3) The owners of the dwellings and structures shall: maintain a primary fuel-free break area surrounding all structures; clear and maintain a secondary fuel-free break area; and maintain adequate access to the dwelling for fire fighting

Recommended Fire Siting Standards for Dwellings and Structures

and

Fire Safety Design Standards for Roads

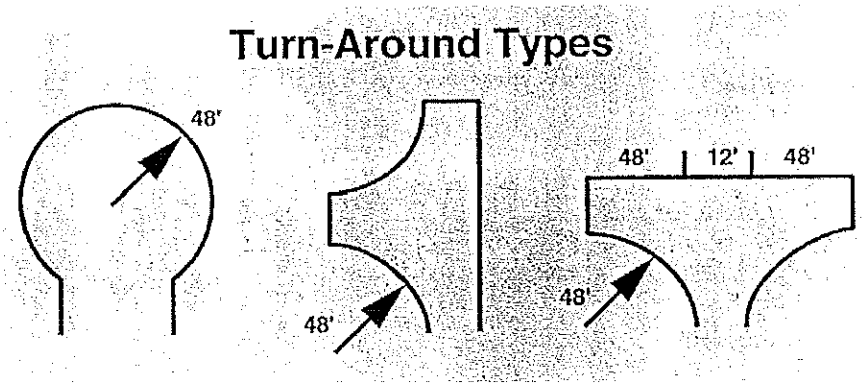
Published by:
Oregon Department of Forestry
Resource Planning Office
2600 State Street
Salem, OR 97310

equipment vehicles in accordance with the provisions in *Protecting Your home from Wildfire* (National Fire Protection Association)."

OAR 660-06-040 (Fire Safety Design Standards for Roads) requires that:

"[T]he governing body shall establish road design standards, except for private roads and bridges accessing only commercial forest uses, which ensure that public roads, bridges, private roads and driveways are constructed so as to provide adequate access for fire fighting equipment. Such standards shall address maximum grade, road width, turning radius, road surface, bridge design, culverts, and road access taking into consideration seasonal weather conditions. The governing body shall consult with the appropriate Rural Fire Protection District and Forest Protection District in establishing these standards."

Though there are no similar rule requirements to be met in rural residential zones in forested areas, the Department of Forestry encourages the adoption by local government of these recommended fire safety standards in these zones as well.



Though some of the recommendations are strictly to accommodate structural fire protection apparatus and needs, it is recommended that the standards be applied to all lands within forest zones, regardless of the presence or absence of a rural (structural) fire protection district. The standards should be applied in anticipation of structural fire protection eventually becoming present.

RECOMMENDED FIRE SITING STANDARDS FOR DWELLINGS AND STRUCTURES:

A. Water Supply Standards:

1. Access— If a water supply—such as a swimming pool, pond, stream, or lake—of 4,000 gallons or more exists within 100 feet of the driveway or road at a reasonable grade (12%) an all-weather approach to a point within 15 feet of the water's edge should be provided. The all-weather approach should provide a turn-around with a 48-foot radius of one of the types shown in the illustration below.

2. Identification— Emergency water supplies should be clearly marked along the access route with a county approved sign.

B. Fuel Break Standards:

1. Primary Safety Zone— The primary safety zone is a fire break extending a minimum of 30 feet in all directions around structures. The goal within the primary safety zone is to remove fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, limbs and other dead vegetation should be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) should be placed next to the house.

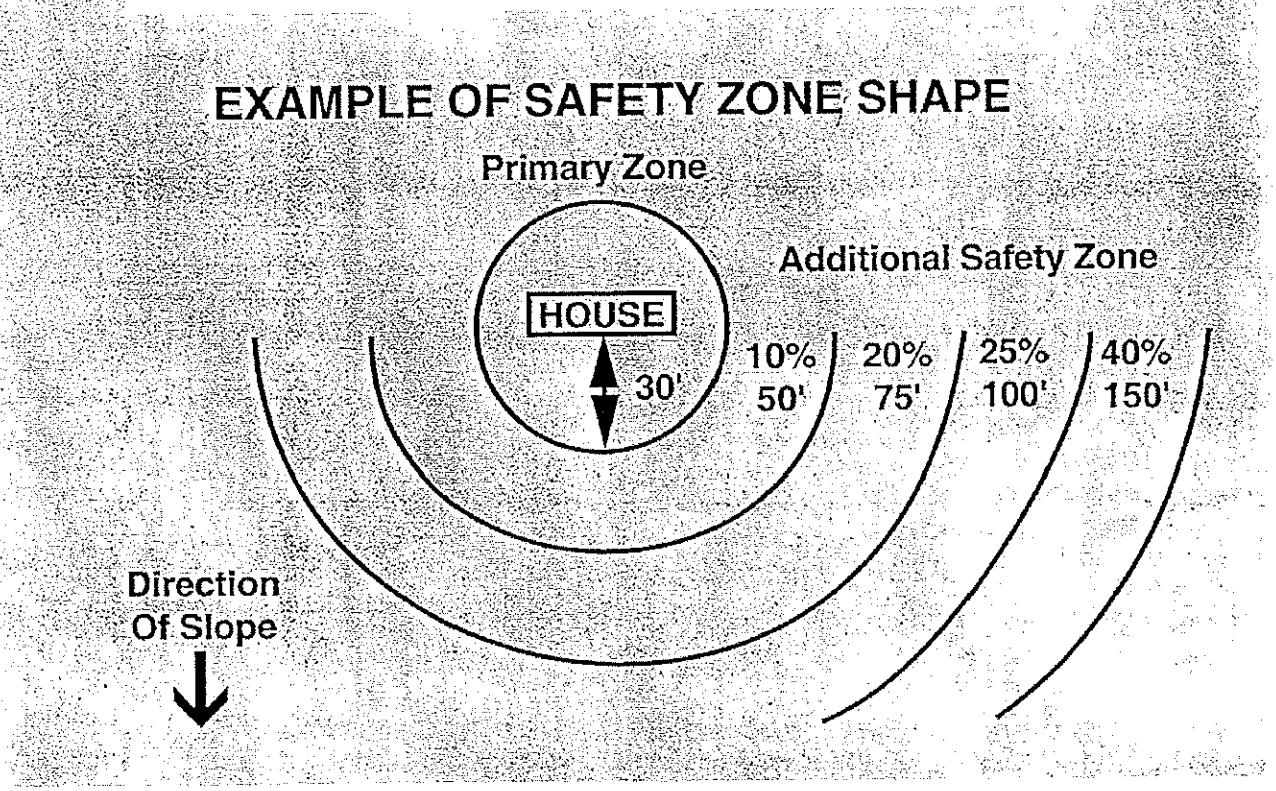
As slope increases, the primary safety zone should increase away from the house, parallel to the slope and down the slope, as shown in the table and illustration on the next page.

2. Secondary Fuel Break— The secondary fuel break is a fuel break extending a mini-

Size of Primary Safety Zone by Percent Slope

Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Buildings should be restricted to slopes of less than 40 percent.



mum of **100** feet in all directions around the primary safety zone. The goal of the secondary fuel break should be to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels should be removed.

RECOMMENDED FIRE SAFETY DESIGN STANDARDS FOR ROADS:

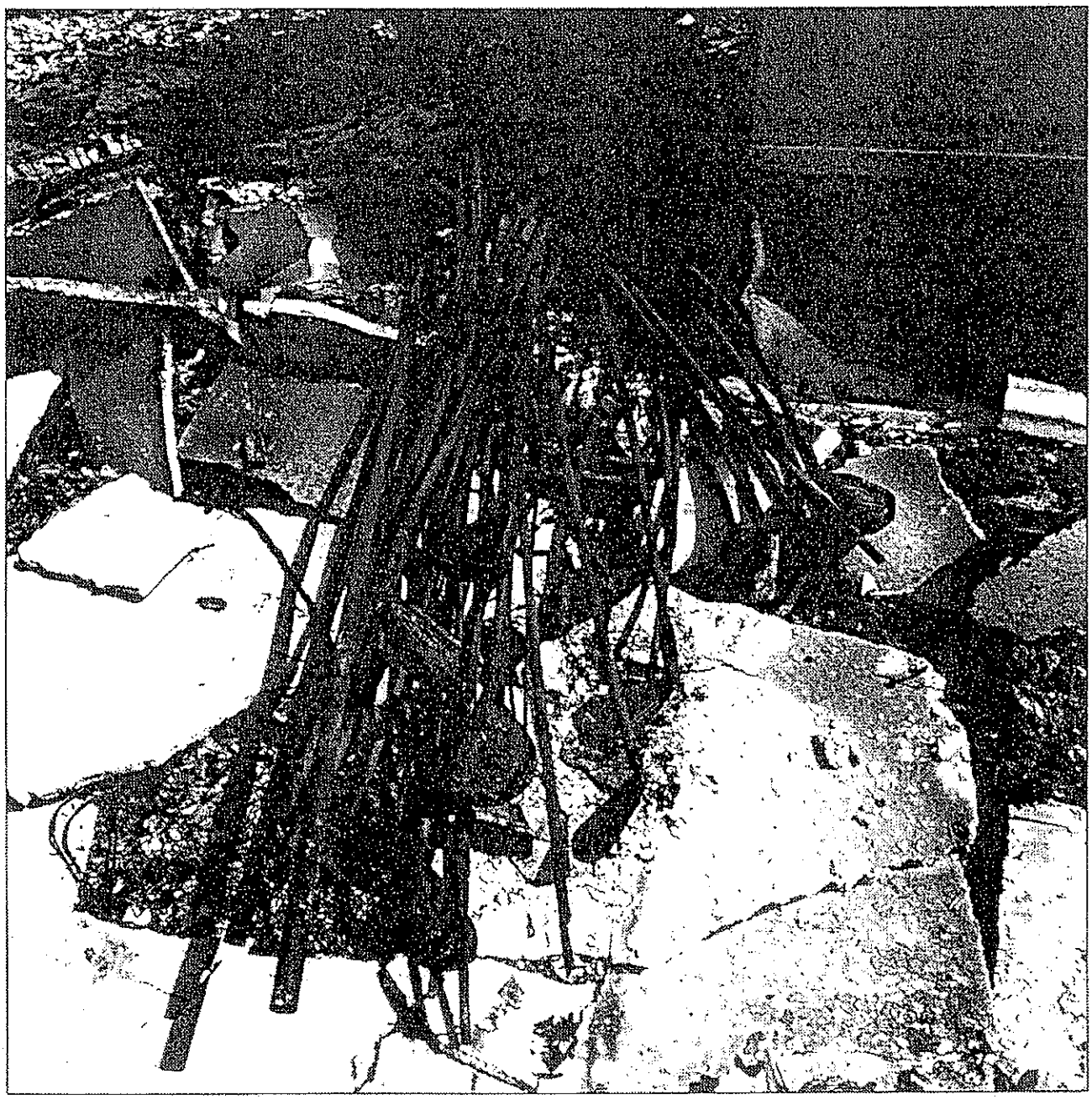
A. Road Standards (public roads and private roads accessing 2 or more residences):

1. Right-of-ways— Roads should be built and maintained to provide a minimum **20** foot width of all-weather surface capable of supporting gross vehicle weights of **50,000** pounds, a minimum curve radius of **48** feet and a vertical clearance of **13'6"**.

2. **Cul-de-Sacs**— Cul-de-sacs should be defined as dead-end roads over **150** feet in length. Cul-de-sacs should have turn-arounds of not less than **48** feet radius at a maximum spacing of **500** feet between turn-a-rounds. All turn-a-rounds should be marked and signed as "NO PARKING."

3. **Bridges and Culverts**— Bridges, culverts, and other structures in the road bed should be constructed and maintained to support gross vehicle weights of 50,000 pounds.

4. **Road Grades**— Road grades should not exceed an average of **8** percent, with a maxi-



A set of burned golf clubs lay in the ruin of a home burned by the 1990 Awbrey Hall Fire. Twenty-two homes burned during this fire, which raced along the outskirts of Bend, Oregon. Most of the burned homes had insufficient fuel breaks surrounding them.

Photograph courtesy of The Bulletin, *Bend*

mum of **12** percent on short pitches. Variances could be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical.

5. Identification— Roads should be uniquely named or numbered and visibly signed at each road intersection. Letters or numbers should be a minimum of three inches in height and constructed of reflectorized material.

B. Driveway Standards (private roads accessing a single residence):

1. Driveways— Driveways should be built and maintained to provide a minimum **12**-foot width of all-weather surface capable of supporting gross vehicle weights of **50,000** pounds, a minimum curve radius of **48** feet and a vertical clearance of **13'6"**.

2. Vehicle Passage Turnouts— Driveways in excess of **200** feet should provide **20**-foot wide by **40**-foot long passage space (turnouts) at a maximum spacing of 1/2 the driveway length or **400** feet, whichever is less. Wherever visibility is limited, these distances should be reduced appropriately.

3. Dead-end-driveways— Dead-end-driveways are defined as dead-end roads over **150** feet in length serving a single residence. Dead-end-driveways should have turn-a-rounds of not less than **48** feet radius.

4. Bridges and Culverts— Bridges, culverts, and other structures in the road bed should be constructed and maintained to support gross vehicle weights of 50,000 pounds.

5. Driveway Grades— Driveway grades should not exceed an average of **8** percent, with a maximum of **12** percent on short pitches. Variances could be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical.

6. Identification— Driveways should be marked with the residence's address unless the residence is visible from the roadway and the address is clearly visible on the residence. Letters or numbers should be a minimum of three inches in height and constructed of reflectorized material.

C. Certification:

1. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 gross vehicle weight standard should be provided from an Oregon Registered Professional Engineer. Otherwise, written verification of compliance should be provided by the applicant.

BASIS FOR RECOMMENDATIONS:

A. Water Supply

Water is a critical tool in fire suppression. Hydrants are generally not available in forested areas. Therefore, fire suppression in forested areas is dependent upon the water carried in the responding fire equipment and water sources available for refill or that can be pumped from an engine. Water available for refilling an engine can mean the difference between saving or losing a structure, or preventing a wildfire from escaping initial attack. When a fire engine or tanker runs out of water, turn around time to a refill site may be quite lengthy. A 4,000 gallon water supply is large enough to refill a large tanker or several smaller fire engines. Requiring construction of an all weather approach to within 15 feet of 4,000 gallon or larger water sources within 100 feet or less of a driveway or road will greatly help fire protection agencies.

B. Fuel Breaks

The steeper the slope, the greater the flame length, the hotter the flame front, and the faster the rate of fire spread. This greater fire activity is primarily due to preheating of the vegetation upslope from the fire, increased draft of fresh air to the fire from below, and more flame contact with upslope fuels. On steeper slopes, failure to provide for larger safety zones downslope from a residence will make it more difficult for fire personnel to protect the structure. The

firefighter is also in a more tenuous safety position.

On the last page are two graphs showing the relationships of flame length and dozer line construction speeds to slope for two fuel types. Flame lengths increase with slope and dozer fire line construction rates decrease. Other fire fighting methods such as water attack and hand line construction are also hampered by steep slopes. Generally, hand lines are useless when flame lengths reach 4 feet; dozer lines fail with 8-foot flame lengths.

C. Road & Driveway Specifications

Fire fighting apparatus (fire engines, tankers, dozer and lowboy, etc.) are much larger and heavier than personal vehicles. These vehicles require greater road width and clearance for passage, wider road curves for turning, and level or at most moderate road grades for maintaining vehicle engine performance and driver safety.

- The 1988 Oregon Uniform Fire Codes, Chapter 10.207 specifies that all roads shall be all weather surfaced, minimum 20 feet width, and have a vertical clearance of 13' 6".

- A filled, fully equipped 3,000 gallon tanker weighs around 40,000-45,000 pounds. Many rural fire departments utilize this size tanker as a water source for the small fire engines. A minimum road surface load limit of 50,000 pounds provides for this load plus an appropriate safety margin.

- Large, heavy vehicles have difficulty driving up and down steep road grades. Additionally, most rural fire departments are principally staffed by volunteers and most forest fire agency employees are seasonal. While these people are capable drivers, very few are professional truck drivers and they may have a more difficult time maneuvering a truck up a steep winding road than would the professional driver.

- Rural address identification is extremely important. While the local resident may be familiar with the localized road or driveway system, emergency responders generally will not. Proper signing of roads and driveways with 3" or larger reflectorized letters or numbers will assist fire fighters in locating threatened residences, especially when visibility is impaired by darkness or smoky conditions.

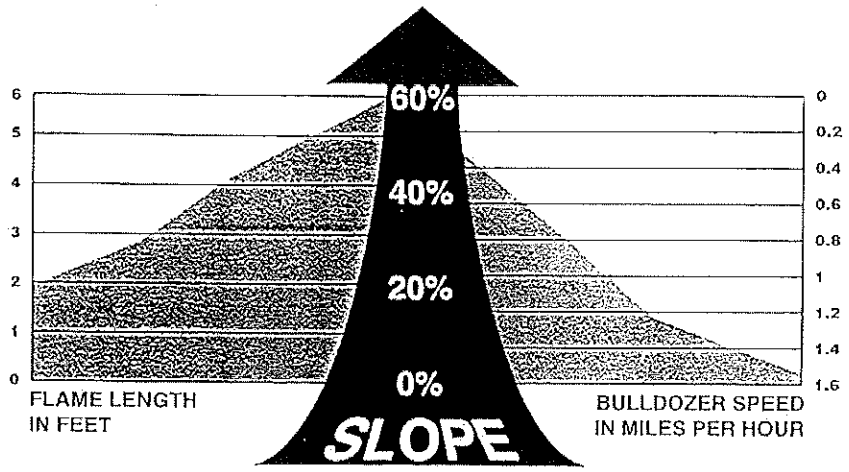
- It is very difficult to back up long distances in large fire apparatus, and this difficulty can be compounded if driveway grade is not level. Therefore, turnouts and turnarounds are very important.



The 1989 Dooley Mountain Fire threatened the residents of Baker City.

Photograph courtesy of the Democrat-Herald, *Albany*

The Relationship of Flame Length to Fuel Type and Slope: Two Situations

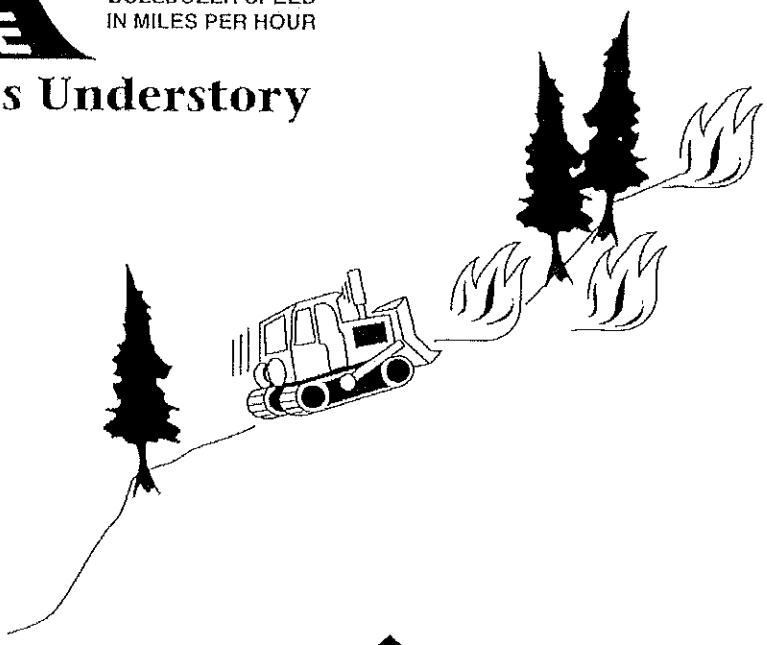


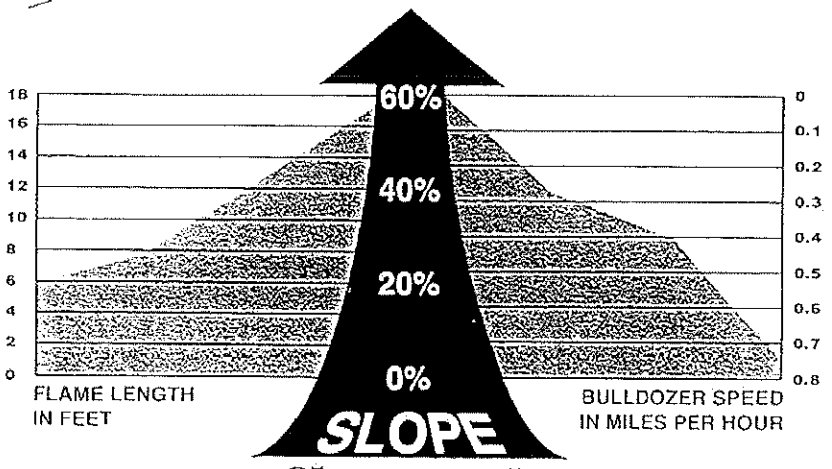
Timber with Grass Understory

These two graphs illustrate the effect of slope on flame length and bulldozer speed in two common fuel types.

In open timber with grass, flames traveling up a 20% slope can reach 3-4 feet in length. Chaparral, on the same slope, will generate flame lengths of 6-8 feet. Hand-constructed fire lines usually fail to stop fires having 4-foot or longer flame lengths. Bulldozer-constructed fire lines usually fail to stop fires having 8-foot or longer flame lengths.

Fire lines become less effective as slope increases and as fuel loads increase.





Chaparral

Information Provided By:

Oregon Department of Forestry
Resource Planning Office

Land Conservation and
Development Commission

Office of State Fire Marshal

Oregon Fire Chiefs Association

To Order Copies of This Publication
Call or Write:

Oregon Department of Forestry
Public Affairs Office
2600 State Street
Salem, Oregon 97310
503-378-2562

Oregon Department of Forestry
Resource Planning Office
2600 State Street
Salem, OR 97310

"STEWARDSHIP IN FORESTRY"

Rev. 3/91 1.5 M

Land Use Application

LMD Land Management Division

REQUEST / PROPOSAL FOR:
F-2 Verification of Conditions. (SUP PA02-5486)

FILE NO. PA 13-05S
ACTION AVC FEE $ 310

LOCATION (PLEASE PRINT)

TOWNSHIP	RANGE	SECTION	1/4 SECTION	TAX LOT	SUBDIVISION / PARTITION	LOT / PARCEL	BLOCK
20	03	21		300		69.	

ZONED F-2 / TAX CODE / PLOT # / ACREAGE

LOCATION ADDRESS None

STRUCTURES NOW ON PROPERTY

APPLICANT / AGENT

Connie Green — NAME (PLEASE PRINT) — DATE 1-17-03
79524 Abbott Ln — ADDRESS — PHONE 942-9288
Cottage Grove, OR 97424 — CITY — ZIP 97424

OWNER

Charles D Green — NAME (PLEASE PRINT) — DATE
79524 Abbott Ln — ADDRESS — PHONE 942-9288
Cottage Grove, OR — CITY — ZIP 97424

DO YOU OWN ADJACENT PROPERTY? Yes ☐ No ☒
MAP, PARCEL NUMBER

Township	Range	Section	1/4 Section	Tax Lot

WATER PUBLIC ☐ ON-SITE WELL ☒ COMMUNITY SYSTEM
SEWAGE PUBLIC ☐ ON-SITE SEPTIC ☒ COMMUNITY SYSTEM
ROAD STATE ☐ COUNTY ☐ PUBLIC ☐ EASEMENT ☒
FIRE DISTRICT South Lane **SCHOOL DISTRICT** South Lane
POWER COMPANY EPUD **PHONE COMPANY** QWest

I (We) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

Charles D Green — OWNER Signature — 1-17-03 Date
Connie Green — APPLICANT Signature — 1-17-03 Date

An accurate Plot Plan must be attached. Ask for a sample Plot Plan

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

RELATED PERMIT # PA02-5486

STAFF COMMENTS: ~~ALL BY~~ FILE

CONDITIONS HAVE BEEN COMPLETED AND PASSED INSPECTION PER BP# 04-1060 & BP# 04-7235 DONALD 4/15/04

07/99

EXHIBIT A

CONDITIONS OF APPROVAL FOR PA 02-5486

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of **PA 02-5486** is valid for a **four-year** period from 12-9, **2002**, the final date of approval until 12-9, **2006**, the expiration date of this approval. Lane County may grant an initial extension period of **two years** if:
   (a) an applicant makes a written request with the required fee for an extension of the development approval period;
   (b) the request is submitted to the county prior to the expiration of the development approval period;
   (c) the applicant states reasons that prevented the applicant from beginning or continuing development within the approval period;
   (d) the county determines that the applicant was unable to begin or continue development during the approval period for reasons which the applicant was not responsible; and
   (e) when applicable criteria for the decision have not changed.

   Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease.

DONE 6/7/04

2. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* with an attached "Exhibit B" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office). Record the documents at the Lane County Deeds and Records Office. DOC# 2004-028664

DONE 5/14/04

3. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. The applicant shall provide a copy of the stocking survey to Land Management Division with evidence of receipt from the Assessor.

DONE PD 05-5055

4. Construct the driveway from its entrance Abbott Lane to the proposed dwelling to the minimum standards of Lane Code 16.211(8)(e). A written certification of compliance with the minimum standards of Lane Code 16.211(8) may be required from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director. Please contact Don Nickell, 541/682-3989 with questions about driveway, bridge and road construction requirements in LC 16.211(8)(e).

DONE LETTER TO FD 4/21/04

5. Submit written documentation obtained from the Cottage Grove/South Lane Rural Fire Protection District stating that the roads and driveway leading from the fire station to the home site are adequate for their fire fighting equipment to access the use, fire fighting equipment and water supply.

DONE PD05-5055

6. Physically establish the primary and secondary fuel breaks as depicted on the approved Detail Development Plan, Exhibit C and as necessary on the adjoining property in accordance with recorded instrument #2002-031079. **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling shall be 30 feet. The minimum secondary

DONE

fuel breaks surrounding the primary safety zone shall be 100 feet. Please contact Don Nickell, 541/682-3989 with questions about fuel break requirements.

7. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). WELL LOG # 152909

8. Submit a building or placement permit application for the proposed dwelling, with the appropriate deposit fee. Contact the Building Department at 682-3823 and the On-Site Sewage Department at 682-3754 with questions regarding building and sanitation requirements

9. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located as on the approved site development plan, Exhibit C. Any deviation from the approved site plan may require an application to Modify Planning Director Conditions of Approval with the required processing fee at the discretion of the Planning Director.

10. Upon completion of conditions #2 through #7, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval for PA 02-5486, with the required processing fee ($310 as of the date of these conditions). [Attachment "1"] **Attach to this form:**
    - Copy of signed, notarized and recorded *Farm Use and Forest Management Agreement* and description of property;
    - Copy of the stocking survey to Land Management Division with evidence of receipt from the Assessor;
    - Copy of letter from the Cottage Grove/Lane County Rural Fire Protection District regarding adequacy of roads and driveway;
    - A copy of the approved Site Development Plan, or a plot plan that conforms with the approved plans, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These final plans shall include the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(8)(c)(i).

11. As part of the Verification of Conditions process, the driveway, and fuel breaks shall be field inspected by Planning Office staff to verify that requirements stated in conditions #4 and #6 have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(c) and (e) upon first inspection may require an additional Application for Fuel Break and Road Inspection, with the applicable fee, at the discretion of the Planning Director

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

12. The proposed dwelling shall meet these requirements in LC 16.211(8)(c)(iii), to be verified by the Lane County Building Official:

"(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two

Land Use Application

Lane County — LMD Land Management Division

REQUEST / PROPOSAL FOR: Verification of Conditions PA 02-5377

FILE NO. 02-5797
ACTION: AUC FEE: $30

LOCATION (PLEASE PRINT)

TOWNSHIP	RANGE	SECTION	1/4 SECTION	TAX LOT	SUBDIVISION / PARTITION	LOT / PARCEL	BLOCK
20	03	21		300			

F-2/RCP
ZONED / TAX CODE / PLOT # / ACREAGE

I-5 to Seginaw exit to Hwy 99 - left about .8 mile to Abbott Ln
LOCATION ADDRESS

Right thru Green archway at 79524 Abbott (on Abbott) left on new road to end.
STRUCTURES NOW ON PROPERTY

APPLICANT / AGENT

Connie A Green — 7-23-02
NAME (PLEASE PRINT) — DATE

79524 Abbott Ln — 942-9288
ADDRESS — PHONE

College Grove, OR 97424
CITY — ZIP

OWNER

Connie A Green — DATE
NAME (PLEASE PRINT)

Same — PHONE
ADDRESS

CITY — ZIP

DO YOU OWN ADJACENT PROPERTY? Yes ☐ No ☒

MAP, PARCEL NUMBER

Township	Range	Section	1/4 Section	Tax Lot

WATER PUBLIC ☐ ON-SITE WELL ☒ COMMUNITY SYSTEM ____

SEWAGE PUBLIC ☐ ON-SITE SEPTIC ☒ COMMUNITY SYSTEM ____

ROAD STATE ☐ COUNTY ☐ PUBLIC ☐ EASEMENT ☒

FIRE DISTRICT South Lane **SCHOOL DISTRICT** South Lane

POWER COMPANY EPUD **PHONE COMPANY** Qwest

I (We) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

Connie A Green 7-23-02
OWNER Signature — Date — APPLICANT Signature — Date

An accurate Plot Plan must be attached. Ask for a sample Plot Plan

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

STAFF COMMENTS:

RELATED PERMIT #
PA 02-5377 ELEC SIGN
BP02-11579 MH
S202-7221

0752

EXHIBIT A

Conditions of Approval
PA 02-5377

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of **PA 02-5377** is valid for a four-year period from July 17, **2002**, the final date of approval until July 17, **2006**, the expiration date of this approval. Lane County may grant a two-year extension period if:
   (a) an applicant makes a written request with the required fee for an extension of the development approval period;
   (b) the request is submitted to the county prior to the expiration of the development approval period;
   (c) the applicant states reasons that prevented the applicant from beginning or continuing development within the approval period;
   (d) the county determines that the applicant was unable to begin or continue development during the approval period for reasons which the applicant was not responsible; and
   (e) When applicable criteria for the decision have not changed.

   Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease.

OK 2. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office). Record the documents at the Lane County Deeds and Records Office. Copy in file

OK 3. Submit written documentation obtained from the Cottage Grove/South Lane Rural Fire District stating that the roads and driveway leading from the fire station to the home site, including all public and private roads on the subject parcel are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply. Copy in file

OK 4. Physically establish the primary and secondary fuel breaks as depicted on the approved site development plan, Exhibit "B-1". **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone to the north, south, east, and west shall be 30 feet. The minimum secondary fuel breaks to the north, south, east and west shall extend 100 feet from the primary safety zone. Both shall be established within the subject property boundaries. Please contact Don Nickell, 541/682-3989 with questions about fuel break requirements. Copy in file

OK 5. Construct the road, driveway and existing bridge to the minimum standards of Land Code 16.211(8)(e). A written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director. Please contact Don Nickell, 541/682-3989 with questions about driveway, bridge and road construction requirements cited below:

Copy in file

Division of Chief Deputy Clerk
Lane County Deeds and Records
2002-031079
$26.00
00286142200200310790010019
04/22/2002 01:01:46 PM
RPR-REST Cnt=1 Stn=6 CASHIER 05
$5.00 $10.00 $11.00

After Filing Return To:
Charles D. Green
79524 Abbott Ln.
Cottage Grove, OR. 97424

DECLARATION OF RESTRICTIVE COVENANT FOR FIRE BREAK EASEMENT

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") is made by Connie A. Green ("Declarant"), for the benefit of Charles D. Green

RECITALS

A. The Declarant owns Tract 3, on Exhibit "B" of that document recorded, October 24, 2001 on reception Number 2001-070532, Lane County Deeds and Records, and Deeded to Connie Green on that document recorded, March 19, 2002 on reception Number 2002-021322, Lane County Deeds and Records.

B. Charles D. Green owns the real property described as Tract 1, on Exhibit "A" of that document recorded, October 29,2001 on Reception Number ~~2001-07186~~ 2001-071466, Lane County Deeds and Records.

B.

C. Charles D. Green indends to apply for a Special Use Permit and homesite placement approximately 65 feet from the property line adjoining the Declarant's property.

D. The Lane County Code requires a 30-foot primary fuel break around structures in F-2 zones, LC 16.211(8)(c)(i)(aa), and an additional 100-foot secondary fire break. LC 16.211(8)(c)(I0(bb).

E. The 30-foot primary fuel break around the dwelling falls entirely on Tract 3. A portion of the secondary fuel break, however, extends onto the Declarant's property.

DECLARATION

Now, therefore, based upon the foregoing recitals, Declarant hereby makes the following Declaration of Restrictive Covenant, to and for the behalf of Charles D. Green.

1. Declarant hereby declares and argues that Declarant and Declarant's successor and assigns will provide, during occupancy of the dwelling on Tract 1, on Exhibit "A" of that document recorded, October 29, 2001 on reception Number ~~2001-07186~~ 2001-071466, Lane County Deeds and Records, for a secondary fuel break on the portion of his property extending 130 feet in all directions from the aforementioned dwelling, sufficient to comply with LC 16.211(8)(c)(I)(bb). Vegetation within the break shall be pruned and spaced so that the fire will not spread between crowns of trees. Small trees and brush growing underneath large trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

2. This Declaration shall touch and concern the property and shall benefit and burden in the manner described above.

DATEDand signed this 22 Day of APRIL ,2002.

Connie A. Green
Connie A. Green, Declarant

Charles D. Green
Charles D. Green

STATE OF OREGON)

)

COUNTY OF LANE)

On the ~~22nd~~ Day of APRIL 2002, personally appeared before me the above named Charles D. Green and Connie A. Green and acknowledged the foregoing instrument to be their voluntary act and deed me:

OFFICIAL SEAL
MARY CRANMER
NOTARY PUBLIC-OREGON
COMMISSION NO. A339710
MY COMMISSION EXPIRES DEC 28, 2004

Mary Cranmer
Notary Public, State of ORegon

AFTER RECORDING RETURN TO:
Connie Green
79524 Abbott Ln
Cottage Grove, OR 97424

DECLARATION OF RESTRICTIVE COVENANT FOR FIRE BREAK EASEMENT

THIS DECLARATION OF RESTRICTIVE COVENANT ("Declaration") is made by Charles D. Green ("Declarant"), for the benefit of Connie A. Green.

RECITALS

A. The Declarant owns the real property described as Tract 1, on Exhibit "A" of that document recorded, October 29,2001 on Reception Number 2001-07166, Lane County Deeds and Records.

B. Connie A. Green owns adjacent Tract 3, on Exhibit "B" of that document recorded, October 24, 2001 on reception Number 2001-070532, Lane County Deeds and Records, and Deeded to Connie Green on that document recorded, March 19, 2002 on reception Number 2002-021322, Lane County Deeds and Records.

C. Connie A. Green indends to apply for a Special Use Permit and homesite placement approximately 100 feet from the property line adjoining the Declarant's property.

D. The Lane County Code requires a 30-foot primary fuel break around structures in F-2 zones, LC 16.211(8)(c)(i)(aa), and an additional 100-foot secondary fire break. LC 16.211(8)(c)(I0(bb).

E. The 30-foot primary fuel break around the dwelling falls entirely on Tract 3. A portion of the secondary fuel break, however, extends onto the Declarant's property.

DECLARATION

Now, therefore, based upon the foregoing recitals, Declarant hereby makes the following Declaration of Restrictive Covenant, to and for the behalf of Connie A. Green.

1. Declarant hereby declares and argues that Declarant and Declarant's successor and assigns will provide, during occupancy of the dwelling on Tract 3, on Exhibit "B" of that document recorded, October 24, 2001 on reception Number 2001-070532, Lane County Deeds and Records, for a secondary fuel break on the portion of his property extending 130 feet in all directions from the aforementioned dwelling, sufficient to comply with LC 16.211(8)(c)(I)(bb). Vegetation within the break shall be pruned and spaced so that the fire will not spread between crowns of trees. Small trees and brush growing underneath large trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

2. This Declaration shall touch and concern the property and shall benefit and burden in the manner described above.

DATEDand signed this 25 Day of March ,2002.

Charles D. Green
Charles D. Green, Declarant

Connie A. Green
Connie A. Green

STATE OF OREGON)
)
COUNTY OF LANE)

Division of Chief Deputy Clerk
Lane County Deeds and Records
2002-022640
$26.00
00275565200200226400010010
03/25/2002 09:29:19 AM
RPR-REST Cnt=1 Stn=7 CASHIER 06
$5.00 $10.00 $11.00

On the 25TH Day of March 2002, personally appeared before me the above named Charles D. Green and Connie A. Green and acknowledged the foregoing instrument to be their voluntary act and deed me:

OFFICIAL SEAL
MARY CRANMER
NOTARY PUBLIC–OREGON
COMMISSION NO. A339710
MY COMMISSION EXPIRES DEC 26, 2004

Mary Cranmer
Notary Public for Oregon
My Commission Expires 12-26-2004

0755

Additional Information Submitted

RECEIVED
NOV 07 2019
Lane County

Submitted By: MICHAEL FARTHING
Phone Number: 541-683-1950
Email Address: mefarthing@yahoo.com
Project Address:
Permit Number (BP, PA, SP, SI): PA-05298
Submittal Description: First Post-Hearing Submission

ATTN: Rachael Sevsten

Type of Submittal:

- ☐ Additional Information
- ☐ Response to Plan Review Comments
- ☐ Revisions to Approved Plans
- ☐ Other:

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

mw 12/26/2018

Michael E. Farthing

Attorney at Law

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

Office: 541-683-1950 ◊ Fax: 541-654-5083

email: mefarthing@yahoo.com

November 7, 2019

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **509-PA-05298 (Nimpkish LLC)**
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County
First Post-Hearing Evidentiary Submission

Mr. Darnielle,

Please enter this letter and attachments into the record of the above-referenced appeal that I am submitting on behalf of the applicant and in support of the Director's decision and findings.

The purpose of this letter is to provide additional evidence and analysis during the first post-hearing record submission period. It includes eyewitness accounts about the County's adoption of Goal 5 policies in 1984 relating to residential densities in the various Big Game Range areas (Major, Peripheral, Impacted) and the relevance of these policies, if any, to individual applications for forest template dwellings in the F-2 zoning district. Given the importance of evaluating the "overall residential density for protection of big game habitat" (Goal 5, Flora and Fauna, Goal 11) and in light of LandWatch's repeated and unsuccessful efforts to breathe life into an ambiguous and, as we have determined, fully implemented policy, Mr. Belknap has prepared a more detailed analysis of the term "density" as it swirls in and through LandWatch's earlier missives as well as Mr. Malone's most recent September 26 letter. My letter will also provide an explanation of the purpose and relevance of the new evidence concerning the Goal 5 density policy as it relates to the template dwelling criteria.

First, the following responds to Mr. Malone's letter and then introduces the new evidence under separate headings.

Malone September 26 Letter

At the September 26 hearing, Mr. Malone, attorney for LandWatch, submitted a letter that primarily addresses a recent LUBA decision, *Cattoche v Lane County*, ___Or LUBA ____ (LUBA NO. 2018-109, May 22, 2019) in an inter-woven discussion that includes selected quotes from that decision. I will discuss this part of his letter later in the section that addresses Goal 5,the *Cattoche* decision and its relevance to this template dwelling application. His analysis of Goal 5 has no sound basis or support in the law or in the legislative context in which Lane County's Goal 5 policies were adopted in 1984.

At the outset, it is important to object to Mr. Malone's generous interpretation of OAR 660-006-0025(6)[1] which he asserts is a portal through which any Lane County Rural Comprehensive Plan ("RCP") policy of LandWatch's choosing can move through and be applied to any and all template dwelling applications. Without any analysis or discussion of the actual text of the rule, Mr. Malone quotes the text and in the next sentence concludes:

> "*** On its face, this rule requires that comprehensive plan policies are approval criteria for template dwelling approvals."

This rule requires nothing close to what Mr. Malone claims but, instead, says that if there are "other requirements contained " in the comprehensive plan or implementing ordinance, "then the template dwelling process does not preclude or affect the applicability of those specific plan or zoning provisions."

It does not apply to plan policies that are in the form of providing direction to the County who, as is discussed later herein, responded to that direction by adopting the F-1 zone that prohibits residences and then applied that zone to 84% of the County's designated forest land. There is no RCP Goal 5 plan policy that ". . .imposes a residential density standard of one dwelling per 80 acres" as Mr. Malone claims in his next paragraph. The 80-acre minimum lot size in the F-2 zone is derived from Goal 4 policies, not Flora and Fauna Policy #11 as claimed by Mr. Malone.

---

[1] OAR 660-006-0025(6) states: Nothing in this rule relieves governing bodies from complying with other requirement contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.

The point of this introduction is to re-emphasize the lack of legal and factual support provided by LandWatch for its various positions with regard to the applicability of RCP policies to individual forest template dwelling applications. The following sections will provide substantial evidence to support the conclusion that the RCP Goal 5 policies, claimed by LandWatch and Mr. Malone to impose 40-acre and 80-acre minimum densities to applications for template dwellings in the F-2 zoning district, have no relevance to those applications, like the present one. The next section describes the present position Lane County, through you, the Hearings Official, and staff, have taken, to date, toward the applicability of the Goal 5 policies which is that they have no relevance as criteria for a forest template dwelling application in the F-2 zone.

Hearings Official Decision, PA 17-05951 (Evans/Betz, 08-08-18)

Lane County, as articulated in your recent decision cited above, has determined that the Big Game Range density standards in the Goal 5 policies are not an applicable standard for forest template dwelling applications. You found in that case:

> "The Appellant makes the following allegations of error:
>
> a. *The Director's approval violates the dwelling density standards of Big Game Ranges.*
>
> The Appellant notes that the entire TRS within which the subject property exists is designated Big Game Range cites OAR 660-006-0027(I)(f) which require that the siting of the dwelling be consistent with density limitations imposed by the acknowledged comprehensive plan and land use regulations. However, the Flora and Fauna Working Paper of the Rural Comprehensive Plan explains that the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations on a regional basis. The density recommendations were not applicable to existing parcels but were to be considered in rezoning applications. Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards.

b. The Director's approval violates Goal 4 and 5 policies of the Rural Comprehensive Plan.

> Lane County's Rural Comprehensive Plan was acknowledged by LCDC in 1984. In regard to compliance with Statewide Planning Goal 5, Lane County did categorize Big Game Habitat as a 1C significant Goal 5 resource.[10] However, as noted above, the County incorporated the protections recommended in the Flora and Fauna Working Paper into the zoning ordinance. Accordingly, residential development was limited in Big Game Habitat areas and further restriction of development was not necessary to comply with Statewide Planning Goal 5.
>
> The Appellant specifically cites Rural Comprehensive Plan Goal 4 Policy #11 which states "*Encourage the consolidation of forest land ownership in order to form larger more viable forest resource units.* First, this policy is aspirational and does not provide an objective standard that applies to a quasi-judicial land use permit process. Second, the action taken by the County does not have any impact upon parcelization. Rather, the template dwelling process forces an applicant to recognize and work within the existing parcelization pattern within a 160-acre square template."

(footnote omitted, emphasis supplied) To date, Mr. Malone has not provided any rational or even plausible explanation as to why these original RCP policies have suddenly sprung into life and became applicable to forest template applications that only come into existence after 1993. Mr. Malone's dependence on the *Cattoche* decision is entirely misplaced for several reasons with the most obvious being that *Cattoche* involved a plan amendment from a Forest designation and F-2 zoning to Non-Resource and Rural Residential 5-acre zoning. The present application requests permission to construct a single dwelling on an existing legal lot while *Cattoche* involved the creation of new residential lots. Mr. Malone is comparing apples to elephants.

Lane County RCP Goal 5, Flora and Fauna Policies 11, 12 and 13

After quoting at length from the *Cattoche* case, Mr. Malone concludes that the

". . . application is not consistent with the 80-acre standard . . ." and must be denied. He makes no attempt to address your *Betz* analysis and particularly the part where you state the ". . .density recommendations were not applicable to existing parcels but were to be considered in rezoning applications", like the *Cattoche* case. Mr. Malone has no response because there is none.

As further support for the County's position towards the ODFW Goal 5 density recommendations I enclose the following documents:

ATTACHMENT "A": Kent Howe letter (10-14-19) re: RCP Goal 4 and Goal 5 policies ("Howe Letter")

ATTACHMENT "B": James Mann letter (10-16-19) re: Template dwellings and RCP Goal 5 ("Mann Letter")

Both of these letters provide first-hand accounts of how and why the RCP Goal 5, Flora and Fauna Policies, specifically Policy 11 that contained the much-discussed ODFW recommendations for "overall residential density", were addressed during the 1984 RCP adoption and acknowledgment process.

The following will provide a brief description of the relevance of each letter although they speak for themselves as to how they relate to the current state of template dwelling applications and RCP Goal 5 "density" recommendations. Let there be no doubt about what happened to the Policy 11 recommendations — they were addressed and implemented in 1984 with the adoption of F-1 zoning and the prohibition of residences in that zone. Acknowledgment by LCDC in 1984 confirmed this conclusion.

Howe Letter

Mr. Howe's credentials and expertise about Lane County's RCP acknowledgment process are impeccable and that is reflected in his straight-forward account of what occurred in 1983-84 when Lane County's RCP was in its final stages of adoption. Mr. Howe succinctly describes the tension in 1983-84 between Goals 4 and 5 and how that conflict was eventually resolved with the adoption of F-1 zoning that prohibited residences on 84% of the designated forest land in the County. That action addressed ODFW's concerns and, as Mr. Howe states, "complied with the rule".

Mann Letter

Mr. Mann's credentials are equal to Mr. Howe's as to what occurred in 1984 with

regard to the recommendations of ODFW for Big Game Habitat protections during the RCP adoption and acknowledgment process in 1983-84. Mr. Mann not confirms Mr. Howe's description of how and why the F-1 zoning was applied to 84% of the County's designated forest land with a prohibition on residential development in those areas. For the remaining F-2 zoned lands, clustering of residences was required as evidenced by the excerpt of the DLCD staff report attached to Mr. Mann's letter.

Both letters confirm your previously-reached conclusion in the *Betz* decision that the ODFW residential density recommendations "are not applicable to existing parcels but were to be considered in rezoning applications". *Betz*, p 10. Mr. Belknap's letter, submitted on this date, provides a comprehensive explanation of how the finite number of lawful units of land, at least in the forest-designated areas of Lane County, was essentially fixed on October 3, 1984, the date LCDC acknowledged Lane County Rural Comprehensive Plan ("the RCP"). The criteria for placing residences on those F-2 zoned parcels changed with the adoption of the template dwelling statute and regulations in the early 1990's. Since then, and even since 1984, the "density" of lawful units of land within this F-2 zoned area (only 16% of the total forest-designated land area in the County) has effectively not changed. Very few F-2 zoned parcels have actually been created since 1984.

Conclusion

The enclosed documents together with Mr. Belknap's letter and attached letter from Mr. Remboldt provide additional evidence to address the concerns raised about the applicability of Goal 5 and 7 to this template dwelling application. LandWatch, in contrast, has not provided any relevant evidence or analysis.

Sincerely,

Michael E. Farthing

Enclosure

c: Gary Darnielle (via email)
Rachel Serslev (via email)
Nimpkish LLC (via email)
Jim Belknap (via email)
Sean Malone(via email)

October 14, 2019

Gary Darnielle,
Lane County Hearings Official
Subject: Wildlife Habitat

This is written to document the development of the Rural Comprehensive Plan in 1984 when I was a Planner working on the acknowledgement effort.

RCP Goal 5, Flora and Fauna Policies 9, 10 and 11 were developed in 1983 and 1984 in an effort by Lane County to address the concerns of the Oregon Department of Fish and Wildlife (ODFW) about the impacts of residential development on Big Game Habitat areas. The discussions in the 1982 Flora and Fauna Working Paper and the requirements in Policies 9, 10 and 11 are about limiting residential densities with specific siting requirements (still applicable in the resource zones) in order to minimize the impacts of new residential development on Big Game Habitat areas.

At the same time, Lane County was trying to comply with Goal 4 requirements for Forest Lands and Lane County adopted Goal 4, Policy 5 that prohibited new dwellings on Non-Impacted Forest Lands zoned F-1. This prohibition applied to 84% of Lane County and substantially addressed the concerns of residential impacts on Big Game Habitat raised under Goal 5 by the ODFW. As a result, Polices 9,10 and 11 of the 1982 Flora and Fauna Working Paper do not designate any Big Game Habitat areas as significant "1 C".

Lane County limited residential development in Big Game Habitat areas by prohibiting new dwellings in 84% of Lane County (the F-1 zone). Lane County complied with the Goal 5 Rule and did not need to further restrict development in Big Game Habitat areas because so much land was preserved from development. Lane County's Big Game Habitat was not categorized as a significant Goal 5 resource. Based on this recognition, no analysis of residential densities is required in wildlife habitat areas in Lane County. Therefore, there are no development limitations on residential densities in Lane County's acknowledged comprehensive plan.

Kent Howe
Former Lane County Planning Director

Attachment "A"

James A. Mann LLC
Land Use Planning & Development Permit Services
P.O. Box 51081
Eugene, Oregon 97405-0902
Telephone: (541) 514-3051
Email: jamannllc@comcast.net

October 16, 2019

Gary Darnielle
Lane County Hearings Official

Re: Wildlife Densities for the F-1 and F-2 Zones

Mr. Darnielle:

This is written in response to assertions that additional protections are required for the approval of template dwellings in the F-2 zone, for the protection of wildlife and big game habitat arreas.

In 1983 and 1984, Lane County developed and adopted the Lane County Rural Comprehensive Plan policies and implementing ordinances in order to comply with the Statewide Planning Goals and to obtain acknowledgement from LCDC for these requirements. I was employed by Lane County during this time as a Principle Planner with the primary responsibility of overseeing this effort, working with other involved County planners, and drafting Lane Code Chapter 16 including the requirements for the F-1 zone in LC 16.210 and the F-2 zone in LC 16.211.

In the early stages of developing these requirements, dwellings were allowed as special uses in the draft F-1 and F-2 zones and LC 16. Therefore, the need for dwelling densities to protect wildlife and big game habitat areas was especially important and was discussed in the Flora and Fauna Working Papers. At the 11th hour of the public hearings process, Lane County decided to significantly change the forest policies and LC 16.210 by prohibiting new dwellings on Nonimpacted, F-1 zoned lands. F-1 zoned lands included approximately 84% of the designed forest lands. After the prohibition on new dwellings on nonimpacted forest lands and F-1 zoned lands was adopted, the need for parcel sizes and dwelling densities on F-1 zoned lands evaporated.

On the remaining 16% of Lane County's forest lands, Impacted forest lands zoned F-2, an acceptable alternative to imposing dwelling and land division densities to protect wildlife and big game habitat areas was developed and adopted by Lane County. This alternative consisted of dwelling clustering requirements. During the hearings process when this alternative was reviewed, a representative from the Oregon Department of Fish and Wildlife was present. e

Attached to this letter is an excerpt from pages 25 and 26 of the September 12, 1984 DLCD report to LCDC for the acknowledgement of the Rural Comprehensive Plan that specifically stated,

> *"Amend the F-2 and EFU zones too carry out the intent of the Flora and Fauna Policy II. Specifically, the zones must either require larger minimum parcel sizes*

Attachment "B"

in the Big Game Habitat portions of these zones or containing clustering requirements in those areas."

The DLCD report expressly identified the clustering requirements in the F-2 zone. These requirements are substantially the same today. LCDC acknowledged these requirements as consistent with Flora and Policy II and as in compliance with Goal 5. It therefore appears that we are not required to do this again today.

Sincerely,

James A. Mann LLC

Attachment "B"

Response

Lane County has responded to this IOTC by amending the Flora and Fauna Working Paper Addendum (p. 7) to include the following justification for not applying riparian setback and vegetation maintenance requirements to lakes or Class II streams (Ord. No. PA 892):

> "For purposes of this analysis, only Class I riparian lands are considered. Class II streams (using ODF standards) are not fish-bearing streams, according to Oregon Fish and Wildlife Department staff, and often dry up in the summer months. Additionally, they are located in remote areas in public ownership or limited to resource uses by resource zones. Many of them have not been inventoried, and location maps are not easily available. Most lakes outside of the coast are impoundments, such as Fern Ridge Reservoir, and have COE easements plus County PR zoning to protect their shorelines. The remaining natural lakes are protected by coastal overlays or are in High Cascade wilderness areas such as Waldo. The Oregon Fish & Wildlife Department, which worked closely with the County in devising a method of protecting Class I riparian lands, did not indicate a need to similarly protect Class II riparian lands. In the nomenclature of the Goal 5 Rule, the County determines the Class II streams are to be considered '1A' resources--not to be included on the Plan inventory."

Conclusion

Requirement 2c has been met.

Requirement

2. Fish and Wildlife Habitats:

   d. Amend the F-2 and EFU zones to carry out the intent of Flora and Fauna Policy II. Specifically, the zones must either require larger minimum lot sizes in the Big Game Habitat portions of these zones, or contain clustering requirements in those areas.

Response

Lane County has added the following new language to both the F-2 and EFU Zones:

> "(a) The Approval Authority shall balance the setback standards of LC.211(8)(a) with the siting requirements and application approval criteria specified elsewhere in LC 16.211 in order to minimize adverse impacts upon forest uses and to assure optimal siting of

Attachment "B"

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proposed residences consistent with the purposes the F-2 [EFU] Zone.

(i) Residences to be sited upon tracts located within a big game range as designated by the Department of Fish and Wildlife shall be sited as follows:

(aa) Near residences on other tracts.

(bb) With minimal intrusion into forest areas undeveloped by nonforest uses.

(cc) Where possible, when considering LC 16.211(8)(a)(i)(aa) and (bb) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU."

Conclusion

Requirement 2d has been met.

Requirement

2. Fish and Wildlife Habitats:

e. Amend the Flora and Fauna Working Paper to include location, quality and quantity information for sensitive bird habitat areas, including great blue heron rookeries, bald eagle and osprey nests, and pigeon mineral springs. Apply all applicable steps of the Goal 5 process to all known sensitive bird sites. Flora and Fauna Policy 15 must also be modified, consistent with these tasks.

Response

Lane County has adopted (Ord. No. PA 892) as part of its Flora and Fauna Working Paper, an inventory of known sensitive bird sites, including location, quality and quantity information. The County has identified conflicting uses and analyzed ESEE consequences. Based on this analysis, Lane County has decided to adopt a procedure for "flagging" areas in which such sites occur and requiring conflicting uses to be subject to conditional use approval. For all conflicting uses except timber management activities, the County has adopted "Sensitive Bird Habitat Protection Standards and Criteria" as part of the Lane Code (Ord. No. 11-84). Excerpts from that zone section are as follows (LC 16.005(4)(1)):

"(b) Development Plan Submittal. The person proposing the development shall submit plans to the

Attachment "B"

SERSLEV Rachel

From: SERSLEV Rachel
Sent: Tuesday, October 8, 2019 7:57 AM
To: 'Lauri Segel-Vaccher'; 'Jim Belknap'; FARTHING Michael (SMTP); 'Sean Malone'; 'GERI BETZ'; 'michael@kaengineers.com'; Gray Goodman
Cc: 'DARNIELLE Gary L'
Subject: Open Record Request PA19-05298
Attachments: PA19-05298, NIMPKISH,LLC Request for Extension of Submittals on Appeal.pdf

Dear Parties of Record,

Hearings Official Darnielle has approved a request to extend the open record period from October 10th to November 7th.

Therefore, the open record deadlines are as follow:

- New information by **November 7, 2019**
- Response to new information by **November 21, 2019**
- Applicant Rebuttal by **November 28, 2019**

Please let me know if you have any questions or concerns.

Thank you,

Rachel Serslev, Planner, CFM
Lane County Land Management Division
3050 N. Delta Hwy, Eugene, OR 97408
541-682-6903 | rachel.serslev@co.lane.or.us

SERSLEV Rachel

From: DARNIELLE Gary L <GDARNIELLE@lcog.org>
Sent: Tuesday, October 8, 2019 7:40 AM
To: SERSLEV Rachel
Subject: RE: PA19-05298

[EXTERNAL ☐]

Rachel,

Please advise the parties that Mr. Belknap's request has been granted. The new open record deadlines are Nov. 7; Nov. 21; and Nov. 28. Thank you.

Gary Darnielle
Lane County Hearings Official

From: SERSLEV Rachel <Rachel.SERSLEV@co.lane.or.us>
Sent: Monday, October 7, 2019 4:46 PM
To: DARNIELLE Gary L <GDARNIELLE@lcog.org>
Subject: RE: PA19-05298

Can you forward me your response on this so I can let the parties of record know. Thank you.

-Rachel

From: SERSLEV Rachel
Sent: Friday, October 4, 2019 2:46 PM
To: DARNIELLE Gary L
Subject: FW: PA19-05298

Hello Gary,

As described below and attached, Jim Belknap representing Nimplish LLC on PA19-05298 has requested an extension of the open record period and provided a corresponding timeline extension. Please let me know when you make a decision on this request and I will relay it to the parties of record.

Thank you,
Rachel

From: Jim Belknap [mailto:jim.e.belknap@gmail.com]
Sent: Friday, October 4, 2019 12:50 PM
To: SERSLEV Rachel
Cc: FARTHING Michael (SMTP); Gray Goodman
Subject: PA19-05298

[EXTERNAL ⚠]

Good Morning Rachel,

I am attaching a letter to Gary Darnielle, in care of your office, requesting an extension of the deadline for response to the submittals of the Appellant in PA19-05298. The current deadline is October 10, 2019, we are requesting that date be extended to November 7, 2019. The request provides for the previously granted two week period to follow the submittal deadline for all parties to be able to respond to information that has been submitted during this initial period and a final one week period for rebuttal by the Applicant. I have also attached a Request for Waiver of the Statutory Timelines, extending the applicable timelines by 45 days. If you feel additional time for the waiver is appropriate please let me know.

Thank you for your attention to this matter. Please let me know as soon as possible if the Hearings Official is amenable to our request.

Jim Belknap

--
Jim Belknap
Principal Broker
Belknap Properties, LLC
P. O. Box 362
Cottage Grove, OR 97424
541-954-2944 Cell
541-942-1653 Fax

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Gary Darnielle
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

October 4, 2019

Re: PA19-05298

Original by U.S. Mail, Electronic Copy to Rachel.Serslev@co.lane.or.us

Dear Mr. Darnielle:

On behalf of NIMPKISH, LLC, the owner of the property known as Tax Lot 18-02-11-00-00507 and the subject of the referenced Planning Action, I am requesting an extension of the deadline for filing additional information relating to the pending appeal from the current scheduled date of October 10, 2019 to November 7, 2019.

The issues raised by the Appellant, in particular their demand that previous decisions of the County Hearings Official be reversed, and policies of County Staff that have been relied upon based on those decisions be dramatically changed, are of profound importance to the citizens of Lane County. While I have not yet been provided with a copy of the appeal, I understand that LandWatch Lane County has also filed an appeal of a similar application for a Template Test Special Use Permit, basing their appeal on issues identical to those raised in this action.

With your concurrence I suggest that following the November 7, 2019 deadline all parties be granted a two week period to submit such information as they deem appropriate followed by a one week period for the Applicant to file a final rebuttal. We will also file an appropriate Request for Extension of Timelines with the Land Management Division, extending the statutory timelines by 45 days.

Thank you for your continuing courtesies in this matter.

Sincerely,

Jim Belknap

Jim Belknap
Agent for NIMPKISH, LLC

Cc: NIMPKISH, LLC
Michael Farthing, Counsel for Applicant

LAND MANAGEMENT DIVISION

Waiver/Extension of Statutory Timeline Requirements

Instructions: To waive or extend the statutory timeline requirements applicable to your land use application, please complete, sign, date, and return this form to the address listed below.

I, James E. Belknap, as owner or authorized representative of the owner of
Applicant (Print Name)

the property known as Assessor's Map and Tax Lot(s) 18-02-11-00-00507

that is the subject of the land use application Department File Number PA19-05298

and is the subject of this request, do hereby voluntarily waive or extend **(Check Only One Box):**

☐ the statutory timeline requirements of ORS 215.427 and the associated right to seek mandamus as provided for by ORS 215.429(1) are hereby **waived**.

☒ the statutory timeline requirements of ORS 215.427 are **extended** for Forty-five (45) days[1] in order to submit additional information.
(Enter Number of Calendar Days)

James E Belknap
Signature (Applicant/Owner)

10/4/19
Date Signed

Return to: **Lane County – Public Works**
Land Management Division
3050 N. Delta Hwy.
125 E. 8th Avenue
Eugene, OR 97408

[1] Per ORS 215.427(5), the total period of time an application can be put on hold and final action timeline extended by an applicant may not exceed 215 days.

(Version 3/2013)

Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

Mr. Gary Darnielle, Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

97408-15550

0773

SERSLEV Rachel

From:	SERSLEV Rachel
Sent:	Friday, September 27, 2019 8:46 AM
To:	SEGEL-VACCHER Lauri (SMTP); 'Jim Belknap'; FARTHING Michael (SMTP); Gray Goodman; 'Sean Malone'; 'GERI BETZ'; 'michael@kaengineers.com'
Cc:	DARNIELLE Gary L
Subject:	FW: Hearing submittals
Attachments:	PA19-05298, NIMPKISH, Appeal Response, Exhibit A.PDF; PA19-05298, NIMPKISH, Appeal Response, Exhibit D.PDF

From: SERSLEV Rachel
Sent: Friday, September 27, 2019 8:45 AM
To: SEGEL-VACCHER Lauri (SMTP); 'Jim Belknap'; FARTHING Michael (SMTP); Gray Goodman; 'Sean Malone'; 'GERI BETZ'; 'michael@kaengineers.com'
Cc: DARNIELLE Gary L
Subject: FW: Hearing submittals

From: SERSLEV Rachel
Sent: Friday, September 27, 2019 8:42 AM
To: SEGEL-VACCHER Lauri (SMTP); 'Jim Belknap'; FARTHING Michael (SMTP); Gray Goodman; 'Sean Malone'; 'GERI BETZ'; 'michael@kaengineers.com'
Cc: DARNIELLE Gary L
Subject: FW: Hearing submittals

I am trying this again with multiple emails for the large attachments because I am not positive they went through.

From: SERSLEV Rachel
Sent: Thursday, September 26, 2019 11:32 AM
To: SEGEL-VACCHER Lauri (SMTP); 'Jim Belknap'; FARTHING Michael (SMTP); Gray Goodman; 'Sean Malone'; 'GERI BETZ'; 'michael@kaengineers.com'
Cc: DARNIELLE Gary L
Subject: Hearing submittals

Interested Parties,

Attached are items that were submitted prior to and at the hearing today. Please confirm receipt as I have attached some larger files.

Thank you,

Rachel Serslev, Planner, CFM
Lane County Land Management Division
3050 N. Delta Hwy, Eugene, OR 97408
541-682-6903 | rachel.serslev@co.lane.or.us

AGENDA
LANE COUNTY HEARINGS OFFICIAL

DATE: Thursday, September 26th, 2019

TIME(S): 9:30 A.M.

LOCATION: Lane County Customer Service Center (CSC) Goodpasture
Rm 3050 N Delta Hwy, Eugene OR, 97408

Lane County complies with state and federal laws and regulations relating to discrimination, including the Americans with Disabilities Act of 1990 (ADA). The meeting location is wheelchair-accessible. If one needs special accommodations (hearing impaired, language translation, chemical sensitivity needs or large print copies of the agenda), please request at least 48 hours prior to the meeting by calling Amber Wolles 541-682-6917.
*SPECIAL DATE

ITEM	FORMAT
1. 509-PA19-05298: Description: An appeal of a request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4, (3), (5) and (6). Map and Tax Lot: 18-02-11-00-00507 Owner: Nimpkish LLC Applicant: Jim Belknap Appellant: LandWatch Lane County Staff: Rachel Serslev Hearings Official: Gary Darnielle	a) Announcement of the nature & purpose of the hearing b) Announcement of opportunities for submission of information & appeal. c) Disclosure of ex parte contacts d) Report by the Director e) Applicant's testimony f) Testimony of persons in favor g) Testimony of other persons h) Any additional comments by the Director i) Applicant rebuttal j) Conclude the hearing The Hearings Official will not make a decision on these matters at this hearing. The County Code requires that a written decision must be made within 10 days of this hearing date. To receive a copy of the Hearings Official's decision, fill out a request form at the public hearing or call the Lane County Land Management Division at 541-682-6917.

LANE COUNTY
HEARINGS OFFICIAL

SIGN-UP SHEET

Date: **SEPTEMBER 26, 2019**

Applicant: **Nimpkish LLC/Belknap**

Planning Action: **509-PA19-05298**

Name	Address, City, Zip	E-Mail
Jim Belknap	77898 Chisholm Trail Dr. Cottage Grove, OR 97424	jim.e.belknap@gmail.com
Sean Malone	259 E. 5th Ave Ste 200-C Eugene 97401	SeanMalone@eohastanding
MIKE EVANS	475 OAKDALE AVE. SFO 97477	LANDPLAN@COMCAST.NET
MICHAEL REMBOLDT	P.O. Box 8486, COBURG, OR 97408	michael@kaengineers.com

0776

ORD. NO. _____
P.A. NO. 509-PA19-05298
DATE: 9/26/19 EXHIBIT NO. 1

Sean T. Malone

Attorney at Law

259 E. Fifth Ave.,
Suite 200-G
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

September 26, 2019

Via Hand Delivery

Lane County Hearings Official
c/o Lane County Planning Department
Land Management Division
3050 North Delta Highway
Eugene OR 97408
(541) 682-4065

Re: LandWatch testimony in opposition to Request for Template Dwelling in the F-2 zone, 509-PA19-05298 (Nimpkish).

On behalf of LandWatch Lane County, please accept this testimony in support of the appeal and in opposition to the application described above.

OAR 660-006-0025(6) explains that "[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinance such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands." On its face, this rule requires that comprehensive plan policies are approval criteria for template dwelling approvals. LandWatch cannot identify any caselaw addressing this provision, and, therefore, its meaning appears to be a matter of first impression.

It is well-known that the comprehensive plan imposes a residential density standard of one dwelling per 80 acres for Major Big Game habitat.[1] The subject property is designated

[1] Flora and Fauna policy 11 states:

> "Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use

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Major Big Game, and, therefore, the applicant must demonstrate that the density is no greater than one dwelling per 80 acres.

LandWatch is also aware of the Hearings Official's ruling in another matter referenced by staff, in which the Hearings Official determined that:

> "Big Game Range density standards were integrated into the zoning classification and minimum lot size recommendations on a regional basis. The density recommendations were not applicable to existing parcels but were to be considered in rezoning applications. Therefore, approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards."

Hearings Official Decision, 509-PA17-05951, (Evans/Betz). The problem with the Hearings Official's conclusion is that it is simply not supported by the Flora and Fauna working paper. While integrating density standards into zoning classifications may have been one of the initial goals, that is not what actually occurred. LUBA addressed this in detail in a recent decision:

> "As discussed below, as part of its program to achieve Goal 5, the county has adopted a standard of no more than one dwelling per 40-acres to protect Peripheral Big Game Range (Residential Density Standard). That standard is found in the Flora & Fauna March 1992 Lane County Comprehensive Plan Working Paper Revisions document (Flora and Fauna Working Paper), [ ]. The Flora and Fauna Working Paper indicates that the initial intent was to preserve the 40-acre standard through *zoning*. However, the county's inclusion of the subject property in the Peripheral Big Game Range inventory is geographical and is not tied to or dependent on the current F-2 zoning. The challenged decision does not purport to remove the subject property from the Peripheral Big Game Range inventory and associated habitat protections, including the limitation of one dwelling per 40 acres.

> regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

The Flora and Fauna Working paper provides the residential densities recommended from ODFW:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 acres; for Major Big Game Range at one dwelling unit per 80 acres. * * * to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range * * * conflicts with habitat for big game." Flora and Fauna Draft Working Paper, Page 24.

* * *

The Flora and Fauna Working Paper the county incorporated into its findings explains that the Big Game Range protection:

> 'premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.' [ ].

The Flora and Fauna Working Paper states that the county will be divided into regions and the county will determine the number of existing residences and the:

> 'additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 [or 80] acres, whichever is lesser, will be recommended in the region for residential density for big game purposes.
>
> * * * * *
>
> If this figure is ever exceeded, it constitutes a conflict with Big Game Range. [ ].'

The Body of the Flora and Fauna Working Paper therefore states that the lesser of this figure or the county's 40-acre figure [or in this case the 80-acre figure] will be 'recommended in the region for residential density for big game purposes.' *Id.* If this figure is exceeded, there is a conflict and an ESEE analysis is required. *Id.* Ultimately, however, the Flora and Fauna Working Paper identified as its selected strategy that 'ODFW recommendations on overall residential density with Peripheral and Major Big Game Range shall be a determinant in minimum parcel size for regions of the County.' [].

In the challenged decision, the county did not identify the level of residential density allowed in the F-2 zone * * * *

We observe that the F-2 zone does not provide a general residential density standard. The use table for impacted forest zones lists six types of dwellings allowed in the F-2 zone. LC Table 16.211, 2.1-2.6. Those dwellings include: (1) caretaker residence for public parks and pubic fish hatcheries, (2) large tract forest dwelling, (3) lot of record dwelling, (4) template dwelling, (5) replacement dwelling, (6) temporary hardship dwelling. *Id.* A large tract forest dwelling may be allowed in the F-2 zone on a tract that is 'at least 160 contiguous acres or 200 acres in one ownership that are not

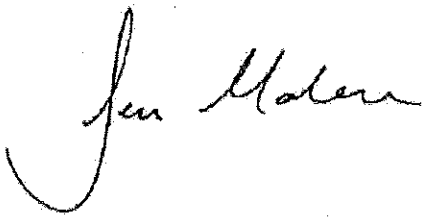
contiguous but are in Lane County or adjacent counties and zoned for forest use.' LC 16.211(3)(a)(ii). The remaining five types of dwellings do not require a particular minimum lot or parcel size. LC 16.211(3). The minimum lot or parcel size for new or adjusted lots or parcels in the F-2 zone is 80 acres. LC 16.211(7); *see also* ORS 215.780 (providing generally applicable 80-acre minimum requirement); OAR 660-006-0026 (same). However, the F-2 zoning indicates that predominant land ownerships are 80 acres or less. Accordingly, as we understand it, the county did not quantify a residential density allowed in the F-2 zone, and instead used the ODFW 40-acre standard for areas inventoried as Peripheral Big Game Range."

Cattoche v. Lane County, __ Or LUBA __ (LUBA No. 2018-109, May 22, 2019), *16-21. (italicized emphasis in original; underline emphasis added).

A complete reading of the *Cattoche* case and the Flora and Fauna Working Paper establishes that, ultimately, densities were not incorporated into the zoning – let alone the F-2 zoning. Instead, it was the 40- and 80-acre residential density standards for Peripheral and Major Big Game designations, respectively, and that this standard *is the program to achieve Goal 5*.[2] Because the application is not consistent with the 80-acre standard, the application must be denied and the Planning Director's decision must be reversed.

I respectfully request that the decision of the Planning Director be reversed and the application denied.

Sincerely,



Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

[2] Indeed, the 40- and 80-acre standard is consistent with the criteria for the programs to achieve goal 5 because it is a "clear and objective standard[]" that satisfies two of the three provisions identified in OAR 660-023-0050(2). More specifically, the standard is a "fixed numerical standard" and "[i]t is a nondiscretionary requirement." *Id.*

Additional Information Submitted

Date Stamp
RECEIVED
SEP 25 2019

Submitted By: MICHAEL FARTHING
Phone Number: 541-683-1950
Email Address: mcfarthing@yahoo.com
Project Address: _____

Permit Number (BP, PA, SP, SI): PA-05298 Appeal of
Submittal Description: Template Dwelling Approval

ATTEN: Rachel Serslev

Type of Submittal:

☒ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other: _____

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swm 12/26/2018

Michael E. Farthing

Attorney at Law

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

Office: 541-683-1950 ◊ Fax: 541-654-5083

email: mefarthing@yahoo.com

September 25, 2019

HAND DELIVERED

Gary Darnielle, Lane County Hearings Official
c/o Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: **509-PA-05298 (Nimpkish LLC)**
Appeal of Director Approval of Template Dwelling in F-2 zone
by Landwatch Lane County

Mr. Darnielle,

Please enter this letter and attachment into the record of the above-referenced appeal that I am submitting on behalf of the applicant and in support of the Director's decision and findings.

The purpose of this letter is twofold. First, I want to fully support Mr. Belknap's detailed response to Landwatch's appeal statement. At this time, there is really no substance or merit to any aspect of Landwatch's appeal.

This leads to my other point which is to vigorously refute Landwatch's speculations about the applicability of Statewide Planning Goal 7 and, more specifically, the County's "Goal 7 (Hazards) working paper" to this template dwelling application. It should be stated clearly: Goal 7 and the County's Natural Hazards Working Paper (dated: "JAN-1982") has no relevance to nor is it part of the criteria that my client must, and has, addressed for this application. That Working Paper has been implemented in various ways including at the building permit level. Attachment 3 to the September 19 staff report reflects that process.

More to the point for this appeal, I have attached the County's 15-page Forest Template Dwelling Application form which contains all of the applicable standards and criteria that must be addressed by a template dwelling applicant, like our clients, the Goodmans, and Nimpkish LLC, the property owner. Nowhere in this multitudinous array of requirements is there any mention of Goal 7, the DOGAMI landslide maps or the County's thirty-seven year old "draft" Natural Hazards Working Paper. Landwatch is free to sift through these various standards to find anything about Goal 7.

As with their venture into Goal 5 and Big Game Habitat that has been repeatedly rejected, so too, this wandering into Goal 7 should also be quickly and summarily rejected. The staff

report articulates this response in a clear and concise manner. Without something more from Landwatch, Goal 7 should follow in the footsteps of Goal 5.

Sincerely,

Michael E. Farthing

Enclosure

c: Gary Darnielle (via email)
Rachel Serslev (via email)
Nimpkish LLC (via email)
Jim Belknap (via email)
Landwatch (via email)

Additional Information Submitted

Date Stamp

RECEIVED SEP 24 2019

Submitted By: James E. Belknap

Phone Number: 541-954-2944

Email Address: jim.e.belknap@gmail.com

Project Address: _____

Permit Number (BP, PA, SP, SI): PA 19-05298

Submittal Description: Letter to Hearings Official

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: Rachel Serlet Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

svm 12/26/2018

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
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Gary Darnielle
Lane County Hearings Official
c/o Rachel Serslev
Lane County Land Management
3959 North Delta Highway
Eugene, OR 97408

Original Personally Delivered and copy by email to:
GDARNIELLE@lcog.org and Rachel.Serslev@co.lane.or.us

September 23, 2019

Re: PA19-05298

Dear Mr. Darnielle:

This Thursday, September 26, 2019, you will be hearing an appeal of the above referenced planning action. Rachel Serslev is the planner at Lane County Land Management who has been quite ably handling this application. Last week I presented a letter to Ms. Serslev and, as these things are wont to go, I believe there is an abundance of information that Ms. Serslev has been preparing for your review. My intent with this correspondence is to summarize what appears to be the three elements of the appeal being made by LandWatch Lane County and to insure that our response to those three points is presented to you prior to the hearing so that we may be able to discuss them directly at that time.

Objection No. 1. The Appellant objects to the inclusion of a dwelling located on Tax Lot 18-02-11-00-00601 (herein Tax Lot 601) in the dwelling count of three as established in the template test provided by our company, representing the applicant, NIMPKISH, LLC. This objection has previously been made by LandWatch, most recently in PA 17-05951, a request for a Special Use Permit using the template test for Tax Lot 18-02-11-00-00201. As noted in our application and as discussed in the appeal of PA17-05951, the dwelling located on Tax Lot 601 was originally established in a mobile home placement permit under BP2367-81 and was replaced with a site built structure under provisions of a Verification of Replacement Rights approved under PA98-05159. In PA17-05951 the Appellant (LandWatch) argued that the dwelling located on Tax Lot 601 did not meet the criteria for construction on or before January 1, 1993 and "continues to exist." This allegation requests the inclusion of the dwelling located on Tax Lot 601 be denied in PA17-05951. The allegation of error was dismissed.

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The 14 page decision in the appeal of PA17-05951 made by the Lane County Hearings Official on August 8, 2018 is included with this letter as Exhibit A. Attention is directed to page 11 of 16, Section No. 4. In what might be addressed as courtroom parlance, the issue raised by the Appellant in the matter at hand, PA 19-05298, that the dwelling located on Tax Lot 601 cannot be considered in the parcel count of the template test, "has been asked and answered." The dwelling located on Tax Lot 601 was lawfully established in 1981 under BP 2367-81, and was lawfully replaced in 1998 under the Verification of Replacement Rights approved in PA98-05159.

The specific question as to the recognition of the dwelling on Tax Lot 601 is identical to that addressed in PA15-05734 and PA15-05735. In both of the those applications the Hearings Official, affirmed by decision of the Lane County Board of Commissioners (Board Order 16-05-17-06), recognized that a dwelling replaced under provisions of a Verification of Replacement Rights, met the standard of "continues to exist."

I must note with interest that our application showed the presence of three dwellings within the template test, the minimum standard required by statute and code, but brought to light the potential for a fourth dwelling to be recognized in Tax Lot 18-02-12-00-00303. I am appreciative of the Land Management Division's attention to the details of the application such as was accomplished and completed the research necessary to confirm that a pre-1/1/93 dwelling did, in fact, exist on Tax Lot 303. I also appreciate the additional research that was completed by the staff in reviewing the dwelling on Tax Lot 18-02-12-00-00302. Of note, we did not claim a dwelling on Tax Lot 18-02-11-00-00600; as was noted in the Staff Report of 9/19/19, the dwelling on Tax Lot 600 does not qualify as a pre-1/1/93 dwelling. We concur.

While the question of the status of the dwelling on Tax Lot 18-02-11-00-00601 is clearly answered in the previous Hearings Official decision, and in the records of LMD, whether or not this is allowed to be counted in the current application towards the dwelling count of three is irrelevant as the required dwelling count is met even without consideration of this lot.

Objection No. 2. The Appellant argues the subject property, Tax Lot 18-02-11-00-00507, is "within an area designated Major Big Game; the county has incorrectly taken the position that zoning protects big game and was adopted to do just that, without providing evidence of how subverting the 80 acre minimum lot/parcel size in favor of underlying fragments has protected zoning meant to protect Major big game by retaining a density of one dwelling/80 acres."

Again, this question "has been asked and answered." Referring to the decision made by the Lane County Hearings Official on August 8, 2018 in the appeal of PA17-05951, noting again a copy of this decision is attached at Exhibit A, one should review page 10 of 14, Section 3. The Appellant in the application under review, PA19-05298, offers the same argument that has been addressed in the appeal of PA17-05951.

The salient points of the Hearings Official's decision in PA17-05951 are the following:

"...the Flora and Fauna Working Paper of the Rural Comprehensive Plan explains that the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations on a regional basis. The density recommendations were not applicable to existing parcels but were to be

considered in rezoning applications. ***Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards."*** *

"Lane County's Rural Comprehensive Plan was acknowledged by LCDC in 1984. In regard to compliance with Statewide Planning Goal 5, Lane County did categorize Big Game Habitat as a 1C significant Goal 5 resource. However, as noted above, the county incorporated the protections recommended in the Flora and Fauna Working Paper into the zoning ordinance. Accordingly, residential development was limited in Big Game Habitat areas and further restriction of development was not necessary to comply with Statewide Planning Goal 5."

"The appellant (LandWatch) specifically cites Rural Comprehensive Plan Goal 4 Policy #11 which states *'Encourage the consolidation of forest land ownership in order to form larger more viable forest resource units.'* First, this policy is aspirational and does not provide an objective standard that applies to a quasi-judicial land use permit process. Second the action taken by the County does not have any impact upon parcelization. Rather, the template dwelling process forces an applicant to recognize and work within the existing parcelization pattern within a 160 acre square template."

***My emphasis is added**

As noted in the enclosed Exhibit A, the allegation of error was dismissed.

Objection No. 3. LandWatch opines:

"the subject property is in an area designated by DOGAMI as severe landslide danger; the Goal 7 (Hazards) working paper policies provide:

Each of these proposed policies is intended to fulfill a significant intent of Goal 7.

Policy 1. Establishes that Lane County plans shall be based on an inventory of known areas of natural disaster and hazard It (sic) is also intended to establish that in rural areas, **specific on-site evaluation is invaluable in avoiding or minimizing hazardous conditions.***

Policy 2. Establishes that the types(s) and degree of hazards(s) present must be considered as significant factors in determining compatible types and intensities of development. A primary determinant of compatibility being whether a development may be reasonably safeguarded. The policy further establishes that safeguards must be provided as a provision for approval of proposed developments. **Also the policy establishes the building code as an assumed level of safeguard.***

Policy 3. Given the technological capabilities available in today's society it is probable that any given development could be protected against the worst of natures (sic) hazards; but at what cost to the environment and the public? This policy establishes that an assessment of these costs is a necessary part of the review process."
***(My emphasis added)**

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Let us note again, the Lane County Comprehensive Plan was approved in 1984 and in that approval was the discussion of Goal 7. The zoning code of Lane County, specifically Chapter 16.211, is adopted to carry out the provisions of the acknowledged Comprehensive Plan. At no place within LC16.211 is reference made to a requirement to address landslide risk. There are provisions that prohibit siting of a dwelling within "30 feet of any ravine, ridge or slope greater than 40 percent (40%)" – LC16.211(5)(a)(i). There are an abundance of limitations made within LC16.211 for purposes of mitigating the hazard of fire danger, but nowhere is a discussion made of landslide risk.

In the Director's Approval of PA 19-05298, on page 5 of 20, Section 14, the staff sets forth:
"The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:
14. The entire subject property, according to DOGAMI, is within a "Very High" landslide susceptibility area and contains landslide deposits. The designations may require a geotech report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 for more information."

This informational condition is set forth by Lane County in total compliance with Goal 7. The Staff Report of 9/19/19 makes this point perfectly clear and accurately concludes "The approval criteria for a template dwelling, located at Lane Code 16.211(2)-2.4 do not include RCP Goal 7."

The Appellant concedes **"the building code as an assumed level of safeguard."** The **"on-site evaluation"** is intended to specifically avoid or minimize the risk of **"hazardous conditions"** and is to be considered by the building department in their evaluation of an application for a building permit.

We concur.

The DOGAMI overlay of landslide risk is, by anyone's definition, a very broad stroke of the brush. A copy of the map reflecting the subject property and adjoining lands is included with this letter at Exhibit B. The area shown in the DOGAMI overlay encompasses hundreds of acres as potentially having a landslide risk. As a specific response to the inclusion of the subject property and the adjoining lands in the DOGAMI map as a "Very High" risk of landslide, this overlay extends onto Tax Lot 501 to the east of the subject property, taking in an area that is virtually level. A reasonable person may ask what landslide risk there is on a level tract of land?

What may be more appropriate for consideration is the soils map for the subject property, which was included in the original application at Exhibit 5C. I am including at Exhibit C to this letter a copy of the soils map depicting the subject property showing the northern portion of the parcel being comprised of Soil Type 113G, Ritner cobbly silty clay loam, 30 to 60 percent slopes, and the southern portion of the property being comprised of Soil Type 107C, Philomath cobbly silty clay, 3 to 12 percent slopes.

Also included with this letter at Exhibit D is the summary of Soil Type 113G and Soil Type 107C as presented in the "Soil Survey of Lane County Area, Oregon" as prepared by the United States Soil Conservation Service in their catalogue issued in September of 1987. In the discussion of Soil Type 107C no limitations are offered for homesite development and no risks of soil movement are highlighted. In the discussion of Soil Type 113G the notation is made "The soil in this unit is subject to slumping, especially where road cuts are made in the steeper areas. Slumping can be minimized by locating roads in the more gently sloping areas and by using

properly designed road drainage systems." This discussion goes on to state "If this unit is used for homesite development, the main limitations are steepness of slope, depth to bedrock, low soil strength, cobbles, and moderately slow permeability. Roads and streets built on the soil in this unit are subject to slippage because of the steepness of slope."

Referring again to the soils map included at Exhibit C, the proposed dwelling is to be located in the area of Soil Type 107C, the Philomath cobbly silty clay, and no risks of "slumping" are noted by the Soil Conservation Service in their catalogue of 1987. Enclosed at Exhibit E to this letter is a copy of Attachment 1 to a Supplement to Application, provided with the original information for staff review. Exhibit E is the Parcel Plan for the subject property showing an overlay of contour lines depicting the effort to site the dwelling on the most level portion of the property and also showing the location of the proposed dwelling to be in the area of Soil Type 107C.

In short, the Director's notation that in any building permit submittal the applicant for that permit needs to provide a "geotech report" in evaluation of the proposed building site is appropriate and meets clearly whatever risk may exist in the soils of the subject property. This is a building permit question, not a land use question.

Thank you for your attention to these thoughts, I look forward to discussing this matter in person with you at the upcoming hearing.

Sincerely,

Jim Belknap

Encl:

Exhibit A	Lane County Hearing Official Decision dated August 8, 2018 re: PA17-05951
Exhibit B	DOGAMI overlay depicting landslide risk of subject and adjoining properties
Exhibit C	Soils map of subject property
Exhibit D	Soils summary from 1987 Soil Conservation Service Catalogue
Exhibit E	Parcel plan depicting location of proposed dwelling, Attachment 1 to Supplement

Cc: NIMPKISH, LLC w/encl
Michael E. Farthing w/encl

(see 6/14)
(see 9/14)
(see 10/14)

Exhibit A
PA19-05298
Response to Appeal
September 20, 2019

LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE DWELLING WITHIN AN F-2 DISTRICT

Application Summary

On November 30, 2017, a request to establish a dwelling in the Impacted Forest Lands (F-2) zone was submitted to Lane County Land Management Division by Geri Betz. The application was deemed complete on January 5, 2018. On May 8, 2018, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners and interested parties. On May 21, 2018, a timely appeal was submitted by LandWatch Lane County.

Parties of Record

Geri Betz	LandWatch Lane County	Mike Evans
Andrew Mulkey	Lauri Segel	Sean Malone
Mike Farthing	Bob Smejkal	

Application History

Hearing Date: June 14, 2018
(Record Held Open Until July 26, 2018)

Decision Date: August 8, 2018

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code (LC) 16.211(5)&(8)
ORS 215.730(1)(b)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 201, assessor's map 18-92-11. The subject property is located approximately half a mile from the Urban Growth Boundary of the City of Springfield. The subject property is vacant, is 18.5 acres in size, and is

owned by the Applicant. It is zoned F-2 Impacted Forest Lands. The subject property is not contiguous to any other properties under the same ownership and therefore is not part of a tract. It is bordered on all sides by property zoned F-2 Impacted Forest Lands.

The subject property is primarily grass with about eight acres of young Douglas fir. It has moderate to steep slopes that slope downward from the north east to the southwest. The proposed development area is located on a relatively flat area in the southeast corner of the property.

2. The subject property received a preliminary legal lot verification per Land Management Division file No. 509-PA07-05916. This preliminary verification was noticed and became final with department file No. 509-PA07-05924. The property has not been reconfigured.

3. Fifty-six percent of the subject property is composed of soils that have a forest capability rating of above 70 cubic feet per acre per year.

Soil Map Unit #	Soil Type Description	% of Tax Lot	Cu.Ft./ Ac./Yr.
113G	Ritner Cobbly Silty Clay Loam, 30 to 60% Slopes	41%	149
116G	Rock Outcrop-Witzel Complex, 10 to 70% Slopes	23%	21
107C	Philomath Silty Clay, 3 to 12% Slopes	21%	45
138G	Witzel Very Cobbly Loam, 30 to 75% Slopes	14%	70
138E	Witzel Very Cobbly Loam, 3 to 30% Slopes	1%	70

Based upon the average soil productivity of the subject property, which is between 50 to 85 cubic feet per acre per year of wood fiber, the 7-parcel template test required by LC 16.211(5)(c)(ii)(aa) is applicable to this application. In addition, LC 16.211(5)(c)(ii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160-acre square centered on the subject property. The following table documents eight parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(ii)(aa):

Count	Assessor's Map	Tax Lot	Year of Creation	Documentation / Deed / LLV / Land Division
1	18-02-11	401	1811	132/519, LLV 509-PA 04-05476
2	18-02-11	404	1922	10/332, LLV 509-PA 04-05480
3	18-02-11	501	1944	LLV 509-PA 15-05130
4	18-02-11	506	1944	LLV 509-PA 15-05130

5	18-02-11	601	1982	Parcel 2 of Partition M 43-81
6	18-02-11	100	1953	460/253
7	18-02-02	200	1973	R631/13118
8	18-02-10	100	1941	222/81

4. Lane Code 16.211(5)(c)(ii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The Applicant has relied upon the following dwellings/tax lots:

Count	Assessor's Map	Tax Lot	Year	Year of Dwelling on Property
1	18-02-11	501	1944	1968 per replacement rights 509-PA 01-05598
2	18-02-11	601	1982	1982 per replacement rights 509-PA 98-05159
3	18-02-11	100	1953	1978 per replacement rights 509-PA 01-05596

The proposed dwelling is located approximately 500 feet from the nearest dwelling on the adjacent Tax Lot 501 to the south east. To the east, Tax Lot 100 also contains a dwelling that is over 1,000 feet from the proposed home site. the home site is located 130 feet from the eastern property boundary, 200 feet from the southern property boundary, approximately 310 feet from the northern property boundary, and over 1,000 feet from the western property boundary.

Slopes are approximately 10 percent at the proposed location of the home site and it is occupied by vegetation that includes grasses, brush, and non-commercial Black Oak trees. The soils in this area are Philomath Silty Clay with 3 to 12 percent slopes, which has a low capability rating compared to soils on most other parts of the subject property. A contour map submitted by the Applicant does not show any ravines, ridges, or slopes greater than 40 percent within 30 feet of the home site.

5. The property is currently accessed by a 1500-foot, existing dirt road off of Weyerhaeuser Haul Road that will be improved to standards required by LC 16.211(8(e). The Applicant proposes an easement for the use of Weyerhaeuser Haul Road from Wallace Creek County Road to the subject property. The Weyerhaeuser Haul Road is asphalt with a gravel shoulder width of over 16 feet and a grade of less than 16 percent. No other dwellings currently use this road for access. Access to the subject property from the Weyerhaeuser Haul Road will be a private driveway that crosses Tax Lots 302, 403, 404, 401, and 200. In the event that an easement to use Weyerhaeuser Haul Road is not obtained, the applicant proposes an easement using Brand S. Road from Bob Straub Parkway (a Lane County road) to the crossing at Weyerhaeuser Road. A crossing is reserved in a

August 19, 1947 deed. (See Book 354, Pages 176–181, Lane County Deeds and Records.) Brand S Road varies from 12 to 20 feet in width and consists of an all-weather gravel surface with some paved sections. It serves several dwellings and has no grades that exceed 16 percent.

An existing, unimproved road near the proposed home site that will be improved to function as the private access road and driveway to the proposed dwelling. The driveway follows an existing unimproved road that appears (from aerial imagery) to end at the northern boundary of the subject property. The driveway will be extended through an open, grassy area to the home site. Furthermore, the applicant states that the road will only be relocated where required by Lane Code to meet grade requirements. Because the driveway is in excess of 200 feet it is required by LC 16.211(8)(e)(ii) to have a turnout.

6. Consistent with ORS 215.730(1)(b)(D), the subject property is located within the service boundary of the Pleasant Hill Rural Fire Protection District and the District has submitted written verification of compliance with standards specified in LC 16.211(8)(e). Steve Abel, the Interim Fire Chief, inspected the access road through the subject property and tax lots 200, 302, 401, 402, 403 and 404. In a March 7, 2017 memorandum to Doug Wolf and Mike Evans, the Fire Chief listed the equipment that would access the subject property and did not identify any topographic features that would prevent the Applicant from satisfying the County road standards contained in LC 16.211(8)(e).

7. Well logs from surrounding properties show an average yield of 33 gallons per minute, indicating that an adequate supply of water is available. The water source is from an aquifer as there are no Class I streams on the subject property.

Decision

THE PLANNING DIRECTOR DECISION APROVING THE REQUEST (PA 17-05951) BY GERI BETZ FOR A TEMPLATE FOREST DWELLING ON TAX LOT 201, ASSESSOR'S MAP 18-02-11 IS AFFIRMED.

Justification for the Decision (Conclusion)

The subject property is zoned F-2 Impacted Forest Land. The Applicant is requesting approval to construct a single-family dwelling as provided by LC 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of LC 16.211(5) must be analyzed through the placement of a 160-acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on non-impacted forest land must meet the siting standards provided by LC 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case,

a majority of the soils on the subject property are capable of producing about 70 cubic feet per acre per year of wood fiber. Therefore, LC 16.211(5)(c)(ii) is applicable. Under Subsection (aa) of this standard, an applicant must demonstrate that there were seven dwellings that existed on January 1, 1993 that are located within the 160-acre square template that is centered on the subject property. Under Subsection (bb) of this standard, an applicant must demonstrate that there were three legal lots that existed on January 1, 1993 and that continue to exist on the other lots or parcels described in LC 16.211(5)(c)(ii)(aa).

In the present case, the Planning Director found that the application satisfied the approval criteria of LC 16.211(5)(c) and the siting standards of LC 16.211(8). The Appellant raises the following allegations of error:

1. *Tax lot 501, assessor's map 18-02-11, one of the tax lots used to satisfy LC 16.211(5)(c)(ii), was subject to a 2017 property line adjustment that moved the dwelling from one lot to another and therefore it did not "continue to exist" as required by LC 16.211(5)(c)(ii)(bb).*

   This application for a template dwelling was submitted on November 30, 2017. A property line adjustment that resulted in a new parcel configuration for the dwelling on tax lot 501 became final on December 18, 2017 via PA 17-05695. The new parcel configuration was not recorded until December 22, 2017 (Instrument No. 2017-062866). Since a permit application must be reviewed under the conditions that exist on the date that it was filed, this property line adjustment is irrelevant to the current appeal.

   This allegation of error is dismissed.

2. *The dwelling on tax lot 501, assessor's map 18-02-11, one of the tax lots used to satisfy LC 16.211(5)(c)(ii), does not continue to exist.*

   This allegation of error raises several issues. These issues are as follows:

   a. *Whether a replacement dwelling meets the "continued to exist" standard of OAR 660-006-0027(3)(b)(B) and Lane Code 16.211(5)(c)(ii)(bb).*

      In the present application, the Applicant is required to satisfy by LC 16.211(5)(c)(ii)(bb) in regard to identifying three dwellings located on lots within the template that existed on January 1, 1993 and continue to exist. The Appellant argues that the dwelling that existed on January 1, 1993 was subsequently replaced and therefore cannot be shown to "*continue to exist.*"

      ORS 215.750 recognizes that a dwelling on some forest land is appropriate depending upon the amount of parcelization and development in the area and the quality of the subject property's soils. Indeed, Multnomah County

has acknowledged that the purpose of the statute as authorizing a limited amount of residential development on forest lands that are parcelized and developed with occupied dwellings.[1] The importance of the dwelling is its existence. That is, the three-dwelling requirement can be satisfied by a 5,000 square foot stick-built home or a single-wide mobile home. The importance lies with the residential use that it represents not the structure itself. In that regard, the lawful replacement of a dwelling that has met the January 1, 1993 threshold is consistent with this understanding.

As a matter of policy, the Lane County Board of Commissioners has held that a replacement dwelling meets the standard of "continue to exist."[2] In addition, I would point to Multnomah County where this interpretation has been codified into the zoning ordinance.[3] Arguably, if either LUBA or the Oregon Court of Appeals would have taken exception to Multnomah County's explicit allowance of replacement dwellings they would have so stated.

Based upon adopted Lane County policy, I must conclude that a dwelling that lawfully replaced a dwelling that was lawfully established on January 1, 1993 meets the "*continues to exist*" standard of Lane Code 16.211(5)(c) and OAR 660-006-0027(3)(b).

b. Whether a lawfully established dwelling may be replaced on forestland if it does not exist at the time of the application of the replacement dwelling permit.

The Appellant argues that a lawfully established dwelling on forestland may only be replaced if it exists at the time of the application of the replacement dwelling permit. If it did not, then the replacement dwelling permit was improperly approved and therefore the dwelling that existed in 1993 no longer 'continues to exist' for purposes of satisfying LC 16.211(5)(c)(ii)(bb). I agree with the Appellant on this issue.

ORS 215.755(1) provides that a dwelling may be replaced if it *has [emphasis mine]* intact exterior walls and roof, indoor plumbing, interior wiring for lighting, and a heating system.[4] The language of this provision is in the present tense and suggests that the necessary features of the dwelling to be replaced must be present.[5] Indeed, in *West v. Multnomah County*[6], LUBA agreed with the County that its definition of dwelling

[1] *West v. Multnomah County*, 70 Or LUBA 235, 242 (2014)
[2] Lane County Board of Commissioners Order No. 16-05-17-06, adopted May 17, 2016.
[3] *West v. Multnomah County*, 70 Or LUBA 235 (2014), 269 Or App 518 (2015)
[4] Contrast this language with Subsection (2)(n) of Section 2 of Chapter 462, Oregon Laws 2013 which provides that a dwelling in an EFU zone may be replaced if it "has, or formerly had.." the listed fixtures.
[5] *Hegele v. Crook County*, 56 Or LUBA 156, 165 (2008)
[6] *West v. Multnomah County*, 70 Or LUBA 235 (2014) *affirmed*, 269 Or App 518, 350 P3d 203 (2015)

would exclude inclusion of a structure that is long abandoned and in a condition that would preclude it being used as a residence. By the same token, for the purposes of a template dwelling test, a dwelling that was removed prior to an application for its replacement would not qualify for a replacement dwelling permit even if it could be shown that it had previously met the structural facilities listed in ORS 215.755(1).

c. *May the County's determination that the dwelling on tax lot 501 existed on January 1, 1993 and continues to exist be challenged in this appeal?*

This issue is whether the theory of issue preclusion prevents a re-examination of a previous decision regarding the lawfulness of the replacement of the dwelling on tax lot 501. Tax lot 501, and its dwelling, were the subject of contention in another appeal of a template dwelling by the Planning Director (PA 15-05734). In that case, tax lot 501 was one of the three parcels relied upon by the applicant Goodman to satisfy Lane Code 16.211(5)(c)(i)(bb). The hearings official explicitly found, as a factual matter, that the mobile home had been removed in a manner consistent with the replacement dwelling regulations.

The Applicant argues that legal status of the dwelling on tax lot 501 was settled in PA 15-05734 and, under the doctrine of issue preclusion, cannot be challenged in this proceeding. The Applicant cites the ruling in *Nelson v. Emerald People's Utility Dist.*, 318 Or 99, 104 (1993) as providing the five-factor test that the Oregon Supreme Court identified regarding issue preclusion. The five factors, as a discussion of their applicability to the current case, are addressed as follows:

i. *The issue in the two proceedings is identical;*

In PA 15-05734 the issue was exactly the same as in the present appeal where the dwelling on tax lot 501 is used to satisfy the three-dwelling requirement of ORS 215.750(1), as implemented by OAR 660-006-0027(3), and Lane Code 16.211(5)(c). Both appeals question whether the replacement of the dwelling on tax lot 501 complied with Lane Code and administrative rule requirements for replacement dwellings and whether a dwelling that had been replaced qualifies as a dwelling that "continues to exist" under OAR 660-006-0027(3)(b)(B) and Lane Code 16.211(5)(c).

ii. *The issue was actually litigated and was essential to a final decision of the merits in the prior proceeding;*

The prior application, as in the present application, was approved by the Planning Director and appealed to the Hearings Official.

The status of the dwelling on tax lot 501 was crucial in meeting the three-dwelling count in the template dwelling test for the applicant in PA 15-05734 as it is for the current applicant in the present appeal. The issue of whether the dwelling had satisfied the replacement dwelling regulations and whether a replacement dwelling qualified as a dwelling that "continued to exist" was raised by the appellant, rebutted by the applicant, and addressed by the Planning Director, the Hearings Official, and the Board of Commissioners in their respective decisions.

iii. *The party sought to be precluded had a full and fair opportunity to be heard on that issue;*

LandWatch Lane County was the official appellant in PA 15-05734 as it is in the present appeal. In both appeals, LandWatch Lane County fully participated in the proceedings.

iv. *The party sought to be precluded was a party or was in privity with a party to the prior proceeding;*

As stated above, LandWatch Lane County was the appellant in PA 15-05734 as it is in the present appeal.

v. *The prior proceeding was the type of proceeding to which preclusive effect will be given.*

In regard to this factor, LUBA has spoken clearly that it does not believe that the doctrine of issue preclusion applies to local land use proceedings.[7]

d. *Assuming the doctrine of issue preclusion does not apply, does the record support a finding that the dwelling on tax lot 501 was lawfully issued a replacement permit in 2001?*

The Appellant argues that the dwelling on tax lot 501 had been removed from the property prior to the filing of an application for a replacement dwelling. In specific, the Appellant argues that the mobile home had been removed prior to October of 2000 and not in April of 2001 as determined by the Planning Director.

[7] *Lawrence v. Clackamas County*, 40 Or LUBA 507,520 (2001)

Except for when the mobile home was removed from tax lot 501, the facts are uncontested. The applicant in PA 15-05734 applied for a permit for the verification and replacement of a lawfully established dwelling on April 20, 2001.[8] However, the same report stated that the mobile home had been removed in April of 2001.

In PA 15-05734, the Hearings Official relied upon the Planning Director's determination that the mobile home was removed in April of 2001 plus notarized testimony that the mobile home existed in 2000. Department of Assessment and Taxation data was felt to be inconclusive as the age of the mobile home could have rendered its value as zero. The owner also offered to provide dated receipts of the donation of the mobile home's heating system but this circumstantial evidence was not placed into the record.

As evidence that the mobile home was removed from tax lot 501 prior to the application for its replacement, the Appellant offers a copy of two photographs. The first photograph, submitted by the Applicant in a July 5, 2018 submission, is a relatively high-resolution color photograph alleged to have been taken August 1, 2000. This photograph shows a square structure and a rectangle structure in a clearing. The photograph is annotated with the dimensions "46'x 12' MH" in parenthesis. This would indicate that the rectangular structure is the mobile home. In its June 21, 2018 submission, the Appellant introduces a copy of a black and white photograph at a lesser scale apparently taken in October of 2000. Despite the Appellant's assertions, this photograph shows the rectangular structure that was present in the earlier photograph. The scale of the photograph does not definitively show whether the square structure remains.

Taken as a whole, the evidence in the record does not indicate that the mobile home on tax lot 501 was removed from the property prior to the filing of the application for its replacement. The determination of the Planning Director made in PA 01-5598 and the Hearings Official in PA 15-05734 regarding the existence of the mobile home and the validity of the replacement dwelling permit is confirmed.

e. *There was no dwelling on the property between 1997 and 2006.*

As pointed out in PA 15-05734, the age of the mobile home between 1997 and when it was removed from the property explains why the Lane County Assessor assigned a zero value to the structure.[9] After the property owner

[8] The Planning Director's staff report incorrectly noted that the application was submitted on May 5, 2001. In fact, the application was submitted on April 20, 2001 (as noted in the Appellant's March 3, 2016 submission), and then put on hold by the Applicant on May 5, 2001.
[9] See May 26, 2016 letter from Mike Cowles, Lane County Assessor.

applied for a replacement dwelling permit and then removed the dwelling, an occupancy-certified structure was not completed until 2006. As explained in the Hearings Official's decision in PA 15-05734, while the building permit process was irregular, the County never did cancel that permit and ultimately issued an occupancy permit for the current dwelling.

This allegation of error is dismissed.

3. ***The application is inconsistent with several working papers to the Lane County Rural Comprehensive Plan, policies for Goals 4 and 5 of the Rural Comprehensive Plan, and OAR 660-006-0027(1)(d) and (f).***

The Appellant makes the following allegations of error:

a. *The Director's approval violates the dwelling density standards of Big Game Ranges.*

The Appellant notes that the entire TRS within which the subject property exists is designated Big Game Range cites OAR 660-006-0027(1)(f) which require that the siting of the dwelling be consistent with density limitations imposed by the acknowledged comprehensive plan and land use regulations. However, the Flora and Fauna Working Paper of the Rural Comprehensive Plan explains that the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations on a regional basis. The density recommendations were not applicable to existing parcels but were to be considered in rezoning applications. Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards.

b. *The Director's approval violates Goal 4 and 5 policies of the Rural Comprehensive Plan.*

Lane County's Rural Comprehensive Plan was acknowledged by LCDC in 1984. In regard to compliance with Statewide Planning Goal 5, Lane County did categorize Big Game Habitat as a 1C significant Goal 5 resource.[10] However, as noted above, the County incorporated the protections recommended in the Flora and Fauna Working Paper into the zoning ordinance. Accordingly, residential development was limited in Big Game Habitat areas and further restriction of development was not necessary to comply with Statewide Planning Goal 5.

The Appellant specifically cites Rural Comprehensive Plan Goal 4 Policy #11 which states "*Encourage the consolidation of forest land ownership in*

[10] *Save TV Butte v. Lane County*, LUBA No. 2017-031, Slip Op at 26 (1/8/2018)

order to form larger more viable forest resource units." First, this policy is aspirational and does not provide an objective standard that applies to a quasi-judicial land use permit process. Second, the action taken by the County does not have any impact upon parcelization. Rather, the template dwelling process forces an applicant to recognize and work within the existing parcelization pattern within a 160-acre square template.

c. *The Planning Director's approval violates OAR 660-006-0027(1)(f).*

OAR 660-006-0027(1)(f) applies to "Lot of Record" dwellings in forest zones. Template dwellings are covered by OAR 660-006-0027(3). While "Lot of Record" standards require habitat protection, template dwelling regulations do not.

This allegation of error is dismissed.

4. ***The dwelling on tax lot 601 does not "continue to exist."***

The dwelling on tax lot 601 is being counted towards the application's compliance with LC 16.211(5)(c)(ii)(bb). A 1972 Hilcrest 20' x 40' manufactured dwelling was placed on tax lot 601 in 1981 (BP 2367-81). At this time the property was zoned FF-20, which allowed a dwelling as a permitted use. The current dwelling replaced that structure in 1998 via replacement dwelling permit PA 98-05159. Prior to the replacement dwelling, the manufactured dwelling was assessed on a separate tax account for personal property (MH 4141121). When a manufactured dwelling is replaced with a stick-built dwelling the value of the new dwelling is added to the property's land account and the account for the manufactured dwelling is removed. The discussion above regarding Allegation of Error #2 is applicable.

This allegation of error is dismissed.

5. ***Tax lot 600 is not a legal lot.***

The Appellant alleges that tax lot 600 was created via a circuit court foreclosure order and therefore it was not lawfully created. Tax lots 600 and 701 were created as independent foreclosures. Per ORS 92.010(9)(a) exempts property created by lien foreclosure as a division of land that requires partition approval. It was verified as a legal lot in PA 2509-92.

Regardless of the history of tax lot 600, the reliance upon this tax lot or its dwelling is not necessary to satisfy LC 16.211(5)(c)(ii)(aa) or (bb).[11]

[11] The Planning Director did not base her findings that the application satisfied LC 16.211(5)(c)(ii)(aa) or (bb) on this tax lot.

This allegation of error is dismissed.

6. ***The application does not comply with the access requirements in Lane Code 16.211(8)(e).***

The Appellant alleges that the Applicant has not demonstrated that both of the alternative routes meet the slope, width and turnout criteria of LC 16.211(8)(e).

The Applicant's preferred access route is over an existing driveway, passing through multiple properties zoned Impacted Forest Lands, to Weyerhaeuser Road, which is owned by Willamalane Park and Recreation District. The access will then follow Weyerhaeuser Road to Wallace Creek Road, travelling through rural residentially zoned property as it nears the latter road. Weyerhaeuser Road has at least a 16-foot travel surface and not grades in excess of 16 percent. This is consistent with the standards of Lane Code 16.211(8)(e)(i) and (iv). In the event that permission is not granted to use Weyerhaeuser Road, the alternative access would be to cross Weyerhaeuser Road and travel west along Brand S Road until it intersects with Bob Straub Parkway. Brand S Road also has a minimum travel surface of 16 feet and no slopes in excess of 16 percent. Lane County transportation staff have noted that both Weyerhaeuser Road and Brand S. Road meet current access standards.[12]

Either access route requires the use of the existing driveway that has been inspected by the Pleasant Hill Fire Protection District and has been found adequate and feasible to be improved, where necessary, to fire district and Lane Code standards. Compliance with the road access standards of LC 16.211(8)(e) have been made a condition of approval.

This allegation of error is dismissed.

7. ***The Applicant has not submitted deeds showing that all of the lots used by the Applicant were lawfully created.***

The evidentiary standard is one of "preponderance of the evidence." Deeds are one type of relevant evidence as are County decisions that verify, either in a preliminary or final way, the legal lot status of property. Other types of evidence such as partition or subdivision approvals, the deed description cards created by the County Assessor, and executed and recorded land sale contracts are also relevant.

The Planning Director relies upon eight parcels to conclude that LC 16.211(5)(c)(ii)(aa) has been satisfied. The Planning Director's decision cites documentation regarding the creation of each parcels and lists its date of creation.

[12] See March 15, 2018 statement from Lane County Transportation Planning. (Exhibit "F" to the Planning Director's decision.)

This list was reviewed by County staff who are skilled in the reading of deeds and other documents regarding the creation of property.

More definitively, the record contains the following documentation regarding the lawful creation of the subject property and the properties relied upon by the Planning Director for the satisfaction of LC 16.211(5)(c)(ii)(aa):

- In regard to the subject property, final legal lot verification and notice for tax lot 201, assessor's map 18–02–11. (PA 07–5916)
- A preliminary legal lot verification for tax lot 401, assessor's map 18–02–11. (PA 04–5476)
- A preliminary legal lot verification for tax lot 404, assessor's map 18–02–11. (PA 04–5480)
- A final legal lot verification and notice for tax lot 501, assessor's map 18–02–11. (PA 15–5130)
- A final legal lot verification and notice for tax lot 506, assessor's map 18–02–11. (PA 15–5130)
- Final partition approval M 43–81, dated June 22, 1982, for tax lot 601, assessor's map 18–02–11 plus Lane County Assessor deed description card.
- Lane County Assessor deed description card for tax lot 100, assessor's map 18–02–11 showing property creation in 1953.
- County Assessor deed description card for tax lot 200, assessor's map 18–02–02 showing property creation in 1973. The 1973 deed is also in the record.
- Lane County Assessor deed description card for tax lot 100, assessor's map 18–02–10 showing property creation in 1942.
- A final legal lot verification and notice for tax lot 201, assessor's map 18–02–11. (PA 07–5916)

Absent any objective evidence by the Appellant that the above–documentation is incorrect, I must conclude that the Applicant has shown by a preponderance of the evidence that all of the properties relied upon by the Planning Director for the satisfaction of LC 16.211(5)(c)(ii)(aa) and the subject property were lawfully created.

This allegation of error is dismissed.

8. ***The Application does not meet the siting standards of Lane Code 16.211(8).***

In its June 21, 2018 submission, the Appellant raises many questions regarding compliance with the siting standards of LC 16.211(8). Pages 11 through 18 of the Planning Director's decision addresses conformity with these standards. I have reviewed this analysis and find that it is supported by evidence in the record and

based upon this evidence, I believe that the standards of LC 16.211(8)(a)–through(b) were adequately weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site. Where necessary, conditions of approval have been required to ensure compliance with various requirements of LC 16.211(8).

This allegation of error is dismissed.

Summary

The Appellant has raised numerous issues regarding the Planning Director's decision, the most substantial of which is in regard to whether replacement dwellings are consistent with the "*continue to exist*" standard of OAR 660–006–0027(3)(b)(B) and Lane Code 16.211(5)(c)(ii)(bb) and whether, in the present case, the dwelling on tax lot 501 was lawfully replaced. This decision answers both questions in the affirmative.

For the reasons outlined above, I concluded that the Planning Director's decision must be affirmed.

Respectfully Submitted,

Gary Darnielle
Lane County Hearings Official

Exhibit B
PA19-05298
Response to Appeal
September 20, 2019

Exhibit C
PA19-05298
Response to Appeal
September 20, 2019



United States Department of Agriculture

Soil Conservation Service

In cooperation with United States Department of the Interior, Bureau of Land Management; Oregon Agricultural Experiment Station; and Lane County

Soil Survey of Lane County Area, Oregon

Exhibit D
PA19-05298
Response to Appeal
September 20, 2019



0806

shrink-swell potential of the highly plastic clay, low soil strength, and the very slow permeability.

If buildings are constructed on this unit, properly designing foundations and footings and diverting runoff away from buildings help to prevent structural damage as a result of shrinking and swelling. Roads for year-round use need heavy base rock. The seasonal high water table is perched above the dense clay substratum, and drainage should be provided if buildings with basements and crawl spaces are constructed. Plants that tolerate a seasonal high water table and droughtiness should be selected if drainage and irrigation are not provided.

This map unit is not assigned a capability classification.

107C—Philomath silty clay, 3 to 12 percent slopes. This shallow, well drained soil is on foothills adjacent to the Willamette Valley. It formed in colluvium and residuum derived from basic igneous rock. Areas are irregular in shape and are 5 to 75 acres in size. The vegetation in areas not cultivated is mainly Oregon white oak, wild rose, poison-oak, and grasses. Elevation is 350 to 1,400 feet. The average annual precipitation is 40 to 60 inches, the average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days.

Typically, the surface layer is very dark brown silty clay about 6 inches thick. The subsoil is very dark brown clay about 8 inches thick. Weathered bedrock is at a depth of 14 inches. Depth to bedrock ranges from 12 to 20 inches. In some areas the surface layer is cobbly silty clay.

Included in this unit are small areas of Dixonville and Hazelair soils. Included areas make up about 15 percent of the total acreage.

Permeability of this Philomath soil is slow. Available water capacity is about 2 to 3 inches. Water supplying capacity is 13 to 15 inches. Effective rooting depth is 12 to 20 inches. Runoff is medium, and the hazard of water erosion is moderate.

This unit is used mainly for pasture. It is also used as homesites and for recreation.

This unit is suited to pasture. Erosion control is a major management concern. Fertilizer is needed for optimum growth of grasses and legumes. It should be applied in spring, when there is adequate soil moisture for plant growth. Use of proper stocking rates, pasture rotation, and restricted grazing during wet periods helps to keep the pasture in good condition and to protect the soil from erosion and compaction.

If this unit is used for recreational development, the main limitations are slow permeability, clay content, and depth to rock. Good drainage should be provided for paths and trails.

If this unit is used for homesite development, the main limitations are slow permeability, small stones, and depth to bedrock. The deep cuts needed to provide essentially level building sites can expose bedrock. In most areas the bedrock is rippable; therefore, blasting is not required for excavation of basements. Support and stability for buildings can be provided by placing footings below a depth of 12 to 20 inches. Roads for year-round use need heavy base rock.

This map unit is in capability subclass VIe.

108C—Philomath cobbly silty clay, 3 to 12 percent slopes. This shallow, well drained soil is on foothills adjacent to the Willamette Valley. It formed in colluvium and residuum derived from basic igneous rock. Areas are irregular in shape and are 15 to 30 acres in size. The vegetation in areas not cultivated is mainly Oregon white oak, poison-oak, wild rose, and grasses. Elevation is 350 to 1,400 feet. The average annual precipitation is 40 to 60 inches, the average annual air temperature is 52 to 54 degrees F, and the average frost-free period is 165 to 210 days.

Typically, the surface layer is very dark brown cobbly silty clay about 6 inches thick. The subsoil is very dark brown cobbly silty clay about 8 inches thick. Weathered bedrock is at a depth of 14 inches. Depth to bedrock ranges from 12 to 20 inches. In some areas the surface layer is silty clay.

Included in this unit are small areas of Dixonville, Hazelair, Panther, and Witzel soils. Included areas make up about 15 percent of the total acreage.

Permeability of this Philomath soil is slow. Available water capacity is about 2 to 3 inches. Water supplying capacity is 13 to 15 inches. Effective rooting depth is 12 to 20 inches. Runoff is medium, and the hazard of water erosion is moderate.

This unit is used mainly for pasture. It is also used for recreation and as homesites.

This unit is suited to pasture. Erosion control is a major management concern. Fertilizer is needed for optimum growth of grasses and legumes. It should be applied early in spring, when there is adequate soil moisture for plant growth. Use of proper stocking rates, pasture rotation, and restricted grazing during wet periods helps to keep the pasture in good condition and to protect the soil from erosion and compaction.

If this unit is used for recreational development, the main limitations are the high clay content, slow permeability, and small stones. Use is limited primarily to paths and trails, for which good drainage should be provided.

If this unit is used for homesite development, the main limitations are small stones, shallow depth to bedrock, slow permeability, and shrink-swell potential. Even in areas where sewer systems exist, the unit has low potential for residential development. The deep cuts needed to provide essentially level building sites can expose bedrock. In most locations the bedrock is rippable; therefore, blasting is not required for excavation

001506

rage annual precipitation is 40 to 60 inches, the annual air temperature is 50 to 54 degrees F, average frost-free period is 165 to 210 days. ally, the surface is covered with a mat of leaves, and twigs about 1 inch thick. The layer is dark reddish brown cobbly silty clay loam inches thick. The subsoil is dark reddish brown wish red very cobbly silty clay loam about 25 hick. Highly fractured basalt is at a depth of 32 Depth to bedrock ranges from 20 to 40 inches. ed in this unit are small areas of Jory, Nekia, el soils. Included areas make up about 15 of the total acreage.

eability of this Ritner soil is moderately slow. e water capacity is about 3 to 6 inches. Water g capability is 16 to 23 inches. Effective rooting 20 to 40 inches. Runoff is medium, and the of water erosion is moderate.

reas of this unit are used for timber production e habitat. A few areas are used for pasture, recreation, and homesites.

it is suited to pasture and orchard crops. It is mainly by stoniness and steepness of slope. In irrigation is required for maximum production. Irrigation is a suitable method of applying water. eeds to be applied slowly to minimize runoff and Trees and grasses respond to nitrogen, and respond to phosphorus and lime. Proper g rates, pasture rotation, and restricted grazing eep the pasture in good condition and to protect from erosion.

it is suited to the production of Douglas-fir. On s of a 100-year site curve, the mean site index as-fir is 131. The potential production per acre cubic feet from an even-aged, fully stocked trees 60 years old or 76,770 board feet rnal rule, one-eighth-inch kerf) from an even- stocked stand of trees 80 years old.

methods of harvesting timber generally are but the soil may be compacted if it is moist heavy equipment is used. Because the clayey soil y when wet, most planting and harvesting ment can be used only during dry periods. Roads andings can be protected from erosion by ructing water bars and by seeding cuts and fills.

e preparation is not adequate, competition from rable plants can prevent or retard natural or ial reestablishment of trees. Competing vegetation e controlled by proper site preparation and by ng, cutting, or girdling to eliminate unwanted s, brush, or trees. Reforestation can be lished by planting Douglas-fir seedlings.

s unit is used for recreational development, the mitations are steepness of slope, small stones, ayey soil texture. Use generally is limited to paths ails, which should extend across the slope.

If this unit is used for homesite development, the main limitations are steepness of slope, depth to bedrock, low soil strength, cobbles, and moderately slow permeability. The deep cuts needed to provide essentially level building sites can expose bedrock. Special foundations for dwellings without basements may be needed to overcome the low soil strength.

This map unit is in capability subclass VIs.

113G—Ritner cobbly silty clay loam, 30 to 60 percent slopes. This moderately deep, well drained soil is on side slopes of foothills. It formed in cobbly colluvium derived from basic igneous rock. Areas are irregular in shape and are 5 to 100 acres or more in size. The native vegetation is mainly Douglas-fir, bigleaf maple, Oregon white oak, western brackenfern, hazelnut, poison-oak, and grasses. Elevation is 400 to 1,800 feet. The average annual precipitation is 40 to 60 inches, the average annual air temperature is 50 to 54 degrees F, and the average frost-free period is 165 to 210 days.

Typically, the surface is covered with a mat of needles, leaves, and twigs about 1 inch thick. The surface layer is dark reddish brown cobbly silty clay loam about 7 inches thick. The subsoil is dark reddish brown and yellowish red very cobbly silty clay loam about 25 inches thick. Highly fractured basalt is at a depth of 32 inches. Depth to bedrock ranges from 20 to 40 inches.

Included in this unit are small areas of Nekia and Witzel soils and Rock outcrop. Included areas make up about 15 percent of the total acreage.

Permeability of this Ritner soil is moderately slow. Available water capacity is about 3 to 6 inches. Water supplying capacity is 16 to 23 inches. Effective rooting depth is 20 to 40 inches. Runoff is rapid, and the hazard of water erosion is high.

This unit is used for timber production, watershed, and wildlife habitat.

This unit is suited to the production of Douglas-fir. On the basis of a 100-year site curve, the mean site index for Douglas-fir is 131. The potential production per acre is 7,860 cubic feet from an even-aged, fully stocked stand of trees 60 years old or 76,770 board feet (International rule, one-eighth-inch kerf) from an even-aged, fully stocked stand of trees 80 years old.

Management that minimizes the risk of erosion is essential in harvesting timber. In some areas highlead or other cable logging systems may be necessary to avoid the excessive soil disturbance caused by tractor logging. Roads and landings can be protected from erosion by constructing water bars and by seeding cuts and fills.

The soil in this unit is subject to slumping, especially where road cuts are made in the steeper areas. Slumping can be minimized by locating roads in the more gently sloping areas and by using properly designed road drainage systems.

Because the soil is sticky when wet, most harvesting equipment can be used only during dry periods. After

001507

timber is harvested, the hazard of erosion can be reduced by revegetating the site as quickly as possible. Plant competition delays natural regeneration but does not prevent the eventual development of a fully stocked stand of trees. Reforestation can be accomplished by planting Douglas-fir seedlings.

If this unit is used for homesite development, the main limitations are steepness of slope, depth to bedrock, low soil strength, cobbles, and moderately slow permeability. Roads and streets built on the soil in this unit are subject to slippage because of the steepness of slope.

This map unit is in capability subclass VIIs.

114—Riverwash. This map unit consists of deep, excessively drained to poorly drained islands or sand and gravel bars in and along major streams and rivers. Riverwash consists of recent deposits of sand and gravel derived dominantly from mixed sedimentary and igneous rock. Slope is 0 to 3 percent. Areas generally are elongated in shape and are 2 to 100 acres in size. The native vegetation is mainly occasional bunches of grass and scattered willows. Elevation is 290 to 1,500 feet. The average annual precipitation is 40 to 100 inches, the average annual air temperature is 47 to 52 degrees F, and the average frost-free period is 150 to 210 days.

Typically, Riverwash is highly stratified sand and gravel to a depth of 60 inches or more.

Included in this unit are small areas of Fluvents and Camas soils. Included areas make up about 15 percent of the total acreage.

Permeability of Riverwash is very rapid. Available water capacity and water supplying capacity are very low. Effective rooting depth is 10 to 40 inches. Runoff is slow, and the hazard of water erosion is very high.

Areas of this unit that do not contain an excess amount of fines can be used for roadfill and as a source of sand and gravel.

Riverwash is subject to overflow when the water level of the rivers and streams is high, and it is extremely droughty when the water level is low. During periods of overflow, material is deposited or eroded away.

This map unit is in capability subclass VIIIw.

115H—Rock outcrop-Kilchis complex, 30 to 90 percent slopes. This map unit is on ridgetops and side slopes of uplands in the Cascade Range. Areas are irregular or elongated in shape and are 5 to 200 acres in size. The native vegetation is mainly vine maple, western swordfern, tall Oregon-grape, western brackenfern, and scattered, slow-growing Douglas-fir. Elevation is 500 to 3,500 feet. The average annual precipitation is 60 to 90 inches, the average annual air temperature is 45 to 52 degrees F, and the average frost-free period is 145 to 200 days.

This unit is 65 percent Rock outcrop and 20 percent Kilchis stony loam. The components of this unit are so intricately intermingled that it was not practical to [illegible] them separately at the scale used.

Included in this unit are small areas of Bohan[illegible] Digger, and Klickitat soils and a soil that is simila[illegible] Kilchis soil but is less than 12 inches deep to bed[illegible] Included areas make up as much as 15 percent [illegible] total acreage.

Rock outcrop is mainly exposed areas of barre[illegible] moss-covered rock. In some areas are a few inche[illegible] weathered rock fragments mixed with a high perc[illegible] of organic material consisting of moss, roots, and decaying needles, leaves, twigs, and wood fragm[illegible] The rock dominantly is basalt that generally is har[illegible] enough to quarry or to serve as a source of rock fo[illegible] roadbuilding.

The Kilchis soil is shallow and well drained. It fo[illegible] in colluvium and residuum derived from basalt and breccia. Typically, the surface is covered with a ma[illegible] needles, twigs, and leaves about 1 inch thick. The surface layer is dark brown stony loam about 4 inc[illegible] thick. The next layer is dark reddish brown very co[illegible] loam about 8 inches thick. The subsoil is reddish br[illegible] very stony loam about 7 inches thick. Fractured ba[illegible] at a depth of 19 inches. Depth to bedrock ranges fro[illegible] 12 to 20 inches.

Permeability of the Kilchis soil is moderately rapid. Available water capacity is about 1 inch to 2 inches. Water supplying capacity is 13 to 20 inches. Effective rooting depth is 12 to 20 inches. Runoff is rapid, and hazard of water erosion is high.

This unit is used mainly for wildlife habitat and as [illegible] quarries. It is also used for recreation.

This unit is not suited to the production of merchantable Douglas-fir. The areas that support vegetation are small and scattered, and the trees in these areas are stunted and twisted. Because of the poor quality and quantity of the trees, it is not economically feasible to use the unit for timber production.

If this unit is used for recreational development, the main limitations are slope and the areas of Rock outcrop. The unit is suited to paths and trails, except in rockfall areas. Paths and trails should extend across the slope in some areas.

This map unit is in capability subclass VIIs.

116G—Rock outcrop-Witzel complex, 10 to 70 percent slopes. This map unit is on ridgetops and side slopes of foothills adjacent to the Willamette Valley. Areas are irregular or elongated in shape and are 3 to 80 acres in size. The native vegetation at lower elevations is mainly annual grasses, forbs, poison-oak, Oregon white oak, and scattered Douglas-fir. Grasses, forbs, and shrubs dominate the plant community at the higher elevations; however, Douglas-fir may be more abundant than at lower elevations. Elevation is 400 to 2,000 feet. The average annual precipitation is 40 to 60

001508

Attachment 1
Supplement to
PA 19-05298

Property Owner:
Gray Goodman
86690 R.R. Baker Road
Springfield, OR 97478

GOODMAN
Tax Map 18-02-11-00
Tax Lot 507

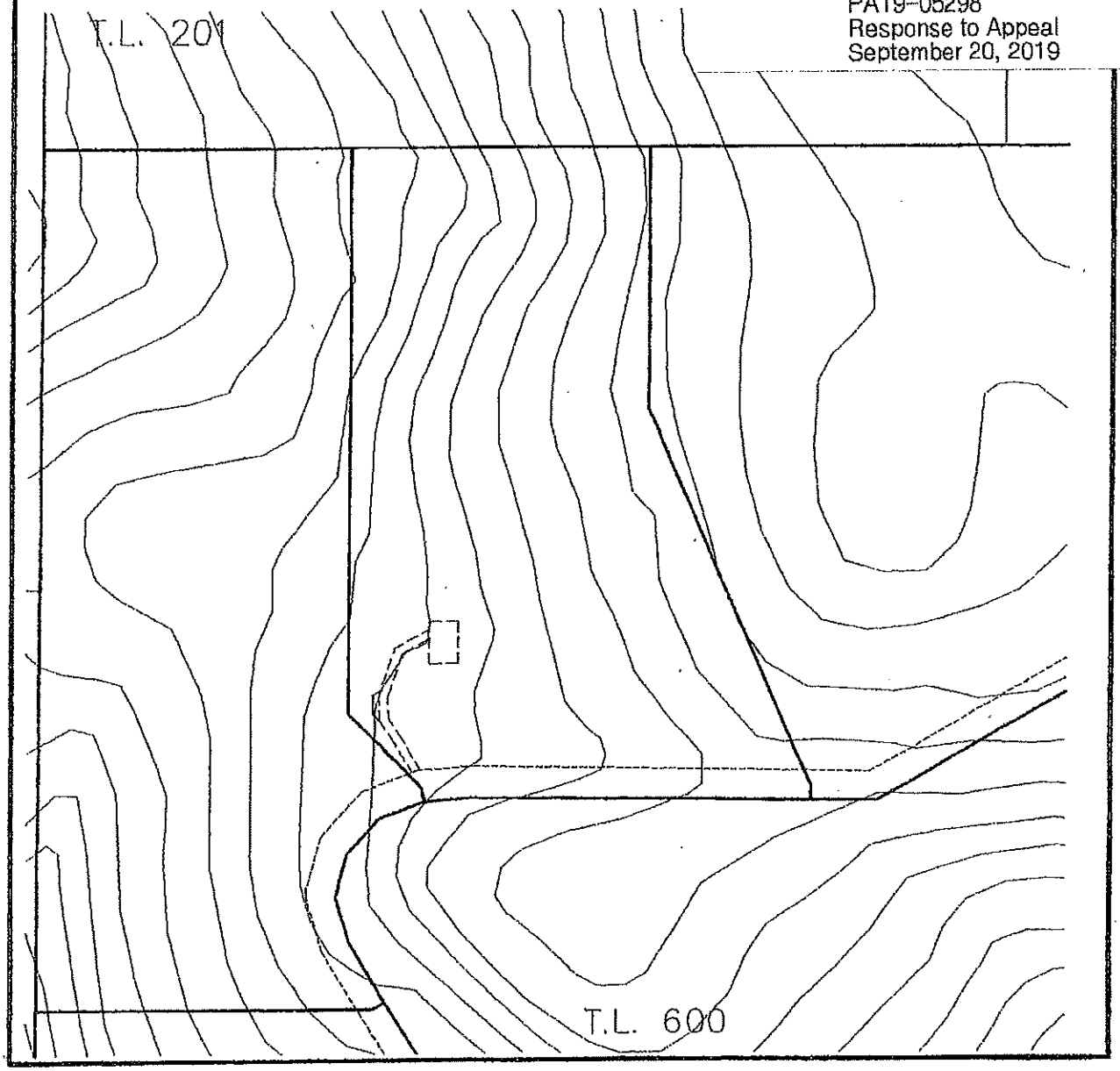
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1982
DAVID J. COLLIER
2552
RENEWAL 12-31-19

N

0 200
SCALE 1" = 200'
CONTOUR INTERVAL=20'

Exhibit E
PA19-05298
Response to Appeal
September 20, 2019



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SEP 20 2019

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
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Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Original by U.S. Mail, email copy to Rachel.serslev@co.lane.or.us

September 20, 2019

Re: PA19-05298, Tax Lot 18-02-11-00-00507

Dear Rachel:

Thank you for providing me with a copy of the appeal of the above referenced Planning Action and the associated comments offered by the Appellant, LandWatch Lane County. I have also received the Staff Report for review by the Hearings Official dated September 19, 2019 and appreciate the detailed analysis given to the application and the elements of the appeal. As you have noted in the 9/19/19 Staff Report, the Appellant's comments seem to focus on three specific objections or assignments of error in the Director's approval of the Special Use Permit. Your summary of the review of those objections is concise and accurate, though I would like to take this opportunity to offer additional comments in response to the specific points made by the Appellant.

Objection No. 1. The Appellant objects to the inclusion of a dwelling located on Tax Lot 18-02-11-00-00601 (herein Tax Lot 601) in the dwelling count of three as established in the template test provided by our company, representing the applicant, NIMPKISH, LLC. This objection has previously been made by LandWatch, most recently in PA 17-05951, a request for a Special Use Permit using the template test for Tax Lot 18-02-11-00-00201. As noted in our application and as discussed in the appeal of PA17-05951, the dwelling located on Tax Lot 601 was originally established in a mobile home placement permit under BP2367-81 and was replaced with a site built structure under provisions of a Verification of Replacement Rights approved under PA98-05159. In PA17-05951 the Appellant (LandWatch) argued that the dwelling located on Tax Lot 601 did not meet the criteria for construction on or before January 1, 1993 and "continues to exist." This allegation requests the inclusion of the dwelling located on Tax Lot 601 be denied in PA17-05951. The allegation of error was dismissed.

The 14 page decision in the appeal of PA17-05951 made by the Lane County Hearings Official on August 8, 2018 is included with this letter as Exhibit A. Attention is directed to page 11 of 16, Section No. 4. In legal parlance, the issue raised by the Appellant in the matter at hand, PA 19-05298, that the dwelling located on

Rachel Serslev
PA 19-05298, Response to LandWatch Appeal
September 20, 2019

Tax Lot 601 cannot be considered in the parcel count of the template test, "has been asked and answered." The dwelling located on Tax Lot 601 was lawfully established in 1981 under BP 2367-81, and was lawfully replaced in 1998 under the Verification of Replacement Rights approved in PA98-05159.

The specific question as to the recognition of the dwelling on Tax Lot 601 is identical to that addressed in PA15-05734 and PA15-05735. In both of the those applications the Hearings Official, affirmed by decision of the Lane County Board of Commissioners (Board Order 16-05-17-06), recognized that a dwelling replaced under provisions of a Verification of Replacement Rights, met the standard of "continues to exist."

The 9/19/19 Staff Report to the Hearings Official makes the same summary as I have noted above.

I must note with interest that our application showed the presence of three dwellings within the template test, but brought to light the potential for a fourth dwelling to be recognized in Tax Lot 18-02-12-00-00303. I am appreciative of your attention to the details of an application such as this and completed the research necessary to confirm that a pre-1/1/93 dwelling did, in fact, exist on Tax Lot 303. I also appreciate the additional research that was completed by the staff in reviewing the dwelling on Tax Lot 18-02-12-00-00302. Of note, we did not claim a dwelling on Tax Lot 18-02-11-00-00600; as you note in the 9/19/19 report, the dwelling on Tax Lot 600 does not qualify as a pre-1/1/93 dwelling. We concur.

While the question of the status of the dwelling on Tax Lot 18-02-11-00-00601 is clearly answered in the previous Hearings Official decision, and in the records of LMD, whether or not this is allowed to be counted in the current application towards the dwelling count of three is irrelevant as the required dwelling count is met even without consideration of this lot.

Objection No. 2. The Appellant argues the subject property, Tax Lot 18-02-11-00-00507, is "within an area designated Major Big Game; the county has incorrectly taken the position that zoning protects big game and was adopted to do just that, without providing evidence of how subverting the 80 acre minimum lot/parcel size in favor of underlying fragments has protected zoning meant to protect Major big game by retaining a density of one dwelling/80 acres."

Again, this question "has been asked and answered." Referring to the decision made by the Lane County Hearings Official on August 8, 2018 in the appeal of PA17-05951, copy attached at Exhibit A, one should review page 10 of 14, Section 3. The Appellant in the application under review, PA19-05298, offers the same argument that has been addressed in the appeal of PA17-05951.

The salient points of the Hearings Official's decision in PA17-05951 are the following:

"...the Flora and Fauna Working Paper of the Rural Comprehensive Plan explains that the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations on a regional basis. The density recommendations were not applicable to existing parcels but were to be considered in rezoning applications. ***Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards." ****

"Lane County's Rural Comprehensive Plan was acknowledged by LCDC in 1984. In regard to compliance with Statewide Planning Goal 5, Lane County did categorize Big Game Habitat as a 1C significant Goal 5 resource. However, as noted above, the county incorporated the protections recommended in the Flora and Fauna Working Paper into the zoning ordinance. Accordingly, residential development was limited in Big Game Habitat areas and further restriction of development was not necessary to comply with Statewide Planning Goal 5."

"The appellant (LandWatch) specifically cites Rural Comprehensive Plan Goal 4 Policy #11 which states '*Encourage the consolidation of forest land ownership in order to form larger more viable forest resource units.*' First, this policy is aspirational and does not provide an objective standard that applies to a quasi-judicial land use permit process. Second the action taken by the County does not have any impact upon parcelization. Rather, the template dwelling process forces an applicant to recognize and work within the existing parcelization pattern within a 160 acre square template."

As noted in the enclosed Exhibit A, the allegation of error was dismissed.

> ***This sentence is directly quoted in the Staff Report of 9/19/19 and is at the essence of the basis of dismissal of this allegation of error in the appeal under consideration.***

I would like to take a moment to digress from the direct response to the LandWatch appeal. My concern at this time is what appears to be the resubmittal of objections that have already been addressed. By anyone's standard our land use planning system is challenging. At the very least we should be working toward consistency in the decision making process. An applicant that seeks to establish the presence of a minimum of three dwellings using the template test needs to be able to rely on previous decisions made by the Land Management Division staff that a dwelling was lawfully placed, such as in a Verification of Replacement Rights. If we are to set a precedent that such an applicant must go back and "revalidate" a previously rendered decision, we are establishing a level of complexity to the process that undermines public confidence in government. The same concern is applicable to the discussion over the Big Game Habitat question and the applicability of Goal 5. The objections being made are spurious at best, but to continue to throw up the same objections after they have been addressed in a previous appeal process is nothing less than an attempt to undermine the land use process.

In no small way I am reminded of raising my three daughters. It was amazing how many ways and how many times they could ask the same question, hoping for a different answer. They are now all approaching middle age and, blessedly, our family unit has survived. I hope for a similar outcome for our land use system.

Objection No. 3. LandWatch opines:

"the subject property is in an area designated by DOGAMI as severe landslide danger; the Goal 7 (Hazards) working paper policies provide:

Each of these proposed policies is intended to fulfill a significant intent of Goal 7.

Policy 1. Establishes that Lane County plans shall be based on an inventory of known areas of natural disaster and hazard it (sic) is also intended to establish that in rural areas, **specific on-site evaluation is invaluable in avoiding or minimizing hazardous conditions.**

Policy 2. Establishes that the types(s) and degree of hazards(s) present must be considered as significant factors in determining compatible types and intensities of development. A primary determinant of compatibility being whether a development may be reasonably safeguarded. The policy further establishes that safeguards must be provided as a provision for approval of proposed developments. **Also the policy establishes the building code as an assumed level of safeguard.**

Policy 3. Given the technological capabilities available in today's society it is probable that any given development could be protected against the worst of natures (sic) hazards; but at what cost to the environment and the public? This policy establishes that an assessment of these costs is a necessary part of the review process."

(My emphasis added)

At this point we are wandering into a blissful discussion of "wouldn't it be nice" rather than the specific elements of county code and state statute, though I will acknowledge that LandWatch has come up with something new to throw against the wall in hopes that it will stick.

Let me note in the Director's Approval of PA 19-05298, on page 5 of 20, Section 14, the staff sets forth:
"The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:
14. The entire subject property, according to DOGAMI, is within a "Very High" landslide susceptibility area and contains landslide deposits. The designations may require a geotech report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 for more information."

This informational condition is set forth by Lane County in total compliance with Goal 7. The Staff Report of 9/19/19 makes this point perfectly clear and accurately concludes "The approval criteria for a template dwelling, located at Lane Code 16.211(2)-2.4 do not include RCP Goal 7."

The Appellant concedes **"the building code as an assumed level of safeguard."** The **"on-site evaluation"** is intended to specifically avoid or minimize the risk of **"hazardous conditions"** and is to be considered by the building department in their evaluation of an application for a building permit.

We concur.

The DOGAMI overlay of landslide risk is, by anyone's definition, a very broad stroke of the brush. A copy of the map reflecting the subject property and adjoining lands is included with this letter at Exhibit B. The area shown in the DOGAMI overlay encompasses hundreds of acres as potentially having a landslide risk. As a specific response to the inclusion of the subject property and the adjoining lands in the DOGAMI map as a "Very High" risk of landslide, this overlay extends onto Tax Lot 501 to the east of the subject property, taking in an area that is virtually level. A reasonable person may ask what landslide risk there is on a level tract of land?

What may be more appropriate for consideration is the soils map for the subject property, which was included in the original application at Exhibit 5C. I am including at Exhibit C to this letter a copy of the soils map depicting the subject property showing the northern portion of the parcel being comprised of Soil Type 113G, Ritner cobbly silty clay loam, 30 to 60 percent slopes, and the southern portion of the property being comprised of Soil Type 107C, Philomath cobbly silty clay, 3 to 12 percent slopes.

Also included with this letter at Exhibit D is the summary of Soil Type 113G and Soil Type 107C as presented in the "Soil Survey of Lane County Area, Oregon" as prepared by the United States Soil Conservation Service in their catalogue issued in September of 1987. In the discussion of Soil Type 107C no limitations are offered for homesite development and no risks of soil movement are highlighted. In the discussion of Soil Type 113G the notation is made "The soil in this unit is subject to slumping, especially where road cuts are made in the steeper areas. Slumping can be minimized by locating roads in the more gently sloping areas and by using properly designed road drainage systems." This discussion goes on to state "If this unit is used for homesite development, the main limitations are steepness of slope, depth to bedrock, low soil strength, cobbles, and moderately slow permeability. Roads and streets built on the soil in this unit are subject to slippage because of the steepness of slope."

Referring again to the soils map included at Exhibit C, the proposed dwelling is to be located in the area of Soil Type 107C, the Philomath cobbly silty clay, and no risks of "slumping" are noted by the Soil Conservation Service in their catalogue of 1987. You may wish to refer again to Attachment 1 that was included in the supplement to the original application, dated July 11, 2019. I am enclosing at Exhibit E to this letter a copy of Attachment 1 to the supplemental information previously provided.

In short, the Director's notation that in any building permit submittal the applicant for that permit needs to provide a "geotech report" in evaluation of the proposed building site is appropriate and meets clearly whatever risk may exist in the soils of the subject property. This is a building permit question, not a land use question.

Rachel Serslev
PA 19-05298, Response to LandWatch Appeal
September 20, 2019

Thank you for the opportunity to comment on the issues raised by LandWatch Lane County in their appeal. As all too commonly seems to be the case, these issues are simply without merit and, notably, have been previously addressed.

Sincerely,

Jim Belknap

Jim Belknap

Encl:

Exhibit A	Lane County Hearing Official Decision dated August 8, 2018 re: PA17-05951
Exhibit B	DOGAMI overlay depicting landslide risk of subject and adjoining properties
Exhibit C	Soils map of subject property
Exhibit D	Soils summary from 1987 Soil Conservation Service Catalogue
Exhibit E	Parcel plan depicting location of proposed dwelling, Attachment 1 to Supplement

Cc: NiMPKISH, LLC w/encl
Michael E. Farthing w/encl

LANE COUNTY HEARINGS OFFICIAL

Staff Report

Department File:	509-PA19-05298
Hearing Date:	September 26, 2019
Report Date:	September 19, 2019
Applicant/Owner:	Nimpkish LLC
Agent:	James E. Belknap
Appellant:	LandWatch Lane County
Assessor's Map & Tax Lot:	18-02-11-00-00507
Size:	10.06 Acres
Base Zone:	Impacted Forest Lands (F-2)
Staff:	Rachel Serslev, Planner

I. PROPOSAL

A Request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4

II. BACKGROUND INFORMATION

The subject property is identified as Assessor's Map and Tax Lot 18-02-11-00-00507. It is located approximately 0.5 of a mile east of the City of Springfield's Urban Growth Boundary and north of Wallace Creek Road, with access off of RR Baker Road, a private road. The property is vacant and does not have an address.

The property is approximately 10.06 acres in size. The property slopes from the north-west corner to the east property boundary, from a mean sea level (MSL) of approximately 1060 feet to 1200 feet MSL determined with Lane County contour data. The County LiDAR data show that slopes range from less than 10% to 40% or more with steep slopes located in the north-west and north-central portion of the subject property. More gentle slopes on the subject property are located in the south-west corner. The property is primarily open pasture with some scattered, low-lying brush and Douglas Fir.

The property is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2, RCP), consistent with that plan designation. The property abuts F-2 zoned properties on all sides. The surrounding area can generally be characterized as a mix of forest and low-density, rural residential uses. The property does not contain floodplain, a Class 1 stream, or mapped wetlands.

On April 18, 2019, the applicant submitted a request to establish a dwelling in the Impacted Forest Lands (F-2) zone to Lane County Land Management Division. The application materials were reviewed by staff and the application was deemed complete on May 17, 2019.

On May 17, 2019, referral responses were solicited from affected agencies, service providers and surrounding property owners. On June 26, 2019, the applicant provided a 60 day timeline extension in order to address comments received during the referral period. Additional information was provided on July 12, 2019, and the applicant requested the application be taken off hold.

On August 2, 2019, the Director issued a decision approving the proposal. On August 14, 2019, LandWatch Lane County submitted a timely appeal of the Director's decision. The Director reviewed the appeal pursuant to Lane Code 14.080(2)(a) and pursuant to Lane Code 14.080(3)(a)(i), elected not to reconsider, and affirmed the August 2, 2019 decision. An appeal hearing was scheduled for September 26, 2019 and notice of the hearing was mailed on September 6, 2019.

III. SUBSTANCE OF THE APPEAL

The appeal statement is provided as **Attachment 1**. Generally, the appellant asserts that the record does not contain sufficient evidence to demonstrate compliance with approval criteria. The specific appeal issues are discussed below with staff's response to the information provided by the appellant.

1. **The appellant argues that the dwelling on Map and Tax Lot 18-02-11-00-00601 did not exist in 1993 and cannot be used to find compliance with Lane Code 16.211(3)(C).**

   The verification of replacement rights (509-PA98-05159) referenced in the Director's staff report indicates that a mobile home has remained on the property and occupied from 1982 until the present date (9/30/1998). The mobile home placement permit 81-2367 validates the placement of a dwelling in 1982. Specifically, the appellant argues that no dwelling was taxed between 1993 and 1998 according to the Regional Land Information Database (RLID). However, RLID actually shows an improvement value of zero from 1998 to 1999. This time frame aligns with the verification of replacement rights planning action, which secured the replacement rights in 1998 and after which, it is reasonable expect that the subject dwelling was replaced, resulting in an improvement value of zero in 1998 and 1999. Therefore, staff maintains that the dwelling on Map and Tax Lot 18-02-11-00-00601 can be utilized to qualify the subject property for a template dwelling. This is consistent with the Hearings Official's previous interpretations in department file No.'s 509-PA15-05734 and 509-PA17-05951.

   Regardless, staff has evaluated all of the qualifying dwellings proposed by the applicant. In the Director's decision, staff only verified the minimum number of dwellings required to meet the criteria. The applicant provided a list of six dwellings. Below, staff has evaluated all of the dwellings to show compliance with the approval criteria for a template dwelling.

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
1	18-02-12	201	1910; RLID
2	18-02-11	601	1982/1999; Verification of Replacement Rights 509-PA98-5159

3	18-02-11	100	1958/2001; Verification of Replacement Rights 509-PA01-05596
4	18-02-12	303	1993; Building permit for replacement dwelling 509-BP93-04658
5	18-02-12	302	1993; RLID, Building permit to place mobile home 509-BP93-03712
6	18-02-11	600	1994; Building permit 509-BP94-04080; Planning action for dwelling approval in 1992 and building permit for dwelling in 1994; DOES NOT QUALIFY

2. **The appellant argues that the County has not protected Major Big Game in accordance with the Flora and Fauna Working Paper of the Rural Comprehensive Plan by allowing a density greater than one dwelling per 80 acres.**

   The approval criteria for a template dwelling, located at Lane Code 16.211(2)-2.4, does not include criteria relating to the Flora and Fauna Working Paper or the density requirement of one dwelling per 80 acres. Therefore, the Director's decision did not make findings regarding the working paper. This is consistent with a previous Hearings Official decision (509-PA17-05951, Evans/Betz), which found that the "Big Game Range density standards were integrated into the zoning classification and minimum lot size recommendations on a regional basis. The density recommendations were not applicable to existing parcels but were to be considered in rezoning applications. Therefore, approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards."

3. **The appellant argues that the Director's decision does not address the Rural Comprehensive Plan (RCP) Goal 7 (Areas subject to natural disasters and hazards) working paper policies.**

   The approval criteria for a template dwelling, located at Lane Code 16.211(2)-2.4, do not include RCP Goal 7. Therefore, the Director's decision did not make findings regarding the Goal 7 working paper policies. Given DOGAMI's classification of "Very High" landslide susceptibility, staff did provide the following informational condition of approval:

   > "The entire subject property, according to DOGAMI, is within a "Very High" landslide susceptibility area and contains landslide deposits. These designations may require a geotech report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 for more information."

   The Oregon Structural Specialty Code (OSSC) provides the authority to assess the soils and slopes at the building site, and require a geotechnical report if necessary. This assessment is completed when a residential building permit is applied for, during the plan review phase. **Attachment 3** provides guidance regarding when a geotechnical report is required with the submittal of a building permit.

V. SUMMARY

Based upon the analysis above, staff finds that the application for a dwelling in the Impacted Forest Zone meets the 'template test' provisions of Lane Code 16.211(2)-2.4 and other applicable criteria. Therefore, the Director respectfully requests that the Hearings Official affirm the decision to approve file 509-PA19-05298.

VI. ATTACHMENTS

1. Appeal Statement *(6 pgs.)*
2. Director's Decision with Exhibits, including Vicinity Map and Site Plan *(49 pgs.)*
3. Lane County Building Program Geotechnical Report Guidance *(1 pg.)*

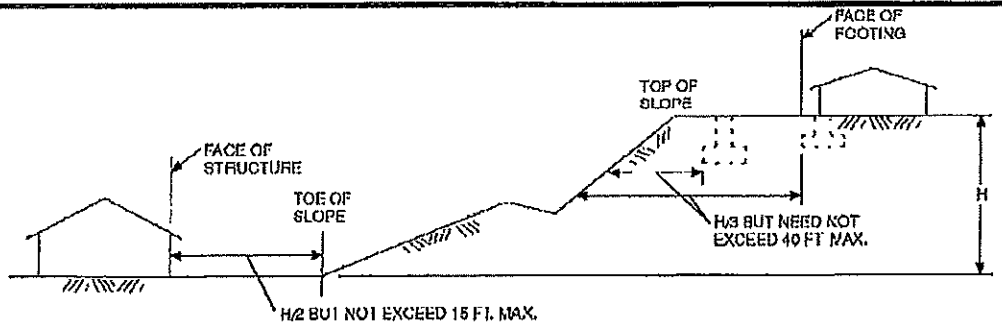
The entire file record is available for review at the Land Management Division Office.

NOTICE TO APPLICANT
Residential (1 & 2 Family Dwellings and Accessory Structures)

The Lane County Building Division will be reviewing residential structural permit applications to more closely assess geotechnical hazards. This is important to better protect the homes we build, helping the community to be more resilient to earthquakes.

A geotechnical or soils report (OSSC Section 1803.6) from a qualified design professional licensed in Oregon will be required if the site for the proposed development:

1. Has ascending or descending slopes that do NOT meet the foundation clearance of Section R403.1.9 and Figure R403.1.9.1 of the 2017 Oregon Residential Specialty Code;



oot = 304.8 mm.

FIGURE R403.1.9.1
FOUNDATION CLEARANCE FROM SLOPES

2. *Is within a soils hazard area: site soils are susceptible to liquefaction; or site prone to landslides. Below is an internet link that will connect to the DOGAMI website where one can find information on the specific site conditions:
   www.oregongeology.org/hazvu
   Landslide: High and Very High will require a geotechnical report.
   Liquefaction: Moderate or High will require a geotechnical report
3. *Has a building site with a 20% (2:10 or 11.3 degrees) or greater slope prior to excavation.
4. Or, is required by Lane County Land Use Planning to have a special foundation system.

All site plans submitted will be required to show any known fill sites or landslide hazards areas.

The soil report shall address: soil bearing capacity, liquefaction, soil classification, stability for lateral (seismic) loading, slope stability, and recommendations for excavation, structural fill and foundation design.

*Items 2 & 3 above will not be applicable to residential accessory structures less than 1000 square feet and one story in height.

SWM/ 07-2018

DO NOT
SEPARATE
PACKET

CERTIFICATE OF MAILING

509-PA19-05298
NIMKISH/BELKNAP
8/1/2019

This is to certify that I, Rachel Serslev, mailed Notification of

Appeal Hearing

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: 9/6/2019

End of Comment Period:

Appeal Deadline:

Hearing Date: 9/26/2019

RS

Rachel Serslev

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

EMAILED:
TRANSPORTATION PLANNING
ASSESSMENT & TAXATION

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF APPEAL HEARING

Department File:	**509-PA19-05298**
Owner / Applicant:	Nimpkish LLC
Agent:	Jim Belknap
Appellent:	Landwatch Lane County
Map & Tax Lot:	18-02-11-00-00507
Size:	10.06 acres
Zone:	Impacted Forest Lands (F-2)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

Proposal: Appeal of a request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4, (3), (5) and (6).

An appeal for the above-cited application was submitted by the appellant on August 14, 2019 and accepted by the Planning Director on August 16, 2019 pursuant to Lane Code 14.520 and 14.530, and the decision was affirmed by the Planning Director.

You received this notice because you own property located near the property that is the subject of this notice. Per Lane Code 14.300(3), Lane County is required to notify you of the appeal of the above-cited decision so that you have the opportunity to comment and/or participate in the De Novo public hearing for the appeal. Lane County is required only to notify the applicant, owner, owners of record of property of adjacent properties per the most recent property tax assessment roll, and other persons identified by LC 14.060(4)(a). **You may want to share this notice with others in your neighborhood as some may not be aware of the proposal.**

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

Enclosed is a vicinity map for the subject property.

The Lane County Hearings Official is the Approval Authority who will conduct a De Novo public hearing, pursuant to Lane Code 14.300. **The hearing will be held on Thursday, September 26, 2019, at 9:30 A.M., in the Lane County Customer Service Center, Goodpasture Room, 3050 North Delta Highway, Eugene, Oregon 97408.**

The order of procedure for the conduct of the hearing will generally be as follows:

a. Announcement of the nature and purpose of the hearing
b. Announcement of opportunities for submission of information and appeal.
c. Disclosure of ex parte contacts
d. Report by the Director

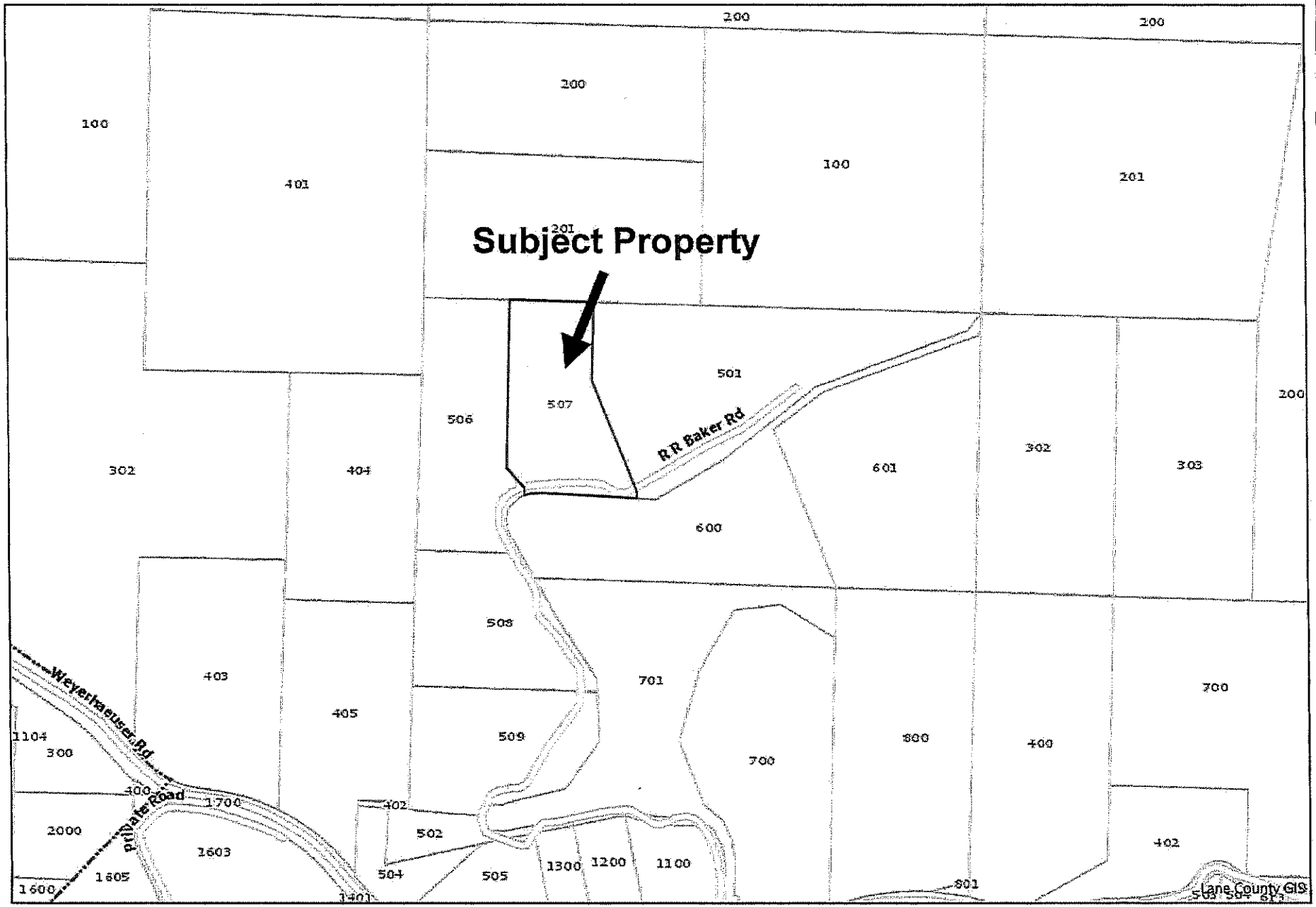
e. Applicant's testimony
f. Testimony of persons in favor
g. Testimony of other persons
h. Any additional comments by the Director
i. Applicant rebuttal
j. Conclude the hearing

Failure to raise an issue in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

The application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at no cost at the Land Management Division. A copy of the staff report will be available for inspection at no cost at least one week prior to the public hearing. Copies of these materials will be provided at a reasonable cost upon request.

The representative of the Land Management Division to contact regarding this application and hearing is **Rachel Serslev** and the telephone number where more information can be obtained is **541-682-6903**. Please submit written materials to: Lane County Land Management Division, Attn. Rachel Serslev, 3050 North Delta Highway, Eugene, Oregon 97408. Written materials may be submitted prior to, or during the public hearing.

The meeting location is wheelchair-accessible. Persons needing special accommodation (e.g., hearing impaired, language translation, chemical sensitivity needs, and large print copies of the agenda) are instructed to submit their request at least 48 hours prior to the meeting by calling Amber Wolles at 541-682-6917.



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but it is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 305 610 1,220 Feet

Vicinity Map

Lane County, Oregon

0825

001524

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF APPEAL RECEIPT

Tentative Hearing Date Change

August 22, 2019

Applicant/Owner: Nimpkish LLC 86690 R.R. Baker Rd. Springfield, OR. 97478 **Agent:** Jim Belknap P.O. Box 362 Cottage Grove, OR. 97424	**Appellant:** LandWatch Lane County P.O. Box 5347 Eugene, OR. 97405

RE: An appeal of a request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4, (3), (5) and (6).

Subject Property: Map 18-02-11-00-00507

File No: 509-PA19-05298

This amended Notice of Appeal Receipt is to inform you the **tentative date** of the public hearing has changed to **September 26, 2019** for the Lane County Hearings Official to hold a De Novo Public Hearing at **9:30 A.M.** on the appeal **at the Customer Service Center 3050 N. Delta Hwy Eugene, OR 97408** in the **Goodpasture Room. Please note more than one hearing may be scheduled for the same day;** a meeting agenda will be posted online in advance of the hearing.

The regulations for De Novo hearings are found in Lane Code 14.080. Lane Code is available on the internet at www.lanecounty.org/, under "Quick Links".

A formal notice of this hearing will be mailed to you at least **20 days prior** to the hearing date. Please submit written materials to the **attention – Rachel Serslev.** You have up to the day of the hearing to submit materials. The staff report to the Hearings Official will be completed on September 12, 2019, utilizing materials in the file record as of September 6, 2019. Any materials submitted after that date may result in staff requesting a continuance.

LAND MANAGEMENT DIVISION

Waiver/Extension of Statutory Timeline Requirements

Instructions: To waive or extend the statutory timeline requirements applicable to your land use application, please complete all applicable fields, sign, date, and return this form to the address listed below.

I, James E. Belknap, as owner or authorized representative of the owner of
Applicant (Print Name)

the property known as Assessor's Map and Tax Lot(s) 18-02-11-00-00507

that is the subject of the land use application Department File Number PA19-05298

and is the subject of this request, do hereby voluntarily waive or extend **(Check Only One Box):**

☐ The statutory timeline requirements of ORS 215.427 and the associated right to seek mandamus as provided for by ORS 215.429(1) are hereby **waived**. NOTE: The County reserves the ability to reinitiate processing of the application if it remains on hold for more than two years and upon providing notice to the applicant at least 30 days in advance.

☒ The statutory timeline requirements of ORS 215.427 are **extended** for 45 days[1] in order to submit additional information.

(Enter Number of Calendar Days)

James E Belknap — 8/21/19

Signature (Applicant/Owner) — **Date Signed**

Return to: **Lane County – Public Works**
Land Management Division
3050 N. Delta Hwy.
Eugene, OR 97408

[1] Per ORS 215.427(5), the total period of time an application can be put on hold and final action timeline extended by an applicant may not exceed 215 days.

(Version 10/18)

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF APPEAL RECEIPT

August 16, 2019

Applicant/Owner: Nimpkish LLC 86690 R.R. Baker Rd. Springfield, OR. 97478 **Agent:** Jim Belknap P.O. Box 362 Cottage Grove, OR. 97424	**Appellant:** LandWatch Lane County P.O. Box 5347 Eugene, OR. 97405

RE: An appeal of a request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4, (3), (5) and (6).

Subject Property: Map 18-02-11-00-00**507**

File No: 509-PA19-05298

This Notice is to inform you that an appeal for the above-cited application was submitted by the appellants on August 14, 2019, and accepted by the Planning Director on August 16, 2019, and the Director has affirmed the decision.

Therefore, a **tentative date** of September 19, 2019 has been set for the Lane County Hearings Official to hold a De Novo Public Hearing at **9:30 A.M.** on the appeal **at the Customer Service Center 3050 N. Delta Hwy Eugene, OR 97408** in the **Goodpasture Room. Please note more than one hearing may be scheduled for the same day;** a meeting agenda will be posted online in advance of the hearing.

The regulations for De Novo hearings are found in Lane Code 14.080. Lane Code is available on the internet at www.lanecounty.org/, under "Quick Links".

A formal notice of this hearing will be mailed to you at least **20 days prior** to the hearing date. Please submit written materials to the **attention – Rachel Serslev.** You have up to the day of the hearing to submit materials. The staff report to the Hearings Official will be completed on September 12, 2019, utilizing materials in the file record as of September 6, 2019. Any materials submitted after that date may result in staff requesting a continuance.

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED AUG 14 2019

APPEAL OF A TYPE II DECISION

PUBLIC WORKS DEPARTMENT *3050 NORTH DELTA HIGHWAY, EUGENE OR 97408*
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only: *FILE #* *CODE:* **HOAPPEAL** *FEE: $250*

Appellant: LWLC
Mailing address: PO Box 5347
Phone: 541 517 4459 Email: fairhope@comcast.net
Signature: Lawin Vogel

Appellant's Representative :
Mailing address:
Phone: Email:
Signature:

LOCATION (subject property)

18 02 11 507
Township Range Section Taxlot Subdivision/partition lot/parcel

REQUIRED SUBMITTALS. A notice of appeal must be filed with the Director prior to the end of business (4 pm PST) on the 12th day after the date the notice of decision is mailed.

Please note that your appeal application will be rejected if it does not meet all the requirements of Lane Code 14.080(1) except LC 14.080(1)(c)(vi). Failure to address all appeal requirements, including all information requested by this form, may result in the appeal being rejected.

1. A copy of the decision being appealed, with the department file number: PA 19 05298 and date of the decision 8-2-19
2. The $250 appeal fee, payable to Lane County.
3. The appeal deadline, as stated in the Director's Decision: 8-14-19
4. Address each of the following standards:
   a. State how the appellant is a person who is entitled to written notice under LC 14.060 or a person who is adversely affected or aggrieved by the application:
      ☐ I am a person entitled to receive the Notice of Decision per LC 14.060
      ☑ I am adversely affected or aggrieved by the application because (explain):
      attached

See Page 2, appeal form continued. →

b. State the reason(s) why the Director's decision was made in error or why the Director should reconsider the decision.

c. Provide an explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration (attach a separate letter if necessary):

- ☐ The Director exceeded their jurisdiction;
- ☐ The Director failed to follow the procedure applicable to the matter;
- ☐ The Director rendered a decision that is unconstitutional; or
- ☐ The Director misinterpreted the Lane Code or Lane Manual, state law or federal law, or other applicable standards and criteria.

5. Include any other additional information in support of your appeal.

LANDWATCH LANE COUNTY
Protecting Our Natural Heritage From the Coast to the Cascades
P.O. Box 5347 • Eugene, OR 97405 • (541) 741-3625 • www.landwatch.net

August 14, 2019

Lane County Land Management
Public Works Department
3050 N Delta Highway
Eugene, OR 97408

Appeal of Director's Decision (Nimpkish) 509 PA1905298, approving a dwelling in the Impacted Forest Lands (F-2) zone pursuant to the "Template Dwelling" provision in Lane Code Chapter 16.211(2)-2.4.

Justification for Appeal

- It does not appear a dwelling existed on tl# 601 (18021100) in 1993, the operative date; although there is evidence of a 1981 MH being approved in 1982, the assertions made in the 1998 replacement dwelling decision regarding an existing dwelling with intact exterior walls and roof structure, indoor plumbing, interior wiring and a lighting system, no evidence was provided and RLID records indicate no improvement dwelling on the tax rolls between 1993 and 1998
- the subject property is within an area designated Major Big Game; the county has incorrectly taken the position that zoning protects big game and was adopted to do just that, without providing evidence of how subverting the 80 acre minimum lot/parcel size in favor of underlying fragments has protected zoning meant to protect Major big game by retaining a density of one dwelling/80 acres
- the subject property is in an area designated by DOGAMI as severe landslide danger; the Goal 7 (Hazards) working paper policies provide:

  Each of these proposed policies is intended to fulfill a significant intent of Goal 7.

  - Policy 1. Establishes that Lane County plans shall be based on an inventory of known areas of natural disaster and hazard It is also intended to establish that in rural areas, specific on-site evaluation is invaluable in avoiding or minimizing hazardous conditions.
  - Policy 2. Establishes that the type(s) and degree of hazard(s) present must be considered as significant factors in determining compatible types and intensities of

development. A primary determinant of compatibility being whether a development may be reasonably safeguarded. The policy further establishes that safeguards must be provided as a provision for approval of proposed developments. Also the policy establishes the building code as an assumed level of safeguard.

- Policy 3. Given the technological capabilities available in today's society it is probable that any given development could be protected against the worst of natures hazards; but at what cost to the environment and the public? This policy establishes that an assessment of these costs is a necessary part of the review process.

- The hazards working paper implementation provisions include:

    - Implementation: LCDC determined that in addition to plan deficiencies the County's implementing measures were also inadequate. The denial order contains three specific requirements necessary to gain compliance:

    - 1. Amend the Lane Code to require that the initial review of conditional and other special uses consider known natural hazards;
    - 2. Specify the types of "appropriate safeguards" which will be applied to development in known hazards areas

LANDWATCH
LANE COUNTY
Protecting Our Natural Heritage
From the Coast to the Cascades
P.O. Box 5347 • Eugene, OR 97405 • (541) 741-3625 • www.landwatch.net

August 14, 2019

LandWatch Lane County is a 501(c)(3) tax exempt, nonprofit organization dedicated to protecting Lane County's water, soils and air so that our natural areas, farms and forests will remain vital in perpetuity.

LandWatch is committed to protecting Lane County's farms, forests and open space from urban sprawl by promoting responsible and sustainable land use policies.

The over-parcelization and development of productive resource land leads to negative impacts for commercial resource use and protection of Goal 5 resources.

LandWatch is aggrieved by the Directors recent approval of a forest template dwelling in the forest zone because the PD approval fails to consider the severe landslide danger present in the area and on the subject property and misconstrues the existence of a dwelling relied on in the applicants dwelling count.

For these reasons LWLC is an aggrieved party.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION

BY THE LANE COUNTY PLANNING DIRECTOR

Date:	8-2-19
Department File:	**509-PA19-05298**
Owner / Applicant:	Nimpkish LLC
Agent:	James E. Belknap
Map & Tax Lot:	18-02-11-00-00508 S ½ 50+
Address:	No Site Address
Size:	10.06 acres
Base Zone:	Impacted Forest Land (F-2)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A Request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4

Enclosed is a vicinity map and site plan showing the proposed location of the template dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. You can contact the Lane County Land Management Division representative **Rachel Serslev** at **(541) 682-6903** or **rachel-serslev@co.lane.or.us** to obtain more information about this notice.

This decision will become final at 4:00 PM on 8-14-19 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the County LMD. **This application form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information and attach it along with the appeal fee, materials, and information required on the appeal form.

2. Submit the completed appeal to the Planning Director so that the Planning Director receives it prior to the date and time that the decision becomes final (see above deadline). The Planning Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.

3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: _____ **Date:** 8-2-19
Rachel Serslev, Planner

Authorized by: _____ **Date:** 8-2-19
Amber Bell, Interim Planning Supervisor
For Keir Miller, Division Manager

EXHIBITS
Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Note: Exhibits below are mailed to the Applicant only. Copies are available upon request. Please contact staff at (541) 682-6917.

Exhibit D: Staff Report
Exhibit E: Contour Map of Subject Property and Contour Map of Homesite
Exhibit F: Lane County Transportation Planning Comments, d. 5/21/2019
Exhibit G: Farm Use and Forest Management Easement
Exhibit H: LandWatch Lane County Referral Comments, d. 6/1/2019
Exhibit I: Applicant's Response to Referral Comments, d. 7/11/2019
Exhibit J: Applicant's Access Site Plan

DO NOT
SEPARATE
PACKET

CERTIFICATE OF MAILING

509-PA19-05298
NIMKISH/BELKNAP
8/1/2019

This is to certify that I, ~~Amber Wolles~~ Lindsey Eichner, mailed Notification of

Notice of Decision

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: 8-2-19

End of Comment Period:

Appeal Deadline: 8-14-19

Hearing Date:

Lindsey E

~~AMBER WOLLES~~
Lindsey Eichner

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

EMAILED:
TRANSPORTATION PLANNING
ASSESSMENT & TAXATION

DO NOT SEPARATE PACKET

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509-PA19-05298
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EMAILED:
TRANSPORTATION PLANNING
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Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION

BY THE LANE COUNTY PLANNING DIRECTOR

Date:	8-2-19
Department File:	**509-PA19-05298**
Owner / Applicant:	Nimpkish LLC
Agent:	James E. Belknap
Map & Tax Lot:	18-02-11-00-00508
Address:	No Site Address
Size:	10.06 acres
Base Zone:	Impacted Forest Land (F-2)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

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PROPOSAL: A Request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4

Enclosed is a vicinity map and site plan showing the proposed location of the template dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

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0837

001537

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Prepared by: _____ **Date:** 8-2-19
Rachel Serslev, Planner

Authorized by: _____ **Date:** 8-2-19
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For Keir Miller, Division Manager

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Exhibit I: Applicant's Response to Referral Comments, d. 7/11/2019
Exhibit J: Applicant's Access Site Plan

EXHIBIT A

CONDITIONS OF APPROVAL

509-PA19-05298

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of **509-PA18-05298** is valid for a **four-year** period from the date of final approval unless an extension is granted in accordance with Lane Code Chapter 14 provisions.

   An extension may be granted if:

   a. An applicant makes a written request with the required fee and the request complies with LC 14.090(6) and (7);

   b. The request is submitted prior to the expiration of the approval period; and

   c. The request is submitted not sooner than six months before the expiration date.

Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

2. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* (**Exhibit G**) with an attached "Exhibit A" depicting the legal description of the property, which must be recorded together with the Agreement at the Lane County Deeds and Records office.

3. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. The applicant shall provide a copy of the stocking survey to Land Management Division with evidence of receipt from Lane County Assessment and Taxation.

4. Improve the access road and construct the driveway to the minimum standards of Lane Code 16.211(6)(b), as was found feasible by staff in **Findings 17 through 24**, and the applicable standards of Lane Code Chapter 15. Oregon Registered Professional Engineer or fire district certifications must be provided for any driveway culverts, bridges, or grades exceeding eight percent.

5. Submit written verification from Pleasant Hill Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, private roads, private access easements, and driveways comply with meet the construction standards Lane Code 16.211(6)(b) and fire district standards.

6. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(6)(c) and as depicted on the applicant's site plan. **These fuel breaks shall be maintained in perpetuity.** The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope, as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet on lands owned or controlled by the owner.

7. The dwelling must be located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

8. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). This can be satisfied by providing a copy of the Well Log for the property. The well must comply with the groundwater appropriation standards of ORS 537.545(1)(d) and have a sustained yield of five gallons per minute for a duration of not less than five hours of continuous pumping as required by Lane Manual 9.160.

9. Upon completion of **conditions #2 through #8**, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. **Attach to this form a copy of:**

   - Signed, notarized, and recorded *Farm Use and Forest Management Agreement* and description of property, along with all required exhibits;
   - Forest stocking survey with evidence of receipt from the County Assessor;
   - A copy of a water use permit, well log or well constructor's report;
   - Verification letter from Pleasant Hill Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route; and
   - Approved Site Development Plan, or a plot plan that conforms with the approved plans, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These final plans shall include the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(6)(c) and this approval.

10. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in **conditions #4 and #6** have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(6)(b) and (c) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the discretion of the Planning Director.

11. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

12. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the approved site development plan, unless modification is authorized by

the Planning Director. Modification to the approved site plan may require an application for Modification of Conditions with the required processing fee, at the discretion of the Planning Director.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

13. The proposed dwelling shall meet the following requirements, to be verified by the Lane County Building Official:

a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.

b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

Please contact a Lane County plans examiner at 541-682-4651 with questions about building code requirements.

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

14. The entire subject property, according to DOGAMI, is within a "Very High" landslide susceptibility area and contains landslide deposits. These designations may require a geotech report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 for more information.

15. Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

16. The applicant is responsible for complying with any applicable local, state, and federal laws.

17. In accordance with Lane Manual 15.515, stormwater runoff from private property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by roadways themselves.

18. The approval is valid for four years as stated in condition one. An extension, if sought and granted in compliance with Lane Code Chapter 14, is limited to a single 2 year extension unless State law or Lane Code amendments allow otherwise.

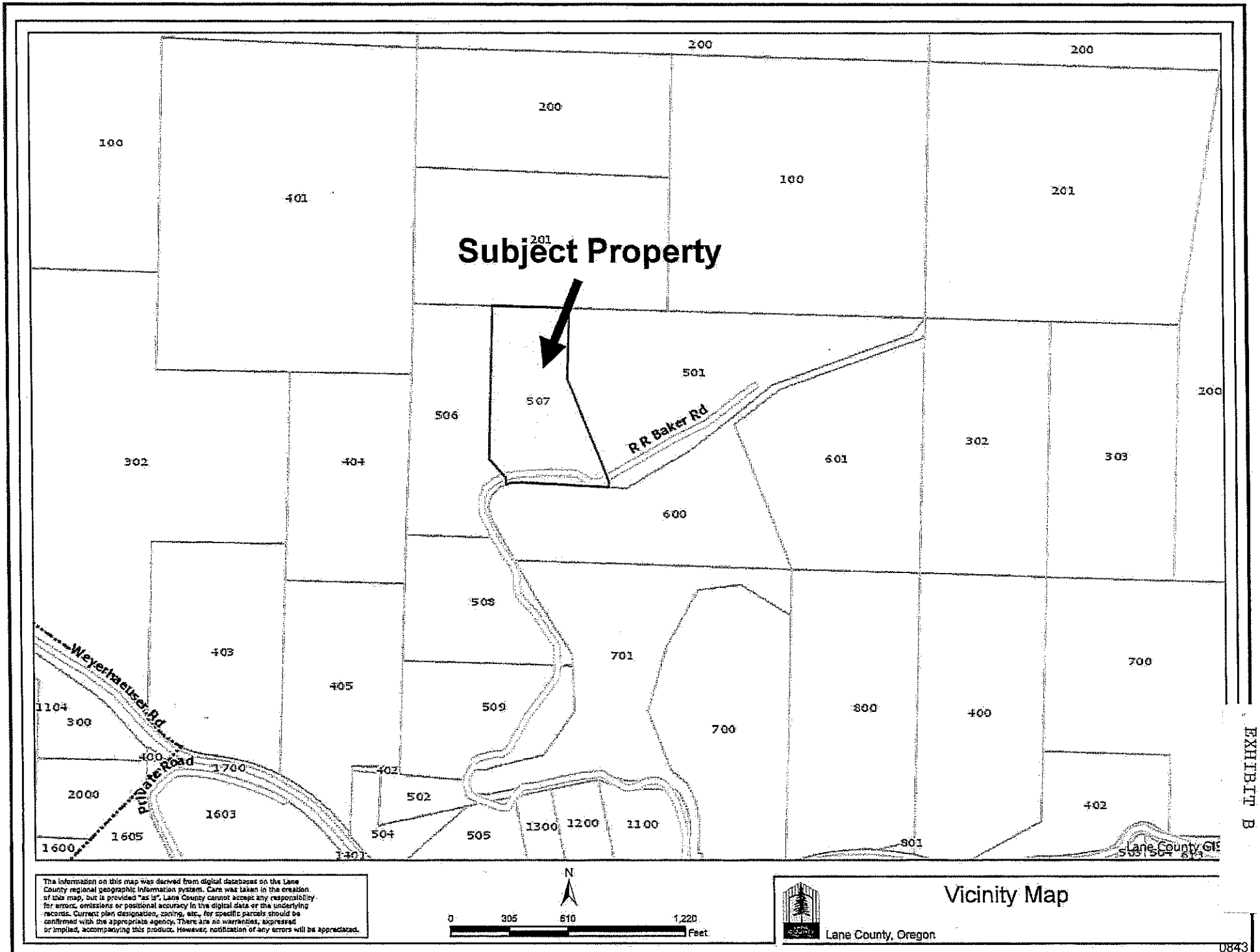
19. The owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(d). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through

the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County); or online at: http://www.oregon.gov/ODF/privateforests/fpaReforestation.shtml.

20. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

> "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

Vicinity Map

Lane County, Oregon

EXHIBIT B

0843

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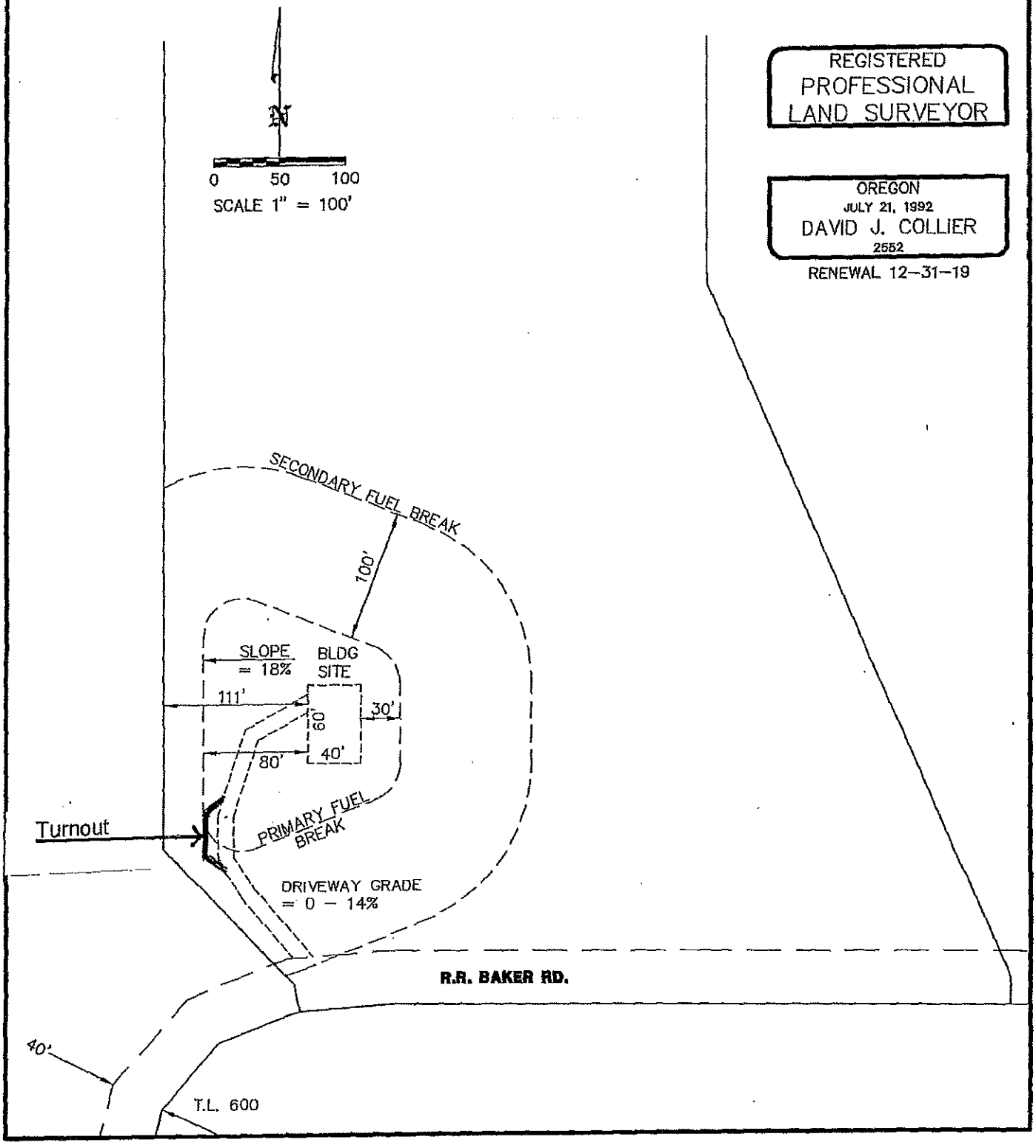
509-PA19-05298

EXHIBIT C

Approved RS 6/25/19

SITE PLAN

TAX MAP 18-02-11-00
(PORTION OF TAX LOT 506)



0844

LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

EXHIBIT D

STAFF REPORT

509-PA19-05298

Department File:	**509-PA19-05298**
Owner / Applicant:	Nimpkish LLC
Agent:	James E. Belknap
Map & Tax Lot:	18-02-11-00-00507
Address:	No Site Address
Size:	10.06 acres
Base Zone:	Impacted Forest Land (F-2)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff:	Rachel Serslev, Planner

I. PROPOSAL

A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(2)-2.4.

II. BACKGROUND INFORMATION

On April 18, 2019, the applicant submitted a request to establish a dwelling in the Impacted Forest Lands (F-2) zone to Lane County Land Management Division. The application materials were reviewed by staff and the application was deemed complete on May 17, 2019.

On May 17, 2019, referral responses were solicited from affected agencies, service providers and surrounding property owners. Copies of all written comments are included in the application file for this proposal and are incorporated in the findings and decision below in the context of the approval criteria, as applicable. On June 26, 2019, the applicant provided a 60 day timeline extension in order to address comments received during the referral period. Additional information was provided on July 12, 2019, and the applicant requested the application be taken off hold.

III. PROPERTY DESCRIPTION

A. **LOCATION:** The subject property is identified as Assessor's Map and Tax Lot 18-02-11-00-00507. It is located approximately 0.5 of a mile east of the City of Springfield's Urban Growth Boundary and north of Wallace Creek Road, with access off of RR Baker Road, a private road. The property is vacant and does not have an address.

B. **PROPERTY DESCRIPTION AND SURROUNDING USES:** The property is approximately 10.06 acres in size. The property slopes from the north-west corner to the east property boundary, from a mean sea level (MSL) of approximately 1060 feet to 1200 feet MSL determined with Lane County contour data. The County LiDAR data show that slopes range from less than 10% to 40% or more with steep slopes located in the north-west and north-central portion of the subject property. More gentle slopes on the subject property are located in the south-west corner. The property is primarily open pasture with some scattered, low-lying brush and Douglas Fir.

The property is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2, RCP), consistent with that plan designation. The property abuts F-2 zoned properties on all sides. The surrounding area can generally be characterized as a mix of forest and low-density, rural residential uses. The property does not contain floodplain, a Class 1 stream, or mapped wetlands.

IV. APPLICABLE CRITERIA AND FINDINGS OF FACT

This application is evaluated pursuant to the applicable criteria found in Lane Code 16.211(3), (5) and (6) and other standards as applicable. The code language is in **boldface** type, followed by the findings of fact.

(3) Use Standards

(C) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

(i) If the lot or parcel is predominantly composed of soils that are:

(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots of parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots of parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

Finding 1. The applicant documents the presence of at least 11 other lots or parcels and five dwellings that existed on January 1, 1993, within a 160-acre acre rectangle that meets Lane Code 16.211(3)(c)(iv) centered on the subject tract. The applicant provides soils data showing that the property is composed of two soil types, 107C Philomath silty clay and 113G Ritner cobbly clay loam, which have forestland capability

of an estimated 45 and 149 cubic feet per acre per year, respectively. Soil type 107C composes approximately 53% of the subject property. Staff has confirmed this using the Lane County GIS measuring tools and soils data. Therefore, the subject property must meet the standards of Lane Code 16.211(3)(c)(i)(aa). The subject property is a lawfully created unit of land in its current configuration resulting from a property line adjustment approved with department file No. 509-PA18-05833.

Based on staff's review of the current property description cards, other documentation submitted by the applicant, and available County records, staff finds that seven of the 11 parcels identified by the applicant appear to have been lawfully created prior to January 1, 1993, and are partially within the 160-acre template area as required. The seven parcels, lots, and units of land that are found to be within the template are described in in **Figure 1** below.

FIGURE 1: LOTS, PARCELS AND UNITS OF LAND WITHIN TEMPLATE AREA

Count (*dwelling)	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / ILV / Partition
1	18-02-11	600	1982	Parcel 1 of M43-81
2*	18-02-11	601	1982	Parcel 2 of M43-81
3*	18-02-12	201	1909	Final Legal Lot Verification 509-PA14-05513
4	18-02-12	303	1992	Parcel 1 of 92-P0221
5	18-02-12	302	1992	Parcel 2 of 92-P0221
6*	18-02-11	100	1953	460/235
7	18-02-10	100	1941	222/81

*Verification of the status of the parcels referenced above is preliminary and does **not** constitute a determination of legal lot status.*

The applicant's materials demonstrate that three of the 11 properties within the template area contain existing dwellings that have existed since January 1, 1993. Staff verified the three dwellings on lots or parcels identified as within the template area. The properties with these dwellings are denoted with an asterisk in **Figure 1** and the dwellings are described in **Figure 2** below. Staff verified that dwellings identified in **Figure 2** have existed since January 1, 1993 and continue to exist, based on the reports from Regional Land Information Database (RLID) and aerial photography.

Staff finds the proposal meets the criteria that all or part of at least three other lots of parcels that existed on January 1, 1993, are within a 160-acre template centered on the center of the subject tract; and at least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

FIGURE 2: QUALIFYING DWELLINGS WITHIN TEMPLATE DWELLING

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
1	18-02-12	201	1910; RLID
2	18-02-11	601	1982/1999; Verification of Replacement Rights 509-PA98-5159
3	18-02-11	100	1958/2001; Verification of Replacement Rights 509-PA01-05596

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

Finding 2. Lots or parcels identified in **Table 1** above are not located within urban growth boundaries. Therefore, staff find this criterion met.

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

Finding 3. **Table 2** lists dwellings on lots or parcels within the 160-acre template area. These dwellings are considered in the template area because they are located on lots or parcels identified in **Table 1**. The lots or parcels that contain qualifying dwellings have asterisks next to the count number in **Table 1**, and these lots or parcels are also listed in **Table 2**. Therefore, staff find this criterion met.

(iv) Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and ¼ mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

Finding 4. The applicant has correctly centered the 160 acre rectangle that is one mile long and a quarter mile wide on the subject property. The abutting road is RR Baker Road, which is described on a 1982 survey, indicating that the road existed prior to January 1, 1993. The template appears to be aligned with the RR Baker Road to the maximum extent possible. Therefore, staff find this criterion met.

(v) The following applies where a tract 60 acres or larger abuts a road or perennial stream:

(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;

(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

Finding 5. The subject tract is 10.06 acres in size. Therefore, the above criterion is not applicable.

(vi) A proposed "template" dwelling under this section is not allowed:

(aa) Unless no dwellings are allowed on other lots of parcels that make up the tract and deed restrictions established under paragraph (3)(a)(iii) for the other lots or parcels that make up the tract are met; or

(bb) If the tract on which the dwelling will be sited includes a dwelling;

(vii) Where other lots or parcels that make up a tract in Subsection (vi):

(aa) The applicant must provide evidence that the covenants, conditions, and restriction from adopted as: "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this sections and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

Finding 6. No parcels meeting the definition of "contiguous" in LC 16.090 and under the same ownership abut the subject property. The property is owned by Nimpkish LLC. All adjacent properties are under different ownership. Therefore, the vacant subject vacant property is not part of a tract developed with a dwelling. Staff find the criteria met.

(Q) For single-family dwellings, the landowner must sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Finding 7. As a condition of approval, the applicant is required to submit proof of a Farm and Forest Management Practices Agreement (**Exhibit G**) recorded in the Lane County Deeds and Records office. This requirement must be satisfied prior to the issuance of a building permit for a single family dwelling or a placement permit for a manufactured home.

(5) Siting Standards for Uses, Activities, and Structures

The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The Director must consider the criteria in this section together with the requirements of Section (6) to identify the building site.

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);

Finding 8. The properties surrounding the subject property to the north and west do not contain any dwellings; although some of those properties have conditional approval for dwellings. Tax Lot 501, to the east of the subject property, and Tax Lot 600, across RR Baker Road to the south, contain the nearest existing dwellings. These dwellings are approximately 460 and 880 feet from the proposed home site.

The nearest public road is Wallace Creek Road, located to the south of the subject property. The subject property is proposed to take access from RR Baker Road, a private road adjacent to the subject property. The proposed homesite is approximately 140 feet from RR Baker Road. Further, the homesite will be accessed by an existing spur road that will be improved to act as the dwelling's driveway. Given this information, staff find that the proposed home site is as near to existing roads as possible.

The applicant provided a contour map for the entire property, as well as a site plan showing the contours of the property at and surrounding the homesite location (**Exhibit E**). Both maps were produced and stamped by a professional land surveyor. Based on this information, staff find that the proposed home site is the most level part of the subject property, consistent with the applicant's statement. Further, it appears the homesite is located at least 30 feet from a ravine ridge or slope greater than 40%. To ensure compliance, this has been made a condition of approval.

The applicant attests that the proposed location of the homesite contains the poorest soils on the subject property. The applicant indicates that the subject property is composed of 107C Philomath silty clay and 113G Ritner cobbly clay loam soils, which have forestland capability of an estimated 45 and 149 cubic feet per acre per year, respectively. The proposed homesite is located on the Philomath soil, which is the soil type with a lower capability as compared to other soils on the subject property. Therefore, the homesite is on the least suitable portion of the tract for forest use.

Per the above discussion, staff find that the proposed dwelling site substantially conforms to the criteria described above, as conditioned, and when balancing with other siting criteria in Lane Code 16.211(8)(a) through (b).

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses;

Finding 9. The subject property is largely clear of timber and is open pasture with low vegetation. The homesite is located in an area already clear of timber and developed with a roadway that will be improved to meet driveway standards. Therefore, staff find the proposal does not intrude into forest areas undeveloped by non-forest uses.

(iii) Where possible, when considering LC 16.211(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining line of property zoned F-2 or EFU; and

Finding 10. The subject property is surrounded by other Impacted Forest Land (F-2) zoned property. Per the applicant's site plan, the proposed homesite is located at least 100 feet from adjoining lines of property also zoned F-2. Therefore, staff find this criterion met.

(iv) The amount of forest lands used to site access roads, service corridors, and structure must be minimized.

Finding 11. The applicant's site plan demonstrates that the proposed homesite is approximately 189 feet away from RR Baker Road, an existing private road. The homesite is also proposed near an existing spur road previously used for logging that will be upgraded to the dwelling's driveway. The home site is located as near to the existing roadway as possible when considering the fuel break requirements of LC 16.211(6)(c). Therefore, staff find that the proposed homesite location minimizes the amount of forest land proposed to be used for roads and structures. Staff find this criterion met.

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).

(iii) The minimum distance necessary to comply Sections (5)(a) and (6).

(iv) Riparian Setback Area. A riparian setback area applies to the area between a line that is 100 feet from an parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with LC 16.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.

Finding 12. The proposed dwelling site is at least 100 feet from all surrounding property lines in order to comply with LC 16.211(5)(a) and (b), and to accommodate the necessary fire breaks required in LC 16.211(6). There are no Class I streams on the property; therefore, the riparian setback area does not apply to the subject property. Based on this information, staff find that this criteria is met.

(c) Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.

Finding 13. The applicant proposes establishing a private well on the property to provide the dwelling with domestic water supply. Given the residential uses on properties surrounding the subject property, staff find it feasible that a domestic water supply can be established and that the above criteria can be met. Per a recent Hearings Official decision (department file No. 509-PA18-05804), the proposed well must comply with ORS 537.545(1)(d) and Lane Manual 9.160. The above standards have been made a condition of approval and the applicant must supply evidence that domestic water supply is from an authorized source as described above. Therefore, staff find these standards conditionally met.

(d) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.

Finding 14. The property is proposed to be accessed by a private road, RR Baker Road, and a private driveway located fully on the subject property. The applicant provides a copy of an (recorded 3/21/2019 with recording number 2019-010337) easement and road maintenance agreement that allows for the subject property's use of RR Baker Road for access (Exhibit 4 of the application materials). Therefore, staff find this criterion is met.

(e) Approval of a dwelling is subject to the following requirements:

(i) Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.

(ii) The Director must notify the County Assessor of the above condition at the time the dwelling is approved.

(iii) Stocking survey report:

(aa) If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(bb) Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirement of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.

Finding 15. The subject property is more than 10 acres in size and must submit a stocking survey report to the County Assessor to verify minimum stocking requirements. The owner must plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. These

requirements have been made conditions of approval and the property owner must submit a stocking survey report to the County Assessor and provide a receipt from Lane County Assessment and Taxation.

(f) Signs.

(i) Signs cannot extend over a public right-of-way or project beyond the property line;

(ii) Signs cannot be illuminated, flashing, blinking, contain scrolling images, or capable of movement; and

(iii) Signs are to be limited to 200 square feet in area.

Finding 16. No signs are requested as part of this application. These criteria are not applicable.

(6) Fire-siting standards for Dwelling and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings, manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:

Finding 17. The subject property is located within the boundaries of the Pleasant Hill Rural Fire Protection District. The applicant provides a letter (d. 5/14/2019) from the Fire Protection District that confirms service to the RR Baker Road area. Specifically, the review pertains to Map 18-02-11 Tax Lots 501 and 506, which were the tax lot numbers associated with the land that is now Tax Lot 507, the subject property. Therefore, a fire safety plan is not required, and staff find that the above criterion is met.

(b) Fire Safety Design Standards for Roads and Driveways

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private road or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to access route, and it may also include a written certification of compliance from an Oregon registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Finding 18. The letter in the record from the Pleasant Hill Rural Fire Protection District confirms that the subject property will be serviced by the District and a list of the firefighting equipment that the District has access to and would use to fight a fire on the property. The applicant also provides information

regarding the nearest fire station at 36745 Jasper-Lowell Road, approximately 2.5 miles from the subject property. The way of access from the fire station to the subject property involves paved County roads and RR Baker Road. As proposed and conditioned, RR Baker Road and the proposed driveway can meet the above requirement. Compliance will be field verified by LMD staff as part of the Verification of Conditions application. Staff find the above criterion met.

(ii) Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, and unobstructed area two feet in width at right angles with each side of the constructed surface , curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel and must have a vertical clearance of 13 feet 6 inches.

Finding 19. Access to the subject property is proposed from Wallace Creek Road, a County road, to RR Baker Road, a private road, to a proposed driveway utilized to access the homesite. It appears that RR Baker Road currently serves more than one dwelling. Therefore, the portion of RR Baker Road from Wallace Creek Road to the subject property must meet the above road standards. The applicant's access site plan (**Exhibit J**) shows RR Baker Road as having a width of 40 feet. The application indicates that the road has a travel width of 16 to 18 feet. Further, the applicant's site plan shows the proposed driveway from RR Baker Road to the homesites as having a 12 foot width. Therefore, staff find it feasible that the road standards can be met. As proposed and conditioned, the access easement and driveway must meet the above requirements. Compliance will be field verified by LMD staff as part of the Verification of Conditions application.

(iii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road

and, where necessary, by the creation of permanent fire breaks around the road.

Finding 20. The applicant is proposing a dead-end road over 200 feet long. Access is proposed via an existing access easement road that will be improved to meet the above standards because it serves more than one single family dwelling. The road from Wallace Creek to the subject property must have seven turnarounds given the above standard and the road's length. Per the applicant's access site plan (**Exhibit J**) and photographs of the turnaround points as they exist, it is feasible that the necessary turnarounds can be established and improved to meet the above standards. The above standards have been made a condition of approval and compliance will be field verified by LMD staff as part of the Verification of Conditions application.

(iv) Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirement, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard if 50,000 lbs.

Finding 21. The applicant attests that there are several existing culverts that provide drainage for RR Baker Road as presently constructed. Two new culverts are proposed, one where RR Baker Road meets the proposed driveway and another along the proposed driveway. These culverts must be constructed to meet the Road Fire Safety Design requirements of LC 16.211(6)(b). These criteria have been made a condition of approval and will be field verified by LMD staff as part of the Verification of Conditions application.

(v) Road and Driveway Grades. Road and driveway grade cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

Finding 22. Materials submitted by the applicant indicate that slopes for the proposed driveway vary between zero and 14 percent. The driveway slopes are indicated on the applicant's site plan which is stamped by a registered professional land surveyor, David J. Collier. The applicant also provides a letter from the Pleasant Hill Goshen Fire and Rescue District (d. 3/14/2019 and Exhibit 7 of the applicant's submittal) that provides preliminary verification of compliance regarding access to the subject property. Therefore, staff find it feasible that the private access easement and proposed driveway can meet the above standards. Compliance with the above criteria has been made a condition of approval, and the proposed driveway and road grades will be field verified as part of the verification of conditions. As conditioned, compliance with any applicable standards of LC 16.211(6)(b) is required, and must be verified by staff as part of the Verification of Conditions application.

(vi) Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.

Finding 23. Lane County Transportation Planning has commented on the proposal (**Exhibit F**) and do not indicate that LC 15.305 through 15.335 apply to this proposal.

(vii) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

Finding 24. The applicant's site plan shows that the existing driveway will be approximately 230 feet in length. The applicant proposes a single turnout midway up the driveway to the homesite. This proposed turnout is depicted on the site plan and complies with the above standard, which has been made a condition of approval. Compliance with this standard is required and must be field verified by staff as part of the Verifications of Conditions application.

(viii) Modifications and Alternatives. The standards in (6)(b)(i) through (6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

Finding 25. The applicant has not requested any modifications or alternatives. This criterion is not applicable.

(c) Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.

(i) Primary Safety Zone. The primary safety zones is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.

(aa) As slope increase, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:

(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and space so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed

to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.

Finding 26. The proposed development site accounts for the required primary and secondary safety zones surrounding the dwelling. The primary safety zone is proposed as 30 feet on the east side of the home site. West of the home site, there is a 17% down slope which requires an additional 75 feet of primary safety zone down slope. This requirement is depicted on the applicant's site plan with an 80 foot primary fire break on the west side of the homesite. The primary safety zone with the additional down slope fit entirely within the boundaries of the subject property. Surrounding the primary safety zone will be a secondary safety zone of 100 feet in all directions on property owned or controlled by the owner. As a condition of approval, Planning Office staff will field inspect the primary and secondary fuel breaks to verify the Fuel Free Break standards of LC 16.211 (6)(c) above are met. With the Verification of Conditions application, staff find that this criterion is conditionally met.

(d) The dwelling must have a fire retardant roof.

Finding 27. As a condition of approval, the applicant must provide evidence that the building plans meet this requirement and this requirement will be field verified. Staff find this above criterion conditionally met.

(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.

Finding 28. See **Finding 8**. It is feasible that this requirement can be met and it has been made a condition of approval.

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

Finding 29. As a condition of approval, the applicant must provide evidence that the building plans meet this requirement and this requirement will be field verified. Staff find this above criterion conditionally met.

V. OTHER DEVELOPMENT STANDARDS:

Lane Code Chapter 15:

Finding 30. Lane County Transportation Planning submitted referral comments on the proposal (**Exhibit F**). The comments did not include or require any conditions of approval.

Other Considerations:

LandWatch Lane County (LWLC) submitted referral comments (**Exhibit H**) on the subject application, raising several concerns about the application. The applicant submitted a response to these comments addressing the issues (**Exhibit I**). Staff has reviewed LandWatch Lane County's concerns about the proposal and the applicant's response, and find that all approval criteria have been satisfactorily addressed as demonstrated in the above findings of fact.

IV. DECISION

Based upon the findings above, the application for a forest template dwelling meets the criteria of Lane Code 16.211(3), (5), and (6), and other applicable criteria. Therefore, **APPROVAL** is granted, subject to the conditions stated in **Exhibit A** of this staff report.

EXHIBIT E

Property Owner:
Gray Goodman
86690 R.R. Baker Road
Springfield, OR 97478

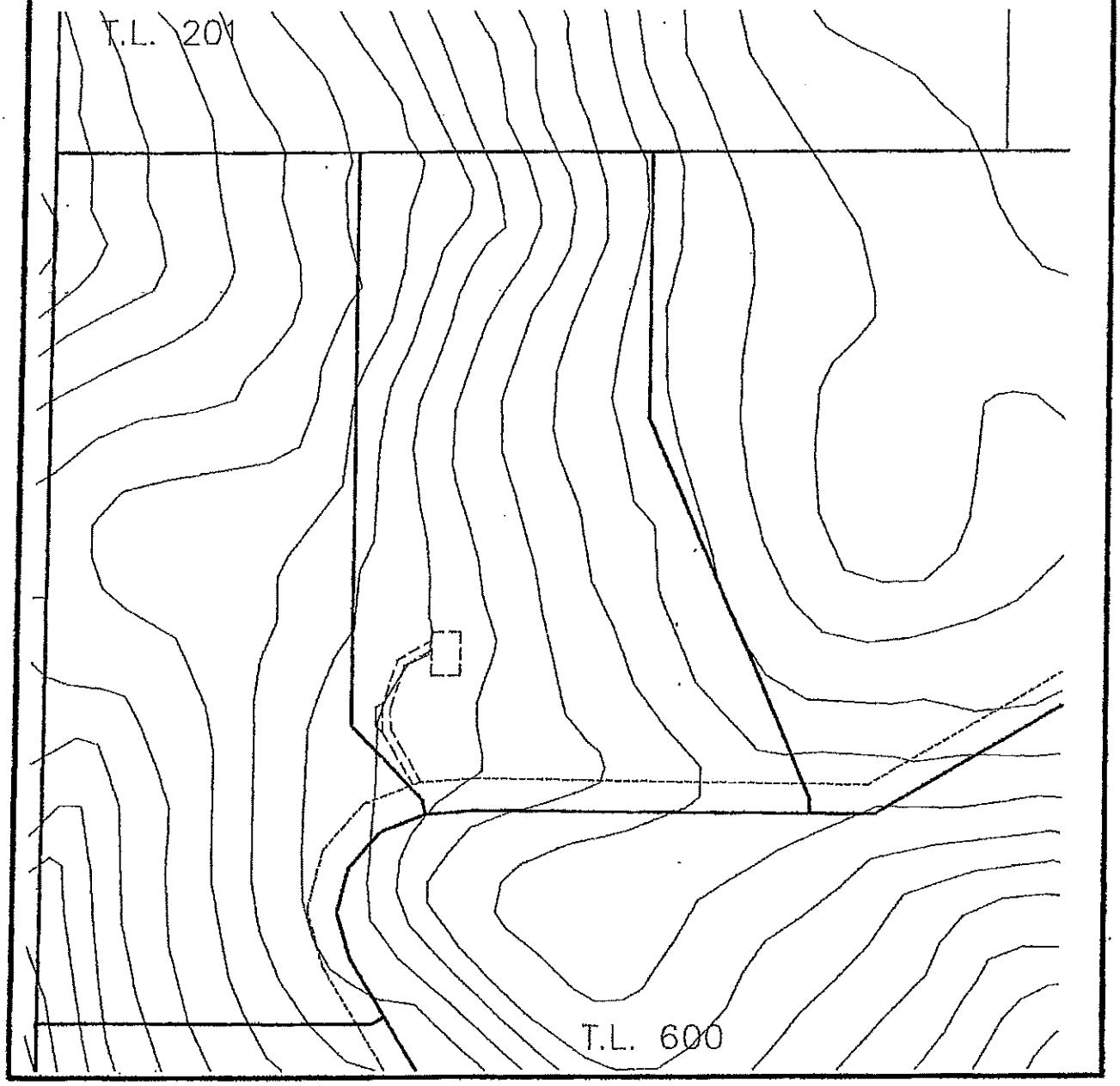
GOODMAN
Tax Map 18-02-11-00
Tax Lot 507

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1982
DAVID J. COLLIER
2552
RENEWAL 12-31-19

N

0 200
SCALE 1" = 200'
CONTOUR INTERVAL=20'



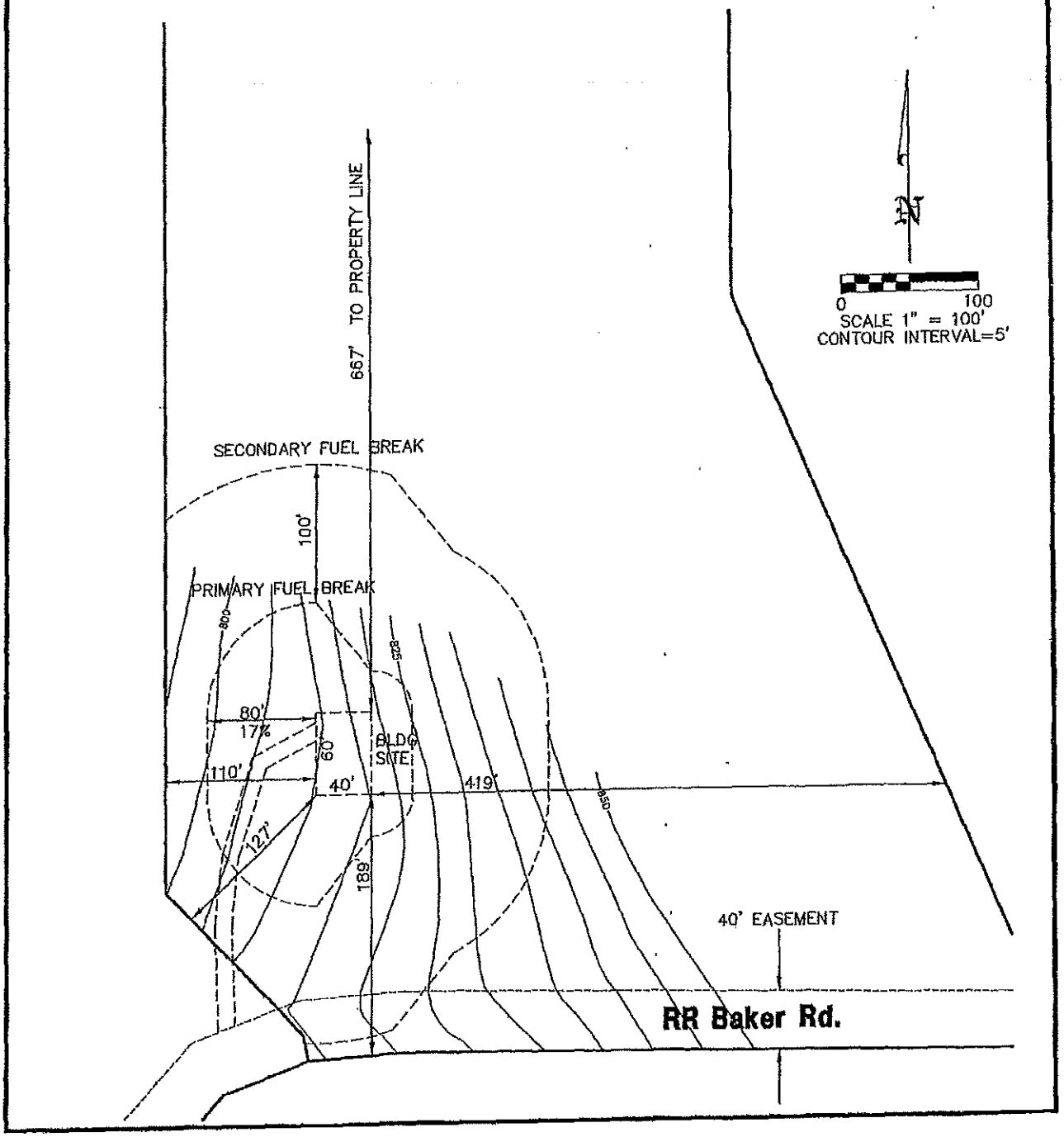
Attachment 2
Supplement to
PA 19-05298

TAX MAP 18-02-11-00
TAX LOT 507

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1992
DAVID J. COLLIER
2552

RENEWAL 12-31-19



PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING
3040 N DELTA HIGHWAY | EUGENE, OR 97408

May 21, 2019

LMD FILE:	509-PA19-05298
APPLICANT/OWNER:	Nimpkish, LLC
AGENT:	James E. Belknap
MAP & TAX LOT:	18-02-11-00-00507
ZONING:	Impacted Forest Lands (F-2) Zone
PROPOSAL:	**A REQUEST FOR DIRECTOR APPROVAL OF A DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2), IN ACCORDANCE WITH THE 'TEMPLATE TEST' PROVISIONS OF LANE CODE 16.211(2)-2.4, (3), (5) AND (6).**

Please accept the following comments from Lane County Transportation Planning. Thank you for the opportunity to review and comment on the request.

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

Pursuant to Lane Code 15.055(2)(c), Lane County Transportation Planning defers to the Lane County Land Management Division to apply the standards of Lane Code Chapter 16 as necessary to determine the adequacy of the private access easement road condition.

CONDITIONS

Lane County Transportation Planning does not recommend conditions of approval specific to Lane Code Chapter 15.

FINDINGS

Based on the site plan, the applicant proposes to take access to the subject property from R R Baker Road. R R Baker Road is a Private Road.

Lane Code 15.055: Minimum Requirements for Private Access Easements

(2) When a Private Access Easement is used to provide access to a vacant lot or parcel where development is proposed, prior to land use and zoning authorization for the proposed development the following shall apply:

(c) The requirements specified above in LC 15.055(2)(a) through (b) shall apply only to lands outside of a County-designated Forest zone. Lands within a Forest zone shall be governed by the siting and development standards of the applicable zoning district.

Transportation Planning defers to Land Management Division to ensure the proposed site meets the applicable siting and development standards of the Impacted Forest Lands Zone (F-2).

After Recording Return to:

_____
_____
_____
_____

Grantor's Full Name & Address:

_____
_____
_____
_____

FARM USE AND FOREST MANAGEMENT EASEMENT

Grantor(s)_____
print name(s)

is/are the owner(s) of real property as described on Exhibit "A", attached hereto. In accordance with the conditions set forth in the decision of the Lane County Land Management Division dated _____ approving Planning Action PA # _____, for Assessor's Map and Tax Lot _____ **Grantor(s)** hereby grant(s) to the owner(s), **(Grantees),** of all property zoned for farm or forest use, a perpetual non-exclusive farm use and forest practices management easement as follows:

1. The Grantor(s), the heirs, successors, and assignees acknowledge by the granting of this easement that the above described property is situated in a farm or forest zone in Lane County, Oregon, and may be subjected to conditions resulting from farm use or commercial forests operations on lands zoned for farm or forest use. Such operations may include farm use as defined in ORS 215.203 and management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and other accepted and customary forest management activities conducted in accordance with Federal and State Laws. Said farm use and forest management activities ordinarily and necessarily produce noise, dust, odors, smoke and other conditions, which may conflict with Grantor's use of Grantor's property for residential purposes, and Grantor(s) hereby give(s) an easement to the property owners of lands zoned for farm or forest use for the resultant impact on Grantors property caused by the farm use or forest management activities on such lands.

2. Grantor(s) shall comply with all restrictions and conditions for maintaining residences in farm and forest zones that may be required by State, Federal, and local land use laws and regulations. Grantor(s) will comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property zoned for farm or forest use, and shall bind the heirs, successors, and assignees of Grantor(s), and shall endure for the benefit of the owners of lands zoned for farm or forest use, their heirs, successors, and assignees. The grantees, their heirs, successors, and assignees are hereby expressly granted the right of third party enforcement of this easement.

_____ _____
Grantor Signature Grantor Signature

IN WITNESS WHEREOF, the Grantor(s) has/have executed this easement on _____
(date)

State of OREGON
County of _____

Signed or attested before me on _____, 20_____

by_____
(Name of Grantor)

_____
Signature of Notary

Recording Label Here

My commission expires: _____

REV. 1/2012 0862

EXHIBIT H

SERSLEV Rachel

From: Lauri Segel-Vaccher <fourhope@comcast.net>
Sent: Monday, June 3, 2019 7:38 PM
To: SERSLEV Rachel
Cc: SORENSON Pete; BUCH Heather H; BERNEY Joe; FARR Pat M (LC); BOZIEVICH Jay K; MILLER Keir C; HURLEY Daniel M; HURLEY Daniel M
Subject: Nimpkish/Goodman forest template dwelling Referral Comments - PA1905298

Rachel

These referral comments are intended for a broader audience than usual, for informational purposes.

Please confirm receipt and please send Notice of decision and Findings when available.

Thank you.

Lauri S
LWLC

****

The history of the forest-zoned lands within township 18, range 02, section 11, much of which is in the ownership of developers with insider access to past LC planning directors and elected officials, is a sad yet all too common example of the effects of some past practices of the planning department.

Recently, efforts by the Planning Director to amend the Code to enable backing away from some past practices was resisted by the developers, their simpatico - the planning commission, and some commissioners, essentially curtailing that effort (at least for now).

LandWatch hopes the Commissioners will take note of the all too common scenario explained below, and will think about the economics of a property tax system that allows tax deferred forest land to be converted to rural residential-sized tax lots while stilling being zoned for forest use and eligible for the forestland property tax deferral. The forestland property tax deferral was established as a 'compensation' mechanism owed to forestland owners managing those lands at a level that would contribute to the state's commercial forest economy. A subsidy to manage forest land for commercial forest uses. This is, in part, the reason behind the 80-acre minimum parcel size that is supposed to apply to forest zoned lands. The subsidy is the only part of the deal that remains today - mostly unchecked.

If you represent any city dwellers, understand that they are responsible for the majority of property tax receipts the county receives, and that city folk are essentially subsidizing the rural developers who are exploiting weak laws with lots of large holes enacted in part by state and local elected officials. Which might not be so bad if the developers were upholding their end of the bargain.

If any of the Commissioners believe the county needs to allow more places for people to live, it might be worthwhile to first arrange for a tour of the two or three dozen or so dwelling sites that should be 'ready to go' for the housing market. Check out the inventory, the accessibility, the infrastructure and availability of services. Prepare a report for Homes for Good, always on the look-out for market rate housing options. Let's hear why those permits haven't been turned into market rate housing yet

In any case, because this is an issue most commissioners are unaware of, we hope you will, at the least, take note and ask some questions.

- Applicant , Nimpkish LLC, is also known as Gray McKenzie Goodman & Dorotea E C Goodman; deed shuffling has enabled four 2019 template dwelling applications (tax lots 506, 507, 508, 509)each on a zombie lot born out of tax lot 501; a 2007 replacement dwelling for a nonexistent dwelling on parent tax lot #501 has already been used to justify approvals for forest template dwellings on other zombie lots owned by other developers with ownerships within TRS 180211. One 60 acre tax lot was turned into five RR10-sized lots without any requirements to consider public health and safety issues that a legitimately approved subdivision would require.

- The four new RR sized tax lots are scheduled to receive a forest property tax deferral once the new fiscal year rolls around and assessment and taxation can legally recognize the zombies for purposes of taxation, which was skillfully avoided for the 2018-19 tax year. Parent tax lot 501 has been receiving a significant forestland property tax deferral since at least 1995; the development of a 2500 square foot 'replacement dwelling raised the tax from less than $100/year (on a RMV ranging from $ 40,000 to $80,000) to $2600/year on a RMV of $388,374. $2600 is .006 percent of the real market value. For comparison, my 'inside the city' 2500 square foot home on .17 acres has a RMV of $324,060, and my property tax is 4,140 (twice what Goodman/Nimpkish is assessed for their now 20 acres with a dwelling tax lot), which is 12% of the RMV. Sure, the city provides water/sewer to my home, but Goodman/Nimpkish and others just like them whose property taxes are subsidized by many people like me come to the city and benefit from the city streets, city water, public safety services that people like me pay for. Does anyone really think that rural property taxes that are a fraction of RMV's are sufficient to cover public services such as public safety, public roads, etc? This is not a sustainable model and is an example of why counties are so underfunded

- The applicant asserts there are no steep slopes on the subject property. According to RLID soils data the subject property does contains steep slopes, where 45% of the subject property has slopes between 30-60 percent. Steep slopes are not a matter of opinion, and development is not allowed in areas where slopes exceed 40%

Soil Map Unit#	Soil Type Description	% of Taxlot	Ag Class	Hydric %
107C	Philomath silty clay, 3 to 12 percent slopes	55%	6	0
113G	Ritner cobbly silty clay loam, 30 to 60 percent slopes	45%	7	0

The applicant's site plan does not show a secondary fuel break NW, W, or SW of the proposed dwelling site; the secondary fuel break must be established on adjacent tl#506, which is controlled by the owner of the subject property

- the site plan does not show the slope of the proposed driveway, stated as between 0 - 14%, and does not indicate its length to inform a finding regarding turnouts; also - the site plan is not overlaid with a contour map and is merely a one dimensional representation of the applicant's desired development site

- Why misstate what the naked eye can see? The applicant states "The vegetation is scattered mixed low lying brush and Himalayan Blackberry with Trailing Blackberry and a well-stocked stand of 4 year old Douglas Fir seedlings, and native grassland" - the site is clear cut with invasive brush/vegetation taking over, and any stand of doug fir seedlings is either on adjacent property controlled by the applicant or is not a 'stand' but rather a patch; it is not clear what "native grasslands" exist in a western Oregon clearcut

- The explanation for the question "Explain how the location of the dwelling and driveway minimize intrusion into the forest" misconstrues the facts. Intrusion into the forest is not a function of the driveway or dwelling location because the forest has been removed - thus no intrusion. the development site has been excavated, thus no slopes - this is not what Mr. Riddle and other LC development interests told the legislature in 1993 - the legislature was told forest dwellings would enable better forest management, but instead forest management has become a sideshow to preparation of forest land for rural residential-like housing on forest lands outside urban growth boundaries

- The site plan does not indicate the "seven turnarounds" the applicant asserts will be constructed on the dead end road that is close to 6000 feet long; the PD must not only determine that the turnarounds are feasible, but also that they WILL BE constructed, regardless of whether or not the fire district has commented on the required turnarounds;

- Driveway turnout on the site plan does not indicate length, the percent of slopes or actual size of turnout; the PD must establish how many turnouts are necessary and whether the development of the turnouts is feasible; the site plan must also show the surrounding driveways in order for the PD to make a finding about compliance with LC 15.138 driveway spacing criteria

- It is not adequate to defer compliance with siting standards to conditions of approval based on broad statements such as " . . . construct the proposed access, road and driveway . . . to the minimum standards of LC 16.211(8)(e)"; the PD must establish feasibility of compliance with specific standards based on the site conditions, dwelling location, etc.; although it is no secret that these zombie lots and forest template dwelling permits are intended for lucrative real estate transactions, the county has no responsibility to enable these transactions. The county's responsibility is to ensure the protection of the public health and safety of the people living here, and that requires applying the siting standards in a manner that ensures compliance. What does it matter if a rural fire district has 3 engines, 2 water trucks, and new station within 3 miles of a proposed development if five dwellings located within less than 1/4 or 1/8 mile of each other, all on steep slopes, have inadequate driveway turnouts, roadway turnarounds, fuel breaks and setbacks.

EXHIBIT I

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Original by U.S. Mail, copy by email to lcpwecopy@co.lane.or.us

July 11, 2019

Re: PA 19-05298
Tax Lot 18-02-11-00-00507

Dear Rachel:

I appreciate your very timely processing of this application and apologize for bringing forth these changes that may require you to re-write some of your report, though I don't believe the enclosed information will change the outcome.

Since the time you provided me with the comments offered by LandWatch Lane County and I prepared our response I have had the opportunity to review several recent decisions made by the Lane County Hearings Official and also visit with other members of the Lane County Land Management Staff regarding the adoption of "new" policies brought about by the recent changes to LC 16.211. Accordingly, I think it is appropriate that we supplement our application and am doing so herein.

At Attachment 1 to this letter you will find a Parcel Map depicting what is now known as Tax Lot 18-02-11-00-00507, the subject of our application. This map has an overlay of contour lines on the entire parcel that clearly depicts the slope and grade of the tract. The map was prepared by David J. Collier, a Registered Surveyor in the State of Oregon and owner of Pacific Survey. While I have maintained it is not a requirement for an applicant to provide a map displaying the slopes and grade of an entire parcel, it appears this has been something of a bone of contention of LandWatch and upon discussion with my client and the owner of the property, NIMPKISH, LLC, we are providing this information at this time.

Attachment 2 to this letter is a re-drawn Site Plan. The location of the proposed dwelling, the annotations of grade and the setbacks and primary and secondary fuel breaks have not changed from the original application. The re-drawn Site Plan has an overlay of contour lines and the boundaries of the primary and secondary fuel breaks are depicted in conformance to the recent revisions to LC 16.211(6)(c) and Figure 16.211-1 showing, for lack of a better term, the expanded "wings" of the outer edges of the increased fuel break areas. Our original Site Plan (Exhibit 3, submitted with the application) was drawn by Mr. Collier using the requirements associated with the slope and grade of the property, but was drawn prior to the adoption of the change to LC16.211(6)(c) and the example shown in Figure 16.211-1. As I have noted, there is no change to the proposed building site, no change to the proposed fuel breaks (other than the addition of the side "wings") and the proposal continues to conform to the requirements of Lane Code.

The third component of this Supplement is of some substance and may require your indulgence in reviewing your report. I have reviewed the concerns voiced by LandWatch over our Road Design submitted at Exhibit 2 to the original application. It would seem that our application could stand on its merits. I contend the letter from Chief Andrew Smith following his on-site review of the road and his approval of the road design proposal on behalf of the Pleasant Hill-Goshen Fire and Rescue Department met the conditions of LC 16.211(6)(b)(i) and that should have been the end of the discussion of the road access provisions. A copy of that letter was included with the original application.

However, given the propensity of LandWatch to file appeals, and what appears to be the likelihood that this application will be subject to an appeal, I think it is appropriate we reconsider our original road design proposal. I have reviewed the concerns voiced by LandWatch with legal counsel for the owner and have met on site with our surveyor and a road construction contractor. The summation is we are proposing a new road plan and copy of that is attached with this letter at Attachment 3.

It is important to note that the original proposal for turn around points intended to use existing residential driveways to nearby houses and existing roads that were constructed for various forest management activities over the years with the subject property. This proposal would have reduced the impact on the forestland nature of the property, complying with the requirements of LC 16.211(5)(a)(iv) "The amount of forest lands used to site access roads, service corridors and structures must be minimized." Ms. Segel-Vaccher expresses concern that our application does not "provide evidence in record of existing driveways." My response was our road design was a proposal, the approval of which by the Director would have been conditioned upon a final inspection that the road was constructed in accordance with our plan. The point was, we didn't need to submit the evidence she was demanding, the road plan was a proposal that would be "proved up" upon completion of the reconstruction. All of this ignores the fact that Chief Smith conducted an on-site evaluation of the road, reviewing the proposed turn around points, and said the proposal would meet the standards of his department. Again, upon reviewing my position with legal counsel for the owners I have been encouraged to provide "evidence" of feasibility of the proposed turn around points. Attachment 4 to this letter is a display of photographs depicting the proposed turn around points. The map included in Attachment 4 is numerically labeled to correspond to the proposed turn around points and the respective photographs.

As discussed, having considered the objections raised by LandWatch to the original road proposal and having reviewed several recent decisions made by the Lane County Hearings Official, we believe it is appropriate to reconsider the original Road Proposal and are submitting with this letter at Attachment 3 a revised Road Proposal titled "Goodman Access Site Plan." This revised Road Proposal will continue to use the existing R. R.

Baker Road, the easement provisions for access remain unchanged, and the use of the existing driveways and forest management road approaches for turn around points will continue though we will be constructing additional turn around points as discussed in this proposal.

The original Road Proposal, Exhibit 2 to the application, showed 7 turn around points and noted the applicant would be re-constructing R. R. Baker Road to its terminus at the eastern edge of Tax Lot 501. After reviewing this proposal with legal counsel and considering the objections raised by LandWatch the revised Road Proposal does not entail reconstructing R. R. Baker Road to its terminus. In concert with the adjoining landowners of Tax Lots 18-02-11-00-00509, 00508 and 00506 the reconstruction of R. R. Baker Road will terminate at the driveway access point to Tax Lot 507, the subject of this application. See Attachment 3.

The owners of Tax Lot 507, NIMPKISH, LLC, under PA 19-05298, are required to provide an improved road of 18 feet width to their driveway approach. This road, as it passes Tax Lots 509, 508 and 506, will be reconstructed to insure an improved 18 foot wide surface and turn around points placed so as to not exceed a 500 foot spacing between such points. The obligation of the owner in this application is to insure an 18' wide road, with appropriate turn around points, is constructed to the intersection with the driveway serving the proposed dwelling on Tax Lot 507. There is no obligation on the part of any of the owners to extend the reconstruction of R. R. Baker Road further to the east for the benefit of adjoining landowners who presently use the road, but are not seeking land use approval for their properties that would be subject to the road requirements of County Code. Specifically, no additional turn around points will be constructed to the east of the driveway benefitting Tax Lot 507.

The road shown in Attachment 3 will provide for the reconstruction of the existing road to insure a minimum of an 18 foot improved gravel surface. In addition, the road will continue to use 4 of the existing driveway approaches and forest management roads and landing areas for turn around points. These 4 points were part of the original 7 proposed turn around points as depicted in Exhibit 2 to the application. The existing turn around points are noted on the road plan at Attachment 3 in dark and annotated as "Turnaround in Driveway." In addition, 5 turn around points are to be constructed, noted in an outline form in the legend of the plan at Attachment 3 and labeled "Turnaround To Be Constructed Per Fire Marshal Requirements." We note this road must be reviewed in its final form after completion of the reconstruction and be approved by the Pleasant Hill-Goshen Fire and Rescue Department. The "Goodman Access Site Plan" has been prepared by Dave Collier, an Oregon Registered Surveyor, and notes the spacing of the existing and proposed turn around points as not exceeding 500 feet. Also noted in this road plan is the grade of various segments of R. R. Baker Road as it will be applicable to the proposal being made by the applicant and the adjoining landowners in their individual proposals.

While the applicant is proposing to revise their road plan, I will again stand by the position that the requirements of Lane County Code are met in the original design with the review and approval of the Pleasant Hill Goshen Fire and Rescue Department, in precise conformance to LC 16.211(6)(b)(i).

Attachment 5 to this letter is a copy of correspondence from Hendrickson Well Drilling, Inc., a road and general excavation contractor, confirming that their company "will be able to construct the road as you have it designed." A copy of the road design plan is attached to Mr. Hendrickson's letter.

Rachel Serslev, Planner
PA 19-05298
July 11, 2019

I will reiterate the point I made in my discussion with another member of the Lane County Land Management Division staff regarding another application, the obligation of the applicant is to submit a development plan that conforms to County Code. The objective of the review process, if it determines that the plan so conforms, is to arrive at a conditional approval that requires the applicant to develop the property in such a manner as to meet the conditions of approval. If we are to start down the slope of "proving feasibility" for each of the conditions being addressed in the site development plan we are moving significantly away from the objective requirements of code and entering into a much more subjective evaluation of whether an application is feasible.

Thank you for your time. Please advise me if you have any questions regarding the enclosed information and attachments.

Sincerely,

Jim Belknap

Jim Belknap

Attachments:
1. Parcel map with annotated contour intervals and proposed building site
2. Site Plan with contour lines annotated and updated fuel break boundaries applied
3. Revised Road Plan
4. Photographs of proposed turn around points
5. Letter from Hendrickson Well Drilling, Inc.

Cc: NIMPKISH, LLC, with attachments

1V

MAPPING & DECISION INSTRUCTIONS

509-PA19-05298

MAP NO. 18-02-11-00-00507 **ADDITIONAL OWNERSHIP:** NONE

APPLICANT:
NIMPKISH, LLC
86690 R R BAKER RD
SPRINGFIELD, OR 97478

OWNER:
NIMPKISH LLC
86690 R R BAKER RD
SPRINGFIELD, OR 97478

AGENT:
JAMES BELKNAP
77898 CHISHOLM TRAIL DR
COTTAGE GROVE, OR 97424

BASE ZONE: F2

COMBINING ZONE: /NONE

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral	Decision		Referral	Decision	
☐	☐	Building	☒	☐	State Fish & Wildlife (ODFW): Valley
☐	☐	Sanitation	☐	☐	State Highway (ODOT)
☐	☐	Final Legal Lot	☒	☒	State Forestry: East
☐	☐	Rural Addressing	☐	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	☐	Flood Management	☐	☐	Dept. Land Conservation & Development (DLCD)
☐	☐	Easement Review	☐	☐	Lane Regional Air Protection Agency (LRAPA)
☐	☐	Compliance	☐	☐	Dept. of Environmental Quality (DEQ)
☐	☐	Surveyors	☐	☐	Dept. of Environmental Quality (DEQ) 1200-C
☒	☒	Transportation Planning	☐	☐	Oregon Health Division
☒	☐	County Road Maintenance	☐	☐	Water Master
☐	☐	Water Quantity/Quality	☐	☐	Division of State Lands (DSL)
☐	☒	Assessment &Taxation	☐	☐	State Parks (Certified mail)
☒	☐	State Fire Marshal	☐	☐	Dept. of Aeronautics
☐	☐	Community Organization undefined	☐	☐	CenturyLink
☒	☐	Watershed Council Middle Fork Willamette Watershe	☐	☐	Northwest Natural Gas
☒	☒	Land Watch	☐	☐	Port of Siuslaw
☐	☐	School District PLEASANT HILL	☐	☐	Power Company EPUD
☐	☐	Water District	☐	☐	US Army Corps. of Engineers (ACOE)
☒	☒	Fire District Pleasant Hill RFPD	☒	☐	US Fish & Wildlife (USF&W)
☐	☐	City Area of Interest (20-day notice) NONE	☐	☐	Confederated Tribes
☐	☐	METRO Area of Interest NONE	☐	☐	State Historic Preservation Office (SHPO)
☐	☐	Environmental Health	☐	☐	Other

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:
- ☒ Vicinity Map
- ☒ Site Plan
- ☐ Flagged Applicant's Material

Copy and Attach Materials to Referral Notices as Instructed Above and Below:

PARTIES OF RECORD

LWLC, Lavi Segal

0870

509-PA19-05298
NIMKISH/BELKNAP
8/1/2019

1802110000201/00405
BETZ/EVANS ASSOCIATES
475 OAKDALE AVE
SPRINGFIELD OR 97477

1802110000501/00506
GOODMAN GRAY MCKENZIE & DOROTEA E C
86690 R R BAKER RD
SPRINGFIELD OR 97478

1802110000701
GRACE GARY L & SHANNON
86561 RR BAKER RD
SPRINGFIELD OR 97478

1802110000507/00508
NIMPKISH LLC
86690 R R BAKER RD
SPRINGFIELD OR 97478

1802110000100
NOE CHRISTOPHER J
86752 R R BAKER RD
SPRINGFIELD OR 97478

1802110000200
OFS PROPERTIES LLC
PO BOX 2114
JASPER OR 97438

1802110000601
QUINN ROCKY D
PO BOX 2074
JASPER OR 97438

1802110000700
RENIE DAVID CHARLES & KATHERINE LYNN
37207 WALLACE CREEK RD
SPRINGFIELD OR 97478

1802110000600
SAFFELL FRANCIS OWINGS & DEJONG JEANETTE
PO BOX 2270

JASPER OR 97438

1802110000404
SMEJKAL DAVID J
42142 NW PALACE DR
BANKS OR 97106

1802110000401
WOLF DOUGLAS F
PO BOX 2114
JASPER OR 97438

JAMES BELNAP
77898 CHISHOLM TRAIL DR
COTTAGE GROVE OR 97424

LANDWATCH LANE COUNTY
PO BOX 5347
EUGENE OR 97405

LANDWATCH LANE COUNTY
BOB EMMONS
40093 LITTLE FALL CREEK RD
FALL CREEK OR 97438

STATE DEPT OF FORESTRY
EASTERN LANE DISTRICT OFFICE
3150 MAIN STREET
SPRINGFIELD OR 97478-5808

PLEASANT HILL RFPD
36024 HWY 58
PLEASANT HILL OR 97455

EMAILED:
TRANSPORTATION PLANNING
ASSESSMENT & TAXATION

Additional Information Submitted

Date Stamp

RECEIVED JUL 12 2019

Submitted By: Jim Belknap

Phone Number: 541-954-2944

Email Address: jim.e.belknap@gmail.com

Project Address: None

Permit Number (BP, PA, SP, SI): PA 19-05298

Submittal Description: Supplemental information for SUP

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fees be paid? ☐ In person ☐ Online ☐ By phone

swh 12/26/2018

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Original by U.S. Mail, copy by email to lcpwecopy@co.lane.or.us

July 11, 2019

Re: PA 19-05298
Tax Lot 18-02-11-00-00507

Dear Rachel:

I appreciate your very timely processing of this application and apologize for bringing forth these changes that may require you to re-write some of your report, though I don't believe the enclosed information will change the outcome.

Since the time you provided me with the comments offered by LandWatch Lane County and I prepared our response I have had the opportunity to review several recent decisions made by the Lane County Hearings Official and also visit with other members of the Lane County Land Management Staff regarding the adoption of "new" policies brought about by the recent changes to LC 16.211. Accordingly, I think it is appropriate that we supplement our application and am doing so herein.

At Attachment 1 to this letter you will find a Parcel Map depicting what is now known as Tax Lot 18-02-11-00-00507, the subject of our application. This map has an overlay of contour lines on the entire parcel that clearly depicts the slope and grade of the tract. The map was prepared by David J. Collier, a Registered Surveyor in the State of Oregon and owner of Pacific Survey. While I have maintained it is not a requirement for an applicant to provide a map displaying the slopes and grade of an entire parcel, it appears this has been something of a bone of contention of LandWatch and upon discussion with my client and the owner of the property, NIMPKISH, LLC, we are providing this information at this time.

Attachment 2 to this letter is a re-drawn Site Plan. The location of the proposed dwelling, the annotations of grade and the setbacks and primary and secondary fuel breaks have not changed from the original application. The re-drawn Site Plan has an overlay of contour lines and the boundaries of the primary and secondary fuel breaks are depicted in conformance to the recent revisions to LC 16.211(6)(c) and Figure 16.211-1 showing, for lack of a better term, the expanded "wings" of the outer edges of the increased fuel break areas. Our original Site Plan (Exhibit 3, submitted with the application) was drawn by Mr. Collier using the requirements associated with the slope and grade of the property, but was drawn prior to the adoption of the change to LC16.211(6)(c) and the example shown in Figure 16.211-1. As I have noted, there is no change to the proposed building site, no change to the proposed fuel breaks (other than the addition of the side "wings") and the proposal continues to conform to the requirements of Lane Code.

The third component of this Supplement is of some substance and may require your indulgence in reviewing your report. I have reviewed the concerns voiced by LandWatch over our Road Design submitted at Exhibit 2 to the original application. It would seem that our application could stand on its merits. I contend the letter from Chief Andrew Smith following his on-site review of the road and his approval of the road design proposal on behalf of the Pleasant Hill-Goshen Fire and Rescue Department met the conditions of LC 16.211(6)(b)(i) and that should have been the end of the discussion of the road access provisions. A copy of that letter was included with the original application.

However, given the propensity of LandWatch to file appeals, and what appears to be the likelihood that this application will be subject to an appeal, I think it is appropriate we reconsider our original road design proposal. I have reviewed the concerns voiced by LandWatch with legal counsel for the owner and have met on site with our surveyor and a road construction contractor. The summation is we are proposing a new road plan and copy of that is attached with this letter at Attachment 3.

It is important to note that the original proposal for turn around points intended to use existing residential driveways to nearby houses and existing roads that were constructed for various forest management activities over the years with the subject property. This proposal would have reduced the impact on the forestland nature of the property, complying with the requirements of LC 16.211(5)(a)(iv) "The amount of forest lands used to site access roads, service corridors and structures must be minimized." Ms. Segel-Vaccher expresses concern that our application does not "provide evidence in record of existing driveways." My response was our road design was a proposal, the approval of which by the Director would have been conditioned upon a final inspection that the road was constructed in accordance with our plan. The point was, we didn't need to submit the evidence she was demanding, the road plan was a proposal that would be "proved up" upon completion of the reconstruction. All of this ignores the fact that Chief Smith conducted an on-site evaluation of the road, reviewing the proposed turn around points, and said the proposal would meet the standards of his department. Again, upon reviewing my position with legal counsel for the owners I have been encouraged to provide "evidence" of feasibility of the proposed turn around points. Attachment 4 to this letter is a display of photographs depicting the proposed turn around points. The map included in Attachment 4 is numerically labeled to correspond to the proposed turn around points and the respective photographs.

As discussed, having considered the objections raised by LandWatch to the original road proposal and having reviewed several recent decisions made by the Lane County Hearings Official, we believe it is appropriate to reconsider the original Road Proposal and are submitting with this letter at Attachment 3 a revised Road Proposal titled "Goodman Access Site Plan." This revised Road Proposal will continue to use the existing R. R.

Baker Road, the easement provisions for access remain unchanged, and the use of the existing driveways and forest management road approaches for turn around points will continue though we will be constructing additional turn around points as discussed in this proposal.

The original Road Proposal, Exhibit 2 to the application, showed 7 turn around points and noted the applicant would be re-constructing R. R. Baker Road to its terminus at the eastern edge of Tax Lot 501. After reviewing this proposal with legal counsel and considering the objections raised by LandWatch the revised Road Proposal does not entail reconstructing R. R. Baker Road to its terminus. In concert with the adjoining landowners of Tax Lots 18-02-11-00-00509, 00508 and 00506 the reconstruction of R. R. Baker Road will terminate at the driveway access point to Tax Lot 507, the subject of this application. See Attachment 3.

The owners of Tax Lot 507, NIMPKISH, LLC, under PA 19-05298, are required to provide an improved road of 18 feet width to their driveway approach. This road, as it passes Tax Lots 509, 508 and 506, will be reconstructed to insure an improved 18 foot wide surface and turn around points placed so as to not exceed a 500 foot spacing between such points. The obligation of the owner in this application is to insure an 18' wide road, with appropriate turn around points, is constructed to the intersection with the driveway serving the proposed dwelling on Tax Lot 507. There is no obligation on the part of any of the owners to extend the reconstruction of R. R. Baker Road further to the east for the benefit of adjoining landowners who presently use the road, but are not seeking land use approval for their properties that would be subject to the road requirements of County Code. Specifically, no additional turn around points will be constructed to the east of the driveway benefitting Tax Lot 507.

The road shown in Attachment 3 will provide for the reconstruction of the existing road to insure a minimum of an 18 foot improved gravel surface. In addition, the road will continue to use 4 of the existing driveway approaches and forest management roads and landing areas for turn around points. These 4 points were part of the original 7 proposed turn around points as depicted in Exhibit 2 to the application. The existing turn around points are noted on the road plan at Attachment 3 in dark and annotated as "Turnaround in Driveway." In addition, 5 turn around points are to be constructed, noted in an outline form in the legend of the plan at Attachment 3 and labeled "Turnaround To Be Constructed Per Fire Marshal Requirements." We note this road must be reviewed in its final form after completion of the reconstruction and be approved by the Pleasant Hill-Goshen Fire and Rescue Department. The "Goodman Access Site Plan" has been prepared by Dave Collier, an Oregon Registered Surveyor, and notes the spacing of the existing and proposed turn around points as not exceeding 500 feet. Also noted in this road plan is the grade of various segments of R. R. Baker Road as it will be applicable to the proposal being made by the applicant and the adjoining landowners in their individual proposals.

While the applicant is proposing to revise their road plan, I will again stand by the position that the requirements of Lane County Code are met in the original design with the review and approval of the Pleasant Hill Goshen Fire and Rescue Department, in precise conformance to LC 16.211(6)(b)(i).

Attachment 5 to this letter is a copy of correspondence from Hendrickson Well Drilling, Inc., a road and general excavation contractor, confirming that their company "will be able to construct the road as you have it designed." A copy of the road design plan is attached to Mr. Hendrickson's letter.

Rachel Sersiev, Planner
PA 19-05298
July 11, 2019

I will reiterate the point I made in my discussion with another member of the Lane County Land Management Division staff regarding another application, the obligation of the applicant is to submit a development plan that conforms to County Code. The objective of the review process, if it determines that the plan so conforms, is to arrive at a conditional approval that requires the applicant to develop the property in such a manner as to meet the conditions of approval. If we are to start down the slope of "proving feasibility" for each of the conditions being addressed in the site development plan we are moving significantly away from the objective requirements of code and entering into a much more subjective evaluation of whether an application is feasible.

Thank you for your time. Please advise me if you have any questions regarding the enclosed information and attachments.

Sincerely,

Jim Belknap

Jim Belknap

Attachments:
1. Parcel map with annotated contour intervals and proposed building site
2. Site Plan with contour lines annotated and updated fuel break boundaries applied
3. Revised Road Plan
4. Photographs of proposed turn around points
5. Letter from Hendrickson Well Drilling, Inc.

Cc: NIMPKISH, LLC, with attachments

Attachment 1
Supplement to
PA 19-05298

Property Owner:
Gray Goodman
86690 R.R. Baker Road
Springfield, OR 97478

GOODMAN
Tax Map 18-02-11-00
Tax Lot 507

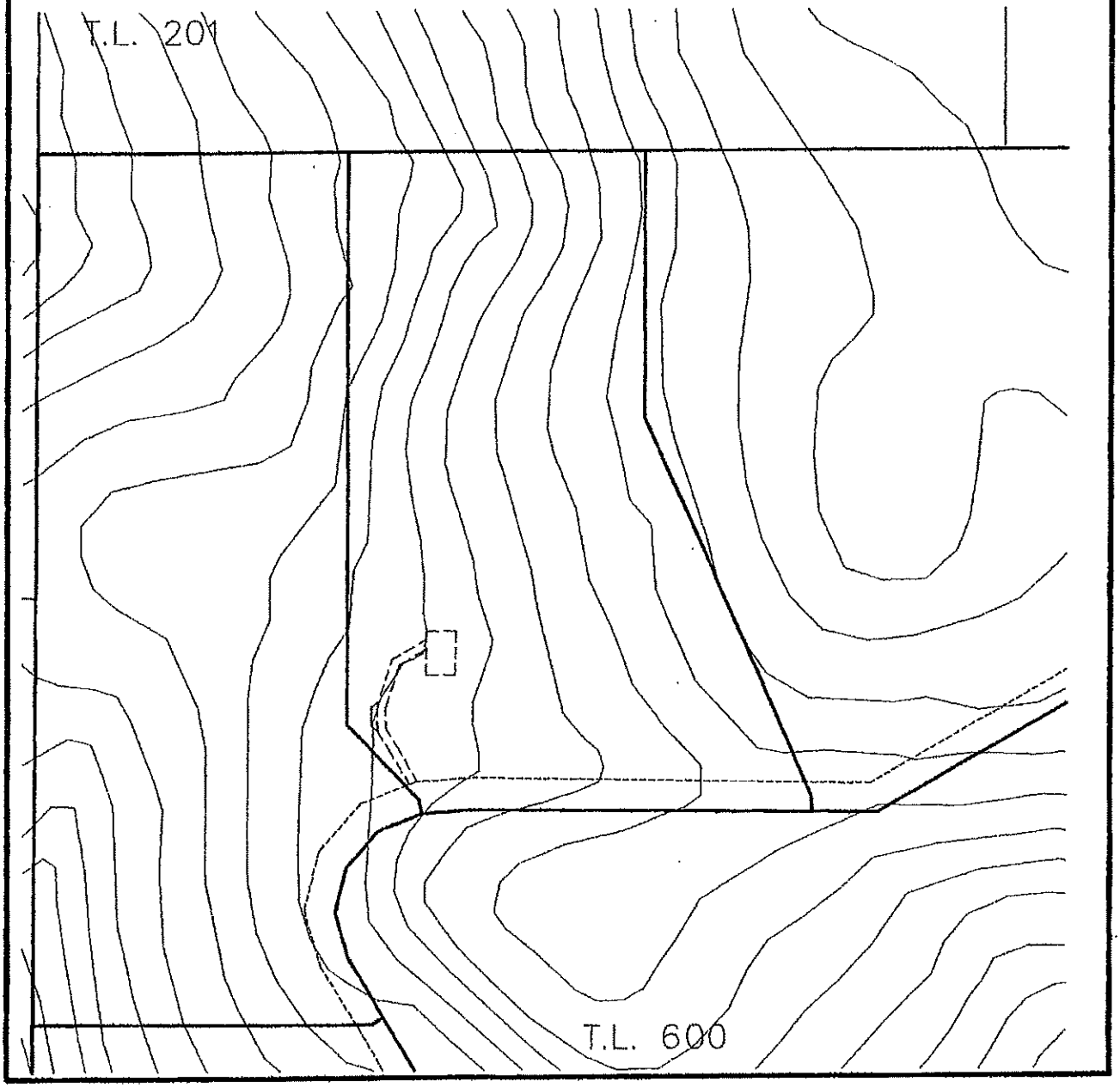
REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1992
DAVID J. COLLIER
2552

RENEWAL 12-31-19

N

0 200
SCALE 1" = 200'
CONTOUR INTERVAL=20'



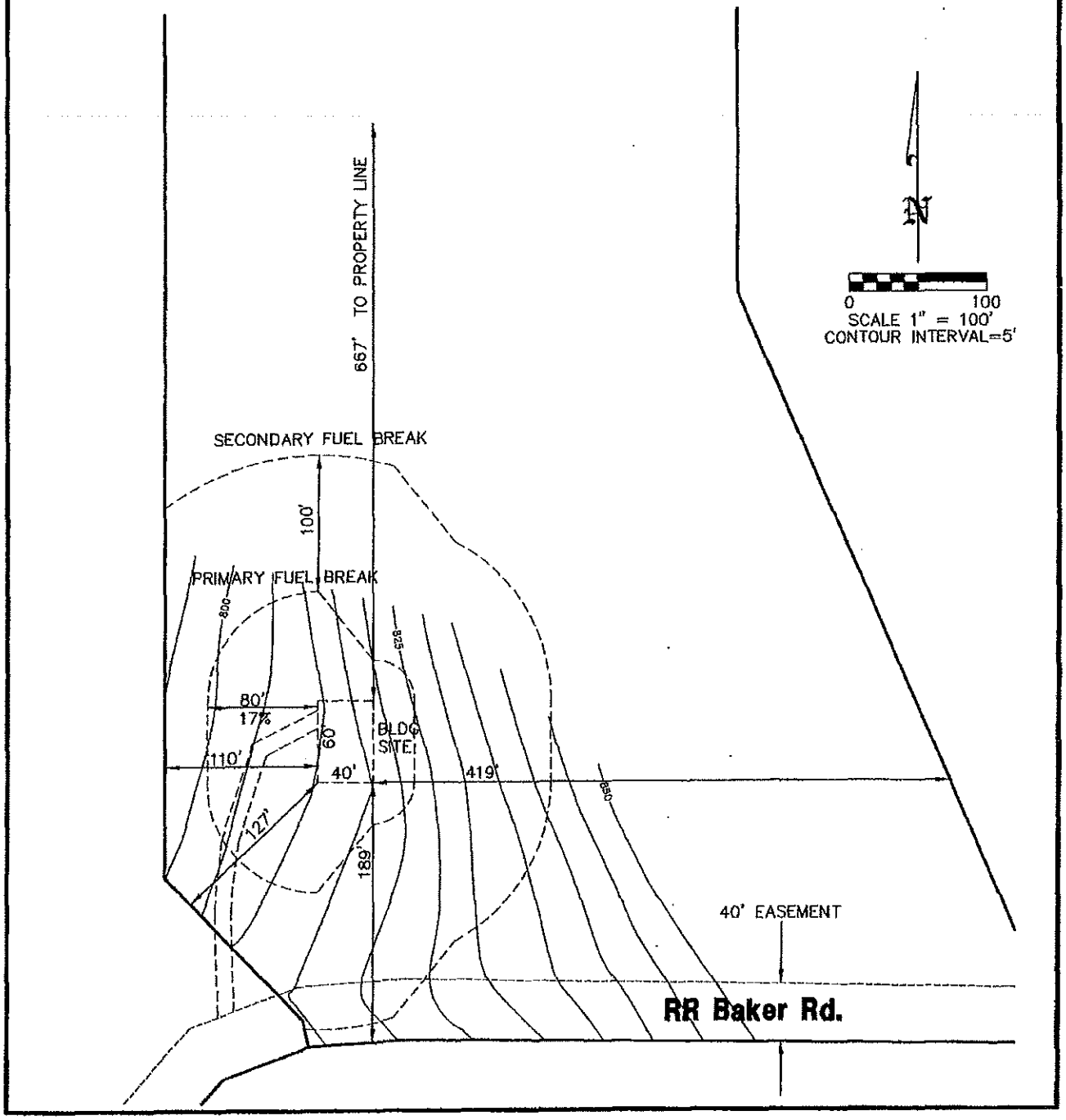
Attachment 2
Supplement to
PA 19-05298

TAX MAP 18-02-11-00
TAX LOT 507

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 21, 1992
DAVID J. COLLIER
2552

RENEWAL 12-31-19



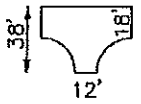
0879

001579

Attachment 3
Supplement to
PA 19-05298

GOODMAN
ACCESS SITE PLAN
Tax Map 18-02-11-00
Tax Lots 501 506 507 508
and 509

LEGEND
- TURNAROUND IN DRIVEWAY
- TURNAROUND TO BE CONSTRUCTED PER FIRE MARSHALL REQUIREMENTS



TYPICAL TURNAROUND
(NOT TO SCALE)

0880

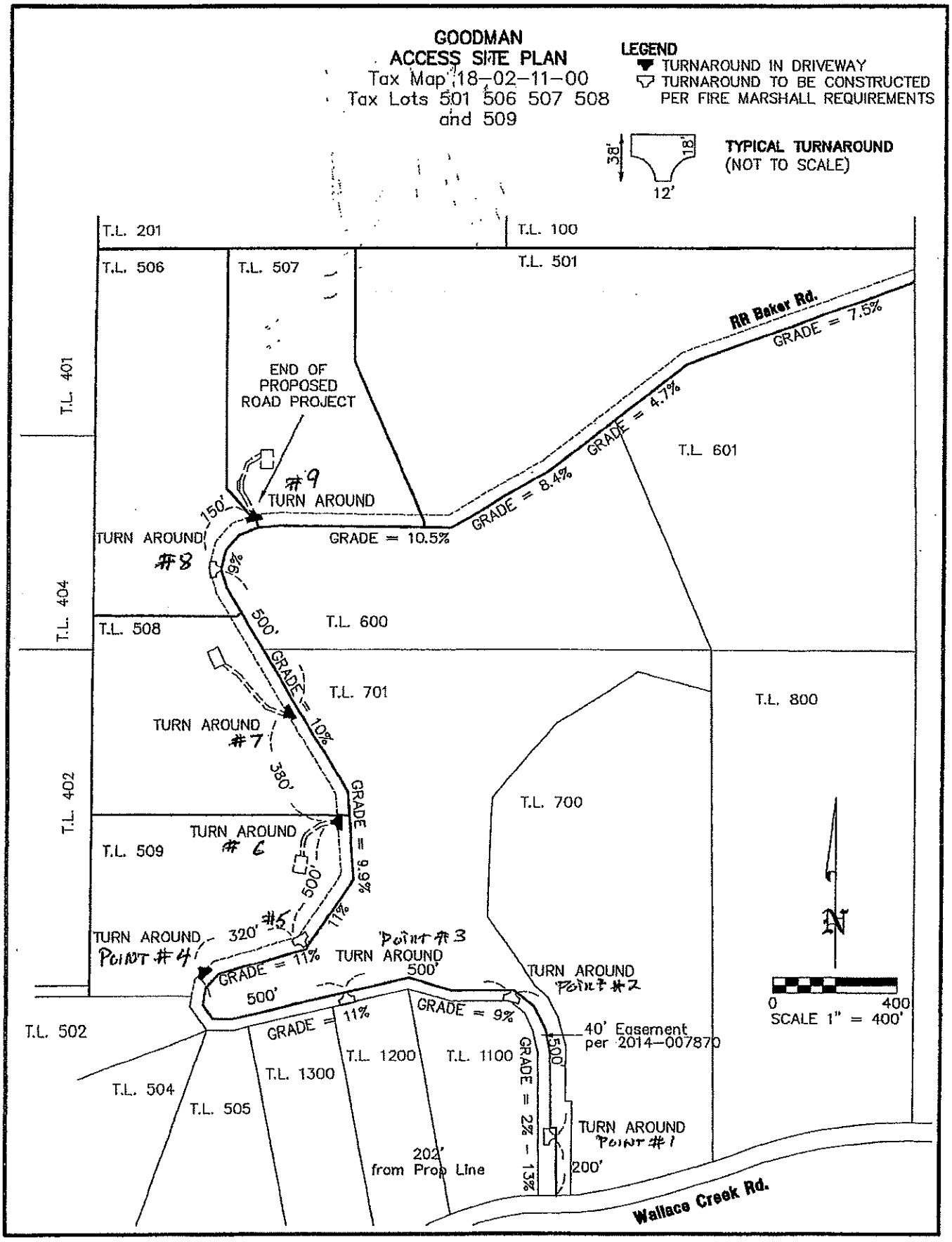
Attachment 4 to Supplemental Letter

July 11, 2019

PA 19-05298

Tax Lot 18-02-11-00-00507

Photographs of Proposed Turn-around Points


GOODMAN
ACCESS SITE PLAN
Tax Map 18-02-11-00
Tax Lots 501 506 507 508
and 509
LEGEND
TURNAROUND IN DRIVEWAY
TURNAROUND TO BE CONSTRUCTED PER FIRE MARSHALL REQUIREMENTS
38'
18'
12'
TYPICAL TURNAROUND
(NOT TO SCALE)
T.L. 201
T.L. 100
T.L. 506
T.L. 507
T.L. 501
RR Baker Rd.
GRADE = 7.5%
GRADE = 4.7%
GRADE = 8.4%
END OF PROPOSED ROAD PROJECT
#9
TURN AROUND
150'
T.L. 401
T.L. 601
TURN AROUND
#8
GRADE = 10.5%
9%
500'
T.L. 404
T.L. 508
T.L. 600
GRADE = 10%
T.L. 701
T.L. 800
TURN AROUND
#7
380'
T.L. 402
GRADE = 8.9%
T.L. 700
TURN AROUND
T.L. 509
#6
500'
#5
11%
TURN AROUND
Point #4
320'
Point #3
GRADE = 11%
TURN AROUND
500'
TURN AROUND
Point #2
500'
N
0
400
SCALE 1" = 400'
T.L. 502
GRADE = 11%
GRADE = 9%
40' Easement
per 2014-007870
T.L. 1200
T.L. 1100
T.L. 1300
500'
T.L. 504
GRADE = 2% - 13%
T.L. 505
TURN AROUND
Point #1
202'
from Prop Line
200'
Wallace Creek Rd.

0882

001582

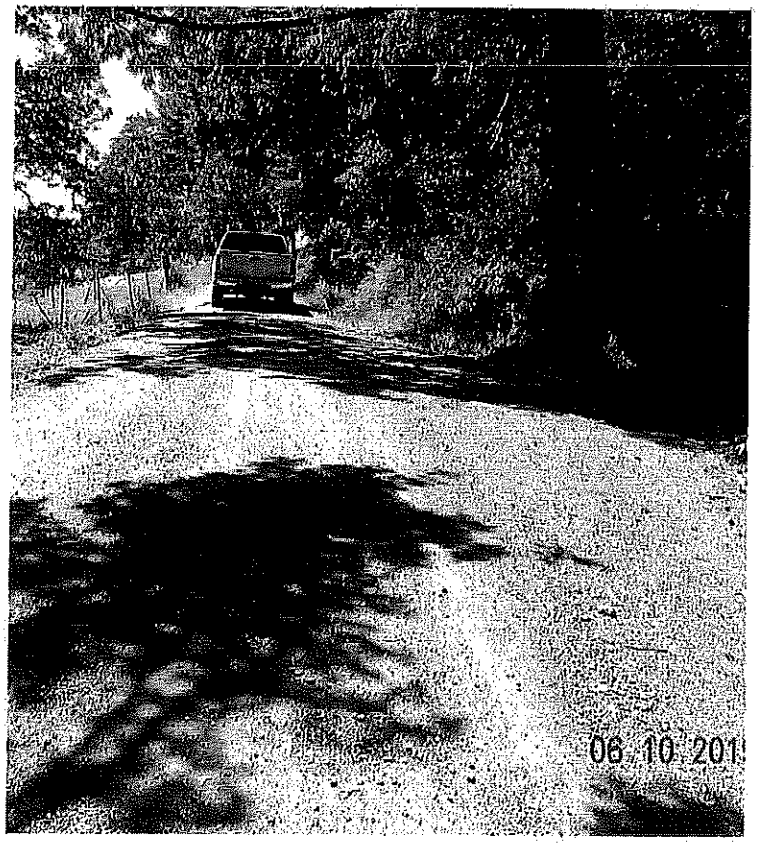
ENTRANCE FROM WALLACE CREEK

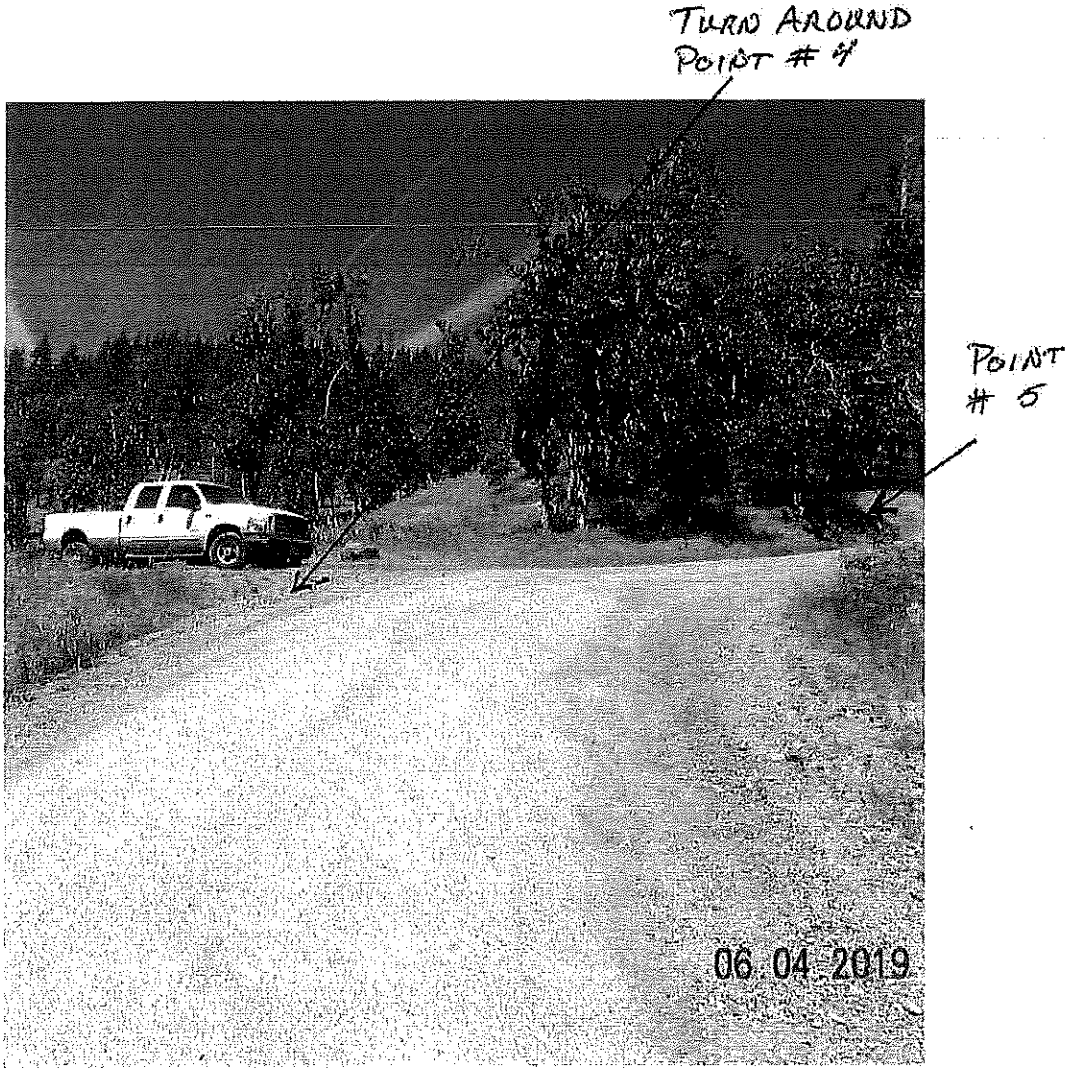
TURN AROUND POINT No. 2



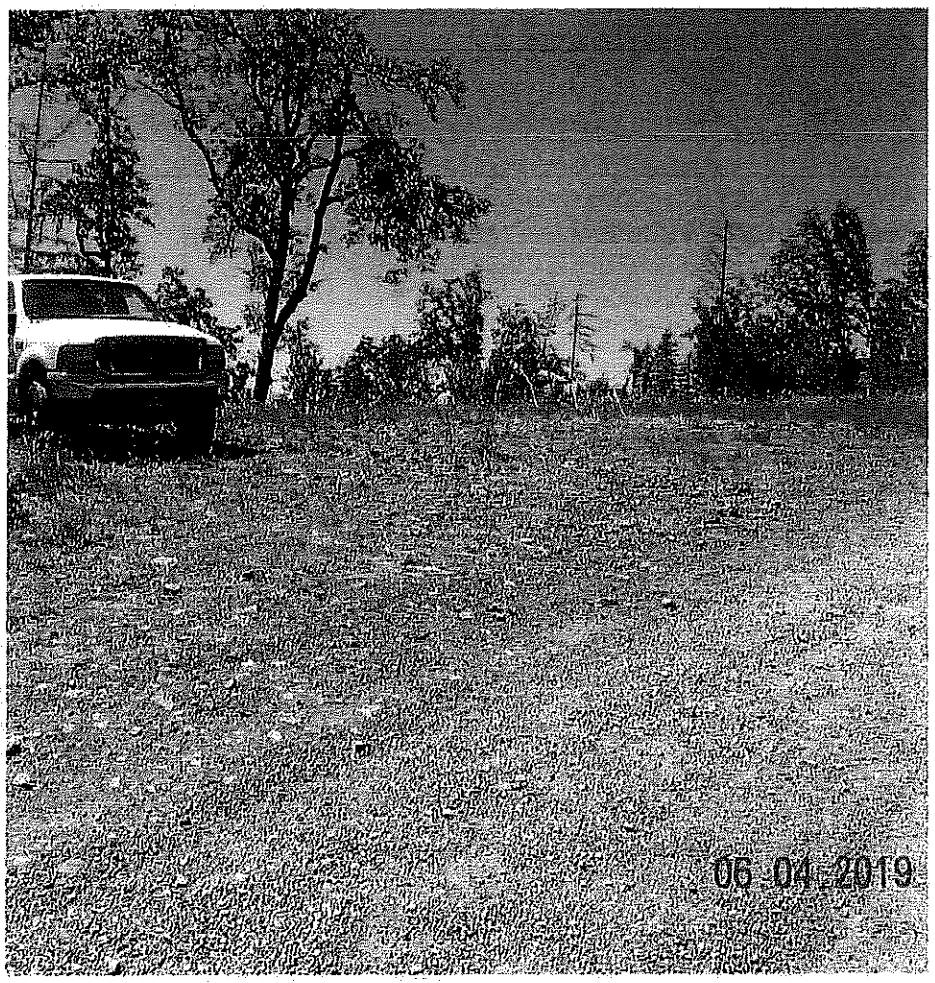
TURN AROUND POINT No. 1

TURN AROUND
POINT No. 3

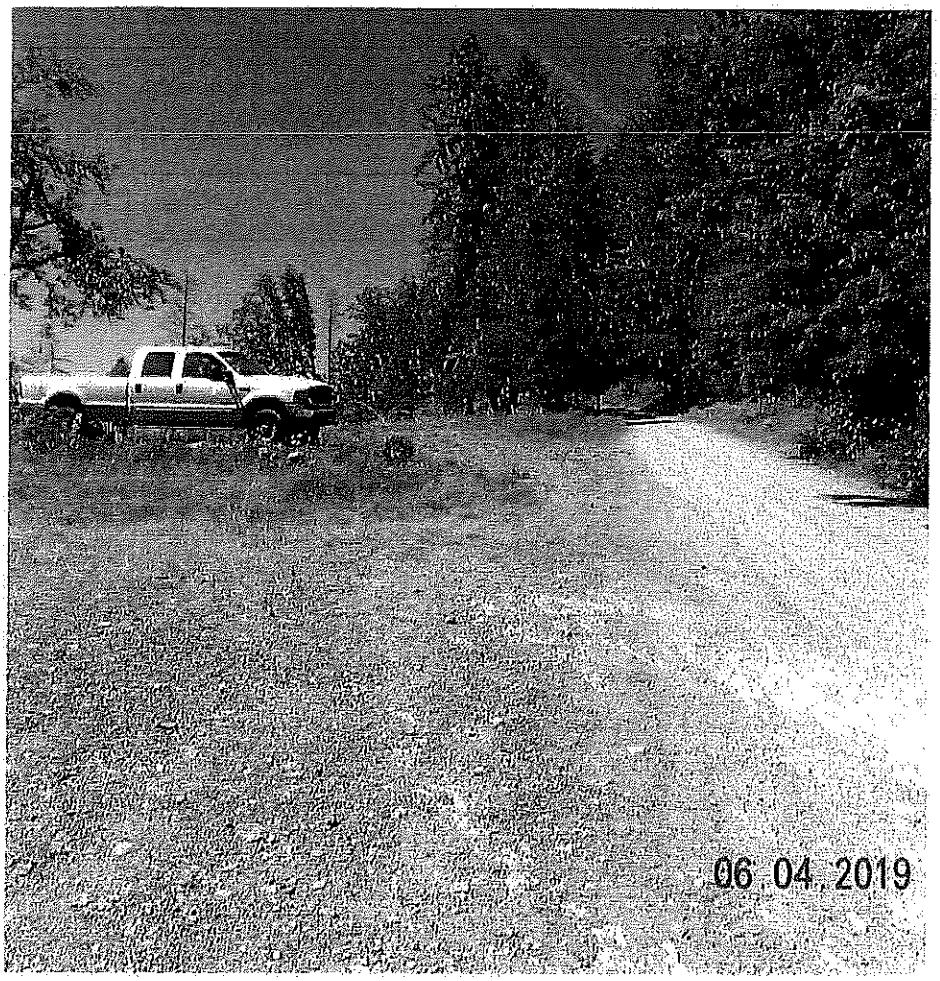



TURN AROUND
POINT # 4
POINT
5
06 04 2019

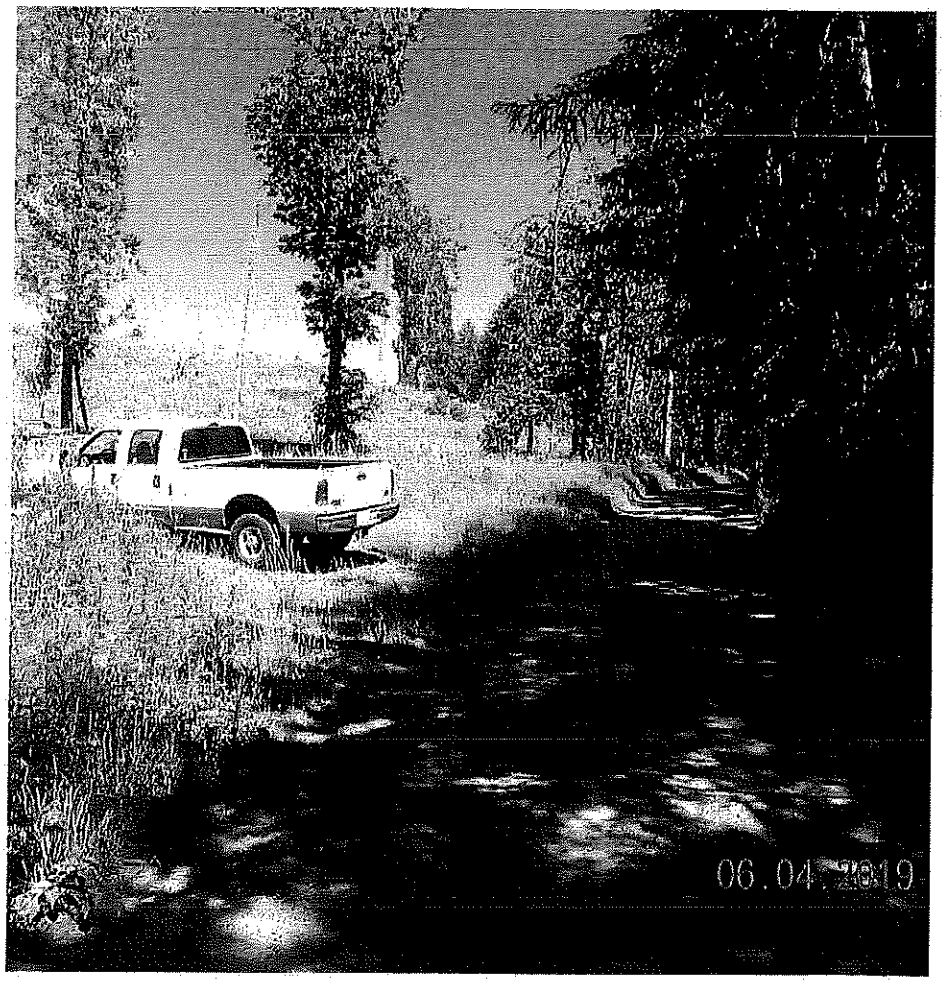
TURN AROUND
POINT # 6



TURN AROUND
POINT #7



TURN AROUND
POINT #9



The Oregon Map

New Directions



Copyright 2011 ORMAP. All rights reserved. Tue Mar 5 2019 01:12:07 PM.

001589

Attachment 5
Supplement to
PA 19-05298

Hendrickson Well Drilling, Inc.

77483 South 6th St., Cottage Grove, OR 97424
Office: 541-942-0843 Fax: 541-767-9820
CCB #68857 WWC #1553 DEQ #36884

Jim Belknap
Belknap Properties, LLC
P.O. Box 362
Cottage Grove, OR 97424

June 21, 2019

Re: Tax Lots 18-02-11-00-509, 508, 506 and 507

Dear Mr. Belknap:

Thank you for the opportunity to complete an on-site evaluation of your proposed road project to serve the referenced properties. We understand you are intending to construct a road with an 18' wide travel surface with several turnaround points to conform to Chapters 15 and 16 of Lane County Code. I am attaching a copy of the road design proposal you presented to us with the annotated turnaround points and driveway intersections.

This letter will confirm that our company will be able to construct the road as you have it designed. The question you have posed to us is: "Is this construction proposal feasible?" Our very succinct answer is: "yes."

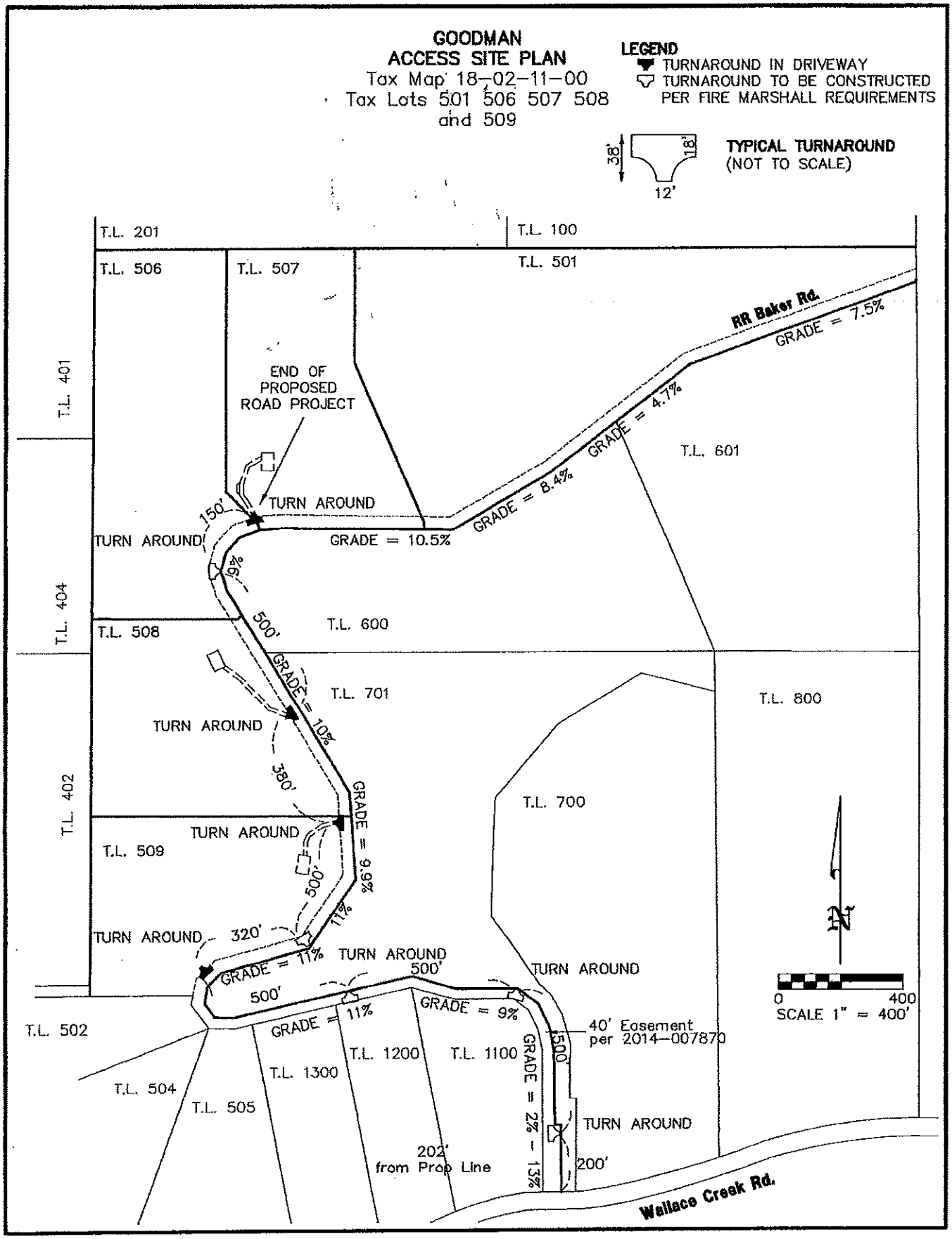
Please contact me if you have any questions.

Sincerely,

Jeffery Hendrickson
541-942-0843 Office
541-954-3553 Cell

Attachment: Road Design

Cc: Gray and Dorotea Goodman


GOODMAN
ACCESS SITE PLAN
Tax Map 18-02-11-00
Tax Lots 501 506 507 508
and 509
LEGEND
TURNAROUND IN DRIVEWAY
TURNAROUND TO BE CONSTRUCTED
PER FIRE MARSHALL REQUIREMENTS
38'
18'
12'
TYPICAL TURNAROUND
(NOT TO SCALE)
T.L. 201
T.L. 100
T.L. 506
T.L. 507
T.L. 501
RR Baker Rd.
GRADE = 7.5%
GRADE = 4.7%
GRADE = 8.4%
END OF
PROPOSED
ROAD PROJECT
T.L. 401
T.L. 601
TURN AROUND
150'
TURN AROUND
GRADE = 10.5%
9%
T.L. 404
T.L. 508
500'
T.L. 600
GRADE = 10%
T.L. 701
T.L. 800
TURN AROUND
380'
T.L. 402
T.L. 700
GRADE = 9.9%
TURN AROUND
T.L. 509
500'
11%
TURN AROUND
320'
GRADE = 11%
TURN AROUND
500'
TURN AROUND
500'
GRADE = 11%
GRADE = 9%
T.L. 502
40' Easement
per 2014-007870
T.L. 1200
T.L. 1100
T.L. 1300
GRADE = 2% - 13%
T.L. 504
T.L. 505
TURN AROUND
202'
from Prop Line
200'
Wallace Creek Rd.
N
0
400
SCALE 1" = 400'

0891

RECEIVED JUL 01 2019

Belknap Properties, LLC

Real Estate Brokerage &
Land Use Consulting

James E. (Jim) Belknap, Principal Broker

Real Estate Offices: 1785 East Main Street
Cottage Grove, OR 97424
Mailing Address: Post Office Box 362
Cottage Grove, OR 97424
Telephone: 541-954-2944
Fax: 541-942-1653
E-Mail: jim.e.belknap@gmail.com

Rachel Serslev, Planner
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

June 26, 2019

Re: PA 19-05298

Dear Rachel:

This letter is to request a 60 day extension of the timelines for processing the above referenced Planning Action, a Template Test Special Use Permit for property now known as Lane County Tax Lot 18-02-11-00-00507.

As we have discussed, I will be submitting supplemental information to be considered in the processing of this application. The primary information will be a re-designed road proposal. I do not anticipate we will need the complete 60 days to submit our additional information, and understand you are close to completion of the processing of the application at this time. I think some minor modifications of the road proposal will remove any questions as to the compliance with Lane Code. As I mentioned in my email yesterday, my hope is to have this information to you the week of July 8, 2019 and anticipate you will be able to complete your work shortly thereafter.

Thank you for your continuing cooperation, please let me know if you have any questions.

Sincerely,

Jim Belknap

Jim Belknap

Cc: NIMPKISH, LLC

LAND MANAGEMENT DIVISION

Waiver/Extension of Statutory Timeline Requirements

Instructions: To waive or extend the statutory timeline requirements applicable to your land use application, please complete, sign, date, and return this form to the address listed below.

I, James E. Belknap, as owner or authorized representative of the owner of
Applicant (Print Name)

the property known as Assessor's Map and Tax Lot(s) 18-02-11-00-00507

that is the subject of the land use application Department File Number PA 19-05298

and is the subject of this request, do hereby voluntarily waive or extend **(Check Only One Box)**:

☐ the statutory timeline requirements of ORS 215.427 and the associated right to seek mandamus as provided for by ORS 215.429(1) are hereby **waived**.

☒ the statutory timeline requirements of ORS 215.427 are **extended** for

60 days[1] in order to submit additional information.

(Enter Number of Calendar Days)

James E. Belknap
Signature (Applicant/Owner)

6/26/19
Date Signed

Return to: **Lane County – Public Works**
Land Management Division
3050 N. Delta Hwy.
125 E. 8th Avenue
Eugene, OR 97408

[1] Per ORS 215.427(5), the total period of time an application can be put on hold and final action timeline extended by an applicant may not exceed 215 days.

(Version 3/2013)

0893

SERSLEV Rachel

From: Lauri Segel-Vaccher <fourhope@comcast.net>
Sent: Monday, June 3, 2019 7:38 PM
To: SERSLEV Rachel
Cc: SORENSON Pete; BUCH Heather H; BERNEY Joe; FARR Pat M (LC); BOZIEVICH Jay K; MILLER Keir C; HURLEY Daniel M; HURLEY Daniel M
Subject: Nimpkish/Goodman forest template dwelling Referral Comments - PA1905298

Rachel

These referral comments are intended for a broader audience than usual, for informational purposes.

Please confirm receipt and please send Notice of decision and Findings when available.

Thank you.

Lauri S
LWLC

****

The history of the forest-zoned lands within township 18, range 02, section 11, much of which is in the ownership of developers with insider access to past LC planning directors and elected officials, is a sad yet all too common example of the effects of some past practices of the planning department.

Recently, efforts by the Planning Director to amend the Code to enable backing away from some past practices was resisted by the developers, their simpatico - the planning commission, and some commissioners, essentially curtailing that effort (at least for now).

LandWatch hopes the Commissioners will take note of the all too common scenario explained below, and will think about the economics of a property tax system that allows tax deferred forest land to be converted to rural residential-sized tax lots while stilling being zoned for forest use and eligible for the forestland property tax deferral. The forestland property tax deferral was established as a 'compensation' mechanism owed to forestland owners managing those lands at a level that would contribute to the state's commercial forest economy. A subsidy to manage forest land for commercial forest uses. This is, in part, the reason behind the 80-acre minimum parcel size that is supposed to apply to forest zoned lands. The subsidy is the only part of the deal that remains today - mostly unchecked.

If you represent any city dwellers, understand that they are responsible for the majority of property tax receipts the county receives, and that city folk are essentially subsidizing the rural developers who are exploiting weak laws with lots of large holes enacted in part by state and local elected officials. Which might not be so bad if the developers were upholding their end of the bargain.

If any of the Commissioners believe the county needs to allow more places for people to live, it might be worthwhile to first arrange for a tour of the two or three dozen or so dwelling sites that should be 'ready to go' for the housing market. Check out the inventory, the accessibility, the infrastructure and availability of services. Prepare a report for Homes for Good, always on the look-out for market rate housing options. Let's hear why those permits haven't been turned into market rate housing yet

In any case, because this is an issue most commissioners are unaware of, we hope you will, at the least, take note and ask some questions.

- Applicant , Nimpkish LLC, is also known as Gray McKenzie Goodman & Dorotea E C Goodman; deed shuffling has enabled four 2019 template dwelling applications (tax lots 506, 507, 508, 509)each on a zombie lot born out of tax lot 501; a 2007 replacement dwelling for a nonexistent dwelling on parent tax lot #501 has already been used to justify approvals for forest template dwellings on other zombie lots owned by other developers with ownerships within TRS 180211. One 60 acre tax lot was turned into five RR10-sized lots without any requirements to consider public health and safety issues that a legitimately approved subdivision would require.

- The four new RR sized tax lots are scheduled to receive a forest property tax deferral once the new fiscal year rolls around and assessment and taxation can legally recognize the zombies for purposes of taxation, which was skillfully avoided for the 2018-19 tax year. Parent tax lot 501 has been receiving a significant forestland property tax deferral since at least 1995; the development of a 2500 square foot 'replacement dwelling raised the tax from less than $100/year (on a RMV ranging from $ 40,000 to $80,000) to $2600/year on a RMV of $388,374. $2600 is .006 percent of the real market value. For comparison, my 'inside the city' 2500 square foot home on .17 acres has a RMV of $324,060, and my property tax is 4,140 (twice what Goodman/Nimpkish is assessed for their now 20 acres with a dwelling tax lot), which is 12% of the RMV. Sure, the city provides water/sewer to my home, but Goodman/Nimpkish and others just like them whose property taxes are subsidized by many people like me come to the city and benefit from the city streets, city water, public safety services that people like me pay for. Does anyone really think that rural property taxes that are a fraction of RMV's are sufficient to cover public services such as public safety, public roads, etc? This is not a sustainable model and is an example of why counties are so underfunded

- The applicant asserts there are no steep slopes on the subject property. According to RLID soils data the subject property does contains steep slopes, where 45% of the subject property has slopes between 30-60 percent. Steep slopes are not a matter of opinion, and development is not allowed in areas where slopes exceed 40%

Soil Map Unit#	Soil Type Description	% of Taxlot	Ag Class	Hydric %
107C	Philomath silty clay, 3 to 12 percent slopes	55%	6	0
113G	Ritner cobbly silty clay loam, 30 to 60 percent slopes	45%	7	0

The applicant's site plan does not show a secondary fuel break NW, W, or SW of the proposed dwelling site; the secondary fuel break must be established on adjacent tl#506, which is controlled by the owner of the subject property

- the site plan does not show the slope of the proposed driveway, stated as between 0 - 14%, and does not indicate its length to inform a finding regarding turnouts; also - the site plan is not overlaid with a contour map and is merely a one dimensional representation of the applicant's desired development site

- Why misstate what the naked eye can see? The applicant states "The vegetation is scattered mixed low lying brush and Himalayan Blackberry with Trailing Blackberry and a well-stocked stand of 4 year old Douglas Fir seedlings, and native grassland" - the site is clear cut with invasive brush/vegetation taking over, and any stand of doug fir seedlings is either on adjacent property controlled by the applicant or is not a 'stand' but rather a patch; it is not clear what "native grasslands" exist in a western Oregon clearcut

- The explanation for the question "Explain how the location of the dwelling and driveway minimize intrusion into the forest" misconstrues the facts. Intrusion into the forest is not a function of the driveway or dwelling location because the forest has been removed - thus no intrusion. the development site has been excavated, thus no slopes - this is not what Mr. Riddle and other LC development interests told the legislature in 1993 - the legislature was told forest dwellings would enable better forest management, but instead forest management has become a sideshow to preparation of forest land for rural residential-like housing on forest lands outside urban growth boundaries

- The site plan does not indicate the "seven turnarounds" the applicant asserts will be constructed on the dead end road that is close to 6000 feet long; the PD must not only determine that the turnarounds are feasible, but also that they WILL BE constructed, regardless of whether or not the fire district has commented on the required turnarounds;

- Driveway turnout on the site plan does not indicate length, the percent of slopes or actual size of turnout; the PD must establish how many turnouts are necessary and whether the development of the turnouts is feasible; the site plan must also show the surrounding driveways in order for the PD to make a finding about compliance with LC 15.138 driveway spacing criteria

- It is not adequate to defer compliance with siting standards to conditions of approval based on broad statements such as " . . . construct the proposed access, road and driveway . . . to the minimum standards of LC 16.211(8)(e)"; the PD must establish feasibility of compliance with specific standards based on the site conditions, dwelling location, etc.; although it is no secret that these zombie lots and forest template dwelling permits are intended for lucrative real estate transactions, the county has no responsibility to enable these transactions. The county's responsibility is to ensure the protection of the public health and safety of the people living here, and that requires applying the siting standards in a manner that ensures compliance. What does it matter if a rural fire district has 3 engines, 2 water trucks, and new station within 3 miles of a proposed development if five dwellings located within less than 1/4 or 1/8 mile of each other, all on steep slopes, have inadequate driveway turnouts, roadway turnarounds, fuel breaks and setbacks.

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING
3040 N DELTA HIGHWAY | EUGENE, OR 97408

May 21, 2019

LMD FILE:	509-PA19-05298
APPLICANT/OWNER:	Nimpkish, LLC
AGENT:	James E. Belknap
MAP & TAX LOT:	18-02-11-00-00507
ZONING:	Impacted Forest Lands (F-2) Zone
PROPOSAL:	**A REQUEST FOR DIRECTOR APPROVAL OF A DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2), IN ACCORDANCE WITH THE 'TEMPLATE TEST' PROVISIONS OF LANE CODE 16.211(2)-2.4, (3), (5) AND (6).**

Please accept the following comments from Lane County Transportation Planning. Thank you for the opportunity to review and comment on the request.

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

Pursuant to Lane Code 15.055(2)(c), Lane County Transportation Planning defers to the Lane County Land Management Division to apply the standards of Lane Code Chapter 16 as necessary to determine the adequacy of the private access easement road condition.

CONDITIONS

Lane County Transportation Planning does not recommend conditions of approval specific to Lane Code Chapter 15.

FINDINGS

Based on the site plan, the applicant proposes to take access to the subject property from R R Baker Road. R R Baker Road is a Private Road.

Lane Code 15.055: Minimum Requirements for Private Access Easements

(2) When a Private Access Easement is used to provide access to a vacant lot or parcel where development is proposed, prior to land use and zoning authorization for the proposed development the following shall apply:

(c) The requirements specified above in LC 15.055(2)(a) through (b) shall apply only to lands outside of a County-designated Forest zone. Lands within a Forest zone shall be governed by the siting and development standards of the applicable zoning district.

Transportation Planning defers to Land Management Division to ensure the proposed site meets the applicable siting and development standards of the Impacted Forest Lands Zone (F-2).

DO NOT SEPARATE PACKET

23

CERTIFICATE OF MAILING

509-PA19-05298
NIMKISH/BELKNAP
05/17/2019

This is to certify that I, Amber Wolles, mailed Notification of

Referal Notice

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: MAY 17 2019

End of Comment Period: JUN 03 2019

Appeal Deadline:

Hearing Date:

AMBER WOLLES

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

Referral Notice and Opportunity to Comment
On a Land Use Application for a Development

LAND MANAGEMENT DIVISION
http://www.lanecounty.org

Date: MAY 17 2019

Department File: 509-PA19-05298
Applicant: NIMPKISH, LLC
Owner: NIMPKISH, LLC
Agent: JAMES BELKNAP
Assessor's Map & Taxlot: 18-02-11-00-00507
Address: NONE
Contiguous Property: NONE
Base Zone: F2
Combining Zone: /NONE

Proposal: A request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4, (3), (5) and (6).

The purpose of this notice is to acquaint you with the proposed development, to gather information you may have about the project, and provide an opportunity to comment and express concerns related to the approval criteria, prior to the Planning Director's decision to approve or deny the proposal.

The application and related materials are available for inspection at the Lane County Land Management Division at no cost and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact concerning this application is RACHEL SERSLEV, 541-682-6903, or rachel.serslev@co.lane.or.us.

Approval criteria are found in the section(s) of Lane Code cited above. The criteria may be obtained or viewed at the Land Management Division or at the internet address below. You may submit information in the spaces provided on the last page and return this document to the attention of RACHEL SERSLEV, Lane County Land Management Division, 3050 N. Delta Hwy., Eugene, OR 97408, Fax to ATTN: RACHEL SERSLEV, (541) 682-3947, or email to rachel.serslev@co.lane.or.us. Please be sure to reference the department file number shown above, and submit your comments by **4:00 P.M.** on JUN 03 2019.

Concerns/comments submitted in writing will be considered in making the decision as they relate to the criteria under which the proposal must be evaluated.

Your comments are important and will greatly improve the decision making process, but please note that you will not receive an individual response to information submitted. By law, comments received that are not related to the approval criteria may not be considered. General planning information is available by calling 541/682-3577, or by visiting the Public Works Customer Service Center at 3050 N. Delta Hwy. weekdays between 9 a.m. and 4:00 p.m.

Links to applicable law are available through our Planning homepage:

http://www.lanecounty.org/Departments/PW/LMD/LandUse/Pages/default.aspx

Mailed copies of the approval criteria are also available, at cost, by calling Land Management Division Staff at 541/682-6917. Please allow one week for mailing.

Date: _____

From: _____

_____

_____

Regarding Department File: 509-PA19-05298
Applicant: NIMPKISH, LLC

Staff: RACHEL SERSLEV

Comments:

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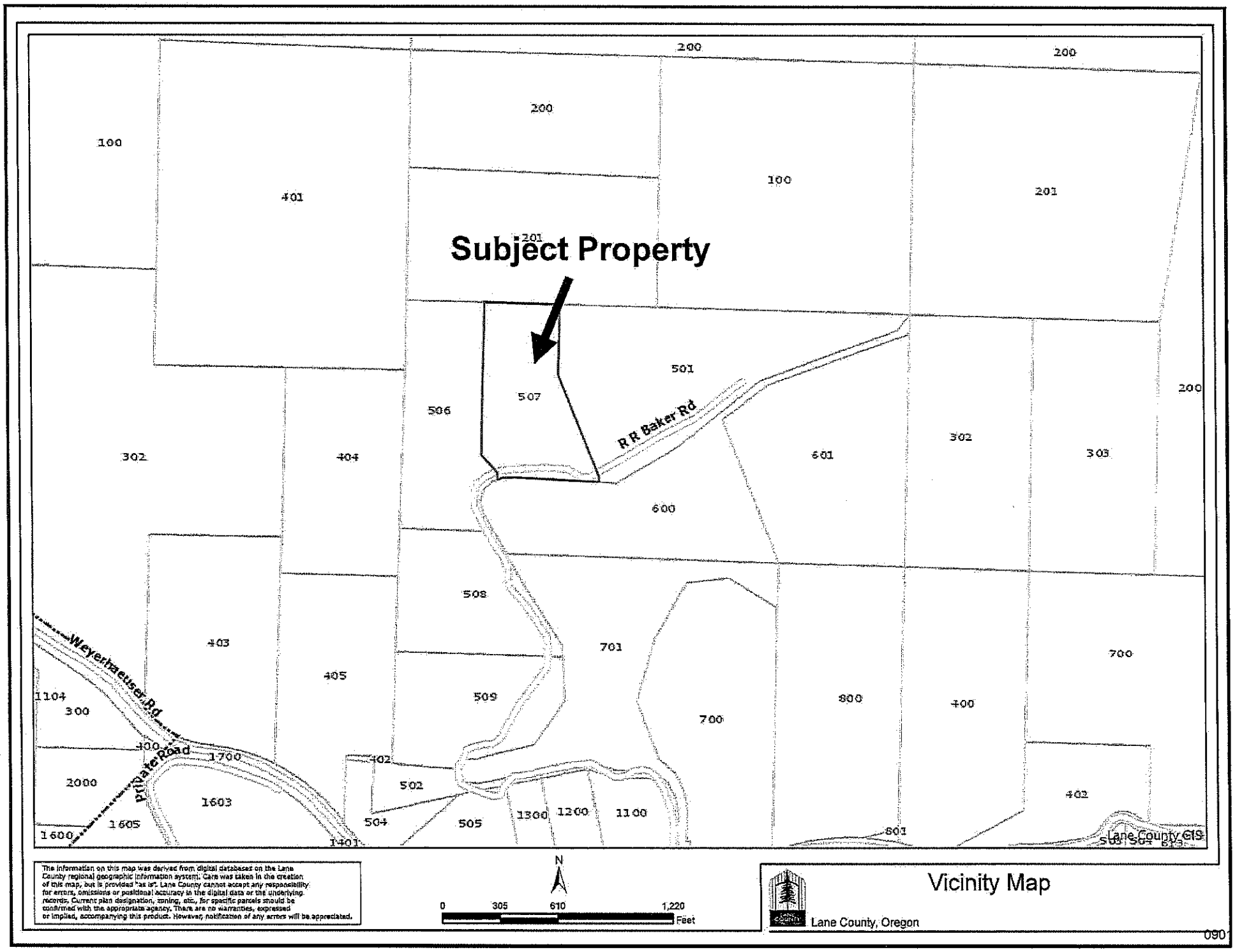
_____

_____

_____

Return to: **RACHEL SERSLEV, Planner**
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

0900


Subject Property
R R Baker Rd
Weyerhaeuser Rd
Private Road
Lane County GIS
The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.
N
0 305 610 1,220
Feet
Vicinity Map
Lane County, Oregon

090

001601

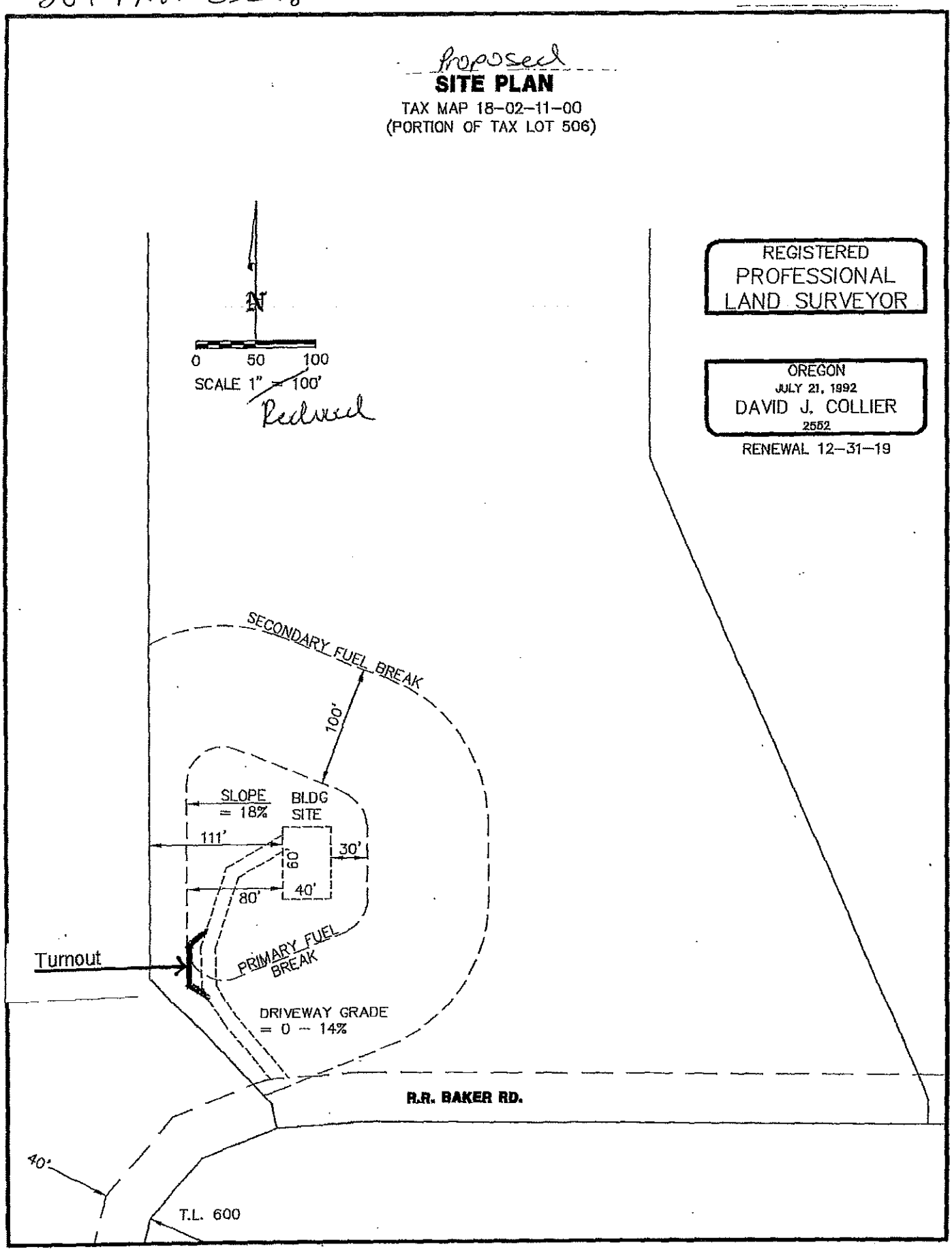
509-PA19-05298

Exhibit 3

Proposed

SITE PLAN

TAX MAP 18-02-11-00
(PORTION OF TAX LOT 506)



0902

MAPPING & REFERRAL INSTRUCTIONS

509-PA19-05298

MAP NO. 18-02-11-00-00507 **ADDITIONAL OWNERSHIP:** NONE

APPLICANT:
NIMPKISH, LLC
86690 R R BAKER RD
SPRINGFIELD, OR 97478

OWNER:
NIMPKISH LLC
86690 R R BAKER RD
SPRINGFIELD, OR 97478

AGENT:
JAMES BELKNAP
77898 CHISHOLM TRAIL DR
COTTAGE GROVE, OR 97424

BASE ZONE: F2 750'

COMBINING ZONE: /NONE

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral		Referral	
☐	Building	☒	State Fish & Wildlife (ODFW): Valley
☐	Sanitation	☐	State Highway (ODOT)
☐	Final Legal Lot	☒	State Forestry: East
☐	Rural Addressing	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	Flood Management	☐	Dept. Land Conservation & Development (DLCD)
☐	Easement Review	☐	Lane Regional Air Protection Agency (LRAPA)
☐	Compliance	☐	Dept. of Environmental Quality (DEQ)
☐	Surveyors	☐	Dept. of Environmental Quality (DEQ) 1200-C
☒	e Transportation Planning	☐	Oregon Health Division
☒	e County Road Maintenance	☐	Water Master
☐	Water Quantity/Quality	☐	Division of State Lands (DSL)
☐	Assessment &Taxation	☐	State Parks (Certified mail)
☒	e State Fire Marshal	☐	Dept. of Aeronautics
☐	Community Organization undefined	☐	CenturyLink
☒	Watershed Council Middle Fork Willamette Watershe	☐	Northwest Natural Gas
☒	Land Watch	☐	Port of Siuslaw
☐	School District PLEASANT HILL	☐	Power Company EPUD
☐	Water District	☐	US Army Corps. of Engineers (ACOE)
☒	Fire District Pleasant Hill RFPD	☒	US Fish & Wildlife (USF&W)
☐	City Area of Interest (20-day notice) NONE	☐	Confederated Tribes
☐	METRO Area of Interest NONE	☐	State Historic Preservation Office (SHPO)
☐	Environmental Health	☒	Other e-EWEB

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:
- ☒ Vicinity Map
- ☒ Site Plan
- ☐ Flagged Applicant's Material

Copy and Attach Materials to Referral Notices as Instructed Above and Below:

PARTIES OF RECORD

0903

509-PA19-05298
NIMKISH/BELKNAP
05/17/2019

1802110000201/00405
BETZ/EVANS ASSOCIATES
475 OAKDALE AVE
SPRINGFIELD OR 97477

1802110000501/00506
GOODMAN GRAY MCKENZIE & DOROTEA E C
86690 R R BAKER RD
SPRINGFIELD OR 97478

1802110000701
GRACE GARY L & SHANNON
86561 RR BAKER RD
SPRINGFIELD OR 97478

1802110000507/00508
NIMPKISH LLC
86690 R R BAKER RD
SPRINGFIELD OR 97478

1802110000100
NOE CHRISTOPHER J
86752 R R BAKER RD
SPRINGFIELD OR 97478

1802110000200
OFS PROPERTIES LLC
PO BOX 2114
JASPER OR 97438

1802110000601
QUINN ROCKY D
PO BOX 2074
JASPER OR 97438

1802110000700
RENIE DAVID CHARLES & KATHERINE LYNN
37207 WALLACE CREEK RD
SPRINGFIELD OR 97478

1802110000600
SAFFELL FRANCIS OWINGS & DEJONG JEANETTE
PO BOX 2270

JASPER OR 97438

1802110000404
SMEJKAL DAVID J
42142 NW PALACE DR
BANKS OR 97106

1802110000401
WOLF DOUGLAS F
PO BOX 2114
JASPER OR 97438

JAMES BELNAP
77898 CHISHOLM TRAIL DR
COTTAGE GROVE OR 97424

LANDWATCH LANE COUNTY
PO BOX 5347
EUGENE OR 97405

LANDWATCH LANE COUNTY
BOB EMMONS
40093 LITTLE FALL CREEK RD
FALL CREEK OR 97438

US FISH & WILDLIFE
KEMFER MCMASTER
2600 SE 98TH AVE SUITE 100
PORTLAND OR 97266

STATE DEPT OF FORESTRY
EASTERN LANE DISTRICT OFFICE
3150 MAIN STREET
SPRINGFIELD OR 97478-5808

OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DRIVE SE
SALEM OR 97302

PLEASANT HILL RFPD
36024 HWY 58
PLEASANT HILL OR 97455

MIDDLE FORK WILLAMETTE WATERSHED COUNCIL

ATTN SARAH DYRDAHL
PO BOX 27
LOWELL OR 97452

EWEB

TRANSPORTATION PLANNING

COUNTY ROAD MAINTENANCE

STATE FIRE MARSHAL

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

May 17, 2019

Notice of Complete Land Use Application

Applicant/Owner:
Nimpkish LLC
86690 RR Baker Road
Springfield, OR 97478

Agent:
James E. Belknap
77898 Chisholm Trail Drive
Cottage Grove, OR 97424

Application File: 509-PA19-05298
Received: April 18, 2019
Date Deemed Complete: May 17, 2019

Proposal: A request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(2)-2.4, (3), (5) and (6).

The land use application(s) referenced above has/have been deemed complete and accepted for processing pursuant to Lane Code (LC) 14.050(1). Acceptance as a complete application does not involve determining if the application is approvable based on the applicable approval criteria. It is the responsibility of the applicant to demonstrate that the application meets the approval criteria. The information provided by the applicant may or may not be adequate for this purpose.

Staff are required by LC 14.050(1)(d) to mail this written notice to the applicant when an application is deemed complete. Staff will process your application according to LC Chapter 14 Type II procedures. A referral notice will be sent to the applicant, agent, agencies and surrounding property owners allowing a minimum 15 day comment period. Following the comment period, staff will process your application and evaluate whether the approval criteria are met. A land use decision with findings of fact and conditions of approval will then be mailed to the applicant, parties of record and surrounding property owners. Absent an appeal and upon expiration of the 12 day appeal period, your land use decision becomes final.

I am the staff contact for this application unless notice is provided otherwise. If you have any questions concerning this letter or your application, please feel free to contact me, at 541-682-6903 or rachel.serslev@co.lane.or.us.

Sincerely,

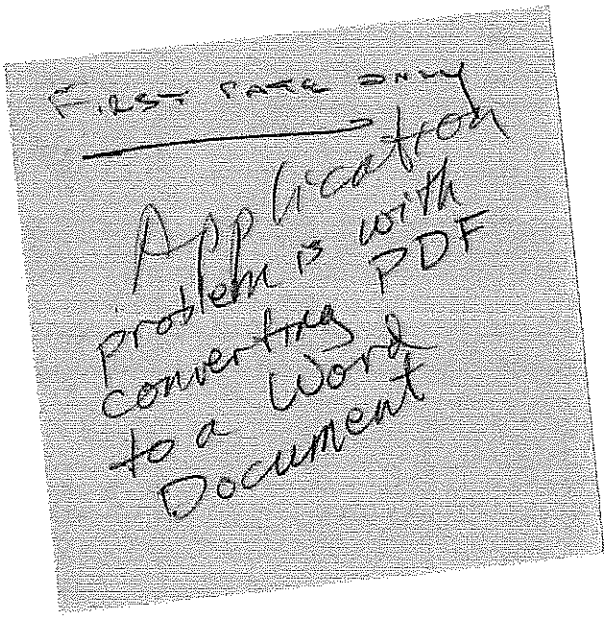
Rachel Serslev, Planner

Date Received:

RECEIVED APR 18 2019

LAND MANAGEMENT DIVISION

TYPE II APPLICATION - Forest Dwelling: Template Dwelling



For Office Use Only: FILE # 509-PA19-05298 FEE:

Applicant (print name): NIMPKISH, LLC

Mailing address: 86690 R. R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Applicant Signature: GRAY GOODMAN member

Applicant Signature: DOROTHA GOODMAN member

Agent (print name): James E. (Jim) Belknap

Mailing address: 77898 Chisholm Trail Drive Cottage Grove, OR 97424

Phone: 541-954-2944 Email: jim.e.belknap@gmail.com

Agent Signature: James E Belknap

Land Owner (print name): NIMPKISH, LLC

Mailing address: 86690 R. R. Baker Road Springfield, OR 97478

Phone: 541-746-5100 Email: ghyrax@gmail.com

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: GRAY GOODMAN member

Land Owner Signature: DOROTHA GOODMAN member

LOCATION

18S 02W 11 00 00506 (part of) NOW TL 507

Assessor's Map and Taxlot Number

None

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

Version 2/2019

REQUIRED SUBMITTALS (Also reference the Application Standards handout)

Lane Code 14.020 (3)(b) Electronic Materials.

(i) **When application or appeal materials submitted in hard copy format are over five pages in length, an applicant or appellant must provide an identical electronic version of the submitted materials in addition to a hard copy. Any other party submitting written materials into the record that are over five pages is also encouraged to submit an identical electronic copy. Any electronic materials must be in a format acceptable to the Director. This provision should not be interpreted to prohibit electronic submittals of materials less than five pages in length. The County will scan submitted materials upon request for fee. The County cannot be held responsible for electronic submittals that are not received by the Director or not confirmed by the Director to have been received.**

(ii) **When electronic materials over five pages in length are submitted by any party for inclusion in an application record, an identical hard copy of the materials must also be submitted unless this requirement is waived by the Director.**

Lane Code 14.040 Application Requirements

(1) **Minimum Submittal Requirements. Applications for a Type I through Type IV procedure must be submitted on a form provided by the Director, address all applicable standards and criteria, and include the following materials and information:**

(a) **Applications must include at least one hard copy of all application materials, no larger than 11 inch x 17 inch in size;**

(b) **All applicable information requested on the application form;**

(c) **Required filing fee, except that the required filing fee may not be required when Lane County initiates an application;**

(d) **Signature of each applicant;**

(e) **Signature of a property owner or property owner's authorized representative;**

(f) **Proof of property ownership by providing a certified or recorded copy of a deed, or land sale contract, or Lane County Tax Assessor's records;**

(Deed reflecting ownership is attached at Exhibit 1)

(g) **Assessor's map and tax lot number of the subject property;**

(h) **A site plan drawn to a standard engineer's scale, and conforming to the County's site plan submittal standards;**

(Site Plan is attached at Exhibit 3)

A site plan must be included. Refer to the handout entitled "How to prepare your plot plan." Identify nearby driveways. Driveways spacing standards are contained in Lane Code 15.138.

(i) **Information demonstrating compliance with any applicable prior decisions and conditions of approval for the subject property;**

(j) **A written narrative clearly indicating what action is requested and addressing all applicable standards and criteria;** (See the Narrative at Exhibit 9.)

(k) **Supporting information required to evaluate the application and address the applicable standards and criteria;**

(l) **A written statement indicating whether a railroad-highway crossing provides or will provide the only access to land that is the subject of an application; and**

Does a railroad-highway crossing provide the only access to the subject property? Yes

___ No _X__

(m) Additional information needed to evaluate applicable standards and criteria.

(2) Fees Required. In addition to any other applicable approval criteria, an approvable Type II or III application must be accompanied by the appropriate filing fee unless the Director authorizes a waiver or reduction to filing fees pursuant to Lane Manual Chapter 60.850.

(3) Determination of Application Requirements. The Director may waive any of the requirements of subsection (1) above if deemed to be inapplicable to the application.

(4) Applicant's Burden. It is the applicant's responsibility to provide evidence demonstrating that the application complies with all applicable standards and criteria.

ADDITIONAL INFORMATION REQUESTED FOR THIS APPLICATION:

ZONING F-2 **ACREAGE:** 10.06 Acres

DESCRIBE THE ACCESS TO THE PROPERTY (circle the answer):

State Hwy County Rd Public Rd Private Easement

Road name: R. R. Baker Road, a private road, provides access to the subject property, see Exhibit 2. R. R. Baker Road connects to Wallace Creek Road, County Road 421. An easement exists over property adjoining to the south that provides for access to the county road. A copy of the access easement is attached at Exhibit 4.

NUMBER OF EXISTING DWELLINGS ON PARCEL: 0

EXISTING IMPROVEMENTS: What structures or improvements does the property contain (i.e., outbuildings, roads, driveways, wells, septic tanks, drainfields)? Will any structure or improvement be removed/demolished?

The only structure is a well constructed gravel and oil road that extends from Wallace Creek Road to the subject property and runs along the east boundary of the property. No other improvements exist.

PHYSICAL FEATURES: Describe the site.

- The Vegetation on the property: The vegetation is scattered mixed low lying brush and Himalayan Blackberry with Trailing Blackberry and a well-stocked stand of 4 year old Douglas Fir seedlings, and native grassland. The area immediately surrounding the proposed building site is a level bench of poor quality soil that has marginally supported the reproduction seedlings.

- The Topography of the property: The western portion of the property is moderately sloping up from the west up to the east. The building site is proposed at a level bench located towards the southwest corner of the tract. The land continues from the bench in a moderate upward slope to the east and to the south. As depicted in the Site Plan, the driveway follows the grade from the building site up to R.R. Baker Road at a grade from level to 14%.

- Any Significant Features of the property (steep slopes, water bodies, etc.): There are no water bodies or steep slopes on the subject property.

APPROVAL CRITERIA

Lane Code 16.211(2) contains the Impacted Forest Lands (F-2) Zone Table of Permitted Uses. Use 2.4, the template dwelling, is subject to (3)(c), (3)(q), (3)(r), (5), and (6).

(3) Use Standards

(c) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

The subject property must be a lawfully established unit of land:

- Was the property created by a partition or subdivision? List plat number _____
- If not, a final legal lot verification is required prior to submittal of this application. What is the file number for the legal lot verification?

See Property Line Adjustment approved under PA 18-05833, the Subject Property is identified as Property 2.

(i) If the lot or parcel is predominantly composed of soils that are:

The minimum number of parcels within the template depends on the productivity of the soil type. At least 51% of the acreage of the parcel is composed of soils capable of producing:

__X__ (1) Less than 50 cubic feet per acre per year: See subsection (aa)

____ (2) 50 to 85 cubic feet per acre per year: See subsection (bb)

____ (3) More than 85 cubic feet per acre per year: See subsection (cc)

See Soils Maps at Exhibits 5a and 5b. Exhibit 5a is the soils map prepared by the Lane Council of Governments (LCOG). Exhibit 5b is the LCOG map overlayed onto the surveyor's map of the Subject Property reflecting the Property Line Adjustment in PA 18-05833 calculating the respective soil types. The surveyor's calculation establishes 4.68 acres in Soil Type 113G, being 46.02% of the land mass, and 5.49 acres in Soil type 107C, being 53.98% of the land mass.

Soil Type	(Cubic ft/acre/yr)	% of Parcel
107 C Philomath sic, 3-12% slope	45	53.98%
113 G Ritner Cobbly silty clay loam, 30-60% slope	149	46.02%
Total (must equal 100 %)		100 %

(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>three</u> other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

Include a scaled map and the template used to verify the requirements in (aa), (bb), or (cc) showing the 1993 configuration of the parcels.

The Template Map is attached at Exhibit 6

How many lots or parcels existed on January 1, 1993? 11

How many dwellings existed on January 1, 1993 and continue to exist? 3

Complete the following table to support your answers on the previous page.

	map and tax lot	deed & date	dwelling date
1.	18-02-12-00-00201	Originally Tax Lot 200 as shown on 8/22/1989. Tax Lot 201 was established by Legal Lot Verification and Property Line Adjustment under PA 14-05513. The original 1910 structure was recognized by a Verification of Replacement Rights in PA 1036-90 and currently remains on the property (see Assessment and Taxation appraisal summary), an additional dwelling was constructed by building permit as a replacement dwelling under BP 1037-90.	1910
2.	18-02-12-00-00303	Parcel 1 of Partition Plat 92-P0221 filed 6/1/1992. No record of previously placed dwelling on the property, but under Building Permit 4658-93, dated 12/29/1993 a mobile home placement permit was approved citing replacement of an "Existing Mobile Home" and the replacement dwelling was connected to an "existing septic system." The replacement dwelling was "finalled" in 1999. This replacement dwelling is not being considered in the dwelling count of this application.	1999
3.	18-02-12-00-00302	Parcel 2 of Partition Plat 92-P0221 filed 6/1/1992	10/23/93
4.	18-02-11-00-00601	Parcel 2 of Partition M43-81, Recorded 6/21/1982 in Reel 1198R, Recorder's Reception Number 82-17934. Deed R1200 Recorder's Reception No. 82-20162, Dated 6/10/1982 Current 1999 Dwelling was approved under Verification of Replacement Rights in PA 98-5159 showing the original dwelling was constructed by building permit in BP 81-2367 (dated 11/13/1981), finalled 2/24/1982	1982

5.	18-02-11-00-00600	Parcel 1, Partition M43-81, Recorded 6/21/1982 in Reel 1198R, Recorder's Reception Number 82-17934. Deed R1275/83-46855 Dated 11/7/1983	2003
6.	18-02-11-00-00404	Originally Tax Lot 400, Verified as a Legal Lot in PA04-5480, Noticed in PA 07-5919	
7.	18-02-11-00-00302	Former Tax Lot 300, Verified as a Legal Lot in PA 04-5478, Noticed in PA 07-5920	
8.	18-02-10-00-00100	Deed Book 222, page 81, Dated 07/30/1941	
9.	18-02-11-00-00401	Originally Tax Lot 200, Verified as a Legal Lot in PA 04/5476, Noticed in PA 07/5923	
10.	18-02-11-00-00201	Originally Tax Lot 201 as 40 Acres Verified as a Legal Lot in PA 04/5477. Noticed in PA 07-5916	
11.	18-02-11-00-00100	Deed Vol 460 Page 235 Dated 5/14/1952 Current dwelling was established in 2001, permitted by Verification of Replacement Rights in PA 015596 showing the original dwelling was constructed in 1958	1958
12.			
13.			

Include property description cards, which you can obtain from Lane County Assessment & Taxation.

If necessary, see the Planner on Duty for prior partitions/subdivision/legal lot status of surrounding properties. If a property was created via a partition or subdivision, please list that above in the deed/date column. If a legal lot verification was completed on a property, please include the PA# along with the year of creation.

If the dwelling is a manufactured dwelling, provide evidence it was placed on the property prior to January 1, 1993.

(ii) **Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;**

(iii) **A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;**

(iv) **Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;**

(v) **The following applies where a tract 60 acres or larger abuts a road or perennial stream:**

(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and onequarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;

(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

Will you be using the 160 acre rectangle template aligned with the road? Yes _X_ No ___

Evidence of the existence of R. R. Baker Road on or before January 1, 1993 is provided at Exhibits 8a, 8b and 8c. There is no precise information regarding the exact date R. R. Baker Road was constructed, it is believed to have been in existence since the 1940's. The question as it pertains to Lane Code 16.211(3)(c)(iv) is whether the road can be shown to have been in existence on or before January 1, 1993. Attached at Exhibit 8a is a copy of a survey dated January 4, 1982 recorded with the Lane County Surveyor's Office in File No. 25341 depicting the center line of R. R. Baker Road. Attached at Exhibit 8b is an easement dated August 22, 1991 (Recorder's Reception No. 9142256) granted by Lee Goodman, predecessor in interest to NIMPKISH, LLC, granting an easement for use of a "40 foot easement strip, including the existing Roadway" in favor of Jack C. Pearce and Joyce A. Pearce. This easement makes specific reference to "the entire roadway known as R. R. Baker Road..." Also attached is Exhibit 8c being a copy of the conveyance deed dated April 11, 1967 from Robert E. Barrett and Doris E. Barrett to Irwin Lee Goodman and Ruth Gray Goodman, recorded in Reel 342R, Recorder's Reception Number 81490. The legal description in this deed provides for a specific reference to a "private road" and provides a description of that road, indicating its existence in April of 1967.

If yes, is least one of the dwellings used in the dwelling count located on the same side of the road as the proposed dwelling? Yes _X_ No ___ (If no, you cannot use the rectangle template)

(vi) A proposed "template" dwelling under this section is not allowed:

(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(c)(vii) for the other lots or parcels that make up the tract are met; or

(bb) If the tract on which the dwelling will be sited includes a dwelling;

Does the tract contain any other dwellings? Yes ___ No _X_

(vii) Where other lots or parcels that make up a tract in Subsection (vi):

(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and

restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(q) For single-family dwellings, the landowner must sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

If this application is approved, this will be made a condition of approval.

(r) For single-family dwellings, the approval is valid for four years from the date of approval, unless otherwise specified in the approval or by other provisions of Lane Code. Notwithstanding the requirements of LC Chapter 14, an application for a two year extension of the timelines for the permit approval can be made and approved pursuant to LC Chapter 14.

Pursuant to ORS 215.417, this application, if approved, will be valid for four years from the date of approval and one two year extension of the timelines can be made. This will be made a condition of approval.

SITING CRITERIA

(5) Siting Standards for Uses, Activities, and Structures

The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The Director must consider the criteria in this section together with the requirements of Section (6) to identify the building site.

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);

Explain the reason for the proposed location. You must address the following issues:

- How is the new dwelling close to other dwellings on adjacent property? Explain.

The nearest dwelling is located on Tax Lot 18-02-11-00-00600 and is approximately 510 feet from the subject proposed dwelling. The second nearest dwelling is to the east on Tax Lot 18-02-11-00-00501 and is approximately 740 feet from the proposed dwelling site. The proposed dwelling site is selected for its relatively level topography, close proximity to the existing road and conforming to the preferred minimum setbacks from adjoining ownerships of at least 100 feet in the F-2 zone as well as being in an area of the poorest soils on the property in its ability to support conifer timber. Conforming to these criteria the distance to the adjacent dwellings is set forth by the distance of those dwellings from their mutual boundaries with the Subject Property. Addressing these criteria places the proposed dwelling site at the indicated distances from adjoining dwellings.

- How is the dwelling near existing roads?

The proposed dwelling is approximately 140 feet from R.R. Baker Road, which is also the south boundary of the subject property. See the site plan attached at Exhibit 3.

- Will a new driveway be constructed or will an existing driveway be extended?

The driveway will use an existing logging spur road that has a heavy rock surface. The turn around at the dwelling site will entail approximately 50 feet of new construction.

- What is the most level part of the property?

The most level part of the property is the area immediately surrounding the proposed dwelling site.

- What is the area that is least suitable for forest use based on the soil productivity, forest management and forest harvesting practices?

  The area surrounding the proposed building site encompasses the poorest quality soils, Soil Type 107C, Philomath Silty Clay at a 3-12% slope and having a forestland capability estimated by the Oregon Department of Forestry at 45 cubic feet per acre per year.

- Is there a ravine, ridge or slope greater than 40% within 30 feet of the new dwelling?

  No

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses;

Will the dwelling encroach into a forested area? Or will it be located in an existing developed or open area? Explain how the dwelling location will cause minimal intrusion to forested areas:

The proposed dwelling site is an area that has previously had scattered conifer timber and various hardwoods. The area where the dwelling is to be sited abuts a former landing site for a previous logging operation that is open and has a heavily rocked surface. The driveway will use an existing constructed and rocked surface road.

(iii) Where possible, when considering LC 16.210(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

[It is believed by the applicant that this code reference is meant to be LC 16.211 not 16.210]

Is the dwelling within 500 feet of adjoining property zoned F-1? Yes ___ No _X_

If yes, explain: _____

_____

_____

Is the dwelling within 100 feet of adjoining property zoned F-2 or EFU? Yes ___ No _X_

If yes, explain: The adjoining properties are zoned F-2, the nearest being approximately 111 feet to the west of the proposed dwelling site and 180 feet from the F-2 zoned property to the south.

(iv) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

Explain how the location of the dwelling and driveway minimize intrusion into the forest. Attach additional pages if necessary.

As discussed previously, the proposed driveway will utilize an existing heavily rocked logging road. The primary access road, R.R. Baker Road, over which the property holds an existing easement, has existed for over 70 years and is utilized by nine neighbors. The proposed building site abuts a non-stocked rock surface area that has been used as a landing site and will not supported forest growth.

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).

(iii) The minimum distance necessary to comply Sections (5)(a) and (6).

Does the property front County Right-of-way? Yes ___ No X

If yes, what is the distance from the proposed dwelling to the County Right-of-way? N/A Feet

How far is the proposed dwelling from the northern property line? 790 Feet

How far is the proposed dwelling from the eastern property line? 395 Feet

How far is the proposed dwelling from the southern property line? 180 Feet

How far is the proposed dwelling from the western property line? 111 Feet

Are these setbacks at least the minimum distance to comply with (5)(a) and (6)?

Yes.

(iv) Riparian Setback Area. A riparian setback area applies to the area (iv) between a line that is 100 feet from and parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with LC 16.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.

Is there a designated Class 1 stream on the property? Yes ___ No X

If yes, how far will the dwelling be from the Class 1 stream? N/A Feet

(c) Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:

(i) **Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;**

(ii) **A water use permit issued by the Water Resources Department for the use described in the application; or**

(iii) **Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.**

What is your proposed water source (check the answer):

Private Well _X__ Community System ___ Public system ___

Describe: A private well will be constructed upon the Subject Property.

For a community or public system, do you have written verification the provider can serve your dwelling?

Yes ___ No ___ If yes, include a copy with this application.

Do you have a water use permit (well log) for an existing well, issued by the Water Resources Department? Yes ___ No _X__

If yes, include a copy with this application. Copies can be obtained by searching for groundwater data at the following website: https://www.oregon.gov/OWRD/pages/index.aspx

(d) **As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.**

(e) **Approval of a dwelling is subject to the following requirements:**

(i) **Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.**

(ii) **The Director must notify the County Assessor of the above condition at the time the dwelling is approved.**

(iii) **Stocking survey report:**

(aa) **If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and**

(bb) **Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.**

If this proposal is approved, (d) and (e) above will be made conditions of approval.

(6) Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings, manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:

Is the property within a fire district? Yes _X_ No ___ If yes, go to (b) below.

The property is within the Pleasant Hill-Goshen Fire and Rescue District.

If the property is not within a fire district, you have two options (choose one):

____ (A) Submit evidence of a long term services contract with the nearest fire district and request annexation into the fire district, or

____ (B) Develop a Fire Protection Plan. It must comply with standards in (i) - (v) below. The Fire Protection Plan will be verified as a Condition of Approval, but it is recommended that you submit the plan with this application.

(i) The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;

(ii) If a water supply is required for fire protection, it must be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;

(iii) The applicant must provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use;

(iv) Road access must be provided to within 15 feet of the water's edge for firefighting pumping units. The road access must accommodate the turnaround of firefighting equipment during the fire season. Permanent signs must be posted along the access route to indicate the location of the emergency water source; and

(v) A 100-foot wide primary safety zone and a 100-foot wide secondary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures must be provided and maintained in perpetuity in compliance with the standards in (6)(c).

(b) Fire Safety Design Standards for Roads and Driveways.

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for

more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Attach to this application objective information demonstrating compliance or feasibility of compliance with Lane Code 16.211(6)(b)(i), including:

__X__ Itemized list of firefighting equipment. Obtain from the fire district (if applicable).

Attached at Exhibit 10 is a printed copy of an email from Chief Andrew Smith of the Pleasant Hill-Goshen Fire and Rescue District confirming the following equipment as being available for firefighting purposes:

3 Water Tank Trucks, 2,500 gallon, 3,000 gallon and 3,500 gallon

5 Structural Engines (Pump Trucks), 2 carrying 1,000 gallons, 2 carrying 750 gallons and 1 carrying 500 gallons

2 Type 6 Engines (Commonly called Brush Trucks), 1 250 gallon and 1 300 gallon.

__X__ Description and evidence of physical nature of access or driveway route. Topography maps, photos, or other evidence may be included in the application.
The nearest fire station is at Jasper (36745 Jasper-Lowell Road), approximately 2.5 miles from the subject property. Access is by paved county road from Jasper over Jasper-Lowell Road travelling west to Wallace Creek Road, then north on Wallace Creek, also a paved county road, to the intersection with R.R. Baker Road which is 16' to 18' in width, graveled with a partial oil surface. R.R. Baker road ascends to the subject property where it makes the southern boundary of said land. As noted in the letter from Chief Andrew Smith of the Pleasant Hill-Goshen Fire and Rescue Department in his on-site review of the property, see Exhibit 7, the physical nature of access is considered adequate for firefighting purposes.

__X__ Description of proposed improvements to access or driveway route. Design drawings may be included in the application.
The roadway of R.R. Baker Road is currently 16 to 18 feet in width, with the approval of this Special Use Permit the roadway will be improved to be a complete 18 feet in width with turnarounds as noted in Exhibit 2 The driveway will be 12 feet in width with sufficient gravel surface to comply with the standards of Chapter 15 of Lane County Code. As depicted in the Site Plan at Exhibit 3 a single turnout will be constructed in the driveway.

In addition to the above items, the application may also include:

__X__ A preliminary written verification of compliance from the agency providing fire protection, or a preliminary written certification of compliance from an Oregon Registered Professional Engineer. However, please note that such certification will also be made a condition of approval to verify final access and/or driveway construction.

See the letter from Chief Andrew Smith of the Pleasant Hill-Goshen Fire and Rescue Department discussing his on-site review of the road proposal at Exhibit 7.

The standards below will be a condition of approval and will be verified by staff.

(ii) Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and must have a vertical clearance of 13 feet 6 inches.

Will an existing driveway be extended to serve the new dwelling? Yes _X_ No ___

Will there be a new driveway in a new location? Yes ___ No _X_

As noted above the area where the dwelling is to be sited abuts a former landing site for a previous logging operation that is open and has a heavily rocked surface. The driveway will use an existing constructed and rocked surface road, though a final extension of approximately 40 feet will extend from the presently constructed rock logging road to the building site and be constructed to provide for vehicle turnaround at the dwelling.

(iii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Are you proposing a dead-end road? Yes _X_ No ___

Is it over 200 feet long? Yes _X_ No ___

If yes, it must contain turnouts. Explain:

The applicant believes the term you are intending to use in this section is "turnarounds" not "turnouts." The existing road is approximately 5,700 feet in length, seven vehicle turnarounds are to be improved at existing driveway turnouts from the road with a hammerhead turnaround constructed at the end of the road. The road will be constructed to a width of 18 feet and by

county code no turnouts are required, though a single turnout is proposed to be constructed approximately 700 feet from Wallace Creek Road, see Exhibit 2.

(iv) Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Will the new driveway or extension of the driveway contain any culverts or bridges? Yes X No ___

If yes, explain:

Several culverts provide drainage for R. R. Baker Road as it is presently constructed. A culvert is anticipated to be placed at the intersection of the existing heavy gravel former logging road and R. R. Baker Road. One culvert is anticipated to be constructed for drainage of the driveway extension from the existing logging road to the building site. All culverts will meet the minimum load support standards of Chapter 15 of Lane County Code.

(v) Road and Driveway Grades. Road and driveway grades cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

Will the road or driveway contain any slopes in excess of 8%? Yes X No ___

If yes, explain:

The driveway grade will vary from 0% to14%, see the Site Plan at Exhibit 3. See the letter from Chief Andrew Smith of the Pleasant Hill-Goshen Fire and Rescue Department at Exhibit 7 discussing the adequacy of the existing road and access proposal that followed his on-site review of the property.

(vi) Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.

Please be advised that staff will evaluate the route of the road serving your dwelling, from the homesite back to the public road to which it connects. Staff will determine if the road is to be named, per LC 15.312 and LM 15.015(3).

(vii) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

The driveway must be 12 feet wide. How wide is the driveway? 12 feet _____

Is it over 200 feet long? Yes X No ___

If yes, it must contain turnouts. Turnouts are not required if the driveway is 16 feet wide.

Will the driveway have turnouts? Yes _X_ No ___

Will the driveway be 16 feet wide? Yes ___ No _X_

(viii) Modifications and Alternatives. The standards in (6)(b)(i) through (6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

Are you proposing any modifications or alternatives to the road or driveway standards? If yes, explain. Attach additional pages of necessary.

No modifications or alternatives to the road or driveway standards are proposed.

(c) Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.

(i) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.

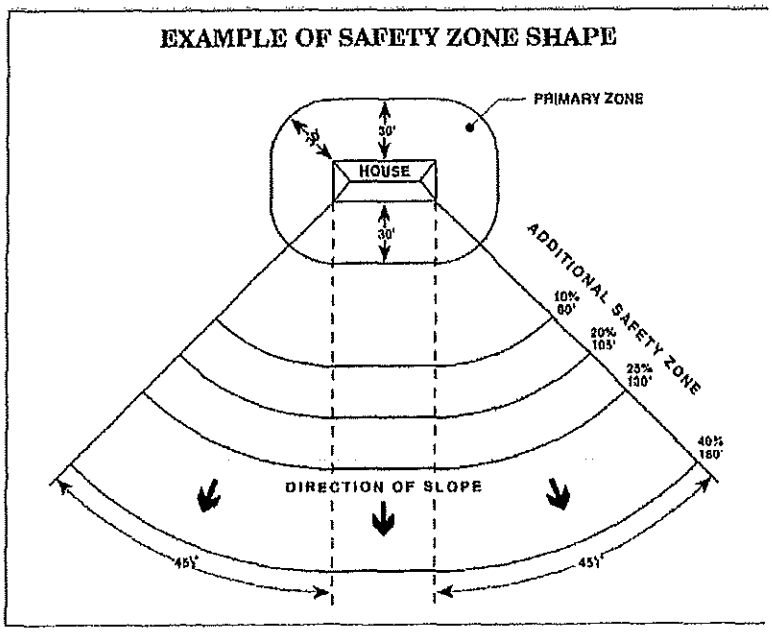
(aa) As slope increases, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:

The new dwelling must be surrounded by a 30 foot primary safety zone. If the dwelling is on a slope, the safety zone will increase, as shown in the table.

Table 16.211-2 Minimum Primary Safety Zone

Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Figure 16.211-1



(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.

The secondary fuel break must be established an additional 100 feet from the primary safety zone, but only on property you own.

* Show the fuel breaks on the site plan. If approved, the primary safety zone and the secondary fuel break will be verified as a condition of approval. Contact staff (541-682-3577) or visit the Planning website (www.lanecounty.org/planning) for details regarding fire break standards.

See the Site Plan at Exhibit 3 to review the proposed fuel breaks and safety zones.

* The establishment and maintenance of fuel breaks within the Riparian Setback Area must comply with the applicable requirements of Lane Code 16.253.

(d) The dwelling must have a fire retardant roof.

(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.

Substantial evidence may need to be submitted with the application to determine slope. This could include photos, slope calculations, and/or evidence from a private engineer or surveyor such as a stamped site plan. What is the slope of the land within 30 feet of the dwelling?

To the north, east and south of the proposed dwelling site the land is virtually flat, to the west of the site the slope approaches 18% at the outer edge of the 30 foot fuel break and an additional 50 feet is designed, to encompass a full 80 foot primary fuel break. See the Site Plan at Exhibit 3 prepared by David J. Collier, registered professional land surveyor.

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

If the proposal is approved, (d) and (f) above will be made conditions of approval and will be verified by staff.

Exhibit 2

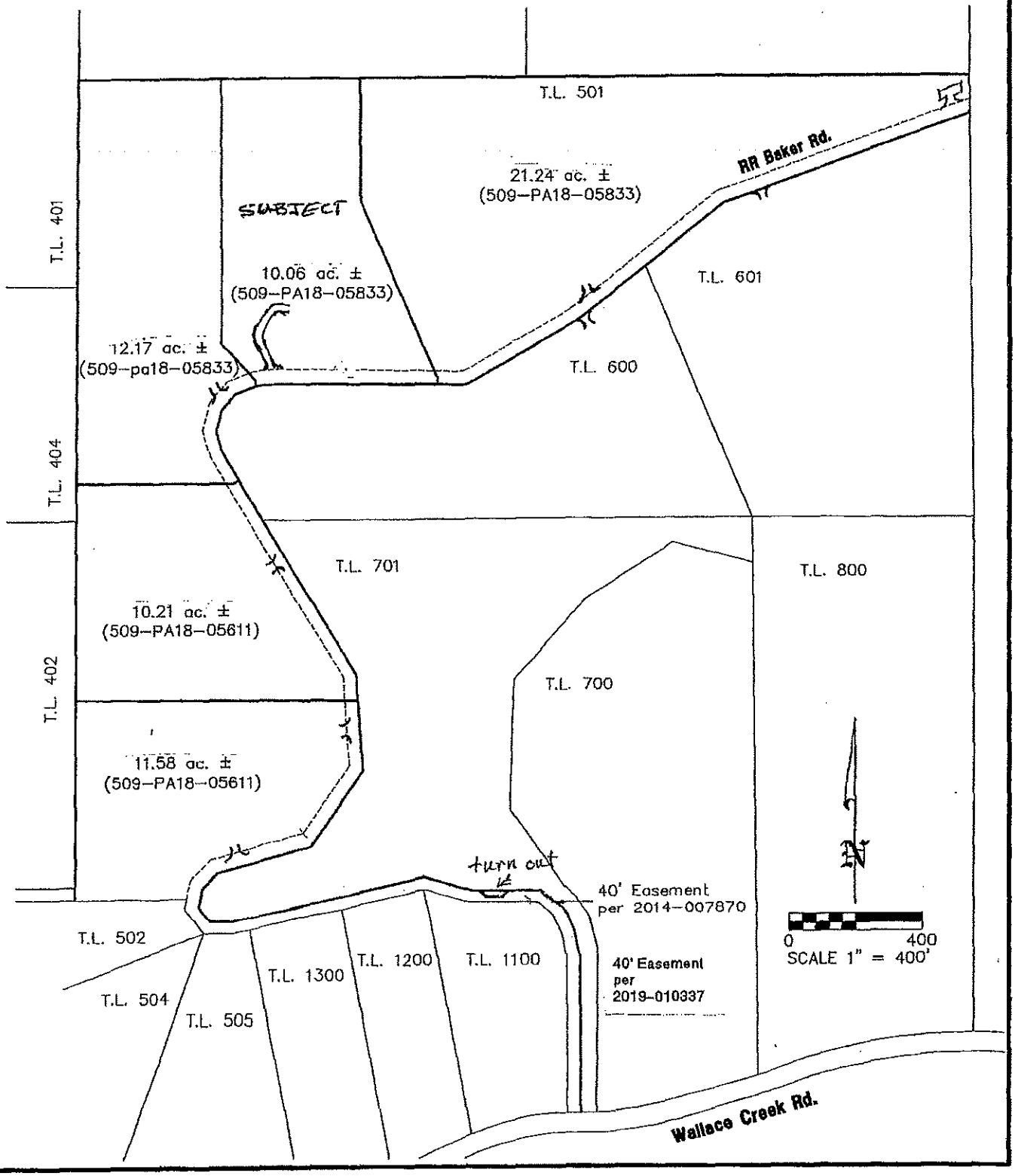
Goodman Road
Design
Tax Lots
18-02-11-00-501 and 506

GOODMAN

Tax Map 18-02-11-00
Tax Lot 506

JL Turn Around Points @ Driveway Intersections

Hammerhead Turn Around at End of Road

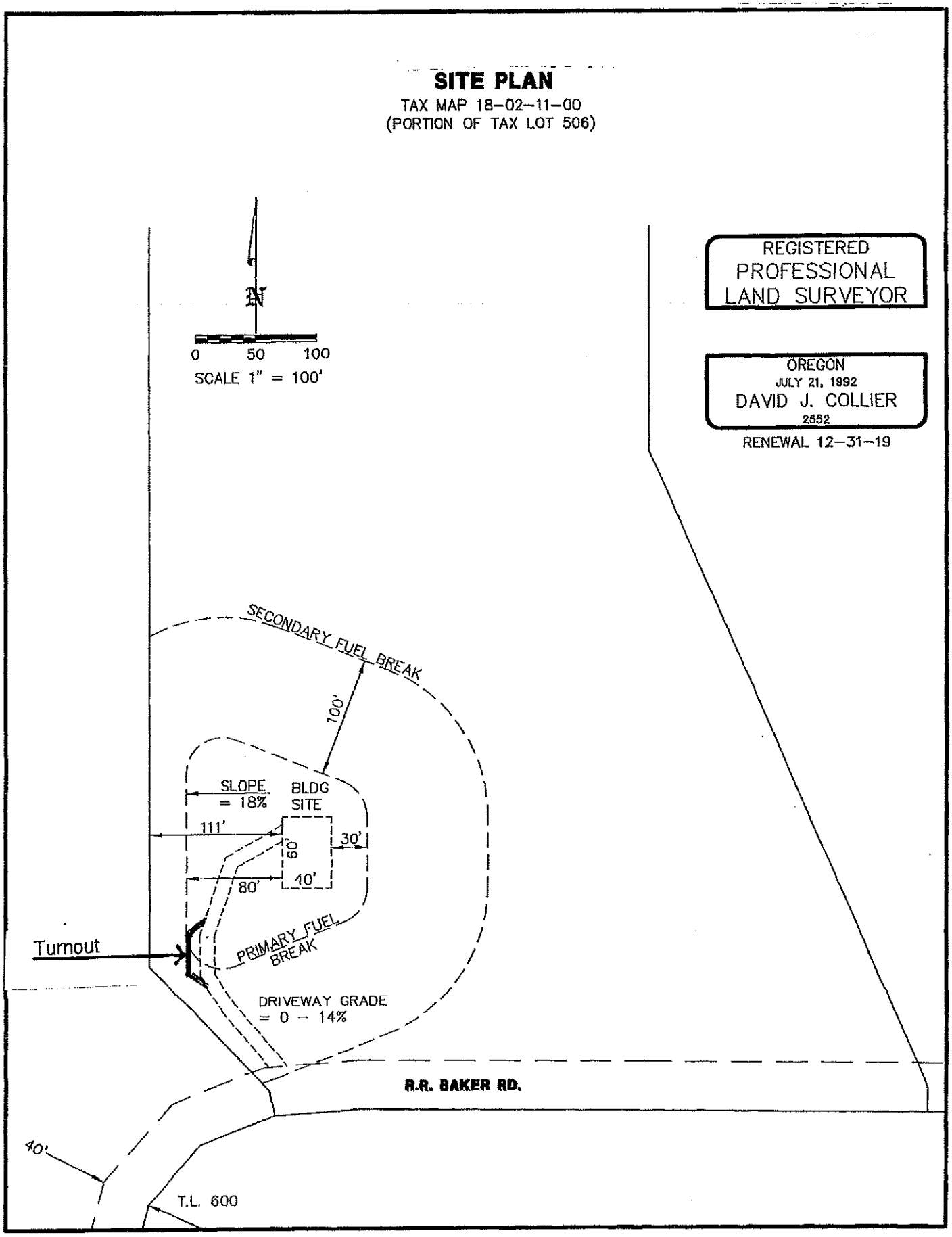


0928

Exhibit 3

SITE PLAN

TAX MAP 18–02–11–00
(PORTION OF TAX LOT 506)



0929

Exhibit 5a

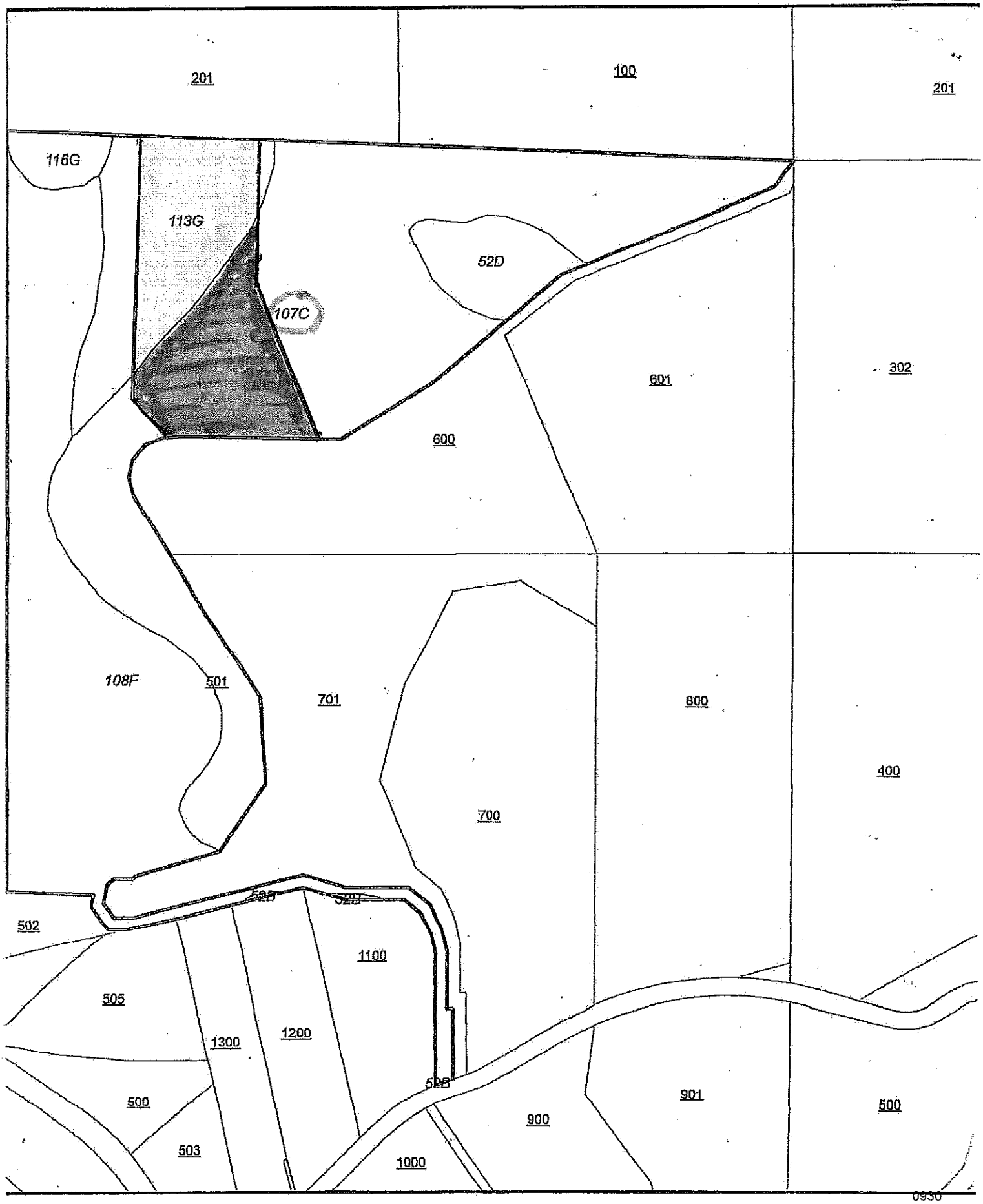
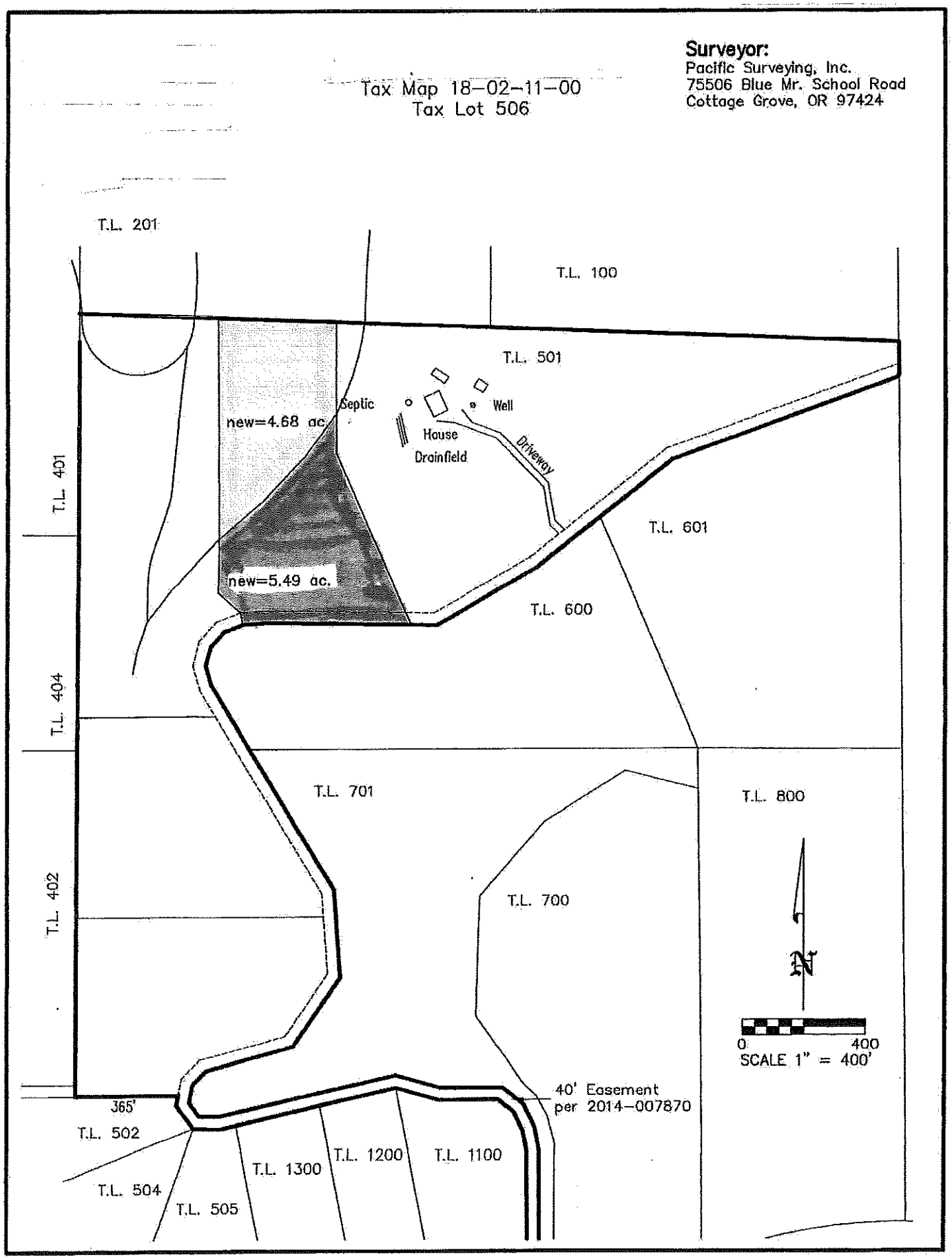

201
100
201
116G
113G
52D
107C
601
302
600
108F
501
701
800
400
700
52B
52B
502
1100
505
1300
1200
52B
500
901
500
900
503
1000
0930

Exhibit 5b


Surveyor:
Pacific Surveying, Inc.
75506 Blue Mr. School Road
Cottage Grove, OR 97424
Tax Map 18-02-11-00
Tax Lot 506
T.L. 201
T.L. 100
T.L. 501
Septic
Well
House
Drainfield
Driveway
new=4.68 ac.
new=5.49 ac.
T.L. 401
T.L. 601
T.L. 600
T.L. 404
T.L. 701
T.L. 800
T.L. 700
T.L. 402
N
0
400
SCALE 1" = 400'
40' Easement
per 2014-007870
365'
T.L. 502
T.L. 504
T.L. 505
T.L. 1300
T.L. 1200
T.L. 1100
0931

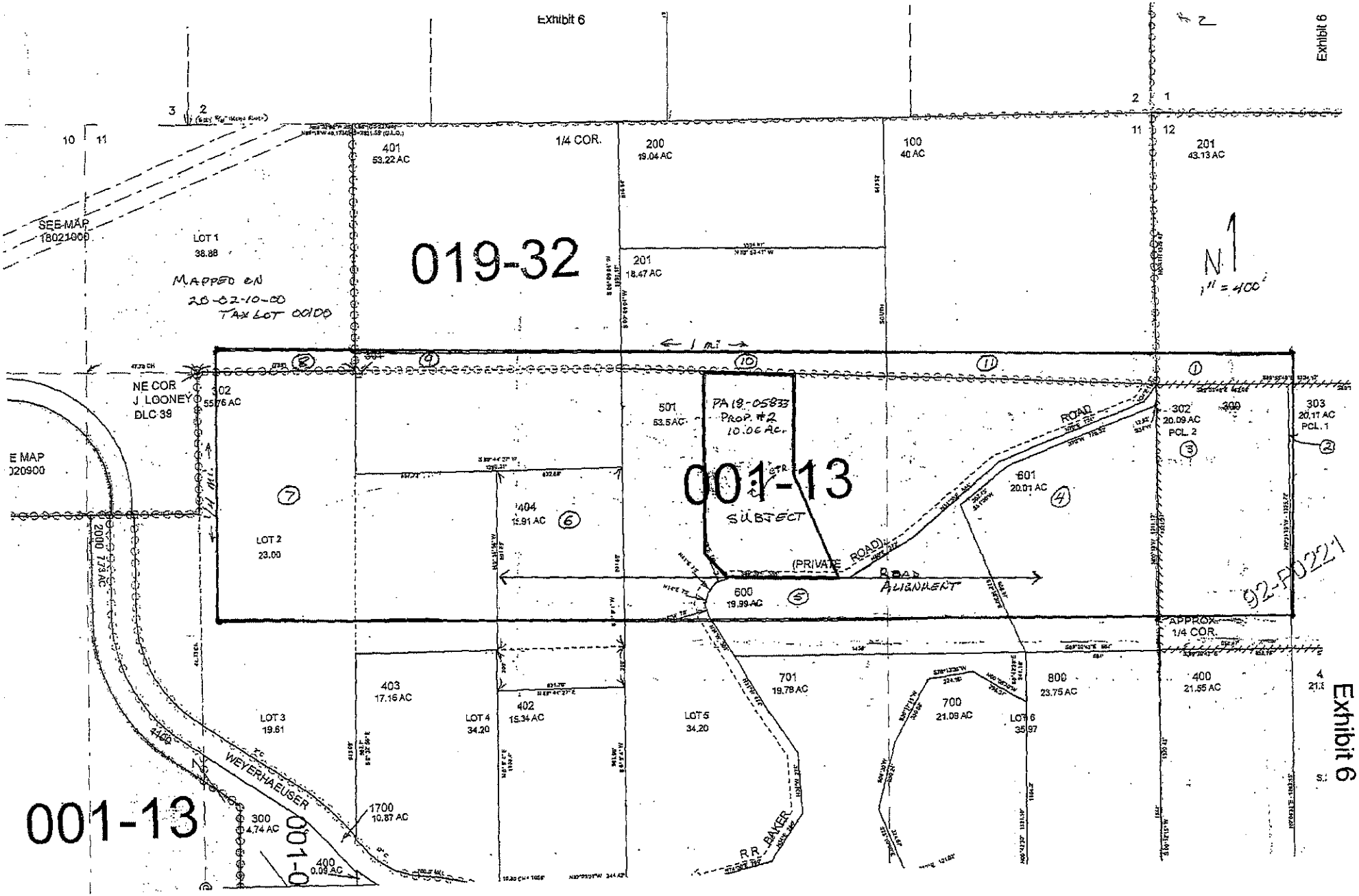
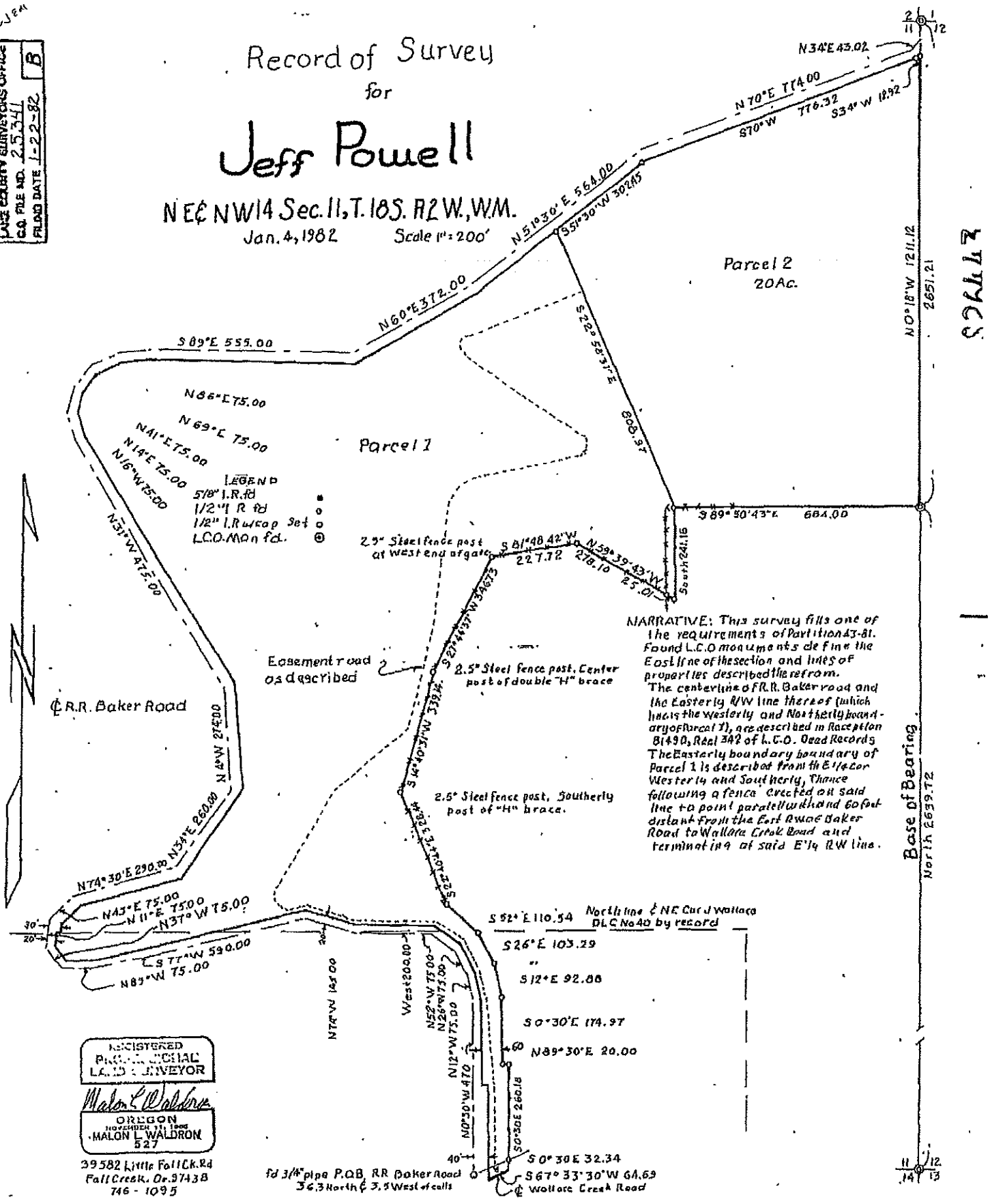

Exhibit 6
019-32
001-13
SUBJECT
PA 18-0583
PROP. #2
10.06 Ac±
MAPPED ON
28-02-10-00
TAX LOT 00100
SEE MAP
18021000
NE COR
J LOONEY
DLC 39
1/4 COR.
APPROX.
1/4 COR.
(PRIVATE ROAD)
ROAD ALIGNMENT
ROAD
WEYERHAEUSER
RR
BAKER
401
53.22 AC
200
19.04 AC
100
40 AC
201
43.13 AC
201
18.47 AC
LOT 1
38.88
302
55.76 AC
501
53.5 AC
LOT 2
23.00
404
15.91 AC
600
19.99 AC
601
20.01 AC
302
20.09 AC
PCL. 2
300
303
20.17 AC
PCL. 1
403
17.16 AC
LOT 3
19.61
LOT 4
34.20
402
15.34 AC
LOT 5
34.20
701
19.78 AC
700
21.09 AC
LOT 6
35.97
800
23.75 AC
400
21.55 AC
300
4.74 AC
1700
10.87 AC
400
0.09 AC
N
1" = 400'
1 mi
92-PD221
Exhibit 6

Exhibit 8a

LANE COUNTY SURVEYORS OFFICE
C.S. FILE NO. 25341 B
FILED DATE 1-22-82

Record of Survey
for
Jeff Powell

N E¼ NW¼ Sec. 11, T. 18S. R2W., W.M.
Jan. 4, 1982 Scale 1" = 200'



NARRATIVE: This survey fills one of the requirements of Partition 43-81. Found L.C.O monuments define the East line of the section and lines of properties described therefrom. The centerline of R.R. Baker road and the Easterly R/W line thereof (which lines the Westerly and Northerly boundary of Parcel 1), are described in Reception 81490, Reel 342 of L.C.O. Deed Records The Easterly boundary boundary of Parcel 1 is described from the E¼ Cor Westerly and Southerly, Thence following a fence erected on said line to point parallel with and 60 feet distant from the East R/W of Baker Road to Wallace Creek Road and terminating of said E¼ R/W line.

REGISTERED PROFESSIONAL LAND SURVEYOR
Malon L Waldron
OREGON
NOVEMBER 11, 1966
MALON L. WALDRON
527

39582 Little Fall Ck. Rd
Fall Creek, Or. 97438
746 - 1095

0933

001633

9142256

EASEMENT AND ROAD MAINTENANCE AGREEMENT

30
10
20

PARTIES:

9241SEP.04'91H06REC 30.00
9241SEP.04'91H06PFUND 10.00
9241SEP.04'91H06ART FUND 20.00

GRANTOR: LEE GOODMAN

GRANTEE: JACK C. PEARCE AND JOYCE A. PEARCE, HUSBAND AND WIFE

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, Grantor LEE GOODMAN hereby grants, transfers, and conveys to Grantee JACK C. PEARCE and JOYCE A. PEARCE, husband and wife, their heirs, successors, and assigns, a perpetual, nonexclusive easement to use the entire roadway known as R.R. Baker Road (the Roadway), upon the terms and conditions hereinafter set forth, which Roadway is a strip of land 40 feet in width, the centerline of which is described as follows:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

1. This easement is not personal or in gross but is to be appurtenant to each and every portion of the following described property owned by Grantee:

SEE EXHIBIT B ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

2. This easement is granted over and across property owned by Grantor in Lane County, Oregon described as follows:

SEE EXHIBIT C ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

3. This grant is made upon the following terms:

3.1 Grantee is granted the right to use the 40-foot easement strip, including the existing Roadway, as a means of ingress and egress to and from the land described in Exhibit B, or any portion thereof. Grantee further is granted the right to use the described strip for the installation and maintenance of such public utilities as may be needed to serve the property described in paragraph 1, or any portions thereof. It is expressly understood that no rights outside the 40-foot easement strip are provided.

3.2 The use of the easement shall be limited as follows:

3.2.1 The easement and right-of-way shall be restricted to use of the property described on Exhibit

B attached hereto as a single residence and not for parcels created as a result of future subdivisions thereof without the prior written consent of Grantor;

3.2.2 The easement and right-of-way may be used for residential purposes only. ~~including, but not limited to, vehicular and pedestrian ingress and egress, the hauling of logs related to removal of timber for fire, disease and insect control and landscaping activities occurring on the property described in Exhibit B attached hereto~~. It is expressly understood that use of the easement and right-of-way for commercial purposes shall not occur without the prior written consent of Grantor;

3.2.3 Grantee shall not significantly widen or change the present location of the existing Roadway without the prior written consent of Grantor; and

3.2.4 The removal of trees of commercial value from and activities causing substantial physical or economic damage to areas within the right-of-way, but outside the existing Roadway, shall not be undertaken by Grantee without the prior written consent of Grantor.

3.3 Any party may cause the right-of-way, or any portion thereof, to be maintained, repaired, or reconstructed. The party causing such maintenance, repair, or reconstruction work to be done shall pay for such work, and any party using the easement other than Grantor Lee Goodman shall be liable for contribution based on the relative use proportional to the total Roadway use; provided, however, heirs, successors, and assigns to Grantor Lee Goodman shall be liable for such contribution. Grantor shall pay the real property taxes on the easement strip, said tax payments to be deducted from Grantor's maintenance contribution obligations herein.

3.4 Grantor shall, at all times and without restriction, have the right to use the easement property and Roadway for purposes not inconsistent with the Grantee's full enjoyment of the rights herein granted.

3.5 The grant of this easement shall run with the land and shall be binding upon and inure to the benefit of the Grantor and Grantee and their respective heirs, successors, and assigns.

3.6 Each party shall indemnify and save the other party harmless from any liability, loss, or expense resulting from any claim for injury to person or property resulting from the party's use of the Roadway or use of

the Roadway by that party's agents and employees, any independent contractor hired by that party, and that party's permittees, invitees, licensees, and guests, unless that injury is caused in part by the other of the party's failure to contribute to the expense of maintaining the Roadway.

3.7 This easement is granted subject to all easements, reservations, restrictions, conditions, and encumbrances of record affecting the Roadway.

IN WITNESS THEREOF, Grantor has executed this Easement and Maintenance Agreement on this 22 day of August, 1991.

GRANTOR:

Lee Goodman

Lee Goodman

STATE OF OREGON)
) ss.
County of Lane)

The foregoing instrument was acknowledged before me this 22nd day of August, 1991, by Lee Goodman.

Notary Public for Oregon
My Commission Expires: 2/28/92

K. E. KNUDSEN NOTARY PUBLIC STATE OF OREGON

9142256

EXHIBIT A TO GOODMAN - PEARCE EASEMENT AND ROAD MAINTENANCE AGREEMENT

BEGINNING at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A. Wallace Donation land Claim No. 40 of said Township and Range; thence, Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence, Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe marking the true point of beginning set on the centerline of a private road; thence, Southwesterly along the center of the private road the following courses and distances:

South 34° West 101 feet; South 70° West 774 feet; South 51° 30' West 564 feet; South 60° West 372 feet; North 89° 30' West 555 feet; South 86° West 75 feet; South 69° West 75 feet; South 41° West 75 feet; South 14° West 75 feet; South 16° East 75 feet; South 31° East 775 feet; South 04° East 274 feet; South 34° West 260 feet; South 74° 30' West 290 feet; South 45° West 75 feet and South 11° West to the ending point on the North line of said Claim No. 40.

ALSO: All of the remainder of the private road extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows: Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence, West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence, Northwesterly along said centerline the following courses and distances: North 0° 30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° West 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 foot private road and extending 224 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).

9142256

EXHIBIT B TO GOODMAN - PEARCE EASEMENT AND ROAD MAINTENANCE AGREEMENT

The East 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 18, Range 2 West of the Willamette Meridian, in Lane County, Oregon.

EXHIBIT C TO GOODMAN - PEARCE EASEMENT AND ROAD MAINTENANCE AGREEMENT

BEGINNING at the intersection of the 1/4 line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A. Wallace Donation Land Claim No. 40 of said Township and Range; thence, Northerly along said 1/4 line to the Northwest corner of the South 1/2 of the Northeast 1/4 of said Section 11; thence, Easterly along the North line of the South 1/2 of the Northeast 1/4 of said Section 11 to an iron pipe set on the centerline of a private road; thence, Southwesterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51° 30' West 564 feet; South 60° West 372 feet; North 89° 30' West 555 feet; South 86° West 75 feet; South 69° West 75 feet; South 41° West 75 feet; South 14° West 75 feet; South 16° East 75 feet; South 31° East 775 feet; South 04° East 274 feet; South 34° West 260 feet; South 74° 30' West 290 feet; South 45° West 75 feet and South 11° West to a point on the North line of said Claim No. 40; thence, Westerly along said Claim line to the point of beginning in Lane County, Oregon, TOGETHER with the east 1/2 of said private road, being a strip of land 20 feet in width lying adjacent to and East of the above described center line.

ALSO: All of the remainder of the private road (being a strip of land 40 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows: Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence, West 1199.5 feet and North 816.5 feet to an iron pipe set on the Northerly line of County Road No. 421 as now located through said Section 11, and marking the TRUE POINT OF BEGINNING; thence, Northwesterly along said centerline the following courses and distances: North 0° 30' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° West 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 590 feet; North 89° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 foot private road and extending 224 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).

9142256

9142256

State of Oregon,
County of Lane-ss-

I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at

4 SEP 91 12:30

Reel 1715R

Lane County OFFICIAL Records
Lane County Clerk

By: Joel E. Taue
County Clerk

0940

Exhibit 8c

81490 Jun 14 67 1:50 L Rfe

BARGAIN & SALE DEED 7 0 6

FOR VALUE RECEIVED

ROBERT E. BARRETT and DORIS E. BARRETT, husband and wife,

herein referred to as grantors, hereby grant, bargain, sell and convey unto IRWIN LEE GOODMAN and

RUTH GRAY GOODMAN, husband and wife,

herein referred to as grantees, the following described real property, with tenements, hereditaments and appurtenances, to wit: Beginning at the intersection of the ¼ line running North and South through Section 11, Township 18 South, Range 2 West of the Willamette Meridian with the North line of the James A. Wallace Donation Land Claim No. 40 of said township and Range; thence Northerly along said ¼ line to the Northwest corner of the South ½ of the Northeast ¼ of said section 11; thence Easterly along the North line of the South ½ of the Northeast ¼ of said Section 11 to an iron pipe set on the centerline of a private road; thence Southeasterly along the center of the private road the following courses and distances: South 34° West 101 feet; South 70° West 774 feet; South 51° 30' West 564 feet; South 60° West 372 feet; North 89° 30' West 555 feet; South 86° West 75 feet; South 69° West 75 feet; South 41° West 75 feet; South 14° West 75 feet; South 16° East 75 feet; South 31° East 775 feet South 040 East 274 feet; South 34° West 260 feet, South 74° 30' West 290 feet; South 45° West 75 feet and South 11° West to a point on the North line of said Claim No. 40; thence westerly along said Claim line to the point of beginning, in Lane County, Oregon. Together with the East ½ of said private road, being a strip of land 30 feet in width lying adjacent to and East of the above described center line. ALSO all of the remainder of the private road (being a strip of land 40 feet in width) extending from the above mentioned intersection of the centerline thereof with the Northerly line of said Claim No. 40 in a Southeasterly direction to the Northerly line of County Road No. 421 the centerline of which is more particularly described as follows:

Beginning at the Southeast corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; thence West 1199.3 feet and North 816.3 feet to an iron pipe set on the Northerly line of County Road No. 431 as now located through said Section 11, and marking the True Point of Beginning, thence Northwesterly along said centerlineathe following courses and distances: North 68 39' West 470 feet; North 12° West 75 feet; North 26° West 75 feet; North 52° West 75 feet; West 200 feet; North 74° West 145 feet; South 77° West 390 feet; North 69° West 75 feet; North 37° West 75 feet and North 11° East to its intersection with the North line of said Claim No. 40 and the most Southerly point on the centerline of the private road as described above.

ALSO: A strip of land 20 feet in width lying adjacent to and East of the East line of said 40 feet private road extending 234 feet Northerly from the intersection of the East line of said 40 foot private road with the Northerly line of County Road No. 421 (being 40 feet in width).

No Rev

Dated: [redacted] 10.67

Robert E. Barrett (Seal) — Doris E. Barrett (Seal)

(Seal) — (Seal)

New Mexico Bernalillo

STATE OF [redacted] County of [redacted] ss. Personally appeared the above named Robert E. Barrett

ROBERT E. BARRETT [redacted],

and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Dated April 7, A.D. 1967

My Commission Expires [illegible] — My Commission Expires [illegible] Notary Public for [redacted] New Mexico Bernalillo 4-7-1967

STATE OF OREGON, County of Lane, ss. Personally appeared the above named

Doris E. Barrett

and acknowledged the foregoing instrument to be her voluntary act and deed. Before me:

Dated: April 11 A.D. 10 67

My Commission Expires 10/10/67 — Notary Public for Oregon

0941

001641

81490

81490

Compliments of
CASCADE TITLE COMPANY
975 Oak Street Eugene, Oregon

BARGAIN & SALE
DEED

$ 3420 Barrett

4 2091 Hardman

State of Oregon,
County of Lane—ss.
I, Ida Randolph, Director of the Department of Records and Elections, do hereby certify that the within instrument was received for record at

Lane County OFFICIAL Records.
IDA RANDOLPH, Director of the Department of Records & Elections

By

Deputy

Return To:

1 50

Exhibit 9

NIMPKISH, LLC
Forest Dwelling: Template Dwelling
Tax Lot 18-02-11-00-00506 (part of)

Applicant's Narrative

Applicant proposes to place a dwelling on the Subject Property pursuant to a Special Use Permit authorized under the Template Dwelling Test as provided in Lane Code 16.211.(3)(c)(i) and (iv).

The application demonstrates the soils of the Subject Property as being 53.98% Soil Type 107C, Philomath sic, 3-12% with a forestland capability of 45 cubic feet per acre per year. Under this soil capability the template test must show the presence of at least 3 parcels as they existed on or before January 1, 1993. The application demonstrates the existence of 11 parcels. Under the Template Dwelling process the application must substantiate the presence of 3 or more dwellings within the template area as being in existence on or before January 1, 1993 and continuing to exist. The application demonstrates the presence of 3 dwellings.

The application is accompanied by a letter from the Pleasant Hill-Goshen Fire and Rescue Department that followed a site inspection by Chief Andrew Smith. The letter from Chief Smith confirms the road proposal for the use of R. R. Baker Road as being adequate for firefighting purposes.

Gmail Jim Belknap <jim.e.belknap@gmail.com>

Tax Lot 18-02-11-00-00506 (part) R.R. Baker Road

2 messages

Jim Belknap <jim.e.belknap@gmail.com> Thu, Apr 11, 2019 at 5:17 PM
To: andrew.smith@pleasanthillfire.org

Chief Smith,
Thank you for taking the time to visit today. As we discussed on the phone, I have prepared an application for a Special Use Permit allowing a dwelling under the provisions of what is called the Template Test, this is the application we visited about on-site last month when you reviewed the access road.

As I shared with you today on the phone, part of the application addresses the following:
"Attach to this application objective information demonstrating evidence of compliance with Lane Code 16.211(8)(e), now referenced as Lane Code 16.211(6)(b)(i), including:
Itemized list of firefighting equipment. Obtain from the fire district (if applicable)."

In a previous telephone conversation with a member of your department I was advised you have the following equipment:
3 Water Tank Trucks. One of 2,500 gallons, one of 3,000 gallons and one of 3,500 gallons
5 Structural Engines (Pump Trucks), Two carrying 1,000 gallons, two carrying 750 gallons and one carrying 500 gallons
2 Type 6 Engines (commonly called Brush Trucks), One carrying 250 gallons and one carrying 300 gallons.

When we met at the property you confirmed this equipment was available to fight a fire on the subject property and also indicated your department has cooperating agreements with other fire departments in the area to assist if necessary.

I provided the above list of equipment to Lane County in our application, but they have deemed the application "incomplete." the staff planner has stipulated "It may be beneficial to supplement the statement (my statement in the application) with evidence directly from the fire district pertaining to the district's available firefighting equipment, such as a letter form the fire district..."

Would you please be so kind as to review the information I provided in the application, set forth above, and if this reflects the equipment your department has available for firefighting acknowledge this email as accurately depicting such equipment. I will print a copy of your response and include it with a supplement to our application.

Thank you for your continuing courtesies with this matter.

--
Jim Belknap
Principal Broker
Belknap Properties, LLC
P. O. Box 362
Cottage Grove, OR 97424
541-954-2944 Cell
541-942-1653 Fax

Andrew Smith <andrew.smith@pleasanthillfire.org> Mon, Apr 15, 2019 at 8:09 AM
To: Jim Belknap <jim.e.belknap@gmail.com>

Good Morning Jim,

Sorry for the delay in returning you email. You are correct with the expected response for a fire at the locations addressed above. This equipment is available from the nearby stations through our own agency and or support from Automatic aid. Should you need a further letter to verify this, let me know and I will be glad to assist.

[Quoted text hidden]

--

Andrew Smith

Fire Chief
Pleasant Hill Goshen Fire & Rescue
(541) 747-3104
"One Team"

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the Public Body. Members of the Public Body may respond to this message, but they should not send a copy of the reply to other members. This email and replies may be subject to public disclosure.

T-2 (#1)

18-02-12-00-00201
1867173 & 1867181

New Tax Lot
2014-045526

EXHIBIT "A"

ADJUSTED PARCEL ONE

Beginning at a point on the North line of Section 12, Township 18 South, Range 02 West, W.M. that is 1111 feet West of the North 1/4 corner of said Section, thence Southwesterly to a 5/8" iron rod as shown in C.S. 29179 marking the Northeast corner of that certain Boundary Line Agreement recorded on Reel 1601, Reception No. 89-50199, Lane County Deed Records, thence N89°55'48"W along the North line and the extension thereof of said Boundary Line Agreement a distance of 1324.12 feet to a 5/8" iron rod on the West line of said Section 12, thence North 1326.47' to a brass cap at the Northwest corner of said Section 12, thence East along the North line of said Section 12 to the Point of Beginning, all in Lane County Oregon.

Contains m/l **43.13 ac**

T-2 (#1)

Lane County Assessment & Taxation Property Information Search

This public site contains the most commonly requested Assessment & Taxation information on property located within Lane County.

Most information is updated weekly.

For copies of tax statements, please go to http://apps.lanecounty.org/TaxStatement/Search.aspx.

To view tax maps, visit http://apps.lanecounty.org/TaxMap/Search.aspx.

This site is for general public use only. It is not intended for commercial use.

NEW! Commercial Appraisal Cards are now available online for Lane County properties.

To access the commercial appraisal card click on the map/taxlot link (*if available*).

Start Over

Account Number 1867173 **Map, Tax Lot &** SIC **18-02-12-00-00201**

Site Address 86835 R R BAKER RD SPRINGFIELD OR 97478

Taxpayer Address 86835 RR BAKER RD SPRINGFIELD, OR 97478

Additional Account Numbers for this Tax Lot 1867173

Owner Information

Owner	Address	City State Zip
DANA WESTPHAL REVOCABLE TRUST	86835 RR BAKER RD	SPRINGFIELD, OR 97478

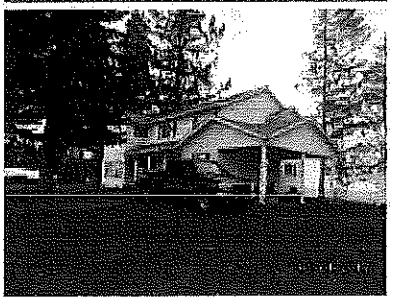
Account Type	Real Property	**Special Assessment Program**	
Account Acreage	5.00	Small Tract Forestland Option	
Pending Property Change	NO	**Taxlot Record**	1802120000201
		Commercial Appraisal Card	n/a
Property Class	Forest		

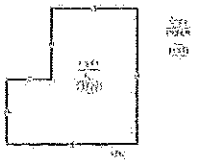
Assessor's Photos & Sketches

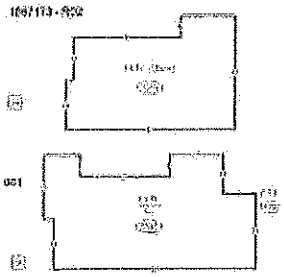
Click on any of the photo/sketch thumbnails to view and download the image full-size (opens in new window). Once in full-size view, use your browser "File>Save (Page) As" menu to download to your computer.

About Assessor Sketches/Photos









Ω

1234

Property Value and Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	Land	Improvement	Total	
2018	$79,124	$469,146	$548,270	$417,973

2018 Taxable Value	2018 Tax	2018 Tax Code Area	**The tax shown is the amount certified for the current tax year. It does not reflect any subsequent value changes, nor does it include any discounts

$417,973	** $5,022.92	00113	offered, payments made, interest owing, or previous year's owing.

Residential **Building #1 (of 2)** If there are multiple dwellings, building characteristics will display for only one of the dwellings.

Year Built	1910
Percent Complete as of Jan 1st	100

Floor	Base Sq Ft	Finished Sq Ft
Basement	N/A	N/A
First	1128	1128
Second	N/A	N/A
Attic	N/A	N/A
Total	1128	1128

Structure	Sq Ft
Bsmt Garage	N/A
Att Garage	N/A
Det Garage	N/A
Att Carport	N/A

Commercial Building None

Generated by on Apr 5, 2019 at 9:40pm using Regional Land Information Database, https://www.rlid.org/

T-2 (#2)

PARCEL RECORD - Cartographic Unit 201 478 591 Page of

Code Area	Township	Range	Section	¼	¼¼	Parcel Number	Type	Number
	18	02	12	0	0	00303		

Map Number | Special Interest

Tax Lot Number

History of Parcel Prior to Re-mapping

Previous Account Number	Previous Tax Lot Number

PARTITION PLAT NO. 92-P0221

Parcel 1

Formerly part of 18-02-12-0-0-00300 & 00301

History of Parcel

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
NEW PARTITION PLAT	1992	C.S. File No. 30575		20.11
	1997 wd	2269	97/3615	
	20205	2012-	012967	

Remarks

160-303-050 (3-87)

0950

001650

ZONING : ML

WATER MASTER INDICATES NO WATER RIGHTS ON THIS PROPERTY. SEE REEL 1261 RECEPTION No. 92-25991 & 92-25992

SUBJECT TO:
EASEMENT FOR ACCESS ROAD RECORDED ON NOVEMBER 25, 1967, RECEPTION No. 5128.

EASEMENT FOR RIGHT-OF-WAY RECORDED ON AUGUST 12, 1980, RECEPTION No.'S 80-33433, 33434 & 33435.

EASEMENT FOR RIGHT-OF-WAY RECORDED ON SEPTEMBER 15, 1972, RECEPTION No. 16985.

EASEMENT FOR RIGHT-OF-WAY RECORDED ON JULY 29, 1982, RECEPTION No. 82-22303.

EASEMENT AND ROAD MAINTENANCE AGREEMENT RECORDED ON FEBRUARY 25, 1991, RECEPTION No. 91-09330.

EASEMENT AND ROAD MAINTENANCE AGREEMENT RECORDED ON APRIL 24, 1991, RECEPTION No. 91-16772

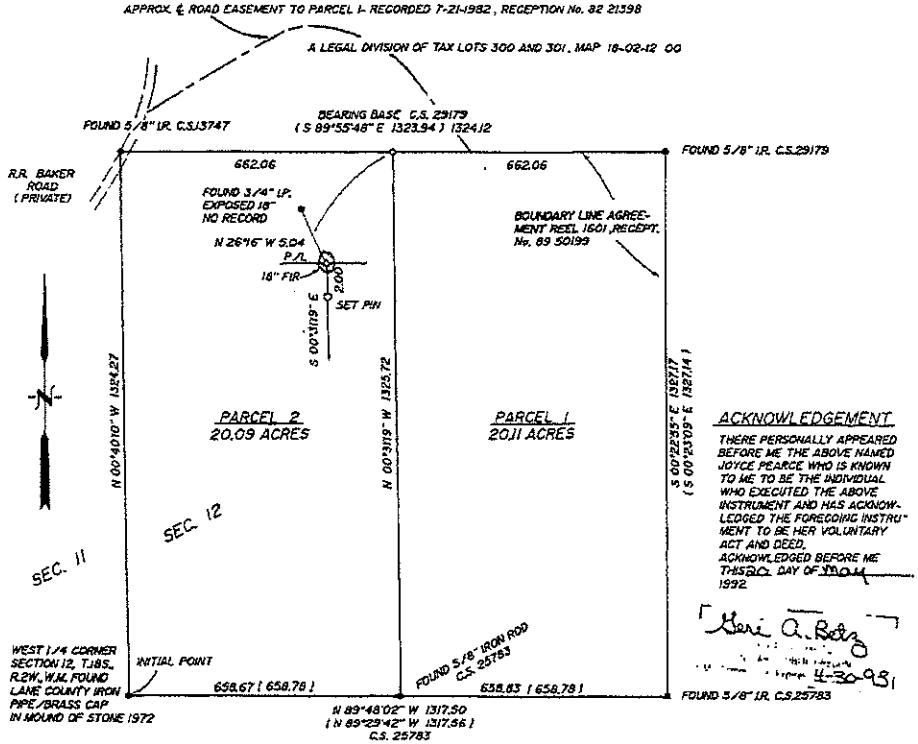
EASEMENT AND ROAD MAINTENANCE AGREEMENT RECORDED ON MARCH 16, 1981, RECEPTION No. 81-10406.

EASEMENT AND ROAD MAINTENANCE AGREEMENT RECORDED ON MARCH 23, 1981, RECEPTION No. 81-12760.

EASEMENT AND ROAD MAINTENANCE AGREEMENT RECORDED ON SEPTEMBER 4, 1991, RECEPTION No. 91-42255 & 42256.

EASEMENT AND ROAD MAINTENANCE AGREEMENT RECORDED ON JULY 21, 1982, RECEPTION No. 82-21398.

APPROX. ℄ ROAD EASEMENT TO PARCEL 1- RECORDED 7-21-1982, RECEPTION No. 82 21398



o SET 5/8" X 30" IRON ROD / RED PLASTIC CAP " L.S. 1103 "
● MONUMENT FOUND AS NOTED
( ) RECORD DATA - C.S.29179
[ ] RECORD DATA - C.S.25783

SURVEY NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO ESTABLISH THE DIVISION LINE BETWEEN PARCEL 1 AND PARCEL 2 AS SHOWN. ALL FOUR EXTERIOR CORNERS WERE FOUND AS SET IN PRIOR SURVEYS. PINS WERE SET TO DIVIDE THE PARCELS AS SHOWN.

LAND PARTITION PLAT NO. 92-P0221

LANE COUNTY SURVEYORS OFFICE
C.S. FILE NO. 30575
FILING DATE 6-1-92 C

FILED
MAY 21 1992
COUNTY CLERK
By Julie P. Parker

PARTITION PLAT FOR JACK PEARCE

LOCATED IN THE
NW 1/4 OF SECTION 12
T.18 S., R.2 W., W.M.
MAY, 1992 SCALE 1"=200'
PA 3185-91

SURVEYOR'S CERTIFICATE

I, DAVID S. SWANSON, A REGISTERED OREGON LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE DIVISION LINE BETWEEN PARCELS 1 AND 2 AS PER LANE COUNTY PA 3185.-91: THAT THE INITIAL POINT IS A LANE COUNTY BRASS CAP MARKING THE QUARER CORNER BETWEEN SECTIONS 11 AND 12, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN; THAT SAID LAND IS DESCRIBED AS FOLLOWS:

BEGINNING AT A BRASS CAP MARKING THE WEST QUARTER CORNER OF SECTION 12, TOWNSHIP 18 SOUTH RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE S 89°48'02" E ALONG THE SOUTH LINE OF THE NORTH WEST QUARTER OF SAID SECTION 12 A DISTANCE OF 1317.50 FEET TO A 5/8" IRON ROD AS SHOWN IN C.S. 29179 MARKING THE SOUTHEAST CORNER OF THAT CERTAIN BOUNDARY LINE AGREEMENT RECORDED ON REEL 1601 RECEPTION No. 89 50199, LANE COUNTY DEED RECORDS, THENCE N 00°22'55" W ALONG THE EAST LINE OF SAID BOUNDARY LINE AGREEMENT A DISTANCE OF 1327.17 FEET TO A 5/8" IRON ROD MARKING THE NORTHEAST CORNER OF SAID BOUNDARY LINE AGREEMENT; THENCE N 89°55'48" W ALONG THE NORTH LINE AND THE EXTENSION THEREOF OF SAID BOUNDARY LINE AGREEMENT A DISTANCE OF 1324.12 FEET TO A 5/8" IRON ROD ON THE WEST LINE OF SAID SECTION 12, THENCE S 00°40'10" E ALONG SAID WEST LINE A DISTANCE OF 1324.27 FEET TO THE POINT OF BEGINNING CONTAINING 40.20 ACRES, ALL IN LANE COUNTY, OREGON.

David S. Swanson

I, DAVID S. SWANSON, HEREBY CERTIFY THAT THIS IS AN EXACT COPY OF THE FINAL PLAT AS SHOWN HEREON.

REGISTERED PROFESSIONAL LAND SURVEYOR
David S. Swanson
OREGON
JULY 22, 1977
DAVID S. SWANSON
1103

OWNER'S DECLARATION

KNOW ALL MEN THAT JACK PEARCE, JOYCE PEARCE AND GERALD GRIES ARE THE OWNERS OF THE LAND DESCRIBED HEREON AND DID CAUSE THE SAME TO BE PARTITIONED AND PLATTED AS SHOWN HEREON ACCORDING TO THE PROVISIONS OF THE OREGON REVISED STATUTES, CHAPTER 92.

Jack Pearce — JACK PEARCE
Joyce Pearce — JOYCE PEARCE
Gerald Gries — GERALD GRIES

ACKNOWLEDGEMENT

THERE PERSONALLY APPEARED BEFORE ME THE ABOVE NAMED JACK PEARCE WHO IS KNOWN TO ME TO BE THE INDIVIDUAL WHO EXECUTED THE ABOVE INSTRUMENT AND HAS ACKNOWLEDGED THE FOREGOING INSTRUMENT TO BE HIS VOLUNTARY ACT AND DEED.

ACKNOWLEDGED BEFORE ME THIS 14 DAY OF May 1992

Teri A. Botz
4-30-93

ACKNOWLEDGEMENT

THERE PERSONALLY APPEARED BEFORE ME THE ABOVE NAMED JOYCE PEARCE WHO IS KNOWN TO ME TO BE THE INDIVIDUAL WHO EXECUTED THE ABOVE INSTRUMENT AND HAS ACKNOWLEDGED THE FOREGOING INSTRUMENT TO BE HER VOLUNTARY ACT AND DEED.

ACKNOWLEDGED BEFORE ME THIS 20 DAY OF May 1992

Teri A. Botz
4-30-93

ACKNOWLEDGEMENT

THERE PERSONALLY APPEARED BEFORE ME THE ABOVE NAMED GERALD GRIES WHO IS KNOWN TO ME TO BE THE INDIVIDUAL WHO EXECUTED THE ABOVE INSTRUMENT AND HAS ACKNOWLEDGED THE FOREGOING INSTRUMENT TO BE HIS VOLUNTARY ACT AND DEED.

ACKNOWLEDGED BEFORE ME THIS 14 DAY OF May 1992

Teri A. Botz
4-30-93

APPROVALS

John S. Pistole — May 20, 1992
FOR ROY BURNS, DIRECTOR, LAND MANAGEMENT DIVISION — DATE

K. Robert Eggli — 5-20-92
LANE COUNTY SURVEYOR — DATE

OWNERS: JACK & JOYCE PEARCE, 1390 HUGHES STREET, EUGENE, OREGON 97402
GERALD GRIES, 2382 NORTH 5th ST., SPRINGFIELD, OREGON 97477

SURVEYOR: CASCADE AERIAL MAPS AND SURVEYS, INC., 1090 BAILEY HILL ROAD, EUGENE, OREGON 97402

T-R
#82-43

001651
3327 0951

T-2 (#2)

G-6 1/4/94 1/5/94

LMD AUTHORIZATION FORM

Land Management Division 125 E. 8th Ave. Eugene, OR 97401

PERMIT # 4658-93

REQUEST FOR: REPLACE MOBILE HOME

ADDRESSING: ☒ VALID ☐ NEW
DATE 1-4-94 LEVY CODE 4DF/X

TOWNSHIP	RANGE	SECTION	1/4 SECTION	TAX LOT	SUBDIVISION / PARTITION	LOT / PARCEL	BLOCK
18	02	12		303	92-P0221	#1	

LOCATION ADDRESS: 86745 RR BAKER ROAD, SPRINGFIELD, OREGON

STRUCTURES NOW ON PROPERTY: EXISTING MOBILE HOME

PROPOSED USE	SEPTIC INSTALLED	WATER INSTALLED	NO. OF STORIES	NO. OF EMPLOYEES	CONSTRUCTION COST/VALUE
RES.		WELL			

DESCRIPTION OF PROPOSED WORK: REPLACE MOBILE HOME, GUERDON, 28'X 44', 1994 — NO. OF BEDROOMS: FOUR

DIRECTIONS TO SITE FROM NEAREST MAIN INTERSECTION: R R BAKER ROAD INTERSECTS WITH WALLACE CREEK ROAD, 1100' EAST OF WEYERHAUSER HAUL ROAD, N.E. ON R R BAKER ROAD, 1.3 MILES ON RIGHT.

APPLICANT NAME & ADDRESS: LAND PLANNING CONSULT., — PHONE 726-8523

OWNERS NAME & ADDRESS: JOYCE PEARCE, P.O. BOX #2152, JASPER, OREGON — PHONE NONE GIVEN

CONTRACTOR/INSTALLER/BUILDER NAME: OWNER — CCB# — PHONE

MAIL PERMIT TO: LAND PLANNING, 1071 HARLOW ROAD, SPRINGFIELD, OREGON 97477
NAME STREET CITY ZIP

I have carefully read BOTH sides of this application and hereby certify that all information is true and correct

LAND PLANNING (PRINT NAME) — Michael P. Evans (Signature) — 12-29-93 (DATE)

PLANNING/ZONING

READ CAREFULLY! Your Authorization Is Based On The Following Conditions

ZONE	FLOOD PLAIN	WETLANDS	ACCESS	LEGAL LOT	MINIMUM SETBACKS	FRONT LOT LINE	P/L SIDE	INTERIOR	REAR	RIPARIAN
ML/RCP	NO	ND	YES	YES		10'	—	10'	10'	—

COMMENTS: MH placement allowed per LC 16.214(2)(a).
Wetlands: N/A Spec 4 NW I quad.

APPROVED BY: SSH DATE 12-29-93

SANITATION

16 hours Pre-Soaking

S/I	R.P.	INST. REC 965.0	TANK SIZE	LIN. FT. O.F.	MAX. TRN DEPTH

☐ INSTALL OUT. SYSTEM PER APPROVED PLOT PLAN, DATED
☐ THE SYSTEM APPEARS TO BE WORKING RIGHT. IF SYSTEM FAILS YOU MUST APPLY FOR A REPAIR PERMIT
☐ HOOK TO EXISTING SYSTEM
☐ INSTALLER PER PERMIT NUMBER

COMMENTS: Hook to early 50's era septic. If 50's era Septic fails a permit to repair will be required

APPROVED BY: DATE 12/29/93

BUILDING

TYPE — GROUP — USE MH

COMMENTS:

DATE 1/8/94

FEES DUE: $ 29.13 APPROVED BY: [signature] DATE 1/8/94

CALL FOR INSPECTIONS (SEE BACK OF FORM FOR INSTRUCTIONS) 687-4065
SEPTIC permits are good for one year. ALL other permits expire after 180 days unless inspections are current.

LMD 040 Rev. 6/92

paid 1-14-94 B

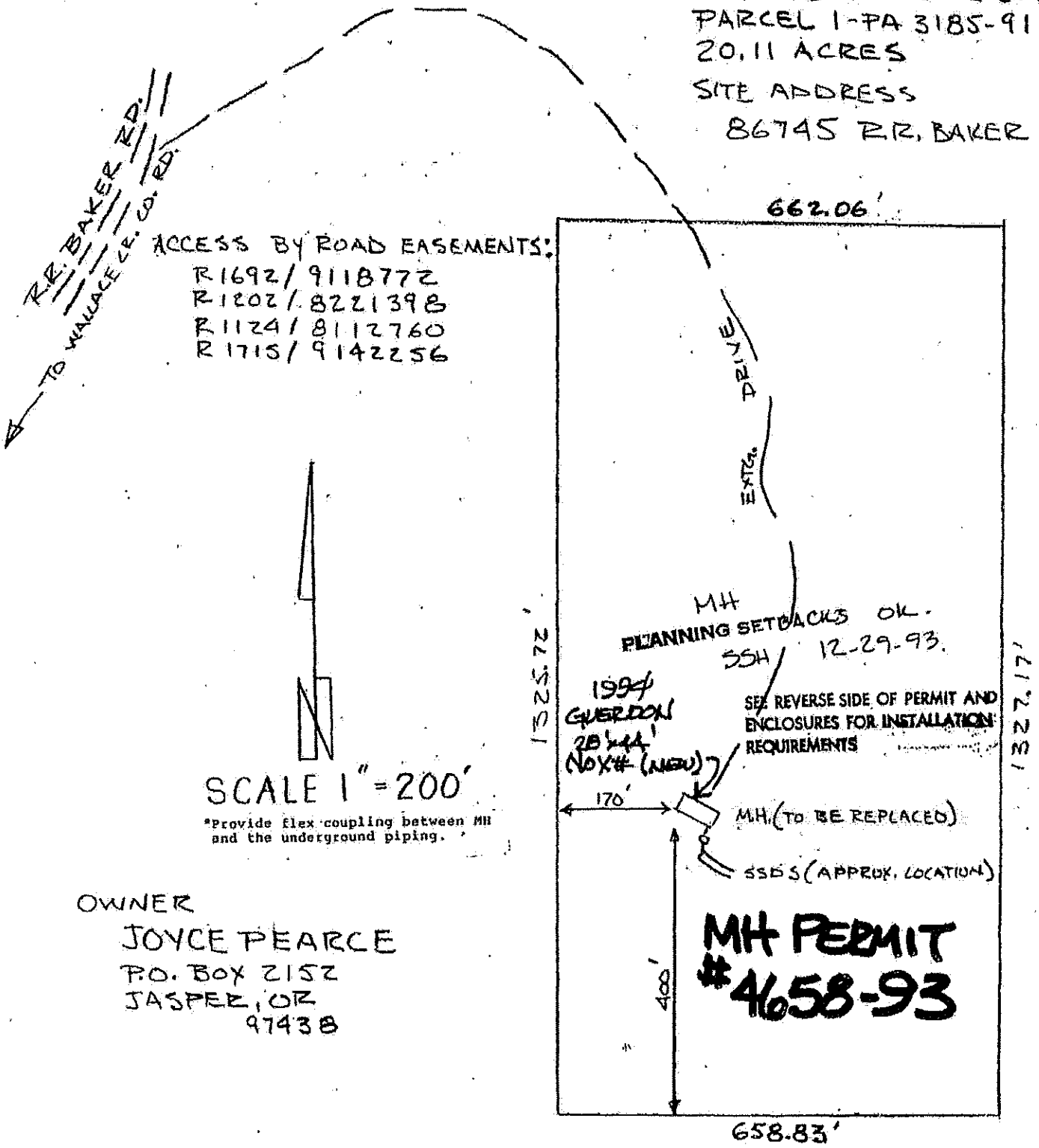
0952

001652

TR5

PLOT PLAN FOR REPLACEMENT MOBILE HOME

MAP 18-02-12 TL 303
PARCEL 1-PA 3185-91
20.11 ACRES
SITE ADDRESS
86745 R.R. BAKER RD.



ACCESS BY ROAD EASEMENTS:
R1692/911877Z
R1202/8221398
R1124/8112760
R1715/9142256

SCALE 1" = 200'

*Provide flex coupling between MH and the underground piping.

MH PERMIT #4658-93

OWNER
JOYCE PEARCE
P.O. BOX 2152
JASPER, OR
97438

0953

001653

NOTICE TO APPLICANT

TRS# 18-02-12/303 DATE ISSUED: 08-Jan-1994 PERMIT# 4658-93

OWNER'S NAME: Pearce, Joyce — PHONE NUMBER **NONE**

CONTRACTOR'S NAME: Pearce, Joyce CCB# **NONE** — PHONE NUMBER **NONE**

SETBACK REQUIREMENTS
PL FRONT: 20' PL SIDE: N/A INT 10' REAR 10' RIPARIAN N/A

WORK AUTHORIZED BY PERMIT:
Replacement Mobile/Manufactured Dwelling
1994, Guerdon, 28' by 44', X#=none (NEW)

SITE ADDRESS:
86745 R R Baker Rd., Springfield

The following list of inspections are required to be completed prior to occupying this mobile/manufactured home. It is recommended that the called inspections follow the order below.

NOTE: IF CONTINUOUS (STRIP) FOOTINGS ARE TO BE USED, THE MANUFACTURER'S INSTALLATION INSTRUCTIONS MUST BE ON THE JOB SITE AND AVAILABLE TO THE INSPECTOR TO RECEIVE AN INSPECTION AND APPROVAL FOR THE FOOTING - OR - THE FOOTINGS ESTABLISHED BY THE STATE OF OREGON MUST BE INSTALLED.

MOBILE HOME PLACEMENT INSPECTION

FINAL PLUMBING INSPECTION

SKIRTING INSPECTION

MH ELECTRICAL FEEDER INSPECTION

FINAL STATE ELECTRICAL INSPECTION

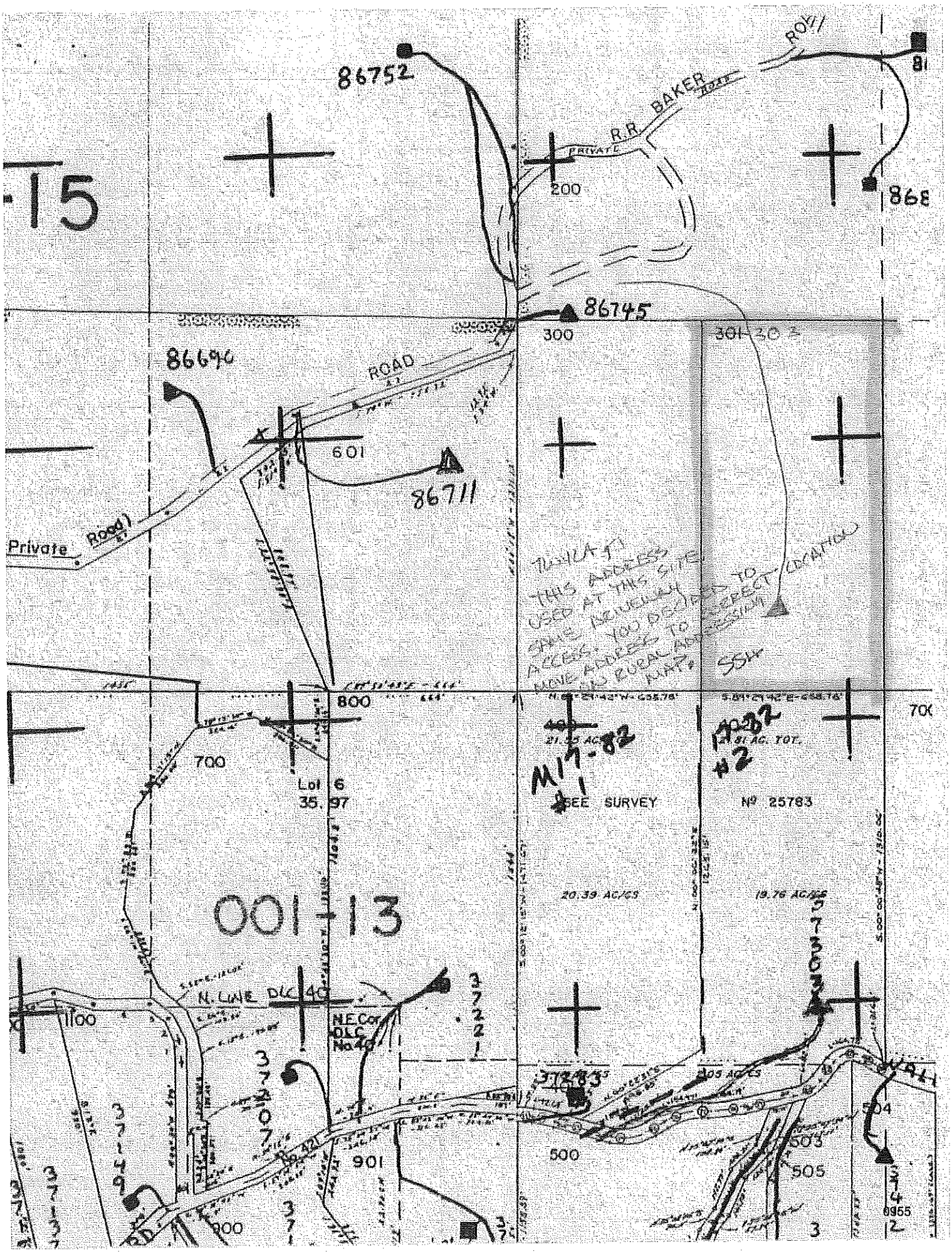
FINAL MOBILE HOME INSPECTION

Failure to secure an inspection within 180 days of the date issued - or - if the inspections lapse more than 180 days, prior to receiving final approval to occupy the mobile/manufactured home, will cause your permit to expire by limit. A new permit will then be required for the placement of your mobile home.

NOTE: A SEPARATE FACILITY PERMIT IS NEEDED PRIOR TO CONSTRUCTING ANY WORK WITHIN THE RIGHT-OF-WAY OF A ROAD UNDER COUNTY JURISDICTION. THIS INCLUDES DRIVEWAY APPROACHES, CULVERTS, UTILITY PLACEMENT, ETC. CALL THE LANE COUNTY PUBLIC WORKS DEPARTMENT AT 341-6900 FOR INFORMATION.

CALL 687-4065 TO REQUEST AN INSPECTION.

BUILDING SECTION / LAND MANAGEMENT DIV. / PUBLIC WORKS DEPARTMENT
Plans Review Program / 125 E. 8th Ave. / Eugene, Oregon 97401-2926


86752
R.R.
BAKER
PRIVATE
ROAD
200
86745
300
86696
ROAD
601
86711
Private
ROAD
800
700
Lot 6
35.97
001-13
N. LINE D.L.C. 40
N.E. Cor.
D.L.C.
No. 40
1100
900
901
500
505
503
SEE SURVEY
No 25783
20.39 AC/CS
19.76 AC/CS
21.85 AC/CS
24.81 AC. TOT.
M17-82
+2
SSH

T-2 (#3)

PARCEL RECORD - Cartographic Unit 201 478 609 Page of

Code Area	Township	Range	Section	¼	¼	Parcel Number	Type	Number
	18	02	12	0	0	00302		

Formerly part of 18-02-12-0-0-00300 & 00301

Map Number

Tax Lot Number

Special Interest

History of Parcel Prior to Re-mapping

Previous Account Number

Previous Tax Lot Number

PARTITION PLAT NO. 92-P0221

Parcel 2

Remarks

History of Parcel				
Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
NEW PARTITION PLAT	1992	C.S. File No. 30575		20.09
	1992	R1765/92	29119 WD	
	1994wd	R1945	9431265	
	2004 WD	2003	121873	
	2007WD	2006	087505	

150-303-050 (3-87)

0956

001656

ZONING : ML

WATER MASTER INDICATES NO WATER RIGHTS ON THIS PROPERTY. SEE REEL 1761 RECEPTION No. 92 25991 & 92 25992

SUBJECT TO:
EASEMENT FOR ACCESS ROAD RECORDED ON NOVEMBER 25, 1967, RECEPTION No. 5128.

EASEMENT FOR RIGHT-OF-WAY RECORDED ON AUGUST 12, 1980, RECEPTION No.'S 80-35433, 35434 & 35435.

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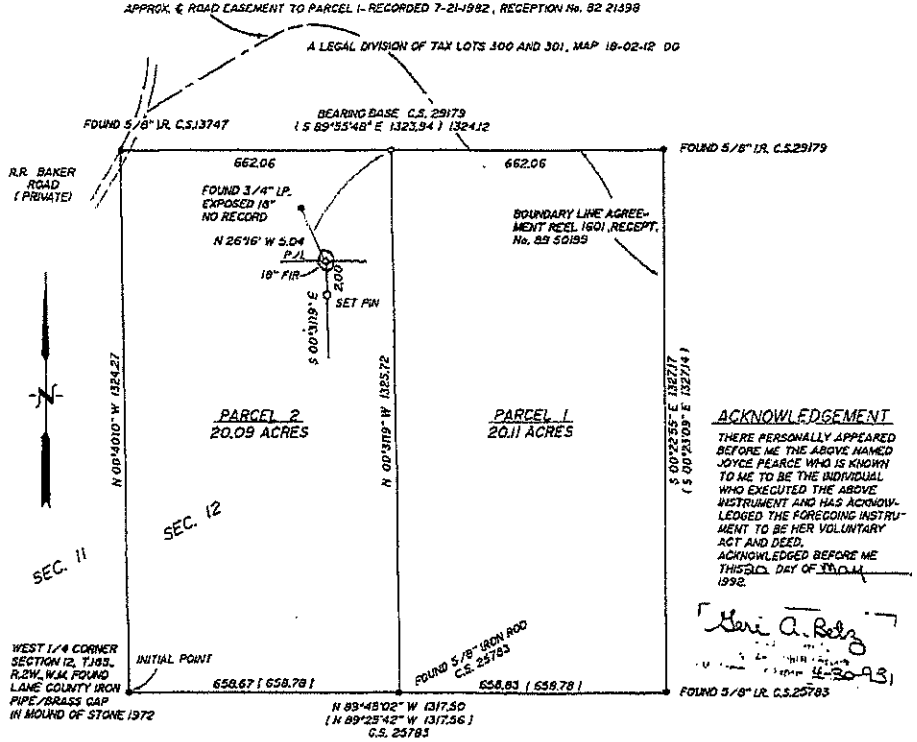
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APPROX. ℄ ROAD EASEMENT TO PARCEL 1- RECORDED 7-21-1982, RECEPTION No. 82 21398



- o SET 5/8" X 30" IRON ROD / RED PLASTIC CAP "L.S. 1103"
- ● MONUMENT FOUND AS NOTED
- ( ) RECORD DATA - C.S.29179
- [ ] RECORD DATA - C.S.25783

SURVEY NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO ESTABLISH THE DIVISION LINE BETWEEN PARCEL 1 AND PARCEL 2 AS SHOWN. ALL FOUR EXTERIOR CORNERS WERE FOUND AS SET BY PRIOR SURVEYS. PINS WERE SET TO DIVIDE THE PARCELS AS SHOWN.

ACKNOWLEDGEMENT

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ACKNOWLEDGED BEFORE ME THIS 30 DAY OF May 1992.

Teri A. Betz
NOTARY PUBLIC FOR OREGON
4-30-93

LAND PARTITION PLAT NO. 92-P0221

LANE COUNTY SURVEYORS OFFICE
C.S. FILE NO. 30575
FILING DATE 6-1-92 C

FILED
MAY 21 1992
COUNTY CLERK
By Julie Parker

PARTITION PLAT FOR JACK PEARCE

LOCATED IN THE
NW 1/4 OF SECTION 12
T.18 S., R.2 W., W.M.
MAY, 1992 SCALE 1"=200'
PA 3185-91

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David S. Swanson

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REGISTERED PROFESSIONAL LAND SURVEYOR
David S. Swanson
OREGON JULY 22, 1977 DAVID S. SWANSON 1103

OWNER'S DECLARATION

KNOW ALL MEN THAT JACK PEARCE, JOYCE PEARCE AND GERALD GRIES ARE THE OWNERS OF THE LAND DESCRIBED HEREON AND DID CAUSE THE SAME TO BE PARTITIONED AND PLATTED AS SHOWN HEREON ACCORDING TO THE PROVISIONS OF THE OREGON REVISED STATUTES, CHAPTER 92.

Jack B Pearce — JACK PEARCE
Joyce Pearce — JOYCE PEARCE
Gerald Gries — GERALD GRIES

ACKNOWLEDGEMENT

THERE PERSONALLY APPEARED BEFORE ME THE ABOVE NAMED JACK PEARCE WHO IS KNOWN TO ME TO BE THE INDIVIDUAL WHO EXECUTED THE ABOVE INSTRUMENT AND HAS ACKNOWLEDGED THE FOREGOING INSTRUMENT TO BE HIS VOLUNTARY ACT AND DEED.

ACKNOWLEDGED BEFORE ME THIS 14 DAY OF May 1992.

Teri A. Betz
NOTARY PUBLIC FOR OREGON
4-30-93

ACKNOWLEDGEMENT

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Teri A. Betz
NOTARY PUBLIC FOR OREGON
4-30-93

APPROVALS

John S. Patsch — May 20, 1992
FOR ROY BURNS, DIRECTOR, LAND MANAGEMENT DIVISION — DATE

K. Robert Eyll — 5-20-92
LANE COUNTY SURVEYOR — DATE

OWNERS: JACK & JOYCE PEARCE, 1390 HUGHES STREET, EUGENE, OREGON 97402
GERALD GRIES, 2382 NORTH 5th ST., SPRINGFIELD, OREGON 97477
SURVEYOR: CASCADE AERIAL MAPS AND SURVEYS, INC., 1090 BAILEY HILL ROAD, EUGENE, OREGON 97402

T. 2 (#2 of 3)

93272 0957

001657

lane county

PARTITIONER:

NAME: JEFF POWELL

ADDRESS: P.O. BOX 84

VENETA OR

PHONE: 935-7339

INTEREST IN PROPERTY:
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: John Charlton

ADDRESS: 37204 Wallace Ck Rd Sqmly

PHONE:

TAX ~~LOT~~ # 600 MAP #: 18-02-11 # 701 18-2

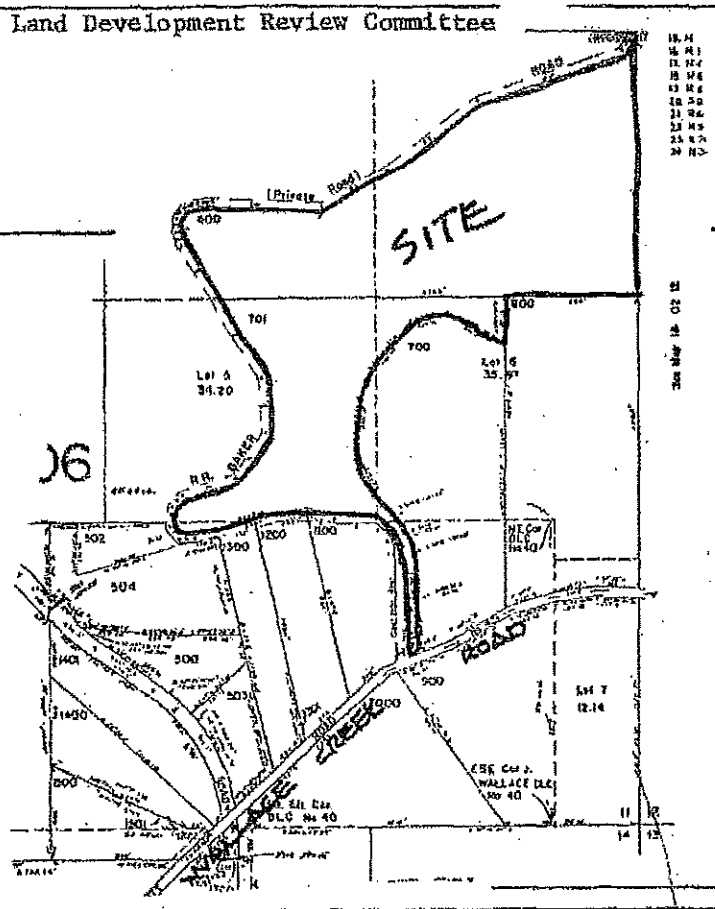
lower Middle Fork + Mike Evans

WATER SUPPLY: Wells
PERMIT #:
SEWAGE DISPOSAL: Subsurface
S.I. #:
ELECTRIC SERVICE: EPUD
ZONING: EFU-20

DATE SUBMITTED: 2-31-80
RECEIVED BY: GMC
FEE PAID: 142.00
HEARING DATE: April 2nd
for office use only

Approval

BY: _____ _____
Acting Chairman, Land Development Review Committee Date

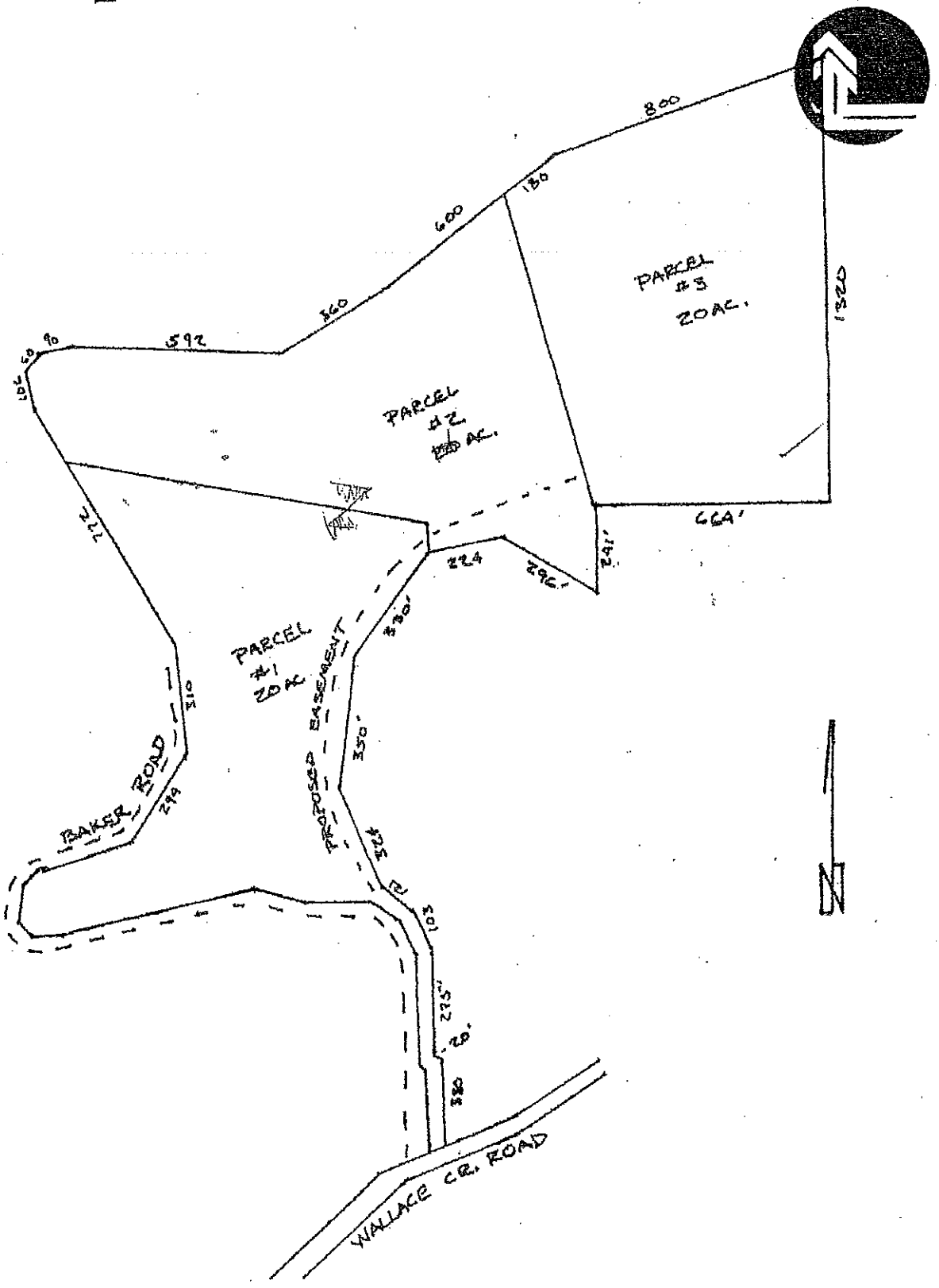


FILE NO: M43-81

☐ MINOR
☒ MAJOR

partition

lane county



SCALE: 1" = 400'

FILE NO: M 43-81

ENVIRONMENTAL MANAGEMENT DEPARTMENT / 125 EAST 8TH AVE. / EUGENE, OR 97401 / PHONE (503) 687-4188

9959

001659

lane county

June 22, 1982

Jeff Powell
Box 84
Veneta, OR 97487

RE: Final Approval -- Partition Application M 43-81

Final approval is hereby granted to the above referenced partition, inasmuch as all requirements and conditions of approval of the partition have been completed.

Attached is a copy of the recorded partition map for your records.

If we may be of assistance in the future, feel free to contact this office.

Very truly yours,

George M. Cressy

Acting Chairman
Land Development Review Committee

cc: Jack Thomas, Public Works
Jim Shrum, Surveyors
Mapping
Enclosure: 1 Copy of recorded map

8217934

ORIGINAL

lane county

PARTITIONER:

NAME: JEFF POWELL

ADDRESS: P.O. BOX 84

VENETA OR

PHONE: 935-7339

INTEREST IN PROPERTY: CONTRACT PURCHASER
(Indicate one: owner, contract purchaser, option holder, other)

OWNER OF RECORD:

NAME: John CARLSON

ADDRESS: 37207 WALLACE CK RD.

SPRINGFIELD OR.

PHONE:

TAX LOT: 701 600 MAP #: 18-02-11

RECEIVED JUN 16 1982 LANE COUNTY FARM/FOR

WATER SUPPLY: WELLS

PERMIT #:

SEWAGE DISPOSAL: ON SITE

ELECTRIC SERVICE: P.P.&L.

ZONING: E.F-20

TAX CODE: 001-03

DATE SUBMITTED: 2-31-80

RECEIVED BY: GMC

FEE PAID: $ 172.00

HEARING DATE: APRIL 2, 1981
for office use only

approval

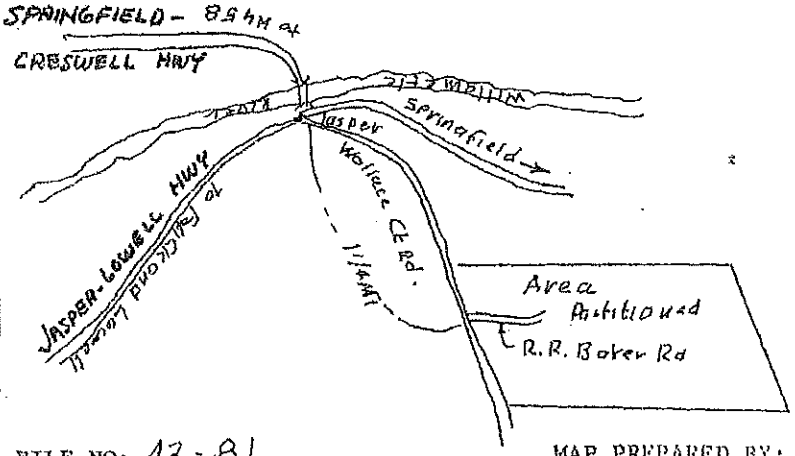
BY: George M. Cumin
Acting Chairman, Land Development Review Committee — June 3, 1982 Date

K. Robert Ezell
Lane County Surveyor — June 3, 1982 Date

Scott Tiemullen
Chairman, Board of County Commissioners — June 9, 1982 Date

vicinity map

APPROVED AS TO FORM
DATE 6/3/82
OF E... C...



REGISTERED PROFESSIONAL LAND SURVEYOR

OREGON
NOVEMBER 11, 1980
MALON L. WALDRON
527

FILE NO: 43-81

MAP PREPARED BY: M.L. Waldron

001661

821-34

ORIGINAL

☐ MINOR
☒ MAJOR

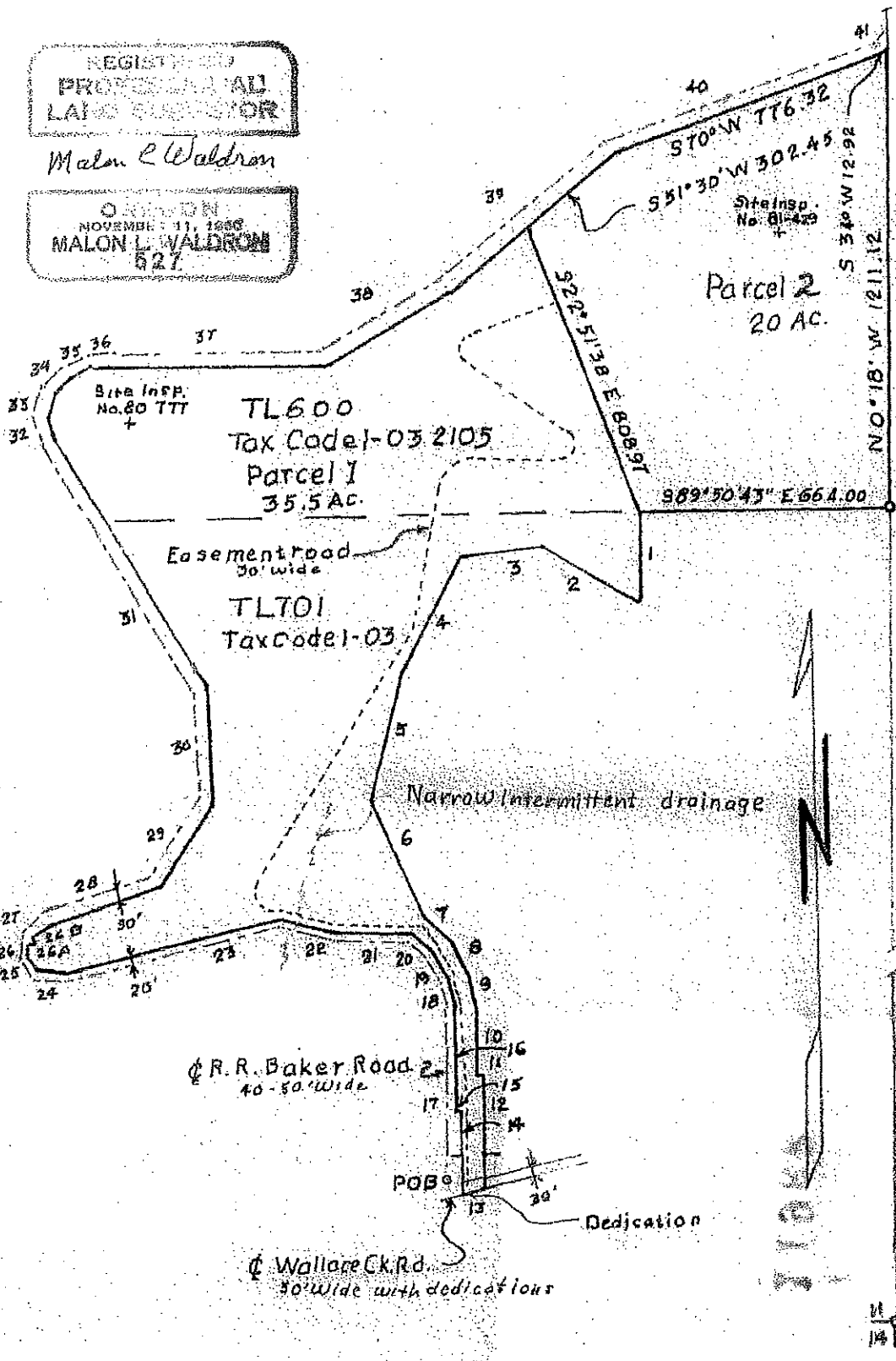
partition

lane county

Sec. 11 T 18 S, R 2 W TL 600 & T01

REGISTERED PROFESSIONAL LAND SURVEYOR
Malon L Waldron

OREGON
NOVEMBER 11, 1980
MALON L. WALDRON
527



Parcel 3 Boundary

1	South	241.16
2	N 59°39'43" W	303.11
3	N 81°48'42" W	227.72
4	S 27°44'37" W	346.73
5	S 14°40'51" W	339.14
6	S 22°40'44" E	328.44
7	S 52° E	110.54
8	S 26° E	103.29
9	S 12° E	92.88
10	S 0°30 E	174.96
11	East	20.00
12	S 0°30' E	292.52
13	S 67°33' 30 W	64.69
14	N 0°30' W	256.34
15	West	20.00
16	N 0°30' W	229.27

R.R. Baker Road

	℄		R/W - Bdry
17	N 0°30' W	470	
18	N 12° W	75	79.47
19	N 26° W	75	82.07
20	N 52° W	75	86.50
21	West	200	204.08
22	N 74° W	145	147.36
23	S 71° W	590	592.72
24	N 89° W	75	62.19
25	N 37° W	75	56.34
26	N 11° E	75	26A 29.06
			East 10.19
	N 11° E		26B 25.92
27	N 45° E	75	57.93
28	N 74°30 E	290	293.17
29	N 34° E	260	281.40
30	N 4° W	274	291.55
31	N 31° W	775	778.25
32	N 16° W	75	63.01
33	N 14° E	75	59.76
34	N 41° W	75	60.32
35	N 69° W	75	63.04
36	N 86° E	75	69.34
37	S 89°30 E	355	562.40
38	N 60° E	372	382.41
39	N 51°30 E	564	561.48
40	N 10 E	774	776.25
41	N 34° E	43.02	12.92
41	N 34 E	(10)	

SCALE: 1" = 400'

FILE NO.: 43-81

0962

PLANNING DIVISION / ENVIRONMENTAL MANAGEMENT DEPARTMENT / 125 EAST 8TH AVE / EUGENE [illegible] 401 / PHONE (503) 687-4186

001662

Petition

MINOR ☐
MAJOR ☒

Lane County

Parcel 3 Boundary

Parcel 3
20 Ac

Parcel 1
TL 600

Easement Road

TL 100
Tax Code 1-03

Road

Reel 1198R

Lane County OFFICIAL Records.

D.M. Penfold, Director of Records and Elections Division.

By _____ Deputy

C30-53

State of Oregon,
County of Lane—ss.

I, D.M. Penfold, Director of Records and Elections Division, in and for the said County, do hereby certify that the within instrument was received for record at

JAN 82 11: 22

0963

T-2 (#4)

Lane County Assessment & Taxation
Property Information Search

This public site contains the most commonly requested Assessment & Taxation information on property located within Lane County.

Most information is updated weekly.

For copies of tax statements, please go to http://apps.lanecounty.org/TaxStatement/Search.aspx.

To view tax maps, visit http://apps.lanecounty.org/TaxMap/Search.aspx.

This site is for general public use only. It is not intended for commercial use.

NEW! Commercial Appraisal Cards are now available online for Lane County properties.

To access the commercial appraisal card click on the map/taxlot link (*if available*).

Start Over

Account Number 1388998 **Map, Tax Lot &** SIC **18-02-11-00-00601**
Site Address 86711 R R BAKER RD SPRINGFIELD OR 97478
Taxpayer Address PO BOX 2074 JASPER, OR 97438
Additional Account Numbers for this Tax Lot 1388998

Owner Information

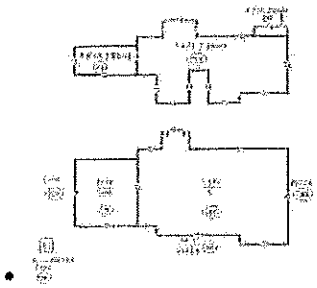
Owner	Address	City State Zip
QUINN ROCKY D	PO BOX 2074	JASPER, OR 97438

Account Type	Real Property	**Special Assessment Program**	
Account Acreage	5.00	no data available	
Pending Property Change	NO	**Taxlot Record**	1802110000601
		Commercial Appraisal Card	n/a
Property Class	Tract		

Assessor's Photos & Sketches

Click on any of the photo/sketch thumbnails to view and download the image full-size (opens in new window). Once in full-size view, use your browser "File>Save (Page) As" menu to download to your computer.

About Assessor Sketches/Photos



0

1

Property Value and Taxes

Real Market Value (RMV)			Total Assessed Value
Year	Land	Improvement	Total	
2018	$87,986	$872,021	$960,007	$648,703

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$648,703	** $6,990.29	00113

**The tax shown is the amount certified for the current tax year. It does not reflect any subsequent value changes, nor does it include any discounts offered, payments made, interest owing, or previous year's owing.

Residential **Building #1 (of 1)** If there are multiple dwellings, building characteristics will display for only one of the dwellings.

See Verification of Replacement Rights PA 98-5159, replacing 1982 house

Year Built	1999
Percent Complete as of Jan 1st	100

Floor	Base Sq Ft	Finished Sq Ft
Basement	N/A	N/A
First	2403	2403
Second	1574	1574
Attic	368	368
Total	4345	4345

Structure	Sq Ft
Bsmt Garage	N/A
Att Garage	728
Det Garage	1200
Att Carport	N/A

Commercial Building None

Generated by on Apr 5, 2019 at 9:47pm using Regional Land Information Database, https://www.rlid.org/

Lane County
Public Works
LAND MANAGEMENT DIVISION

Date Rec'd. 9-29-98
Deemed Complete on 9-30-98
Date Issued: 9-30-98
Days Waived None
Total Processing Days: 1

Land Use Decision By The Planning Director
Within The
Non-Impacted Forest Land Zone

Department File No.:	**PA 98-5159**
Property Owner:	**Rocky Quinn**
Agent:	**Same**
Property Address:	**86711 RR Baker Road Springfield, Oregon 97478**
Zoning:	**Impacted Forest Lands F2/RCP**
Map & Tax Lot Numbers	**18-02-11 TL 601**

Proposal: Planning Director Approval to allow a Replacement Residence at the same location on the property (expanded footprint) within the Impacted Forest Land Zone, F2/RCP.

General description of the property and the structure for which a "Lawfully Established Dwelling" verification is being requested:

The subject property is approximately 20 acres in size and located at 86711 RR Baker Road, Springfield, Oregon #97478. According to the records reviewed in the Land Management property files, a valid mobile home placement permit was issued for the subject property and received a final inspection on February 24, 1982. According to the applicant's submittal, the mobile home has remained on the property and occupied from 1982 until the present date. Mobile Home Placement Permit 81-2367 validates the applicant's submittal.

The subject parcel is currently designated Forest Land in the Lane County Rural Comprehensive Plan and is Zoned Impacted Forest Land, F2/RCP, consistent with that designation. The owner's of the property intends to replace the residence at the same development site (expanded footprint) as the previous residence and the replacement residence will be connected to the existing sewage disposal system. The replacement site will not require the removal of any commercial timber species or disturbance of an agricultural area under cultivation.

See the attached plot plan with the location of the structure drawn on it.

The purpose of this report is to verify if the above referenced structure complies with the requirements of ORS 660 Division 33 and Lane Code 16.210 and therefore qualifies as a "lawfully established dwelling" with rights for alteration, repair or replacement. Based on the findings in this report, the above referenced structure:

x **Is a "lawfully established dwelling" with rights for alteration, repair and replacement. An explanation of what the rights for alteration, repair and replacement entail is included at the end of this report.**

☐ **Is not a "lawfully established dwelling" with rights for alteration, repair and replacement.**

1. **The above referenced structure has been "lawfully established" as a dwelling. "Lawfully established" is interpreted to mean that at the time the dwelling was established, its establishment complied with any zoning and land use regulations applicable to the subject property or its establishment predated any zoning and land use regulations applicable to the subject property.**

   The subject property is currently zoned Impacted Forest Land, F2/RCP. Because the residential use of the property was established legally with the placement of a legal mobile home (BP81-2367) and because the mobile home has remained on the property until the present date, this request meets the requirements of OAR 660-06-025(3)(p) and the residence (mobile home) in question qualifies as lawfully established with rights for replacement at the same exact location (expanded footprint) on the property.

2. **The above referenced structure has intact exterior walls and roof structure.**

   The applicant's statement is accepted as evidence that the residence (mobile home) in question has in tact exterior walls and a roof structure.

3. **The above referenced structure has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system.**

   The applicant's statement is accepted as evidence that the residence in question has indoor plumbing, a kitchen sink, a toilet and bathing facilities connected to a sanitary waste disposal system. Final inspection on the sewage disposal system was completed on December 4, 1981.

4. **The above referenced structure has interior wiring for interior lights.**

   The applicant's statement is accepted evidence that the residence in question has wiring for interior lighting.

5. **The above referenced structure has a heating system.**

   The applicant's statement is accepted as evidence that the residence had central heating.

Prepared By: _____ **Date:** 9/30/98
Donnalee Newman/Associate Planner

0967

001667

Exhibit "A"

Conditions: PA 98-5159 **Lawfully Established SFD**

Approval of this request is supported by findings of fact that establish compliance with all applicable criteria of Lane Code 16.211 and OAR 660 Division 33. This Planning Director Decision is subject to the following conditions of approval:

1. Approval of Permit PA 98-5159 will be valid for a two year period from the final date of approval of September 30, 1998. Lane County may grant an extension period of up to 12 months if: (a) An applicant makes a written request for an extension of the development approval period; (b) The request is submitted to the county prior to the expiration of the development approval period; (c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; (d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons which the applicant was not responsible. Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. Additional one year extensions may be authorized where applicable criteria for the decision have not changed.

2. Any proposed placement or construction permit for a dwelling or mobile home on the subject property shall be submitted to the Building Official within the two-year time period authorized in Condition #1 above. In the event the legal owners fail to apply for a building permit within the two-year period the development rights conditionally allowed by PA98-5159 shall cease unless the legal owners have complied with the extension provisions in Condition #1 above.

3. The proposal must meet all applicable building codes and Department of Environmental Quality requirements for on site sewage disposal requirements.

4. A new residence or mobile home shall have a fire retardant roof.

5. If the mobile home or residence has a chimney, the chimney shall have a spark arrester.

6. The existing, lawfully established dwelling shall be removed from the parcel within 90 days following the final inspection for legal occupancy of the replacement dwelling by the Building Official.

7. Applicant shall contact Don Nickell for the required Fuel Break Inspection as per 98-5160 682-3989.

approved 10/14/98 DRussell

0968

001668

T-2 (#5)

#167767 I0974-3

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES 18-02-11

OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON 1-08 600

YEAR	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	DEED RECORD VOL.	DEED RECORD PAGE	ACRES REMAINING
	6-3	11	18 S.	E. ___ OR W. 2 W. M.	255	636	
					287	89	

YEAR	BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION		
1944 1946			Beginning at the quarter corner between Sections 11 and 12, Township 18 South, Range 2 West of the Willamette Meridian, thence		
	West	2120 ft	to the right of way of private road, thence following said private road as per survey, leaving stated right of way to the 40 corner on ½ section line between Sections 11 and 12, thence		
	South	1320 ft	to place of beginning, containing acres more or less, in Lane County Oregon.		40
1977			Beginning at the ¼ corner corner between Sec 11 & 12, Twp 18 S, R 2 W of the WM; thence	R847/29697 R847/29698 R848/30960	
1982	West	2120 ft	along the North line of Lots 5 & 6 of sadi Sec 11 to the East line of	R1200/82-20160	
1981 1982			private roadway; thence following East line to said right of way to a point opposite the NE corner to the SE¼ of the NE¼ of said Sec 11; thence leaving said right of way	R1132/81-17513 R1200/82-20161	
	East		to the Sec line between Sec 11 & 12; thence		
	South	1320 ft	to the point of beginning, in Lane County, Oregon.		
			EXCEPT: 20.01 acres to parcel 601 by R1200/82-20162 for 1982.		
			Cont. m/1		19.99
1984			Beginning at the quarter corner between Sections 11 and 12, Twp18S, R2W of the WM; thence	R1275/83-46855 R1300/84-24122	
1988	West	2120 ft.	along the North line of Lots 5 and 6 of said Sec.11, to the East line of a	R1515/8821013	
1993 CO	East		Private roadway; thence following line of said right of way to a point opposite the Northeast corner of the Southeast 1/4 of the Northeast 1/4 of said Sec.11; thence leaving said right of way	R1877/9356920 R1928/9411133 R1909/9386859	
1993 WD					

CANCELLED 84

CANCELLED 11

0969

001669

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON

YEAR	TAX LOT NO.	SECTION	TOWNSHIP S.	RANGE E. OR W. W. M.	DEED RECORD VOL. PAGE	ACRES REMAINING

BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION
East		to the Section line between Sections 11 and 12; thence
South	1302 ft.	to the Point of Beginning, in Lane Co., Oregon. EXCEPT: Beginning at the East quarter corner of Section 11, Twp18S, R2W of the WM; run thence
N0°18'W	1211.12 ft.	along the East line of said Sec. 11 to its intersection with the Southerly right of way line of the R.R. Baker Private Road, said point marked by a 1/2 inch iron rod; thence
S34°W	12.92 ft.	to a 1/2 inch iron rod; thence
S70°00'W	776.32 ft.	to a point marked by a 1/2 inch iron rod; thence
S51°30'W	302.45 ft.	to a 1/2 inch iron rod; thence
S22°58'30"E	808.97 ft.	to a 1/2 inch iron rod; thence
S89°50'43"E	664.00 ft.	to the Point of Beginning, all in Lane County, Oregon.
		Cont. m/1

19.99

0970

001670

T-2 (#5)

8346855

16

DEED

MARVIN G. DENNIS and DONALD J. McKENDREE, Grantors, convey to ARNE V. WILJANEN and BETTE J. WILJANEN, husband and wife, as Grantees, all of Grantors' right, title and interest in and to that parcel of real property in Lane County, Oregon described in Exhibit A which is attached hereto and by this reference expressly incorporated herein.

This deed is a conveyance absolute in effect as well as in form and conveys all of Grantors' right, title and interest and to the real property described above to the Grantees and does not operate as a mortgage, trust conveyance or security of any kind.

This deed does not effect a merger of the fee ownership and a lien of the fee ownership and the lien of the mortgage from Jeffry W. Powell to Arne V. Wiljanen and Bette J.Wiljanen, husband and wife, dated April 21, 1981, recorded April 22, 1981, Reel No. 1132, Reception No. 81-17512 in Lane County Oregon Records. The fee and lien shall hereafter remain separate and distinct.

By acceptance of this deed, Grantees convenant and agree that they will forebear taking any action whatsoever against Grantors, other than by foreclosure, on a certain mortgage from Jeffry W. Powell in favor of Grantees, dated April 21, 1981, recorded April 22, 1981, at Reel No. 1132, Reception No. 81-17512, in Lane County, Oregon, given to secure a certain promissory note for the sum of $32,000. Further, Grantees agree not to seek, obtain or permit a deficiency judgment against Grantors, their heirs or assigns, such rights and remedies being hereby waived.

Without limiting the generality of the foregoing conveyance, it is the specific intent of Grantors to, and Grantors do hereby convey, surrender, waive and relinquish to Grantees any equity of redemption and statutory rights of redemption concerning the real property and mortgage described above.

Grantors are not acting under any misapprehension as to the legal effect of this deed, nor under any duress, undue influence or misrepresentations of Grantees, their agents or attorneys or any other person.

The true and actual consideration for this transfer is other value 30750001 12/12/83 REC 16.00
#V001**

Marvin G. Dennis
MARVIN G. DENNIS

Donald J. McKendree
DONALD J. McKENDREE

1 - DEED

097

8346855

STATE OF WASHINGTON)
) ss.
County of SKAGIT)

Before me personally appeared the above named Marvin G. Dennis and acknowledged his signature to be his voluntary act and deed. Dated this 7th day of Nov, 1983.

Robert A. Hammond
Notary Public for Washington
My Commission Expires: 1984

STATE OF WASHINGTON)
) ss.
County of SKAGIT)

Before me personally appeared the above named Donald J. McKendree and acknowledged his signature to be his voluntary act and deed. Dated this 7th day of Nov, 1983.

Robert A. Hammond
Notary Public for Washington
My Commission Expires: 1984

8346855

PARCEL 1

Beginning at a point in the center line of the County Road No. 421, which point is 1195.5 feet West and 792.5 feet North of the corner of Sections 11, 12, 13 and 14, Township 18 South, Range 2 West of the Willamette Meridian, and running thence North 00° 30' West 494 feet; thence North 12° West 75 feet; thence North 26° West 75 feet; thence North 52° West 75 feet; thence West 200 feet; thence North 74° West 145 feet; thence South 77° West 590 feet; thence North 89° West 75 feet; thence North 37° West 75 feet; thence North 11° East 75 feet; thence North 45° East 75 feet; thence North 74 1/2° East 295 feet; thence North 24° East 260 feet; thence North 4° West 274 feet; thence North 31° West 474 feet to a point 2120 feet West of the quarter section corner between Sections 11 and 12 of said Township; all of the above being the centerline of a private road 40 feet in width; thence East leaving the private road 2120 feet to the said quarter section corner between Sections 11 and 12; thence South along the section line 1544 feet to the center line of the County Road No. 421; thence Southwesterly along the center line of County Road No. 421, 1250 feet, more or less, to the point of beginning, in Lane County, Oregon;

EXCEPTING THEREFROM all of the said private roadway;

ALSO EXCEPTING an additional strip of land 20 feet in width of the beginning or Southern end of said private roadway 224 feet in length, said strip fronting on the County Road No. 421, 20 feet and extending 224 feet along and on the East side of said private road;

ALSO EXCEPTING THEREFROM: Beginning at a point 664.00 feet West and 241.16 feet South 0° 42' 30" East from the East 1/4 corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian, in Lane County, Oregon; run thence North 60° 06' 30" West 296.31 feet; thence South 78° 13' 30" West 224.76 feet; thence South 36° 17' 15" West 350.08 feet; thence South 6° 30" West 350.24 feet; thence South 25° 10' 40" East 324.57 feet to a point 80 feet from the centerline of an existing private road; thence run parallel with said road as follows: South 52° 00' East 121.02 feet; thence South 26° 00' East 103.30 feet; thence South 12° 00' East 92.88 feet; thence South 0° 30' East 183.49 feet; thence perpendicular to said road North 89° 30' East 20.00 feet; thence parallel with said road South 0° 30' East 380.37 feet to the center of County Road No. 421; thence along the center of said road as follows: North 68° 30' East 161.58 feet; thence North 59° 15' East 312.36 feet; thence leave said road and run North 0° 42' 30" West 1321.10 feet parallel with the East line of said Section 11, to the point of beginning, in Lane County, Oregon;

ALSO EXCEPT THEREFROM that portion of said property conveyed to August Wendt, et ux, recorded March 7, 1944, Reception No. 132313, Lane County Oregon Deed Records, Lane County, Oregon;

ALSO EXCEPT THEREFROM that portion described in dedication of public road to Lane County, Oregon, as political subdivision of the State of Oregon, recorded June 28, 1982, Reception No. 8218718, Lane County Oregon Records.

EXHIBIT A

001673

8346855

Property description - continued

PARCEL 2

Beginning at the quarter corner between Sections 11 and 12, Township 18 South, Range 2 West of the Willamette Meridian; thence West along the North line of Lots 5 and 6 of said Section 11, 2120 feet to the East line of private roadway; thence following East line of said right of way to a point opposite the Northeast corner of the Southeast 1/4 of the Northeast 1/4 of said Section 11; thence leaving said right of way East to the Section line between Sections 11 and 12; thence South 1320 feet to the point of beginning, in Lane County, Oregon.

EXCEPT FROM THE ABOVE DESCRIBED PARCELS 1 AND 2:
Beginning at the East quarter corner of Section 11, Township 18 South, Range 2 West of the Willamette Meridian; run thence North 0° 18' West 1211.12 feet along the East line of said Section 11 to its intersection with the Southerly right of way line of the R. R. Baker Private Road, said point marked by a 1/2 inch iron rod; thence South 34° West 12.92 feet to a 1/2 inch iron rod; thence South 70° 00' West 776.32 feet to a point marked by a 1/2 inch iron rod; thence South 51° 30' West 302.45 feet to a 1/2 inch iron rod; thence South 22° 58' 30" East 808.97 feet to a 1/2 inch iron rod; thence South 89° 50' 43" East 664.00 feet to the point of beginning, all in Lane County, Oregon.

8346855

State of Oregon,
County of Lane--ss.

I, the County Clerk, in and for the said County, do hereby certify that the within instrument was received for record at

12 DEC 83 15: 03

Real 12 157R

Lane County OFFICIAL Records.
Lane County Clerk

By: _____ Deputy

C 30-53

T-2 (#6)

LAND MANAGEMENT DIVISION

LAND USE APPLICATION
Legal Lot Verification

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401 Planning: 682-3807

For Office Use Only. FILE # PA075919 CODE: ALLV56 FEE: ~~$653.13~~ 331.52

Applicant (print name): LAND PLANNING CONSULTANTS

Mailing address: 1071 HARLOW RD. SPRINGFIELD, OR 97477

Phone: 726-8523 Email:

Applicant Signature: Michael P. Evans

Land Owner (print name): JAMES A. SMETKAL

Mailing address: PO BOX 2114, JASPER, OR. 97438-0299

Phone: 510-1079 Email:

Land Owner Signature: SEE ATTACHED

Zone: EZ

PROPERTY LOCATION

REVISED

18-02-11	400 (PARCEL 3)	N/A	12.90 ac.	
Township/Range Section	Tax lot	Subdivision/partition	lot/parcel	block

N/A
Site address

REQUIRED SUBMITTALS

- The property description card. This is available in the Assessment and Taxation Department.
- Submit every deed listed on the description card. Deeds are available at the Deeds & Records Office.
- The tax map for the subject property. This is available in the Assessment and Taxation Department.
- The applicable fee. The fee for the legal lot research is based on the number of deeds on the description card. When multiple legal lots are discovered in a single application, the fee is half the applicable base fee for each additional legal lot.
- This application form.

DEEMED 7/30/07

This review is a preliminary determination and is not a land use decision. It is based on the evidence available at the time of the application. Until notice is sent, this preliminary determination may change based on new evidence. Because this is not a final decision, it can not be appealed.

Version 11-05

FINAL PARCEL 5 ACRES

USE ONLY 3RE PLATS P. 3

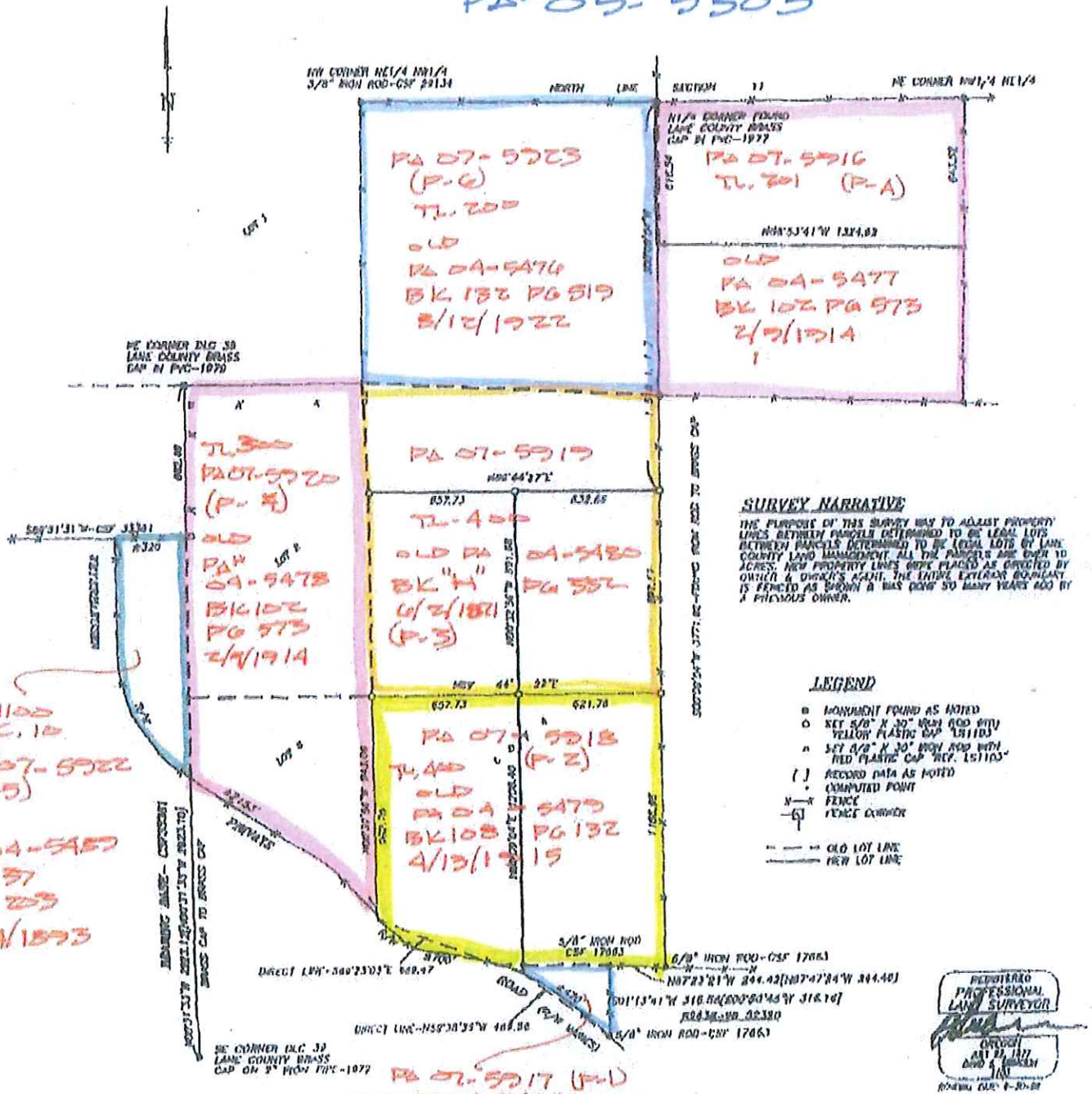
THE REVISED 12.9 AC PARCEL P. 4

0975

MAP OF SURVEY
FOR
DOUG & DEBBIE WOLF
IN THE NE1/4, NW1/4, SW1/4 & SE1/4
SECTION 11, T.18S., R.2W., WM
JULY, 2007

ORIGINAL PARCELS

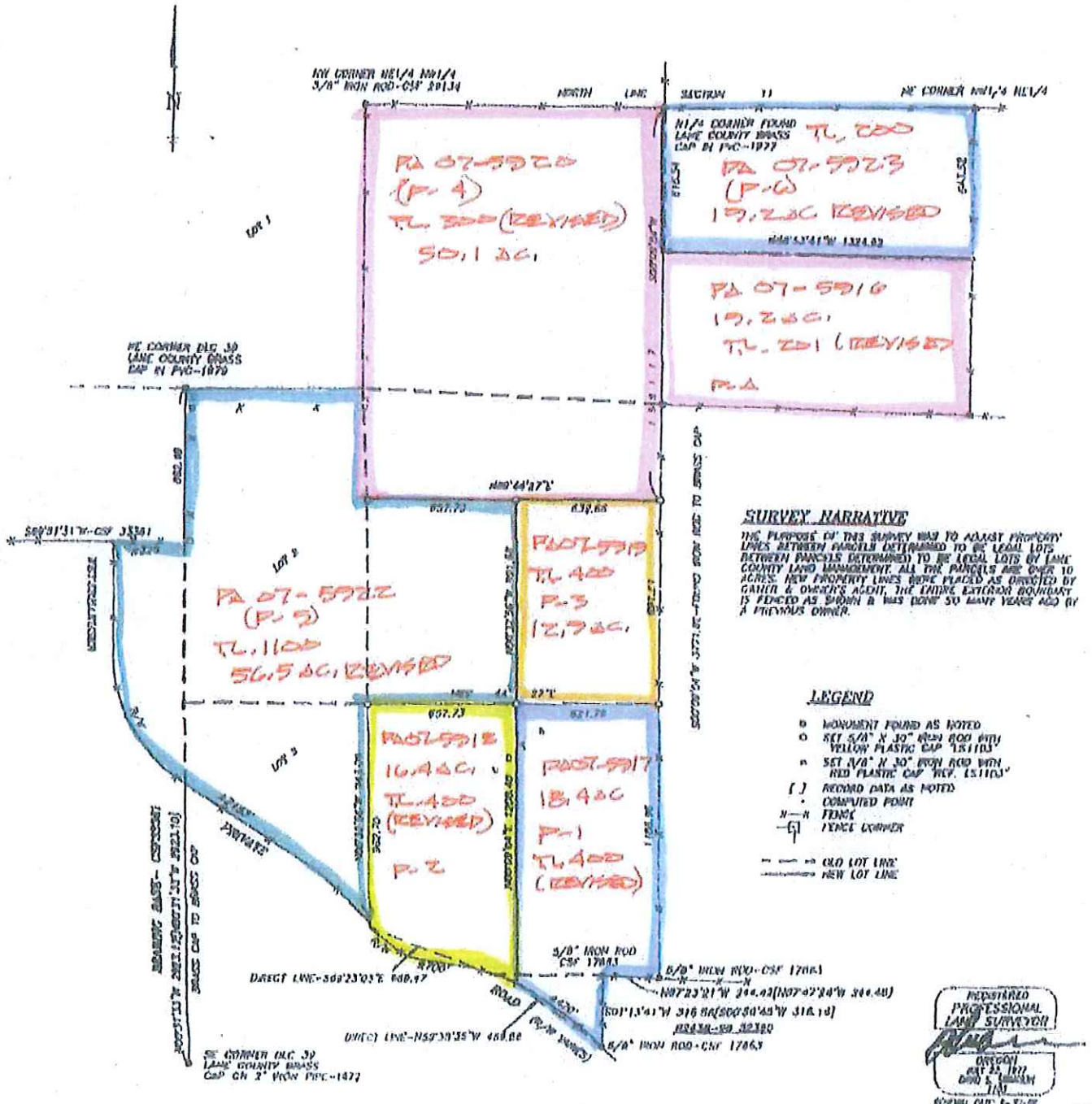
NOTICE ON ALL
PA#05-5303



07/31/07 TUE 15:44 [TX/RX NO 7036] 0976

MAP OF SURVEY
FOR
DOUG & DEBBIE WOLF
IN THE NE1/4, NW1/4, SW1/4 & SE1/4
SECTION 11, T.16S., R.2W., WM
JULY, 2007

REVISED PARCELS



PARCEL RECORD – Cartographic Unit

1820651 Page 1 of

Code Area	Township	Range	Section	¼	1/16	Parcel Number	Type	Number
	18	02	11	0	0	00404		

Formerly part of 18-02-11-00-00401

Map Number / Tax Lot Number / Special Interest

History of Parcel Prior to Re-mapping

Previous Account Number	Previous Tax Lot Number

Remarks

History of Parcel

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
NEW PARCEL	2008 LLA	2007	049979	12.70
	20108S	2010	010590	
Acreage Correction	2011			12.98
New Description	2011 LLA			15.91

T-2

#6

0978

001678

T. 2 #7

LAND MANAGEMENT DIVISION

LAND USE APPLICATION
Legal Lot Verification

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401 Planning: 682-3807

For Office Use Only: FILE # PA 75920 CODE: ALLV5b FEE: $ 683.75 331.57

Applicant (print name): LAND PLANNING CONSULTANTS

Mailing address: 1071 HARLOW RD. SPRINGFIELD, OR 97477

Phone: 726-8573 Email:

Applicant Signature: Michael P. Evans

Land Owner (print name): JAMES A. SMEJKAL

Mailing address: PO BOX 2114, JASPER, OR. 97438-0299

Phone: 510-1079 Email:

Land Owner Signature: SEE ATTACHED

Zone: EZ

PROPERTY LOCATION

18-02-11 ~~200~~ 300 (PARCEL 4) N/A REVISED 50.1 AC.

TownshipRange Section Taxlot Subdivision/partition lot/parcel block

N/A

Site address

REQUIRED SUBMITTALS

- The property description card. This is available in the Assessment and Taxation Department.
- Submit every deed listed on the description card. Deeds are available at the Deeds & Records Office.
- The tax map for the subject property. This is available in the Assessment and Taxation Department.
- The applicable fee. The fee for the legal lot research is based on the number of deeds on the description card. When multiple legal lots are discovered in a single application, the fee is half the applicable base fee for each additional legal lot.
- This application form.

THE REVISED 50.1 AC. PARCEL AFTER THE DEED, IS A LEGAL LOT

This review is a preliminary determination and is not a land use decision. It is based on the evidence available at the time of the application. Until notice is sent, this preliminary determination may change based on new evidence. Because this is not a final decision, it can not be appealed.

PLOP

USE 3RD & 4TH. 5TH AFFECTS P-3 7/30/07

~~FINAL FOR 4~~

FINAL FOR 4

P-4

E: 2

0979

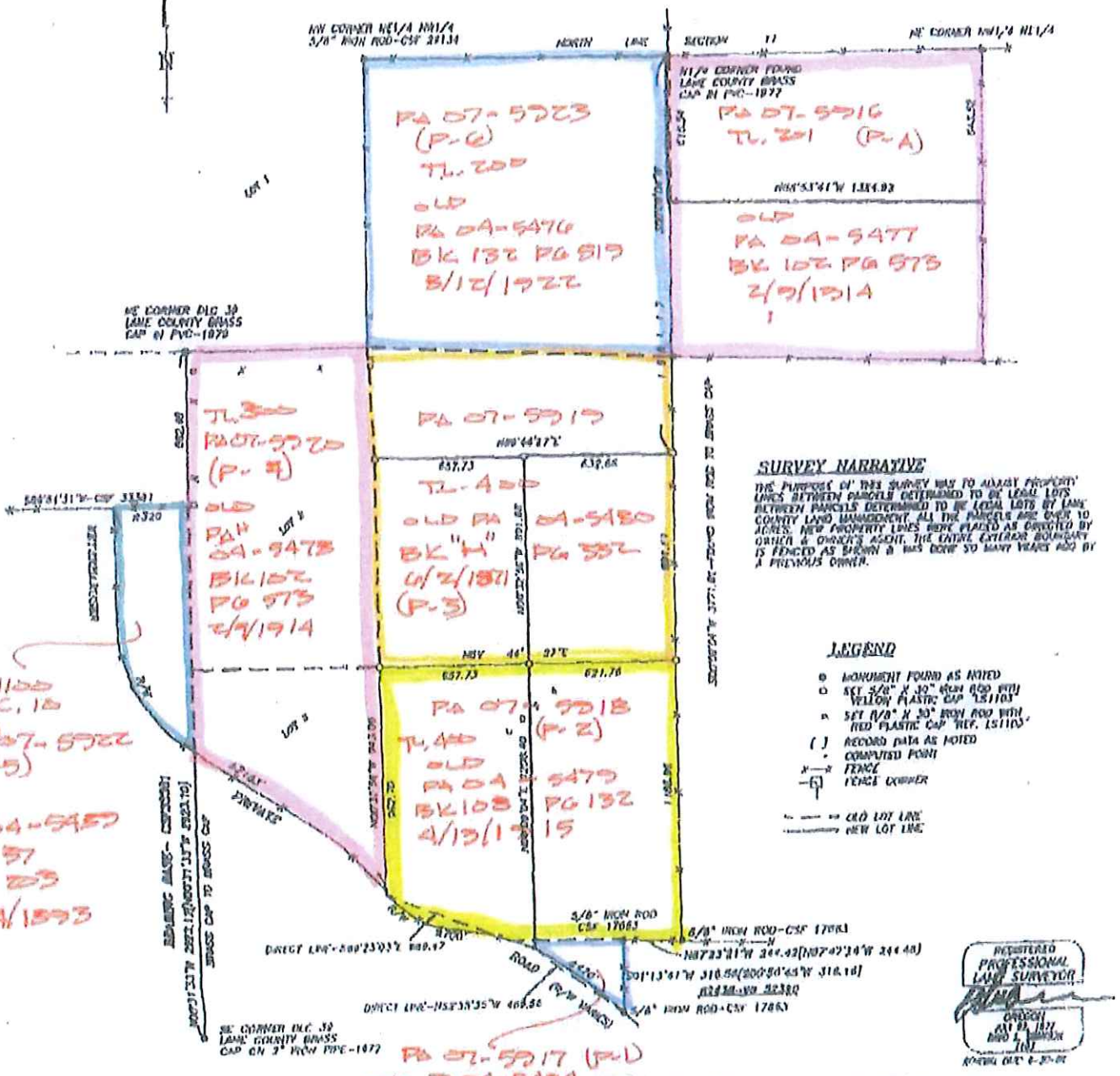
001679

LANE COUNTY ASSESSOR'S OFFICE
CS FILE NO.
FIELD BOOK

MAP OF SURVEY
FOR
DOUG & DEBBIE WOLF
IN THE NE1/4, NW1/4, SW1/4 & SE1/4
SECTION 11, T.18S., R.2W., WM
JULY, 2007

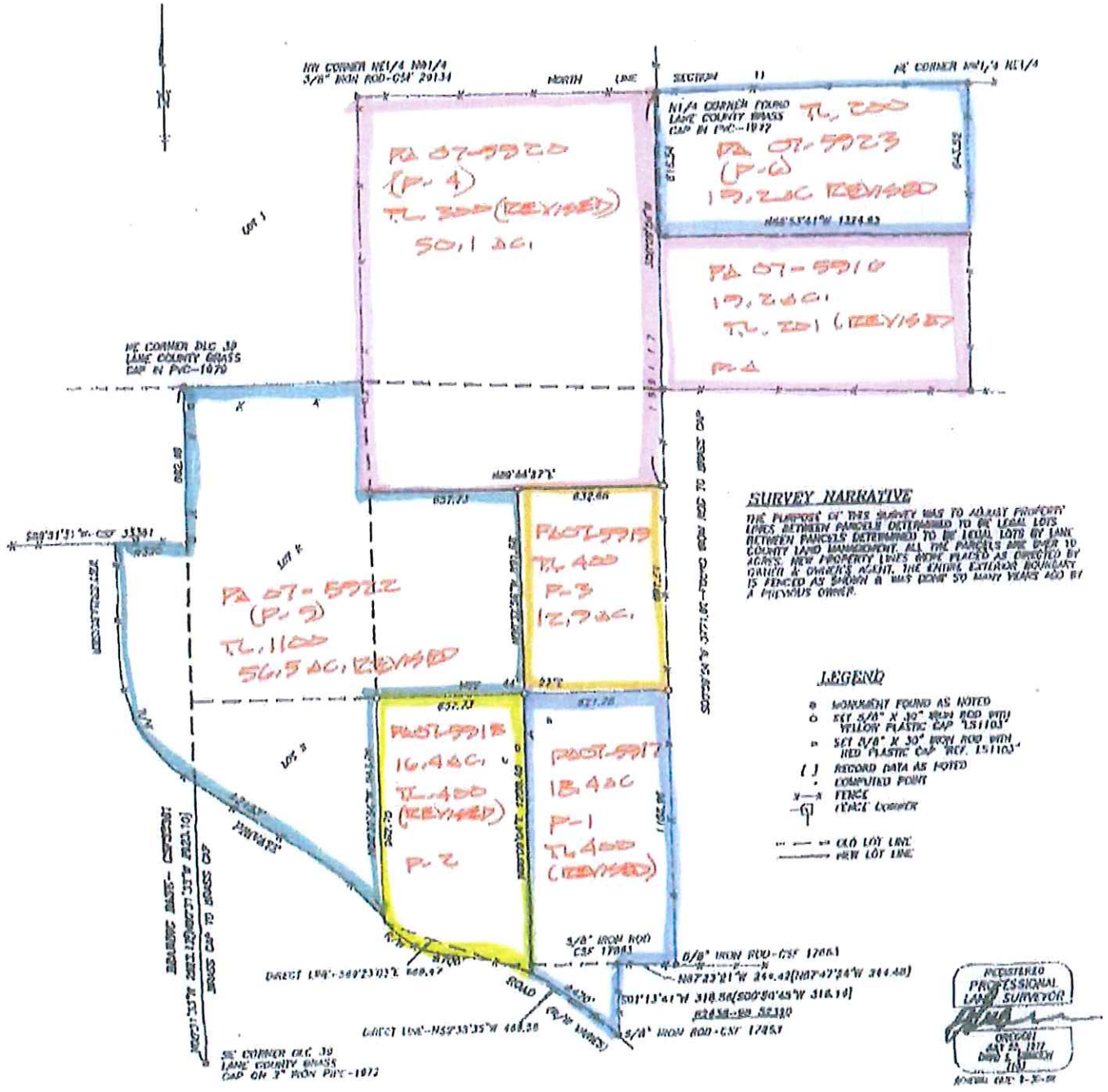
ORIGINAL PARCELS

NOTICE ON ALL
PA#05-5303



MAP OF SURVEY
FOR
DOUG & DEBBIE WOLF
IN THE NE1/4, NW1/4, SW1/4 & SE1/4
SECTION 11, T.18S., R.2W., WM
JULY, 2007

REVISED PARCELS



May 6, 2004
42142 NW Palace Dr
Banks, OR 97106

TO: LANE COUNTY PLANNING

I authorize Land Planning Consultants to make application for permits on property located in Township 18s Range 02 Sections 10, 11, 13 & 14 in Lane County, Oregon.

James A. Smejkal

0982

001682

LAND MANAGEMENT DIVISION

Date: July 30, 2007

APPLICANT:
Land Planning Consultants
1070 Harlow Road
Springfield, Oregon 97477

OWNER:
James Smejkal
P.O. Box 2114
Jasper, Oregon 97438-0299

PA: 07-6920

RE: Report and Verification of a Legal Lot

Tax Map: 18-02-11-00 Taxlot: 300 (revised 50.1 acre parcel)

A more exact description by reference to Deed or Land Sales Contract Is Document No. 2007-049979; 2007-049980; and 2007-049981

Based upon the Findings provided in this report, the above referenced property **constitutes a preliminary legal lot**. A legal lot means:

1. Ownership to this property may be conveyed with the assurance that such a conveyance would not require approval by Lane County land division regulations; and
2. Upon the completion of the "Final Notice" process, Lane County will recognize this property as a legally separate unit of land for the purposes of development. Nevertheless, development will still be subject to applicable zoning, sanitation, access, and building regulations.

(A **Preliminary Legal Lot Determination** establishes the legality of the creation of this unit of land. Lane County makes no claim as to ownership, title or boundary location).

Findings

1. The subject property was revised as a separate parcel on July 23 2007

   See attached instrument(s) Document No. 2007-049979; 2007-049980; and 2007-049981

2. The creation of the subject property as a separate parcel complied with all effective land division, zoning and comprehensive plan regulations, and it therefore constitutes a legal lot:

   a. Land division regulations:

   ☒ There were land division regulations in effect governing the creation of this parcel, and the creation of this parcel was specifically exempted by these regulations from compliance because This property line adjustment is allowed per O.R.S. Chapter 92 for 4 legal lots. The original parcel, TL 300, has been determined to be a final legal lot by the Lane County Planning Department, see the preliminary legal lot verification on PA# 04-5478, and notice of the final legal

LANE COUNTY OREGON
PUBLIC WORKS
LAND MANAGEMENT DIVISION

lot on PA# 05-5303. The other parcels that are affected by the property line adjustment are as follows: TL 400, has been previously determined to be a legal lot, see the preliminary legal lot verification on PA# 04-5480, and notice of final legal lot on PA# 05-5303; TL 1100 of Map No. 18-02-10, has been previously determined to be a legal lot, see the preliminary legal lot verification on PA# 04-5489, and notice of final legal lot on PA# 05-5303; and TL 200, has been previously determined to be a legal lot, see the preliminary legal lot verification on PA# 04-5476, and notice of the final legal lot on PA# 05-5303. All of the parcels met the Land Use Laws in effect at the time of their creation.

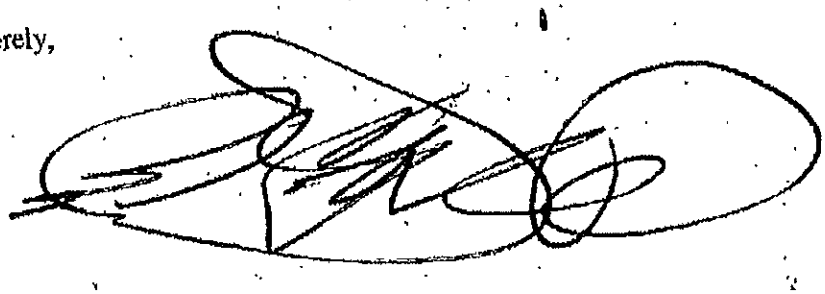
b. Zoning regulations:

☒ When the subject parcel was created, there were the following zoning regulations in effect which the parcel complied with because the original and revised parcel is substandard to the F-2 zone. Lane County Planning Department policy allows property line adjustments of substandard parcels to remain substandard, therefore this revised parcel meets the zoning requirements.

c. Additional Comments:
The requirements of the State Law for Property line adjustments per O.R.S. Chapter 92 have been completed. Enclosed are copies of the recorded Property line Adjustment documents. No survey is required because the affected parcels are both over 10 acres in size, per O.R.S. Chapter 92. There does not appear to be access. Please contact the Lane County Planning Department for more information on the access issue.

This Legal Lot Verification report is a **preliminary** indication that the above referenced property, as further designated on the enclosed map, is preliminarily a legal lot. The final legal lot decision will be made at the time of "Application for Notice," which is a notice that is sent to adjacent property owners per L.C. 13.020. Please be aware that if the boundary of this preliminary legal lot changes by the time a permit or application requiring a legal lot is submitted, then a new Legal Lot Verification will be required."

Sincerely,

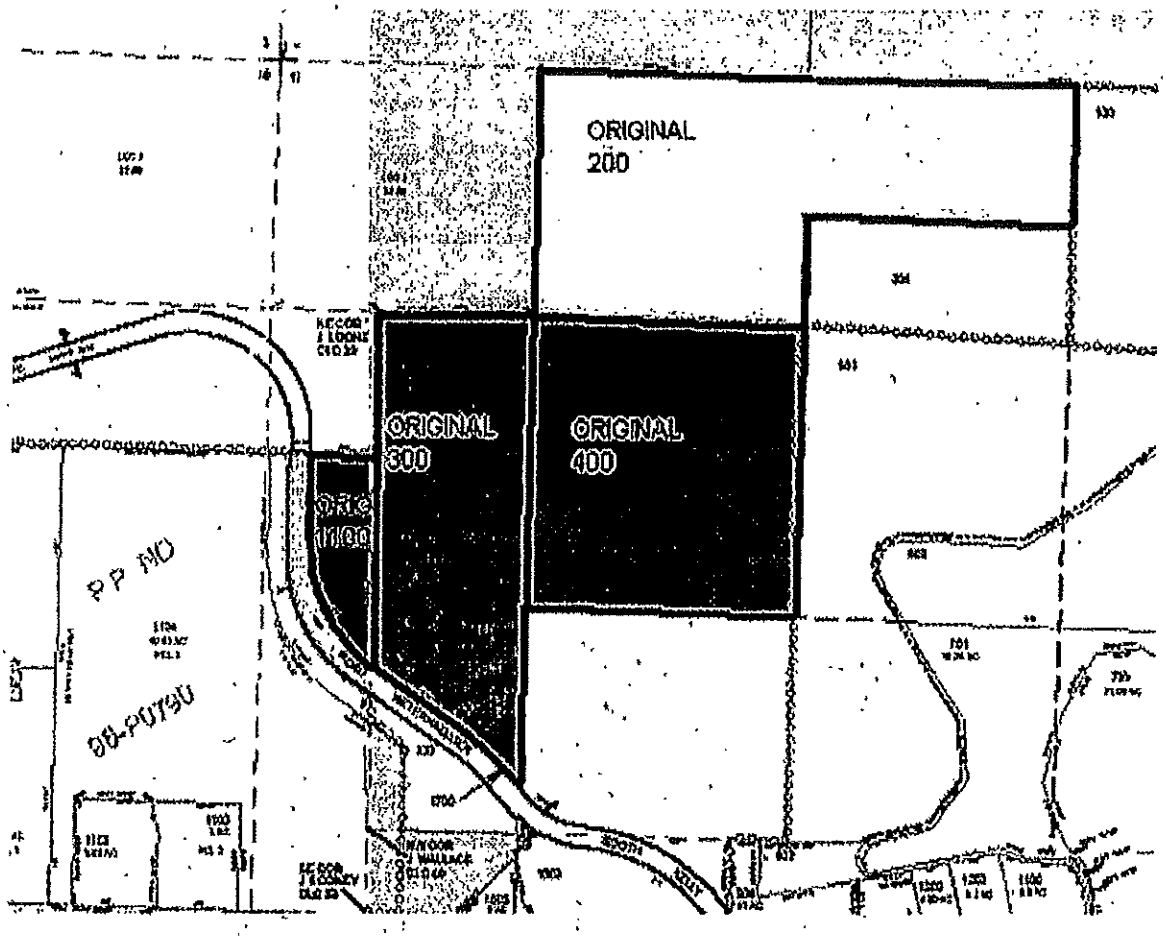


D. G. NICKELL, P.L.S.O.
Engineering Associate
541-682-3989

ATTACHMENTS//CC: TRS File

LANE COUNTY OREGON
PUBLIC WORKS
LAND MANAGEMENT DIVISION

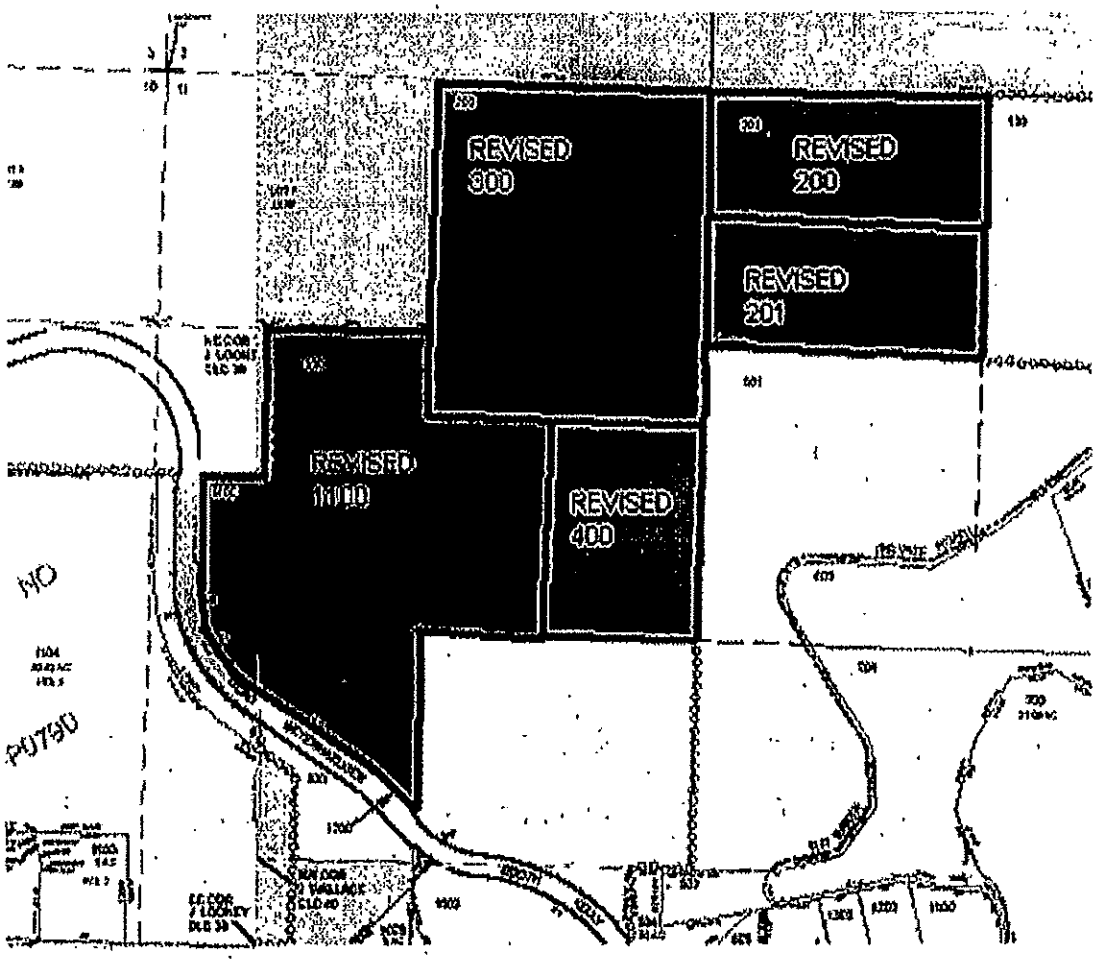
THE CONFIGURATION OF THE ORIGINAL PARCEL PRIOR TO THE PROPERTY LINE ADJUSTMENT



LAND MANAGEMENT DIVISION / PUBLIC WORKS DEPARTMENT / 125 EAST 8TH AVENUE / EUGENE, OREGON 97401 / FAX 541-682-3947
BUILDING (541- 682-3823 / PLANNING (541) 682-3807 / SURVEYORS (541) 682-4195 / COMPLIANCE (541) 682-3741
100% Recycled Unbleached paper – 50% Post-Consumer Content

LANE COUNTY OREGON
PUBLIC WORKS
LAND MANAGEMENT DIVISION

THE CONFIGURATION OF THE PARCEL AFTER THE PROPERTY LINE ADJUSTMENT



LAND MANAGEMENT DIVISION / PUBLIC WORKS DEPARTMENT / 125 EAST 8TH AVENUE / EUGENE, OREGON 97401 / FAX 541-682-3947
BUILDING (541- 682-3823 / PLANNING (541) 682-3807 / SURVEYORS (541) 682-4195 / COMPLIANCE (541) 682-3741
100% Recycled Unbleached paper – 50% Post-Consumer Content

Division of Chief Deputy Clerk
Lane County Deeds and Records

2007-049979

$41.00

00927180200700489790040048

07/23/2007 10:43:17 AM

RPR-DEED Cnt=1 Stn=6 CASHIER 07
$20.00 $11.00 $10.00

After Recording Return To:

Send Tax Statements To:
James A. Smejkal
P.O. Box 2114
Jasper, OR 97438-0299

DECLARATION OF PROPERTY LINE ADJUSTMENT

This Declaration of Property Line Adjustment is the second in a series of four (2 of 4) property line adjustments recorded to relocate the boundaries between six commonly owned parcels of land, OWNED BY JAMES A. SMEJKAL.

The purpose of the second property line adjustment is to move a common boundary line between Parcel 3 and Parcel 4 according to Lane County Land Use Regulations and ORS 92.190.

The deed reference for Parcel 3 is the deed recorded June 2, 1871 on Book H Page 332 Lane County, Oregon Deed Records. Parcel 3 was determined to be a legal lot by Lane County Planning Action Number PA 04-5480.

The deed reference for Parcel 4 is the warranty deed recorded February 9, 1914 on Book 102, Page 573 Lane County, Oregon Deed Records. Parcel 4 was determined to be a legal lot by Lane County Planning Action Number PA 04-5478.

Following this property line adjustment the legal description for Parcel 3 is described on Exhibit 'A'.

Following this property line adjustment the new adjusted boundary between Parcel 3 and Parcel 4 is underlined on the description of Parcel 3 attached as Exhibit 'A'.

A sketch of this adjustment is attached as Exhibit 'B'.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352."

The True Consideration For This Conveyance is None.

Date: 7/23/07 Declarant: James A. Smejkal by Robert A Smejkal

James A. Smejkal
By Robert A. Smejkal
His Attorney in Fact

STATE OF OREGON)
)ss.
County of Lane)

On July 23, 2007 personally appeared before me the above named Robert A. Smejkal as Attorney in Fact for James A. Smejkal and acknowledged the foregoing instrument to be his voluntary act and deed.

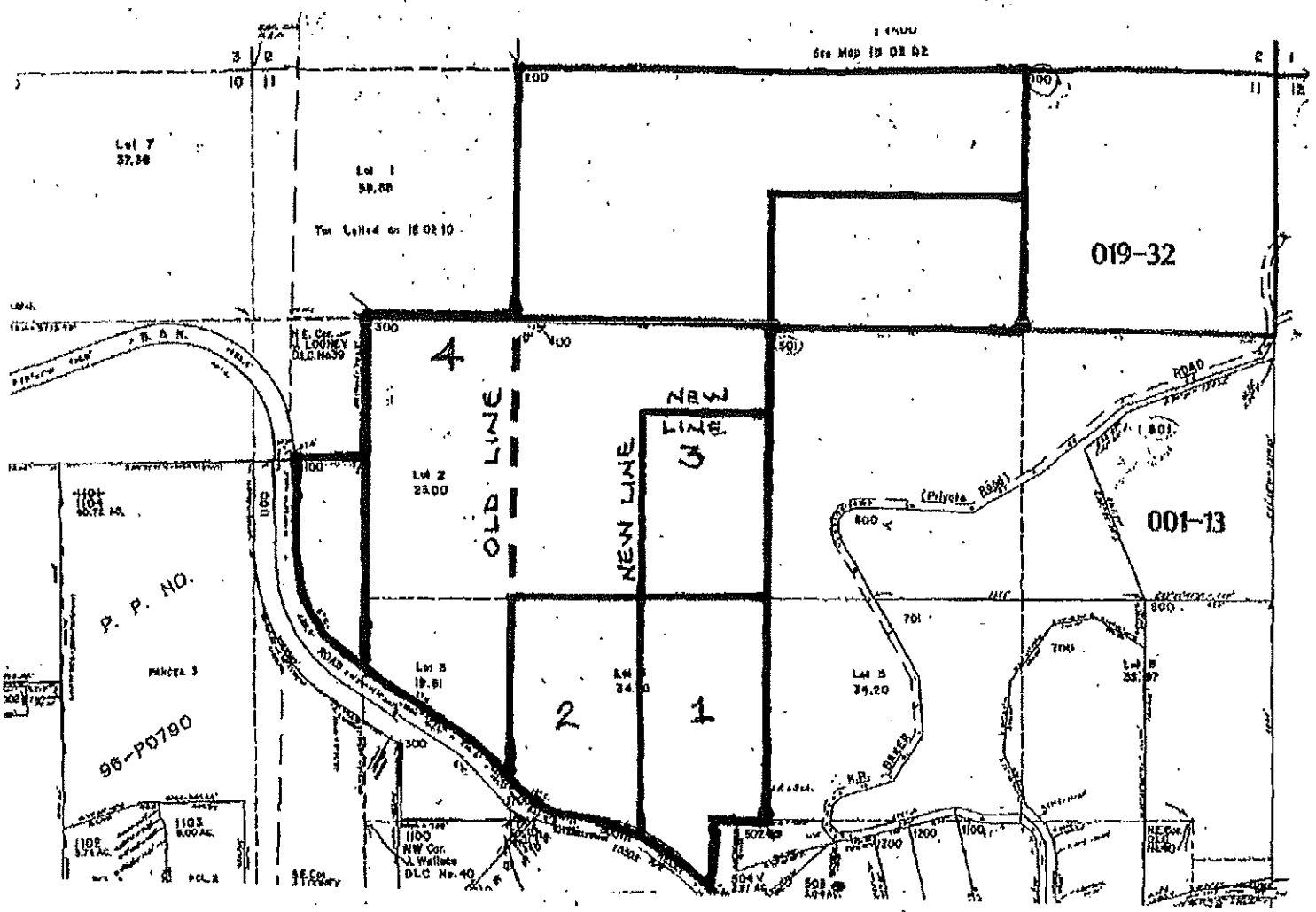
OFFICIAL SEAL
ANNETTE KAYSER
NOTARY PUBLIC - OREGON
COMMISSION NO. 414086
MY COMMISSION EXPIRES APRIL 3, 2011

Annette Kayser
Notary Public for Oregon
My Commission Expires: 4/3/11

EXHIBIT A
PARCEL 3

BEGINNING AT A BRASS CAP MARKING THE NORTH 1/4 CORNER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE S00°09'04"W A DISTANCE OF 1691.17 FEET TO A 5/8" IRON ROD BEING THE **TRUE POINT OF BEGINNING,** THENCE, CONTINUING S00°09'04"W A DISTANCE OF 891.69 FEET TO A 5/8" IRON ROD, THENCE S89°44'27"W A DISTANCE OF 621.76 FEET TO A 5/8" IRON ROD, THENCE N00°32'56"W A DISTANCE OF 891.68 FEET TO A 5/8" IRON ROD, THENCE N89°44'27"E A DISTANCE OF 632.66 FEET TO THE **TRUE POINT OF BEGINNING,** ALL IN LANE COUNTY, OREGON.

RENEWAL DATE: 6-30-08



ADJUSTMENT 2.

EXHIBIT 'B'

0990

Division of Chief Deputy Clerk
Lane County Deeds and Records

2007-049980

$41.00

00927182200700499800040044

07/23/2007 10:43:17 AM

RPR-DEED Cnt=1 Stn=6 CASHIER 07
$20.00 $11.00 $10.00

After Recording Return To:

Send Tax Statements To:
James A. Smejkal
P.O. Box 2114
Jasper, OR 97438-0299

DECLARATION OF PROPERTY LINE ADJUSTMENT

This Declaration of Property Line Adjustment is the third in a series of four (3 of 4) property line adjustments recorded to relocate the boundaries between six commonly owned parcels of land, OWNED BY JAMES A. SMEJKAL.

The purpose of the third property line adjustment is to move a common boundary line between Parcel 4 and Parcel 5 according to Lane County Land Use Regulations and ORS 92.190.

The deed reference for Parcel 4 is the deed recorded February 9, 1914 at Book 102 Page 573 Lane County, Oregon Deed Records as adjusted by the previous step two of this series property line adjustment recorded this date.

The deed reference for Parcel 5 is the warranty deed recorded July 14, 1893 at Book 37, Page 203 Lane County, Oregon Deed Records. Parcel 5 was determined to be a legal lot by Lane County Planning Action Number PA 04-5489.

Following this property line adjustment the legal description for Parcel 5 is described on Exhibit 'A'.

Following this property line adjustment the new adjusted boundary between Parcel 4 and Parcel 5 is underlined on the description of Parcel 5 attached as Exhibit 'A'.

A sketch of this adjustment is attached as Exhibit 'B'.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352."

The True Consideration For This Conveyance is None.

Date: 7/23/07 Declarant: James A. Smejkal by Robert A Smejkal

James A. Smejkal
By Robert A. Smejkal
His Attorney in Fact

STATE OF OREGON)
)ss.
County of Lane)

On July 23, 2007 personally appeared before me the above named Robert A. Smejkal as Attorney in Fact for James A. Smejkal and acknowledged the foregoing instrument to be his voluntary act and deed.

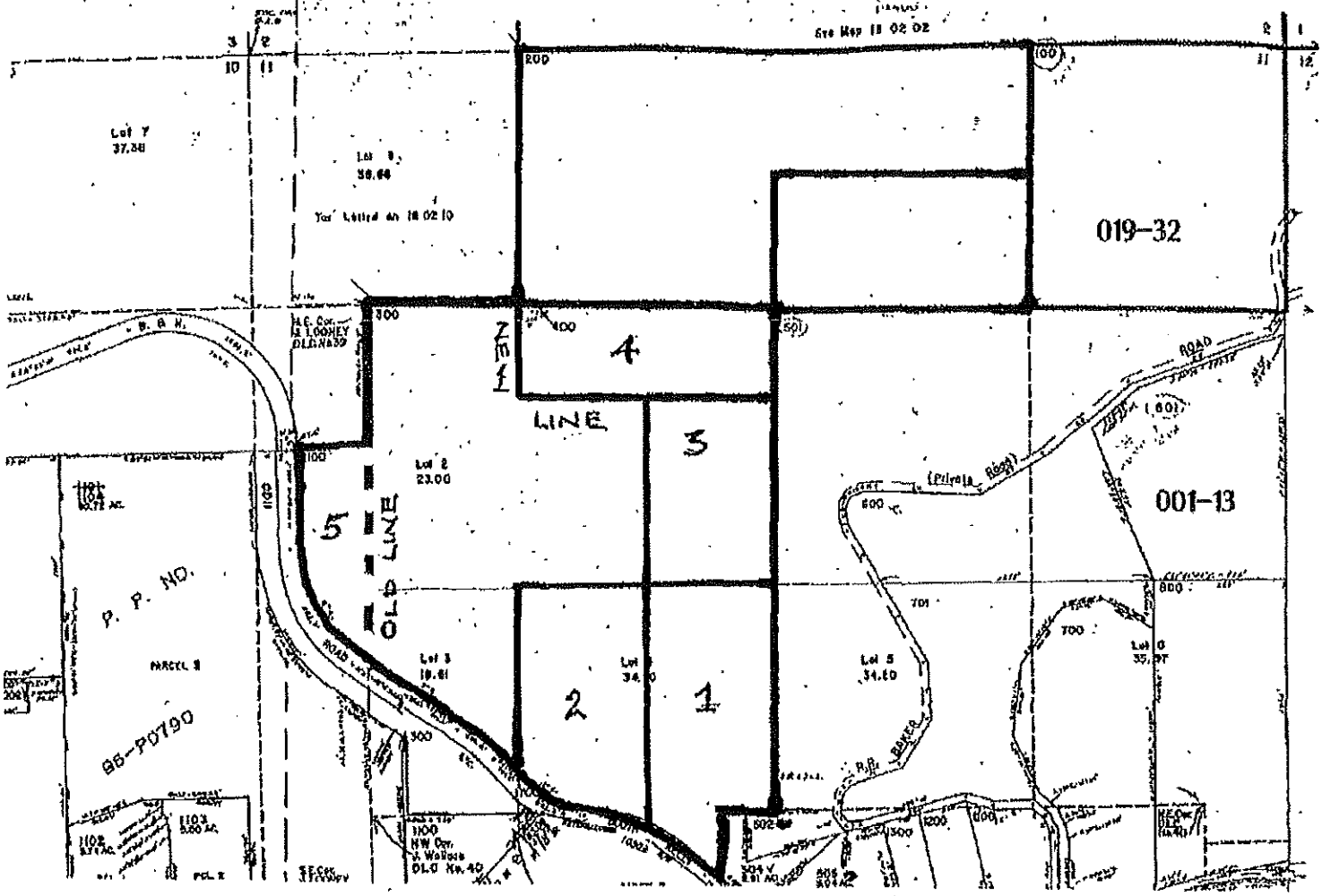
OFFICIAL SEAL
ANNETTE KAYSER
NOTARY PUBLIC - OREGON
COMMISSION NO. 414086
MY COMMISSION EXPIRES APRIL 3, 2011

Annette Kayser
Notary Public for Oregon
My Commission Expires: 4/3/11

EXHIBIT A
PARCEL 5

BEGINNING AT A BRASS CAP MARKING THE NORTH 1/4 CORNER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE WEST ALONG THE NORTH LINE OF SAID SECTION 11 TO THE NORTHWEST CORNER OF THE NE ¼ OF THE NW ¼ OF SAID SECTION 11, THENCE SOUTH TO THE SOUTHWEST CORNER OF SAID NE ¼ OF THE NW ¼ OF SAID SECTION 11 BEING THE **TRUE POINT OF BEGINNING,** THENCE WEST TO A BRASS CAP MARKING THE NORTHEAST CORNER OF DONATION LAND CLAIM NO. 39, THENCE S00°31'33"E ALONG THE EAST LINE OF SAID DLC NO. 39 A DISTANCE OF 662.49 FEET, THENCE S89°51'31"W A DISTANCE OF 320 FEET TO THE EASTERLY RIGHT OF WAY OF THE WEYERHAEUSER COMPANY PRIVATE ROAD AS DESCRIBED IN INSTRUMENT RECORDED IN BOOK 353, PAGE 292, LANE COUNTY OFFICIAL RECORDS, THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 2153 FEET, MORE OR LESS, TO A POINT, THENCE, LEAVING SAID RIGHT OF WAY, N00°32'56"E A DISTANCE OF 943.09 FEET TO A 5/8" IRON ROD, THENCE N89°44'27"E A DISTANCE OF 657.73 FEET TO A 5/8" IRON ROD, THENCE N00°32'56"E A DISTANCE OF 891.68 FEET TO A 5/8" IRON ROD, THENCE S89°44'27"W A DISTANCE OF 657.73 FEET TO A 5/8" IRON ROD, THENCE NORTHWESTERLY TO THE **TRUE POINT OF BEGINNING,** ALL IN LANE COUNTY, OREGON.

RENEWAL DATE: 6-30-08



ADJUSTMENT 3

EXHIBIT 'B'

0994

Division of Chief Deputy Clerk
Lane County Deeds and Records

2007-049981

$46.00

00927184200700499810050056

07/23/2007 10:43:17 AM

RPR-DEED Cnt=1 Stn=5 CASHIER 07
$25.00 $11.00 $10.00

After Recording Return To:

Send Tax Statements To:
James A. Smejkal
P.O. Box 2114
Jasper, OR 97438-0299

DECLARATION OF PROPERTY LINE ADJUSTMENT

This Declaration of Property Line Adjustment is the fourth in a series of four (4 of 4) property line adjustments recorded to relocate the boundaries between six commonly owned parcels of land, OWNED BY JAMES A. SMEJKAL.

The purpose of the fourth property line adjustment is to move a common boundary line between Parcel 4 and Parcel 6 according to Lane County Land Use Regulations and ORS 92.190.

The deed reference for Parcel 4 is the deed recorded February 9, 1914 at Book 102, Page 573 Lane County, Oregon Deed Records as adjusted by the previous steps 2 and 3 of this series property line adjustment recorded this date.

The deed reference for Parcel 6 is the warranty deed recorded August 12, 1922 at Book 132, Page 519 Lane County, Oregon Deed Records. Parcel 6 was adjusted by a previous property line adjustment recorded this same date as Lane County Reception No. 2007-49977.

Following this property line adjustment the legal description for Parcel 4 is described on Exhibit 'A' and the legal description for adjusted Parcel 6 is described on Exhibit 'B'.

Following this property line adjustment the new adjusted boundary between Parcel 4 and Parcel 6 is underlined on the description of Parcel 6 attached as Exhibit 'B'.

A sketch of this adjustment is attached as Exhibit 'C'.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352."

THE TRUE CONSIDERATION FOR THIS CONVEYANCE IS NONE.

0995

The True Consideration For This Conveyance is None.

Date: 7/23/07 Declarant: James A. Smejkal by Robert A Smejkal
James A. Smejkal
By Robert A. Smejkal
His Attorney in Fact

STATE OF OREGON)
)ss.
County of Lane)

On July 23, 2007 personally appeared before me the above named Robert A. Smejkal as Attorney in Fact for James A. Smejkal and acknowledged the foregoing instrument to be his voluntary act and deed.

OFFICIAL SEAL
ANNETTE KAYSER
NOTARY PUBLIC - OREGON
COMMISSION NO. 414088
MY COMMISSION EXPIRES APRIL 3, 2011

Annette Kayser
Notary Public for Oregon
My Commission Expires: 4/3/11

EXHIBIT A
PARCEL 4

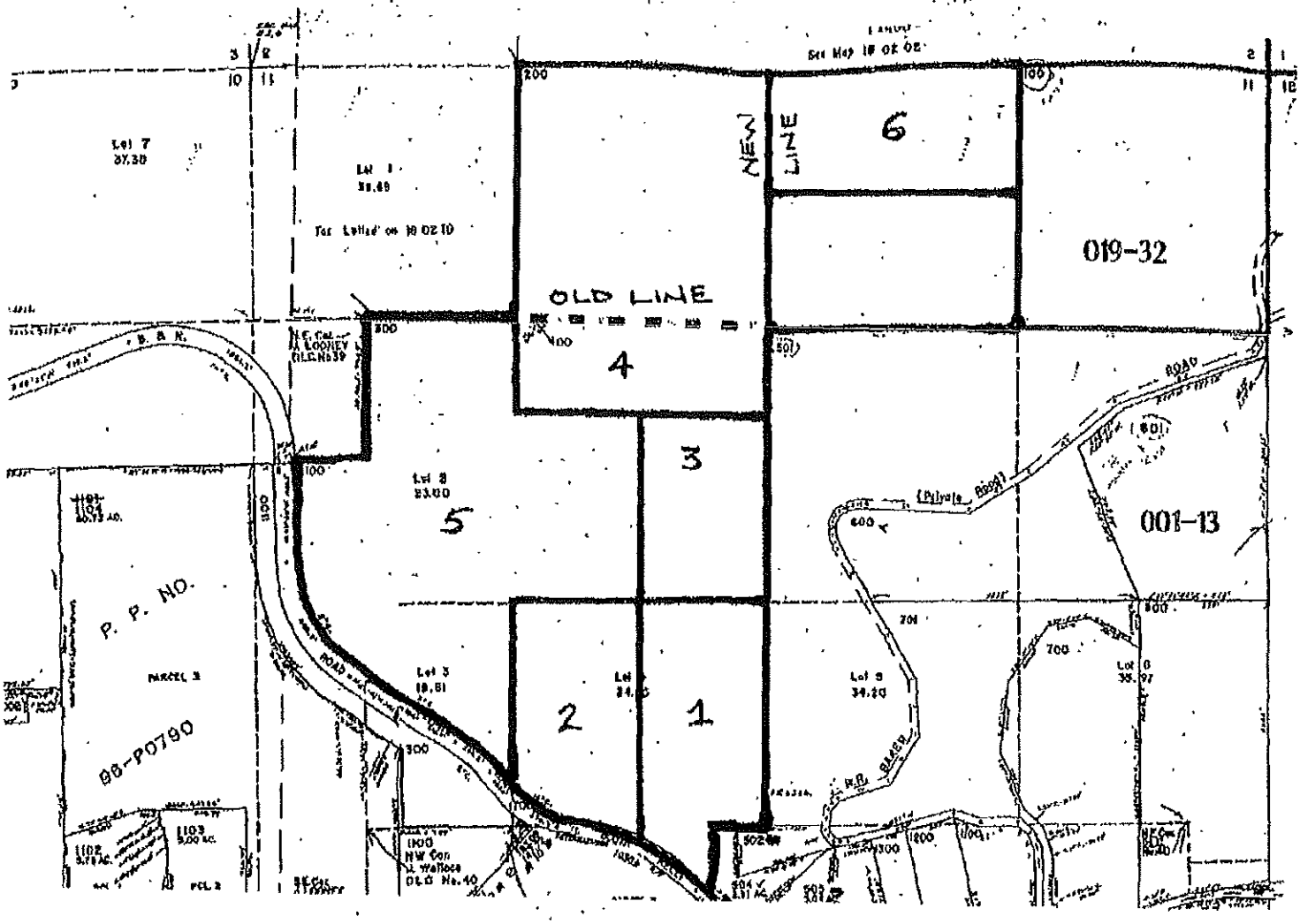
BEGINNING AT A BRASS CAP MARKING THE NORTH 1/4 CORNER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE S00°09'04"W A DISTANCE OF 1691.17 FEET TO A 5/8" IRON ROD, THENCE S89°44'27"W A DISTANCE OF 1290.31 FEET TO A 5/8" IRON ROD, THENCE NORTHWESTERLY TO THE SOUTHWEST CORNER OF THE NE ¼ OF THE NW ¼ OF SAID SECTION 11, THENCE NORTHERLY TO THE NORTHWEST CORNER OF THE NE ¼ OF THE NW ¼ OF SAID SECTION 11, THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 11 TO THE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

RENEWAL DATE: 6-30-08

EXHIBIT B
PARCEL 6

BEGINNING AT A BRASS CAP MARKING THE NORTH 1/4 CORNER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 11 TO THE NORTHEAST CORNER OF THE NW ¼ OF THE NE ¼ OF SAID SECTION 11, THENCE SOUTHERLY ALONG THE EAST LINE OF NW ¼ OF THE NE ¼ OF SAID SECTION 11 ADISTANCE OF 643.52 FEET,, THENCE N88°53'41"W A DISTANCE OF 1324.912 FEET TO A POINT BEARING S00°09'04"W OF THE POINT OF BEGINNING, THENCE N00°09'04"E A DISTANCE OF 616.54 FEET TO THE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

RENEWAL DATE: 6-30-08



ADJUSTMENT 4

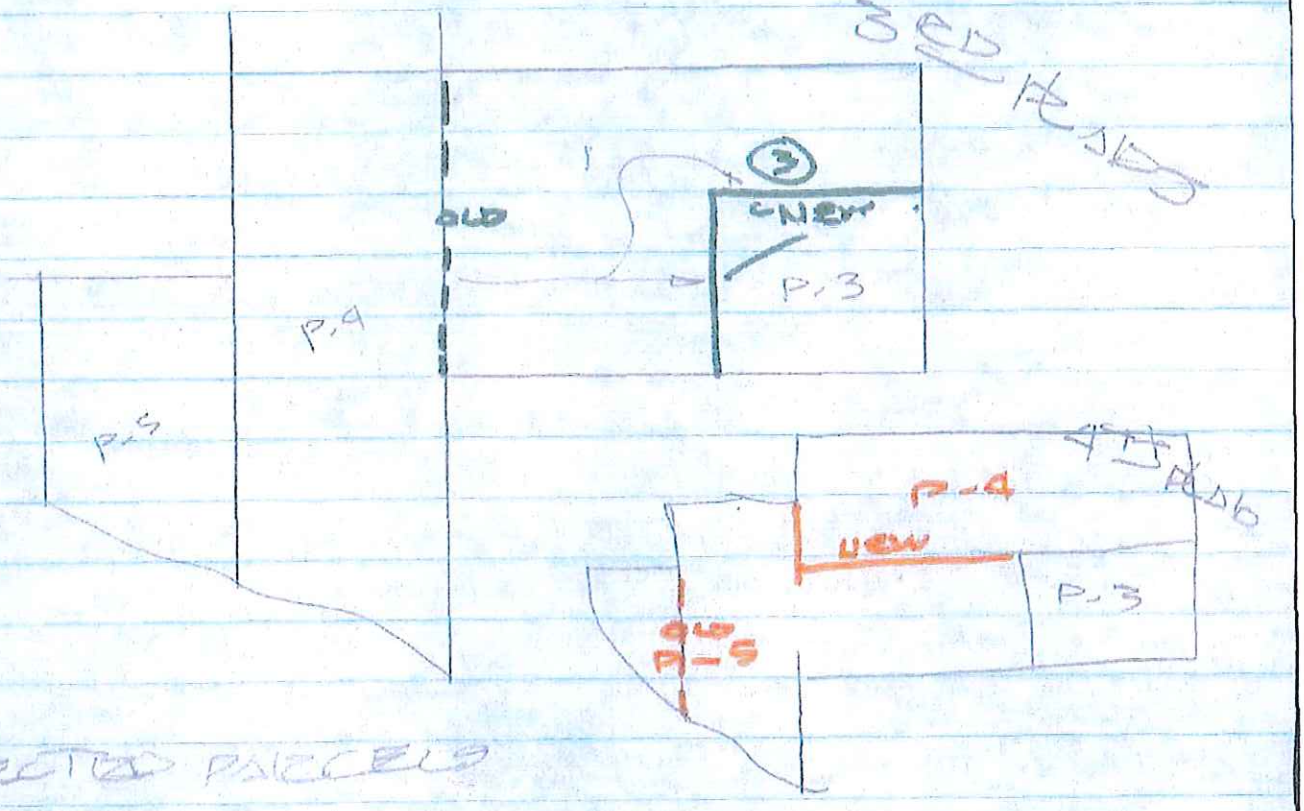
EXHIBIT 'C'

Pa 07-5920 P-4

ORIGINAL PARCEL REVISED 50.1 AC.

18-02-10 TL 300 Pa 04-5478

BOOK 102 PAGE 573 7/9/1914



AFFECTED PARCELS

3RD PL ADD 2007-049979

P-3 TL 400 Pa 04-5420

BOOK 34 PG 332 6/21/1871

4TH PL ADD 2007-049980

18-02-10.00

P-5 TL 1100 Pa 04-5439

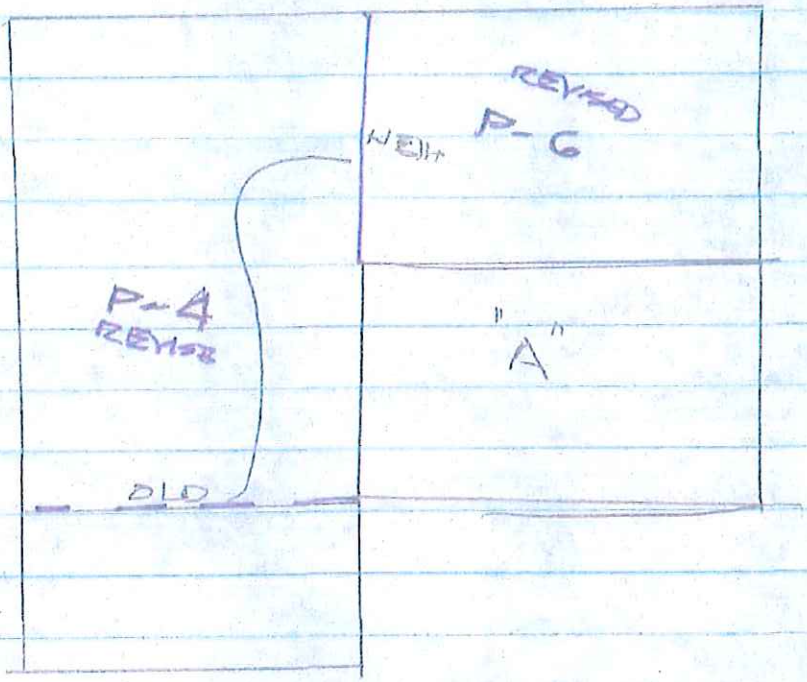
Bk 37 PG 203 7/19/1895

PA 07-5920 P-4

5TH FL ADJ 2007-0499381

P-6 PA*04-5476 18-02-11 TU. 200

BK 132 PG 519 8/12/1922



PARCEL RECORD – Cartographic Unit

1822111 Page 1 of

Township	Range	Section	¼	1/16	Parcel Number	Type	Number
18	02	11	0	0	00302		

Formerly part of 18-02-10-00-01100 & 18-02-11-00-00300, 00401

Map Number

Tax Lot Number

Special Interest

History of Parcel Prior to Re-mapping

Previous Account Number	Previous Tax Lot Number

History of Parcel

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
NEW PARCEL	2008	2007	049980	55.76
	2010 BS	2010	010592	

Remarks

T-2 #7

001702

001703

EXHIBIT A
PARCEL 5

BEGINNING AT A BRASS CAP MARKING THE NORTH 1/4 CORNER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE WEST ALONG THE NORTH LINE OF SAID SECTION 11 TO THE NORTHWEST CORNER OF THE NE ¼ OF THE NW ¼ OF SAID SECTION 11, THENCE SOUTH TO THE SOUTHWEST CORNER OF SAID NE ¼ OF THE NW ¼ OF SAID SECTION 11 BEING THE **TRUE POINT OF BEGINNING,** THENCE WEST TO A BRASS CAP MARKING THE NORTHEAST CORNER OF DONATION LAND CLAIM NO. 39, THENCE S00°31'33"E ALONG THE EAST LINE OF SAID DLC NO. 39 A DISTANCE OF 662.49 FEET, THENCE S89°51'31"W A DISTANCE OF 320 FEET TO THE EASTERLY RIGHT OF WAY OF THE WEYERHAEUSER COMPANY PRIVATE ROAD AS DESCRIBED IN INSTRUMENT RECORDED IN BOOK 353, PAGE 292, LANE COUNTY OFFICIAL RECORDS, THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY A DISTANCE OF 2153 FEET, MORE OR LESS, TO A POINT, THENCE, LEAVING SAID RIGHT OF WAY, N00°32'56"E A DISTANCE OF 943.09 FEET TO A 5/8" IRON ROD, THENCE N89°44'27"E A DISTANCE OF 657.73 FEET TO A 5/8" IRON ROD, THENCE N00°32'56"E A DISTANCE OF 891.68 FEET TO A 5/8" IRON ROD, THENCE S89°44'27"W A DISTANCE OF 657.73 FEET TO A 5/8" IRON ROD, THENCE NORTHWESTERLY TO THE **TRUE POINT OF BEGINNING,** ALL IN LANE COUNTY, OREGON.

Lane County
Public Works
LAND MANAGEMENT DIVISION

Date: DEC. 8 2004

APPLICANT: LAND PLANNING CONSULTANTS
1071 HARLOW ROAD
SPRINGFIELD OR 97477

OWNER: JAMES SMESKAL
87342 PRINCE LANE
EUGENE, OR 97402

PA: 04-5487

RE: Report and Verification of a Legal Lot
Tax Map: 18-02E-10.00 Taxlot: 1100 (APPROX. 4.9 ACRE PARCEL)

A more exact description by reference to Deed or Land Sales Contract is BOOK 37 PAGE 703.

Based upon the Findings provided in this report, the above referenced property constitutes a legal lot, which means:

1. Ownership to this property may be conveyed with the assurance that such a conveyance would not require approval by Lane County land division regulations; and
2. Lane County recognizes this property as a legally separate unit of land for the purposes of development. Development would still be subject to applicable zoning, sanitation, access and building regulations.

Findings

1. The subject property was created as a separate parcel on JULY 14 1893
See attached instruments BOOK 37 PAGE 703

2. The creation of the subject property as a separate parcel complied with all effective land division, zoning and comprehensive plan regulations, and it therefore constitutes a legal lot:

a. Land division regulations:

[X] When the subject parcel was created, there were not land division regulations in effect to govern its creation. Lane County did not adopt applicable regulations for this kind of division until MARCH 7TH 1975.

[ ] There were land division regulations in effect governing the creation of this parcel, and the creation of this parcel was specifically exempted by these regulations from compliance because _____

Lane County
Public Works
LAND MANAGEMENT DIVISION

b. Zoning regulations:

[X] When the subject parcel was created, there were no zoning regulations in effect at this time. The zoning for this property was adopted on NOV. 12 1975.

[ ] When the subject parcel was created, there were the following zoning regulations in effect which the parcel complied with because _____

c. Additional Comments:

THIS LEGAL LOT IS FOR THAT PORTION OF THE LAND THAT IS NORTH AND EAST OF THE WEYERHAEUSER ROAD, BEING THE LAND DESCRIBED IN THE WEYERHAEUSER ROAD WAS ESTABLISHED ON FEB. 27 1897 AS A 120 FOOT WIDTH, SEE DEED 354, PAGE 170. THIS LEGAL LOT DOES NOT APPEAR TO CONTAIN ANY LEGAL ACCESS.

"This is a preliminary indication that the above referenced property, as further designated on the enclosed map, is a legal lot. The decision that this property constitutes a legal lot will be made at the time of the first permit or application action where a legal lot is required. If the boundaries of this legal lot have changed at the time of a permit or application which requires a legal lot, a new Legal Lot Verification will be required."

Sincerely,

D. G. NICKELL P.L.S.O.
Engineering Associate
541-682-3989

ATTACHMENTS

CC: TRS File

BK 37
pg 203

2247

...that Jesse H. Smith ...his wife, for and ...
...Rose Orkle, and Margaret and Isabelle Breidenstein ...
...to me ...paid, do hereby Bargain, Sell and Convey, unto Emma V. Wallace ...
...the following described premises, to-wit:

Beginning at the S.E. corner of John A. Lovejoy Donation Land Claim No. 41 in Twp. 12 South, Range 2 East of the Will. Meridian, thence North 20.45 chains, thence West 23.40 chains, thence South 20.45 chains, thence East 23.40 chains to the place of beginning, containing 48 acres, Reserving however a life estate in the said premises to the said Jesse H. Smith and Mary E. Smith, grantors herein and to the survivor ...

To Have and to Hold the said premises, with their appurtenances, unto the said Emma V. Wallace and to her ...heirs and assigns forever.

And the said Jesse H. Smith ...do ...hereby covenant to and with the said Emma V. Wallace ...and her ...heirs and assigns, that he ...is the owner in fee simple of said premises; and they are free from all incumbrances, and that he ...will warrant and defend the same from all lawful claims whatsoever.

In Witness Whereof, he ...have hereunto set ...hand ...and seal ...this 14th day of July ...A. D. 1892.

Signed, sealed and delivered in presence of
Howard Bunn
W. B. Orkeson

Jesse H. Smith (Seal)
Mary E. Smith (Seal)
(Seal)
(Seal)

STATE OF OREGON,
County of Lane } ss.

On this, the 14th day of July A. D. 1892, personally came before me, W. Orkney Public ...in and for said County, the within named Jesse H. Smith and Mary E. Smith his wife, to me personally known to be the identical persons described in and who executed the within instrument, and acknowledged to me that he ...executed the same freely and voluntarily for the uses and purposes therein named.

And the said Mary E. Smith ...on examination separate and apart from her said husband, acknowledged to me that she executed the same freely and voluntarily, and without fear or compulsion from any one.

Witness my hand and seal this 14th day of July 1892.

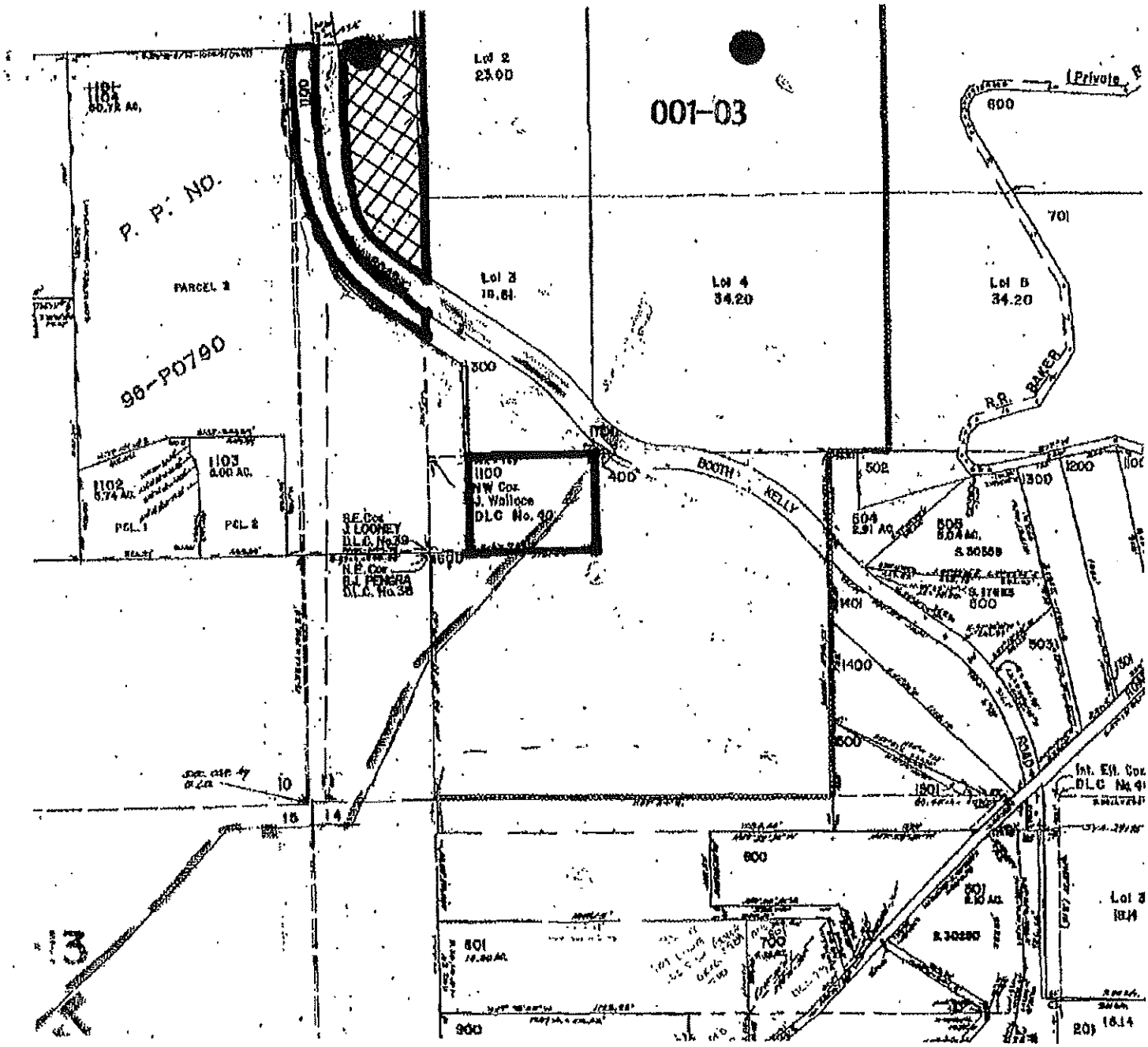
Howard Bunn
Notary Public for Oregon

Recorded April 25th 1893.

M. P. Jamieson
County Clerk.
By F. E. Hills
Deputy.

** TOTAL PAGE. 03 **

001706


001-03
P. P. NO.
96-P0790
PARCEL 2
Lot 2
23.00
Lot 3
18.61
Lot 4
34.20
Lot 5
34.20
1100
NW Cor.
D. Wallace
DLC No. 40
BOOTH KELLY
R.R.
BAKER
1102
5.74 Ac.
1103
8.00 Ac.
PCL. 1
PCL. 2
N.E. Cor.
J. LOOMEY
D.L.C. No. 39
N.E. Cor.
B.J. PENGRA
D.L.C. No. 38
604
2.91 Ac.
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8.04 Ac.
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NOTICE OF A LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Department File:	PA# 05-5303 & PA# 04-5476 (LLV) PA# 04-5477 (LLV); PA# 04-5478 (LLV); PA# 04-5479 (LLV); PA# 04-5480 (LLV); PA# 5484 (LLV); PA# 04-5485 (LLV); PA# 04-5486 (LLV); PA# 04-5487 (LLV); PA# 04-5488 (LLV); PA# 04-5489 (LLV); PA# 04-5490 (LLV); & PA# 04-5491
Property Owners:	James Smejkal
Applicant:	Land Planning Consultants
Assessor's Map & Tax Lot:	18-02-10-00 Tax Lots 1100; 18-02-11-00, Tax Lots 200, 300, 400, and 1600; 18-02-15-00, Tax Lots 100 and 1799

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: Request for a Director Approval of a final legal lot verification per Lane Code Chapter 13.020.

Enclosed is a Assessment and Taxation map or Survey Map of the subject property and surrounding properties.

LEGAL LOT VERIFICATION (No property line adjustment)

E: March 18, 2005

05-5303 & PA# 04-5476; PA# 04-5477;
A# 04-5478; PA# 04-5479; PA# 04-5480;
PA# 04-5484; PA# 04-5485; PA# 04-5486;
PA# 04-5487; PA# 04-5488; PA# 04-5489;
PA# 04-5490; and PA# 04-5491(all LLV's)

STAFF: Donald Nickell

DETERMINATION

The legal lot contains 508 acres.

TRS 18-02-10 Tax Lot 1100
18-02-11 Tax Lots 200; 300; 400; 1600
18-02-15 Tax Lots 100 and 1799

DOCUMENTATION

Book 132 Page 519 for 18-02-10 tax lot 1100;
Book 37 Page 203 for 18-02-10 tax lot 1100;
Book 132 Page 519 for 18-02-11 tax lot 200;
Book 102 Page 573 for 18-02-11 tax lot 200;
Book 102 Page 573 for 18-02-11 tax lot 300;
Book 108 Page 132 for 18-02-11 tax lot 400;
Book H Page 332 for 18-02-11 tax lot 400;
Book Q Page 266 for 18-02-11 tax lot 1600;
Book 46 Page 298 for 18-02-11 tax lot 1600;
Book 156 Page 264 for 18-02-11 tax lot 1600;
Book 419 Page 465 for 18-02-15 tax lot 100;
Book 432 Page 399 for 18-02-15 tax lot 1799;
Reel 127-R Instrument # 58452 for 18-02-11 tax lot 400

Zoning effective on: November 12 1975

Land division laws effective on: May 2, 1962 June 4, 1970 X March 26, 1975

DIAGRAM OF THE LEGAL LOTS

see additional page for diagram

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

1009

PA# 05-9303

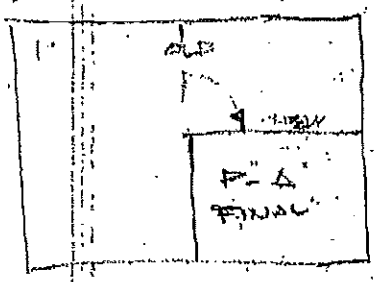
NOTICE FOR

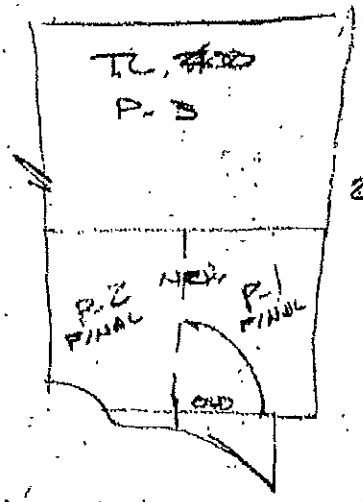
P-A
P-1
P-2
P-3
P-4
P-5
P-6

P-A	PA	07-5916	18-02-11	NEW TL, 201 OLD LLV 04-5477 TL. 200 LLV 04-5484	19.2 AC
P-1	PA	07-5917	18-02-11	TL. 400 LLV 04-5479	18,4
P-2	PA	07-5918	18-02-11	TL 400 LLV 04-5480	16.4 AC
P-3	PA	07-5919	18-02-11	TL 400 LLV 04-5478	12.9 AC
P-4	PA	07-5920	18-02-11	TL 300 LLV 04-5489	50.1 AC
P-5	PA	07-5922	18-02-10	TL. 1100 LLV 04-5476	56.5 AC
P-6	PA	07-5923	18-02-11	TL. 200	19.2 AC

1ST PL ADS 2007-049977

TL 200

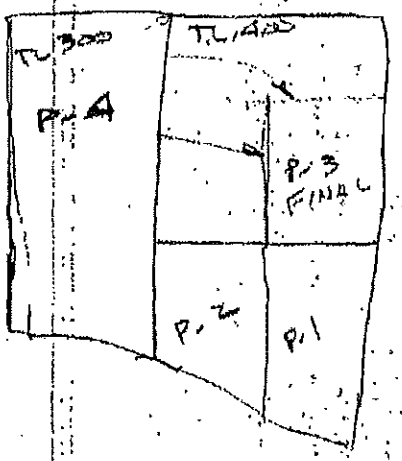




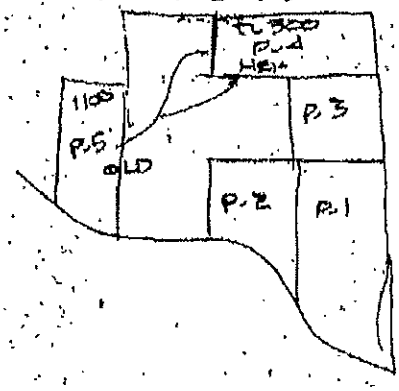
2ND PL ADS

2007-049978

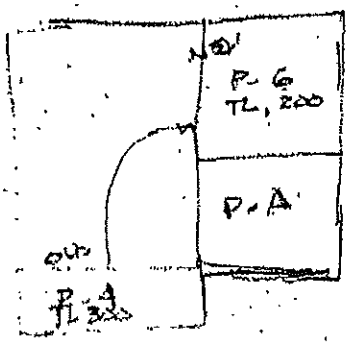
3RD PL ADS 2007-049979



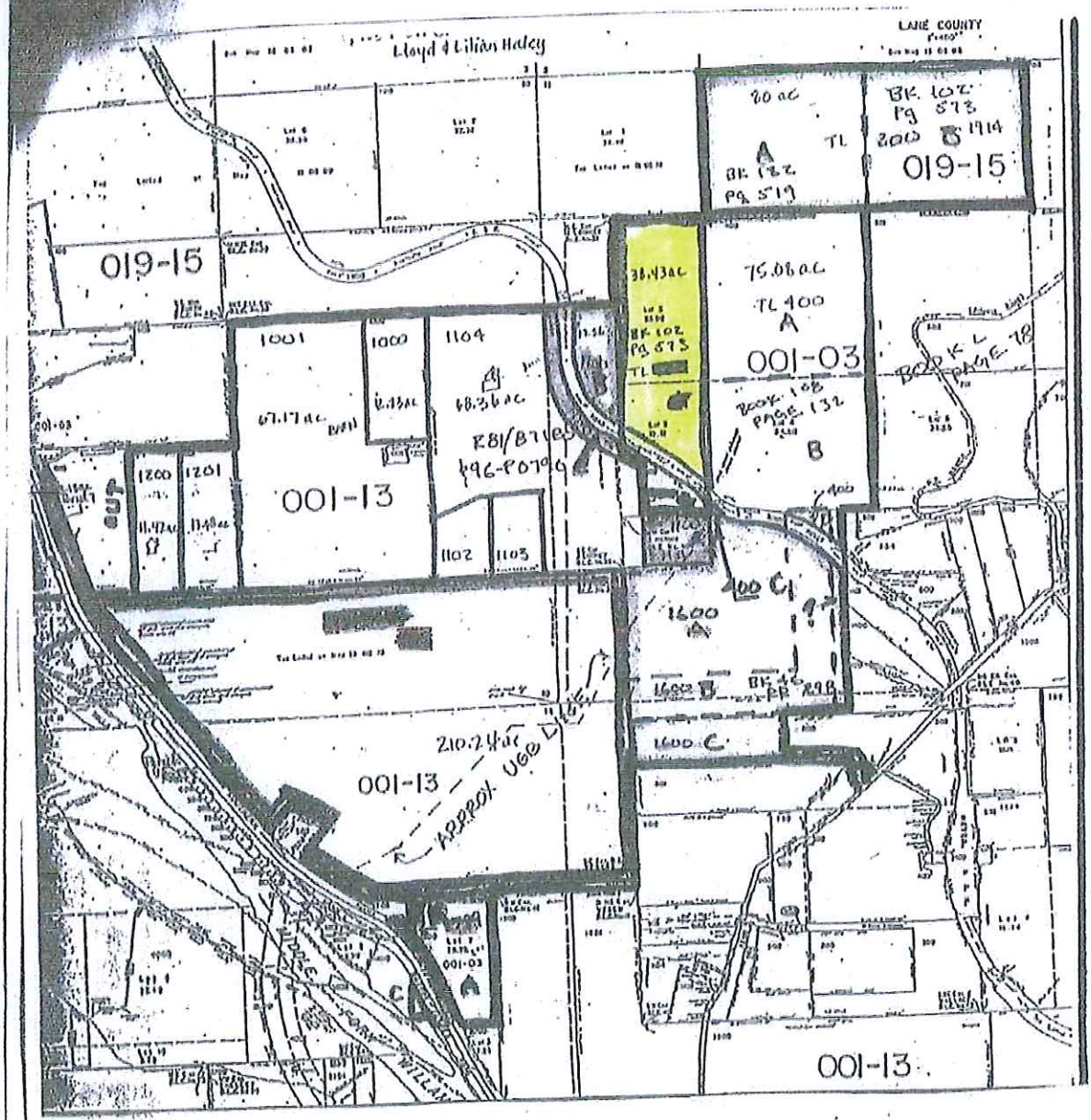
4TH PL ADS
2007-049980

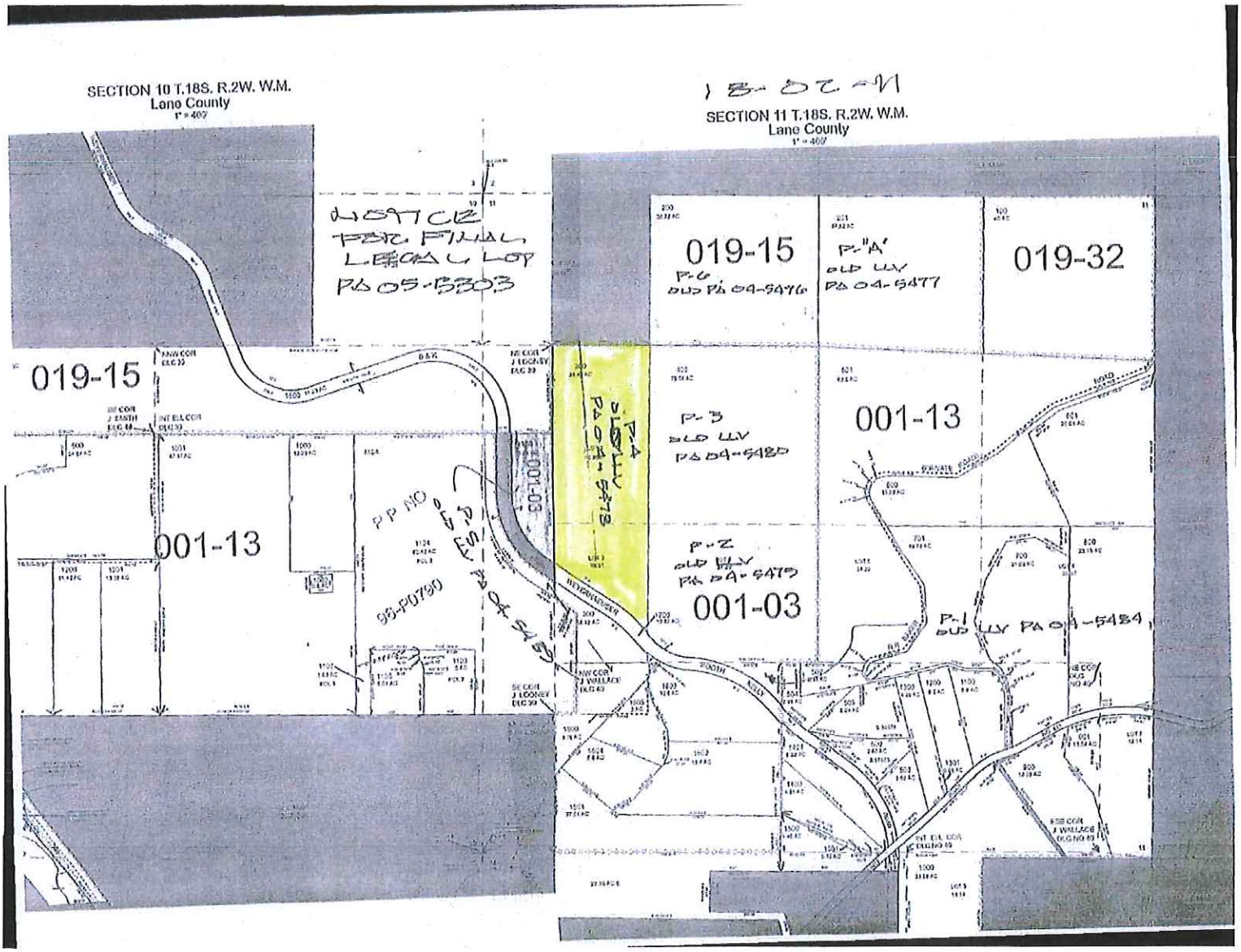


5TH PL ADS,
2007-049981



1010


LANE COUNTY
Lloyd & Lilian Haley
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019-15
001-03
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001-13
001-13
38.43ac
75.06ac
TL 400
TL
1001
1000
1104
1200
1201
1102
1103
1600
1600 B
1600 C
210.24ac
ARROYO USE LIE
BK. 102 PG. 573
BK. 182 PG. 519
BOOK 168 PAGE 132
BOOK PAGE 78
R81/B71
496-P0799


SECTION 10 T.18S. R.2W. W.M.
Lane County
SECTION 11 T.18S. R.2W. W.M.
Lane County
019-15
001-13
019-15
019-32
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001-03
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Willamalane Parks + Rec
No Dwelling

T-2

(#8)

16587

10896

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

18.02.10
100
19-01

OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON

YEAR	4-1-48T No. Sec. 2	2-3 SECTION 10 & 11	567 345 TOWNSHIP 18 S.	1 page only RANGE E. ___ OR W. 2 W. M.	DEED RECORD VOL.	DEED RECORD PAGE	ACRES REMAINING
	BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION				
1942.			All of the following lying East of County Road No. 266:		222	81	
1989 partial rep deed			S½SW¼, Section 2; SE¼SE¼, Section 3; Lot 1, Section 11; Lot 7, Section 10.				R1581/892 9408
1998 WD			also: Beginning at the North-				R2485/9891908 R2485/9891908 R2485/9891909
	N.89°41'W.	47.78 ch	east corner of John C. Looney D.L.C. No. 39, Section 11, thence thence				
	West		to a point North of the Northwest corner of Lot 4, Section 9, thence				
	South		to the Northwest corner of said Lot 4, thence				
	East	97.78 ch	thence				
	North	10.70 ch	to the place of beginning, containing more or less				~~286.04~~
		Part of 1600	Except: Tax Lot 10 of Section 10, in Sections 10 and 11, Township 18 South, Range 2 West, WM., containing more or less 6.06 acres.				
			Containing more or less				~~279.98~~
			Planimetered Acreage				265.98 ac
			EXCEPT 50.16 ac out to TL 18-02-09-00103 for 2008 by 2008-006787; Contains m/l				215.82

KOKE-CHAPMAN CO., EUGENE, ORE. 93949

18-02-10-00-00100 7/30/41

LANE COUNTY OREGON

BOOK 222 PAGE 81

FILED FOR RECORD
W. B. DILLARD, CO. CLERK
BY [signature] DEPUTY

102463

WARRANTY DEED

THIS INDENTURE WITNESSETH: That C. Bardwell and Margaret E. Bardwell, husband and wife, the grantors, for and in consideration of the sum of ten dollars to them paid, do hereby bargain, sell and convey unto Charles E. Wethered and Ebba M. Wethered, husband and wife, the grantees the following described premises, towit:

CT-21041 AM

All of the following lying east of County Road No. 266: The south half of the southwest quarter of section 2, the southeast quarter of the southeast quarter of section 3, lot 1 in section 11, lot 7 in section 10, also commencing at the northeast corner of John C. Looney Donation Land Claim No. 39, in section 11, running thence north 89° 41' west 47.78 chains, thence west to a point north of the northwest corner of lot 4, in section 9, thence south to the northwest corner of said lot 4, thence east 97.78 chains, thence north 10.70 chains, more or less to the place of beginning, all in township 18 South Range 2 West of the Willamette Meridian, in Lane County, Oregon. Also lot 6 in section 10, lots 2, 3, and 4 in section 9, and commencing 10.70 chains north of the easterly southeast corner of the John Smith Donation Land Claim No. 48, in section 10 and running thence north 27.05 chains, thence west to the west line of said claim, thence south on the west line of said claim, to a point west of the place of beginning, thence east to the place of beginning. Also beginning on the west line of said Donation Land Claim No. 48, at the northeast corner of lot 9 in section 9, running thence south 20 chains, thence east to the east line of the all of said D. L. C. No. 48, thence north 20 chains, thence west to the place of beginning, all in township 18 South of Range 2 West of the Willamette Meridian, in Lane County, Oregon. Except from the above described property that certain tract conveyed to Oregonian Railroad Company by deed recorded Aug. 27, 1890, at page 163 of vol. 25 Lane County Oregon Deed Records. Also except that certain tract conveyed to The Oregon and California Railroad Company by deed recorded March 27, 1891 at page 255 of vol. 29 Lane County Oregon Deed Records. Also except the following described premises towit: Beginning at a point on the west line of the John Smith Donation Land Claim No. 48, in township 18 South Range 2 West of the Willamette Meridian, 37.25 chains south of the northwest corner of said claim, and running thence south along the west line of the claim, 29.18 chains, more or less, to a point 30 feet south of the northeast corner of lot 9 of section 9, of same township, thence east 30 feet, thence north 29.18 chains, more or less, to a point due east of the point of beginning, thence west 30 feet to the place of beginning. All in Lane County, Oregon.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said Grantees, their heirs and assigns forever.

And the said Grantors do hereby covenant to and with the said grantees their heirs and assigns that they are the owners in fee simple of said premises; and that they are free from all incumbrances and that they will warrant and defend the same from all lawful claims whatsoever, except a mortgage to The Federal Land Bank of Spokane, recorded Nov. 28, 1939 at page 286 of vol. 89 Lane County Oregon Mortgage Records, to secure the payment of a note for $5000.00, also except a mortgage to Land Bank Commissioner, recorded Nov. 28, 1939 at page 174 of vol. 91 Lane County Oregon Mortgage Records, to secure the payment of a note for $3000.00.

1014

001714

BOOK 222 PAGE 82

IN WITNESS WHEREOF, they have hereunto set their hands and seals this 30th day of July, 1941.

C. Bardwell

Margaret E Bardwell

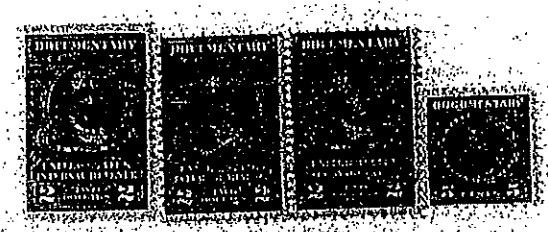
STATE OF ~~OREGON~~ California OK)
) SS.
COUNTY OF ~~LANE~~ Los Angeles)

Be it remembered that on this 30th day of July, 1941 personally came before me, a Notary Public in and for said county, the within named C. Bardwell and Margaret E. Bardwell, his wife to me personally known to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein named.

Witness my hand and seal this day and year last above written.

Goldie Clark

Notary Public for ~~Oregon~~ California OK
My commission expires
My Commission Expires July 30, 1944.



1822301

PARCEL RECORD - Cartographic Unit

1809647

Page 1 of

Code Area	Township	Range	Section	1/4	1/16	Parcel Number	Type	Number
	18	02	11	0	0	00401		

Map Number

Tax Lot Number

Special Interest

Formerly part of 18-02-11-00-00400

History of Parcel Prior to Re-mapping

Previous Account Number

Previous Tax Lot Number 18-02-11-00-00401

~~OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES~~
OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

1809647
ACCOUNT NUMBER

TAX LOT
MAP NO. 18-02-11-00 PARCEL NO. 00401 SECTION ____ TOWNSHIP ____ S. RANGE ____ W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	(out of 400) The SE 1/4 NW 1/4 of Section 11, Twp. 18 S R2W, WM., excepting the Beginning at the NW corner of the SE 1/4 of the NW 1/4 of said Section 11, thence	2008*	R127/58452 (1959) R129/58060 (1959)	
East	2 rods, thence	1976	R 753/32090	
South	2 rods, thence	1994WD	R1953/9438125	
West	2 rods, thence	1994QC	R1953/9438129	
North	2 rods to the place of beginning.			
	ALSO: All that part of Government lot 4 of Section 11 T18S,R2W, WM. lying N'ly and E'ly of tract conveyed to the Weyerhaeuser Timber Co. for road purposes as set forth in instrument recorded in book 353, page 292, Lane County, Oregon Deed Records. Contains m/l			73.33
	ALSO: acreage added from #16767. Beginning at a point on the North line of the James A Wallace DLC#40 in Sec. 11, T18S,R2W WM. 26.50 chs East of the NW corner of said DLC; and running thence			
South	to a point on the N'ly right of way of the Weyerhaeuser Timber Co.'s right of way as set forth in instrument recorded in Book 353, page 292, Lane County Oregon Records; and running thence			
NW'ly	along the N'ly right of way of said Weyerhaeuser Road to the North line of said James A Wallace DLC; thence			
East	to the point of beginning in Lane County, Oregon. Contains m/l 1.75 acre. Contains m/l			75.08
	ACREAGE CORRECTED per cartography by GIS for 2008. Contains m/l	2008		78.24

CANCELLED 2008

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record: Volume	Deed Record: Page	Acres Remaining
Contains m/l				16.46
NEW DESCRIPTION (0.03 ac from TL 00301	2008 & 36.73 ac	2007 from TL	049981 00200)	53.22
		2010 BS	2010-010591	

150-303-050 (3-87)

~~Subdivision was missed in 1959, however ownerships are correct. Original description~~
Card # for TL 00400 filed in cancelled description card file for historic purposes.

* Original card for TL 00401 in cancelled file for historic purposes.

1016

T-2 (#9)

001716

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER _____ ACCOUNT NUMBER _____

TAX LOT | MAP NO. | PARCEL NO. | SECTION _____ | TOWNSHIP _____ S. | RANGE _____ W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Continued.. Contains m/l			78.24
	EXCEPT: 17.32 ac to New TL 00402 per 2007-049978 for 2008 Contains m/l			60.92
	EXCEPT: 17.16 ac to New TL 00403 per 2007-049978 for 2008 Contains m/l			43.76
	EXCEPT: 12.30 ac to New TL 00404 per 2007-049979 for 2008 Contains m/l			31.06
	EXCEPT: 14.60 ac to New TL 00302 per 2007-049980 for 2008 Contains m/l			16.46

CANCELLED 2008

001717

EXHIBIT A
PARCEL 4

FD
TL 401

BEGINNING AT A BRASS CAP MARKING THE NORTH 1/4 CORNER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE S00°09'04"W A DISTANCE OF 1691.17 FEET TO A 5/8" IRON ROD, THENCE S89°44'27"W A DISTANCE OF 1290.31 FEET TO A 5/8" IRON ROD, THENCE NORTHWESTERLY TO THE SOUTHWEST CORNER OF THE NE ¼ OF THE NW ¼ OF SAID SECTION 11, THENCE NORTHERLY TO THE NORTHWEST CORNER OF THE NE ¼ OF THE NW ¼ OF SAID SECTION 11, THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 11 TO THE POINT OF BEGINNING, ALL IN LANE COUNTY, OREGON.

RENEWAL DATE: 6-30-08

18-02-11-00-00401
Account 1809647
Page 3
2007-049981

T-2 #9

6/20/07

LAND MANAGEMENT DIVISION

LAND USE APPLICATION
Legal Lot Verification

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401 Planning: 682-3807

For Office Use Only: FILE # PA075923 CODE: ALLV5b FEE: ~~$53.13~~ 331.57

Applicant (print name): LAND PLANNING CONSULTANTS

Mailing address: 1071 HARLOW RD. SPRINGFIELD, OR 97477

Phone: 726-8573 Email:

Applicant Signature: Michael P. Evans

Land Owner (print name): JAMES A. SMETKAL

Mailing address: PO BOX 2114, JASPER, OR. 97438-0299

Phone: 510-1079 Email:

Land Owner Signature: SEE ATTACHED

Zone: EZ

PROPERTY LOCATION

18-02-11 700/~~600~~ (PARCEL 6) N/A REVISED 19.2AC

Township/Range Section Taxlot Subdivision/partition lot/parcel block

N/A

Site address

CP 6-18-07 MIKE

REQUIRED SUBMITTALS

- The property description card. This is available in the Assessment and Taxation Department.
- Submit every deed listed on the description card. Deeds are available at the Deeds & Records Office.
- The tax map for the subject property. This is available in the Assessment and Taxation Department.
- The applicable fee. The fee for the legal lot research is based on the number of deeds on the description card. When multiple legal lots are discovered in a single application, the fee is half the applicable base fee for each additional legal lot.
- This application form.

EDN 8/1/07

THE REVISED 19.2AC PARCEL AFTER THE PROP. IS A LEGAL LOT W/

This review is a preliminary determination and is not a land use decision. It is based on the evidence available at the time of the application. Until notice is sent, this preliminary determination may change based on new evidence. Because this is not a final decision, it can not be appealed.

Version 11-05

USE PROP 3RD, 4TH, 5TH AFFECTS P-3 P-4 P-5 P-6

FINAL FOR P-6

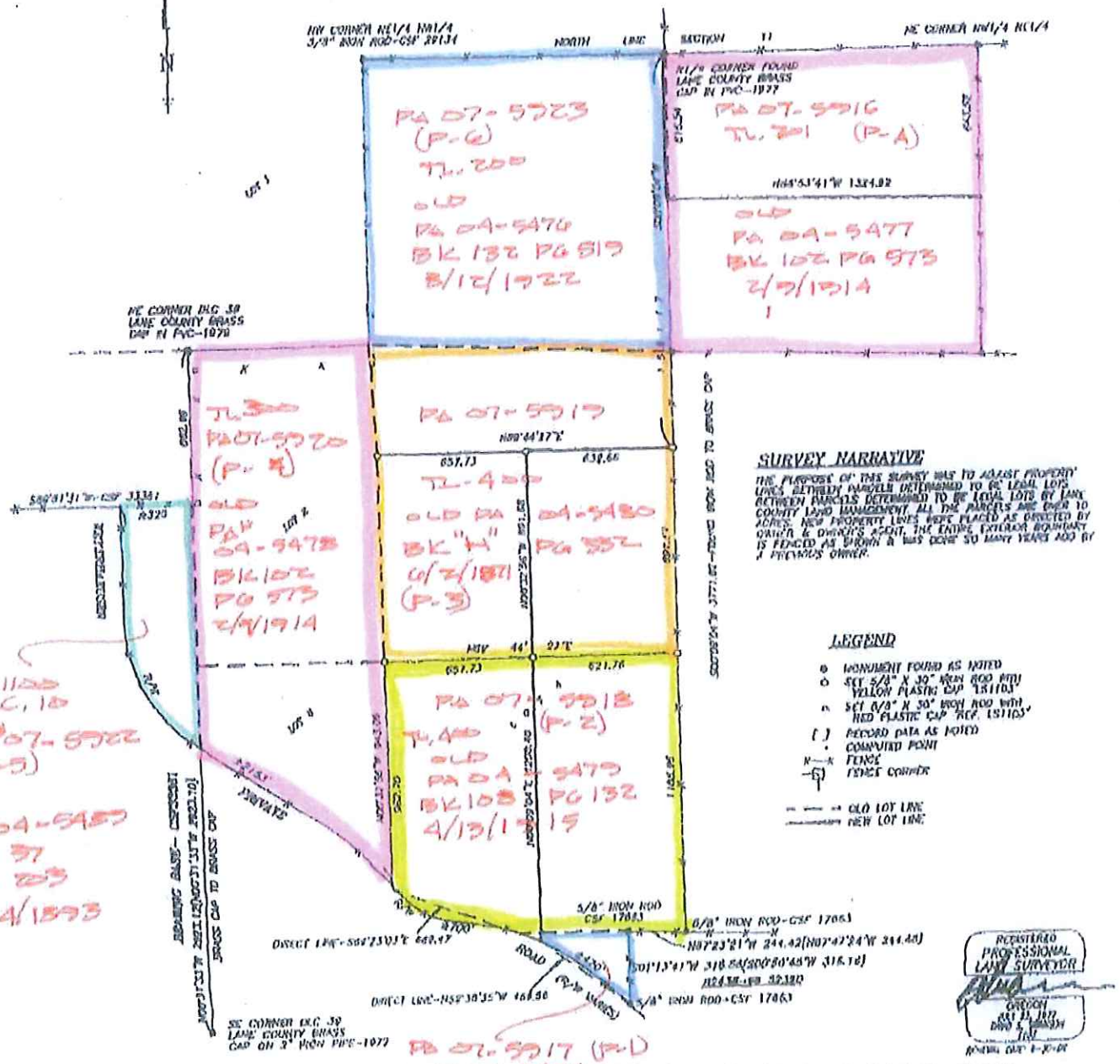
1019

LANE COUNTY SURVEYOR'S OFFICE
FILED
RECEIVING DATE

MAP OF SURVEY
FOR
DOUG & DEBBIE WOLF
IN THE NE1/4, NW1/4, SW1/4 & SE1/4
SECTION 11, T.18S., R.2W., WM
JULY, 2007

ORIGINAL PARCELS

NOTICE ON ALL
PA#05-5303



SURVEY NARRATIVE

THE PURPOSE OF THIS SURVEY WAS TO ADJUST PROPERTY LINES BETWEEN PARCELS DETERMINED TO BE LEGAL LOTS BY LANE COUNTY LAND MANAGEMENT. ALL THE PARCELS ARE OVER 10 ACRES. NEW PROPERTY LINES WERE PLACED AS DIRECTED BY OWNER & OWNER'S AGENT. THE ENTIRE EXTERIOR BOUNDARY IS FENCED AS SHOWN & WAS DONE SO MANY YEARS AGO BY A PREVIOUS OWNER.

LEGEND

- ⊕ MONUMENT FOUND AS NOTED
- ○ SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP "LS1103"
- ● SET 5/8" X 30" IRON ROD WITH RED PLASTIC CAP "REF. LS1103"
- ( ) RECORD DATA AS NOTED
- • COMPUTED POINT
- N—N FENCE
- —(5)— FENCE CORNER
- — — — OLD LOT LINE
- ——— NEW LOT LINE

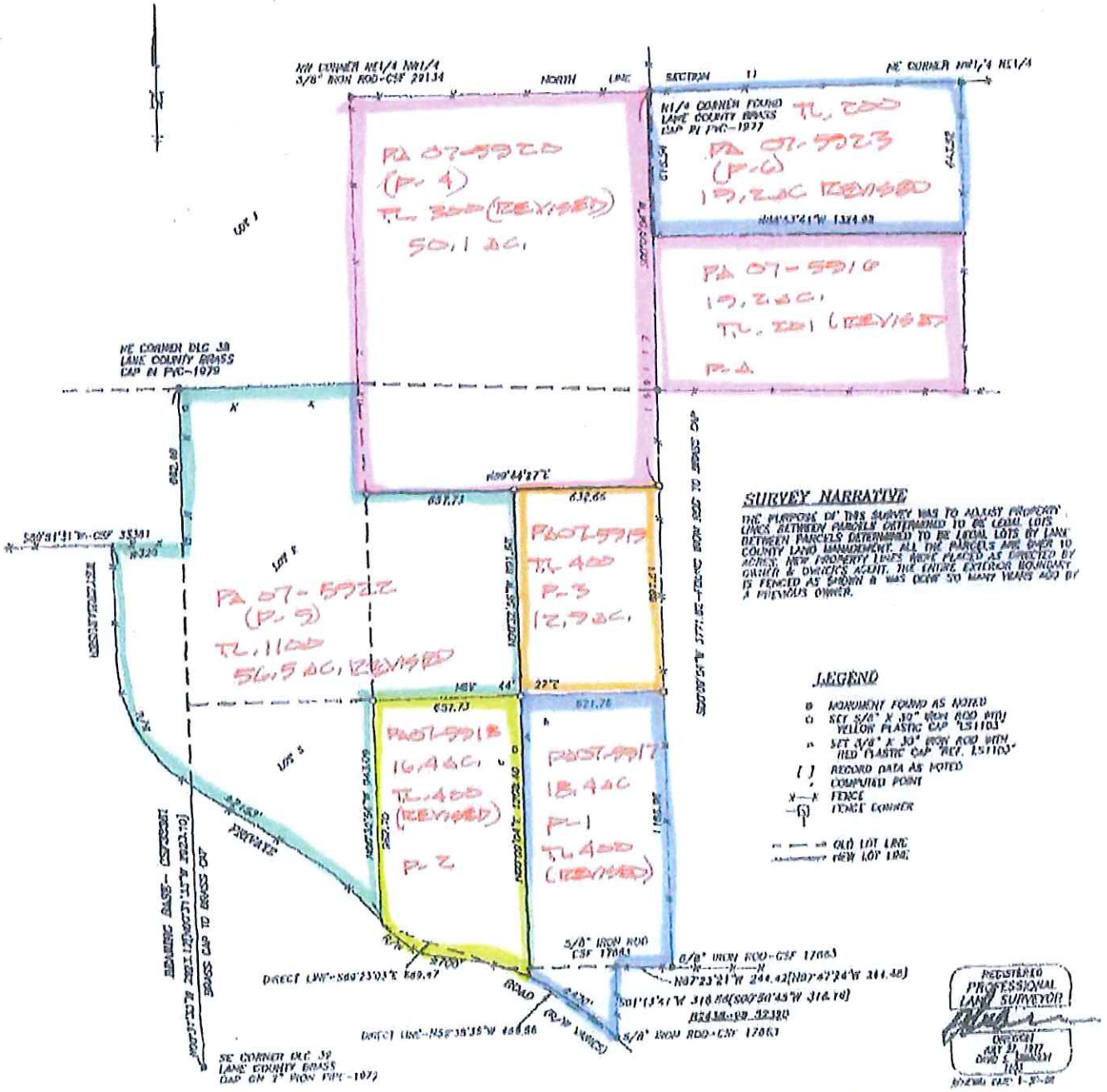
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JULY 13, 1977
DOUG L. WOLFE
2161
RENEWAL DATE 6-30-08

LANE COUNTY SURVEYOR'S OFFICE
CS NO. _____
RECEIVED _____

MAP OF SURVEY
FOR
DOUG & DEBBIE WOLF

IN THE NE1/4, NW1/4, SW1/4 & SE1/4
SECTION 11, T.18S., R.2W., WM
JULY, 2007

REVISED PARCELS



PARCEL RECORD – Cartographic Unit

1795390 Page 1 of

Code Area	Township	Range	Section	¼	1/16	Parcel Number	Type	Number
	18	02	11	0	0	00201		

Formerly part of 18-02-11-00-00200

Map Number

Tax Lot Number

Special Interest

History of Parcel Prior to Re-mapping

Previous Account Number	Previous Tax Lot Number

Remarks

History of Parcel

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
NEW DESCRIPTION	2007WD	2006	029188	37.52
NEW DESCRIPTION (19.05 ac to TL 00200)	2008 LLA	2007	049977	18.47

1022

001722

The Northwest Quarter of the Northeast Quarter of Section 11, Township 18 South, Range 2 West of the Willamette Meridian in Lane County, Oregon.

CANCELLED
2008

18-02-11-00-00201
Rec# 1795390
2006-029188
Page 2

001724

PARCEL A

BEGINNING AT A BRASS CAP MARKING THE NORTH 1/4 CORNER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST, WILLAMETTE MERIDIAN, THENCE S00°09'04"W A DISTANCE OF 616.54 FEET TO THE **TRUE POINT OF BEGINNING,** THENCE S88°53'41"E TO THE EAST LINE OF THE NW ¼ OF THE NE ¼ OF SAID SECTION 11, THENCE SOUTH TO THE SOUTHEAST CORNER OF THE NW ¼ OF THE NE ¼ OF SAID SECTION 11, THENCE NORTHWESTERLY ALONG THE SOUTH LINE OF SAID NW ¼ OF THE NE ¼ OF SECTION 11 TO A POINT BEARING S00°09'04"W OF THE TRUE POINT OF BEGINNING, THENCE N00°09'04"E TO THE **TRUE POINT OF BEGINNING,** ALL IN LANE COUNTY, OREGON.

T-2 (#11)

16780-A

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTY

18-02-11

OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON 19-01 100

YEAR	TAX LOT NO. No Tax No.	SECTION 11	TOWNSHIP 18 S.	RANGE E. OR W. 2 W. M.	DEED RECORD VOL. PAGE	ACRES REMAINING
	BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION			
					460/235	
			NE¼NE¼ of Section 11, Twp.18 South, Range 2 West, W.M.			
1953						40.0
1963					R.192	
					66032	
1964					R.219	
					11853	
1981					**R1127/81**	**13957**
1988					R1505/881	1506
1990wd					R1609/89	59200
1994 wd					R1990/	94642

SHELTON-TURNBULL-FULLER CO. EUGENE, OREGON D2005

1025

001725

18-02-11-00-00100 T-2 #11

Vol. 447 Page 335

[redacted] R.H.Baker, an unmarried person,

[redacted] and no/100 ---------- Dollars,

to him paid by [redacted] Hunderson and Norman D. Henderson, husband and wife, as survivors,

the receipt whereof is hereby acknowledged, and [redacted] Hunderson and Norman D. Henderson, husband and wife, as survivors

[redacted] have and assume, all the following real property, with the tenements, hereditaments and appurtenances, situated in the County of Lane and State of Oregon, bounded and described as follows, to-wit:

All of the Northeast one-fourth of the Southeast one-fourth of Section 11, Township 18 South, Range 2 East of the Willamette Meridian in Lane County, Oregon, and containing 40 acres of land, more or less.

[redacted]

To Have and to Hold the above described and granted premises unto the said [redacted] and Norman D. Henderson, husband and wife, as survivors,

[redacted] heirs and assigns forever.

And R.H.Baker, an unmarried person,

the grantor above named do [redacted] covenant to and with the above named grantees, [redacted] heirs and assigns, that [redacted] is [redacted] lawfully seized in fee simple of the above granted premises, free from all encumbrances, and that the above granted premises are free from all encumbrances,

and that [redacted] will and [redacted] heirs, executors and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever.

Witness [redacted] hand and seal this 14th day of [redacted], 19[redacted]

Executed in the Presence of:

R.H.Baker (SEAL)

STATE OF OREGON, }
County of LANE } ss.

BE IT REMEMBERED, That on this 11th day of [redacted], 19[redacted] before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named R.H.Baker, an unmarried person

known to me to be the identical individual described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public for Oregon

My Commission expires [redacted]

After recording return to:
Eugene Oregon
83 W. 7th Ave.
Phone 343-3394

1028

001726

WARRANTY DEED

001727

T-2 (#11)

RLID

Lane County Assessment & Taxation Property Information Search

This public site contains the most commonly requested Assessment & Taxation information on property located within Lane County.

Most information is updated weekly.

For copies of tax statements, please go to http://apps.lanecounty.org/TaxStatement/Search.aspx.

To view tax maps, visit http://apps.lanecounty.org/TaxMap/Search.aspx.

This site is for general public use only. It is not intended for commercial use.



NEW! Commercial Appraisal Cards are now available online for Lane County properties.

To access the commercial appraisal card click on the map/taxlot link (*if available*).

Start Over

Account Number 0567634 **Map, Tax Lot &** SIC **18-02-11-00-00100**

Site Address 86752 R R BAKER RD SPRINGFIELD OR 97478

Taxpayer Address 86752 R R BAKER RD SPRINGFIELD, OR 97478

Additional Account Numbers for this Tax Lot 0567634

Owner Information

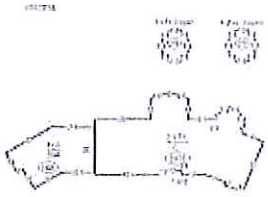
Owner	Address	City State Zip
NOE CHRISTOPHER J	86752 R R BAKER RD	SPRINGFIELD, OR 97478

Account Type	Real Property	**Special Assessment Program**	
Account Acreage	5.00	Forest Deferral	
Pending Property Change	NO	**Taxlot Record**	1802110000100
		Commercial Appraisal Card	n/a
Property Class	Forest		

Assessor's Photos & Sketches

Click on any of the photo/sketch thumbnails to view and download the image full-size (opens in new window). Once in full-size view, use your browser "File>Save (Page) As" menu to download to your computer.

About Assessor Sketches/Photos



0

1

Property Value and Taxes

Real Market Value (RMV)				Total Assessed Value
Year	Land	Improvement	Total	
2018	$59,054	$662,755	$721,809	$430,876

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$430,876	** $4,230.64	01932

**The tax shown is the amount certified for the current tax year. It does not reflect any subsequent value changes, nor does it include any discounts offered, payments made, interest owing, or previous year's owing.

Residential **Building #1 (of 1)** If there are multiple dwellings, building characteristics will display for only one of the dwellings.

Year Built	2001
Percent Complete as of Jan 1st	100

Floor	Base Sq Ft	Finished Sq Ft
Basement	N/A	N/A
First	3978	3978
Second	279	279
Attic	279	279
Total	4536	4536

Structure	Sq Ft
Bsmt Garage	N/A
Att Garage	1406
Det Garage	N/A
Att Carport	N/A

Commercial Building None

Generated by on Apr 5, 2019 at 10:52pm using Regional Land Information Database, https://www.rlid.org/

T-2 (#11)

Land Use Application

LMD Land Management Division

REQUEST / PROPOSAL FOR: F2 Replace Same Site

FILE NO. PA01-5596
ACTION AVRR FEE 142 DD

AT 3.22.01

LOCATION (PLEASE PRINT)

TOWNSHIP	RANGE	SECTION	1/4 SECTION	TAX LOT	SUBDIVISION / PARTITION	LOT / PARCEL	BLOCK
18	02	11		100			

ZONED	TAX CODE	PLOT	ACREAGE
Fv/ACP		482	40.0

LOCATION ADDRESS: 86752 RR Baker Rd, Springfield OR 97478

STRUCTURES NOW ON PROPERTY: House, [redacted], pump houses

APPLICANT / AGENT

NAME (PLEASE PRINT): Jerold K. & Susan J. Reeder — DATE: May 1, 2001

ADDRESS: 86752 RR Baker Rd — PHONE: (541) 744-0650

CITY: Springfield, OR 97478-9542 — ZIP:

OWNER

NAME (PLEASE PRINT): Jerold K. & Susan J. Reeder — DATE: May 1, 2001

ADDRESS: 86752 RR Baker Rd — PHONE: (541) 744-0650

CITY: Springfield, OR 97478-9542 — ZIP:

DO YOU OWN ADJACENT PROPERTY? Yes ☒ No ☒

MAP, PARCEL NUMBER

Township	Range	Section	1/4 Section	Tax Lot

WATER PUBLIC ☐ ON-SITE WELL ☒ COMMUNITY SYSTEM

SEWAGE PUBLIC ☐ ON-SITE SEPTIC ☒ COMMUNITY SYSTEM

ROAD STATE ☐ COUNTY ☐ PUBLIC ☐ EASEMENT ☒

FIRE DISTRICT: Pleasant Hill — SCHOOL DISTRICT: Pleasant Hill

POWER COMPANY: EPUD — PHONE COMPANY: Quest

I (We) have completed all the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) so authorized to submit this application as evidenced by the signature of the owner below.

Susan J Reeder 5/1/01 (OWNER Signature / Date)

Susan J Reeder 5/1/01 (APPLICANT Signature / Date)

An accurate Plot Plan must be attached. Ask for a sample Plot Plan

SPECIFIC SECTION OF LANE CODE REQUIRING THIS APPLICATION

RELATED PERMIT #

STAFF COMMENTS: Assist to Rec Supv

Lane County
Public Works
LAND MANAGEMENT DIVISION

Verification and Replacement of a Lawfully Established Dwelling in the Same Location within the (F2/RCP) Impacted Forestland Zone

Report Date:	May 7, 2001
Department File:	PA 01-5596
Property Owner:	Jerod K. & Susan J. Reeder
Applicant:	Jerod K. & Susan J. Reeder
Property (Mailing) Address:	86752 RR Baker Road, Springfield, OR 97478-9542
Assessor's Map:	18-02-11 **Tax Lot:** 100
Acreage:	40 acres
Base Zone:	Impacted Forest Land (F2)
Combining Zone:	None
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff Planner:	Bill Sage, 541/682-3772

I. PROPOSAL

Administrative Approval to allow a Replacement Dwelling within the Impacted Forest Zone (F2), as authorized by Oregon Administrative Rule (OAR) 660-06-0025(3)(p).

II. BACKGROUND INFORMATION

A request to replace a dwelling in the Impacted Forest Zone (F2) was submitted to the Lane County Land Management Division on May 1, 2001. The subject property is located southwest of RR Baker Road. The 40 acre parcel has an active site address of 86752 RR Baker Road, Springfield, OR 97478-9542. The property is designated Forestland in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Zone (F2/RCP), consistent with the designation.

The property is currently developed with a single-family dwelling, garage, driveway and septic system. The applicant proposes to replace the exiting dwelling in approximately the same location. The replacement dwelling will be located approximately 568 feet, 500 feet, 687 feet and 659 feet from the Northern, eastern, southern, and western boundaries respectively.

III. APPROVAL CRITERIA & FINDINGS OF FACT

The purpose of this report is to verify if the above referenced structure complies with the requirements of OAR 660-06-025(3)(p), and therefore qualifies as a "lawfully established dwelling" with rights for alteration, repair or replacement. "Lawfully established" is interpreted to mean that at the time the dwelling was established, its establishment complied with any zoning and land use regulations applicable to the subject property or its establishment predated any zoning and land use regulations applicable to the subject property. The code language is in **boldface** type, followed by the Findings of Fact.

OAR 660-06-025(3)(p): A lawfully established dwelling is a single family dwelling which:
(A) Has intact exterior walls and roof structure;
(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and
(D) Has a heating system;

Based on Lane County Land Management Division, the subject dwelling was placed on the property in 1958 prior to requirements for a Lane County building permit. Lane County Assessment and Taxation records verify that the dwelling was inspected/appraised by LC AT&T in 1978. The dwelling has been occupied continuously since that time. Based on these records and the applicant's submittals, the dwelling provides the basic living improvements listed above.

The subject property was zoned Farm-Forestry (FF-20) in 1976. In 1984, the property was re-zoned to its current zoning of F2. The establishment of the subject mobile home occurred prior to the current zoning and would have complied with the earliest regulations in 1976.

Because the establishment of the dwelling in question appears to have complied with zoning and land use regulations applicable to the subject property, and because it provides the required basic living improvements, the application is consistent with the criteria. The dwelling in question qualifies as lawfully established with rights for replacement.

OAR 660-06-025(3)(p) In the case of replacement, the dwelling to be replaced shall be removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling.

The applicant has indicated the dwelling will be burned by the local RFPD as a practice burn. The applicant shall provide a letter from the RFPD attesting to the fact that the structure was destroyed on a particular date. Or, if the structure is not burned, the dwelling shall be demolished within three months of the authorization by the Lane County Building Official for occupancy of the replacement dwelling. The demolition would require a permit authorized by the Building Official.

Siting Standards

LC 16.211(8)(a) Property Line Setbacks: The proposal meets all property line setbacks, and is therefore consistent with this standard.

LC 16.212(8)(c) Class I Stream Riparian Setback Area: No Class I streams are located within 100 feet from the existing dwelling. Therefore, the proposal is consistent with this standard.

LC 16.244, Floodplain (/FP) requirements: The replacement dwelling site is not located with a flood hazard area.

LC 16.005(4), Sensitive Bird Habitat Protection: The subject property is not identified as unique wildlife habitat site. Therefore, the proposal is consistent with this standard.

ORS 215.418, Wetlands: The site of replacement dwelling site does contain mapped wetlands or waterways as indicated on the National Wetlands Inventory Map Springfield 4.

IV. DECISION

The findings above demonstrate that this application for replacement of a lawfully established residence meets the provisions and criteria of OAR 660-06-025(3)(p) and is subject to all conditions of approval.

LAND MANAGEMENT DIVISION / PUBLIC WORKS DEPARTMENT / 125 EAST 8TH AVENUE / EUGENE, OREGON 97401 / FAX 541/682-3947
BUILDING (541) 682-3823 / PLANNING (541) 682-3807 / SURVEYORS (541) 682-4195 / COMPLIANCE (541) 682-3807 / ON-SITE SEWAGE (541) 682-3754
1032
30% Post-Consumer Content
001732

Lane County
Public Works
LAND MANAGEMENT DIVISION

V. EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B1: Approved Applicant's Site Plan

Prepared By: _____ **Date:** May 7, 2001
Bill Sage, Associate Planner

Authorized By: Kent Howe **Date:** 5-7-01
Kent Howe, Planning Director

LAND MANAGEMENT DIVISION / PUBLIC WORKS DEPARTMENT / 125 EAST 8TH AVENUE / EUGENE, OREGON 97401 / FAX 541/682-3947
BUILDING (541) 682-3823 / PLANNING (541) 682-3807 / SURVEYORS (541) 682-4195 / COMPLIANCE (541) 682-3807 / ON-SITE SEWAGE (541) 682-3533

30% Post-Consumer Content

Lane County
Public Works
LAND MANAGEMENT DIVISION

EXHIBIT A

CONDITIONS OF APPROVAL
PA 01-5596

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of Permit **PA 01-5596** is valid for a two-year period from May 7, 2001, the final date of approval until May 7, 2003, the expiration date of this approval. Lane County may grant one extension period of up to 12 months if:
   (a) An applicant makes a written request for an extension of the development approval period;
   (b) The request is submitted to the county prior to the expiration of the development approval period;
   (c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period;
   (d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons that the applicant was not responsible.

   Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.

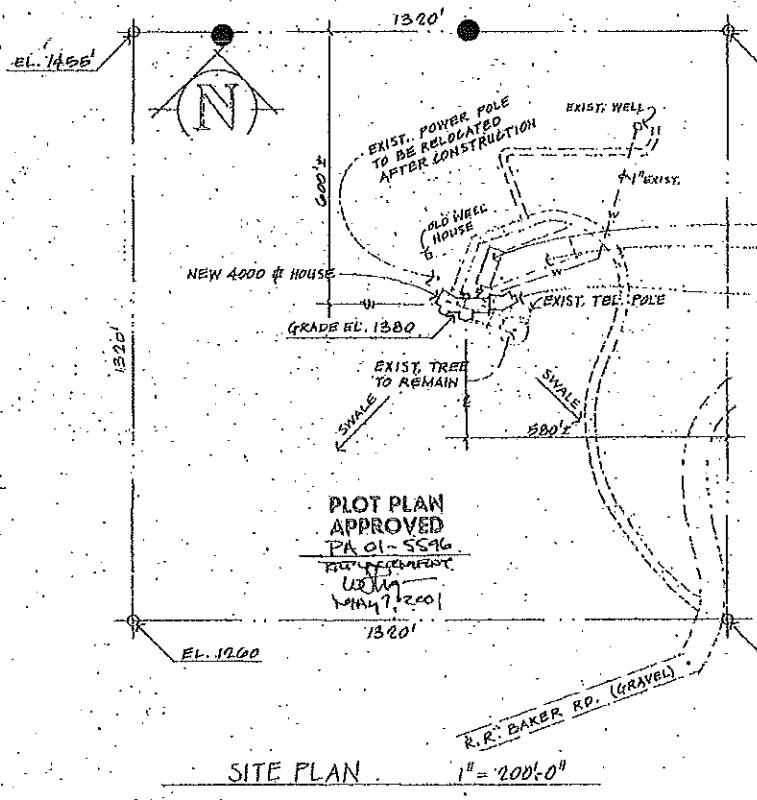
2. The dwelling location shall be as represented by the applicant's written statement the approved plot plan dated May 7, 2001 unless modified by the Planning Department.

3. The existing dwelling must be removed within 90 days of three months of the completion of the replacement dwelling.

4. The replacement dwelling must meet all applicable building and sanitation requirements.

5. For informational purposes, it is the applicant's responsibility to secure any other applicable local, state, or federal authorizations.

LAND MANAGEMENT DIVISION / PUBLIC WORKS DEPARTMENT / 125 EAST 8TH AVENUE / EUGENE, OREGON 97401 / FAX 541/682-3947
BUILDING (541) 682-3823 / PLANNING (541) 682-3807 / SURVEYORS (541) 682-4195 / COMPLIANCE (541) 682-3807 / ON-SITE SEWAGE (541) 682-3754
1034
30% Post-Consumer Content
001734



EXIST. DRAIN FIELD

REPLACEMENT FIELD

NEW HOUSE PLACED OVER LOCATION OF EXIST. HOUSE TO BE REMOVED. MAINTAIN 15' FROM EXIST. SEPTIC TANK

EXIST. DRIVEWAY (GRAVEL)

NOTE: EXACT PLACEMENT OF HOUSE TO BE DETERMINED ON SITE. HOUSE & SEPTIC SYSTEM SITS ON NEARLY LEVEL BROW OF THE HILL.

PLOT PLAN APPROVED
PA 01-5596
[illegible]
[illegible]
[illegible]

LEGAL DESCRIPTION

NORTHEAST ONE-FOURTH OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 18 SOUTH, RANGE 2 WEST OF WILLAMETTE MARIDIAN, TAX LOT NO. 100, LANE COUNTY, OREGON. (MAP # 18021I)

SITE PLAN 1" = 200'-0"

JERRY & SUSAN REEDER HOUSE
86752 R.R. BAKER RD.
SPRINGFIELD, OR. 97478 TEL. 744-0650

MAP & LOT NO. 18 2 11 100
ADDRESS HUTCHISON FAITH E + NORMAN
APPR NO. 1990
CYCLE 4 9-8-78

567634
19-15 ~~19-01~~

PROP CLASS 1-6-1 STAT CLASS 1-4-D
CLASS R1-4 QUAL ADJ ____ %
STORIES 1 SHAPE ADJ ____ %
SQ FTG 1ST FLOOR 1204
YEAR BUILT 19 55
EFFECTIVE AGE ____
REMODELED ☐ NO ☐
YEAR 19__ PERMIT NO. ____
☐ RENTAL $ ____ MO.
☐ SOLD 19__ AMOUNT $ ____

DWELLING
SQ FT 1ST FLOOR 1204
SQ FT 2ND FLOOR ____
SQ FT FIN ATTIC ____
SQ FT FIN BSMT ____
TOTAL LIVING AREA 1204
CLASS OF SURR IMPRV ____
NBRHOOD LOCATION ____
INT INSPECTED YES ☐ NO ☒ OWNER AT DOOR No CHANGE OCY

PHYS COND 4
FUNC UTIL 4
APPEARANCE 4
COMPLETE ____ %
DEPRECIATION
NORMAL 9 %
FUNCTIONAL ____ %
LOCATIONAL ____ %
PERCENT GOOD 81 %
COST INDEX YEAR 19 77 INDEX 120 %

FOUNDATION
☐ CONCRETE
☒ CONC BLOCK
☐ CONC SLAB
☐ BRICK
☐ STONE
☐ FRAME
☐ WD BLOCK
ADJ $

EXTERIOR
☐ WOOD FRAME
☒ DOUBLE
☐ SINGLE
☐ SHEATHG ONLY
☐ BEVEL
☐ RUSTIC
☐ VERT
☒ B & B
☐ WD SHAKE
☐ ASB SHAKE
☐ STUCCO
☐ COMP SHGL
☐ METAL
☐ PLYWOOD
☐ MASONRY
☐ BRICK VEN
☐ BRICK
☐ STONE
☐ CONC BLK
☐ PAINT
☐ FUR'D
☐ STUCCO
ADJ $

ROOF
☒ GABLED
☐ HIP
☐ BUILT-UP ROCK
☐ FLAT
☐ COMPLEX
☐ EXP BEAM
PITCH
☐ LOW
☒ AVE
☐ STEEP
SHINGLE
☐ WOOD
☒ COMPO
☐ METAL
☐ SHAKES
☐ ROLLED ROOFG
☐ BAR TILE
☐ DORMERS L. FT ____
ADJ $

SITE IMPRV
☐ PAVED ACCESS
☒ GRAVEL ACCESS
☐ DIRT ACCESS
☐ CURBS
☐ GUTTERS
☐ SIDEWALKS
☐ WATER SERV
☐ SAN SEWERS
☐ STORM SEWERS
☐ UND CABLES
☐ STREET LIGHTS

PARTITIONS	F	U	A	B
PLASTER				
DRYWALL	X			
COMPO				
CLD & PA				
T & G				
PLYWOOD	X			
FUR'D				
PANELING				
TRIM:				
FIR	X			
HD WOOD				

ADJ $

FLOORS	F	U	A	B
DOUBLE	X			
SINGLE				
FIR				
HDWOOD	X			
TILE				
CONCRETE				
CARPET				
PLYWOOD				
LINO	X			
SUB ONLY				

ADJ $

ROOMS	F	U	A	B
LIVING	1			
DINING				
DINING AREA	1			
KITCHEN	1			
FAM/REC/STUDY				
BED ROOMS	2			
FULL BATHS	1			
HALF BATHS				
UTILITY ROOM	1			
OTHER				

UPPER FLOOR	CLASS	SQ FT	ADJ $
SEALED			
FULL FINISH			

~~ATTIC~~	CLASS	SQ FT	ADJ $
UNFINISHED			
SEALED			
FULL FINISH			

BASEMENT	CLASS	SQ FT	ADJ $
TOTAL			
SEALED			
FULL FINISH			

SITE AND AREA INFLUENCES

VIEW: NONE, SL, MOD, WID, PAN	STR TYPE: MAIN, SEC, X RES DEADEND, CUL	CONTOUR: POS, X NO EFF, NEG
ZONE CON: X YES, NO	TRAFFIC: HVY, MOD, X MIN	SITE DRAIN: POOR, FAIR, X AVE, GOOD
NEIGH TR: TR, INT, X ST, DIS	LOT TYPE: REAR, X IN, CNR	LANDSCAPING: POOR, FAIR, X AVE, GOOD
NEIGH DES: HI, X AV, LOW	LOT SHAPE: X REG, I/G, I/B	

HEATING
CLASS R1-4
SQ FT 1204
☒ ELECTRIC
☐ GAS
☐ OIL
☐ HARD FUEL
☐ CEIL CABLE ½
☒ BSBD/W. UNITS
☐ NO. WALL UNIT
☐ HEAT PUMP
☐ CEN AIR C
☐ NO. TONS
☐ F. AIR
☐ FL/W FURN
☐ HOT WATER
☐ GRAVITY
☐ CEN. HEAT
☐ CHIMNEY
☐ PORTABLE
☐ RENTAL
ADJ $ 700+

BUILT-INS
CLASS R1-4
☐ CABINETS
☐ FIR
☒ HD. WOOD
☐ METAL
☐ CAB. TOPS
☒ FORMICA
☐ LINO
☐ PLASTIC
☐ VAC CLNR
☐ INTERCOM
ADJ $

ELECTRICAL
CLASS R1-4

PLUMBING
CLASS R1-4
CL EXTRAS
1 LAVATORY
1 TOILET
W. HUNG
1 BATHTUB
1 SOT
☐ ST SH CER
☐ ST SH FIB
☐ ST SH METAL
☐ GLS DOOR
1 SINK; KIT
☐ SINK, W. BAR
1 WATER HTR
1 LAUN FAC
1 LAUN TUB
ADJ $

APPLIANCES
CLASS R1-4
☐ GAS
☒ ELECTRIC
☐ OVEN-SGL
☐ OVEN-DBL
☐ COOKTOP
☐ RANGE
☐ DISHWASHER
☐ GARB DISP
☐ HOOD & FAN
1 FAN - KIT
☐ FAN - BATH
ADJ $ 40+

FIREPLACE
CLASS R1-4
1 1 STRY SGL
☐ 1 STRY BKD
☐ 2 STRY SGL
☐ 2 STRY STKD
1 NO. OPENINGS
1 PLAIN
☐ ELABORATE
ADJ $ 900+

SPEC IMPRV
☐ CONC DRIVE
☐ B. T. DRIVE
☐ PORCH COVERED ENCLOSED
☐ PATIO COVERED
☐ EXT DECK
☐ SW. POOL
☐ PUR. SP. SYS.
☐ OTHER IMPVTS

VALUE SUMMARY

BASE VALUE		17950
UPPER FLOORS		
SHAPE ADJ	____ %	
NET LUMP SUM		1640
QUALITY ADJ	____ %	
TOTAL REPLACEMENT COST		19590
PERCENT GOOD	81 %	15870
DEPR REPLACEMENT COST		2260
GARAGE DEPR. REPL COST		1290
OTHER IMPROVEMENTS DRC		19420
19 77 COST INDEX 120 %		23300
TOTAL DEPRECIATED REPL COST		

REMARKS

IMPROVEMENT VALUE SUMMARY

COST APPROACH: D.R.C.	23300
INCOME APPROACH: IMPROVEMENTS	
MARKET APPROACH: IMPROVEMENTS	27960
IMPROVEMENT VALUE CONCLUSION	27960
AS OF APPRAISAL DATE 1-1-78	78 I - 27960

567634 19-15-0-11-100

	CLASS	FOUN	FLOOR	ROOF	EX WALL	INT WALL	MISC	DIMEN	AREA	LUMP SUM	QUAL INDEX	REPL COST	PHYS% USE% GOOD %	D.R.C.
GARPORT	R1-4	Co-BLK	Co	GA										
YR BLT 19														
ATT				SHAKE	DBL X	UNFIN X	NO. CARS 2	22X22	484	3290		3090	81	2260
DET X				COMPO X	SGL	FIN				-200			90	
BSMT				WOOD	BEV	DRY/PL				3090				
					SHK	LC WD	NO DOORS @ 2.00						73	
					R&G X									

FOR ASSESSMENT AND TAXATION USE ONLY

MAY 9 1990 341

1036

001736

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date indicated below, I filed the enclosed original of the **REPLACEMENT RECORD OF PROCEEDING UNDER REVIEW** in electronic format by delivering two complete copies of the record on optical disk, with documents recorded in a searchable PDF format, to:

LAND USE BOARD OF APPEALS
775 Summer Street, NE, Suite 330
Salem, OR 97301-1265

by first class mail, postage prepaid, deposited with the United States Postal Service.

On the same date, I served a true and correct copy of the same document in electronic format to attorneys for Petitioner, Intervenor-Respondent and Intervenor-Petitioner as follows:

Sean Malone
Attorney at Law
295 E. 5th Ave, Suite 200-C
Eugene, OR 97401
Attorney for Petitioner

Michael E. Farthing
PO Box 10126
Eugene, OR 97440
Attorney for Intervenor-Respondent

Andrew Mulkey
133 SW 2nd Ave., Ste.201
Portland, OR 97204
Attorney for Intervenor-Petitioner

Dated this 8th day of May, 2020.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. ANDREW CLARK, OSB #881818
Of Attorneys for Respondent Lane County

ADAMS Shawna L

From:	ADAMS Shawna L
Sent:	Thursday, March 11, 2021 8:29 PM
To:	'lsv1953@gmail.com'; 'Kimberly O'Dea'; 'DAVIES Anne'; 'Sean Malone'; 'Michael E. Farthing'; 'Jim McLaughlin'; 'Jeremy Keepers'
Cc:	BELL Amber R; EICHNER Lindsey A; BAUDER Jared W
Subject:	RE: 3/4/21 Hearing Submittals for 509-PA20-05064 & 509-PA20-05066
Attachments:	20210305135306743.pdf

Good evening, Attached is a Hearings Official order to modify the open record periods for the Oakridge Airport King template dwelling appeals. The revised open record period deadlines are also pasted below.

March 18, 2021: First open record period
April 1, 2021: Responses to materials submitted during first open record period
April 8, 2021: Final rebuttal by applicant

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

LCOG
LANE COUNCIL OF GOVERNMENTS

March 5, 2021

Shawna Adams
Lane County Land Management Division
3050 North Delta Highway
Eugene, OR 97408

Re: Order--Open Record Period in PA 20-05066 and 20-05064 (King/EJK Investments)

Dear Shawna:

At the public hearing on this matter on March 4, 2021, I announced the scheduled open record period as follows:

March 11, 2021: First open record period
March 18, 2021: Responses to materials submitted during first open record period
March 25, 2021: Final rebuttal by applicant

The applicant has since requested that the open record period be extended as follows:

March 18, 2021: First open record period
April 1, 2021: Responses to materials submitted during first open record period
April 8, 2021: Final rebuttal by applicant

LandWatch Lane County has agreed to the request.

Accordingly, the open record period is revised as set forth above. Please provide notice to the parties of this Order.

Sincerely,

Anne C. Davies
Lane County Hearings Official

Additional Information Submitted

Date Stamp
RECEIVED
MAR 09 2021

Submitted By: Kim O'Dea
Phone Number: 541-954-0095
Email Address: kimodea@landuseoregon.com
Project Address: _____

LANE COUNTY OREGON

Permit Number (BP, PA, SP, SI): PA 20-05065
Submittal Description: 3/4/21 Hearing Submission hard copy
Material Submitted:
Please Route to Shawna Adams

Type of Submittal:

☒ Additional Information
☐ Response to Plan Review Comments
☐ Revisions to Approved Plans
☐ Other: _____

☐ Deferred Submittal
$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

swm 12/26/2018

email copy rcvd March 4, 2021
hard copy
RECEIVED MAR 09 2021

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.0095
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM

March 4, 2021
HEARING LETTER

Anne Davies
Lane County Hearings Official
c/o Shawna Adams
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: King and EJK Inv.; Reissue Expired Director's Decision for Template Dwellings; PA 20-05066 and PA 20-05064, Map 21-35-07-30, TL 2800 and 2900

Ms. Davies:

These decisions were appealed on a single issue: LUBA's recent decision addressing Big Game density. *LandWatch v. Lane County*, ____ Or LUBA ____ (2021)(LUBA No. 2020-030)(*Nimpkish*).

I. Background

TL 2800 is 13.28 acres of vacant F-2 land located adjacent to the Oakridge airport. TL 2900 is 12.05 acres of vacant F-2 land located adjacent to the Oakridge airport. Both are located within Major Big Game habitat. TL 2900 is adjacent to Impacted Big Game habitat.

Policy 15(c) of the Lane County RCP Goal 4 Forest Lands element acknowledges that there are a significant number of forest properties in Lane County less than 80 acres in size, and that those properties are more likely to be impacted and thus zoned F-2. Exhibit B. LC 16.211 does not have a minimum lot size for template dwellings. As such, the Code acknowledges that properties zoned F-2 can be developed with a template dwelling regardless of size, if template test requirement are met. Thus, the RCP and its implementing ordinance acknowledge that parcel size is not a limiting factor for template dwelling development. Both of these documents were acknowledged by LCDC.

Policy 11 of the Lane County RCP Goal 5 Flora and Fauna element, states:

> *"Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range*

> *through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."* (emphasis added)

The Flora and Fauna Working Paper ("Working Paper") of the RCP states,

> *"ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than *** one dwelling unit/80 acres in Major Range conflicts with habitat for big game."* (emphasis added)

In *Nimpkish*, LUBA determined that it was irrelevant that the County had not divided the County into "regions" consistent with Policy 11 and the Working Paper,

> *"*** the county's failure to take the steps of identifying regions and basing zoning by region on either overall residential densities or ODFW minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in the RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. Rather *** Policy 11 remains operative, and it provides that "[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict ***." Pg 13.*

The end result is that if overall density exceeds one dwelling per 80 acres in Major Big Game Range areas, then a conflict exists and an ESEE analysis must be done. If overall density does not exceed one dwelling per 80 acres, then there is no conflict and no further analysis is needed.

II. Development of the subject property does not result in an overall density that exceeds one dwelling per 80 acres.

The acreage of the subject property is irrelevant to this analysis. The focus is on the "overall" density.

In response to *Nimpkish*, our office commissioned a Major Big Game Density report from Lane Council of Governments (LCOG). Exhibit A. Based on that report, there are 2,571,426 acres of Major Big Game in Lane County[1]. There are 3,137 existing dwellings within that Major Big Game area. As such, the overall density is 1 dwelling per 819 acres. This density is significantly lower than ODFW recommendations.

[1] When Major Big Game was originally digitized, exclusions required by the RCP were not omitted (Metro Plan, UGB area and Developed and Committed Areas). The LCOG report refines that digitized layer to omit the required exclusions.

While reviewing the Major Big Game mapping for the entire County, we noticed that the I-5 corridor is largely mapped as Impacted and Peripheral Big Game Range, which results in a break in range continuity. Exhibit A, Map 1. Further, while larger big game species can conceivably cross a 4 to 6 lane interstate with a median, it seems unlikely that they often do, and so the corridor also serves as a potential physical deterrent. Given that continuity provides the ability to roam freely, and that such freedom of movement is a major element of habitat, it seems logical that the I-5 corridor might serve to divide the county into two Major Big Game regions[2]. Further, a division along the I-5 corridor would be "convenient for planning purposes." Flora and Fauna Working Paper, page 25. To be thorough, we requested that LCOG analyze each region (East and West) independently. Based on that analysis, the overall density of East Lane County is one dwelling per 1,435 acres; and the overall density of West Lane County is one dwelling per 406 acres. Both are significantly lower than ODFW recommendations.

In Summary:

The subject properties are located east of I-5. Based on the above analyses, whether viewed as a whole or as a region, many more residences can be added in the Major Big Game Range before exceeding the ODFW density standard. The proposed additional of two dwellings will not result in the East region (or the Major Big Game Range area as a whole) exceeding ODFW overall density standards. The addition of two dwelling does not change the overall density. In fact, the addition of 100 homes to the entire Major Big Game Range would only increase density to 1 dwelling per 794 acres. Based on the above, there is no conflict. No ESEE analysis is required.

Sincerely,
/s/ *Kimberly JR O'Dea*
Kimberly J.R. O'Dea

Exhibits:

A: LCOG Major Big Game Report dated March 2, 2021
B: RCP and Working Paper excerpts
C: *Nimpkish* LUBA decision

[2] Within those two Major Big Game regions, there would also be additional Peripheral Big Game regions that are not relevant here. Those regions could also be identified based on continuity/proximity. A cursory review of the Peripheral Big Game overlay shows roughly 6-8 regions. There would be additional Impacted Big Game regions. As such, the applicant's approach results in a number of regions that is consistent with what is anticipated in the Flora and Fauna Working Paper, page 25.

LCOG
WorkingTogether
FOR OUR COMMUNITY
03/02/2021

Report - Major Big Game Range in Lane County RCP

There were three objectives for the analysis:

1. Determine the acreage of the Major Big Game Range within Lane County's Rural Comprehensive Plan outside of Metro Plan, UGB's and Developed and Committed Areas.
2. Identify the number of dwellings that fall within that amount of acreage.
3. Determine the overall density of dwellings per acre.

ESRI GIS software and geoprocessing tools in combination with various data (see sources below) was used to perform the analysis, which included filtering specific data both spatially and tabularly.

The acreage within the study area was calculated from the digitized boundary layer of the Major Big Game Range. This acreage was then refined by subtracting acreage that was found to be within the Metro Plan, UGB's and Developed and Committed Areas. Analysis was also performed separately for the east and west parts of the County as the Major Big Game Range is not contiguous across the lands within and adjacent to the I-5 corridor.

Spatial and tabular filters were applied to the Lane County's Rural Plan Designation layer, specifically, those designated Residential, Commercial, or Industrial. All lands that have a plan designation of R, C or I that are outside of UGB's and the Metro Plan boundary by necessity must be within a Developed and Committed Lands Exception (D&C) Area to receive that Plan designation. All areas within a D&C Area are considered Impacted Big Game Range (per Lane County RCP Goal 5 Flora and Fauna Policy #10) and not Major Big Game Range. Therefore, any of the D&C areas that lie within the digitized boundary layer of the Major Big Game Range were excluded from the total acreage calculation. Since there is no specific digitized layer for D&C areas outside of the Metro Plan, the only way to identify and exclude these lands was to utilize the Rural Plan Designation layer.

Tabular filters were also applied to the regional address layer to determine residential dwellings outside of exclusion areas. Specifically, only addresses with a HUD/BPR residential use code (D,K,M,N,S,Q) were used. The official reference for the HUD/BPR codes (also commonly known as the SLUCM codes) is the Standard Land Use Code Manual from the Urban Renewal Administration, Bureau of Public Roads published in 1965. The coding scheme has been modified in its details to meet the local needs of Lane County. Address points are almost always located where the structure/dwelling exists, and there may be instances where a portion of a given parcel or property is within an exclusion area, while the dwelling is not.

EXHIBIT A

Analysis Results (acreage values are as mapped):
Total Acres (land & water) in Lane County = 2,955,953
Major Big Game Range in Lane County (no exclusions) = 2,596,120 acres

Map 1:
Major Big Game Range in Lane County with exclusions = 2,571,426 acres
Residential Addresses (dwellings) outside of exclusion areas = 3,137
Overall Density = 1 dwelling / 819 acres

Map 2:
Major Big Game Range in Lane County east of I-5 with exclusions = 1,818,537 acres
Residential Addresses (dwellings) outside of exclusion areas and east of Interstate 5 = 1,285
Overall Density = 1 dwelling / 1,415 acres

Map 3:
Major Big Game Range in Lane County west of I-5 with exclusions = 752,889 acres
Residential Addresses (dwellings) outside of exclusion areas and west of Interstate 5 = 1,852
Overall Density = 1 dwelling / 406 acres

Source & Data:

Lane County-
- Major Big Game Range Habitat Area
- Rural Plan Designations

Lane Council of Governments (LCOG)-
- Addresses
- Eugene/Springfield Metro Plan Boundary
- Lane County Boundary

State of Oregon-
- Urban Growth Boundaries
- PLSS Township/Range

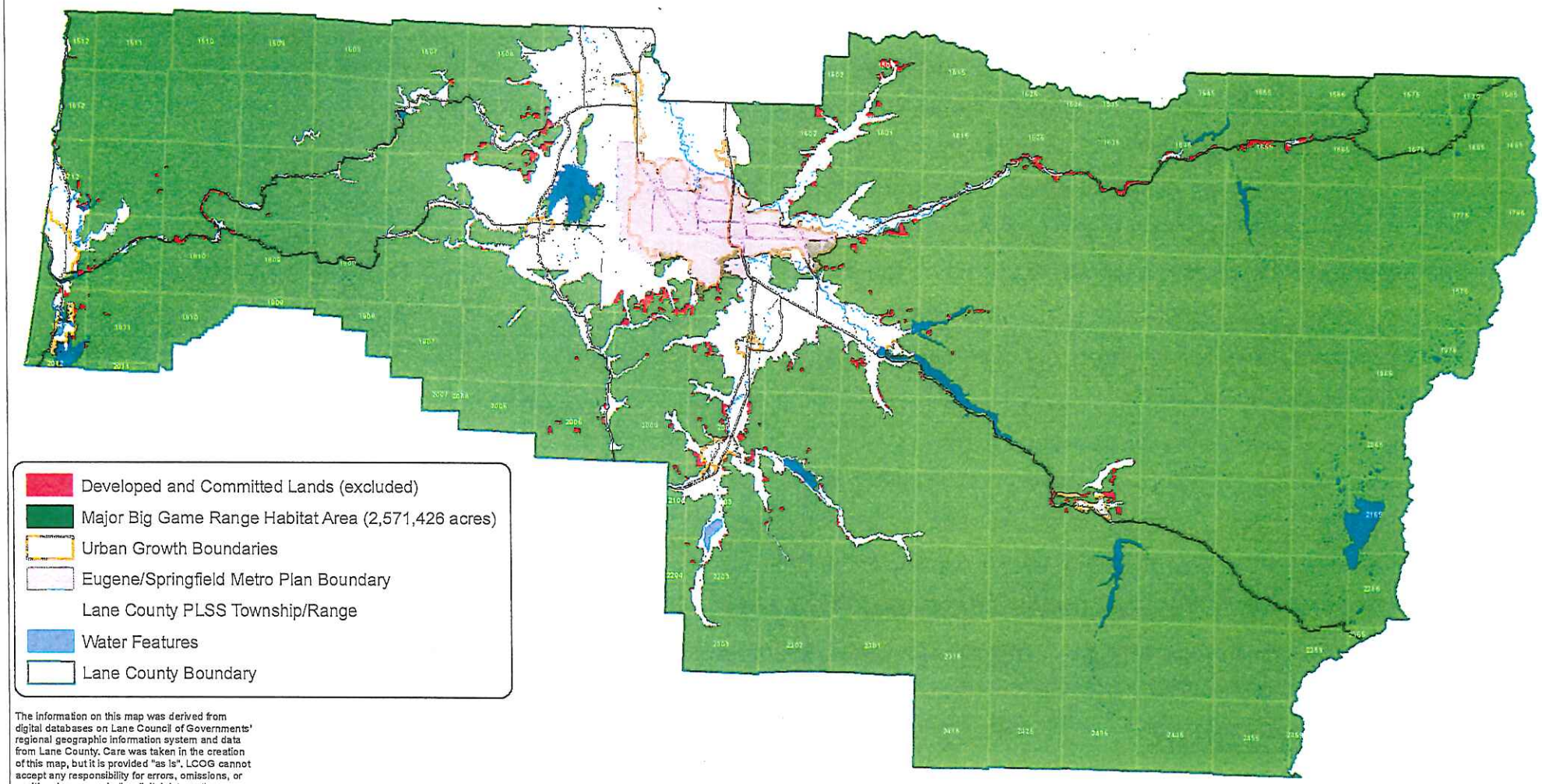
National Hydrography Dataset (NHD)-
- Water Features

---All data except for the analysis output can be verified here:
https://lcmaps.lanecounty.org/LaneCountyMaps/ZoneAndPlanMapsApp/index.html

Created on 03/02/2021 by: Kyle Overstake – GIS Associate, Lane Council of Governments

The information in this report was derived from digital databases on Lane Council of Governments' regional geographic information system and data from Lane County. Care was taken in the analysis and creation of the report, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions in results and/or underlying records. There are no warranties, expressed or implied, accompanying this product.

Major Big Game Range in Lane County RCP



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Eugene, Oregon 97401-2910

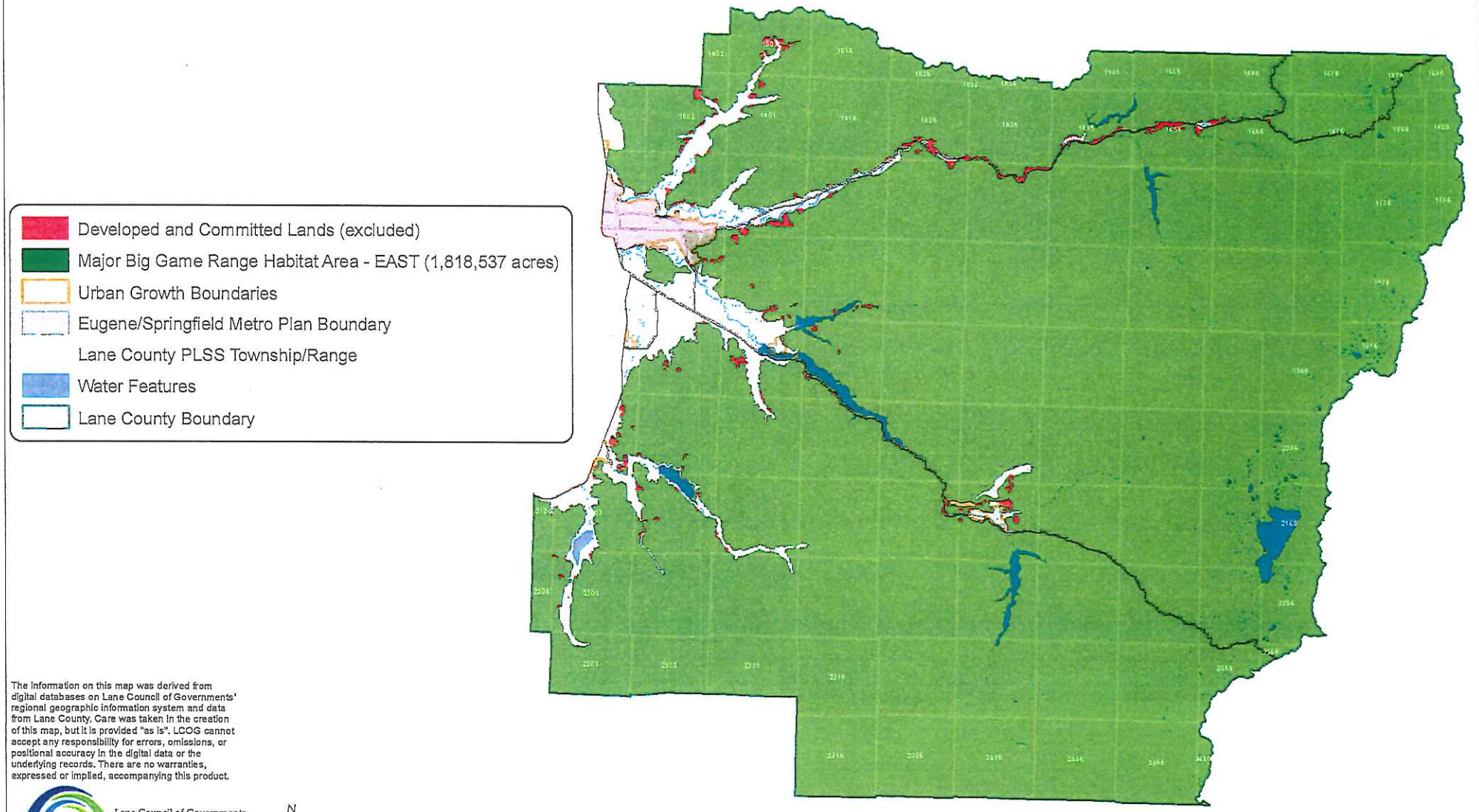
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Map 1

Printing Date: March 02, 2021

Major Big Game Range in Lane County RCP (East)



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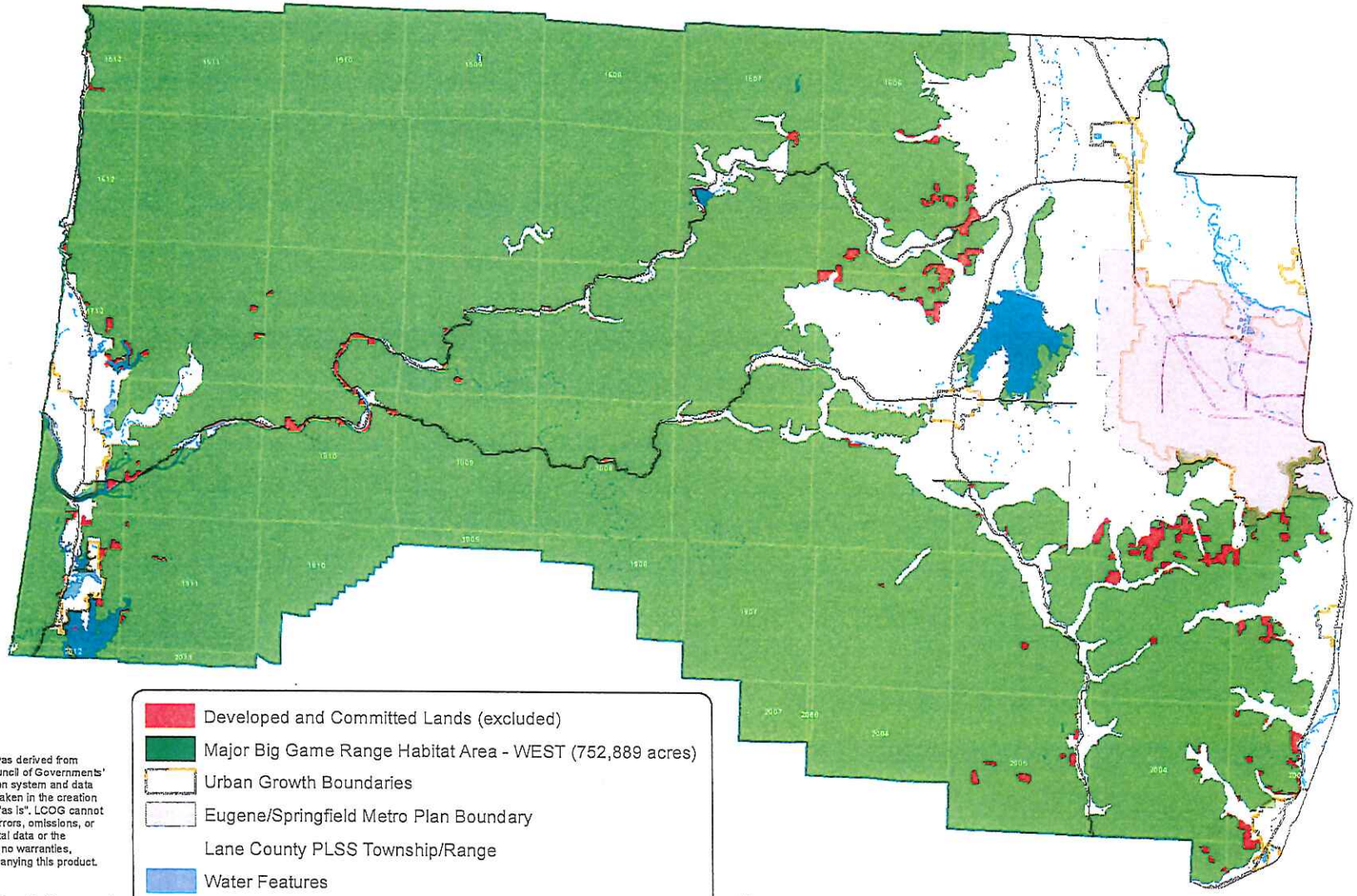
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Map 2

Printing Date: March 02, 2021

Major Big Game Range in Lane County RCP (West)



Developed and Committed Lands (excluded)
Major Big Game Range Habitat Area - WEST (752,889 acres)
Urban Growth Boundaries
Eugene/Springfield Metro Plan Boundary
Lane County PLSS Township/Range
Water Features
Lane County Boundary

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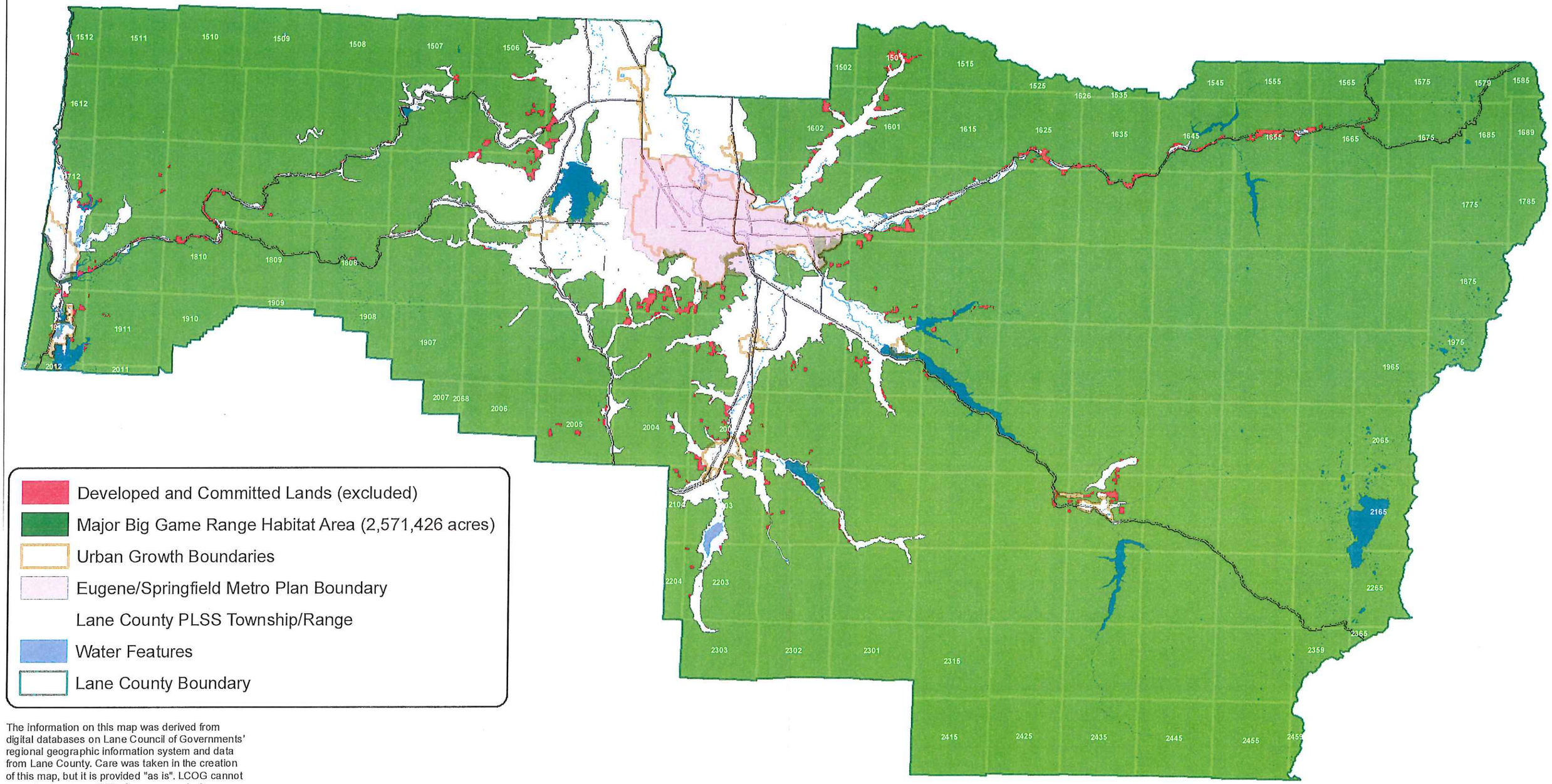
Map 3

Printing Date: March 02, 2021

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Major Big Game Range in Lane County RCP



- Developed and Committed Lands (excluded)
- Major Big Game Range Habitat Area (2,571,426 acres)
- Urban Growth Boundaries
- Eugene/Springfield Metro Plan Boundary
- Lane County PLSS Township/Range
- Water Features
- Lane County Boundary

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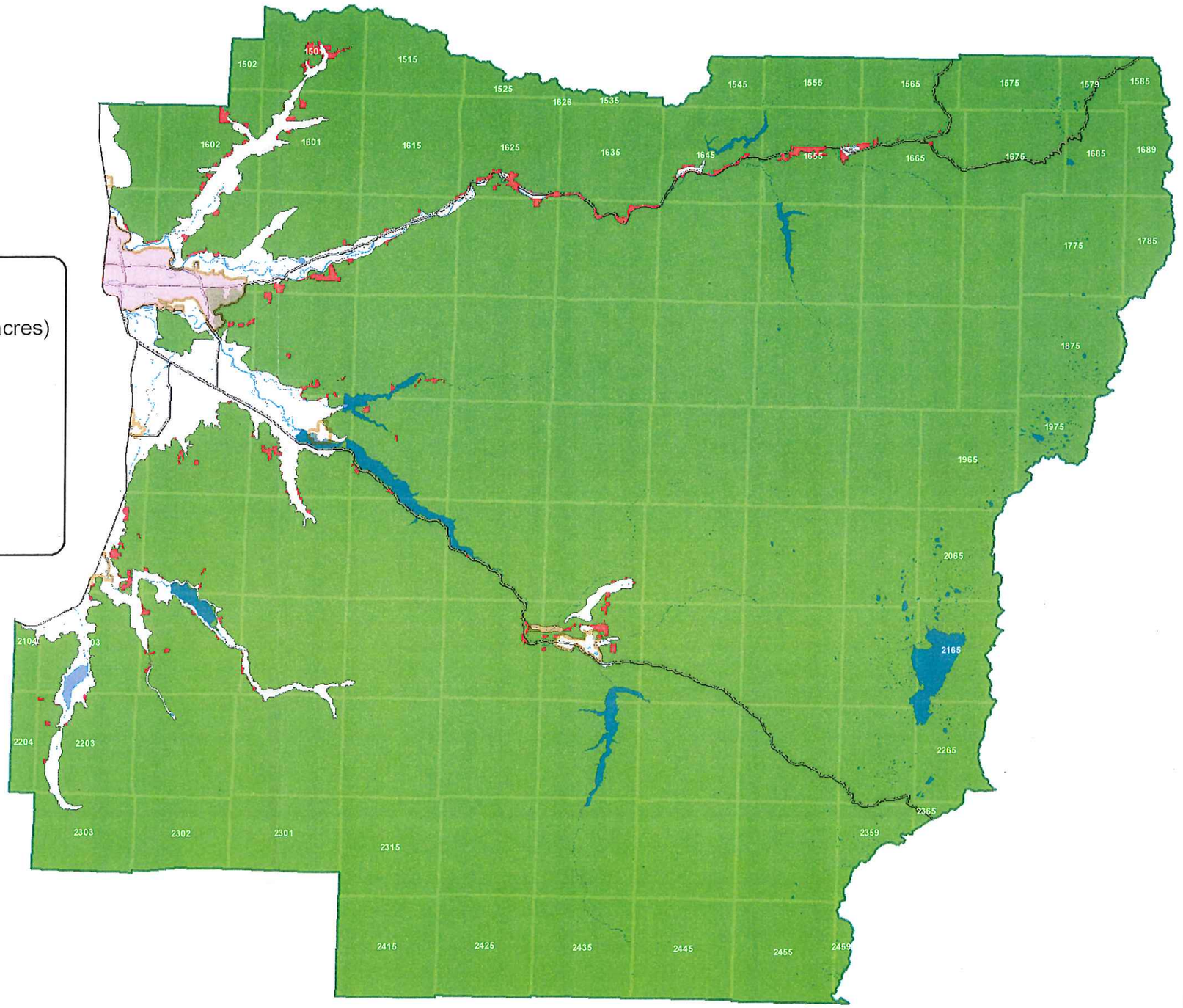
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Map 1

Printing Date: March 02, 2021

001749

Major Big Game Range in Lane County RCP (East)



- Developed and Committed Lands (excluded)
- Major Big Game Range Habitat Area - EAST (1,818,537 acres)
- Urban Growth Boundaries
- Eugene/Springfield Metro Plan Boundary
- Lane County PLSS Township/Range
- Water Features
- Lane County Boundary

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Eugene, Oregon 97401-2910

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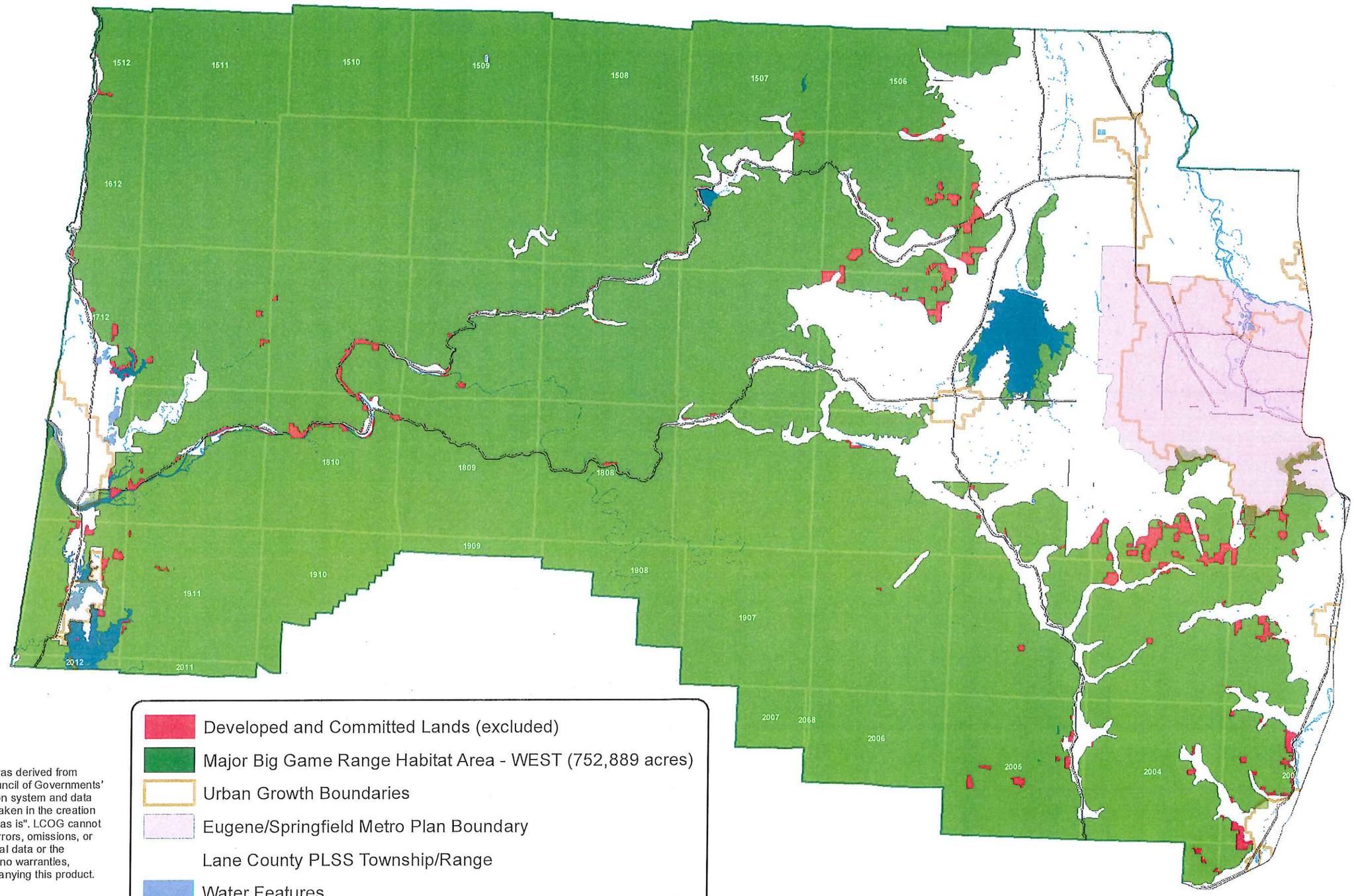
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Map 2

Printing Date: March 02, 2021

001750

Major Big Game Range in Lane County RCP (West)



Developed and Committed Lands (excluded)

Major Big Game Range Habitat Area - WEST (752,889 acres)

Urban Growth Boundaries

Eugene/Springfield Metro Plan Boundary

Lane County PLSS Township/Range

Water Features

Lane County Boundary

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N

0 3 6 12 Miles

Map 3

Printing Date: March 02, 2021

001751



LANE COUNTY

RURAL COMPREHENSIVE PLAN

GENERAL PLAN POLICIES 1984

Excerpt

UPDATED:
January 1998
April 2003
August 2003
December 2003
February 2004
January 2005
February 2008
June 2009

EXHIBIT B 1

GOAL 4: FOREST LANDS

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

   Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water, and fish and wildlife resources.

2. Forest lands will be segregated into two categories, Non-impacted and Impacted and these categories shall be defined and mapped by the general characteristics specified in the Non-Impacted and Impacted Forest Land Zones General Characteristics.

3. Forest lands that satisfy the requirements of ORS 197.247 (1991 Edition), may be designated as Marginal Lands and such designations shall also made in accordance with other Plan policies. Uses and land divisions allowed on Marginal Lands ands shall be those allowed by ORS 197.247 (1991 Edition).

4. Forest operations, practices and auxiliary uses shall be allowed on forest lands subject only to such regulation of uses as are found in the Oregon Forest Practices Act, ORS 527.722.

5. Prohibit residences on Non-Impacted Forest Lands except for the maintenance, repair or replacement of existing residences.

6. Dwellings shall be allowed in the Impacted Forest Land (F-2/RCP) Zone District as provided in OAR 660-06.

7. The minimum land division size for the Nonimpacted Forest Lands (F-1/RCP) Zone and the Impacted Forest Lands (F-2/RCP) zone shall comply with OAR 660-06.

8. New structures must comply with the Siting and Fire Safety Standards of OAR 660-06-029 and 660 06-035.

9. Recreational activities in the Park and Recreation (PR/RCP) Zone District within resource areas that are outside lands for which a built or committed exception to a Statewide Planning Goal has been taken shall be limited to those uses consistent with Statewide Planning Goals 3 and 4.

10. The effects of a projected shortfall in timber supplies within the near future are of considerable concern to Lane County. The County supports efforts by state and federal agencies in developing plans that will address the situation. The County intends to be an active, committed participant in such plan development.

11. Encourage the consolidation of forest land ownership in order to form larger more viable forest resource units.

12. Encourage the conversion of under-productive forest lands through silvicultural practices and reforestation efforts.

13. Encourage the development of assistance programs, tax laws, educational programs and research that will assist small woodland owners with the management of their forest land.

14. Lane County recognizes that the Oregon Forest Practices Act sha11 be the only mechanism regulating the growing and harvesting of forest tree species on commercial forest lands unless Goal #5 resource sites have been recognized and identified as being more important through an analysis of ESEE consequences and conflict resolution as per Goal #5. No other findings, assumptions, goal policy or other planning regulation shall be construed as additional regulation of forest management activities.

15. Lands designated within the Rural Comprehensive Plan as forest land shall be zoned Non-Impacted Forest Lands (F-1, RCP) or Impacted Forest Lands (F-2, RCP). A decision to apply one of the above zones or both of the above zones in a split zone fashion shall be based upon:

    a. A conclusion that characteristics of the land correspond more closely to the characteristics of the proposed zoning than the characteristics of the other forest zone. The zoning characteristics referred to are specified below in subsections b and c. This conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion.

    b. Non-impacted Forest Land Zone (F-l,RCP) Characteristics:
        (1) Predominantly ownerships not developed by residences or nonforest uses.
        (2) Predominantly contiguous, ownerships of 80 acres or larger in size.
        (3) Predominantly ownerships contiguous to other lands utilized for commercial forest or commercial farm uses.
        (4) Accessed by arterial roads or roads intended primarily for forest management. Primarily under commercial forest management.

    c. Impacted Forest Land Zone (F-2, RCP) Characteristics:
        (1) Predominantly ownerships developed by residences or nonforest uses
        (2) Predominantly ownerships 80 acres or less in size.
        (3) Ownerships generally contiguous to tracts containing less then 80 acres and residences and/or adjacent to developed or committed areas for which an exception has been taken in the Rural Comprehensive Plan.

(4) Provided with a level of public facilities and services, and roads, intended primarily for direct services to rural residences.

GOAL FIVE: OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

Historical Resources

1. A group known as the "Lane County Historic Resource Committee" is to be established and given permanent status by the Board of County Commissioners. The Committee shall represent a wide array of historical interests and the interests of property owners. Its tasks shall include: general concern with historical matters in the County; to monitor conditions affecting such resources; to devise criteria and methods for the selection of newly-designated historical resources; to advise the staff and officials of the County on proposed new historical sites and structures; to oversee the administration of the Historic Structures or Sites ordinance; and other related tasks and duties. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

2. The County shall administer the "Historic Structures or Sites" section of Lane Code Chapter 10 as a means of protecting historic resources. These regulations shall be applied to all sites contained in list of "Historic Structures or Sites" referenced by the ordinance, which are sites deemed significant by the County, and therefore meriting protection from conflicting uses by a limitation of such conflicting uses.

3. The Goal 5 conflict resolution process (OAR 660-16-000 through 660-16-025) which has been applied in the selection of historical sites and structures contained in the General Plan and implemented through the "Historic Structures or Sites" ordinance, shall continue to be applied, where appropriate, to historic sites and places prior to regulation of them.

4. The County shall seek to enlist voluntary compliance with individual landowners in the addition of their property as historical sites, and landowners shall be notified of Public Hearings, including information about inclusion as a Historical Site.

5. The County shall encourage its own agencies, and communities within the County, to emphasize their historical, geographic and other unique qualities.

6. The County shall review proposals for development or changes in land use for possible impacts with designated historical sites. When proposed development or land use changes will cause harm or degradation of a designated site, such effects shall be mitigated in a satisfactory manner.

7. The County shall continually develop and refine, through review, and update, its inventory of historic sites and resources. A long-term objective shall be in the inclusion of historical sites in the County's geo-data system.

8. The County shall take advantage, where practical, of state and federal programs to assist in the identification and protection of historical resources, including the use of financial assistance from these programs.

8. Encourage farm and forestry use of aggregate land prior to extraction; minimize negative environmental impacts during extraction; require reclamation after extraction which is compatible with adjacent uses.

9. Lane County shall apply the appropriate district (SG, SG/CP, /QM) to the sites listed in Appendix "J" of the Mineral and Aggregate Working Paper. Those sites with potential conflicts shall be placed in the SG/CP or QM/SR Districts.

10. Sites for which not enough information is presently available to determine quality, quantity and conflicts with other uses which include those sites listed in Appendix "F" of the "Mineral and Aggregate Working Paper, shall be considered " Significant" in terms of OAR 660- 16-000 through 660-16-025, but requiring that the Goal 5 evaluation process be delayed (the "1B" option). At such a time as it is clear that these sites will be needed within the county's advance framework, they shall be evaluated per the Goal 5 rule including conflict analysis and implementation of protective measures. Such evaluation will take the form of Plan amendment or revision studies. Notwithstanding the above schedule, all "1B" sites will be evaluated within five years of the date of this Policy adoption. These sites are included herein as Goal #5 Mineral and Aggregate Exhibit A.

11. Mineral and aggregate extraction activities within the Willamette Greenway shall comply with the requirements of Statewide Planning Goal 15 (Willamette Greenway). Significant fish and wildlife habitat areas shall be protected in accordance with sections C.3.d. and C.3.i. of the Goal. The provisions of the Lane County Greenway Plan and implementing regulations shall be used to this purpose.

Flora and Fauna

1. Implement construction, development and other land use activities which significantly alter natural systems only after evaluation of effects on wildlife habitats and natural areas.

2. Recognize existing federal and state programs protecting threatened or endangered fish and wildlife species.

3. Through the use of County regulations including zoning, seek to minimize the adverse impacts of land use changes on sensitive species (those susceptible to significant population declines resulting from habitat modification).

4. Public agencies are encouraged to work with landowners to conserve wildlife habitats.

5. Lane County shall investigate fee acquisitions, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to protect Goal 5 resources.

6. Riparian vegetation along all Class I streams in the County is recognized as being of high value for many purposes, notably wildlife habitat and streambank stabilization. Riparian lands shall be defined as the lands within 100 feet of ordinary high water on Class I streams, and shall be

000/025); "3C" protection of the riparian resource shall be achieved through development setbacks and vegetation management regulations within the riparian strip. The setback distance will vary from 100 feet from ordinary high water in rural resource zones to 50 feet from ordinary high water in developed and committed areas; provided a means is made available for review and modification of these requirements where it can be demonstrated that an unduly restrictive burden would be placed on the property owner or, that riparian vegetation does actually extend all the way into the 50 foot or 100 foot setback to the location of the proposed improvements.

Such review and modification shall be spelled out in the zoning districts affected, and shall involve consultation with officials of the Oregon Department of Fish and Wildlife.

7. Because of incomplete County coverage by, and interpretation of, the National Wetlands Inventory, wetland resources are to be considered "significant" in terms of OAR 660-16-000/025 and placed in "1B" and "1C" categories. Major wetlands designated "1C" resources shall be protected per the "3C" option through a combination of existing County Coastal and Greenway zoning regulations, and federal; state ownership; where these do not occur, an appropriate wetlands zoning district shall be developed and applied. Other wetlands from the National Wetlands Inventory shall be evaluated per "1B" requirements within two years of the date of Plan adoption, and decisions made on the protection or use of the resource. The County shall consider enlarging the list of protected wetlands per Goal 5 requirements if it is clearly demonstrated that an unprotected significant wetland(s) is likely to be significantly impacted by a land use action over which the County has jurisdiction. (Modification in process)

8. Sensitive Fish and Waterfowl Areas as identified in the 1983 Revision the Flora and Fauna Working Paper, shall be considered "significant" "1C" resources per OAR 660-16-000/025, and protected per "3C" requirements through protection of riparian and wetland resources as described in the above Policy statement.

9. Residential building permits issued within Major or Peripheral Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna, and as revised and updated in 1983, shall include an indication of that Range and a note that compatibility problems, such as damage to vegetation, may occur.

10. Lands with an acknowledged exception as "built upon or committed" will be treated as Impacted Big Game Range, as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983.

11. Oregon Department of Fish and Wildlife recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with Oregon Department of Fish and Wildlife officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similiar activities which are already a part of the County's rural resources zoning program.

12. If uses are identified (which were not previously identified in the Plan) which would conflict with a Goal 5 resource, an evaluation of the economic, social, environmental and energy consequences shall be used to determine the level of protection necessary for the resource. The procedure outlined in OAR 660-16-000 will be followed.

13. In its program of protecting "1C" resources, the County shall make maximum practical use of existing land use regulations (e.g., Willamette Greenway Permit, Coastal Resources Zoning overlays, rural forest and agricultural resource zones)to achieve such protection. Duplication of existing standards shall be avoided wherever practicable, provided County-determined Goal 5 and OAR 660-16-000/025 objectives are met.

14. A group known as the "Lane County Flora and Fauna Committee" is to be established and given permanent status by the Board of County Commissioners. The committee shall represent a wide array of environmental interests and the interests of property owners. Its tasks shall include: evaluation of LCDC Goal 5 concerns and resources, development of information to help the County comply with OAT 660-16-000/025 ("Goal 5 Rule"), research and provision of resource site data to the County, and response to work in progress. Outputs of the Committee shall be presented to the Planning Commissions and subsequently to the Board of County Commissioners.

15. Currently known pigeon springs, heron and rapor (hawk, osprey and eagle) nest sites shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. Lane County shall consider enlarging the list of significant nest sites whenever information about additional sites becomes available. The significant nest sites shall be those identified by Jim Greer and Jim Hutchison (Department of Fish and Wildlife biologists) in a 12/20/83 letter to Jim Mann (Senior Planner, Lane County Land Management Division), and these sites shall be incorporated into the Lane County General Plan Policies document as Flora and Fauna Exhibit A.

16. Rare and endangered vascular plants, identified in a 1/8/84 list prepared by the Native Plant Society of Oregon shall be considered significant in terms of OAR 660-16-000/025 and shall be placed in a "1B" category and evaluated per "1B" requirements within two years of the date of plan adoption. This list of rare and endangered vascular plants is included into the Lane County General Plan Policies document as Flora and Fauna Exhibit B.

17. Lane County recognizes that Douglas fir old growth stands provide valuable and unique wildlife habitat and will encourage the Forest Service and Bureau of Land Management to maintain acreage in this age class sufficient to ensure viable populations of dependent wildlife species.

Open Space and Scenic Areas

1. Lane County has determined that all resource lands in the County are also open space lands. Resource related activities shall prodominate on these lands. Where proposals are developed land uses are made consistent with the Comprehensive Plan and Statewide Goals, development standards shall be applied which minimize loss of open space.

WORKING PAPER:

Flora & Fauna

Excerpt.

DRAFT

MAR ~ 1982

COMPREHENSIVE PLAN REVISION

LANE COUNTY, OREGON

EXHIBIT B 2

FLORA AND FAUNA WORKING PAPER

INTRODUCTION

Oregon's wildlife and fish resources are varied and abundant. Lane County alone with its large land area and highly diverse landscape from snow level to sea level provides numerous specialized habitat areas for more than 290 species of birds, 70 mammal, 13 reptile, 17 amphibian and over 50 fish species. This diversity also is apparent in the vegetation of the County from coastal salt spray meadows inland to the treeless crests of the Cascade range.

Inventories of fish and wildlife species were compiled from Oregon Department of Fish and Wildlife information, various environmental assessment or impact statements and the Eugene-Springfield Metropolitan Area Wildlife Study. These lists are presented in the appendix to this report.

Inventories of habitat types are presented on USGS maps at a scale of one inch equaling one mile (15-minute series). This shows unique, endangered or threatened sites such as eagle nests, snowy plover sites, heron rookeries, band-tailed pigeon mineral springs, osprey snags and northern spotted owl sites. Further, major and Peripheral Big Game Range and general riparian vegetation around Class I streams are shown on these maps. Noncoastal wetlands and Sensitive Fish and Waterfowl areas are depicted on other maps.

The USGS maps also show general locations of Nature Conservancy sites and sites inventoried by the Oregon Natural Area Preserves Advisory Committee (NAPAC) which are in Lane County's Inventory.

Statewide Planning Goal #5 - Open Spaces, Scenic and Historic Areas, and Natural Resources - requires consideration of numerous resources, among them fish and wildlife habitat, ecologically and scientifically significant natural areas and wetlands.

Wetlands are considered here as fish and wildlife habitat. Although they have many valuable functions, their habitat value is a primary one. The original list of ecologically and scientifically significant areas included 86 sites from the Nature Conservancy Inventory and 12 sites from the Natural Area Preserves Advisory Committee. These are further refined in this paper.

Several deficiencies in Lane County's treatment of fish and wildlife habitats and natural areas were noted by LCDC. These were:

1. Updated inventory information required for sensitive fish and waterfowl areas and noncoastal wetlands.

2. Provide more specific information on Nature Conservancy Inventory sites.

3. Adopt mandatory policies regarding the protection of natural areas and noncoastal wetlands and clarify this with existing policies that encourage drainage projects.

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4. Adopt implementing measures for the protection and/or resolution of conflicts with noncoastal wetlands, natural areas and the following types of fish and wildlife habitat: big game range, riparian areas and sensitive fish and waterfowl areas.

After these orders to comply were written, LCDC adopted administrative rule 660-16-00 which gives very specific procedures for evaluating Goal 5 resources. The administrative rule applied to Lane County due to the continuance status of the County. Therefore, this paper addresses the items set out in the orders to comply and does so in the format of OAR 660-16-00. Specifically, this rule requires that when conflicts to Goal 5 resources can be anticipated in the plan, the economic, social, environmental and energy (ESEE) consequences of the conflict are analyzed and resolution to the conflict proposed. In cases where a resource is considered significant but conflicts cannot be anticipated, procedures are established to analyze conflicts as they are identified.

The contents of this paper are as follows:

A. General Findings. Concise statements summarizing facts on Lane County's flora and fauna resource and potential impacts of certain land use activities.

B. Habitat Types. A description of the 12 habitat types found in Lane County.

C. Endangered or Threatened and Special Concern Species. A listing of the threatened or endangered species found in the County and special habitat requirements for some of them.

D. Habitats of Particular Concern. Location, quality and quantity information and conflict analysis for the following types of habitat:

Riparian vegetation
Noncoastal wetlands
Sensitive fish and waterfowl
Big game range

E. Natural Areas. Location, quality and quantity of the sites on the Nature Conservancy and NAPAC lists determined to be significant, including conflict analysis.

F. Policy Recommendations.

G. Appendices. Includes lists of species.

FINDINGS

1. Lane County's fish and wildlife resource is highly varied. Diverse habitats, ranging from coastal to alpine, support nearly 400 vertebrate species. Status of individual species extends from common to endangered.

2. Four physiographic provinces - coast, coast range, western interior valleys and western Cascades - are found in Lane County. Each province represents differences in climate, substrate, topography and other physical

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and chemical variables. Each is distinct and represents a unique diversity, supporting flora and fauna which are adapted to the region.

3. Twelve distinct wildlife habitats are found in Lane County: estuary and bay (includes subtypes coastal salt marsh, tidelands and eelgrass), inland marsh, lakes and reservoirs, wet meadows, annual and perennial grasslands, riparian vegetation, coastal shore pine/spruce, Douglas fir/trailing blackberry, true fir/alpine, deciduous hardwoods, agricultural lands and cities.

4. Lane County's fish and wildlife resource provides substantial social, economic and ecological values.

5. A diversity of habitats is required to maintain Lane County's fish and wildlife fauna. Distribution of many species is limited by specialized habitat requirements.

6. Coordination between Lane County and state and federal agencies is necessary to properly harmonize wildlife needs and other resource values.

7. There will be a continuing need to review and update fish and wildlife inventory information.

8. Numerous land use activities have the potential to diminish the quality and quantity of fish and wildlife habitat. Habitat losses for a broad spectrum of fish and wildlife continue to occur. Sound resource management is necessary to minimize this loss.

9. Lack of biological information for many species handicaps the development of management procedures such as habitat guidelines.

10. Species not presently endangered or threatened may become so if their habitats are not adequately protected.

11. Examples of habitats of special value to fish and wildlife include high quality riparian and wetlands areas, estuaries, Major and Peripheral Big Game Ranges and other sensitive, fragile or unique areas.

12. Protecting water quality and quantity is vital to fish and wildlife resources.

13. A majority of certain habitat types and major watersheds lie within federal ownerships in Lane County. Therefore, public land managers have prime responsibility for protection of these habitats and watersheds. Where private lands support certain habitats, County land use planning needs to take into consideration wildlife needs, Statewide Planning Goal objectives and the rights and management objectives of the private landowner.

14. Land use activities which could negatively impact fish and wildlife habitat if uncontrolled include:

    a. Conversion of agricultural and forest lands to other uses;

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b. Division of large tracts of farm and forest lands to small parcels;

c. Field burning, fencerow clearing, wetland drainage and certain other agricultural practices;

d. Careless or unplanned road construction;

e. Gravel extraction from streambeds.

f. Logging and road building activities which do not conform strictly to the Oregon Forest Practices Act.

15. Designated natural areas in Lane County provide examples of unique or outstanding habitat or species assemblages.

BIG GAME RANGE

LCDC Orders to Comply required implementing measures for the protection and/or resolution of conflicts with Big Game Range. The County must clarify the types of uses which conflict with big game habitat, and would therefore be reviewable by the County under any implementing measures developed. The primary conflicting use mentioned by LCDC is residential use at certain densities.

Location. The Oregon Department of Fish and Wildlife (ODFW) has divided big game range in Lane County into three categories as follows:

> Major Big Game Range - That portion of the County which supports the majority of big game. In general these lands are sparsely developed commercial forest lands. They also provide the majority of big game recreational opportunity.
>
> Peripheral Big Game Range - Foothill areas of the County generally located between commercial forest lands and valley floors. These lands support substantial big game populations and serve as a wintering area for animals in severe winters.
>
> Impacted Big Game Range - Those areas of the County that have existing levels of land use which preclude future wildlife management options of maintaining viable wildlife populations and recreational opportunity. These areas frequently contain populations of big game animals.

These areas are mapped on Lane County Wildlife Inventory maps. As a general depiction, Major Big Game Range occurs on federal lands, large timber company holdings, and some private lands which are sparsely developed. Peripheral Big Game Range encompasses primarily foothills and smaller valleys. Impacted Range includes cultivated fields and developed areas, often on valley floors.

Because of the large amount of undeveloped timberland in Lane County, the majority of the County is Major Big Game Range. But, due to scattered ownership patterns, many areas within the Major Range are small, private parcels. Peripheral Range often falls along small valley floors which are privately owned and often fairly extensively developed. For example, most of the Fall Creek, Mohawk and Lorane valleys are within Peripheral Range, as well as large tracts of land west of Elmira.

Wildlife Inventory maps have not been included in this Working Paper due to budget constraints, but are available for review in the Planning Department office.

Quality. The majority of big game use occurs on Major Range. This can be considered the highest quality habitat as man's intrusion with developments is the least. Peripheral Range is also important habitat, and can be particularly crucial in severe winters, but has enough development to limit big game use and management options. Impacted Range is the lowest quality habitat of the three categories. It is already developed to an extent that precludes viable management of the species, although populations may still exist there.

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One other category of lands should be mentioned here. Outside Urban Growth Boundaries, areas exist which are committed to nonresource use. Exceptions for these areas will be taken as "Built Upon and Committed Lands" and acknowledged by LCDC. These small pockets of development within Major or Peripheral Range are essentially Impacted areas due to their level of use by man. They were not large enough, generally to include on the Big Game maps as Impacted. These areas will be treated as Impacted areas for implementation purposes.

Quantity. Areas of of Major, Peripheral and Impacted Big Game Range have not been computed. Figures for acreage of some other categories of land may be useful, though, for illustrative purposes.

Total amount of land in Lane County	2,959,400 acres
Commercial forest land (primarily Major Range)	1,813,228 acres
Other public lands (primarily Major Range, some Peripheral Range)	735,112 acres
Farms (primarily Impacted Range)	255,712 acres

Over 61 percent of the County is considered commercial forest land, a category with essentially no residential development. Including other public lands, such as the Dunes National Recreation Area, Oregon State lands, Corps of Engineers lands and County parks, approximately 85 percent of the County is not available for residential use. A good portion of the remaining acreage is farmland, a category very difficult to justify as available for residential use, but also not prime big game habitat.

Conflict Identification

The clearing of natural vegetation for agricultural purposes decreases an area's habitat value for big game. But since important, existing agricultural lands are already considered Impacted Big Game Range, this is not an issue now. Impacted Range has essentially been "written off" for big game management.

Management of land for timber production does not conflict with big game habitat. With proper forest management techniques, big game habitat can be significantly enhanced. The forage provided to deer and elk in clear-cut areas is very important, but the combination of areas in various successional stages is probably the vital factor in enhancing numbers of deer and elk. Lands zoned for the primary purpose of timber production are subject to the requirements of the Oregon Forest Practices Act. For our purposes, timber harvesting activities do not constitute a conflict to Big Game Range.

The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall residential densities for Peripheral Big Game Range at one dwelling unit per 40 areas; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and one dwelling unit/80 acres in Major Range conflicts with habitat for big game.

The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning

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by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.

The County will be divided into regions convenient for planning purposes. These have not yet been determined, but will probably result in 10-20 regions in the County.

Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.

Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process.

As a final note regarding residences in Big Game Range, damage to landscaping and gardens is a common problem around these residences. For new residential building permits within Major and Peripheral Range, the applicant will be notified that compatibility problems with big game may exist.

Several recommendations in the Policies Section of this Working Paper relate to the method the County will use to protect Big Game Range.

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01/22/21 AM 8:58 LUBA

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

LANDWATCH LANE COUNTY,
Petitioner,

and

1000 FRIENDS OF OREGON,
Intervenor-Petitioner,

vs.

LANE COUNTY,
Respondent,

and

NIMPKISH LLC,
Intervenor-Respondent.

LUBA No. 2020-030

FINAL OPINION
AND ORDER

Appeal from Lane County.

Sean Malone filed a petition for review and reply brief and argued on behalf of petitioner.

Andrew Mulkey filed a petition for review and reply brief and argued on behalf of intervenor-petitioner.

No appearance by Lane County.

Michael E. Farthing filed the response briefs and argued on behalf of intervenor-respondent.

EXHIBIT C

RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 01/21/2021

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a decision by a hearings officer approving an application for a forest template dwelling.

MOTION TO INTERVENE

1000 Friends of Oregon (1000 Friends) moves to intervene on the side of petitioner. There is no opposition to the motion and it is allowed.

Nimpkish LLC (intervenor), the applicant below, moves to intervene on the side of the county. There is no opposition to the motion and it is allowed.

FACTS

Intervenor's property is approximately 10 acres in size and zoned Impacted Forest Land (F-2). The property includes slopes of over 40 percent in some areas. The property is included on the county's inventory of Major Big Game Range. Intervenor applied for a forest template dwelling, and the planning director approved the application. Petitioner appealed the planning director's decision to the hearings officer, who held a hearing on the appeal and issued a decision affirming the planning director's decision and approving the application. This appeal followed.

PETITIONER'S FIRST ASSIGNMENT OF ERROR/1000 FRIENDS' ASSIGNMENT OF ERROR

Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) (Goal 5) is "[t]o protect natural resources and conserve scenic

and historic areas and open spaces." OAR 660-015-0000(5). In order to implement Goal 5, local governments are required to "adopt programs that will protect natural resources." *Id.* The county's program to protect natural resources was acknowledged by the Land Conservation and Development Commission (LCDC) to comply with Goal 5 in 1984. The county's Goal 5 program includes a map and inventory of big game habitat determined to be "significant or important" within the meaning of *former* OAR 660-016-0000(1)(1C) (June 29, 1981) *renumbered as* OAR 660-016-0000(5)(c) (June 6, 1990) (Big Game Habitat Inventory). *Save TV Butte v. Lane County*, 77 Or LUBA 22, 40 (2018).[1] As noted, the subject property is included on the Big Game Habitat Inventory.[2]

The county's Goal 5 program also includes a Rural Comprehensive Plan (RCP) policy, the meaning and application of which is at the heart of the parties' dispute in this appeal. RCP Goal 5, Flora and Fauna Policy 11, provides:

"Oregon Department of Fish and Wildlife [(ODFW)]

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[1] LCDC adopted Goal 5 in 1974. It adopted its first set of Goal 5 rules in 1981, which were codified at OAR chapter 660, division 16. Those rules were amended in 1990. In 1996, LCDC adopted a second set of Statewide Planning Goal 5 rules, which are codified at OAR chapter 660, division 23. Because LCDC acknowledged the county's program to protect natural resources in 1984, the 1981 rules applied. *See Delta Property Co., LLC v. Lane County*, 271 Or App 612, 616-19, 617 n 1, 352 P3d 86 (2015).

[2] The Lane County Wildlife Inventory maps were developed based on Oregon Department of Fish and Wildlife (ODFW) big game range maps and identify the location, quality, and quantity of big game range, identify conflicts with big game range, and explain how those conflicts are to be mitigated. Record 541-42.

> recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

RCP Goal 5, Flora and Fauna Policy 11, was developed in part by relying on a March 1982 Flora and Fauna Working Paper. The county (and DLCD) relied on the Flora and Fauna Working Paper as a background document to the RCP.[3]

During the proceedings below, petitioner and intervenor-petitioner (together, petitioners) argued that RCP Goal 5, Flora and Fauna Policy 11, applied to the application and that, because the density of the subject property with a forest template dwelling would be one dwelling unit per 10 acres, which

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[3] The RCP characterizes the Flora and Fauna Working Paper as "background information * * * to be used to help interpret and understand [the RCP]." RCP Part 1(C). The Flora and Fauna Working Paper explains in more detail that that the ODFW residential density recommendations for Major Big Game Range were one dwelling unit per 80 acres:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and* * * one dwelling unit/80 acres in Major Range conflicts with habitat for big game." Record 542.

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would exceed the ODFW recommendations on overall density for protection of Major Big Game Range, the application could not be approved absent "resolution in accordance with OAR 660-16-000." The hearings officer concluded that RCP Goal 5, Flora and Fauna Policy 11, did not apply to intervenor's application for a forest template dwelling because that provision only applies to applications for a land division or a zone change:

> "Ultimately, the acknowledged zoning ordinance did not apply the Big Game limitations except in certain circumstances, such as in the Exclusive Farm Use Zone. And in that case only properties lying within a Major Big Game area were affected. No specific siting regulations for forest template dwellings located within a peripheral big game range were adopted by the acknowledged Chapter 16 zoning code. That is, the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations within the [F-2] Zone. The density recommendations were not applicable to existing parcels but were to be considered only in rezoning and land division applications. Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards." Record 10 (footnote omitted).

In reaching that conclusion, the hearings officer relied in part on a July 1984 Department of Land Conservation and Development (DLCD) staff report, prepared by DLCD when the county was seeking LCDC acknowledgement of its Goal 5 program.[4] According to the hearings officer, the DLCD staff report and

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[4] The hearings officer found:

> "The DLCD staff report of July 19, 1984 indicates a concern with the minimum lot sizes in the resource zones coupled with a lack of

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the Flora and Fauna Working Paper demonstrate that the county intended that the primary method for achieving the recommended ODFW density standards was the creation of zoning areas, the adoption of minimum parcel sizes to implement the density standards, and the adoption of siting and clustering standards for new dwellings in the F-2 zone. The hearings officer also relied on testimony from two former county planners that RCP Goal 5, Flora and Fauna Policy 11, was intended only to apply to land divisions and zone changes. Record 9-10.

Petitioner's first assignment of error and 1000 Friends' sole assignment of error challenge the hearings officer's interpretation of the density

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siting and clustering requirements. The minimum parcel size was the County's chosen method to comply with the ODFW recommended maximum densities. The recommended densities—one dwelling per 40 acres in the peripheral big game range—depended entirely on the size of the area being studied. When considering an 80-acre study area, the recommendation would only allow two dwellings. However, the recommendation was intended to apply at a much higher level; which is why the County originally anticipated dividing the County into regions. Ultimately, the County, with the blessing of DLCD and ODFW, decided to rely on minimum parcel sizes to implement the ODFW recommendations. This view is borne out in DLCD's staff report which stated: '*Without siting clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable.)*' At this time, Lane County's proposal was to have a minimum lot size of 40 acres for the F-1 Zone, minimum lot size of 20 acres in the F-2 Zone, minimum lot size of 40 acres in the EFU Zone, and no clustering or siting standards for dwellings." Record 9 (emphasis in original).

recommendations referenced in RCP Goal 5, Flora and Fauna Policy 11, as being inapplicable to intervenor's forest template dwelling application.[5] Petitioners argue that the hearings officer's conclusion that the density recommendations were "integrated into the zoning classifications and minimum lot size recommendations within the [F-2] Zone" has no support in the provisions of the F-2 zone. Petitioners argue that the hearings officer failed to give any effect to the second sentence of RCP Goal 5, Flora and Fauna Policy 11, which, according to petitioners, prohibits the county from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis under the applicable Statewide Planning Goal 5 rule. Petitioners argue that the hearings officer's interpretation contravenes ORS 174.010's prohibition on "insert[ing] what has been omitted."[6]

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[5] OAR 660-006-0027(6)(a) provides, in relevant part, that "[a] proposed 'template' dwelling under this rule is allowed only if" "[i]t will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law." OAR 660-006-0025(6) provides that "[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands."

[6] ORS 174.010 provides:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

Intervenor responds that, based on the testimony of the former county planners and the legislative history in the record regarding LCDC's acknowledgement of the county's Goal 5 program, the hearings officer correctly concluded that RCP Goal 5, Flora and Fauna Policy 11, does not apply to a forest template dwelling application for property inventoried as Major Big Game Range. In intervenor's view, the county's program to protect Major Big Game Range relies on the F-2 zone's minimum parcel size of 80 acres for new land divisions and clustering standards in Lane Code (LC) 16.211, but the LC includes no density standards for dwellings on existing parcels.

We review the hearings officer's interpretation of the RCP and the LC to determine whether the hearings officer "[i]mproperly construed the applicable law." ORS 197.835(9)(a)(D). In construing the law, we will consider the text and context of the law at issue in order to determine the intent of the enacting body. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993); *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). For the reasons explained below, we agree with petitioners that RCP Goal 5, Flora and Fauna Policy 11, applies to intervenor's application for a forest template dwelling on property included on the county's Big Game Habitat Inventory of Major Big Game Range.

First, the hearings officer's conclusion that RCP Goal 5, Flora and Fauna Policy 11, applies only where an application is for a land division or a zone change has no support in the text that policy or in any of the LC provisions

governing the F-2 zone. The plain language of RCP Goal 5, Flora and Fauna Policy 11, does not refer to or limit its application to land divisions and zone changes. Context provided by the Flora and Fauna Working Paper does not refer to or limit the county's Goal 5 program to applications for land divisions and zone changes.[7] For those reasons, we agree with petitioners that the text and

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[7] The Flora and Fauna Working Paper explains:

> "The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.
>
> "The County will be divided into regions convenient for planning purposes. These have not yet been determined but will probably result in 10-20 regions in the County.
>
> "Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

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context of RCP Goal 5, Flora and Fauna Policy 11, does not support the hearings officer's interpretation. Rather, the hearings officer's interpretation "insert[s] what has been omitted," in contravention of ORS 174.010, and gives no effect to the second sentence of RCP Goal 5, Flora and Fauna Policy 11. Moreover, a decision approving an application to divide or rezone land generally does not authorize any development, let alone residential development, but rather is the precursor to an application for future residential development. Thus, it is difficult to see how the ODFW density standards would apply to either of those types of applications at all, let alone apply *solely* to those types of applications.[8] Finally,

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> "If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.
>
> "Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process." Record 542-43.

[8] An application to rezone property could trigger OAR 660-023-0250(3)(b), which provides that a local government is required to apply Goal 5 to an application for a post-acknowledgment plan or land use regulation amendment (PAPA) only if "[t]he PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site."

the testimony of the former county planners on which the hearings officer relied is not particularly persuasive, given that it also is not supported by the text of RCP Goal 5, Flora and Fauna Policy 11, or any provision of the LC.

As explained above, the hearings officer's view of the county's Goal 5 program is that the county intended to rely on (1) the creation of zoning areas, (2) the adoption of minimum parcel sizes to implement the density standards, and (3) the adoption of siting and clustering standards for new dwellings in the F-2 zone. The first sentence of RCP Goal 5, Flora and Fauna Policy 11, refers to the process that the county was supposed to follow, which included taking actions to identify "10-20 regions" and to "base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations." *See* n 7. All parties agree that, during the 36 years since its Goal 5 program was acknowledged, the county has never taken the steps described in the first sentence and has never created any "regions" or "base[d] zoning by region on the overall residential densities or ODFW minimum parcel size recommendations."

1000 Friends argues that the county's failure to take the steps described in the first sentence of RCP Goal 5, Flora and Fauna Policy 11, means that Goal 5 applies directly to the county's permit decision. We disagree with that argument. RCP Goal 5, Flora and Fauna Policy 11, is acknowledged to comply with Goal 5 and Goal 5 does not apply directly to the county's decision. ORS 197.175(2)(d).

However, the county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW

minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. Rather, the *second sentence* of RCP Goal 5, Flora and Fauna Policy 11, remains operative, and it provides that "[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000."[9] The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the county to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgement of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program. Moreover, the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential

[9] The hearings officer's decision never directly addresses the second sentence of RCP Goal 5, Flora and Fauna Policy 11.

development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d).

This view is supported by language in DLCD's final staff report leading to acknowledgement of the county's Goal 5 program. In its response to some objections to the county's proposed program, DLCD explained its understanding of why the county's program did not conflict with Goal 5:

> "Objectors are not correct that [RCP Goal 5, Flora and Fauna Policy 11,] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. *The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis.*" Record 212-13 (emphasis added).

We understand DLCD to have concluded that the county's Goal 5 program protects habitat because it adopts residential densities in accordance with ODFW's recommendations and requires that, if "proposals are made" that exceed those densities, the county will conduct an ESEE analysis for that individual proposal. Contrary to the hearings officer's decision, RCP Goal 5, Flora and Fauna Policy 11, includes no language that limits its application to land divisions and zone changes. The hearings officer's decision is not consistent with ORS 174.010 because it inserts language into the policy.

Moreover, the hearings officer's interpretation that the county's Goal 5 program to protect Big Game Range is implemented by provisions of the LC, specifically the F-2 zone's minimum parcel size of 80 acres for new land

divisions and the clustering standards in LC 16.211(5), is not supported by anything in the text of the F-2 zone provisions. The siting and clustering standards in LC 16.211(5)(a) do not quantify a residential density standard. A requirement to site dwellings "[n]ear dwellings on other tracts" is not a density standard. LC 16.211(5)(a)(i). Nor do the rest of the F-2 zone provisions support the hearings officer's interpretation. The use table for the F-2 zone lists six types of allowed dwellings, five of which do not require any particular parcel size. The F-2 zone does not provide any residential density standard at all. As we explained in *Cattoche v. Lane County*, the county has not quantified a residential density standard in the F-2 zone but "instead use[s] the ODFW 40-acre standard [referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper] for areas inventoried as Peripheral Big Game Range." 79 Or LUBA 466, 479 (2019). Similarly, here, we conclude that the county uses the one-dwelling-per-80-acres standard referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper to determine the allowed residential density in areas inventoried as Major Big Game Range.

In conclusion, we agree with petitioners that the hearings officer's conclusion that RCP Goal 5, Flora and Fauna Policy 11, does not apply because the application does not involve a land division or a zone change improperly construes RCP Goal 5, Flora and Fauna Policy 11. There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres. Accordingly, the proposed dwelling "shall be

considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." RCP Goal 5, Flora and Fauna Policy 11.

Petitioner's first assignment of error and 1000 Friends' assignment of error are sustained.

PETITIONER'S SECOND ASSIGNMENT OF ERROR

As noted, the located of the proposed dwelling is in an area of the property that contains steep slopes.[10] RCP Goal 7, Policy 3 provides:

> "When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact (including financial and economic considerations) of such safeguards on the environment and the public shall be considered."

In appealing the planning director's decision, petitioner argued that RCP Goal 7, Policy 3 (Policy 3) applied and that the planning director failed to apply it to the application. Record 608.

During the proceedings below, intervenor provided a geotechnical evaluation of the proposed dwelling site and the property (Level I report). The Level I report determined that the proposed driveway location did not present a

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[10] The decision states that the home site is "located at least 30 feet from a ravine ridge or slope greater than 40%" and that, "[w]est of the home site, there is a 17% downslope." Record 5-6.

significant landslide hazard, and recommended a more detailed geotechnical investigation of the proposed dwelling site prior to development.[11] Record 11.

The hearings officer found that the general location of the property within a very high-risk landslide area "is an indication that potential development problems may exist." Record 12. While the hearings officer expressed doubt that Policy 3 applied to the application, the decision applied Policy 3 and found:

> "In regard to Policy #3, the Level I [report] did not identify extensive or drastic safeguards that had to be employed in conjunction with [intervenor's] development proposal. However, the location of the development within a very high landslide hazard area is an indication that potential development problems may exist. Thus, [the Level I report] wisely recommends that this evaluation be a prelude to a more comprehensive evaluation (Level II) when the actual development is proposed through the building permit process.
>
> "In a prior appeal of a template dwelling in the general area of the subject property, this Hearings Official addressed the implications of [*Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992),] in regard to LC 16.005(2). In its decision in the *Rhyne* case, LUBA noted that [the] local government had the option of deferring its determination of compliance [with] a standard to a subsequent proceeding. Lane County has a process where an applicant may be compelled to apply for a Type III Modification of Decision when a substantial change in an approved application is necessary. This review would be before the Hearings Official and would require notice to the Appellant.
>
> "Thus, the building inspector will review the Level II * * * report provided by [intervenor's] engineer. Section 1803 of the Oregon

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[11] The decision states that slopes for the proposed driveway are between zero and 14 percent. Record 4.

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> Structural Specialty code gives the Building Official the authority to require and review geotechnical information. If the Building Official finds problems that would require a restriction on mechanical grading and/or clearing, that issue would be reviewed by the Hearings Official. Condition of Approval #13 has been modified to reflect this change." Record 12 (footnotes omitted).[12]

In *Rhyne*, we explained a local government's options in evaluating the evidence submitted to it to support compliance with an approval criterion:

> "Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, if the local government determines that there is insufficient evidence to determine the feasibility of compliance with the standard, instead of finding the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so, as part of the first stage approval (as it does under the first option described above). Therefore, the local government must assure that the second stage approval process to which the decision making is deferred provides the statutorily required notice and hearing, even though the local code may not require such notice and

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[12] We note that the decision includes a purported quote of "LC 16.005(2)" that does not appear to be an accurate quote of that LC provision. Record 12. The language quoted by the hearings officer as LC 16.005(2) appears to be a quote of a provision of the Metro Plan, the regional plan for the cities of Eugene and Springfield and the county.

> hearing for second stage decisions in other circumstances." 23 Or LUBA at 447-48 (footnotes omitted) (citing *Holland v. Lane County*, 16 Or LUBA 583, 596-97 (1988)).

In its second assignment of error, petitioner argues that the hearings officer erred in deferring a determination of whether Policy 3 was met to a later-stage proceeding that does not allow for notice and an opportunity for a hearing.[13] Intervenor responds that the hearings officer found that compliance with Policy 3 is feasible, as allowed by *Meyer v. City of Portland*, 67 Or App 274, 678 P2d 741, *rev den*, 297 Or 82 (1984), and that the later Level II report that is required by Condition 13 is therefore not entitled to public review and comment.[14]

The hearings officer's decision regarding Policy 3 is somewhat unclear, and the parties' dispute boils down to a dispute over whether the hearings officer's decision follows the first *Rhyne* option, as intervenor maintains, or the third *Rhyne* option, as petitioner maintains. Given the decision's explicit

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[13] Petitioner also cites RCP Goal 7, Policies 1 and 2, but does not develop any argument regarding why those policies apply or are not met.

[14] Condition 13 provides:

> "Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of the subject property made usable by means of fill shall be suitable for the intended purpose. Prior to building approval, [intervenor] shall submit a Level II * * * report to the County. If the building inspector finds problems that would require a restriction on mechanical grading and/or clearing, that issue shall be reviewed by the Hearings Official through a Type III Modification of Decision." Record 7.

reference to the third *Rhyne* option ("LUBA noted that [the] local government had the option of deferring its determination of compliance [with] a standard to a subsequent proceeding"), we understand the hearings officer to have determined that the evidence provided by the Level I report was insufficient to determine whether Policy 3 was met and to have deferred that determination to a later stage approval process through Condition 13. The problem with Condition 13 is that it places review and approval of the future Level II report solely in the discretion of the building inspector, and only if the building inspector concludes that there are "problems that would require a restriction on mechanical grading and/or clearing" would that issue be referred by the building inspector to the hearings officer for review. Such a closed circle of decision making that excludes public participation is inconsistent with *Rhyne*.

The second assignment of error is sustained.

PETITIONER'S THIRD ASSIGNMENT OF ERROR

Former ORS 215.750(4)(d) (2017), *renumbered as* ORS 215.750(5)(d) (2020), prohibits a template dwelling if the property is part of a tract that already contains a dwelling. ORS 215.010(2) defines "tract" as "one or more contiguous lots or parcels under the same ownership." The subject property is owned by intervenor, a limited liability company. The Goodmans own adjacent properties to the west and the east of the subject property, at least one of which contains a dwelling. Record 685-86. The Goodmans are the registered agents of and have a membership interest in intervenor.

The hearings officer concluded that the subject property is not part of a tract because the owner of the subject property is not the owner of the adjacent properties and that the fact that the Goodmans may control the owner of the subject property or own the limited liability company that owns the subject property is not relevant for purposes of applying the operative terms of the definition of "tract." Petitioner argues that the subject property is part of a tract that is effectively owned by the Goodmans and, therefore, the subject property is not allowed a dwelling. Petitioner argues that viewing the subject property and adjacent properties as under different ownership is "contrary to the underlying policy of the template dwelling statute's prohibition on allowing more than one dwelling on a tract." Petition for Review 30-31. Intervenor responds that the hearings officer correctly interpreted *former* ORS 215.750(4)(d) (2017) to conclude that the subject property is not under the same ownership as the adjacent properties.

Petitioner has not developed any argument that persuades us to conclude that the subject property and adjacent properties are "under the same ownership," within the meaning of ORS 215.010(2), where title to the properties is vested in different owners. Absent any developed argument regarding the meaning of the phrase "under the same ownership" in the context of *former* ORS 215.750(4)

(2017), petitioner's arguments in this assignment of error do not provide a basis for reversal or remand.[15]

The third assignment of error is denied.

The county's decision is remanded.

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[15] In *Central Oregon Landwatch v. Deschutes County*, ___ Or LUBA ___ (LUBA No 2019-105, Jan 31, 2020), we rejected the petitioner's argument that two properties constituted a "tract" because they were "under the same ownership" within the meaning of ORS 215.010(2), where title to one property was held in the name of an individual person and title to an adjacent property was held in the name of the same person as "trustee" of a trust. *Id.* at ___ (slip op at 10-13).

AGENDA
LANE COUNTY HEARINGS OFFICIAL

DATE: Thursday, March 4th, 2021

TIME(S): 9:30 A.M.

LOCATION: Remote Access Only*

Lane County complies with state and federal laws and regulations relating to discrimination, including the Americans with Disabilities Act of 1990 (ADA). The meeting location is wheelchair-accessible. If one needs special accommodations (hearing impaired, language translation, chemical sensitivity needs or large print copies of the agenda), please request at least 48 hours prior to the meeting by calling Rachel Adams 541-682-6911.

ITEM	FORMAT
9:30 AM 1. **Application File:** 509-PA20-05519; **Description:** Appeal of Director **DENIAL** of Type II Legal Lot Verification Research and Notice pursuant to Lane Code 13.140. **Assessor's Map and Tax Lot:** 22-03-18-00-00202; **Applicant/Owner/Appellant**: Michael and Maureen Bowman; **Staff:** Kevin Gilbride; **Hearings Official:** Anne Davies 2. **Application File:** 509-PA20-05064; **Description:** Appeal of Type II Director **APPROVAL** of a forest template dwelling in the F-2 zone pursuant to LC 16.211(5) and (8) and HB 2225. **Assessor's Map and Tax Lot**: 21-35-07-30-02900; **Appellant:** LandWatch Lane County; **Owner:** EJK Investments; **Applicant:** Edward King; **Agent:** Kim O'Dea; **Staff:** Shawna Adams; **Hearings Official:** Anne Davies 3. **Application File:** 509-PA20-05066; **Description:** Appeal of Type II Director **APPROVAL** of a forest template dwelling in the F-2 zone pursuant to LC 16.211(5) and (8) and HB 2225. **Assessor's Map and Tax Lot:** 21-35-07-30-02800; **Appellant:** LandWatch Lane County; **Applicant/Owner:** Edward King; **Agent:** Kim O'Dea; **Staff:** Shawna Adams; **Hearings Official:** Anne Davies	a) Announcement of the nature & purpose of the hearing b) Announcement of opportunities for submission of information & appeal. c) Disclosure of ex parte contacts d) Report by the Director e) Applicant's testimony f) Testimony of persons in favor g) Testimony of other persons h) Any additional comments by the Director i) Applicant rebuttal j) Conclude the hearing The Hearings Official will not make a decision on these matters at this hearing. The County Code requires that a written decision must be made within 10 days of this hearing date. To receive a copy of the Hearings Official's decision, fill out a request form at the public hearing or call the Lane County Land Management Division at 541-682-6911.

Call in Information

Dial-in Info: (541) 682-1094
Extension: 6821094
Participant Code: 333-572-15
VoIP: voip://(541) 6821094;33357215#
iOS Devices: (541) 682-1094,33357215 and press #
Other Devices: (541) 682-1094x33357215#

Malone
O Dea
Segel
McMurphin
Eastburg

LE
JG
MB
SA
KG

Record - 1 WK, 1 WK, 1 WK | 1st, 18th, 25th

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

LANE COUNTY HEARINGS OFFICIAL STAFF REPORT

Department File:	509-PA20-05064
Hearing Date:	March 4, 2021
Report Date:	February 25, 2021
Owner:	E.J.K. Investments
Applicant:	Edward J. King
Agent:	Kim O'Dea – Law Office of Bill Kloos
Appellant:	LandWatch Lane County
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

I. PROPOSAL

Appeal of the Type II Type II Director **APPROVAL** of a request for a forest template dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

II. BACKGROUND INFORMATION

The applicant submitted the subject application to the Lane County Land Management Division (LMD) on February 5, 2020. Staff deemed the application complete on March 6, 2020 and solicited referral responses from affected agencies, service providers, and surrounding property owners on March 23, 2020. On January 27, 2021, the Director mailed a decision approving the proposal (**Attachment 2**).

LandWatch Lane County (LWLC) submitted a timely appeal of the Director's decision on February 8, 2020. The Director reviewed the appeal pursuant to Lane Code 14.080(1) and, on February 10, 2021, accepted the appeal, and affirmed the decision without reconsideration. On February 8, 2021, staff mailed notice of the appeal hearing. The hearing is scheduled for March 4, 2020 at 9:30 am, which is day 188 of the statutory 150-day timeline set forth in ORS 215.427, accounting for extensions provided by the applicant totaling 165 days.

The subject 12.5 acre parcel is identified as Tax Lot 2900 on Lane County Tax Assessor's Map 21-35-07-30 and is not part of a larger tract under common ownership. The property is located immediately north of the Oakridge Airport, and situated between the Westfir and Oakridge Urban Growth Boundaries (UGBs). The property is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration (BPA) easement that transects the property. The property generally slopes downward to the northwest property corner with steep slopes greater than 25 percent predominating north of the BPA easement.

According to County GIS data layers, the property is mapped by DOGAMI as having "high" and "moderate" landslide susceptibility and does not contain floodplain, a Class 1 stream, or wetlands. Per the applicant, the site is vegetated with small fir trees, scattered with underbrush and a few maple and oak trees. 2018 statewide imagery shows more tree cover north of the BPA easement.

The entire property is designated Major Big Game Range by the Department of Fish and Wildlife Habitat Maps. As well, the property is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2) consistent with that plan designation. The property is bordered to the south by the Oakridge Airport within the Airport Operations (AO-RCP) zoning district and abuts Impacted Forest Lands (F-2, RCP) zoned properties, to the north, east and west.

The subject application was one of three related template dwelling applications in the vicinity, and one of two applications approved by the Planning Director now on appeal and scheduled for public hearing by the Hearings Official on March 4, 2021. Staff note that the application for the other hearing item (File No. 509-PA20-05064) concerns a template dwelling proposal on a contiguous 13.28 acre parcel identified as Tax Lot 2800 of Assessor's Map 21-35-07-30, which is also designated Major Big Game Range by the Department of Fish and Wildlife Habitat Maps.

III. SUBSTANCE OF THE APPEAL

The appeal statement is provided as **Attachment 1**. The appellant contends the Director erred on one count with respect to the interpretation of Lane Code or Lane Manual, state law or federal law, or other applicable standards and criteria. The specific assignment of error is summarized below and followed by staff's response.

1. **The PD decision failed to consider the subject property is designated Major Big Game. Pursuant to LUBA No. 2020-030, an ESEE analysis is required.**

Staff Response: Staff understand this assignment of error to be the same assignment of error concerning Major Game that was sustained by LUBA in LandWatch Lane County vs. Lane County (LUBA 2020-030) for Nimpkish (**Attachment 3**). .

Nimpkish concerns a forest template dwelling proposal submitted under File No. 509-PA19-05298 that was approved by the Planning Director and affirmed by the Hearings Official. The petitioners asserted that the Hearings Official erred by approving a forest template dwelling on a 10-acre parcel within designated Big Game Habitat contrary to the one one-dwelling-per-80-acres standard referenced in the Lane County Rural Comprehensive Plan (RCP), Goal 5, Flora and Fauna 15 Policy 11, and the Flora and Fauna Working Paper. The petitioners maintained that the policy prohibits the county from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis under the applicable Statewide 11 Planning Goal 5 rule.

The Hearings Official had concluded that the RCP Policy does not apply to template dwelling proposals. In accordance with the Hearings Official determination in Nimpkish, the Planning Director did not address compliance with the referenced RCP Policy or related background information contained in the Flora and Fauna Working Paper in the decision approving the subject template dwelling application.

Footnote 5 of LUBA's decision recognizes that OAR 660-006-0027(6)(a) only authorizes template dwellings that comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law and does not relieve governing bodies from complying with other requirements

contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands.

For the reasons outlined in its decision, LUBA held that the Hearings Official errored in finding the policy inapplicable and that the proposal conflicts with Goal 5.

> *"As we explained in Cattoche v. Lane County, the county has not quantified a residential density 10 standard in the F-2 zone but "instead use[s] the ODFW 40-acre standard [referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper] for areas inventoried as Peripheral Big Game Range." 79 Or LUBA 466, 479 (2019). Similarly, here, we conclude that the county uses the one-dwelling-per-80-acres standard referenced in RCP, Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper to determine the allowed residential density in areas inventoried as Major Big Game Range.*
>
> *In conclusion, we agree with petitioners that the hearings officer's conclusion that RCP Goal 5, Flora and Fauna Policy 11, does not apply because the application does not involve a land division or a zone change improperly construes RCP Goal 5, Flora and Fauna Policy 11. There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres. Accordingly, the proposed dwelling "shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." RCP Goal 5, Flora and Fauna Policy 11. Petitioner's first assignment of error and 1000 Friends' assignment of error are sustained."*

The circumstances concerning Big Game density requirements for the subject proposal are substantially similar to the circumstances addressed by LUBA in Nimpkish.

Absent evidence that demonstrates no Big Game density conflict exists or a plan amendment that resolves the conflict with the required ESEE analysis justification, staff concede the Director erred in approving the application and recommend that the Hearings Official reverse the Director Approval and deny the request based on noncompliance with *RCP Goal 5, Flora and Fauna Policy 11* and OAR 660-006-0027(6)(a).

VI. ATTACHMENTS

1. Appeal Statement *(6 pgs.)*
2. Director's Decision with Exhibits, including Vicinity Map and Site Plan *(83 pgs.)*
3. LandWatch Lane County vs. Lane County (LUBA 2020-030) *(22 pgs.)*
4. County GIS Big Game Habitat data layer (*1 pg*.)

The entire file record is available for review at the Land Management Division Office.

LAND MANAGEMENT DIVISION

Date Received:

APPEAL OF A TYPE II DECISION

PUBLIC WORKS DEPARTMENT 3050 NORTH DELTA HIGHWAY, EUGENE OR 97408
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only. FILE # CODE: HOAPPEAL FEE: $250

Appellant: LWLC

Mailing address: PO Box 5347 Eugene 97405

Phone: 541 517 4459 Email: lsv19536@gmail.com

Signature: Kassi Negel

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____

LOCATION (subject property)

21 35 07 30 02900

Assessor's Map and Tax Lot

REQUIRED SUBMITTALS. A notice of appeal must be filed with the Director prior to the end of business (4 pm PST) on the 12th day after the date the notice of decision is mailed.

Please note that your appeal application will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). Failure to address all appeal requirements of Lane Code 14.080(1)(a) through (c) may result in the appeal being rejected.

1. A copy of the decision being appealed, with the department file number: PA2005064 and date of the decision Jan 27, 2021
2. The $250 appeal fee, payable to Lane County.
3. The appeal deadline, as stated in the Director's Decision: Feb. 8 2021
4. Address each of the following:
   a. State how the appellant is a person who is entitled to written notice under LC 14.060 or a person who is adversely affected or aggrieved by the application:
      - ☐ I am a person entitled to receive the Notice of Decision per LC 14.060
      - ☑ I am adversely affected or aggrieved by the application because (explain): statement attached

See Page 2, appeal form continued. →

b. Please provide a written statement explaining the reason(s) why the Director's decision was made in error or why the Director should reconsider the decision. Please explain the issues being raised on appeal with sufficient specificity to afford the approval authority the opportunity to respond to each issue raised (attached a separate letter if necessary).

attached

c. Provide an explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration (attach a separate letter if necessary):

- ☐ The Director exceeded their jurisdiction;
- ☐ The Director failed to follow the procedure applicable to the matter;
- ☐ The Director rendered a decision that is unconstitutional; or
- ☑ The Director misinterpreted the Lane Code or Lane Manual, state law or federal law, or other applicable standards and criteria.
- ☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

statement attached

5. Include any other additional information in support of your appeal.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date:	JAN 27 2021
Department File:	**509-PA20-05064**
Owner/Applicant:	E.J.K. Investments
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

Enclosed is a vicinity map and site plan that shows the proposed location of the dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report can be made available electronically at no cost, and copies will be provided at reasonable cost. The Lane County Land Management Division representative to contact is Shawna Adams at (541) 682-8904 or shawna.adams@co.lane.or.us.

This decision will become final at 4 P.M. on FEB 08 2021 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information along with all of the materials and information required in the appeal form, the appeal fee, and all materials required by LC 14.080(1).
2. Submit the completed appeal to the Planning Director so that the Director receives it prior to the date and time that the decision becomes final (see above deadline). The Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.
3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals (LUBA).

Prepared by: Shawna Adams, Senior Planner **Date:** JAN 27 2021

Authorized by: Amber Bell, Planning Director **Date:** JAN 27 2021

EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Exhibits below are mailed to the Applicant only. Copies are available upon request. Please contact staff at (541) 682-6911.

Exhibit D: Staff Report
Exhibit E: Lane County Transportation Planning Referral Response, dated 07/10/2020
Exhibit F: LandWatch Lane County Comments, received April 16, 2020
Exhibit G: BPA comments and correspondence, dated 4/14/2020, 4/16/2020, 4/20/2020, 4/27/20
Exhibit H: DOA comments and correspondence, dated 3/26/2020 & 11/9/2020
Exhibit I: Neighbor Comments, received 3/30/2020 & 4/2/2020
Exhibit J: Applicant's Supplemental Information, received 9/29/2020, 11/23/2020
Exhibit K: Additional County GIS LiDAR & Contour Maps
Exhibit L: Farm Use and Forest Management Easement

LANDWATCH
LANE COUNTY
Protecting Our Natural Heritage
From the Coast to the Cascades
P.O. Box 5347 • Eugene, OR 97405 • (541) 741-3625 • www.landwatch.net

February 8, 2021

Lane County Planning Director
LC Public Works Customer Service Center
3050 North Delta Highway
Eugene OR 97408

RE: APPEAL OF PA2005064, EJK INVESTMENTS TEMPLATE DWELLING APROVAL

JUSTIFICATION FOR APPEAL AND REQUEST FOR RECONSIDERATION

The PD decision failed to consider the subject property is designated Major Big Game. Pursuant to LUBA No. 2020-030, an ESEE analysis is required.

For this reason, LWLC respectfully requests reconsideration of the PD decision.

Thank you.

LANDWATCH
LANE COUNTY
Protecting Our Natural Heritage
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P.O. Box 5347 • Eugene, OR 97405 • (541) 741-3625 • www.landwatch.net

February 8, 2021

LandWatch Lane County is a 501(c)(3) tax exempt, nonprofit organization dedicated to protecting Lane County's water, soils and air so that our natural areas, farms and forests will remain vital in perpetuity.

LandWatch is committed to protecting Lane County's farms, forests and open space from urban sprawl by promoting responsible and sustainable land use policies.

The over-parcelization and development of productive resource land leads to negative impacts for commercial resource use and protection of Goal 5 resources.

LandWatch is aggrieved by the Directors recent approval of a forest template dwelling in the F2 zone because the decision does not consider the subject property is designated Major Big Game and is subject to an ESEE analysis pursuant to LUBA No. 2020-030, dated January 21, 2021.

For this reason, LWLC is an aggrieved party.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date:	JAN 27 2021
Department File:	**509-PA20-05064**
Owner/Applicant:	E.J.K. Investments
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

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PROPOSAL: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

Enclosed is a vicinity map and site plan that shows the proposed location of the dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report can be made available electronically at no cost, and copies will be provided at reasonable cost. The Lane County Land Management Division representative to contact is **Shawna Adams** at **(541) 682-8904** or **shawna.adams@co.lane.or.us**.

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Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals (LUBA).

Prepared by: _____ **Date:** JAN 27 2021
Shawna Adams, Senior Planner

Authorized by: _____ **Date:** JAN 27 2021
Amber Bell, Planning Director

EXHIBITS

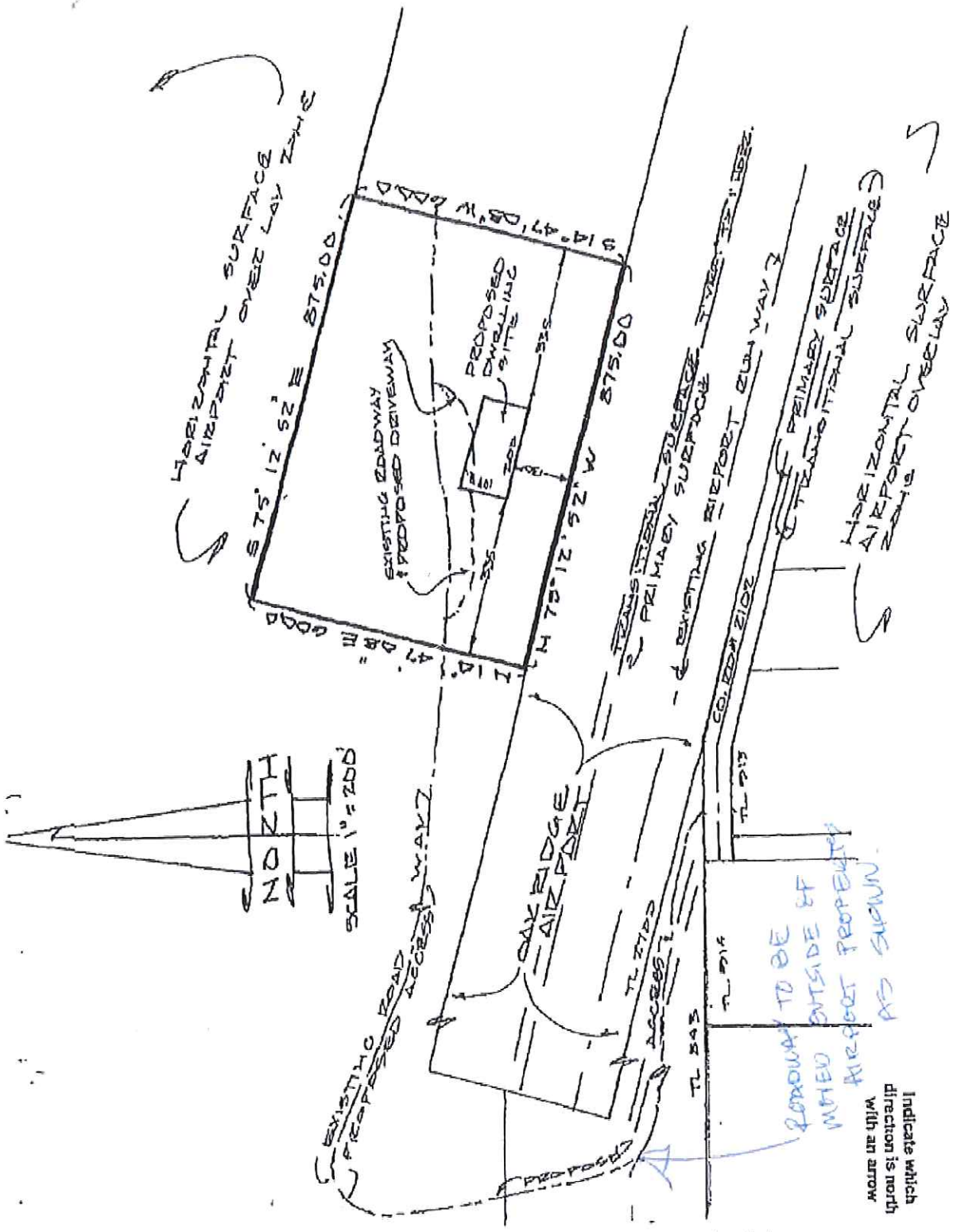
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Exhibit J: Applicant's Supplemental Information, received 9/29/2020, 11/23/2020
Exhibit K: Additional County GIS LiDAR & Contour Maps
Exhibit L: Farm Use and Forest Management Easement

SITE PLAN SUBMITTAL FORM

OWNER NAME: EJK INVESTMENT PHONE #: ADDRESS: 30414 LEABLEU ROAD EUGENE, OR 97405	Map and Taxlot #: 21-36-07-30 TL 2300 Scale: 1" = 200'	APPLICANT NAME: NICKELL LAND SURVEYING PHONE # 541-915-2905 ADDRESS: 33225 CRAIG LOOP COTTAGE GROVE, OR 97424



Site Plan (Not to Scale)

EXHIBIT C

SEE PT20-05069 APPROVED PRELIMINARY SITE PLAN - ACCESS PG 2 of 2 DAT 1/20/2021

EXHIBIT C

OAK RIDGE AIRPORT

EXISTING PROPOSED ACCESSWAY ROAD

SCALE 1" = 200'

NORTH

APPROVED PRELIMINARY SITE PLAN 569-PA20-05064
PG 1 of 2 SA 1/20/2021

S 14° 47'08" W 600.0

EXISTING ROADWAY TO BE ADDED TO PROPOSED DRIVE

S 75° 12' 52" E 875.0

N 75° 12' 52" W 875.00

N 14°47'08" E 600.00

30' PRIMARY FIRE BREAK

100' SECONDARY FIRE BREAK

REDUCE TO 70' + 110' HOME SITE AREA APPROVED

Fuel breaks NOT approved

EXHIBIT "B"

0062.71 03°10'55"-12

ATTACHMENT 2.3

EXHIBIT A

CONDITIONS OF APPROVAL
509-PA20-05064

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of 509-PA20-05064 is valid for a four-year period from the final date of approval unless and extension is granted in accordance with Lane Code Chapter 14 provisions in effect at the time the request is made.

2. The dwelling must be located within the reduced 70 x110-foot approved home site area shown in **Exhibit C.**

3. The dwelling must be located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

4. The subject properties are located within the Airport Safety Combining Zone (/AS) and the Transitional Surface of the Oakridge Airport. Development shall comply with the applicable requirements of LC 16.246. Pursuant to LC 16.246(3)(a) and (5)(e), no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

5. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office).

6. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. Submit a copy of the stocking survey report to Lane County Land Management Division with evidence of receipt by Lane County Assessment and Taxation.

7. Obtain Lane County Facility Permit to verify the shared access easement approach to Airport Road is adequate to support a shared approach to multiple properties/dwellings as proposed. For more information about Facility Permits, contact 541-682-6902 or visit: https://lanecounty.org/ government/ county departments/ public works/right-of-way permits/facility permits/.

8. Any private access easements serving the subject property must comply with LC 15.055(4), (5), and (7), specifically including provisions for utilities. Submit a copy of the recorded access easement(s) demonstrating compliance with this requirement and specifically including documentation verifying legal right of use for any segments coinciding with BPA access and transmission line easements. This can be satisfied by providing a copy of BPA approval or court rulings.

9. Improve the existing roadway access Airport Road and the dwelling site to the minimum standards of LC 16.211(8)(e) and the applicable standards of Lane Code Chapter 15. The shared access easement road between Airport Road and the easternmost base of the driveway loop must be improved to road standards, with turnarounds spaced not more than 500 feet. Between the shared access easement road and the home

site, the driveway loop must be improved to driveway standards with a turnaround. As specified in LC 16.211(8)(e), Oregon Registered Professional Engineer or fire district certifications must be provided for the road and driveway grades that exceed eight percent and for any culverts or bridges.

10. Submit written verification from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, and driveways comply with and meet the construction standards Lane Code 16.211(8)(e) and the Fire District standards.

11. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c)(i). These fuel breaks shall be maintained in perpetuity. The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet to the extent this can be established on lands owned or controlled by the owner. Primary fuel breaks, including any Additional Safety Zone Down Slopes, must be fully accommodated on site. The approved preliminary site plan in **Exhibit C** must be revised accordingly.

12. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). This can be satisfied by providing a copy of the Well Log for the property that complies with the requirements outlined in Lane Manual Chapter 9.160, specifically a five-hour flow test.

13. Upon completion of **conditions #5 through #12**, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. **Attach to this form a copy of:**
    - Signed, notarized, and recorded Farm Use and Forest Management Agreement and description of property, along with all required exhibits;
    - Recorded shared access easement(s) with BPA right of use documentation;
    - Approved facility permit;
    - Forest stocking survey with evidence of receipt from the County Assessor;
    - Well log or well constructor's report and pump test that complies with the Lane Manual 9.160;
    - Verification letter from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route and the adequacy of the constructed road and driveway improvements;
    - A revised final Site Plan that conforms with the approved plan, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These plans shall show the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(8)(c)(i), the entire access between Airport Road and the home site, surfacing widths, turnouts, turnarounds, bridges, culverts, airport surface, easements, including BPA easements, transmission lines etc.

14. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in **conditions #3, #9, and #11** have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(e) and (c) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the determination of the Planning Director.

15. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the

appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

16. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the final approved site development plan, except as authorized by the Planning Director. Per Lane Code Chapter 14, modifications to the final approved site plan not within the scope of the original approval may be subject to a new Type II or Type III Modification of Approval.

The following condition shall be met prior to building permit issuance for above ground construction.

17. Prior to building permit submittal, the applicant must submit documentation demonstrating compliance with LC 16.246(3)(a) and (5)(e), with the maximum height limitation to be indicated on the building permit plans. Preliminary calculations under **Finding 28** indicate a single-story structure is feasible.

18. Prior to building permit submittal, the property owner must complete a FAA Form 7460-1 for the proposed dwelling and return to Seth Thompson, Aviation Planner at ODA and receive a Letter of Determination for the proposed construction as required by OAR 738-070-0060. Submit a copy of the completed form and letter of determination to Lane County Land Management Division at the time of building permit.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

19. The proposed dwelling shall meet the following requirements, to be indicated on the building permit plans and verified by the Lane County Building Official:

a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.
b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

20. The applicant is responsible for complying with any applicable local, state, and federal laws, including Oregon Department of State Lands (DSL) and/or Army Corps of Engineers (ACOE) wetland regulations and Oregon Department of Aviation (ODA) and Federal Aviation Administration (FAA) requirements. See **Exhibit H** for more information about ODA and FAA requirements.

21. Future development must comply with the limitations and standards of the Airport Safety Combining Zone, LC 16.246.

22. The applicant is responsible for procuring the necessary agreements with the Bonneville Power Association. Recent and past BPA communications indicate that portions of tax lots 2800 & 2900 are encumbered by an easement for high-voltage transmission lines and an access road easement. Per the BPA, these easements grant certain rights to BPA and limit the landowner's use within the easement area. A portion of BPA's rights include the right of ingress and egress, and the right to keep the easements free and clear of vegetation and buildings, sheds, fences, roads or any other type of structure. All activities planned within the BPA easement need to be reviewed by BPA prior to their occurrence. Do not build, dig or plant within the easement area without first contacting BPA. Requests for information regarding the process for reviewing proposed uses of the easement may be addressed to Janai Soto at jasoto@bpa.gov or 541/988-7409.

23. Per LC 16.005, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and the character of soils for fill and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

24. The subject property is within a "High" and "Moderate" landslide susceptibility area according to DOGAMI. This designation may require a geotechnical report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 to confirm requirements.

25. Any future naming of the proposed shared access easement road is subject to the provisions of LC 15.305 through 15.335.

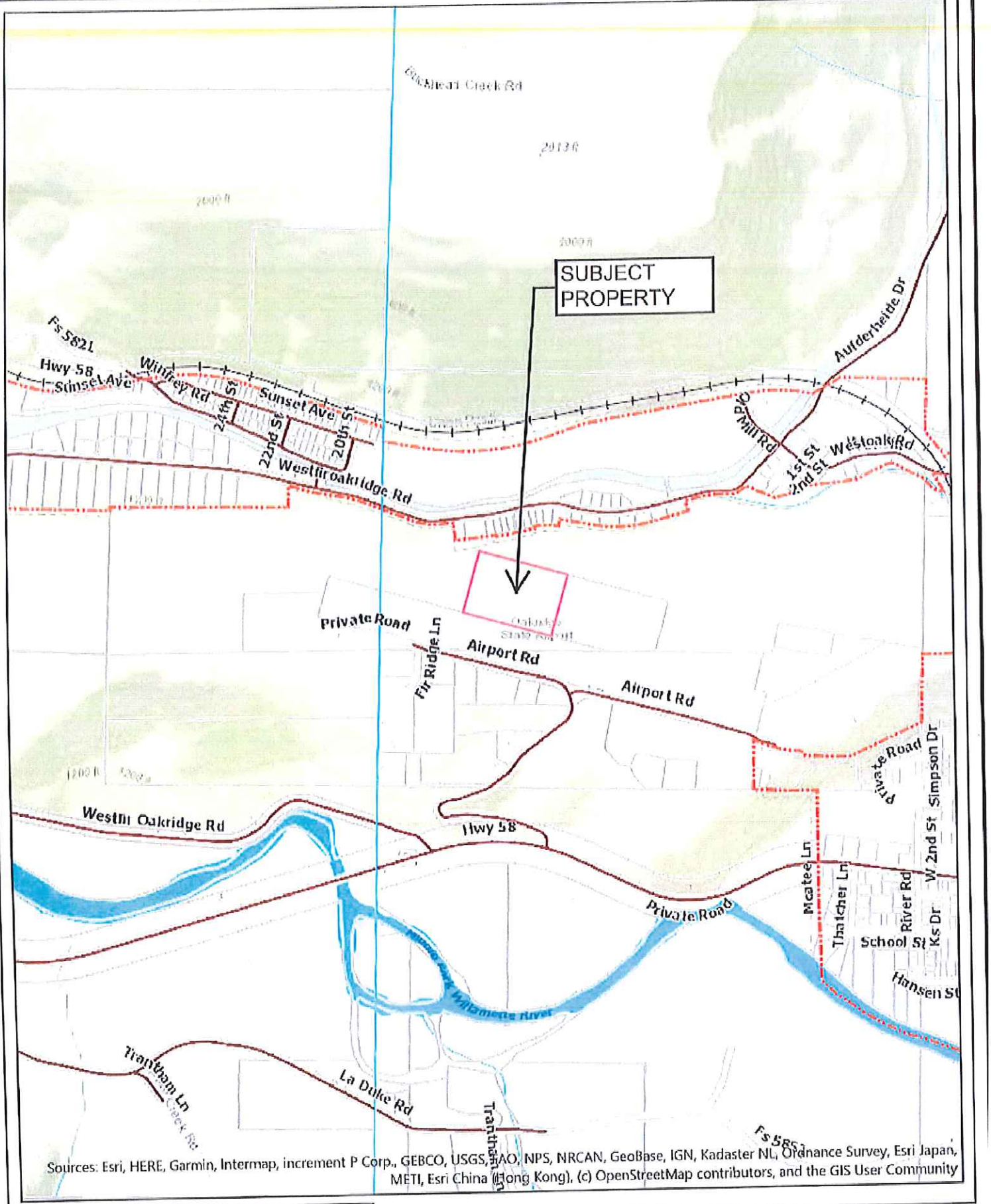
26. Storm water runoff from the subject property shall not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

27. The owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(e). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County).

28. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

    "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

    This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 300 600 1,200 Feet

VICINITY MAP: PA20-05064

Lane County, Oreg

EXHIBIT B

LAND MANAGEMENT DIVISION

Date Received:

APPEAL OF A TYPE II DECISION

PUBLIC WORKS DEPARTMENT 3050 NORTH DELTA HIGHWAY, EUGENE OR 97408
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only: FILE # CODE: HOAPPEAL FEE: $250

Appellant: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____

LOCATION (subject property)

_____

Assessor's Map and Tax Lot

REQUIRED SUBMITTALS. **A notice of appeal must be filed with the Director prior to the end of business (4 pm PST) on the 12th day after the date the notice of decision is mailed.**

Please note that your appeal application will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). Failure to address all appeal requirements of Lane Code 14.080(1)(a) through (c) may result in the appeal being rejected.

1. A copy of the decision being appealed, with the department file number:_____ and date of the decision_____
2. The $250 appeal fee, payable to Lane County.
3. The appeal deadline, as stated in the Director's Decision: _____
4. Address each of the following:
   a. State how the appellant is a person who is entitled to written notice under LC 14.060 or a person who is adversely affected or aggrieved by the application:

      ☐ I am a person entitled to receive the Notice of Decision per LC 14.060

      ☐ I am adversely affected or aggrieved by the application because (explain):

      _____

      _____

See Page 2, appeal form continued. →

b. Please provide a written statement explaining the reason(s) why the Director's decision was made in error or why the Director should reconsider the decision. Please explain the issues being raised on appeal with sufficient specificity to afford the approval authority the opportunity to respond to each issue raised (attached a separate letter if necessary).

c. Provide an explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration (attach a separate letter if necessary):

- ☐ The Director exceeded their jurisdiction;
- ☐ The Director failed to follow the procedure applicable to the matter;
- ☐ The Director rendered a decision that is unconstitutional; or
- ☐ The Director misinterpreted the Lane Code or Lane Manual, state law or federal law, or other applicable standards and criteria.
- ☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

5. Include any other additional information in support of your appeal.

(Version 12/2019)

EXHIBIT D

STAFF REPORT

509-PA20-05064

Department File:	**509-PA20-05064**
Owner/Applicant:	E.J.K. Investments
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff:	Shawna Adams, Senior Planner

I. PROPOSAL

A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

II. BACKGROUND INFORMATION

The subject application was submitted to the Land Management Division on February 5, 2020 and was deemed complete by staff on March 6, 2020. On March 23, 2020, staff solicited referral responses from affected agencies, service providers, and surrounding property owners. Subsequently, the applicant provided extensions to the statutory timeline requirements of ORS 215.427 totaling 165 days. Copies of all written comments and applicant submittals are included in the application file for this proposal and are addressed in the staff evaluation below in the context of the approval criteria, as applicable.

III. PROPERTY DESCRIPTION

A. **LOCATION**: The subject property is identified as Tax Lot 2900 on Lane County Tax Assessor's Map 21-35-07-30. The property is located immediately north of the Oakridge Airport, and situated between the Westfir and Oakridge Urban Growth Boundaries (UGBs).

B. **PHYSICAL DESCRIPTION**: The subject 12.05-acre property is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration (BPA) easement that transects the property. The property generally slopes downward to the northwest property corner with steep slopes greater than 25 percent predominating north of the BPA easement. According to County GIS data layers, the property is mapped by DOGAMI as having "high" and "moderate" landslide susceptibility and does not contain floodplain, a Class 1 stream, or wetlands. Per the applicant, the site is vegetated with small fir trees, scattered with underbrush and a few maple and oak trees. 2018 statewide imagery shows more tree cover north of the BPA easement.

C. ZONING & SURROUNDING PROPERTIES: The property is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2) consistent with that plan designation. The property is bordered to the south by the Oakridge Airport within the Airport Operations (AO-RCP) zoning district and abuts Impacted Forest Lands (F-2, RCP) zoned properties, to the north, east and west.

IV. APPLICABLE CRITERIA AND FINDINGS OF FACT

This application is evaluated pursuant to the applicable criteria found in Lane Code 16.211(5) and Lane Code 16.211(8) and other standards as applicable. The code language is in **boldface** type, followed by findings of fact.

D. Conformity with Lane Code 16.211(5):

Template Dwelling. One single-family dwelling is allowed subject to prior submittal and approval of an application pursuant to Type II procedures of LC Chapter, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) The tract upon which the dwelling will be located has no other dwellings on it.

Finding 1: The subject property on which the dwelling will be located coincides with Tax Lot 2900 of Assessor's Map and Tax Lot 21-35-07-30, does not contain a dwelling, and is owned by EKJ Investments. The tract consists only of the subject property. As per Regional Land Information Database (RLID) records, all abutting properties are under separate ownership and owned by Crown Properties LLC, Oregon State Board of Aeronautics, Edward J King, or the State of Oregon. Accordingly, this criterion is met.

House Bill 2225 includes additional tract requirements that have not yet been adopted in the Lane Code. These provisions apply directly as of January 1, 2020 and are set forth in OAR 660-06-027(6)(a). The applicable provisions of Section 2 of the House Bill applicable through January 1, 2023 further provide that no more than one dwelling may have existed, exist, or have been approved on the other lots or parcels within the former tract that existed as of January 1, 2019 and thereafter through January 1, 2021. Staff find that the RLID records and other information in the file record indicate that subject tract remains the same as it existed on January 1, 2019, in compliance with these requirements. Also see **Finding 30**.

(b) The lot or parcel upon which the dwelling will be located was lawfully created.

Finding 2: The subject parcel was verified to be a legal lot under Planning Action File No. 509-PA08-06632 and noticed as a final land use decision without appeal under 509-PA08-06329 and remains in the same configuration. This criterion is met.

(c) The lot or parcel upon which the dwelling will be located:

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least eleven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(iii)(aa) above.

(bb) At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels described in LC 16.211(5)(c)(iii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(iii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle.

Finding 3: The applicant chose to document the presence of at least 11 other lots or parcels that existed on January 1, 1993. This is the most rigorous of the three "tests" outlined in LC 16.211(5)(c), and it appears to be the only option given that RLID soils data and Lane County Soil Ratings for Forestry and Agriculture estimates indicate 100% of the subject parcel's soils are Nekia soils (89D & 89F capable of producing 160 cubic feet per acre per year of wood fiber. The applicant's template square is centered on the mathematical center of the tract, as verified by County GIS generated centroid measurements. Accordingly staff find that the proposal satisfies the methodology set forth in subsection (5)(c)(iii)(aa) and House Bill 2225 for tracts with less than 60 acres. Staff also note that the submitted template map is marginally different from the 1:400 scale indicated, but finds the relationship between the template and parcels appears to be preserved and an accurate measure.

The applicant has identified 17 lots or parcels that existed on January 1, 1993, as within the template area. With consideration of the current property description cards and other documentation submitted by the applicant, and available County records included in the application file, staff find that at least 12 of the 17 lots or parcels identified as within the 160-acre template appear to have been lawfully created prior to January 1, 1993. None of these parcels were wholly or partially within a UGB as of January 1, 1993 or currently. These parcels satisfy LC 16.211(5)(c)(iii)(aa) and are described in in **Figure 1**.

FIGURE 1: LOTS, PARCELS AND UNITS OF LAND WITHIN TEMPLATE AREA

Count (*dwelling)	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	21-35-07-30	2700	1972	R360D/96687
2*	21-35-18-00	914	1980	P1 of M463-79
3*	21-35-18-00	913	1980	P1 of M463-79; R1210-8227205
4*	21-35-18-00	911	1979	P2 of M316-78
5*	21-35-18-00	912	1979	P1 of M316-78
6*	21-35-18-00	906	1970	Reel 469-D/95859
7*	21-35-18-00	908	1970	LSC R1437/8652701; Deed R484/10186; LL PA87-02870 Part 2
8	21-35-18-00	903	1971	LSC R477/3455; Deed R871/70102; LL PA87-02870 Part 1
9*	21-35-18-00	904	1969	R423/52735
10*	21-35-18-00	918	1984	P2 of PA83-02253; 1291R/8412582
11	21-35-18-00	902	1968	R382/16860
12*	21-35-18-00	910	1978	P2 of M174-78

*Note: Verification of the parcels above is preliminary and does **not** constitute a determination of legal lot status.*

The applicant provided documentation for ten (10) dwellings located on the parcels identified in **Figure 1** above. These are denoted with an asterisk and include three dwellings that post-date January 1, 1993 according to the submitted documentation. As evidenced by the RLID reports and other records submitted by the applicant and 2018 aerial photography, staff verified at least five (5) of the ten dwellings existed on January 1, 1993, continue to exist on the qualifying lots partially or wholly located within the template square. The relative location of the dwellings is not relevant because the template measurement was not made according to LC 16.211(5)(c)(iii)(aa)(B). The dwellings found to satisfy LC 16.211(5)(c)(iii)(bb) are listed in **Figure 2** below.

FIGURE 2: QUALIFYING DWELLINGS WITHIN TEMPLATE DWELLING

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
1	21-35-18-00	912	1965; RLID
2	21-35-18-00	908	1954; RLID
3	21-35-18-00	904	1965; RLID
4	21-35-18-00	910	1974; RLID
5	21-35-18-00	913	1990; RLID; BP80-02322

For the reasons explained above, staff find the proposal satisfies LC 16.211(5)(c).

(d) Approval of a dwelling or manufactured dwelling shall comply with the requirements in LC 16.211(5)(d)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

Finding 4: All of the provisions of LC 16.211(5)(d)(i) through (iv) apply since the subject property is larger than ten acres. Lane County Assessment and Taxation will receive notice of this decision. Conditions of approval have been established to ensure that the owner plants a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. As conditioned, the owner must submit to Lane County Assessment and Taxation a stocking survey report for the subject property, prepared by a qualified forester. A copy of the stocking survey report with evidence of receipt by Lane County Assessment and Taxation must be submitted to Lane County Land Management Division as part of the Verification of Conditions application process. The proposal meets this criterion as conditioned.

(e) Prior to land use clearance of a building permit for the dwelling, when the lot or parcel on which the dwelling will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(7), "Exhibit A," shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

Finding 5: The subject tract consists of the subject parcel with no contiguous property under common ownership remaining. As such, the above criterion, does not apply. Staff note that the referenced OAR was renumbered under House Bill 2225 and is now implemented in OAR 660-06-027(6)(a).

(f) Land use approval of a permit described in LC 16.211(5) above shall be valid for four years from the date of the approval.

Finding 6: This approval will be valid for four years from the final date of approval indicated on the Notice of Decision. This has been made part of **Condition #1** of **Exhibit A**.

(g) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Finding 7: As a condition of approval to ensure compliance with the above criterion, the applicant must record a Farm and Forest Management Practices Agreement with Lane County Deeds and Records office and submit a copy of the recorded agreement to Land Management Division as part of the Verification of Conditions application. This requirement must be satisfied prior to the issuance of a building permit for a single family dwelling or a placement permit for a manufactured home.

E. Conformity with Lane Code 16.211(8):

Siting Standards for Dwellings, Structures, and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h), (2) (j), and (2)(o), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

Finding 8: The applicant's site plan identifies a 100-foot by 200-foot home site area set back 130 feet from the south property line and 335 feet from the east and west property lines (**Exhibit C**). The subject property is near numerous dwellings, including dwellings within the Westfir UGB to the north and south of the Oakridge Airport. The nearest dwelling to the proposed home site appears to be approximately 600 feet to the south. The proposed home site is roughly 100 feet to the south of the existing private roadway that runs along the BPA easement, and as near to other nearby roads as other locations within the tract. The entire property is comprised of soils suitable for forestry use. Staff conclude that the portion of the property that lies south of the BPA easement where the home site is proposed is the least suitable for forestry use, due to its proximity to the BPA transmission

lines, existing roadway, and greater height limitations due to higher elevations and proximity to the airport. See **Finding 28.**

Specific to slopes, April 16, 2020 comments from LandWatch Lane County (LWLC) contend that that onsite slopes are greater than indicated by the applicant (**Exhibit F**). The applicant indicates that the home site is proposed within the most level area of the tract, that slopes within the home site do not exceed six percent, and that the home site is not within 200 feet of slopes 40 percent or greater. The submitted County LiDAR and 20-foot contour data suggest that slopes within the vicinity of the home site are greater than indicated by the applicant. As evidenced by the submitted slope data and other available County GIS LiDAR and contour data layers (**Exhibit K**), the home site is at the north and west end of the most level part of the property, predominately consists of slopes greater than six percent with significantly steeper slopes in the north part of the home site, with slopes indicated be 40 percent or greater in the northeast corner of the home site and within 30 feet of the home site's north boundary. The data do not indicate that the proposed 100 x 200 foot home site meets the above standard, but do indicate that a reduced 70 x 110-foot home site, with the northern 30 feet and western 90 feet eliminated, would comply with the above standards and allow sufficient area for home site development.

For the reasons explained above, staff find that proposal meets the above standard subject to the condition that the home site be reduced as described and indicated on the approved preliminary site plan in **Exhibit C.**

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

Finding 9: The applicant indicates that the proposed home site is located in a forested area that was clear cut several years ago and is in a mostly open area with only a few scattered underbrush and replanted fir trees. For the reasons explained under **Finding 8** staff find that part of the site south of the BPA easement where the home site is proposed is the least suitable part of the site for forestry. The available slope evidence addressed under **Finding 8** and the fuel break requirements addressed under **Finding 14**, indicate that construction of a dwelling within the north part of the proposed 100 x 200-foot home site would necessitate the maximum additional safety zone downslopes to the north and northeast of the home site, with the possibility of both primary and secondary fuel breaks extending north of the BPA easement. Reducing the home site area to 70 x 110 feet as indicated on the approved preliminary site plan in **Exhibit C**, would necessitate less extensive fuel breaks and more fully accommodate required fuel breaks within the south part of the site. The home site, as reduced, is found to sufficiently minimize intrusion into forest areas. As conditioned, the proposal meets this standard.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

Finding 10: The subject property abuts only F-2 and AO zoned property. The proposed home site is set back at least 100 feet from the nearest property boundary in accordance with this standard.

(iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met; and

Finding 11: The property does not contain and is not near a designated Class 1 stream. The above standards do not apply.

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 30 feet from all property lines other than those described in LC 16.211(8)(a)(v)(aa) above; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

Finding 12: The subject property does not front a road subject to compliance with subsection (v)(aa). Otherwise, the proposed home site is located more than 30 feet from all property lines in accordance with subsection (v)(bb). **Findings 8 through 12 and Finding 13 through 17** address compliance with the remaining standards of LC 16.211(8)(a) through (d), and are incorporated here as demonstration of compliance with (cc) above. The above standard is met.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

Finding 13: As further explained under **Finding 8** and **9**, the reduced home site area is to be sited near an existing access roadway and BPA access easement in a location where fuel breaks will be minimized. As conditioned, the proposal meets this standard.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:

(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50

20	30	75
25	30	100
40	30	150

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

Finding 14: The applicant indicates that slopes within 30 feet of the home site range from three to six percent and, accordingly, the applicant's site plan shows the standard 30 foot fuel break and a secondary 100 foot fuel break on lands controlled by the owner. However, the applicants slope evidence includes County GIS LiDAR and 20-foot contour data that indicate down slopes within 30 feet of the home site are greater than assumed. See **Finding 8**. Currently available County GIS LiDAR and 1-foot contour interval data also indicates the slopes are greater than assumed (**Exhibit K**). These slope data would dictate a 30-foot primary fuel break with an additional 150-foot additional safety zone down slope to the north and northwest of the proposed 100 by 200-foot home site. While it appears that this primary fuel break and additional 100-foot secondary fuel break could be accommodated in accordance with fuel break requirements, staff do not find the proposed home site's placement in proximity to the downslopes meets the siting standards at LC 16.211(8)(a) and (b) and has conditioned approval on the reduced 110 by 70-foot home site area shown on the approved preliminary site plan in **Exhibit C**. As reduced, it appears that the downslopes within 30 feet of the home site may exceed 25 percent near the northeast corner and require an additional safety zone down slope of up to 100 feet. In any case, the evidence indicates that the required primary and secondary fuel breaks can be fully accommodated on the subject property without need for consideration of the extent abutting properties might be under common control. Compliance with fuel break has been made a condition of approval, and will be field verified as part of the Verification of Conditions application review. As conditioned, the required fuel breaks must be maintained in perpetuity and must be accurately depicted on the final site plan.

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. If the dwelling or manufactured dwelling are not within a FPD, the applicant shall provide evidence that the applicant has submitted a written request for a long term services contract with the nearest FPD and to be annexed into the FPD boundaries. If the FPD and the Planning Director determine that inclusion within a FPD or contracting for residential fire protection is impracticable, the Planning Director shall require as a condition of approval for the dwelling or manufactured dwelling that the property owner implement and maintain a Fire Protection Plan as an alternative means for protecting the dwelling or manufactured dwelling from fire hazards, consistent with the following standards:

Finding 15: The subject property is located within the Hazeldell Rural Fire Protection District. This standard is satisfied without need for a Structural Fire Protection Plan.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the

State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

Finding 16: As a condition of approval, the applicant must provide evidence that the building plans meet this requirement. This requirement will also be field verified by Lane County staff.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

Finding 17: The applicant indicates that the proposed dwelling will be served by a future on site well and has submitted well reports for several properties in the vicinity to demonstrate feasibility. Per the Lane County Hearings Official' findings in Planning Action File No. 509-PA18-05804, to verify compliance with this standard, the well must comply with ORS 537.545(1)(d) and Lane Manual 9.160. ORS 537.545(1)(d) provides that the use of the well for single or group domestic purposes in an amount not exceeding 15,000 gallons a day does not require a water use permit. As conditioned to ensure compliance with this standard, the applicant will be required to provide a well log or well constructor's report that conforms with Lane Manual 9.160 and ORS 537.545(1)(d), as applicable.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than

one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Finding 18: Home site access is proposed via a 40-foot wide shared access easement road and driveway loop off the private road. The applicant proposes to establish a shared access easement between the Airport Road terminus and driveway loop adjacent to the home site. The proposed shared access easement is to be established over Tax Lot 843, Tax Lot 103, and the subject property and allow for the improvement of the existing roadway to be improved to the road and driveway standards of LC 16.211(8)(e). Currently, the existing roadway appears to be devoted to commercial forestry and BPA use, is largely contained within the BPA easement north of the Airport, and clips the southwest corner of the Oakridge Airport. As proposed, the access will be adjusted such that it is entirely outside of the Airport property. The proposed driveway loop appears to be existing and outside of the BPA easement.

The application materials detail the route of access from the Fire station to the home site. The file record includes publically available information indicating that the Hazeldell Rural Fire Protection District contracts with the Oakridge Fire Department to provide service and the equipment used by the District.

April 16, 2020 LWLC comments cite several concerns regarding the adequacy of the submitted documentation with respect to grades, road turnarounds, and BPAs easement limitations. As further addressed under **Finding 19 through 26** below, and with consideration of **Finding 26 and 27** addressing Lane Code Chapter 15 and BPA requirements, staff find that the evidence is sufficient to demonstrate it is feasible for the road access and driveway to meet the standards of LC 16.211(8)(e). Compliance with Lane Code 16.211(8)(e) and field verification by staff has been made a condition of approval. Also, written verification of compliance from an Oregon Registered Professional Engineer or the fire district providing residential fire protection service must be provided. All road and driveway improvements, including turnarounds, turnouts, and culverts, and all easement locations must be shown on the final site plans.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

Finding 19: The applicant proposes to improve the proposed shared access easement road and driveway as necessary to comply with the above standards and further confirms that the shared access easement will be improved to road standards with a minimum 20-foot unobstructed width and a 16-foot wide gravel surface and the driveway will be improved to driveway standards with a 12-foot wide gravel surface. Staff note that the application materials provide conflicting information regarding the extent to which the Road and Driveway surfaces are already improved to standard, although it appears from aerial photos and other communications that the roadway and driveway has been established to, or near to, the widths required. Compliance with this standard is required and will be field verified as part of the Verification of Conditions application process.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not more than 500 feet. Turnarounds shall comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(dd) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Finding 20: Staff find that compliance with the above standards is feasible. The proposed dwelling is to be accessed from Airport Road via a private shared access easement road. The private road does not appear to exit onto any other roads and is therefore considered to be a dead-end road necessitating turnarounds. Notwithstanding that the application materials provide conflicting statements regarding whether turnarounds or turnouts are proposed or required along the shared access road, staff understands that the applicant proposes turnarounds spaced not more than 500 feet and maintains that these can be accommodated along the existing roadway and may also propose a turnaround at the home site. The roadway is already established, crosses other properties that appear to be in common control, if not ownership, and it appears that these turnarounds can be accommodated within the proposed shared access easement either within or outside of the proposed shared access easement can accommodate the turnarounds either within or outside of the existing BPA easement area. Given that the roadway is found to otherwise comply with the applicable standards and criteria addressed elsewhere in this report, staff find the submitted evidence is sufficient to demonstrate the required turnarounds along the roadway are feasible. Compliance with LC 16.211(8)(e) has been made a condition of approval. The above standard will be field verified by staff during the Verification of Conditions.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Finding 21: The applicant does not propose any bridges or culverts as a part of the proposed development, In the event that a bridge or culvert becomes necessary during construction of the access, it must be constructed to meet the above standard. General compliance with the applicable standards of LC 16.211(8)(e) has been made a condition of approval. As conditioned, written verification of compliance from an Oregon Registered Professional Engineer or the fire district providing residential fire protection service must be provided for any bridges or culverts within the constructed access.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon

demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

Finding 22: Materials submitted by the applicant, including current County GIS LiDAR, aerial photo, and 20-foot contour data, and clinometer readings from Brinks Land Improvement submitted on November 23, 2020 (**Exhibit J**), evidence that the road and driveway are existing and slopes do not exceed 16 percent. Brinks Land Improvement indicate that the clinometer readings indicate no area in excess of 10%, most grades measured 3-6 percent, and no presence of inclines that would exceed 15 percent. Compliance with has been made a condition of approval with field verification by staff as part of the Verification of Conditions application process. Since the road and driveway grades exceed eight percent, the fire district or a licensed engineer must certify that the road and driveway grades are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment, and water supply.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

Finding 23: Lane County Transportation Planning has not indicated that road naming is required for the proposed dwelling. As an advisory condition, staff note that road naming is subject to the provisions of LC 15.305 through 15.335.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

Finding 24: Based on the applicant's site plan and site access plan, the looped driveway between the shared access road and home site exceed 200 feet. Therefore, turnouts spaced 400 feet or less are required along the driveway. Compliance with the above standard has been made a condition of approval.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

Finding 25: No modification of road standards has been requested with this application or appears to be required. Any modifications or alternatives that may prove necessary or preferred, will be subject to review and approval of a new Type II dwelling application or Modification of Approval application as set forth in Lane Code Chapter 14.090.

F. Compliance with Other Development Standards

Lane Code 16.095: Compliance with LC Chapter 15, Roads

Finding 26: Access to the home site from Airport Road is proposed via a proposed 40-foot wide shared access easement road over Tax Lot 843, Tax Lot 133, and a driveway loop of the road.

See **Exhibit E** for Lane County Transportation Planning (LCTP) comments dated April 2 2020 and incorporated herein by reference. In summary, LCTP comments confirm Airport Road is Rural Local Road under the jurisdiction

and maintenance of Lane County and that Facility permit approval will be required to ensure the existing approach is adequate to support a shared approach to multiple properties and dwellings in accordance with applicable Chapter 15 requirements. LCTP staff further confirm that the private access easements serving the proposed dwelling must meet the minimum private access easement requirements of LC 15.055 (4), (5), and (7). Given that the ownerships traversed by the proposed easement appear to be represented by the same individual, Ed King, staff find that establishment and improvement of the shared access and utility easement compliance with LC 15.055 appears feasible and has been made a condition of approval along with field verification by staff as part of the Verifications of Conditions process. See Also **Finding 27**.

Bonneville Power Association (BPA) Easement

Finding 27: The subject property is traversed by an east-west Bonneville Power Administration easement that partially coincides with the proposed private road access.

LWLC suggests that the expired 2010 approval for the proposed template dwelling home site (509-PA10-05484) did not require compliance with BPA concerns and question whether BPA was notified of the subject application.

Staff note that the applicant's submittal includes December 8, 2010 correspondence in support of the feasibility of an identical access proposal for expired template dwelling approvals on Tax Lot 2900 and Tax Lot 2800 that have been resubmitted for new approvals under 509-PA20-05064 and 509-PA20-05066). The letter notes that tax lots 2800 and 2900 are encumbered by an easement for high-voltage transmission lines and an access road easements that grant certain rights to BPA and limit the landowner's use within the easement area, and necessitate review and approval by BPA for all activities planned within the BPA easement prior to their occurrence. The letter confirmed that the BPA would like to work with the landowner to locate the dwelling so it doesn't interfere with BPA's use of the access road and asked that the dwelling land use decision make note of the BPA restrictions. The expired template dwelling approvals included the advisory statements requested by BPA and an updated statement has been added as an advisory condition for the subject application.

BPA referral comments and communications with the applicant specific to the subject confirm that BPA approval will be required for use and improvement of the proposed shared access easement within the BPA easement area (**Exhibit G**). Via phone, BPA staff indicated that BPA cannot directly confirm feasibility outside of the formal BPA review process. BPA communications with the applicant indicate that additional details regarding turnaround locations, the method of improvement, and possibly a road survey by the property owner will be needed for BPA review and approval so that BPA can work with the property owner to assure safe and secure joint access to the road in the future. BPA also advised the applicant that BPA application review may be delayed due to COVID-19 work restrictions.

On September 29, 2020, the applicant submitted a revised access proposal and home site location to address BPA issues and other considerations. Staff advised the applicant that staff consideration of these application materials appeared to require an application modification if not a new application submittal according to Lane Code Chapter 14. Moreover, staff's review of the BPA communication in the record did not appear to establish that improvement of the existing access road was infeasible and, accordingly, that new construction of a 4,000 foot long shared access easement road segment adjacent to the existing roadway used by BPA would minimize impacts to forest lands as required to comply with LC 16.211(8)(a) and (b). Subsequently, the applicant has directed staff to proceed with review of the initial proposal and has provided additional evidence regarding the slope of the existing roadway.

While the BPA has not directly stated that use of the roadway is conceptually acceptable, the BPA indicates a willingness to work with the applicant to assure safe and secure joint access of the road via BPA's review process. Also, the available information appears to indicate options exist to accommodate any necessary improvements to

the existing roadway within and outside the transmission line easement area. Use of the existing roadway for access appears feasible. Verification of legal use and improvement of the existing roadway has been made a condition of approval.

Lane Code 16.246, Airport Safety Combining Zone (/AS):

(3) Use Limitations. In a/AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

Finding 28: The proposed home site is located within the Transitional Surface of the Oakridge Airport. Per LC 16.246(5)(e), the Transitional Surface extends upward and outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of seven horizontal feet to one vertical foot to the intersection with the Horizontal Surface, a horizontal plane 150 feet above the airport runway.

The application includes 2010 documentation stamped by a surveyor demonstrating that a 50-foot high structure could be developed at a specific location in the north half of the reduced 70 x 110-foot home site boundary in accordance with the above standard. Staff further note that the Primary Surface as delineated on the applicant's September 29, 2020 maps measures approximately 301 from the center of the south home site boundary and approximately 371 feet from the center of north site boundary. Per LC 16.246(2)(d), the elevation of the Oakridge runway is 1419 feet above sea level. Using the 7:1 ratio to determine the height limit at the southern home site boundary, staff calculate the Transitional Surface to be approximately 1464 MSL (301/7=43; 43+1419=1462). The surveyor documentation indicates the elevation at a high point near the center of the south home site boundary is 1435 feet above sea level. This would allow for construction of a home that is 27 feet above grade at the southern border of the home site (1462-1435=27) and increasing to height of 50 feet or more as documented in the record. Given that single-story homes are generally between 14 and 28 feet above grade, compliance with the above requirement appears feasible and has been made a condition of approval to be satisfied as part of the building permit submittal process.

Referral comments from Oregon Department of Aviation (ODA) indicate that pursuant to OAR 738-070-0060, the applicant must submit FAA Form 7460-1 documents to the ODA and receive a Letters of Determination for the proposed construction prior to issuance of any building permits for the template dwelling and provide information

about additional ODA and Federal Aviation Administration (FAA) requirements (**Exhibit H**). As conditioned to ensure compliance with the above standards, the applicant must submit a copy of the FAA Form and Letter of Determination at the time of building permit. The applicant is advised that the ODA will also require post construction documentation.

Lane Code Chapter 16.005(2) - Use of a Development - Landslide Hazards

Finding 29: April 16, 2020 LWLC comments note that the home site and a portion of the access road appear to be within areas mapped by DOGAMI as having high susceptibility for landslides. Per available County GIS DOGAMI map data added to the file record, the subject property contains areas of "Moderate" and "High" landslide susceptibility areas according to DOGAMI landslide hazard maps. Depending on the location of the dwelling within the dwelling site area, these designations will or may require a geotechnical report with submittal of a building permit.

The areas mapped by DOGAMI as moderate and high landslide risk areas generally are divided along the BPA easement boundary, which bisects the north and south part of the property. The easement is developed with transmission lines and the existing roadway, which meander within and outside the south part of the easement. The mapped high landslide risk area to the north corresponds with the steepest portion of the property, where over 20 percent predominate. The moderate susceptibility area generally corresponds with the moderate slopes to the south where the home site is proposed. Contrary to LWLC's assertion, the home site is within the Moderate susceptibility area. Otherwise, the roadway generally follows the boundary between the mapped landslide risk designations, with portions in each. Based on the pixilation, staff interprets the mapped boundary to be generalized. Otherwise, driveway and roadway are within areas or follow contours where slopes are less than 16 percent according to available contour data and LiDAR data in the file record. Clinometer readings reported by Brinks Land Improvement indicate no inclines above 15 percent, if not 10 percent. With consideration of these data and the fact that the access is already constructed, and in the absence of evidence to the contrary, staff do not find that landslide hazard makes the development unfeasible or warrants additional measures beyond those that will be addressed as part of the building permit review process for dwelling construction.

The general requirements at LC 16.005 remain applicable and provide that excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. This requirement has been made an advisory condition of approval. The applicant also is advised to consult with Building Department staff to verify related geotechnical requirements that may be required due to the DOGAMI risk designation and slope and soil conditions. This has been made an advisory condition of approval.

House Bill 2225

Finding 30: Approval of this request is subject to compliance with the provisions House Bill (HB) 2225, as implemented in OAR 660-06-027(6)(a). Consistent with these provisions, the subject property has not been reconfigured/property line adjusted since January 1, 2019 in order to meet the template test or to qualify for dwelling. The remaining requirements of HB 2225 have been addressed in this report, as applicable.

IV. DECISION

Based upon the findings above, the application for a forest template dwelling meets the criteria of Lane Code 16.211(5), 16.211(8), and other applicable criteria. Therefore, **APPROVAL** is granted, subject to the conditions stated in **Exhibit A** of this staff report.

MAPPING & DECISION INSTRUCTIONS

509-PA20-05064

MAP NO. 21-35-07-30-02900

ADDITIONAL OWNERSHIP:

APPLICANT:
EDWARD KING

30414 LEBLEU RD
EUGENE, OR 97401

OWNER:
E J K INVESTMENTS LLC

30414 LE BLEU RD
EUGENE, OR 97405

AGENT:
KIM O'DEA - LAW OFFICE OF BILL KLOOS
375 W 4TH AVE STE 204
EUGENE, OR 97401

BASE ZONE: F2

COMBINING ZONE: /AS/NONE

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral	Decision		Referral	Decision	
☐	☐	Building	☒	☐	State Fish & Wildlife (ODFW): Valley
☐	☐	Sanitation	☐	☐	State Highway (ODOT)
☐	☐	Final Legal Lot	☒	☐	State Forestry: East
☐	☐	Rural Addressing	☐	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	☐	Flood Management	☐	☐	Dept. Land Conservation & Development (DLCD)
☐	☐	Easement Review	☐	☐	Lane Regional Air Protection Agency (LRAPA)
☐	☐	Compliance	☐	☐	Dept. of Environmental Quality (DEQ)
☐	☐	Surveyors	☐	☒	Dept. of Environmental Quality (DEQ) 1200-C
☒	☒	Transportation Planning	☐	☐	Oregon Health Division
☒	☒	County Road Maintenance	☐	☐	Water Master
☐	☐	Water Quantity/Quality	☐	☐	Division of State Lands (DSL)
☐	☒	Assessment &Taxation	☐	☐	State Parks (Certified mail)
☒	☒	State Fire Marshal	☒	☐	Dept. of Aeronautics
☐	☐	Community Organization NONE	☐	☐	CenturyLink
☒	☐	Watershed Council Middle Fork Willamette Watershe	☐	☐	Northwest Natural Gas
☒	☐	Land Watch	☐	☐	Port of Siuslaw
☐	☐	School District OAKRIDGE	☐	☐	Power Company Lane Electric
☐	☐	Water District	☐	☐	US Army Corps. of Engineers (ACOE)
☒	☒	Fire District Hazeldell Rural Fire District	☒	☐	US Fish & Wildlife (USF&W)
☒	☐	City Area of Interest (20-day notice) Westfir	☐	☐	Confederated Tribes
☐	☐	METRO Area of Interest NONE	☐	☐	State Historic Preservation Office (SHPO)
☐	☐	Environmental Health	☒	☒	Other IPs below

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:
- ☒ Vicinity Map
- ☒ Site Plan
- ☐ Flagged Applicant's Material

Copy and Attach Materials to Referral Notices as Instructed Above and Below:

Comments submitted by: ; JAY & GRETCHEN ANTHONY PO Box 1507 Gold Beach Or 97444?; BPA (Janai Soto, asoto@bpa.gov); ODA 3040 25TH STREET SE, SALEM, OR 97302 seth.thompson@aviation.state.or.us; MAX BAKER, PO BOX 490, LOWELL, OR 97452 (Public Water Notification Area)

Also notify: Max Baker, PO Box 490, LOWELL, OR 97452 (Public Water Notification Area)

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING
3040 N DELTA HIGHWAY | EUGENE, OR 97408

April 2, 2020

LMD FILE:	509-PA20-05064
APPLICANT:	Edward King
OWNER:	E J K Investments LLC
AGENT:	Kim O'Dea – Law Office of Bill Kloos
MAP & TAX LOT(S):	21-35-07-30-02900
ZONING:	Impacted Forest Lands Zone (/F-2)
PROPOSAL:	**A REQUEST FOR DIRECTOR APPROVAL OF A DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2), IN ACCORDANCE WITH THE 'TEMPLATE TEST' PROVISIONS OF LANE CODE 16.211(5) AND (8).**

Thank you for the opportunity to review and comment on this proposal. Please accept the following comments from Lane County Transportation Planning:

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

CONDITIONS

- Any private access easements serving the subject property must meet the requirements of Lane Code 15.055(2), (4), (5), and (7).

- Facility Permit approval will be required to ensure the existing access is adequate to support a shared approach to multiple properties/dwellings as proposed in the written statement. For more information about Facility Permits, please call 541.682.6902 or visit: https://lanecounty.org/government/county_departments/public_works/right-of-way_permits/facility_permits/

- As an informational item, stormwater runoff from the subject property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

FINDINGS

Based on the site plan, the subject property "property" is proposed to take access via an existing driveway off Airport Road. The existing access will extend to the proposed dwelling as a private access easement. Airport Road is owned and maintained by Lane County and is functionally classified as a Rural Local road. For the purpose of establishing development setbacks, the minimum right-of-way (ROW) width of Rural Local roads is 50 feet (Lane Code [LC] 15.070(1)(c)(gg)). Proposed development as conceptually shown meets this requirement.

Lane Code 15.055: Minimum Requirements for Private Access Easements

(2) When a Private Access Easement is used to provide access to a vacant lot or parcel where development is proposed, prior to land use and zoning authorization for the proposed development the following shall apply:

EXHIBIT E

(c) **The requirements specified above in LC 15.055(2)(a) through (b) shall apply only to lands outside of a County-designated Forest zone. Lands within a Forest zone shall be governed by the siting and development standards of the applicable zoning district.**

Pursuant to Lane Code 15.055(2)(c), transportation Planning defers to Land Management Division to ensure the private access easement meets the applicable siting and development standards of the Impacted Forest Lands Zone (F-2).

(4) **The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.**

(5) **All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.**

(7) **Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of the grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.**

Compliance with LC 15.055(4), (5), and (7) must be demonstrated.

Lane Code 15.205: Facility Permits

Facility Permits are required for the placement of facilities and development within Lane County right-of-way. Facilities and development include, but are not limited to: road improvements; sidewalks; new or reconstructed driveway or road approach intersections; utility placements; excavation; clearing; grading; culvert placement or replacement; stormwater facilities; or any other facility, thing, or appurtenance [Lane Code 15.205(1)].

A review of Lane County Facility Permit records indicates that there is no record of a Facility Permit for the existing access off Airport Road.

Lane Manual 15.515: Drainage

Stormwater runoff from new private development must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches (Lane Manual 15.515). Accordingly, levels of stormwater directed off-site post-construction of the improvements must match pre-development flows. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by the roadways themselves.

ADAMS Shawna L

From: lsv1953@gmail.com
Sent: Thursday, April 16, 2020 12:37 PM
To: ADAMS Shawna L; BAUDER Jared W
Subject: King/Crown Prop. Template applications - PA20-05064, -05065, -05066

[EXTERNAL]

Shawna and Jared,

Please confirm receipt and please send Notice of Decision for the three applications noted above.

Thank you.

Lauri Segel
LWLC

- The applicant relies on the 2010 application materials for all three 2020 applications; in PA 20-05065, the application says a rectangular template map will not be used; however, the 2010 application and decision for tax lot 843 relied on a rectangular template that did not appear to be aligned with the road; that decision did not discuss the actual alignment of the rectangular template nor whether at least one of the required dwellings was on the same side of the road as the proposed dwelling

- The 2010 decisions did not require proof of slopes, and the applicant's assertions about the slopes at the time appear to understate the area of tax lots 843 and 2900 having slopes greater than 10%

- It does not appear the 2010 decisions required compliance with the BPA concerns regarding their easement that the applicant intends to use to access the three proposed dwellings; it also does not appear that BPA was sent referral notice for the 2020 planning actions

- Tax lot 2900 is within an area designated by DOGAMI mapping as having a high susceptibility for landslides; that area appears to coincide with the proposed dwelling site on tax lot 2900, and a portion of the long access easement roadway that is between tax lot 843 and 2900

- The site plans do not identify the required turnarounds with the applicable spacing

- All the parcel/dwelling count lists have errors including but not limited to siting to preliminary LLVs instead of noticed LLVs

ADAMS Shawna L

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 2:28 PM
To: ADAMS Shawna L
Subject: FW: 509-PA20-05064 E.KING Oakridge
Attachments: O-LP-1-A-13R1_file0001_1582.pdf; 71862A-1-2.tif; Application_for_use_of_BPA_Right_of_Way.pdf

[EXTERNAL A]

Hi Shawna,

Kimberly (Ed Kings attorney) emailed us on Friday requesting what's needed for her client. BPA has responded to her request fyi. Thank you~

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Sent: Monday, April 27, 2020 2:12 PM
To: kimodea@landuseoregon.com
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>; Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: RE: 509-PA20-05064 E.KING Oakridge

Kimberly,

Thank You for your inquiry into use of the BPA access road for driveway access to your clients property.

I have attached a copy of the BPA easements and the plan & profile drawing for the area crossing your clients property. BPA's Hills Creek-Lookout Point No. 1, 115 kV transmission line right of way is 100 feet in width. The deeded access road includes portions of the road that are both inside and outside the corridor width. A survey by your client locating the right-of-way boundary may be needed to assist proper siting of structures beyond the boundary.

Also attached, is a copy of BPA's land use application form. A $250.00 non-refundable fee will be required to process the application.

Your email mentioned plans to upgrade the road and bring it up to county standards. As part of the application, BPA would like to know, the equipment that will be used to do the work, what grades and turnouts are planned, what gates may be installed and whether any utilities will be undergrounded in the road. (Distances of road features from transmission structures are especially useful for analysis and can reduce the need for site visits.) This information will allow BPA to do a

EXHIBIT G

thorough analysis of safety hazards that could arise from excavation and grading work in the right-of-way and to work with your client to assure safe and secure joint access to the road in the future.

Please note that a portion of the BPA access road crosses the airport property as it turns north from the county road. Permission from the Oregon State Board of Aeronautics may be needed to improve and use that portion of the road.

Due to COVID-19 work restrictions, applications can take longer to process than usual. Detailed plans and work descriptions greatly assist in the turnaround time for responses. Email correspondence and application submission is vital to aid response time.

Please contact Myself or Janai if you have further questions or concerns.

Respectfully,

Harley Canaday
Realty Specialist
503-230-5545 office
360-931-0631 mobile
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx
Bonneville
POWER ADMINISTRATION

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 7:26 AM
To: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: FW: 509-PA20-05064 E.KING Oakridge

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Friday, April 24, 2020 2:08 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] FW: 509-PA20-05064 E.KING Oakridge

Good afternoon, Janai:

I represent Ed King on the subject properties near Oakridge. Based on our site plans, none of the proposed dwellings are within the BPA right-of-way, which appears to be 80-90'. It is not our intention to propose any dwellings within the BPA easement. In fact, no structures will be built within the BPA easement.

However, we would like to utilize the existing access road. I was under the understanding that it was an old logging road. Regardless, as part of development, it will need to be improved to County standards (16' wide; compacted gravel; 20' of cleared area). This will also benefit BPA and give better access.

Attached is a rough site plan that shows all the parcels and the location of proposed access. It is feasible for us to move the dwelling site on TL 2900 eastward, if that would alleviate your concerns. A couple detailed site plans are also included.

In any case, please let me know what we need to do to obtain permission to use the existing access road, part of which is within the BPA easement?
Further, could you clarify the location and width of the BPA easement so that we can incorporate into our site plans, please?

Thank you much,
Kim

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Tuesday, April 21, 2020 3:41 PM
To: Kimberly O'Dea <kimodea@landuseoregon.com>
Subject: RE: 509-PA20-05064 E.KING

Kim, Sounds good. You may have better luck with Janai than I did, especially if you show her the c. 2010 letter to her.

If you are unable to get something from them that confirms feasibility by Friday and would like me to hold off on the decision until that can be provided, I'll need an extension to enable that.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Kimberly O'Dea [mailto:kimodea@landuseoregon.com]
Sent: Tuesday, April 21, 2020 8:52 AM
To: ADAMS Shawna L
Subject: Re: 509-PA20-05064 E.KING

[EXTERNAL ⚠]

Thanks, Shawna. I will contact her today. Do you need an extension?

Sent from my iPhone

On Apr 20, 2020, at 3:29 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Kim, BPA comment for this template dwelling application are below. I have followed up with Janai to verify whether the situation is similar to that in 2010 where we had sufficient confirmation to make feasibility findings. It sounds like that is not the case this time- they would need more info and an application before they can confirm that use of their access for the proposed purposes is something arrangements can be made for. Please advise how you would prefer we proceed with the review.

Be well,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Monday, April 20, 2020 7:14 AM
To: ADAMS Shawna L
Subject: RE: 509-PA20-05064 E.KING

[EXTERNAL ⚠]

Yes, thank you he needs to submit an application if he plans on using our access roads in case damage is done etc…

Respectfully,

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Thursday, April 16, 2020 6:55 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] RE: 509-PA20-05064 E.KING

Thanks Janai. At this point, we just need to know that the proposed access is feasible, e.g. that BPA is amenable to an arrangement with the applicants. Is the BPA able to confirm that at this stage? If not, is that what might be 12 weeks out or does the applicant need to submit one of your applications to before you would be able to respond?

Thanks much,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Tuesday, April 14, 2020 3:27 PM
To: ADAMS Shawna L
Subject: ref:509-PA20-05064 E.KING

[EXTERNAL A]

My error I apologize this will need to be approved by BPA & has not been submitted as of yet. The existing case file we have is on another E.King parcel in Lane County.

I have attached a map that reflects where our lines are it appears the landowner will need to complete one of our applications for approval before building any dwellings in our easement areas. His parcels are marked by blue dots...
Thank you~

<image001.jpg>

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Soto,Janai A (CONTR) - TERR-ALVEY
Sent: Tuesday, April 14, 2020 12:10 PM
To: 'shawna.adams@co.lane.or.us' <shawna.adams@co.lane.or.us>
Cc: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>; Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: lis case 20200165/your ref:509-PA20-05064 E.KING

Hi Shawna,

BPA currently has received a request for this development & is in the process of review for a Land use permit. Due to the Covid 19 we are currently on a telework status from home. Our current eta on the Land use applications for multiple departments to review may be extended, the normal response time is: 6-12 weeks to process. Thank you for your patience. Have a great day & stay safe.

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

The Grantor, EDWARD HINES LUMBER CO., a Delaware corporation, for and in consideration of the sum of * * * TWO HUNDRED FIFTY * * * * * * * * * * * * * * Dollars ($250.00 * * *), in hand paid by the UNITED STATES OF AMERICA, receipt of which is hereby acknowledged, hereby grants, bargains, sells, and conveys to the UNITED STATES OF AMERICA and its assigns, a perpetual easement and right to enter and erect, maintain, repair, rebuild, operate, and patrol one line of electric power transmission structures and appurtenant signal lines, including the right to erect such poles, transmission structures, wires, cables, and appurtenances as are necessary thereto, in, over, upon and across the following-described parcels of land in the County of Lane, in the State of Oregon, to-wit:

Tract O-LP-R-13

A strip of land 100 feet in width across the S½SW¼ of Section 7, Township 21 South, Range 3 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

Beginning at a point which is N. 41°04'40" W. 3558.3 feet from the southeast corner of Section 12, Township 21 South, Range 2 East, Willamette Meridian; thence S. 47°28' E. 2225.0 feet; thence S. 53°28'00" E. 360.0 feet; thence S. 69°39'00" E. 1141.4 feet; thence S. 88°05'00" E. 1255.5 feet; thence S. 79°16'50" E. 3472.6 feet to a point which is S. 89°14'30" W. 2475.8 feet from the north quarter corner of Section 17, Township 21 South, Range 3 East, Willamette Meridian.

The bearings of said survey line refer to Local Grid.

Tract LO-R-35

A strip of land 100 feet in width through the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

Beginning at a point in said survey line in Section 12, Township 21 South, Range 2 East, Willamette Meridian, said point being N. 41°04'40" W. 3558.3 feet from the southeast corner of said Section 12; thence S. 47°28' E. 2225.0 feet to a point; thence S. 53°28'00" E. 360.0 feet to a point; thence S. 69°39'00" E. 1141.4 feet to a point; thence S. 88° 05'00" E. 1255.5 feet to a point; thence S. 79°16'50" E. 3472.6 feet to a point in said survey line in Section 17, Township 21 South, Range 3 East, Willamette Meridian, said point being S. 89°14'30" W. 2475.8 feet from the north quarter corner of said Section 17.

The bearings of said survey line refer to Local Grid;

together with the present and future right to clear said right of way and keep the same clear of brush, timber, structures, and fire hazards, provided that fire hazards shall not be interpreted to include any growing crops other than the present and future right to top, limb or fell all growing [illegible] danger trees") located on land

Tract O-LP-R-13:

Width in Feet	Side of R/W	From	To
85	Northerly	West line Sec. 7, T21S, R3E, WM	Opp. SS 990+80
40	North	Opp. SS 993+15	Opp. SS 994+60
50	Northerly	Opp. SS 997+32	Opp. SS 1001+30
60	Northerly	Opp. SS 1007+20	Opp. SS 1020+00
70	Northerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM	Opp. SS 1030+00
45	South	Opp. SS 987+70	Opp. SS 991+60
40	South	Opp. SS 994+00	Opp. SS 995+00
50	Southerly	Opp. SS 997+32	Opp. SS 1001+80
50	Southerly	Opp. SS 1009+00	Opp. SS 1014+25
50	Southerly	Opp. SS 1017+50	West line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM
40	Southerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7 T21S, R3E, WM	South line Sec. 7, T21S, R3E, WM

Tract LO-R-35:

50	Northeasterly	Opp. SS 969+75	Opp. SS 973+35
85	Northeasterly	Opp. SS 975+70	East line Sec. 12, T21S, R2E, WM

and contiguous to said right of way that (a) are danger trees on the date hereof (hereinafter called "present danger trees"), or (b) become danger trees thereafter (hereinafter called "future danger trees"). The right to top, limb or fell danger trees outside of said strips (hereinafter called "additional danger trees") may only be exercised within 3 years after all present danger trees have been cut, and the UNITED STATES OF AMERICA shall pay the person who is the owner thereof at the date of cutting such additional danger trees the market value prevailing at the date of cutting under authority of the UNITED STATES OF AMERICA, such payment to be made within a reasonable period of time after they have been so cut; and

Grantor also hereby grants, bargains, sells, and conveys unto the UNITED STATES OF AMERICA, and its assigns, a permanent easement and right of way for the construction, operation, use and maintenance of roads approximately 14 feet in width (with such additional widths as are necessary to provide for cuts, fills, and turn-outs and for curves at angle points) on, over, and across the land of the Grantor in portions of the SW¼SE¼, SE¼SW¼ and Government Lot 4 of Section 7, Township 21 South, Range 3 East, and the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, W. M., Lane County, Oregon, for the following purposes, namely: the right to enter and to clear of timber, danger trees, and [illegible] to build, cut, fill, level, grade, drain, surface, maintain,

Bonneville Power Administration, [illegible]
ence, made a part hereof.

The Grantor reserves the right of ingress and egress over and across said roads and the right to pass and repass along and on said roads insofar as the same extend across the lands of the Grantor, said right to be exercised in a manner that will not interfere with the use of the roads by the UNITED STATES OF AMERICA, its employees, contractors, or assigns.

It is understood and agreed that if said roads are damaged by the UNITED STATES OF AMERICA, its employees, contractors, or assigns, the UNITED STATES OF AMERICA, subject to the availability of appropriations, or its assigns, will repair such damage. It is further understood and agreed that the Grantor may erect or maintain fences across such roads, provided adequate gates of not less than ten feet in width are installed, which may be kept locked, provided the UNITED STATES OF AMERICA is also permitted to install its own lock thereon.

TO HAVE AND TO HOLD said easement and rights unto the UNITED STATES OF AMERICA and its assigns, forever.

The Grantor covenants to and with the UNITED STATES OF AMERICA and its assigns that the title to all brush, timber, or structures existing upon the rights of way on the date hereof, and the title to all present danger trees shall vest in the UNITED STATES OF AMERICA on said date; and that title to any additional danger trees shall vest in the UNITED STATES OF AMERICA upon their being cut pursuant to the terms hereof; and that title to all future danger trees cut pursuant to the terms hereof shall remain in the owner thereof at the date of cutting; and that the consideration stated herein is accepted by the Grantor as full compensation for all damages incidental to the exercise of said easement and danger tree rights, except payment for any additional danger trees as defined hereinabove which may be cut under authority of the UNITED STATES OF AMERICA as herein provided.

The Grantor also covenants to and with the UNITED STATES OF AMERICA that Grantor is lawfully seized and possessed of the lands aforesaid; has a good and lawful right and power to sell and convey same; that same are free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

The UNITED STATES OF AMERICA, Department of the Interior, acting by and through the Bonneville Power Administrator, pursuant to the Acts of Congress approved August 20, 1937 (50 Stat. 731, 16 U.S.C. 832a, et seq.), as amended, and June 30, 1949 (63 Stat. 377, 40 U.S.C. 471, et seq.), as amended, and regulations and delegations of authority issued pursuant thereto, and as part of the consideration for the easement rights hereinabove described, does hereby remise, release and quitclaim to the Grantor all that portion of Tract LO-35 as acquired by easement dated October 10, 1960 and recorded in Reel 162 '60 D, File No. 15633, Official Records of Lane County, Oregon, which lies southerly of the above-described Tract Lo-R-35.

IN WITNESS WHEREOF, EDWARD HINES LUMBER CO. has caused this instrument to be signed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed this 18 day of July, 1968.

UNITED STATES OF AMERICA
Department of the Interior
Bonneville Power Administration

By _____
Chief, Branch of Land

EDWARD HINES LUMBER CO.

By _____
Executive Vice President

Attest _____
Asst. Sec'y.

ATE OF ILLINOIS)
) ss:
UNTY OF COOK)

On this 18th day of July , 1968, before me personally appeared Joseph J. Fitzgerald and Estelle D. Koehn to me known to be the Exec. Vice President and Asst. Secretary of the corporation that xecuted the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and n oath stated they were authorized to execute said instrument and that the seal ffixed is the corporate seal of said corporation.

GIVEN under my hand and official seal the day and year last above written.

Daniel J. Kyle
Notary Public in and for the
State of Illinois
Residing at Chicago

My commission expires:
april 13, 1970

DANIEL J. KYLE NOTARY PUBLIC COOK COUNTY, ILL. (SEAL)

STATE OF OREGON)
) ss:
COUNTY OF MULTNOMAH)

On the 30th day of October , 1969 , personally came before me, a notary public in and for said County and State, the within-named John V. Mulcahy, Chief, Branch of Land, Bonneville Power Administration, to me personally known to be the identical person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

W. E. Hedman
Notary Public in and for the
State of Oregon
Residing at Portland

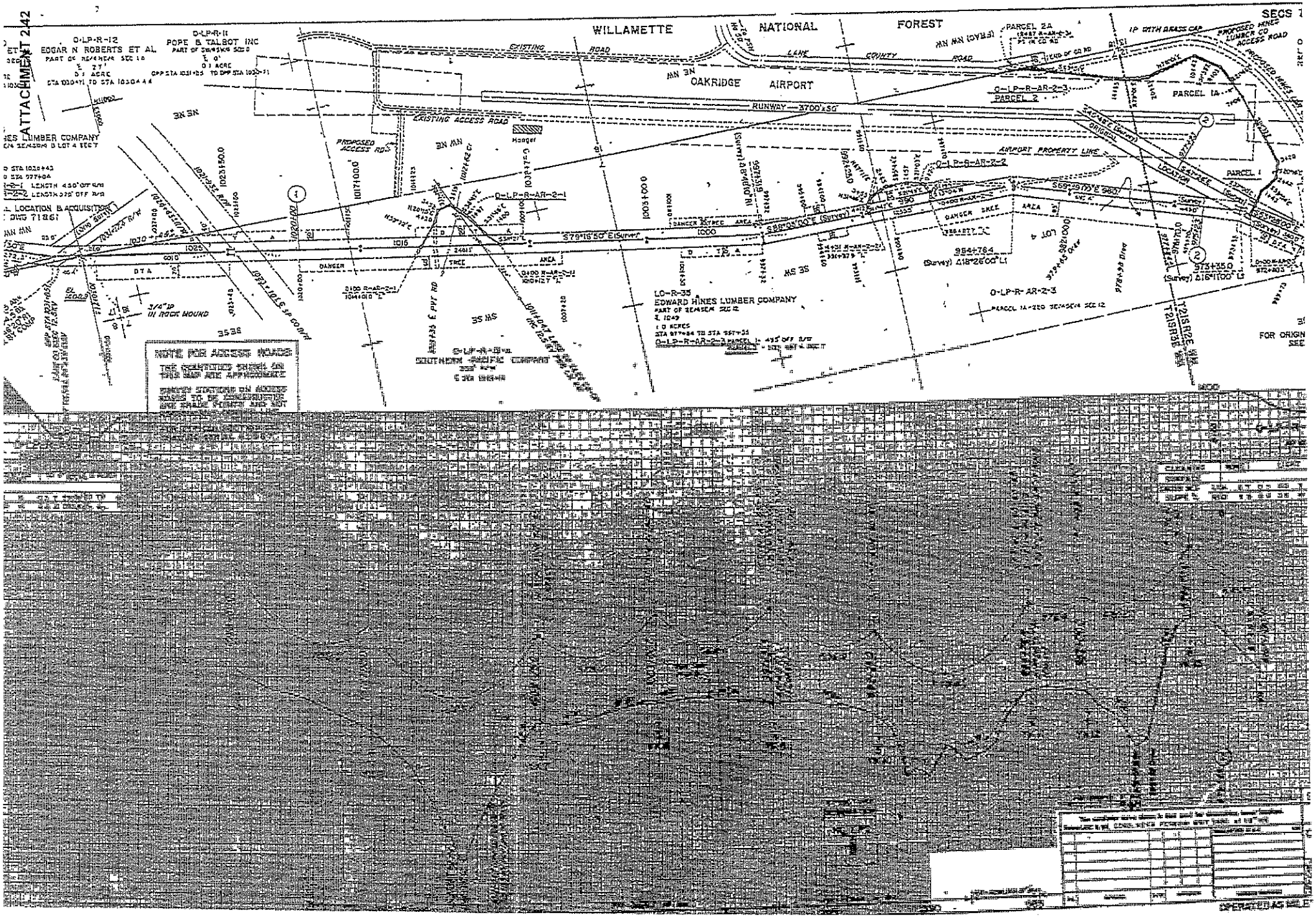
(SEAL)

My commission expires:
Sept. 20, 1973

The within instrument was received for the record on the day of , 19 at M., and recorded in book on page , records of Count (State).

By

ATTACHMENT 2 42



ATTACHMENT 2-13

001842

State of Oregon,
County of Lane—ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

1969 OCT 31 PM 4 32 2

Reel 458-R

Lane County OFFICIAL Records.

INA RANDOLPH, Director of the Department of Records & Elections.

By _____ Deputy

C25-083-05


WILLAMETTE NATIONAL FOREST
OAKRIDGE AIRPORT
RUNWAY — 3700'x50'
EXISTING ACCESS ROAD
PROPOSED ACCESS RD
AIRPORT PROPERTY LINE
PROPOSED HINES LUMBER CO ACCESS ROAD
LANE COUNTY ROAD
O-LP-R-12
POPE & TALBOT INC
O-LP-R-AR-2-1
O-LP-R-AR-2-2
O-LP-R-AR-2-3
LO-R-35
EDWARD HINES LUMBER COMPANY
LO-35
EDWARD HINES LUMBER CO
PARCEL 1
PARCEL 1A
PARCEL 2
PARCEL 2A
DANGER TREE AREA
Hanger
NOTE FOR ACCESS ROADS
THE QUANTITIES SHOWN ON THIS MAP ARE APPROXIMATE
SURVEY STATIONS ON ACCESS ROADS TO BE CONSTRUCTED ARE GRADE POINTS AND NOT NECESSARILY CENTER LINE
CLEARING NONE
SURFACE
CROSS-SEC
SLOPE %
The conductor curve shown is that used for determining tower locations
Drake ACSR 26/7
INSULATORS M & E
ATTACHMENT 2144
OPERATED AS MILE 7
001843

BPA F 4300.03e (07-2019)

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION (BPA)
APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

1-800-282-3713

Ask for Real Property Services or a contact person from web site.
www.bpa.gov/goto/LandsCommunity

Date:

Privacy Act Statement
Authority: 42 USC § 7101 and 50 USC § 2401
Purpose: BPA will use this information to assess whether your proposed use of our right-of-way will interfere with BPA's land rights.
Routine Uses: This information is authorized to be maintained in Privacy Act system of records DOE-24, "Land Records System." Other routine uses for which this information may be disclosed are listed in the Privacy Act system of records notice for DOE-24, which is published in the Federal Register.
Disclosure: Voluntary; however, failure to provide complete information may result in a delay or denial of your application.

Applicant is required to complete all of page 1. If not submitting an attached map, plan or sketch, page 2 is required.

Checks will not be accepted. Remit payment to BPA electronically. To make payment using Google Chrome, Firefox, or Edge browser, navigate to https://www.bpa.gov/goto/HowtoPay; select the blue hyperlink MAKE PAYMENT NOW; select the blue CONTINUE TO FORM button; under Purpose of Payment select REALTY APPLICATION FEE and fill out remaining fields with an *; select CONTINUE to submit payment. Please make sure to select the appropriate box below before making your payment. You should receive a confirmation when finished.

☐ NO APPLICATION FEE	☐ $250 APPLICATION FEE	☐ $2500 APPLICATION FEE
For individual landowners requesting personal use of BPA Right-of-Way	For developments or subdivisions. Application fee is non-refundable.	For longitudinal occupancies that require multiple miles of BPA Right-of-Way. Application fee is non-refundable.

Applicant	**Owner** *(Complete only if the applicant is not the owner.)*
1. NAME	4. NAME
2. ADDRESS, CITY, STATE, ZIP	5. ADDRESS, CITY, STATE, ZIP
3. TELEPHONE NO. EMAIL ADDRESS: FAX NO:	6. TELEPHONE NO. EMAIL ADDRESS: FAX NO:

7. LOCATION OF PROPERTY (Legal description of the property. *This information is on your title, insurance policy, courthouse deed, or your tax statement.*)
(PROVIDE A COUNTY ASSESSOR'S MAP SHOWING THE OWNER'S BOUNDARY LINES AND THE LOCATION OF USE.)

QUARTER SECTION(S)	SECTION(S)	TOWNSHIP	RANGE	COUNTY	STATE

8. PURPOSE FOR WHICH BPA RIGHT-OF-WAY/PROPERTY IS TO BE USED. Check all boxes that apply and complete the information on the following page. *(Include a map, plan or sketch if appropriate.) NOTE:* For submission of digital plans please provide a PDF version. BPA will request larger plans, if needed.

☐ Driveway / Roadway Width
Width _____
Material _____
PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS.

☐ Pipelines
Type: ☐ Gas ☐ Sewer ☐ Water
Diameter _____
Material _____
Buried Depth

☐ Electric Service Line
Voltage _____
Underground _____
Overhead _____

☐ Other Uses: _____

Narrative: Please describe your intended use in detail. In order to assure safe clearance, please describe any equipment that will be used for applied use *(including equipment intended to construct and maintain the use)*. Space is provided on page 2 for a drawing. ***IF GRADING, PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS***

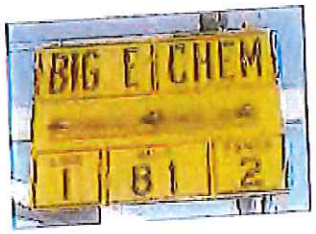
9. APPLICANT NAME	10. APPLICANT SIGNATURE	11. APPLICANT TITLE

...and then disposed. Active period ends upon the sale of the property or at the end of BPA's interest in the property, whichever is longer. VITAL RECORD

IF APPLICABLE, ATTACH NAME, COMPANY ADDRESS, AND A CONTACT PERSON FOR ALL [illegible] INVOLVED IN PROJECT.

12. RIGHT-OF-WAY Draw in space provided below the location of the proposed use. (Identify structures and show distances and angles from BPA structures). Diamonds on the line represent BPA structures on the right-of-way. Copy the series of letters and numbers from the lower half of each BPA structure *(see example below)* and enter in "BPA Structure Identification" block. Indicate which direction is "North" in relation to the right-of-way.

BIG E – CHEM 1-81-2
BPA STRUCTURE IDENTIFICATION



PS2 1-2-A
BPA STRUCTURE IDENTIFICATION



Identify structures and show distances and angles from BPA structures

BPA STRUCTURE IDENTIFICATION

BPA STRUCTURE IDENTIFICATION

[illegible] dispute. Active period ends upon the sale of the property or at the end of BPA's interest in the property, whichever is longer. VITAL RECORD

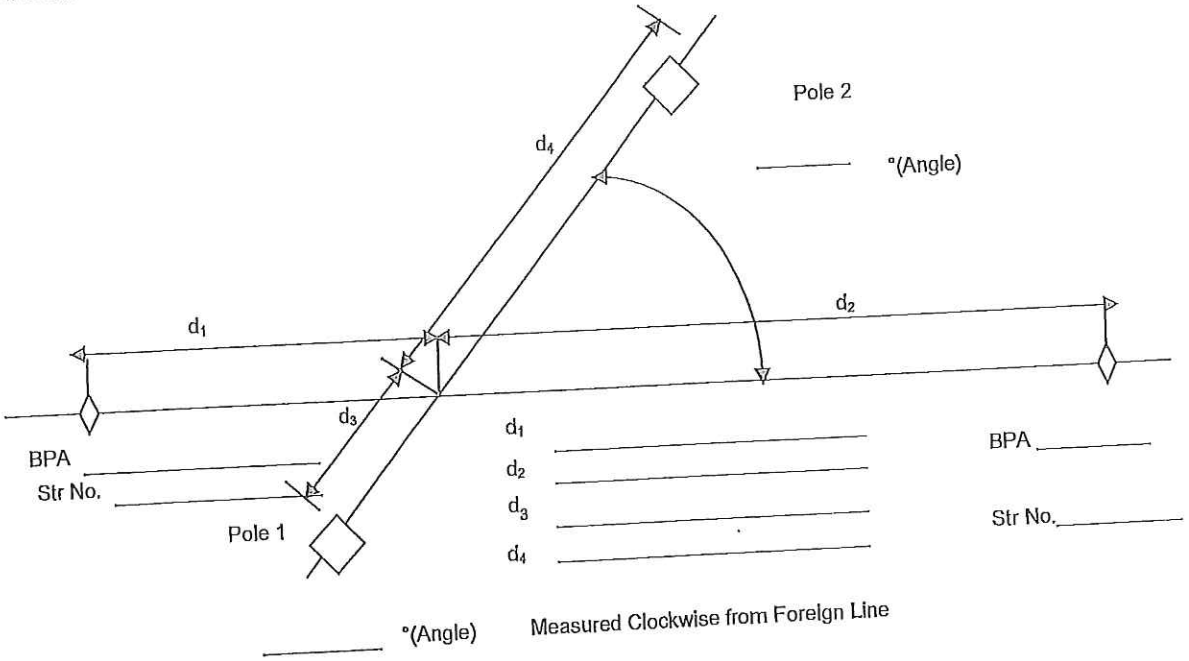
U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION

ATTACHMENT 2.47

APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

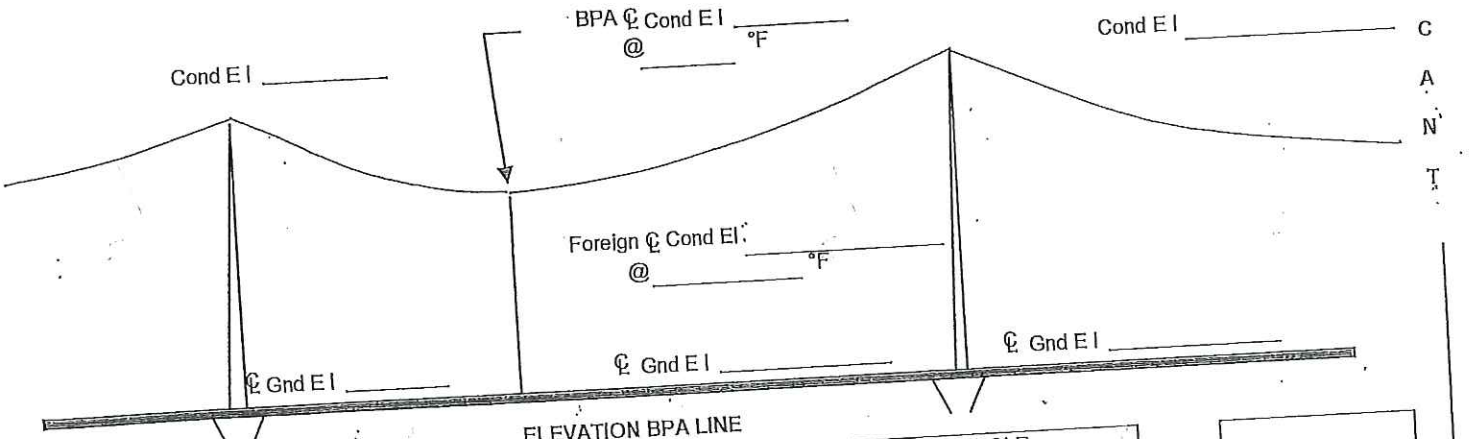
APPLICANT NAME

mplete ONLY if overhead or underground foreign line crosses an overhead BPA line. If the foreign line crosses more than one BPA line use additional eets.



PLAN

APPLICANT



ELEVATION BPA LINE

POLES	LENGTH	DEPTH SET	CLASS POLE
POLE 1			
POLE 2			

FIXTURES	SIZE OF CROSSARMS	
	MAKE AND CATALOG NUMBER OF INSULATORS	
CONDUCTORS	NUMBER	SIZE
	KIND	VOLTAGE
	MWT	LOADING
	COMMENTS	

POLE 1

POLE 2

CONFIGURATIONS

APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

Mail your application to the location nearest to your project:

WESTERN WASHINGTON

Location and Address	Phone Number
nohomish District Office, 914 Ave D, Snohomish, WA 98290	360.563.3640
ovington District Office, PO Box 3621, Portland, OR 97208-3621	253.638.3741
lympia District Office, 5240 Trosper St SW, Olympia, WA 98512	360.570.4352, 360.570.4333 OR 360.570.4332
oss Maint. Hdqt. Office, PO Box 3621, Portland, OR 97208-3621	800.836.6691

OREGON

Location and Address	Phone Number
edmond District Office, 3655 SW Highland Ave., Redmond, OR 97756	541.516.3200
ugene District Office, 86000 Hwy 99S, Eugene, OR 97405	541.988.7432
alem District Office, 2715 Tepper Lane, Keizer, OR 97303	503.304.5900
ortland Office, PO Box 3621, Portland, OR 97208-3621	800.836.6619
Hood River, *(see Portland for mailing address)*	
North Bend Area, *(see Portland for mailing address)*	

EASTERN WASHINGTON, IDAHO AND MONTANA

Location and Address	Phone Number
daho Falls District Office, *(see Tri-Cities Pasco, WA mailing address)*	509.544.4747
Tri-Cities District Office, *(OR Side)*, 2211 North Commercial Avenue, Pasco, WA 99301	509.544.4747
Tri-Cities *(WA side)*, 2211 North Commercial Avenue, Pasco, WA 99301	503.230.5510
Spokane District Office, 2410 E. Hawthorne Rd., Mead, WA 99021-9594	509.468.3081
Grand Coulee Area, PO Box 24, Grand Coulee, WA 99133	509.378.7447
Ellensburg Area, PO Box 3621, Portland, OR 97208-3621	503.230.5611
Kalispell Maintenance District Office, 2520 US Hwy 2 East, Kalispell, MT 59901	406.751.7824

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Monday, November 9, 2020 2:51 PM
To: BAUDER Jared W
Cc: ADAMS Shawna L; PECK Heather
Subject: RE: ODA Comment: 509-PA20-05065 & 509-PA20-05066

[EXTERNAL ⚠]

Hi Jared,

Great to hear from you and thanks for reaching out. I'm doing well, thank you. I hope you are as well.

Yes, the ODA requests submittal of the FAA Form 7460-1 still be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport.

The applicant must submit FAA Form 7460-1 documents to the ODA and receive Letters of Determination for the proposed construction as required by OAR 738-070-0060, prior to issuance of any building permits for the Template Dwellings.

The applicant should note that a separate FAA Form 7460-1 must be submitted for each Template Dwelling.

Notification to the FAA is also required for each Template Dwelling and is completed through the FAA's online portal:

https://oeaaa.faa.gov/oeaaa/external/portal.jsp

The ODA Letters of Determination will provide recommendations for the proposed construction in regards to aviation and public safety.

I am happy to reach out to the applicant directly if further clarification is needed.

Thanks again and please let me know if you have further questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: BAUDER Jared W <jared.bauder@lanecountyor.gov>
Sent: Monday, November 9, 2020 11:54 AM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Cc: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: FW: ODA Comment: 509-PA20-05065 & 509-PA20-05066

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Hi Seth –

EXHIBIT H

I hope all is well with you. I just want to confirm that the ODA would still like the attached form to be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport?

If so, is their submittal of the form to you all sufficient for the County to issue building permits, or do they need to see the processing of the form through with ODA first?

Thank you much,

Jared Bauder | Planner, CFM
Land Management Division | Lane County Public Works
Customer Service Center
3050 N Delta Hwy. | Eugene, OR 97408
Office: 541.682.6949 | **Fax:** 541.682.3947
Website : www.lanecounty.org/planning

From: THOMPSON Seth [mailto:Seth.THOMPSON@aviation.state.or.us]
Sent: Thursday, March 26, 2020 4:03 PM
To: BAUDER Jared W
Subject: ODA Comment: 509-PA20-05065

[EXTERNAL SENDER]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation (ODA) to comment on Department File: 509-PA20-05065.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Thursday, March 26, 2020 3:50 PM
To: ADAMS Shawna L
Subject: ODA Comment: 509-PA20-05064
Attachments: FAA_Form_7460-1.pdf

[EXTERNAL]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation(ODA) to comment on Department File: 509-PA20-05064.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§ 77.7 Form and time of notice.

(a) If you are required to file notice under §77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the Internet.

(b) You must submit this form at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure that exceeds 2,000 ft. in height above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 45-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) or (b) of this section.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177
Fax: (817) 222-5920

Website: https://oeaaa.faa.gov

INSTRUCTIONS FOR COMPLETING FAA FORM 7460-1

PLEASE TYPE or PRINT

ITEM #1. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #2. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #3. New Construction would be a structure that has not yet been built.

Alteration is a change to an existing structure such as the addition of a side mounted antenna, a change to the marking and lighting, a change to power and/or frequency, or a change to the height. The nature of the alteration shall be included in ITEM #21 "Complete Description of Proposal".

Existing would be a correction to the latitude and/or longitude, a correction to the height, or if filing on an existing structure which has never been studied by the FAA. The reason for the notice shall be included in ITEM #21 "Complete Description of Proposal".

ITEM #4. If Permanent, so indicate. If Temporary, such as a crane or drilling derrick, enters the estimated length of time the temporary structure will be up.

ITEM #5. Enter the date that construction is expected to start and the date that construction should be completed.

ITEM #6. Please indicate the type of structure. DO NOT LEAVE BLANK.

ITEM #7. In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference" DO NOT LEAVE BLANK. NOTE: High intensity lighting shall be used only for structures over 500' AGL. In the absence of high intensity lighting for structures over 500' AGL, marking is also required.

ITEM #8. If this is an existing tower that has been registered with the FCC, enter the FCC Antenna Structure Registration number here.

ITEM #9 and #10. Latitude and longitude must be geographic coordinates, accurate to within the nearest second or to the nearest hundredth of a second if known. Latitude and longitude derived solely from a hand-held G P S instrument is NOT acceptable. A hand-held GPS is only accurate to within 100 meters (328 feet) 95 percent of the time. This data, when plotted, should match the site depiction submitted under ITEM #20.

ITEM #11. NAD 83 is preferred; however, latitude and longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datum may be used. It is important to know which datum is used. DO NOT LEAVE BLANK.

ITEM #12. Enter the name of the nearest city and state to the site. If the structure is or will be in a city, enter the name of that city and state.

ITEM #13. Enter the full name of the nearest public-use (not private-use) airport or heliport or military airport or heliport to the site.

ITEM #14. Enter the distance from the airport or heliport listed in #13 to the structure.

ITEM #15. Enter the direction from the airport or heliport listed in #13 to the structure.

ITEM #16. Enter the site elevation above mean sea level and expressed in whole feet rounded to the nearest foot (e.g. 17'3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under ITEM #20.

ITEM #17. Enter the total structure height above ground level in whole feet rounded to the next highest foot (e.g. 17'3" rounds to 18'). The total structure height shall include anything mounted on top of the structure, such as antennas, obstruction lights, lightning rods, etc.

ITEM #18. Enter the overall height above mean sea level and expressed in whole feet. This will be the total of ITEM #16 + ITEM #17.

ITEM #19. If an FAA aeronautical study was previously conducted, enter the previous study number.

ITEM #20. Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" x 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-888-275-8747 or via internet at "http://store.usgs.gov". If available, attach a copy of a documented site survey with the surveyor's certification stating the amount of vertical and horizontal accuracy in feet.

ITEM #21.

- For transmitting stations, include maximum effective radiated power (ERP) and all frequencies.
- For antennas, include the type of antenna and center of radiation (Attach the antenna pattern, if available).
- For microwave, include azimuth relative to true north.
- For overhead wires or transmission lines, include size and configuration of wires and their supporting structures (Attach depiction).
- For each pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For buildings, include site orientation, coordinates of each corner, dimensions, and construction materials.
- For alterations, explain the alteration thoroughly.
- For existing structures, thoroughly explain the reason for notifying the FAA (e.g. corrections, no record or previous study, etc.).

Filing this information with the FAA does not relieve the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation's and zoning authorities.

Paperwork Reduction Work Act Statement: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. The OMB control number for this information collection is 2120-0001. Public reporting for this collection of information is estimated to be approximately 39 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory for anyone proposing construction or alteration that meets the criteria contained in 14 CFR 77. This information is collected to evaluate the effect of proposed construction or alteration on air navigation and is not confidential. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

Form 7460-1 (02/20) Superseded Previous Edition

Electronic Version (Adobe)

NSN: 0052-00-012-0009

ATTACHMENT 2.54

Federal Regulations (14 CFR), part 77 authorizes FAA to collect this information. PURPOSE(S): FAA will use the information provided to administer the Aeronautical Study Process. ROUTINE USE(S): In accordance with DOT's system of records notice, DOT/ALL 15 Mailing Management System and DOT/FAA 826 Petitions for Exemption, Other than Medical Exemption Public Dockets, the information provided may be disclosed to officials within the Federal government [illegible]

Form Approved OMB No. 2120-0001
Expiration Date: 02/29/2020

Please Type or Print on This Form

Failure To Provide All Requested Information May Delay Processing of Your Notice

U.S. Department of Transportation
Federal Aviation Administration

Notice of Proposed Construction or Alteration

FOR FAA USE ONLY
Aeronautical Study Number

1. Sponsor *(person, company, etc. proposing this action)*:
Attn. of
Name:
Address:
City: State: Zip:
Telephone: Fax:

2. Sponsor's Representative *(if other than #1)*:
Attn. of
Name:
Address:
City: State: Zip:
Telephone: Fax:

3. Notice of: ☐ New Construction ☐ Alteration ☐ Existing
4. Duration: ☐ Permanent ☐ Temporary (___ months, ___ days)
5. Work Schedule: Beginning End
6. Type: ☐ Antenna Tower ☐ Crane ☐ Building ☐ Power Line
☐ Landfill ☐ Water Tank ☐ Other
7. Marking/Painting and/or Lighting Preferred:
☐ Red Lights and Paint ☐ Dual - Red and Medium Intensity
☐ White-Medium Intensity ☐ Dual - Red and High Intensity
☐ White -High Intensity ☐ Other
8. FCC Antenna Structure Registration Number *(if applicable)*:

9. Latitude: ° ' "
10. Longitude: ° ' "
11. Datum: ☐ NAD 83 ☐ NAD 27 ☐ Other
12. Nearest: City: State
13. Nearest *Public-use (not private-use)* or Military Airport or Heliport:
14. Distance from #13. to Structure:
15. Direction from #13. to Structure:
16. Site Elevation *(AMSL)*: ft.
17. Total Structure Height *(AGL)*: ft.
18. Overall Height (#16 + #17) *(AMSL)*: ft.
19. Previous FAA Aeronautical Study Number *(if applicable)*:
-OE
20. Description of Location: *(Attach a USGS 7.5 minute Quadrangle Map with the precise site marked and any certified survey)*

21. Complete Description of Proposal:

Frequency/Power (kW)	

Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44718. Persons who knowingly and willingly violate the notice requirements of part 77 are subject to a civil penalty of $1,000 per day until the notice is received, pursuant to 49 U.S.C., Section 46301(a)

I hereby certify that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to mark and/or light the structure in accordance with established marking & lighting standards as necessary.

Date	Typed or Printed Name and Title of Person Filing Notice	Signature

RECEIVED APR 02 2020

Date: 3-30-2020

From: Jay & Gretchen Anthony

21 35 07 30 00100

Regarding Department File: 509-PA20-05064
Applicant: EDWARD KING

Staff: Shawna Adams

Comments:

We support this application.

Gretchen Anthony

Return to: Shawna Adams, Planner
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

EXHIBIT I

Date: March, 2020

From: Neighbors in Westfir

RECEIVED MAR 30 2020

Regarding Department File: 509-PA20-05064
Applicant: EDWARD KING

Staff: Shawna Adams

Comments:

We know it doesn't matter what we tell you or how we feel about more homes, I'm sure they already have it in the works, We say NO more houses. Progress Sucks!! Keep the Airport clear of more homes.

Mr. King can build his Castle elsewhere. Keep Westfir Clear of more homes altogether!

Return to: Shawna Adams, Planner
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

ADAMS Shawna L

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Monday, November 23, 2020 8:41 AM
To: ADAMS Shawna L; BAUDER Jared W
Cc: tlanfear@pacinfo.com
Subject: King: Oakridge Access Road Grade Statement
Attachments: Brink Color Logo copy.pdf; Untitled attachment 00162.htm

[EXTERNAL ⚠]

See below from Mark Brink. He has measured grade on the existing road with a clinometer.
Please put this email into the record of PA 20-05066, PA 20-05064 and PA 20-05065.
TL 843 should go forward as supplemented, as the revision was slight;
TL 2800 and 2900 can go forward as originally filed (dwelling site and access) per conversations with Shawna.
No portion of the accessway fall within the runway.

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: Mark W. Brink [mailto:mark@brinkslandimprovement.com]
Sent: Monday, November 16, 2020 5:05 PM
To: Thom Lanfear <tlanfear@pacinfo.com>
Cc: Mark W. Brink <mark@brinkslandimprovement.com>
Subject: Oakridge Access Road Grade Statement

Thom,

To whom it may concern , We did an evaluation of the road to access lots 2800 and 2900 next to the Oakridge Airport that need to be used for access, By using a clinometer to measure the percentage of slope at any point in the road. We found no area that exceeded 10% and most areas were 3% - 6% there are no inclines that would exceed 15% on the road areas in question.

Any Questions please let me know.

Thanks,
Mark W. Brink

Pleasant Hill, OR 97455
Cell: 541-554-5803
mark@brinkslandimprovement.com
http://brinkslandimprovement.com/

Additional Information Submitted

Date Stamp

Submitted By: Kim O'Dea

Phone Number: 541-954-0095

Email Address: kimodea@landuseoregon.com

Project Address: _____

LANE COUNTY OREGON

RECEIVED
SEP 19 2018

Permit Number (BP, PA, SP, SI): _____

Submittal Description: _____

Material Submitted: _____

Please Route to Jared Bauder

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

rev 12/26/2018

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.0095
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM

September 25, 2020

Jared Bauder
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: King; Reissue Expired Director's Decision for Template Dwelling; 509-PA 20-05064;
Map 21-37-07-30, TL ~~2p00~~ 2700

Jared:

To address BPA easement issues, to better address CAS requirements, and to better comply with required setbacks, we have slightly revised the subject site plans. Exhibits 1 – 6 of attached Exhibit NN. We have also provided supplemental narrative in support. Exhibit NN, part 1 and part 2.

Sincerely,
/s/ Kimberly JR O'Dea
Kimberly J.R. O'Dea

Exhibits:

NN: Updated narrative with Exhibits
Part 1: siting standards narrative
Part 2: CAS narrative
Exhibit 1: Site plan
Exhibit 2: Site plan with Lidar
Exhibit 3: Site plan with contour
Exhibit 4: Site plan with aerial
Exhibit 5: Site plan with airport surface info
Exhibit 6: Road access maps 1-4

Applicant's Statement addressing Lane Code Siting Standards for development of a dwelling on Map 21-35-07-30 Taxlot 2900

LC 16.211(8): Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h), (2) (j), and (2)(o), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through (b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

RESPONSE: The above provision requires that the standards of subsections (a) through (b) below be weighed together with the requirements of (c) and (e) below in order to determine the best site.

(a) Setbacks. Residences, dwellings, or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent;

RESPONSE:

Near other dwellings: The dwelling site is located in the southeast portion of the parcel. The area is sparsely settled with dwellings. The proposed dwelling site is located approximately 700 feet from the 4 dwellings located due south on the south side of the Oakridge Airport. The site is as close to dwellings on other tracts as it can be while maximizing proximity to the forest lands to the north.

Near existing roads: The homesite is located immediately adjacent to an existing road running under the BPA power lines to the north. See Exhibits 1 & 4 – Site Plan and Aerial.

On the most level part of the tract. The tract is level on the south side of the power lines and slopes down to the north on the north side of the lines See Exhibits 2 & 3 Based on these materials, the dwelling site is on the most level portion of the tract, especially when this provision is balanced with other provisions, such as setbacks, access, slopes, and minimal intrusion into forested areas.

On the least suitable portion of the tract for forest use: The entire area of the parcel is comprised of Soil Map Unit Nekia (89D & F) with a forest productivity ratings of at least 160 cu.ft./ac/yr. There is no ability to construct the home within an area of less forest productivity. Exhibit F. Soils are not determinative of forestry suitability, but are relevant. When balanced with other standards, the dwelling site is located on the least suitable portion of the tract for forest use.

EXHIBIT N N
Part 1

At least 30 feet from any ravine, ridge or slope greater than 40%. There are no ravines, ridges or slopes greater than 40% within 30 feet of the site. See Exhibit 2 – Detail Site Plan LIDAR.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses;

RESPONSE: Intrusion into forest areas is minimized by the placement of the dwelling in the south portion of the property between the airport and the BPA power lines.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

RESPONSE: The subject property is bordered by property zoned F-2 to the west, north, and east. Property to the south is zoned AO. The dwelling site is setback 100 feet from the east property line and 400 feet and 600 feet from the north and west property lines respectively (the directions of the F-2 properties).

(iv) (iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and

RESPONSE: There are no Class I streams on the subject property

(v) Structures other than a fence or sign cannot be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(bb) 30 feet from all property lines other than those described in LC 16.211(8)(a)(v)(aa) above; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

RESPONSE: The parcel does not border any public road right-of-way. The dwelling site is at least 30 feet from all property lines. See Site Plan. (8)(a) and (b) through (d) are addressed below. See Site Plan.

(b) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

RESPONSE: The site will be accessed from Airport Road by an access road across Map 21-25-12 #843 and Map 21-35-07-40 #133 that also serves as access to the parcel to the east Map 21-35-07-30 #2800. The roadway will be constructed to county standards. Service corridors for utilities will run adjacent to the proposed roadway and driveway. Thus, the use of the proposed shared roadway to serve multiple parcels assures the amount of forestland used to site roads and services will be minimized.

The applicant believes that this standard applies only to structures other than the dwelling, as the relationship between dwellings and forestlands is already addressed under (ii). There are no other proposed structures on the property. However, even if the dwelling site is subject to this analysis, the sites are sited with all other siting standards in mind, thus reducing the amount of forest lands used. The response under (ii) is herein incorporated.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:
(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements. (aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	*Feet of Primary Safety Zone*	*Feet of Additional Safety Zone Down Slope*
0	*30*	*0*
10	*30*	*50*
20	*30*	*75*
25	*30*	*100*
40	*30*	*150*

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent

RESPONSE: The site is level at the proposed homesite. The parcel slopes downward to the north on the north side of the BPS power lines. There are no slopes greater than 10% within 30 feet of the dwelling site. The applicant has provided a 30-foot primary fuel break in all directions. See Exhibit 1 - Site Plan. There are no slopes in excess of 40% within 30 feet of the home site.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

RESPONSE: The proposed dwelling site will have a secondary fuel break that extends to the south property line, east property line, and the BPA easement to the north. The secondary fuel break to the west will be 100 feet.

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district . . .

RESPONSE: The parcel is located within the Hazeldell Rural Fire Protection District.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

RESPONSE: This is instructional.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:
(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or
(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

RESPONSE: Based on well log data for nearby wells, Exhibit KK – Water Resources Report, there is sufficient proof to make a conclusion that there is a feasible domestic water supply available. The subject property is exempt under ORS 537.545, and agrees to submit the required report once the well is complete.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

RESPONSE: The subject property is within a fire district. The route of access from the Fire District located at 47592 Hwy 58 to the property is by way of a State Highway (58) for a distance of 1 mile to Airport Road (County road). Airport Road is paved for the entire ¾ mile length to get to the subject property. The proposed shared road and driveway from Airport Road to the subject property will be improved to the applicable Lane Code 16.211 fire standards See Exhibit 6.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

RESPONSE: Access to the site is from Airport Road via an existing shared easement road and a driveway that will be improved to Lane Code 16.211 standards. Exhibit 6 It is feasible to construct the road and driveway to the above county standards.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not more than 500 feet. Turnarounds shall comply with these design and construction standards:
(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or
(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and
(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

RESPONSE: Turn arounds within the road portion of the shared access are illustrated on Exhibit 6 at intervals of not more than 500 feet. A turn around will be provided at the dwelling,

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from a engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

RESPONSE: No bridges are required or existing. No new culverts are proposed. However, if any are needed, the applicant agrees to install per the above.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

RESPONSE: The proposed shared roadway and driveway can be constructed on slopes not exceeding 16%.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

RESPONSE: This is instructional.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

RESPONSE: The driveway portion of the access is less than 200 feet in length to the home site. See site plan, Exhibit 1, Exhibit 6.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

RESPONSE: Not applicable.

(9) Other Development Standards.
(a) Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian setback area. Maintenance, removal and replacement of indigenous vegetation within the riparian setback area designated for riparian vegetation protection by the comprehensive plan must comply with the provisions of LC 16.253(2) or LC 16.253(6), as applicable.

No removal of riparian vegetation is proposed for development of the dwelling.

(b) Signs.
(i) Signs shall not extend over a public right-of-way or project beyond the property line.
(ii) Signs shall not be illuminated or capable of movement.
(iii) Signs shall be limited to 200 square feet in area.

RESPONSE: No signs are proposed.

Exhibits
1. Site Plan
2. LIDAR Map
3. Contour Map
4. Aerial Photo
5. Airport Surfaces
6. Road Access Map

Applicant's Statements addressing Lane Code 16.246 Airport Safety Combining Zone requirements for development of a dwelling on Map 21-35-07-30 Taxlot 2900

LC 16.246(2) Applicability. The /AS-RCP Zone is applied to those lands adjacent to the Creswell Airport, the Cottage Grove Airport, the McKenzie Airport, the Oakridge Airport and Florence Airport which are encompassed by the surfaces set forth and described in LC 16.246(5) below and diagramed in LC 16.246(9) below. For purposes of this Chapter, the elevations of the five runways are established as follows:

(a) Cottage Grove - 641 feet above sea level.
(b) Creswell - 535 feet above sea level.
(c) Florence - 12 feet above sea level.
(d) Oakridge - 1419 feet above sea level.
(e) McKenzie - 1620 feet above sea level.

The determinations of the height of the various airport surfaces below are based on the established primary surface of the Oakridge Airport runway at an elevation of 1419' MSL.

(3) Use Limitations. In a/AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

The homesite is located underneath the Transitional Surface to the north of the Primary Surface. It is feasible to construct a dwelling on the subject property that does not penetrate the surface as described below. See analysis under the applicable Lane Code 16.246(5)(e) provision.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

It is feasible to meet these requirements when development of the property occurs. The applicant will file a Notice of Construction or Alteration (Form 7460-1) with the Federal Aviation Administration and Oregon Department of Aviation.

(4) Uses Prohibited. The area lying beneath the Approach Surface beginning at the end of the Primary Surface and extending outward a horizontal distance of 1,000 feet shall be considered to be

EXHIBIT N N
PART 2

a clear zone. Within this clear zone, no structure or object, except for fences and navigational aids approved by the airport operator, shall be erected, placed, altered, allowed to grow or be maintained above the surface of the ground.

The subject property is not located beneath the Approach Zone of the Oakridge Airport.

(5) Surface Described.

(a) Approach Surface. A surface longitudinally centered on the runway centerline, extending outward and upward from the ends of the Primary Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge.

The subject property is not located beneath the Approach Zone of the Oakridge Airport.

(d) Primary Surface. The Primary Surface is a plane longitudinally centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway surface and having a width of 250 feet. For purposes of this section, the Primary Surface shall be considered as having the same elevation as its respective runway as the same are specified in LC 16.246(2) above.

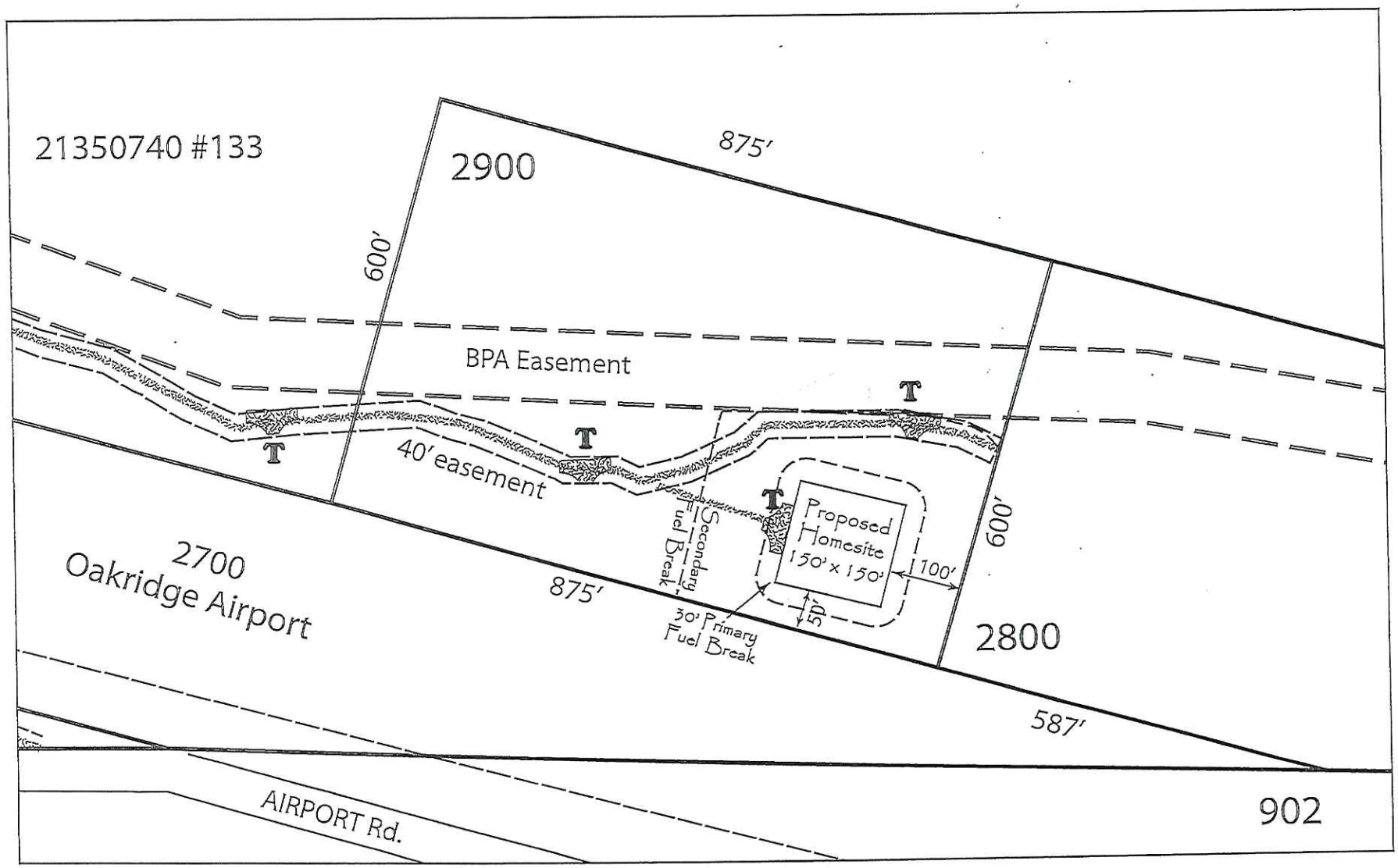
The proposed homesite is located 230' from the side of the primary surface. The Primary Surface is established at an elevation of 1419' MSL above.

(e) Transitional Surfaces. These surfaces extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the Primary Surface and Approach Surface to the point of intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway.

The southern boundary of the proposed is located 230' from the side of the primary surface when measured perpendicular to the runway centerline. The northern boundary of the proposed homesite is located 380 feet from the side of the primary surface when measured perpendicular to the runway centerline. Using the 7:1 ration to determine the height of the Transitional Surface at the homesite, it can be determined that the Transitional Surface is located at a height of 1451' MSL [230' / 7 = 32.8'; 32 + 1419' = 1451'] at the southern boundary of the proposed homesite. It can also be determined that the Transitional Surface is located at a height of 1473' MSL [380' / 7 = 54.3'; 54 + 1419' = 1473'] at the northern boundary of the proposed homesite. Prior information in the record established the elevation at the level homesite at 1421' MSL. This allows for the construction of a home that is 30 feet in height at the southern border of the homesite (1451' – 1421' = 30') and increasing to a height of 52 feet at the northern boundary of the homesite (1473' – 1421' = 30'). It is feasible to develop a residence in the proposed homesite location within these height limitations.

ATTACHMENT 2.70

Site Plan



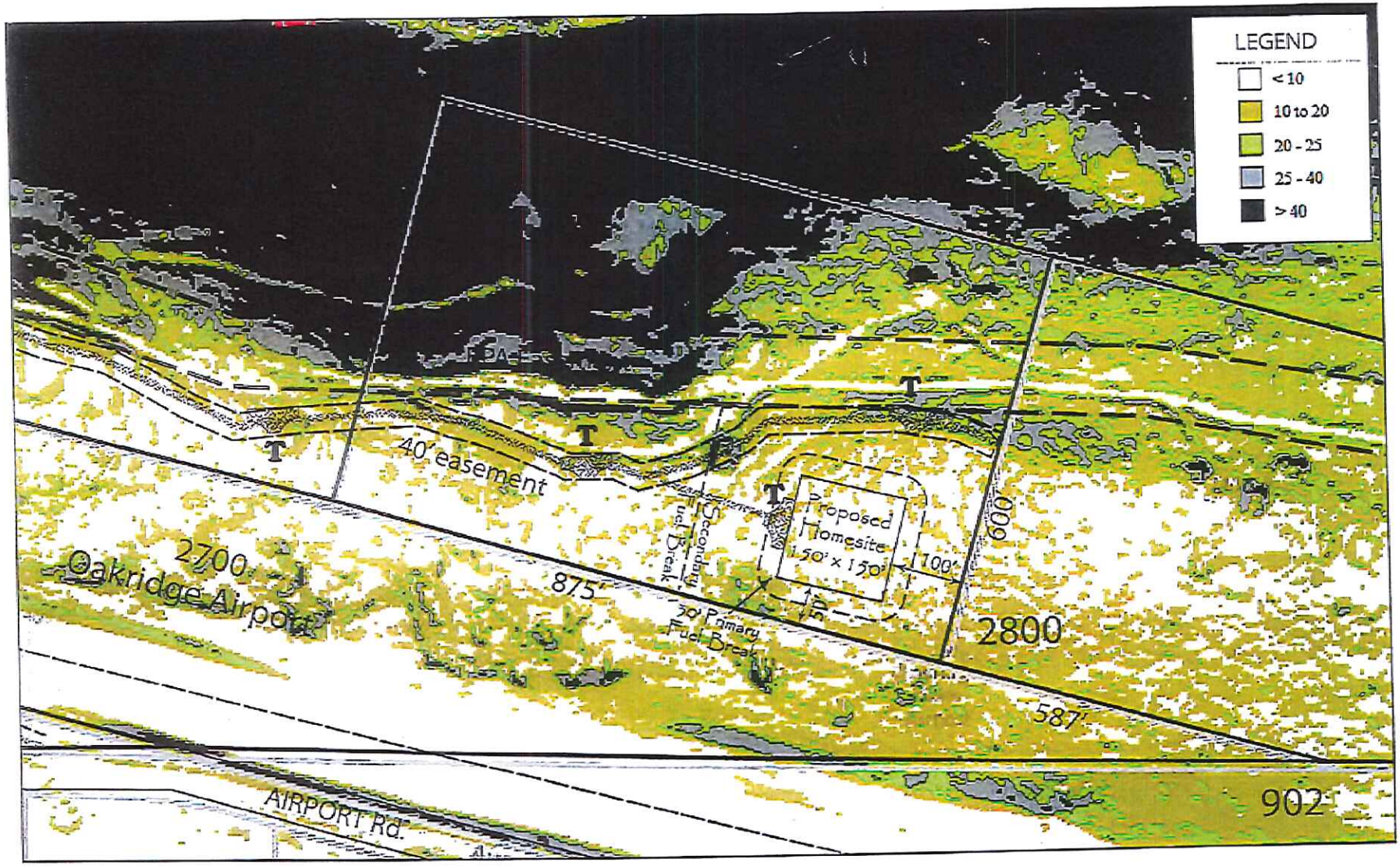
Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 1

ATTACHMENT 2.71

Site Plan

LIDAR Data



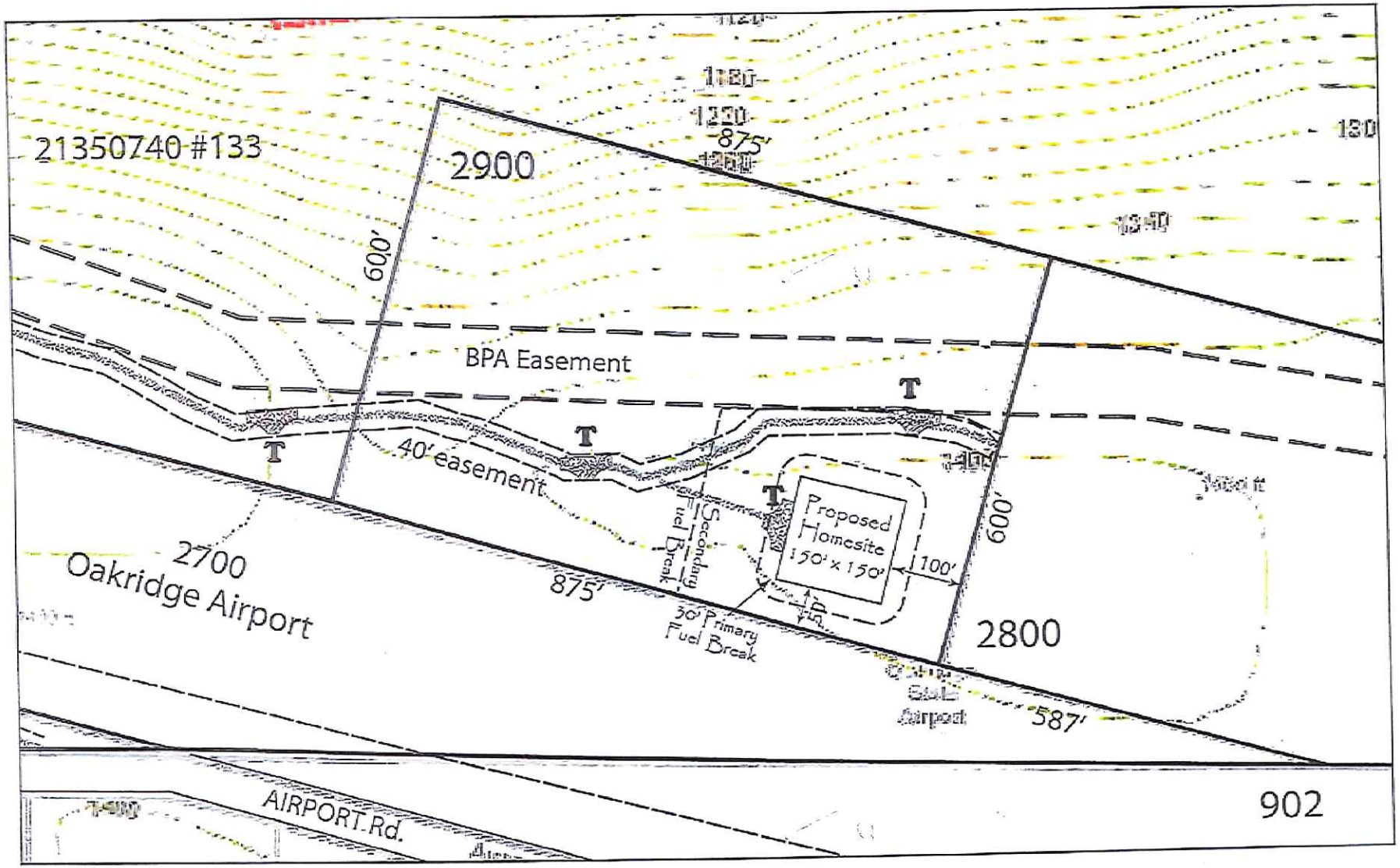
Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 2

ATTACHMENT 2.72

Site Plan

Contours



scale 1" = 200'
Feet
0 50 100 200

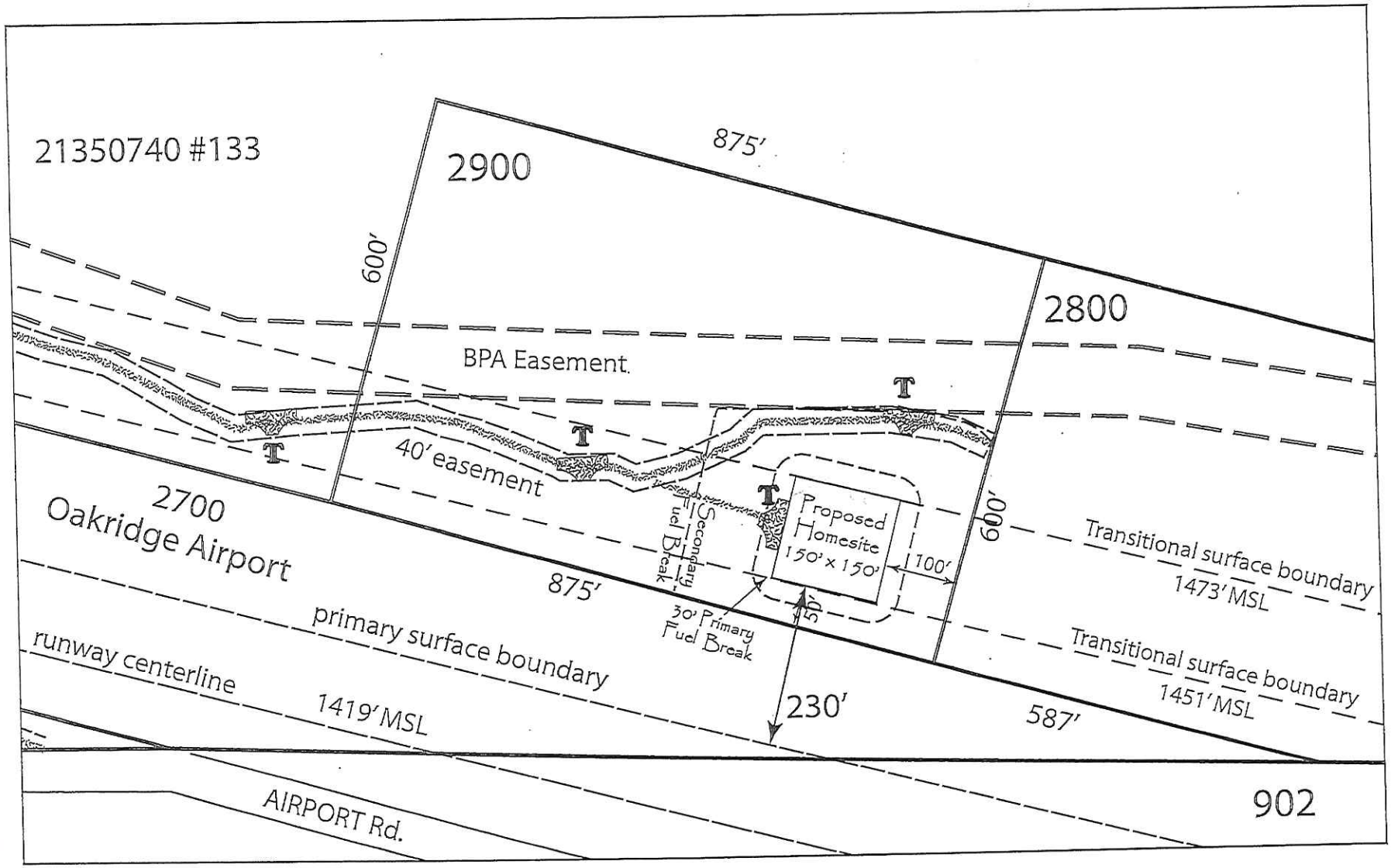
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Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 3

ATTACHMENT 2.73

Airport Surfaces

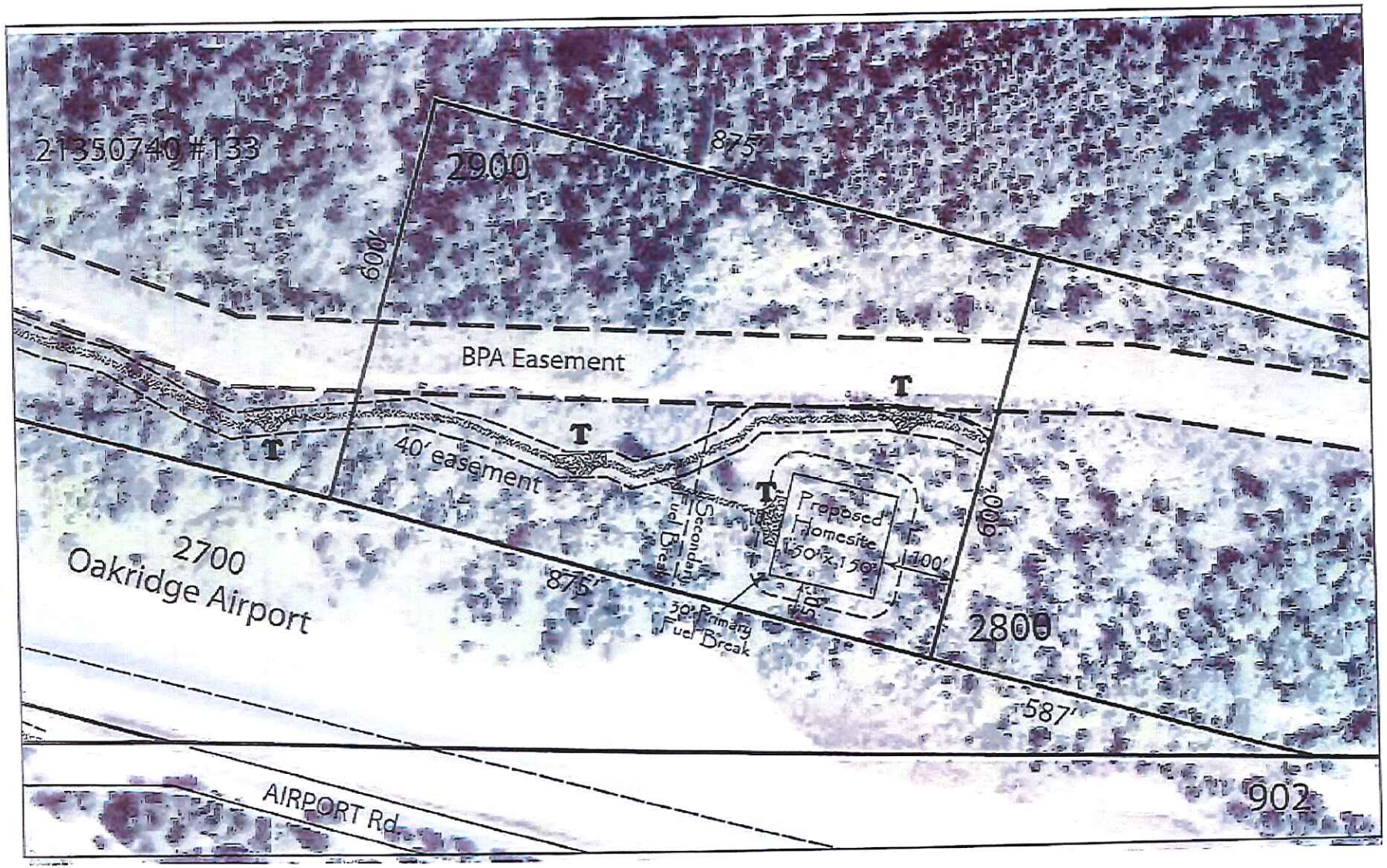


Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 5

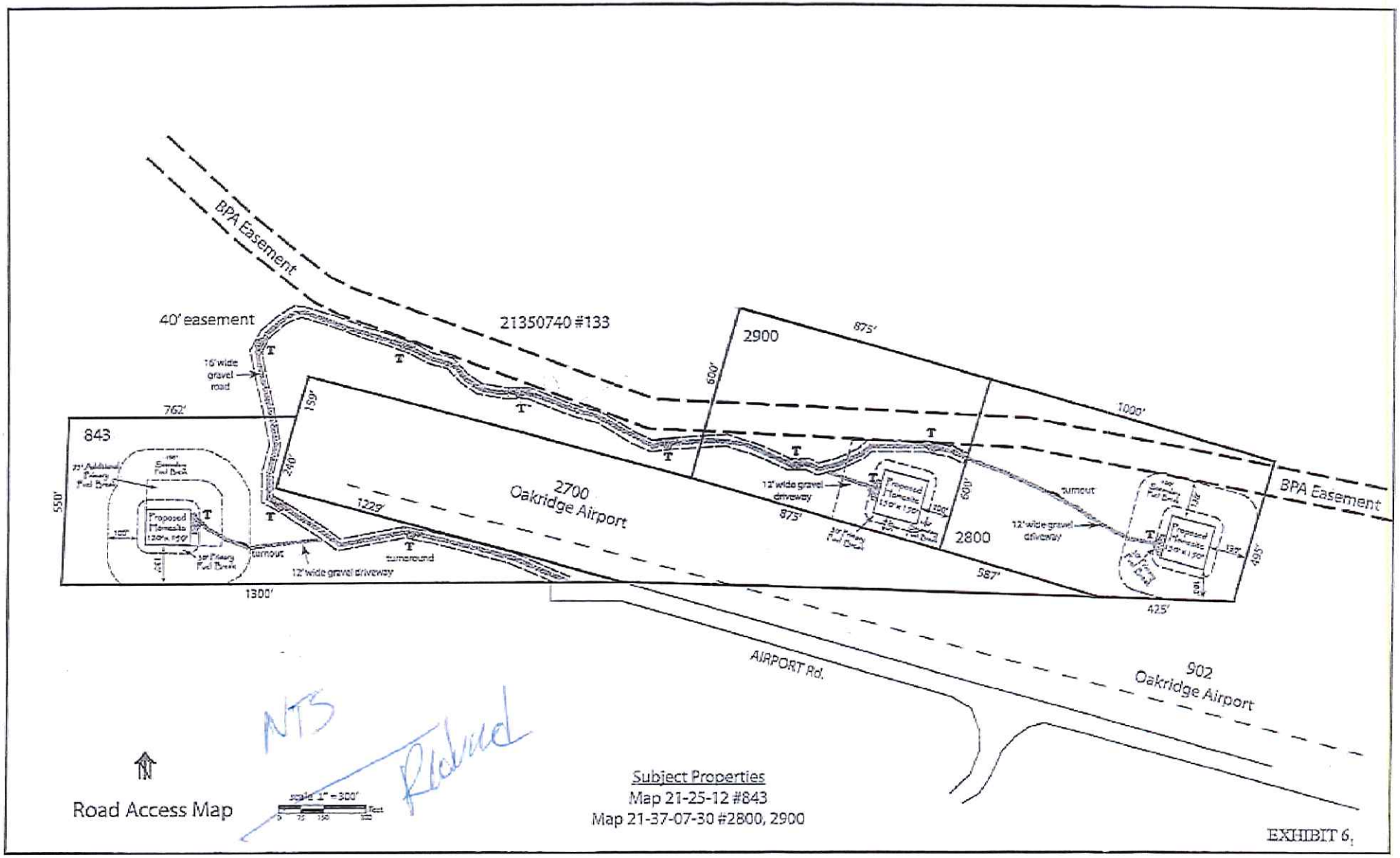
Site Plan

Aerial Photo



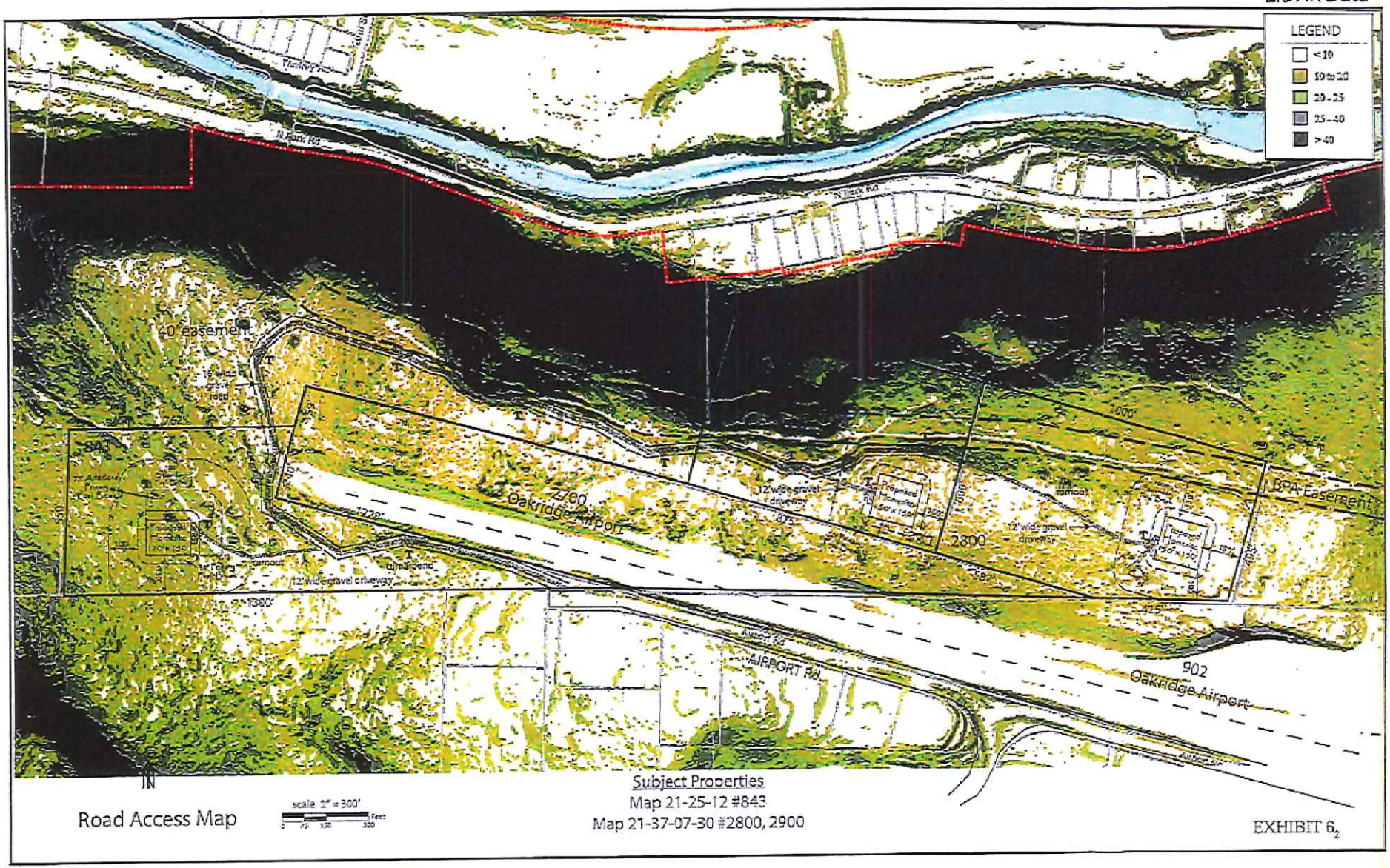
Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 4



ATTACHMENT 2.75

LIDAR Data



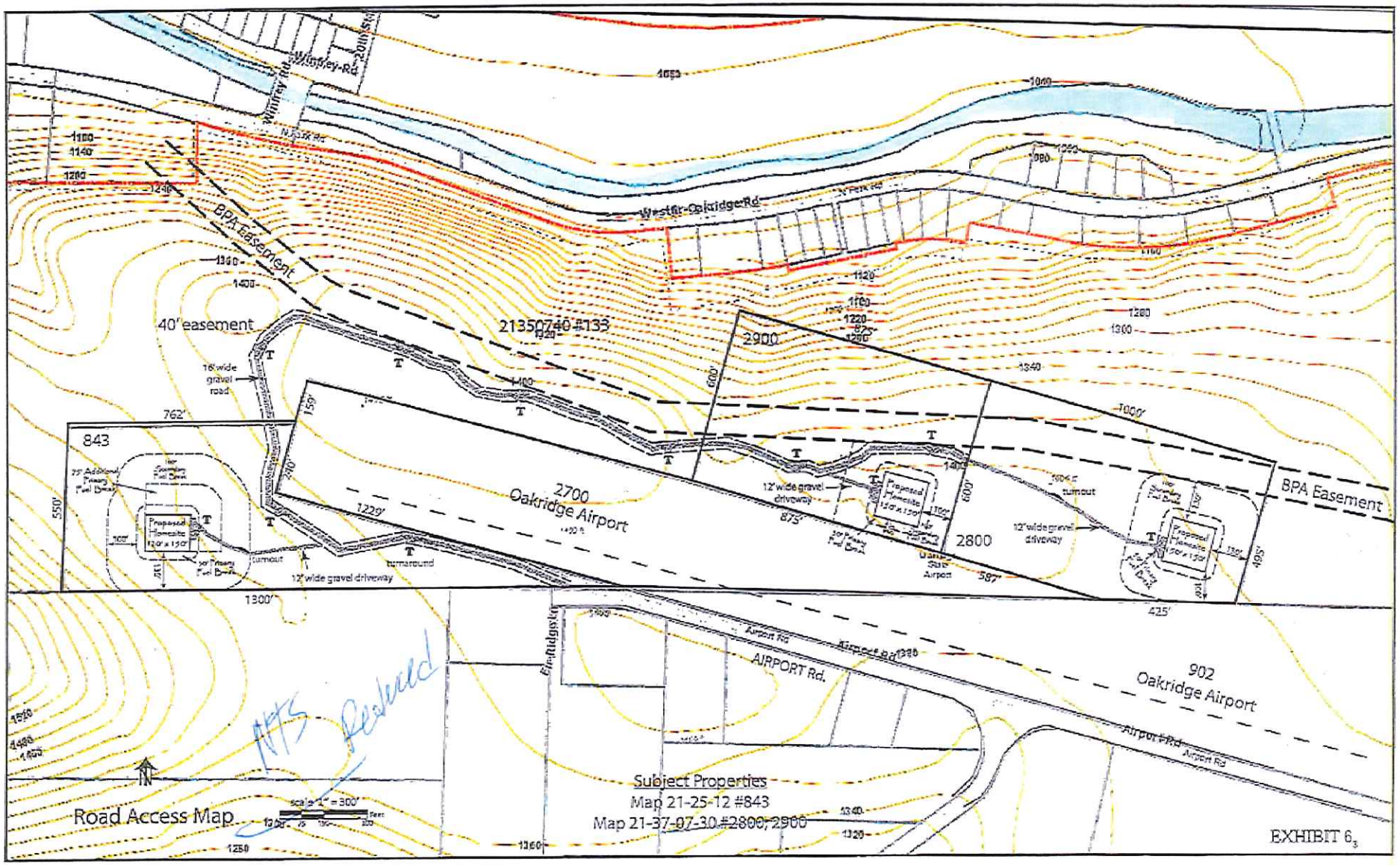
Road Access Map

scale 1" = 300'

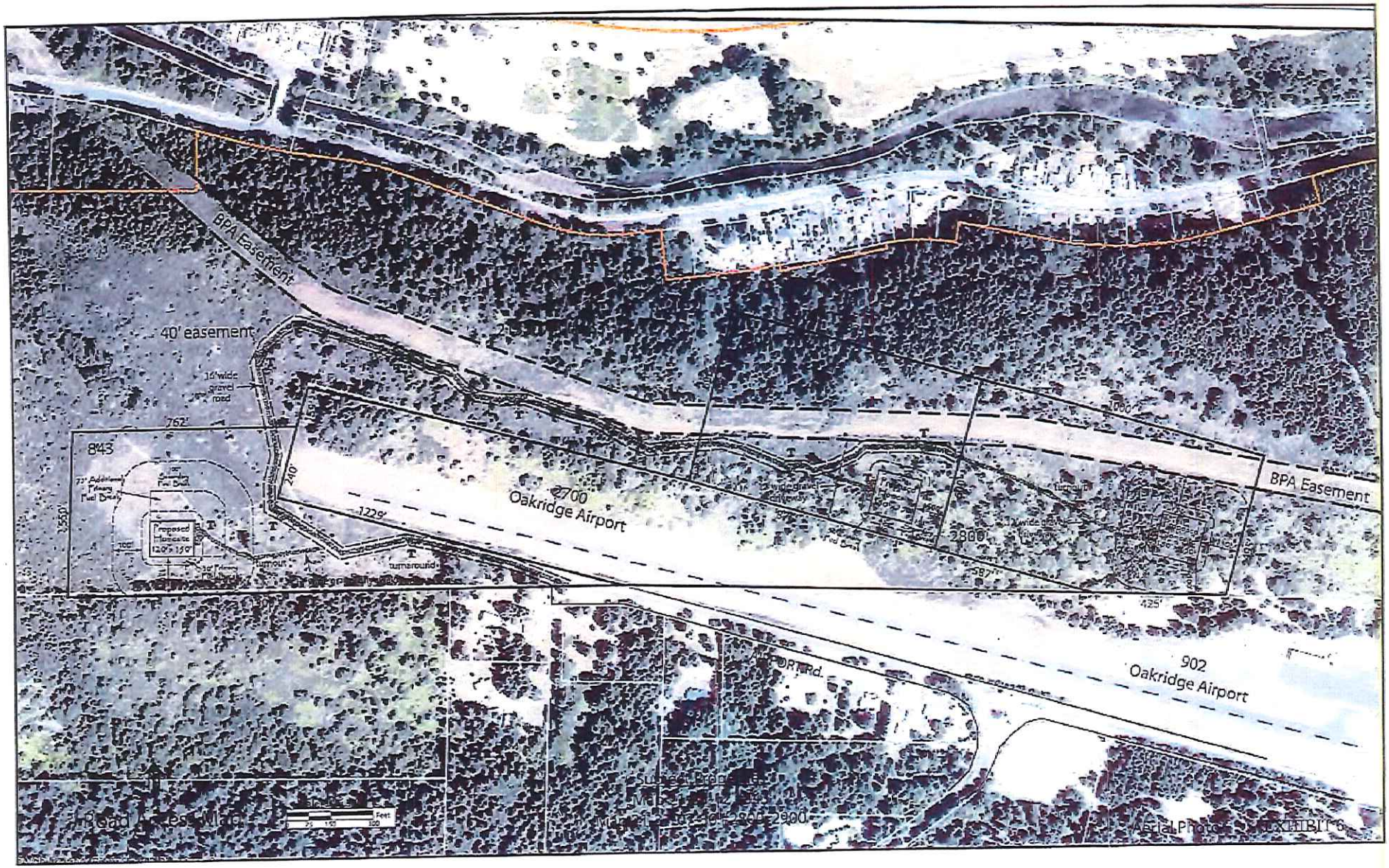
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900

EXHIBIT 6$_2$

ATTACHMENT 2.76



ATTACHMENT 2.77



ATTACHMENT 2.78

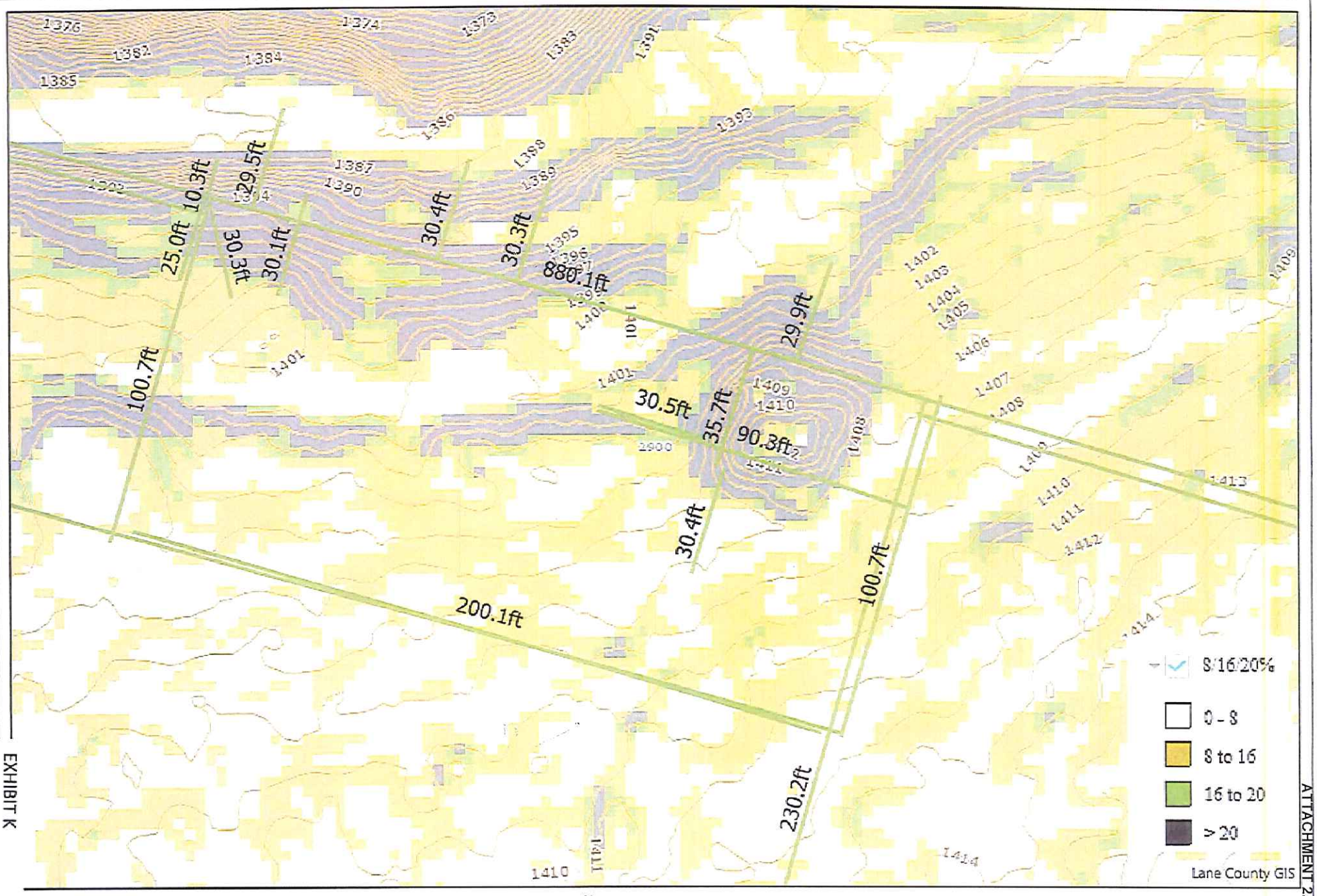


EXHIBIT K

ATTACHMENT 2.79

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

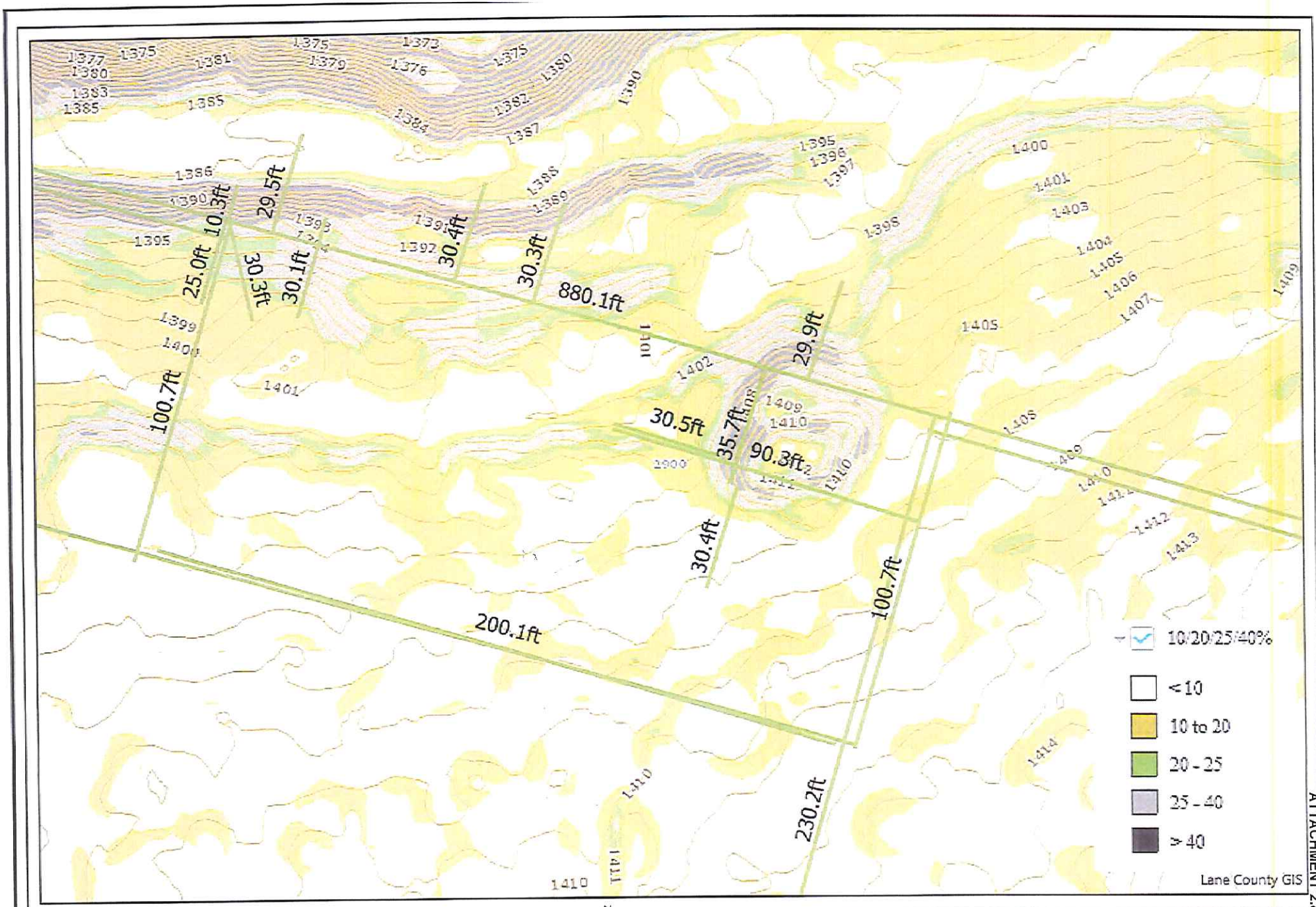
N

0 15 30 60 Feet

1-ft Contour & 8/16/20% LiDAR

Lane County, Oregon

001878



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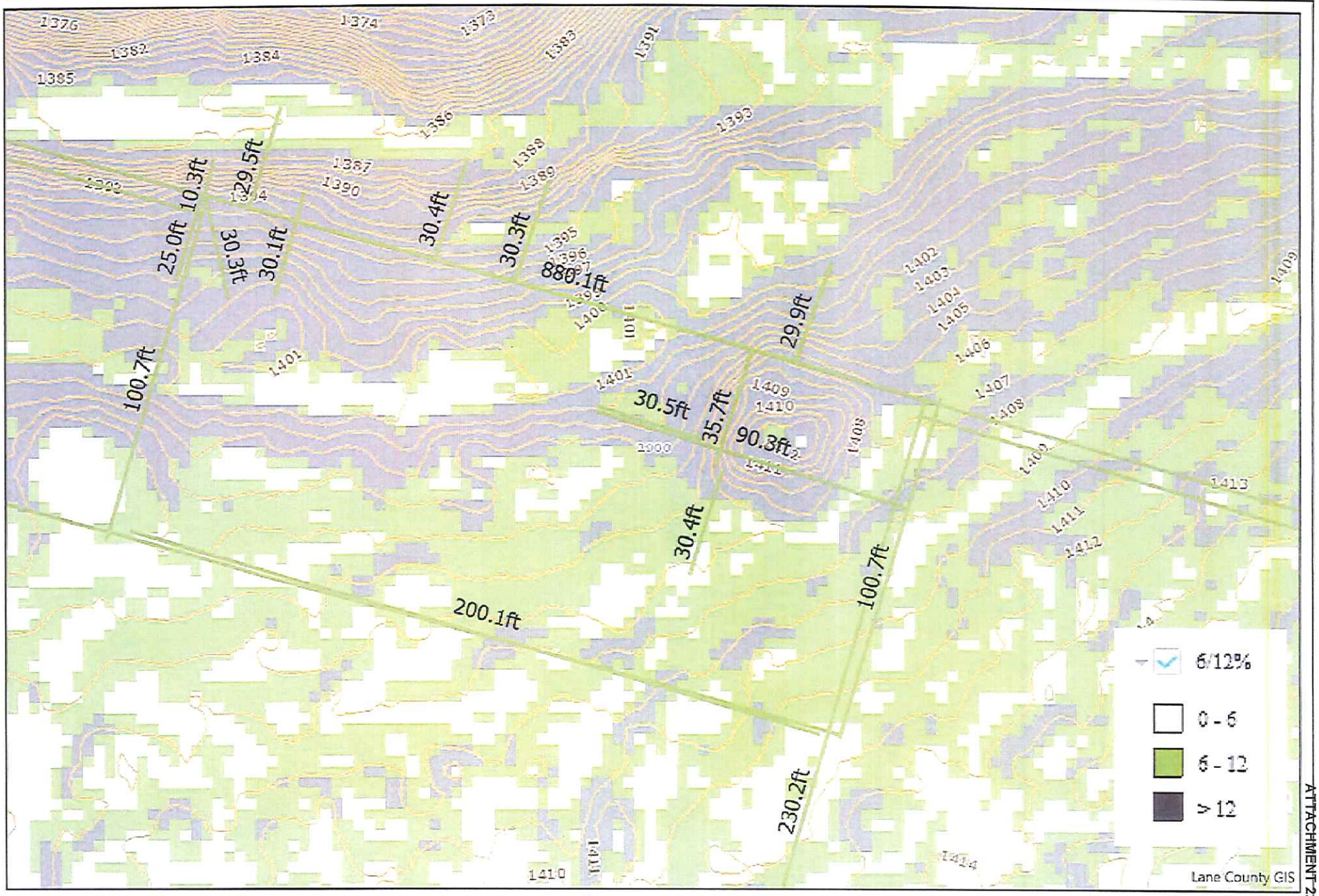
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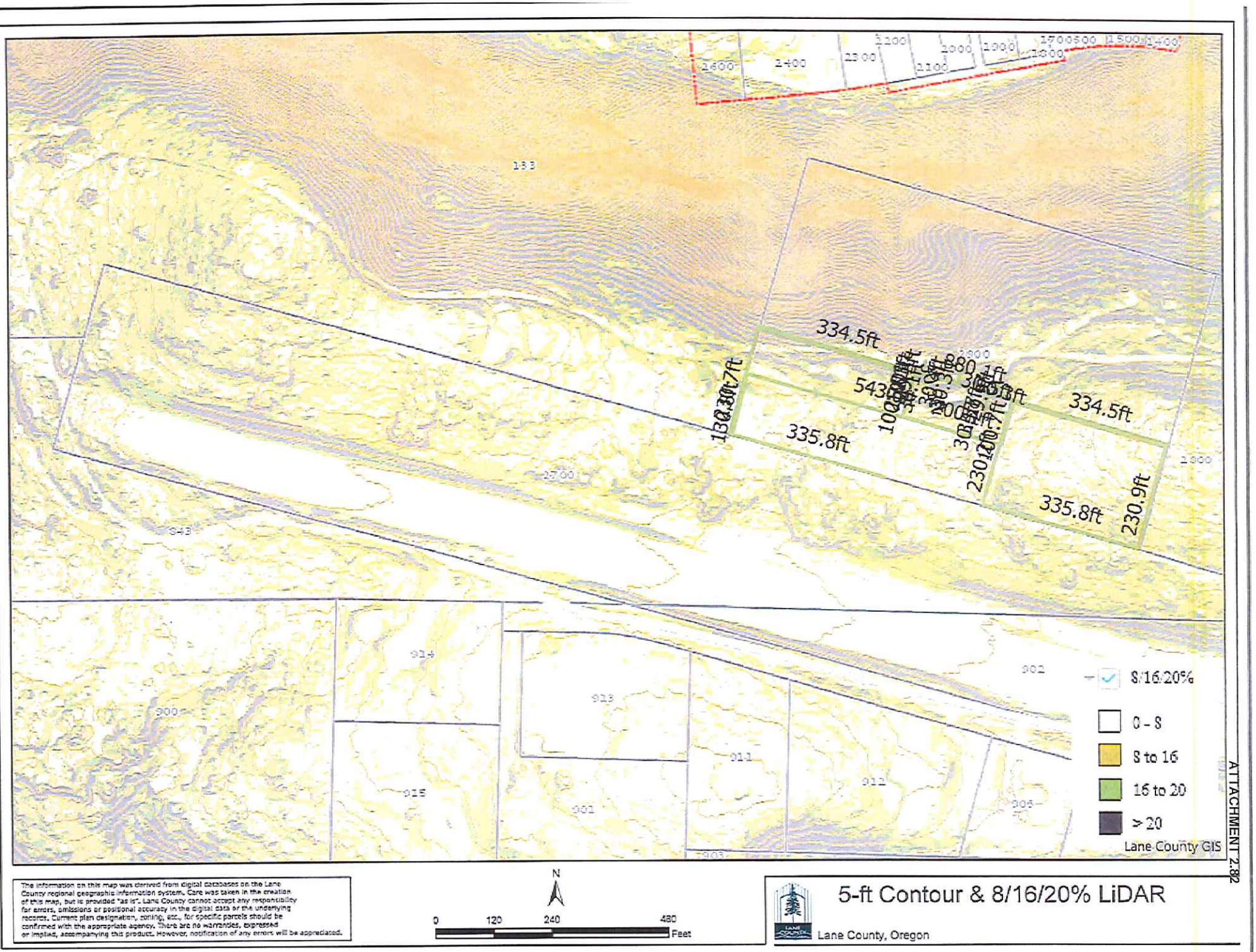
1-ft Contour & 10/20/25/40% LiDAR

Lane County, Oregon

ATTACHMENT 2.80



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5-ft Contour & 8/16/20% LiDAR

Lane County, Oregon

ATTACHMENT 2-82

After Recording Return to:

_____
_____
_____
_____

Recording Label Here

FARM USE AND FOREST MANAGEMENT EASEMENT

Grantor(s)_____
print name(s)

is/are the owner(s) of real property as described on Exhibit "A", attached hereto. In accordance with the conditions set forth in the decision of the Lane County Land Management Division dated _____ approving Planning Action PA # _____, for Assessor's Map and Tax Lot _____ **Grantor**(s) hereby grant(s) to the owner(s), **(Grantees)**, of all property zoned for farm or forest use, a perpetual non-exclusive farm use and forest practices management easement as follows:

1. The Grantor(s), the heirs, successors, and assignees acknowledge by the granting of this easement that the above described property is situated in a farm or forest zone in Lane County, Oregon, and may be subjected to conditions resulting from farm use or commercial forests operations on lands zoned for farm or forest use. Such operations may include farm use as defined in ORS 215.203 and management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and other accepted and customary forest management activities conducted in accordance with Federal and State Laws. Said farm use and forest management activities ordinarily and necessarily produce noise, dust, odors, smoke and other conditions, which may conflict with Grantor's use of Grantor's property for residential purposes, and Grantor(s) hereby give(s) an easement to the property owners of lands zoned for farm or forest use for the resultant impact on Grantors property caused by the farm use or forest management activities on such lands.

2. Grantor(s) shall comply with all restrictions and conditions for maintaining residences in farm and forest zones that may be required by State, Federal, and local land use laws and regulations. Grantor(s) will comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property zoned for farm or forest use, and shall bind the heirs, successors, and assignees of Grantor(s), and shall endure for the benefit of the owners of lands zoned for farm or forest use, their heirs, successors, and assignees. The grantees, their heirs, successors, and assignees are hereby expressly granted the right of third party enforcement of this easement.

_____ _____
Grantor Signature Grantor Signature

IN WITNESS WHEREOF, the Grantor(s) has/have executed this easement on _____
(date)

State of OREGON
County of _____

Signed or attested before me on _____, 20____

by_____
(Name of Grantor)

_____
Signature of Notary

My commission expires: _____

REV. 3/2011

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

LANDWATCH LANE COUNTY,
Petitioner,

and

1000 FRIENDS OF OREGON,
Intervenor-Petitioner,

vs.

LANE COUNTY,
Respondent,

and

NIMPKISH LLC,
Intervenor-Respondent.

LUBA No. 2020-030

FINAL OPINION
AND ORDER

Appeal from Lane County.

Sean Malone filed a petition for review and reply brief and argued on behalf of petitioner.

Andrew Mulkey filed a petition for review and reply brief and argued on behalf of intervenor-petitioner.

No appearance by Lane County.

Michael E. Farthing filed the response briefs and argued on behalf of intervenor-respondent.

RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board Member, participated in the decision.

REMANDED 01/21/2021

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner appeals a decision by a hearings officer approving an application for a forest template dwelling.

MOTION TO INTERVENE

1000 Friends of Oregon (1000 Friends) moves to intervene on the side of petitioner. There is no opposition to the motion and it is allowed.

Nimpkish LLC (intervenor), the applicant below, moves to intervene on the side of the county. There is no opposition to the motion and it is allowed.

FACTS

Intervenor's property is approximately 10 acres in size and zoned Impacted Forest Land (F-2). The property includes slopes of over 40 percent in some areas. The property is included on the county's inventory of Major Big Game Range. Intervenor applied for a forest template dwelling, and the planning director approved the application. Petitioner appealed the planning director's decision to the hearings officer, who held a hearing on the appeal and issued a decision affirming the planning director's decision and approving the application. This appeal followed.

PETITIONER'S FIRST ASSIGNMENT OF ERROR/1000 FRIENDS' ASSIGNMENT OF ERROR

Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) (Goal 5) is "[t]o protect natural resources and conserve scenic

and historic areas and open spaces." OAR 660-015-0000(5). In order to implement Goal 5, local governments are required to "adopt programs that will protect natural resources." *Id.* The county's program to protect natural resources was acknowledged by the Land Conservation and Development Commission (LCDC) to comply with Goal 5 in 1984. The county's Goal 5 program includes a map and inventory of big game habitat determined to be "significant or important" within the meaning of *former* OAR 660-016-0000(1)(1C) (June 29, 1981) *renumbered as* OAR 660-016-0000(5)(c) (June 6, 1990) (Big Game Habitat Inventory). *Save TV Butte v. Lane County*, 77 Or LUBA 22, 40 (2018).[1] As noted, the subject property is included on the Big Game Habitat Inventory.[2]

The county's Goal 5 program also includes a Rural Comprehensive Plan (RCP) policy, the meaning and application of which is at the heart of the parties' dispute in this appeal. RCP Goal 5, Flora and Fauna Policy 11, provides:

"Oregon Department of Fish and Wildlife [(ODFW)]

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[1] LCDC adopted Goal 5 in 1974. It adopted its first set of Goal 5 rules in 1981, which were codified at OAR chapter 660, division 16. Those rules were amended in 1990. In 1996, LCDC adopted a second set of Statewide Planning Goal 5 rules, which are codified at OAR chapter 660, division 23. Because LCDC acknowledged the county's program to protect natural resources in 1984, the 1981 rules applied. *See Delta Property Co., LLC v. Lane County*, 271 Or App 612, 616-19, 617 n 1, 352 P3d 86 (2015).

[2] The Lane County Wildlife Inventory maps were developed based on Oregon Department of Fish and Wildlife (ODFW) big game range maps and identify the location, quality, and quantity of big game range, identify conflicts with big game range, and explain how those conflicts are to be mitigated. Record 541-42.

> recommendations on overall residential density for protection of big game shall be used to determine the allowable number of residential units within regions of the County. Any density above that limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000. The County shall work with [ODFW] officials to prevent conflicts between development and Big Game Range through land use regulation in resource areas, siting requirements and similar activities which are already a part of the County's rural resources zoning program."

RCP Goal 5, Flora and Fauna Policy 11, was developed in part by relying on a March 1982 Flora and Fauna Working Paper. The county (and DLCD) relied on the Flora and Fauna Working Paper as a background document to the RCP.[3]

During the proceedings below, petitioner and intervenor-petitioner (together, petitioners) argued that RCP Goal 5, Flora and Fauna Policy 11, applied to the application and that, because the density of the subject property with a forest template dwelling would be one dwelling unit per 10 acres, which

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[3] The RCP characterizes the Flora and Fauna Working Paper as "background information * * * to be used to help interpret and understand [the RCP]." RCP Part 1(C). The Flora and Fauna Working Paper explains in more detail that that the ODFW residential density recommendations for Major Big Game Range were one dwelling unit per 80 acres:

> "The primary conflict to big game, as mentioned earlier is residential use at certain densities. ODFW has recommended overall densities for Peripheral Big Game Range at one dwelling unit per 40 [acres]; for Major Big Game Range at one dwelling unit per 80 acres. Therefore, to restate the conflict: overall residential density greater than one dwelling unit/40 acres in Peripheral Range and* * * one dwelling unit/80 acres in Major Range conflicts with habitat for big game." Record 542.

would exceed the ODFW recommendations on overall density for protection of Major Big Game Range, the application could not be approved absent "resolution in accordance with OAR 660-16-000." The hearings officer concluded that RCP Goal 5, Flora and Fauna Policy 11, did not apply to intervenor's application for a forest template dwelling because that provision only applies to applications for a land division or a zone change:

> "Ultimately, the acknowledged zoning ordinance did not apply the Big Game limitations except in certain circumstances, such as in the Exclusive Farm Use Zone. And in that case only properties lying within a Major Big Game area were affected. No specific siting regulations for forest template dwellings located within a peripheral big game range were adopted by the acknowledged Chapter 16 zoning code. That is, the Big Game Range density standards were integrated into the zoning classifications and minimum lot size recommendations within the [F-2] Zone. The density recommendations were not applicable to existing parcels but were to be considered only in rezoning and land division applications. Therefore, the approval of dwellings under a template dwelling test does not involve a determination of consistency with Big Game Range density standards." Record 10 (footnote omitted).

In reaching that conclusion, the hearings officer relied in part on a July 1984 Department of Land Conservation and Development (DLCD) staff report, prepared by DLCD when the county was seeking LCDC acknowledgement of its Goal 5 program.[4] According to the hearings officer, the DLCD staff report and

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[4] The hearings officer found:

> "The DLCD staff report of July 19, 1984 indicates a concern with the minimum lot sizes in the resource zones coupled with a lack of

the Flora and Fauna Working Paper demonstrate that the county intended that the primary method for achieving the recommended ODFW density standards was the creation of zoning areas, the adoption of minimum parcel sizes to implement the density standards, and the adoption of siting and clustering standards for new dwellings in the F-2 zone. The hearings officer also relied on testimony from two former county planners that RCP Goal 5, Flora and Fauna Policy 11, was intended only to apply to land divisions and zone changes. Record 9-10.

Petitioner's first assignment of error and 1000 Friends' sole assignment of error challenge the hearings officer's interpretation of the density

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siting and clustering requirements. The minimum parcel size was the County's chosen method to comply with the ODFW recommended maximum densities. The recommended densities—one dwelling per 40 acres in the peripheral big game range—depended entirely on the size of the area being studied. When considering an 80-acre study area, the recommendation would only allow two dwellings. However, the recommendation was intended to apply at a much higher level; which is why the County originally anticipated dividing the County into regions. Ultimately, the County, with the blessing of DLCD and ODFW, decided to rely on minimum parcel sizes to implement the ODFW recommendations. This view is borne out in DLCD's staff report which stated: '*Without siting clustering requirements, the minimum lot sizes in the F-1, F-2 and E zones are half that recommended by ODFW (i.e., the minimum lot sizes would have to be doubled to be acceptable.)*' At this time, Lane County's proposal was to have a minimum lot size of 40 acres for the F-1 Zone, minimum lot size of 20 acres in the F-2 Zone, minimum lot size of 40 acres in the EFU Zone, and no clustering or siting standards for dwellings." Record 9 (emphasis in original).

recommendations referenced in RCP Goal 5, Flora and Fauna Policy 11, as being inapplicable to intervenor's forest template dwelling application.[5] Petitioners argue that the hearings officer's conclusion that the density recommendations were "integrated into the zoning classifications and minimum lot size recommendations within the [F-2] Zone" has no support in the provisions of the F-2 zone. Petitioners argue that the hearings officer failed to give any effect to the second sentence of RCP Goal 5, Flora and Fauna Policy 11, which, according to petitioners, prohibits the county from allowing residential density above the ODFW-recommended limits without first conducting an Economic, Social, Environmental, and Energy (ESEE) analysis under the applicable Statewide Planning Goal 5 rule. Petitioners argue that the hearings officer's interpretation contravenes ORS 174.010's prohibition on "insert[ing] what has been omitted."[6]

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[5] OAR 660-006-0027(6)(a) provides, in relevant part, that "[a] proposed 'template' dwelling under this rule is allowed only if" "[i]t will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law." OAR 660-006-0025(6) provides that "[n]othing in this rule relieves governing bodies from complying with other requirements contained in the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) that exist on forest lands."

[6] ORS 174.010 provides:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

Intervenor responds that, based on the testimony of the former county planners and the legislative history in the record regarding LCDC's acknowledgement of the county's Goal 5 program, the hearings officer correctly concluded that RCP Goal 5, Flora and Fauna Policy 11, does not apply to a forest template dwelling application for property inventoried as Major Big Game Range. In intervenor's view, the county's program to protect Major Big Game Range relies on the F-2 zone's minimum parcel size of 80 acres for new land divisions and clustering standards in Lane Code (LC) 16.211, but the LC includes no density standards for dwellings on existing parcels.

We review the hearings officer's interpretation of the RCP and the LC to determine whether the hearings officer "[i]mproperly construed the applicable law." ORS 197.835(9)(a)(D). In construing the law, we will consider the text and context of the law at issue in order to determine the intent of the enacting body. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993); *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). For the reasons explained below, we agree with petitioners that RCP Goal 5, Flora and Fauna Policy 11, applies to intervenor's application for a forest template dwelling on property included on the county's Big Game Habitat Inventory of Major Big Game Range.

First, the hearings officer's conclusion that RCP Goal 5, Flora and Fauna Policy 11, applies only where an application is for a land division or a zone change has no support in the text that policy or in any of the LC provisions

governing the F-2 zone. The plain language of RCP Goal 5, Flora and Fauna Policy 11, does not refer to or limit its application to land divisions and zone changes. Context provided by the Flora and Fauna Working Paper does not refer to or limit the county's Goal 5 program to applications for land divisions and zone changes.[7] For those reasons, we agree with petitioners that the text and

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[7] The Flora and Fauna Working Paper explains:

> "The following paragraphs basically outline procedures to be used for implementation of the ODFW density recommendations in big game ranges. The premise is to work overall density figures into minimum lot size recommendations for regions of the County, rather than postponing the issue by referrals to ODFW for every land division application. The anticipated result is to base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations, thereby creating no conflict with Goal 5.
>
> "The County will be divided into regions convenient for planning purposes. These have not yet been determined but will probably result in 10-20 regions in the County.
>
> "Within these regions, determinations will be made of acreages, number of existing residences, and additional number of residences allowable to still fall within the overall density level. Built upon and committed areas are subtracted out, as they are treated as Impacted Range. From the figure of remaining residences and acreage, a residential carrying capacity will be determined. This figure, or the ODFW figure of 40 or 80 acres, whichever is lesser, will be recommended in the region for residential density for big game purposes. This, along with other resource land requirements will be used to determine appropriate zoning in an area.

context of RCP Goal 5, Flora and Fauna Policy 11, does not support the hearings officer's interpretation. Rather, the hearings officer's interpretation "insert[s] what has been omitted," in contravention of ORS 174.010, and gives no effect to the second sentence of RCP Goal 5, Flora and Fauna Policy 11. Moreover, a decision approving an application to divide or rezone land generally does not authorize any development, let alone residential development, but rather is the precursor to an application for future residential development. Thus, it is difficult to see how the ODFW density standards would apply to either of those types of applications at all, let alone apply *solely* to those types of applications.[8] Finally,

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> "If this figure is ever exceeded, it constitutes a conflict with Big Game Range. ESEE consequences must be determined and analyzed at that time. Prior to dividing the County into regions and making the above determinations, it is impossible to determine if conflicts will exist in any regions. The expectation, based on examining trial areas, is that the recommendations of ODFW can be incorporated without creating a conflict.
>
> "Special uses which may be allowed in resource zones have the potential of conflicting with Big Game Range. To preclude that conflict, criteria will be incorporated into the Special Use review considering the effect on big game. Recommendations will be requested from ODFW and considered as part of the review process." Record 542-43.

[8] An application to rezone property could trigger OAR 660-023-0250(3)(b), which provides that a local government is required to apply Goal 5 to an application for a post-acknowledgment plan or land use regulation amendment (PAPA) only if "[t]he PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site."

the testimony of the former county planners on which the hearings officer relied is not particularly persuasive, given that it also is not supported by the text of RCP Goal 5, Flora and Fauna Policy 11, or any provision of the LC.

As explained above, the hearings officer's view of the county's Goal 5 program is that the county intended to rely on (1) the creation of zoning areas, (2) the adoption of minimum parcel sizes to implement the density standards, and (3) the adoption of siting and clustering standards for new dwellings in the F-2 zone. The first sentence of RCP Goal 5, Flora and Fauna Policy 11, refers to the process that the county was supposed to follow, which included taking actions to identify "10-20 regions" and to "base zoning by region on the overall residential densities or ODFW minimum parcel size recommendations." *See* n 7. All parties agree that, during the 36 years since its Goal 5 program was acknowledged, the county has never taken the steps described in the first sentence and has never created any "regions" or "base[d] zoning by region on the overall residential densities or ODFW minimum parcel size recommendations."

1000 Friends argues that the county's failure to take the steps described in the first sentence of RCP Goal 5, Flora and Fauna Policy 11, means that Goal 5 applies directly to the county's permit decision. We disagree with that argument. RCP Goal 5, Flora and Fauna Policy 11, is acknowledged to comply with Goal 5 and Goal 5 does not apply directly to the county's decision. ORS 197.175(2)(d).

However, the county's failure to take the step of identifying regions and basing zoning by region on either overall residential densities or ODFW

minimum parcel size recommendations does not mean that the county is absolved from protecting land included on the Big Game Habitat Inventory as Major Big Game Range through the residential density recommendations referred to in RCP Goal 5, Flora and Fauna Policy 11, or that the density recommendations simply do not apply. Rather, the *second sentence* of RCP Goal 5, Flora and Fauna Policy 11, remains operative, and it provides that "[a]ny density above [the ODFW-recommended density] limit shall be considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000."[9] The second sentence is not tethered to or derivative of the first sentence, which envisions the creation of zoning areas that the county has never completed. The second sentence does not mention or refer to zoning areas. To find that the second sentence simply has no effect absent the creation of zoning areas would be to allow the county to fail to perform an action that it assured LCDC it would perform in order to obtain acknowledgement of its Goal 5 program, and it would have the effect of eliminating the Goal 5 protections for Big Game Range that LCDC understood were in place when it acknowledged the program. Moreover, the county must interpret a provision of the RCP that was adopted to implement its Goal 5 program, which protects Big Game Range from conflicting residential

[9] The hearings officer's decision never directly addresses the second sentence of RCP Goal 5, Flora and Fauna Policy 11.

development through density standards, in a manner that is not inconsistent with Goal 5. ORS 197.829(1)(d).

This view is supported by language in DLCD's final staff report leading to acknowledgement of the county's Goal 5 program. In its response to some objections to the county's proposed program, DLCD explained its understanding of why the county's program did not conflict with Goal 5:

> "Objectors are not correct that [RCP Goal 5, Flora and Fauna Policy 11,] violates Goal 5. Densities above those recommended by ODFW would certainly constitute a conflict with big game habitat. *The County has, through this policy, however, simply indicated that it intends to resolve them by applying the entire Goal 5 process when such proposals are made. This would require a plan amendment and could only take place if justified based on the Goal 5 analysis.*" Record 212-13 (emphasis added).

We understand DLCD to have concluded that the county's Goal 5 program protects habitat because it adopts residential densities in accordance with ODFW's recommendations and requires that, if "proposals are made" that exceed those densities, the county will conduct an ESEE analysis for that individual proposal. Contrary to the hearings officer's decision, RCP Goal 5, Flora and Fauna Policy 11, includes no language that limits its application to land divisions and zone changes. The hearings officer's decision is not consistent with ORS 174.010 because it inserts language into the policy.

Moreover, the hearings officer's interpretation that the county's Goal 5 program to protect Big Game Range is implemented by provisions of the LC, specifically the F-2 zone's minimum parcel size of 80 acres for new land

divisions and the clustering standards in LC 16.211(5), is not supported by anything in the text of the F-2 zone provisions. The siting and clustering standards in LC 16.211(5)(a) do not quantify a residential density standard. A requirement to site dwellings "[n]ear dwellings on other tracts" is not a density standard. LC 16.211(5)(a)(i). Nor do the rest of the F-2 zone provisions support the hearings officer's interpretation. The use table for the F-2 zone lists six types of allowed dwellings, five of which do not require any particular parcel size. The F-2 zone does not provide any residential density standard at all. As we explained in *Cattoche v. Lane County*, the county has not quantified a residential density standard in the F-2 zone but "instead use[s] the ODFW 40-acre standard [referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper] for areas inventoried as Peripheral Big Game Range." 79 Or LUBA 466, 479 (2019). Similarly, here, we conclude that the county uses the one-dwelling-per-80-acres standard referenced in RCP Goal 5, Flora and Fauna Policy 11, and the Flora and Fauna Working Paper to determine the allowed residential density in areas inventoried as Major Big Game Range.

In conclusion, we agree with petitioners that the hearings officer's conclusion that RCP Goal 5, Flora and Fauna Policy 11, does not apply because the application does not involve a land division or a zone change improperly construes RCP Goal 5, Flora and Fauna Policy 11. There is no dispute that the density of the subject property with the proposed dwelling would exceed one dwelling unit per 80 acres. Accordingly, the proposed dwelling "shall be

considered to conflict with Goal 5 and will be allowed only after resolution in accordance with OAR 660-16-000." RCP Goal 5, Flora and Fauna Policy 11.

Petitioner's first assignment of error and 1000 Friends' assignment of error are sustained.

PETITIONER'S SECOND ASSIGNMENT OF ERROR

As noted, the located of the proposed dwelling is in an area of the property that contains steep slopes.[10] RCP Goal 7, Policy 3 provides:

> "When extensive or drastic safeguards must be employed in conjunction with development proposals, the immediate and ultimate impact (including financial and economic considerations) of such safeguards on the environment and the public shall be considered."

In appealing the planning director's decision, petitioner argued that RCP Goal 7, Policy 3 (Policy 3) applied and that the planning director failed to apply it to the application. Record 608.

During the proceedings below, intervenor provided a geotechnical evaluation of the proposed dwelling site and the property (Level I report). The Level I report determined that the proposed driveway location did not present a

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[10] The decision states that the home site is "located at least 30 feet from a ravine ridge or slope greater than 40%" and that, "[w]est of the home site, there is a 17% downslope." Record 5-6.

significant landslide hazard, and recommended a more detailed geotechnical investigation of the proposed dwelling site prior to development.[11] Record 11.

The hearings officer found that the general location of the property within a very high-risk landslide area "is an indication that potential development problems may exist." Record 12. While the hearings officer expressed doubt that Policy 3 applied to the application, the decision applied Policy 3 and found:

> "In regard to Policy #3, the Level I [report] did not identify extensive or drastic safeguards that had to be employed in conjunction with [intervenor's] development proposal. However, the location of the development within a very high landslide hazard area is an indication that potential development problems may exist. Thus, [the Level I report] wisely recommends that this evaluation be a prelude to a more comprehensive evaluation (Level II) when the actual development is proposed through the building permit process.
>
> "In a prior appeal of a template dwelling in the general area of the subject property, this Hearings Official addressed the implications of [*Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992),] in regard to LC 16.005(2). In its decision in the *Rhyne* case, LUBA noted that [the] local government had the option of deferring its determination of compliance [with] a standard to a subsequent proceeding. Lane County has a process where an applicant may be compelled to apply for a Type III Modification of Decision when a substantial change in an approved application is necessary. This review would be before the Hearings Official and would require notice to the Appellant.
>
> "Thus, the building inspector will review the Level II * * * report provided by [intervenor's] engineer. Section 1803 of the Oregon

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[11] The decision states that slopes for the proposed driveway are between zero and 14 percent. Record 4.

> Structural Specialty code gives the Building Official the authority to require and review geotechnical information. If the Building Official finds problems that would require a restriction on mechanical grading and/or clearing, that issue would be reviewed by the Hearings Official. Condition of Approval #13 has been modified to reflect this change." Record 12 (footnotes omitted).[12]

In *Rhyne*, we explained a local government's options in evaluating the evidence submitted to it to support compliance with an approval criterion:

> "Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, if the local government determines that there is insufficient evidence to determine the feasibility of compliance with the standard, instead of finding the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so, as part of the first stage approval (as it does under the first option described above). Therefore, the local government must assure that the second stage approval process to which the decision making is deferred provides the statutorily required notice and hearing, even though the local code may not require such notice and

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[12] We note that the decision includes a purported quote of "LC 16.005(2)" that does not appear to be an accurate quote of that LC provision. Record 12. The language quoted by the hearings officer as LC 16.005(2) appears to be a quote of a provision of the Metro Plan, the regional plan for the cities of Eugene and Springfield and the county.

> hearing for second stage decisions in other circumstances." 23 Or LUBA at 447-48 (footnotes omitted) (citing *Holland v. Lane County*, 16 Or LUBA 583, 596-97 (1988)).

In its second assignment of error, petitioner argues that the hearings officer erred in deferring a determination of whether Policy 3 was met to a later-stage proceeding that does not allow for notice and an opportunity for a hearing.[13] Intervenor responds that the hearings officer found that compliance with Policy 3 is feasible, as allowed by *Meyer v. City of Portland*, 67 Or App 274, 678 P2d 741, *rev den*, 297 Or 82 (1984), and that the later Level II report that is required by Condition 13 is therefore not entitled to public review and comment.[14]

The hearings officer's decision regarding Policy 3 is somewhat unclear, and the parties' dispute boils down to a dispute over whether the hearings officer's decision follows the first *Rhyne* option, as intervenor maintains, or the third *Rhyne* option, as petitioner maintains. Given the decision's explicit

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[13] Petitioner also cites RCP Goal 7, Policies 1 and 2, but does not develop any argument regarding why those policies apply or are not met.

[14] Condition 13 provides:

> "Excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. The character of soils for fills and the characteristics of the subject property made usable by means of fill shall be suitable for the intended purpose. Prior to building approval, [intervenor] shall submit a Level II * * * report to the County. If the building inspector finds problems that would require a restriction on mechanical grading and/or clearing, that issue shall be reviewed by the Hearings Official through a Type III Modification of Decision." Record 7.

reference to the third *Rhyne* option ("LUBA noted that [the] local government had the option of deferring its determination of compliance [with] a standard to a subsequent proceeding"), we understand the hearings officer to have determined that the evidence provided by the Level I report was insufficient to determine whether Policy 3 was met and to have deferred that determination to a later stage approval process through Condition 13. The problem with Condition 13 is that it places review and approval of the future Level II report solely in the discretion of the building inspector, and only if the building inspector concludes that there are "problems that would require a restriction on mechanical grading and/or clearing" would that issue be referred by the building inspector to the hearings officer for review. Such a closed circle of decision making that excludes public participation is inconsistent with *Rhyne*.

The second assignment of error is sustained.

PETITIONER'S THIRD ASSIGNMENT OF ERROR

Former ORS 215.750(4)(d) (2017), *renumbered as* ORS 215.750(5)(d) (2020), prohibits a template dwelling if the property is part of a tract that already contains a dwelling. ORS 215.010(2) defines "tract" as "one or more contiguous lots or parcels under the same ownership." The subject property is owned by intervenor, a limited liability company. The Goodmans own adjacent properties to the west and the east of the subject property, at least one of which contains a dwelling. Record 685-86. The Goodmans are the registered agents of and have a membership interest in intervenor.

The hearings officer concluded that the subject property is not part of a tract because the owner of the subject property is not the owner of the adjacent properties and that the fact that the Goodmans may control the owner of the subject property or own the limited liability company that owns the subject property is not relevant for purposes of applying the operative terms of the definition of "tract." Petitioner argues that the subject property is part of a tract that is effectively owned by the Goodmans and, therefore, the subject property is not allowed a dwelling. Petitioner argues that viewing the subject property and adjacent properties as under different ownership is "contrary to the underlying policy of the template dwelling statute's prohibition on allowing more than one dwelling on a tract." Petition for Review 30-31. Intervenor responds that the hearings officer correctly interpreted *former* ORS 215.750(4)(d) (2017) to conclude that the subject property is not under the same ownership as the adjacent properties.

Petitioner has not developed any argument that persuades us to conclude that the subject property and adjacent properties are "under the same ownership," within the meaning of ORS 215.010(2), where title to the properties is vested in different owners. Absent any developed argument regarding the meaning of the phrase "under the same ownership" in the context of *former* ORS 215.750(4)

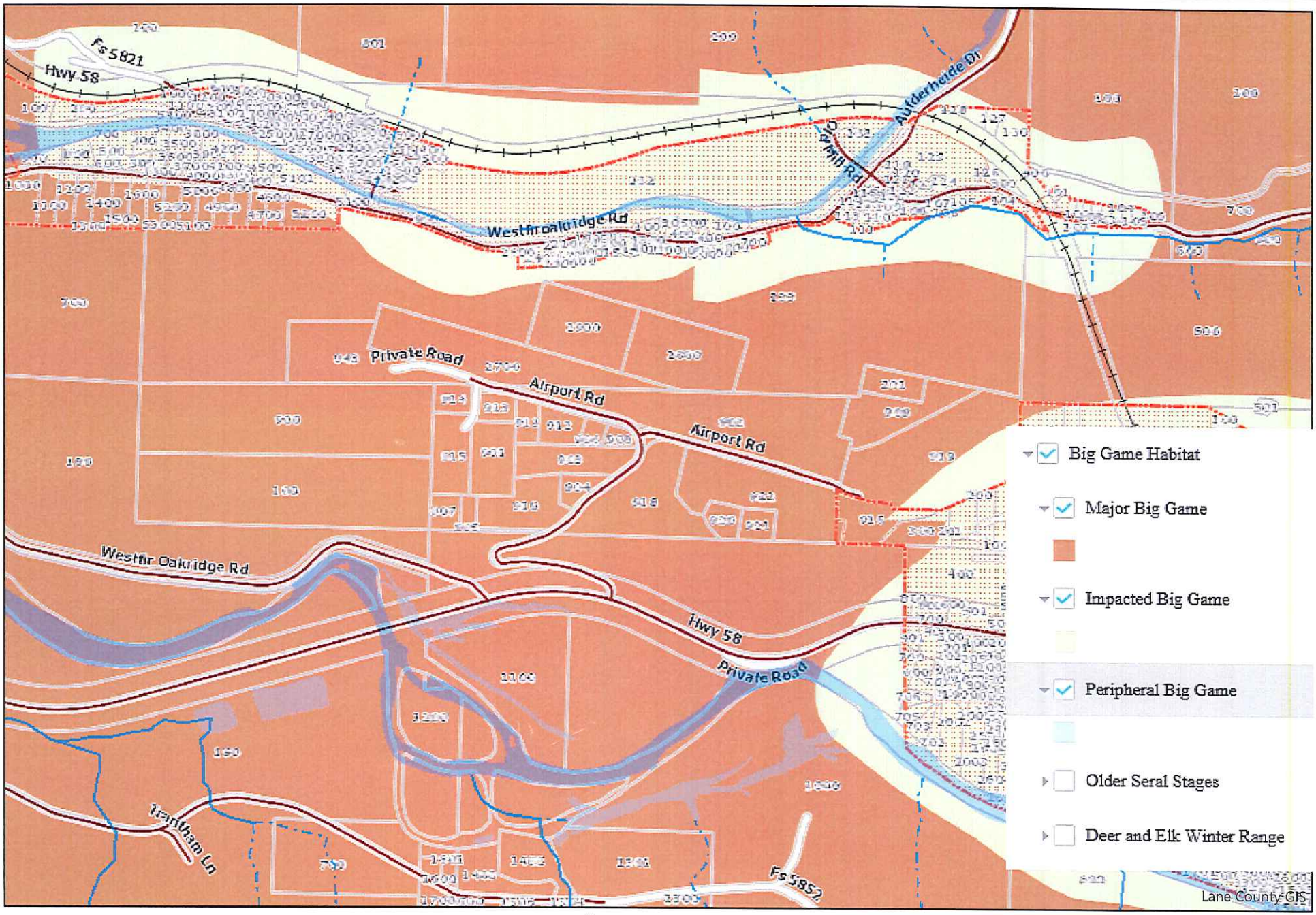
(2017), petitioner's arguments in this assignment of error do not provide a basis for reversal or remand.[15]

The third assignment of error is denied.

The county's decision is remanded.

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[15] In *Central Oregon Landwatch v. Deschutes County*, ___ Or LUBA ___ (LUBA No 2019-105, Jan 31, 2020), we rejected the petitioner's argument that two properties constituted a "tract" because they were "under the same ownership" within the meaning of ORS 215.010(2), where title to one property was held in the name of an individual person and title to an adjacent property was held in the name of the same person as "trustee" of a trust. *Id.* at ___ (slip op at 10-13).



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

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0 500 1,000 2,000 Feet

Big Game

Lane County, Oregon

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DO NOT
SEPARATE
PACKET

CERTIFICATE OF MAILING

509-PA20-05064/PA20-05066
E J K /KING/O'DEA
2/12/2021

This is to certify that I, Rachel Adams, mailed Notification of

Notice of Appeal Hearing

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: FEB 12 2021

End of Comment Period: _____

Appeal Deadline: _____

Hearing Date: MAR 04 2021

Rachel Adams

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF APPEAL RECEIPT & ACCEPTANCE

February 12, 2021

Appellant:	**Land Owner:**	**Applicant:**	**Agent:**
Lauri Segel, LandWatch Lane County PO Box 5347 Eugene, OR 97405	E.J.K. Investments 30414 Lebleu Road Eugene, OR 97405	Edward J. King 30414 Lebleu Road Eugene, OR 97405	Kim O'Dea Law Office of Bill Kloos 375 W. 4th, Suite 204 Eugene, OR 97401

Department File No: 509-PA20-05064
Subject Property: Assessor's Map & Tax Lot 21-35-07-30-02900.

RE: Appeal of a Type II Planning Director approval of a forest template dwelling in in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

This Notice is to inform you that an appeal and request for reconsideration for the above-cited application was received by the Land Management Division on February 8, 2021 and accepted by the Planning Director on February 10, 2021, and the Director has affirmed the decision.

Therefore, a **tentative date** of March 4, 2021 has been set for the Lane County Hearings Official to hold a De Novo Public Hearing at **9:30 A.M.**

Due to concerns caused by the COVID-19 outbreak, the hearing will be held digitally through a call in conference service. Additional information will be provided with the notice of appeal hearing. Please note more than one hearing may be scheduled for March 4.

The regulations for De Novo hearings are found in Lane Code 14.080. Lane Code is available on the internet at www.lanecounty.org/, under "Quick Links".

A formal notice of this hearing will be mailed to you at least **20 days prior** to the hearing date. Please submit written materials to the **attention of Shawna Adams**. You have up to the day of the hearing to submit materials. For a hearing scheduled on March 4, the staff report to the Hearings Official would be completed on February 25, 2021, in consideration of materials in the file record as of February 24, 2021. Any materials submitted after that date may result in staff requesting a continuance.

Sincerely,

Shawna Adams, Senior Planner

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF APPEAL HEARING
(REMOTE ACCESS ONLY)

Department File:	**509-PA20-05064**
Owner:	E.J.K. Investments
Applicant:	Edward J. King
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

Proposal : Appeal of Type II Director **APPROVAL** of a request for a forest template dwelling in in the Impacted Forest Lands Zone (F-2), in accordance with the provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

An appeal for the above-cited application was submitted by the appellant on February 8, 2021 and accepted by the Planning Director on February 10, 2021 pursuant to Lane Code Chapter 14. The Planning Director has affirmed the decision.

The Lane County Hearings Official is the Approval Authority who will conduct a De Novo public hearing, pursuant to Lane Code Chapter 14. **Due to concerns caused by the nationwide COVID-19 outbreak, the hearing will be held digitally on Thursday, March 4, 2021, at 9:30 A.M. through a call-in conference service. Information for call-ins is as follows:**

Dial-in Number Info:	**(541) 682-1094**
Extension:	**6821094**
Participant Code:	**333-572-15**
Mobile AutoDial:	
VoIP:	**voip://(541) 6821094;33357215#**
iOS Devices:	**(541) 682-1094,33357215 and press #**
Other Devices:	**(541) 682-1094x33357215#**

Upon request, if you do not have access to a computer with internet access or a phone on the day of the hearing, accommodation for teleconference access needs will be made available at the **Lane County Customer Service Center, Goodpasture Room, 3050 North Delta Highway, Eugene, Oregon 97408.** For accommodation, please contact **Shawna Adams** at shawna.adams@lanecountyor.gov or 541-682-4054.

If you wish to receive a courtesy digital copy of the Hearings Official Decision, please contact the above staff.

You received this notice because you own property located near the property that is the subject of this notice. Per Lane Code 14.060, Lane County is required to notify you of the appeal of the above-cited decision so that you have the opportunity to comment and/or participate in the De Novo public hearing for the appeal. Lane County is required only to notify the applicant, owner, owners of record of property of adjacent properties per the most recent property tax assessment roll, and other persons identified. **You may want to share this notice with others in your neighborhood as some may not be aware of the proposal.**

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

Enclosed is a vicinity map for the subject property.

The order of procedure for the conduct of the hearing will generally be as follows:

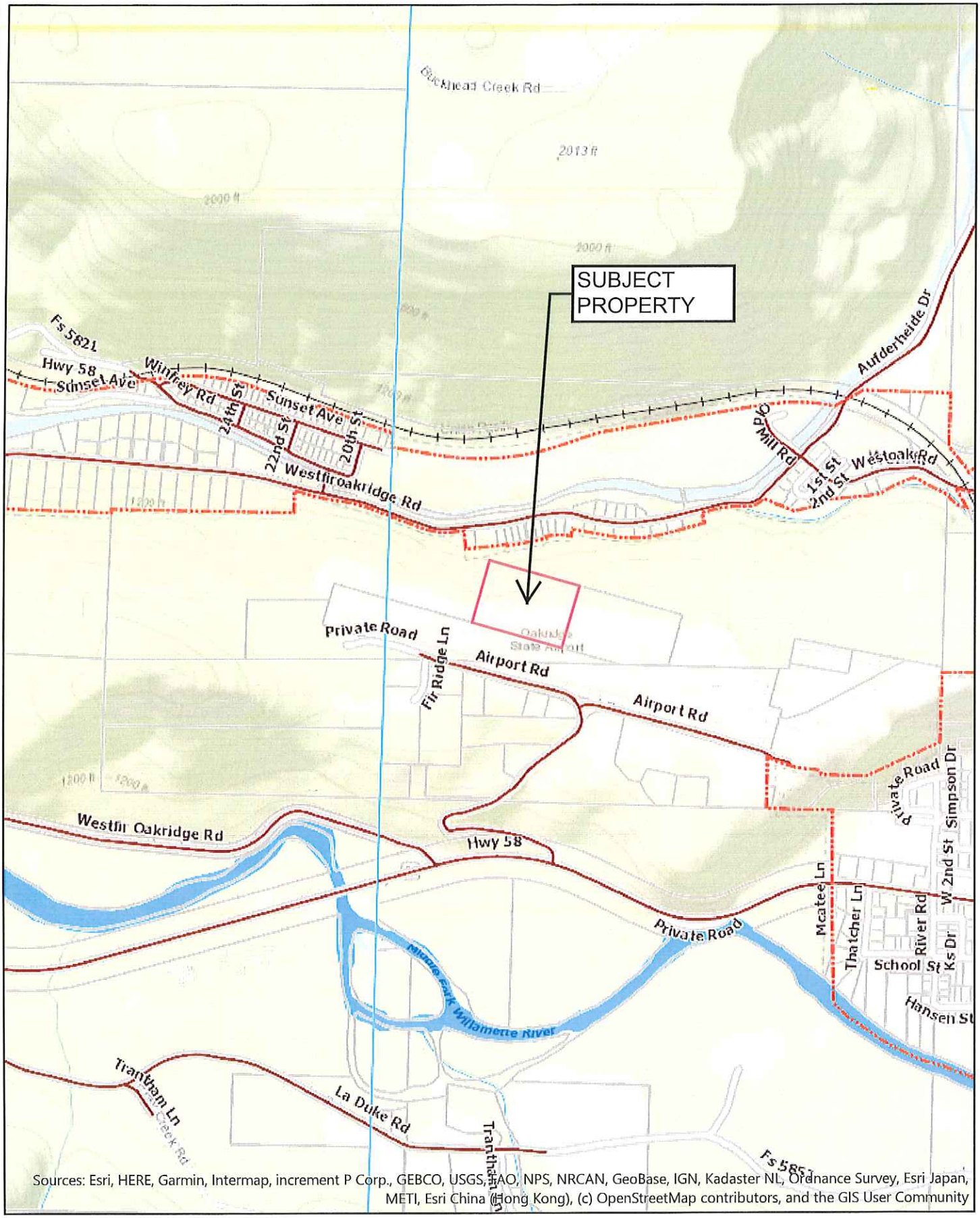
a. Announcement of the nature and purpose of the hearing
b. Announcement of opportunities for submission of information and appeal.
c. Disclosure of ex parte contacts
d. Report by the Director
e. Applicant's testimony
f. Testimony of persons in favor
g. Testimony of other persons
h. Any additional comments by the Director
i. Applicant rebuttal
j. Conclude the hearing

Failure to raise an issue in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

The application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at no cost at the Land Management Division. A copy of the staff report will be available for inspection at no cost at least one week prior to the public hearing. Copies of these materials will be provided at a reasonable cost upon request.

The representative of the Land Management Division to contact regarding this application and hearing is **Shawna Adams** and the telephone number where more information can be obtained is **541-682-8904.** Please submit written materials to: Lane County Land Management Division, Attn. Shawna Adams, 3050 North Delta Highway, Eugene, Oregon 97408. Written materials may be submitted prior to, or during the public hearing.

The meeting location is wheelchair-accessible. Persons needing special accommodation (e.g., hearing impaired, language translation, chemical sensitivity needs, and large print copies of the agenda) are instructed to submit their request at least 48 hours prior to the meeting by calling Rachel Adams at 541-682-6911.



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 300 600 1,200 Feet

VICINITY MAP: PA20-05064

Lane County, Oregon

001910

509-PA20-05064/PA20-05066
E J K /KING/O'DEA
2/12/2021

2135073001100
ADAMSON VALERIE M
209 BONVIEW ST
SAN FRANCISCO CA 94110

2135180000902
ALTEMUS MATTHEW
47919 W 2ND ST
OAKRIDGE OR 97463

2135073000100
*ANTHONY JAY
PO BOX 1507
GOLD BEACH OR 97444

2135180000918
CATHEY CHRISTY D & MIKE A
PO BOX 892
OAKRIDGE OR 97463

2135074000100
CROWN PROPERTIES LLC
30414 LE BLEU RD
EUGENE OR 97405

2135073001500
DAMEWOOD JAMES S
47114 WESTFIR RD
WESTFIR OR 97492

2135180000908
DANIELS DAVID L & DEBORAH L
PO BOX 1412
OAKRIDGE OR 97463

2135180000914
DEBOER KENNETH J & BRIDGETT M
46979 AIRPORT RD
OAKRIDGE OR 97463

2135073000800
DEW DEBRA
47222 WESTFIR-OAKRIDGE RD

WESTFIR OR 97492

2135073002900
*E J K INVESTMENTS LLC
30414 LE BLEU RD
EUGENE OR 97405

2135180000922
FLACK KEITH F & JANICE M
PO BOX 434
OAKRIDGE OR 97463

2135073000500
GRAY BETTY J
47171 WESTFIR RD
WESTFIR OR 97492

2135180000911
HANKINS RICHARD P & JANICE I
47070 AIRPORT RD
OAKRIDGE OR 97463

2135180000912
HAYDEN STEVEN EUGENE
10916 FENTON CIR
WESTMINISTER CO 80020

2135073001400
HAYWARD HELEN Y
PO BOX 292
WESTFIR OR 97492

2135073000300
HENDERSON LEON EARL
47155 WESTFIR RD
WESTFIR OR 97492

2135073002800
*KING EDWARD J
30414 LE BLEU RD
EUGENE OR 97405

2135073002100
MIKKOLA CHERYL J
47066 WESTFIR RD
WESTFIR OR 97492

2135180000913

MILLER MARVIN
47022 AIRPORT RD
OAKRIDGE OR 97463

2135073001700
NEIL & SALLY FRIEDMAN JOINT TRUST
47094 WESTFIR RD
WESTFIR OR 97492

2135073000400
NEWLAND INVESTMENTS LLC
3895 VINE MAPLE
EUGENE OR 97405

2135073001000
NIBBLETT NORMAN D & BONNIE J
47198 WESTFIR RD
WESTFIR OR 97492

2135073001300
OLSON BRIAN J
727 W HIGH ST
STAYTON OR 97383

2135073002000
PETERSON ALAN D & JODI M
PO BOX 50245
EUGENE OR 97405

2135073000900
PRZYBYSZ CHRIS P & JAMIE L
47202 WESTFIR RD
WESTFIR OR 97492

2135074000132
RALPH CHRISTENSEN
PO BOX 10667
EUGENE OR 97440

2135180000903
REYNOLDS BERNARD R & C J
76579 AIRPORT RD
OAKRIDGE OR 97463

2135073000200
SHEARER RICHARD A & AMY J
47147 WESTFIR-OAKRIDGE RD
WESTFIR OR 97492

2135073001900
SNYDER WILLIAM J & TERESA A
PO BOX 353
WESTFIR OR 97492

2135073002600
STONE JOEL F & RUTHANNE
PO BOX 361
WESTFIR OR 97492

2135180000906
SULLIVAN FAMILY TRUST
3602 JEFFERSON AVE
REDWOOD CITY CA 94062

2135073001600
TIGER MOUNTAIN TRUST
1381 PARK TERRACE AVE
LAKE HAVASU CITY AZ 86404

2135180000901
TOMLIN LIVING TRUST
47634 TELLER RD
OAKRIDGE OR 97463

2135073002300
WATTERS COLIN B
47054 WESTFIR RD
WESTFIR OR 97492

2135073002200
WEBER STEPHEN H
PO BOX 243
WESTFIR OR 97492

2135073001200
WILLEY JAMES M & BARBARA A
47158 WEST FIR RD
WESTFIR OR 97492

LAW OFFICE OF BILL KLOOS
*KIM O'DEA
375 W 4TH AVE STE 204
EUGENE OR 97401

LANDWATCH LANE COUNTY
PO BOX 5347

EUGENE OR 97405

LANDWATCH LANE COUNTY
BOB EMMONS
40093 LITTLE FALL CREEK RD
FALL CREEK OR 97438

OREGON DEPT OF AERONAUTICS
PLANNING
3040 25TH ST SE
SALEM OR 97310-0100

HAZELDELL RURAL FIRE DISTRICT
PO BOX 717
OAKRIDGE OR 97463

DEPARTMENT OF ENVIRONMENTAL QUALITY
EUGENE ADMINISTRATIVE OFFICE
165 E 7TH AVE STE 100
EUGENE OR 97401

BONNEVILLE POWER ADMINISTRATION
TERR/ALVERY
86000 HWY 99 SOUTH
EUGENE OR 97405

MAX BAKER
PO BOX 490
LOWELL OR 97452

EWEB

TRANSPORTATION PLANNING

COUNTY ROAD MAINTENANCE

STATE FIRE MARSHAL

LAND MANAGEMENT DIVISION

Date Received:

APPEAL OF A TYPE II DECISION

PUBLIC WORKS DEPARTMENT 3050 NORTH DELTA HIGHWAY, EUGENE OR 97408
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only, FILE # CODE: HOAPPEAL FEE: $250

Appellant: LWLC

Mailing address: PO Box 5347 Eugene 97405

Phone: 541 517 4459 Email: lsv1953@gmail.com

Signature: Kassi Angel

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____

LOCATION (subject property)

21 35 07 30 02900

Assessor's Map and Tax Lot

REQUIRED SUBMITTALS. A notice of appeal must be filed with the Director prior to the end of business (4 pm PST) on the 12th day after the date the notice of decision is mailed.

Please note that your appeal application will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). Failure to address all appeal requirements of Lane Code 14.080(1)(a) through (c) may result in the appeal being rejected.

1. A copy of the decision being appealed, with the department file number: PA2005064 and date of the decision Jan 27, 2021
2. The $250 appeal fee, payable to Lane County.
3. The appeal deadline, as stated in the Director's Decision: Feb. 8 2021
4. Address each of the following:
   a. State how the appellant is a person who is entitled to written notice under LC 14.060 or a person who is adversely affected or aggrieved by the application:

   ☐ I am a person entitled to receive the Notice of Decision per LC 14.060

   ☑ I am adversely affected or aggrieved by the application because (explain):
   statement attached

See Page 2, appeal form continued. →

b. Please provide a written statement explaining the reason(s) why the Director's decision was made in error or why the Director should reconsider the decision. Please explain the issues being raised on appeal with sufficient specificity to afford the approval authority the opportunity to respond to each issue raised (attached a separate letter if necessary).

attached

c. Provide an explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration (attach a separate letter if necessary):

- ☐ The Director exceeded their jurisdiction;
- ☐ The Director failed to follow the procedure applicable to the matter;
- ☐ The Director rendered a decision that is unconstitutional; or
- ☑ The Director misinterpreted the Lane Code or Lane Manual, state law or federal law, or other applicable standards and criteria.
- ☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

statement attached

5. Include any other additional information in support of your appeal.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date:	JAN 27 2021
Department File:	**509-PA20-05064**
Owner/Applicant:	E.J.K. Investments
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

Enclosed is a vicinity map and site plan that shows the proposed location of the dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report can be made available electronically at no cost, and copies will be provided at reasonable cost. The Lane County Land Management Division representative to contact is **Shawna Adams** at **(541) 682-8904** or **shawna.adams@co.lane.or.us**.

This decision will become final at 4 P.M. on FEB 08 2021 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information along with all of the materials and information required in the appeal form, the appeal fee, and all materials required by LC 14.080(1).
2. Submit the completed appeal to the Planning Director so that the Director receives it prior to the date and time that the decision becomes final (see above deadline). The Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.
3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals (LUBA).

Prepared by: Shawna Adams, Senior Planner **Date:** JAN 27 2021

Authorized by: Amber Bell, Planning Director **Date:** JAN 27 2021

EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Exhibits below are mailed to the Applicant only. Copies are available upon request. Please contact staff at (541) 682-6911.

Exhibit D: Staff Report
Exhibit E: Lane County Transportation Planning Referral Response, dated 07/10/2020
Exhibit F: LandWatch Lane County Comments, received April 16, 2020
Exhibit G: BPA comments and correspondence, dated 4/14/2020, 4/16/2020, 4/20/2020, 4/27/20
Exhibit H: DOA comments and correspondence, dated 3/26/2020 & 11/9/2020
Exhibit I: Neighbor Comments, received 3/30/2020 & 4/2/2020
Exhibit J: Applicant's Supplemental Information, received 9/29/2020, 11/23/2020
Exhibit K: Additional County GIS LiDAR & Contour Maps
Exhibit L: Farm Use and Forest Management Easement

LANDWATCH
LANE COUNTY
Protecting Our Natural Heritage
From the Coast to the Cascades
P.O. Box 5347 • Eugene, OR 97405 • (541) 741-3625 • www.landwatch.net

February 8, 2021

LandWatch Lane County is a 501(c)(3) tax exempt, nonprofit organization dedicated to protecting Lane County's water, soils and air so that our natural areas, farms and forests will remain vital in perpetuity.

LandWatch is committed to protecting Lane County's farms, forests and open space from urban sprawl by promoting responsible and sustainable land use policies.

The over-parcelization and development of productive resource land leads to negative impacts for commercial resource use and protection of Goal 5 resources.

LandWatch is aggrieved by the Directors recent approval of a forest template dwelling in the F2 zone because the decision does not consider the subject property is designated Major Big Game and is subject to an ESEE analysis pursuant to LUBA No. 2020-030, dated January 21, 2021.

For this reason, LWLC is an aggrieved party.

LANDWATCH
LANE COUNTY
Protecting Our Natural Heritage
From the Coast to the Cascades
P.O. Box 5347 • Eugene, OR 97405 • (541) 741-3625 • www.landwatch.net

February 8, 2021

Lane County Planning Director
LC Public Works Customer Service Center
3050 North Delta Highway
Eugene OR 97408

RE: APPEAL OF PA2005064, EJK INVESTMENTS TEMPLATE DWELLING APROVAL

JUSTIFICATION FOR APPEAL AND REQUEST FOR RECONSIDERATION

The PD decision failed to consider the subject property is designated Major Big Game. Pursuant to LUBA No. 2020-030, an ESEE analysis is required.

For this reason, LWLC respectfully requests reconsideration of the PD decision.

Thank you.

VP/BA 10/34

11/93

DO NOT SEPARATE PACKET

CERTIFICATE OF MAILING

509-PA20-05064/PA20-05066
E J K /KING/O'DEA
01/27/2021

This is to certify that I, Rachel Adams, mailed Notification of

Decision

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: JAN 27 2021

End of Comment Period: _____

Appeal Deadline: FEB 08 2021

Hearing Date: _____

Rachel Adams

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

NOTICE OF PENDING LAND USE DECISION BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date:	JAN 27 2021
Department File:	**509-PA20-05064**
Owner/Applicant:	E.J.K. Investments
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

Enclosed is a vicinity map and site plan that shows the proposed location of the dwelling.

The proposed use that could be authorized by approval of the land use application is: One single family dwelling on the subject property.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report can be made available electronically at no cost, and copies will be provided at reasonable cost. The Lane County Land Management Division representative to contact is **Shawna Adams** at **(541) 682-8904** or **shawna.adams@co.lane.or.us**.

This decision will become final at 4 P.M. on FEB 08 2021 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision. To complete this form and appeal the decision:**

1. Fill in the required information along with all of the materials and information required in the appeal form, the appeal fee, and all materials required by LC 14.080(1).
2. Submit the completed appeal to the Planning Director so that the Director receives it prior to the date and time that the decision becomes final (see above deadline). The Director will reject an appeal if it: (a) is not received prior to the date and time that the decision becomes final or (b) is incomplete.
3. To be accepted, appeals must satisfy all the requirements of Lane Code 14.080(1). A Type II decision issued by the Director for which a hearing has not been held may be appealed by a person who is entitled to written notice or any person who is adversely affected or aggrieved by the application.

Failure to raise an issue in a hearing—in person or in writing—or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals (LUBA).

Prepared by: _____ **Date:** JAN 27 2021
Shawna Adams, Senior Planner

Authorized by: _____ **Date:** JAN 27 2021
Amber Bell, Planning Director

EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Exhibits below are mailed to the Applicant only. Copies are available upon request. Please contact staff at (541) 682-6911.

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Exhibit G: BPA comments and correspondence, dated 4/14/2020, 4/16/2020, 4/20/2020, 4/27/20
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Exhibit J: Applicant's Supplemental Information, received 9/29/2020, 11/23/2020
Exhibit K: Additional County GIS LiDAR & Contour Maps
Exhibit L: Farm Use and Forest Management Easement

EXHIBIT A

CONDITIONS OF APPROVAL
509-PA20-05064

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of 509-PA20-05064 is valid for a four-year period from the final date of approval unless and extension is granted in accordance with Lane Code Chapter 14 provisions in effect at the time the request is made.

2. The dwelling must be located within the reduced 70 x110-foot approved home site area shown in **Exhibit C**.

3. The dwelling must be located at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

4. The subject properties are located within the Airport Safety Combining Zone (/AS) and the Transitional Surface of the Oakridge Airport. Development shall comply with the applicable requirements of LC 16.246. Pursuant to LC 16.246(3)(a) and (5)(e), no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

5. Complete, have notarized, and record the enclosed *Farm and Forest Management Agreement* with an attached "Exhibit A" depicting the legal description of the property (which must be recorded together with the Agreement at the Lane County Deeds and Records office).

6. Submit a stocking survey report for the subject parcel prepared by a qualified forester to the Lane County Assessor. Submit a copy of the stocking survey report to Lane County Land Management Division with evidence of receipt by Lane County Assessment and Taxation.

7. Obtain Lane County Facility Permit to verify the shared access easement approach to Airport Road is adequate to support a shared approach to multiple properties/dwellings as proposed. For more information about Facility Permits, contact 541-682-6902 or visit: https://lanecounty.org/ government/ county_departments/ public_works/right-of-way_permits/facility_permits/.

8. Any private access easements serving the subject property must comply with LC 15.055(4), (5), and (7), specifically including provisions for utilities. Submit a copy of the recorded access easement(s) demonstrating compliance with this requirement and specifically including documentation verifying legal right of use for any segments coinciding with BPA access and transmission line easements. This can be satisfied by providing a copy of BPA approval or court rulings.

9. Improve the existing roadway access Airport Road and the dwelling site to the minimum standards of LC 16.211(8)(e) and the applicable standards of Lane Code Chapter 15. The shared access easement road between Airport Road and the easternmost base of the driveway loop must be improved to road standards, with turnarounds spaced not more than 500 feet. Between the shared access easement road and the home

site, the driveway loop must be improved to driveway standards with a turnaround. As specified in LC 16.211(8)(e), Oregon Registered Professional Engineer or fire district certifications must be provided for the road and driveway grades that exceed eight percent and for any culverts or bridges.

10. Submit written verification from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, stating that the route of access for firefighting equipment from the fire station to the building site, across public roads, bridges, and driveways comply with and meet the construction standards Lane Code 16.211(8)(e) and the Fire District standards.

11. Physically establish the primary and secondary fuel breaks in compliance with Lane Code 16.211(8)(c)(i). These fuel breaks shall be maintained in perpetuity. The minimum primary safety zone surrounding the proposed dwelling shall be at least 30 feet plus the Additional Safety Zone Down Slope as applicable. The minimum secondary fuel breaks surrounding the primary safety zone shall be at least 100 feet to the extent this can be established on lands owned or controlled by the owner. Primary fuel breaks, including any Additional Safety Zone Down Slopes, must be fully accommodated on site. The approved preliminary site plan in **Exhibit C** must be revised accordingly.

12. Provide evidence to the Planning Director that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule (OAR Chapter 629). This can be satisfied by providing a copy of the Well Log for the property that complies with the requirements outlined in Lane Manual Chapter 9.160, specifically a five-hour flow test.

13. Upon completion of **conditions #5 through #12**, the applicant shall complete and submit a Land Use Application form to Verify Compliance with Conditions of Approval, with the required processing fee. **Attach to this form a copy of:**

- Signed, notarized, and recorded Farm Use and Forest Management Agreement and description of property, along with all required exhibits;
- Recorded shared access easement(s) with BPA right of use documentation;
- Approved facility permit;
- Forest stocking survey with evidence of receipt from the County Assessor;
- Well log or well constructor's report and pump test that complies with the Lane Manual 9.160;
- Verification letter from the Hazeldell Rural Fire Protection District, or written certification from an Oregon Registered Professional Engineer, regarding adequacy of access route and the adequacy of the constructed road and driveway improvements;
- A revised final Site Plan that conforms with the approved plan, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. These plans shall show the primary and secondary fuel breaks surrounding the proposed dwelling as required by Lane Code 16.211(8)(c)(i), the entire access between Airport Road and the home site, surfacing widths, turnouts, turnarounds, bridges, culverts, airport surface, easements, including BPA easements, transmission lines etc.

14. As part of the Verification of Conditions process, the access road, driveway and fuel breaks must be field inspected by Planning Office staff to verify that requirements stated in **conditions #3, #9, and #11** have been met. Failure to meet minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(e) and (c) upon first inspection may require an additional application for fuel break and road inspection, with the applicable fee, at the determination of the Planning Director.

15. Upon completion of Verification of Conditions, submit a building permit to verify that the construction of the dwelling meets current Oregon Structural Specialty Code application for the proposed dwelling, with the

appropriate deposit fee. Contact the Building Program at 541-682-4651 and the On-Site Wastewater Program at 541-682-3754 with questions regarding building and sanitation requirements.

16. In the building or placement permit application submittal, the applicant shall submit a site plan demonstrating that the parcel configuration, and the proposed dwelling, driveway, and septic system, are located consistent with the final approved site development plan, except as authorized by the Planning Director. Per Lane Code Chapter 14, modifications to the final approved site plan not within the scope of the original approval may be subject to a new Type II or Type III Modification of Approval.

The following condition shall be met prior to building permit issuance for above ground construction.

17. Prior to building permit submittal, the applicant must submit documentation demonstrating compliance with LC 16.246(3)(a) and (5)(e), with the maximum height limitation to be indicated on the building permit plans. Preliminary calculations under **Finding 28** indicate a single-story structure is feasible.

18. Prior to building permit submittal, the property owner must complete a FAA Form 7460-1 for the proposed dwelling and return to Seth Thompson, Aviation Planner at ODA and receive a Letter of Determination for the proposed construction as required by OAR 738-070-0060. Submit a copy of the completed form and letter of determination to Lane County Land Management Division at the time of building permit.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

19. The proposed dwelling shall meet the following requirements, to be indicated on the building permit plans and verified by the Lane County Building Official:

a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.
b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

20. The applicant is responsible for complying with any applicable local, state, and federal laws, including Oregon Department of State Lands (DSL) and/or Army Corps of Engineers (ACOE) wetland regulations and Oregon Department of Aviation (ODA) and Federal Aviation Administration (FAA) requirements. See **Exhibit H** for more information about ODA and FAA requirements.

21. Future development must comply with the limitations and standards of the Airport Safety Combining Zone, LC 16.246.

22. The applicant is responsible for procuring the necessary agreements with the Bonneville Power Association. Recent and past BPA communications indicate that portions of tax lots 2800 & 2900 are encumbered by an easement for high-voltage transmission lines and an access road easement. Per the BPA, these easements grant certain rights to BPA and limit the landowner's use within the easement area. A portion of BPA's rights include the right of ingress and egress, and the right to keep the easements free and clear of vegetation and buildings, sheds, fences, roads or any other type of structure. All activities planned within the BPA easement need to be reviewed by BPA prior to their occurrence. Do not build, dig or plant within the easement area without first contacting BPA. Requests for information regarding the process for reviewing proposed uses of the easement may be addressed to Janai Soto at jasoto@bpa.gov or 541/988-7409.

23. Per LC 16.005, excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and the character of soils for fill and the characteristics of parcels or lots made usable by means of fill shall be suitable for the intended purpose.

24. The subject property is within a "High" and "Moderate" landslide susceptibility area according to DOGAMI. This designation may require a geotechnical report with submittal of a building permit. Please contact the Lane County Building Department at 541-682-4651 to confirm requirements.

25. Any future naming of the proposed shared access easement road is subject to the provisions of LC 15.305 through 15.335.

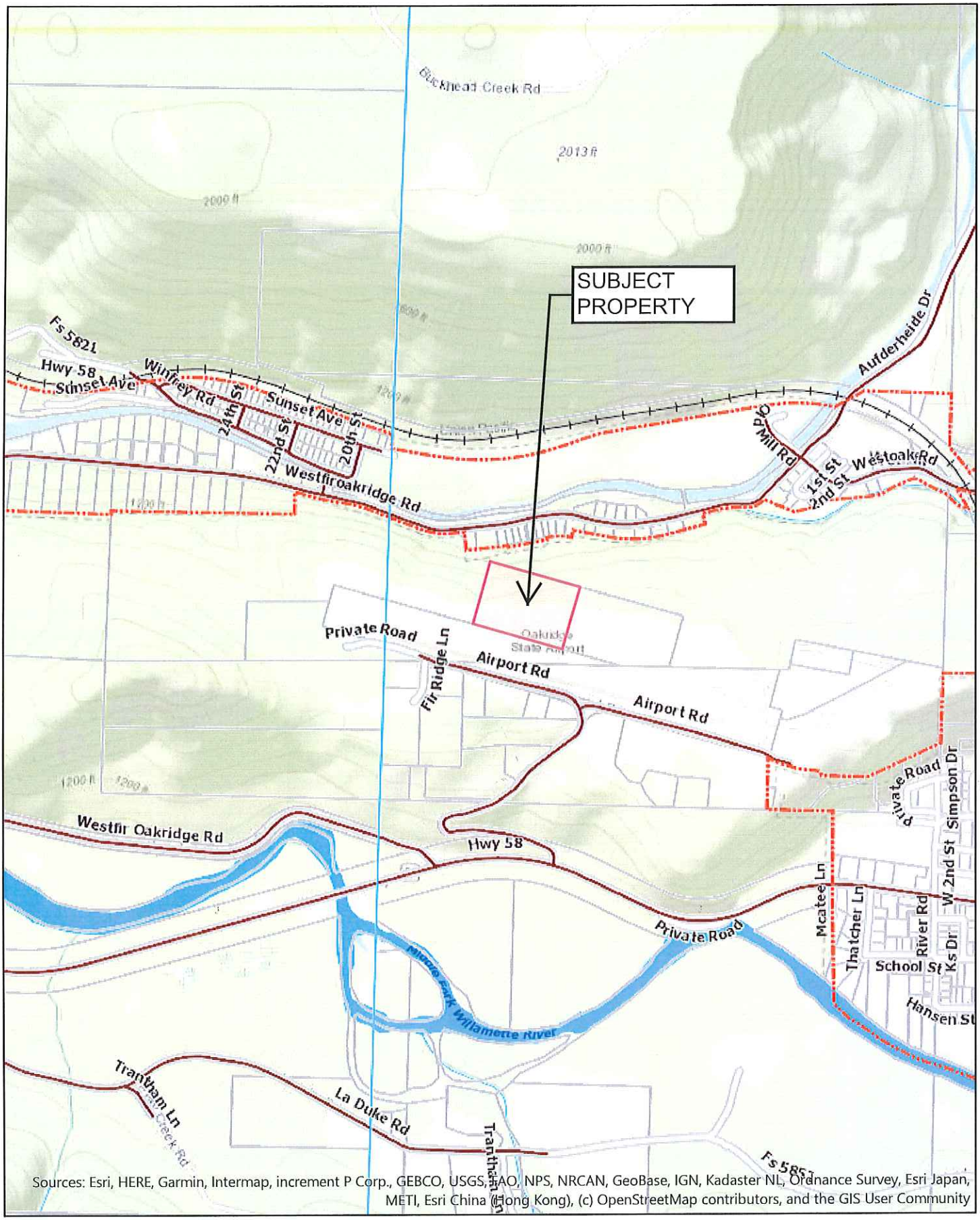
26. Storm water runoff from the subject property shall not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

27. The owner shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. It is the owner's responsibility to document that the required tree planting was done in conformance with the criteria of Lane Code 16.211(5)(e). If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry. Information regarding Department of Forestry stocking requirements can be obtained through the Department of Forestry at (541) 935-2283 (in western Lane County); (541) 726-2501 (in eastern Lane County).

28. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

> "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

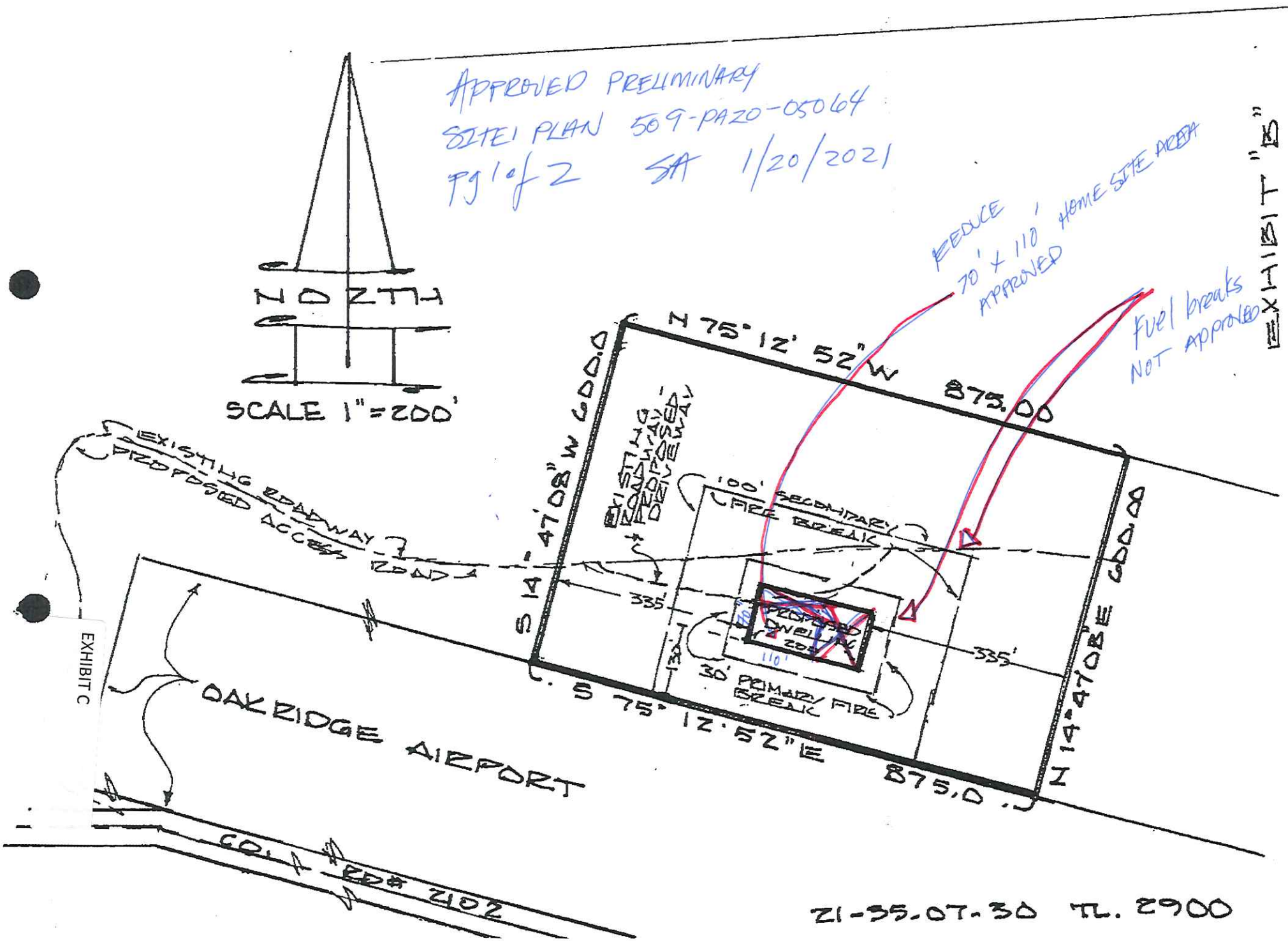
0 300 600 1,200 Feet

VICINITY MAP: PA20-05064

Lane County, Oreg

EXHIBIT B

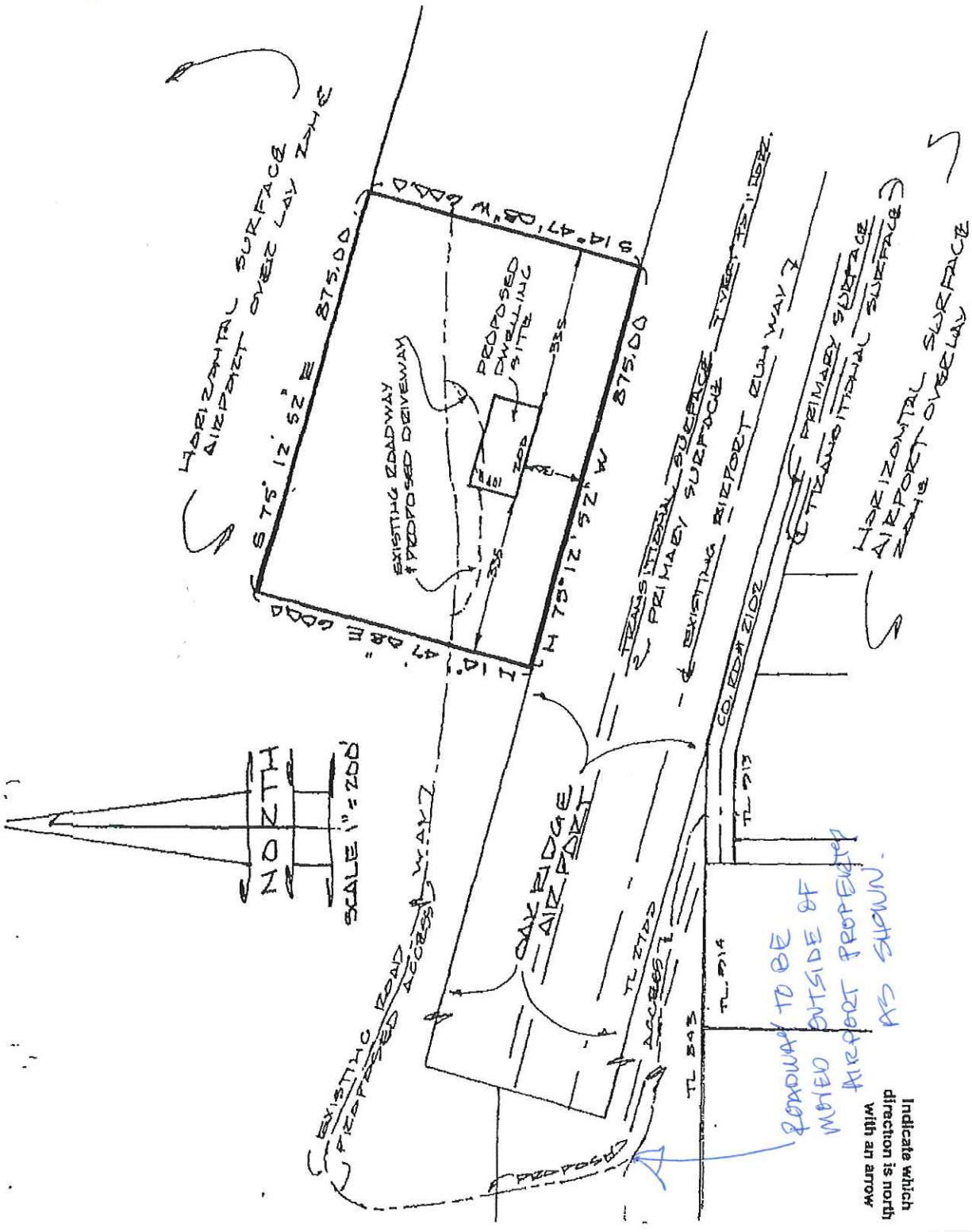
001929


APPROVED PRELIMINARY
SITE PLAN 509-PAZO-05064
PG 1 of 2 SA 1/20/2021
EXHIBIT "B"
NORTH
SCALE 1" = 200'
REDUCE 70' X 110' HOME SITE AREA APPROVED
Fuel breaks NOT APPROVED
N 75° 12' 52" W 875.00
S 14° 47' 08" W 600.0
N 14° 47' 08" E 600.0
S 75° 12' 52" E 875.0
EXISTING ROADWAY
PROPOSED ACCESS ROAD
EXISTING AND PROPOSED DRIVEWAY
100' SECONDARY FIRE BREAK
335'
335'
PROPOSED DWELLING
30' PRIMARY FIRE BREAK
110'
OAK RIDGE AIRPORT
COLT RD # 202
21-55-07-30 TL. 2900
EXHIBIT C

001930

SITE PLAN SUBMITTAL FORM

OWNER NAME: EJK INVESTMENT	Map and Taxlot #: 21-35-07-30 TL 2900	APPLICANT NAME. NICKELL LAND SURVEYING
PHONE #		PHONE # 541-878-2905
ADDRESS: 30414 LOBLEU ROAD	Scale: 1" = 200'	ADDRESS: 33225 CRAIG LOOP
ELKGENE, OR 97405		COTTAGE GROVE, OR 97424



Site Plan (Not to Scale)

EXHIBIT C

SUB-DR20-05064
APPROVED PRELIMINARY SITE PLAN - ACCESS
SM 1/20/2021
PG 2 of 2

LAND MANAGEMENT DIVISION

Date Received:

APPEAL OF A TYPE II DECISION

PUBLIC WORKS DEPARTMENT *3050 NORTH DELTA HIGHWAY, EUGENE OR 97408*
PLANNING: 541-682-3577 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only: FILE # *CODE:* **HOAPPEAL** *FEE: $250*

Appellant: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____

Appellant's Representative: _____

Mailing address: _____

Phone: _____ Email: _____

Signature: _____

LOCATION (subject property)

_____

Assessor's Map and Tax Lot

REQUIRED SUBMITTALS. A notice of appeal must be filed with the Director prior to the end of business (4 pm PST) on the 12th day after the date the notice of decision is mailed.

Please note that your appeal application will be rejected if it does not meet all the requirements of Lane Code 14.080(1)(a) through (c). Failure to address all appeal requirements of Lane Code 14.080(1)(a) through (c) may result in the appeal being rejected.

1. A copy of the decision being appealed, with the department file number:_____ and date of the decision_____
2. The $250 appeal fee, payable to Lane County.
3. The appeal deadline, as stated in the Director's Decision: _____
4. Address each of the following:
   a. State how the appellant is a person who is entitled to written notice under LC 14.060 or a person who is adversely affected or aggrieved by the application:

      ☐ I am a person entitled to receive the Notice of Decision per LC 14.060

      ☐ I am adversely affected or aggrieved by the application because (explain):

      _____

      _____

See Page 2, appeal form continued. →

b. Please provide a written statement explaining the reason(s) why the Director's decision was made in error or why the Director should reconsider the decision. Please explain the issues being raised on appeal with sufficient specificity to afford the approval authority the opportunity to respond to each issue raised (attached a separate letter if necessary).

c. Provide an explanation with detailed support specifying one or more of the following as assignments of error or reasons for reconsideration (attach a separate letter if necessary):

- ☐ The Director exceeded their jurisdiction;
- ☐ The Director failed to follow the procedure applicable to the matter;
- ☐ The Director rendered a decision that is unconstitutional; or
- ☐ The Director misinterpreted the Lane Code or Lane Manual, state law or federal law, or other applicable standards and criteria.
- ☐ Reconsideration of the decision is requested in order to submit additional evidence not available in the record at the hearing and addressing compliance with relevant standards and criteria.

5. Include any other additional information in support of your appeal.

(Version 12/2019)

EXHIBIT D

STAFF REPORT

509-PA20-05064

Department File:	**509-PA20-05064**
Owner/Applicant:	E.J.K. Investments
Agent:	Kim O'Dea – Law Office of Bill Kloos
Map & Tax Lot:	21-35-07-30-02900
Address:	N/A
Size:	12.05 +/- Acres
Base Zone:	Impacted Forest Lands (F-2)
Combining Zone:	Airport Safety Combining Zone (/AS)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff:	Shawna Adams, Senior Planner

I. PROPOSAL

A request for Director Approval of dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) and House Bill 2225.

II. BACKGROUND INFORMATION

The subject application was submitted to the Land Management Division on February 5, 2020 and was deemed complete by staff on March 6, 2020. On March 23, 2020, staff solicited referral responses from affected agencies, service providers, and surrounding property owners. Subsequently, the applicant provided extensions to the statutory timeline requirements of ORS 215.427 totaling 165 days. Copies of all written comments and applicant submittals are included in the application file for this proposal and are addressed in the staff evaluation below in the context of the approval criteria, as applicable.

III. PROPERTY DESCRIPTION

A. **LOCATION**: The subject property is identified as Tax Lot 2900 on Lane County Tax Assessor's Map 21-35-07-30. The property is located immediately north of the Oakridge Airport, and situated between the Westfir and Oakridge Urban Growth Boundaries (UGBs).

B. **PHYSICAL DESCRIPTION**: The subject 12.05-acre property is vacant except for an existing roadway and powerlines largely within an east-west Bonneville Power Administration (BPA) easement that transects the property. The property generally slopes downward to the northwest property corner with steep slopes greater than 25 percent predominating north of the BPA easement. According to County GIS data layers, the property is mapped by DOGAMI as having "high" and "moderate" landslide susceptibility and does not contain floodplain, a Class 1 stream, or wetlands. Per the applicant, the site is vegetated with small fir trees, scattered with underbrush and a few maple and oak trees. 2018 statewide imagery shows more tree cover north of the BPA easement.

C. ZONING & SURROUNDING PROPERTIES: The property is designated Forest in the Lane County Rural Comprehensive Plan, and is zoned Impacted Forest Land (F-2) consistent with that plan designation. The property is bordered to the south by the Oakridge Airport within the Airport Operations (AO-RCP) zoning district and abuts Impacted Forest Lands (F-2, RCP) zoned properties, to the north, east and west.

IV. APPLICABLE CRITERIA AND FINDINGS OF FACT

This application is evaluated pursuant to the applicable criteria found in Lane Code 16.211(5) and Lane Code 16.211(8) and other standards as applicable. The code language is in **boldface** type, followed by findings of fact.

D. Conformity with Lane Code 16.211(5):

Template Dwelling. One single-family dwelling is allowed subject to prior submittal and approval of an application pursuant to Type II procedures of LC Chapter, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) The tract upon which the dwelling will be located has no other dwellings on it.

Finding 1: The subject property on which the dwelling will be located coincides with Tax Lot 2900 of Assessor's Map and Tax Lot 21-35-07-30, does not contain a dwelling, and is owned by EKJ Investments. The tract consists only of the subject property. As per Regional Land Information Database (RLID) records, all abutting properties are under separate ownership and owned by Crown Properties LLC, Oregon State Board of Aeronautics, Edward J King, or the State of Oregon. Accordingly, this criterion is met.

House Bill 2225 includes additional tract requirements that have not yet been adopted in the Lane Code. These provisions apply directly as of January 1, 2020 and are set forth in OAR 660-06-027(6)(a). The applicable provisions of Section 2 of the House Bill applicable through January 1, 2023 further provide that no more than one dwelling may have existed, exist, or have been approved on the other lots or parcels within the former tract that existed as of January 1, 2019 and thereafter through January 1, 2021. Staff find that the RLID records and other information in the file record indicate that subject tract remains the same as it existed on January 1, 2019, in compliance with these requirements. Also see **Finding 30**.

(b) The lot or parcel upon which the dwelling will be located was lawfully created.

Finding 2: The subject parcel was verified to be a legal lot under Planning Action File No. 509-PA08-06632 and noticed as a final land use decision without appeal under 509-PA08-06329 and remains in the same configuration. This criterion is met.

(c) The lot or parcel upon which the dwelling will be located:

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least eleven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(iii)(aa) above.

(bb) At least three dwellings existed on January 1, 1993, and continue to exist on the other lots or parcels described in LC 16.211(5)(c)(iii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(iii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle.

Finding 3: The applicant chose to document the presence of at least 11 other lots or parcels that existed on January 1, 1993. This is the most rigorous of the three "tests" outlined in LC 16.211(5)(c), and it appears to be the only option given that RLID soils data and Lane County Soil Ratings for Forestry and Agriculture estimates indicate 100% of the subject parcel's soils are Nekia soils (89D & 89F capable of producing 160 cubic feet per acre per year of wood fiber. The applicant's template square is centered on the mathematical center of the tract, as verified by County GIS generated centroid measurements. Accordingly staff find that the proposal satisfies the methodology set forth in subsection (5)(c)(iii)(aa) and House Bill 2225 for tracts with less than 60 acres. Staff also note that the submitted template map is marginally different from the 1:400 scale indicated, but finds the relationship between the template and parcels appears to be preserved and an accurate measure.

The applicant has identified 17 lots or parcels that existed on January 1, 1993, as within the template area. With consideration of the current property description cards and other documentation submitted by the applicant, and available County records included in the application file, staff find that at least 12 of the 17 lots or parcels identified as within the 160-acre template appear to have been lawfully created prior to January 1, 1993. None of these parcels were wholly or partially within a UGB as of January 1, 1993 or currently. These parcels satisfy LC 16.211(5)(c)(iii)(aa) and are described in in **Figure 1**.

FIGURE 1: LOTS, PARCELS AND UNITS OF LAND WITHIN TEMPLATE AREA

Count (*dwelling)	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	21-35-07-30	2700	1972	R360D/96687
2*	21-35-18-00	914	1980	P1 of M463-79
3*	21-35-18-00	913	1980	P1 of M463-79; R1210-8227205
4*	21-35-18-00	911	1979	P2 of M316-78
5*	21-35-18-00	912	1979	P1 of M316-78
6*	21-35-18-00	906	1970	Reel 469-D/95859
7*	21-35-18-00	908	1970	LSC R1437/8652701; Deed R484/10186; LL PA87-02870 Part 2
8	21-35-18-00	903	1971	LSC R477/3455; Deed R871/70102; LL PA87-02870 Part 1
9*	21-35-18-00	904	1969	R423/52735
10*	21-35-18-00	918	1984	P2 of PA83-02253; 1291R/8412582
11	21-35-18-00	902	1968	R382/16860
12*	21-35-18-00	910	1978	P2 of M174-78

*Note: Verification of the parcels above is preliminary and does **not** constitute a determination of legal lot status.*

The applicant provided documentation for ten (10) dwellings located on the parcels identified in **Figure 1** above. These are denoted with an asterisk and include three dwellings that post-date January 1, 1993 according to the submitted documentation. As evidenced by the RLID reports and other records submitted by the applicant and 2018 aerial photography, staff verified at least five (5) of the ten dwellings existed on January 1, 1993, continue to exist on the qualifying lots partially or wholly located within the template square. The relative location of the dwellings is not relevant because the template measurement was not made according to LC 16.211(5)(c)(iii)(aa)(B). The dwellings found to satisfy LC 16.211(5)(c)(iii)(bb) are listed in **Figure 2** below.

FIGURE 2: QUALIFYING DWELLINGS WITHIN TEMPLATE DWELLING

Count	Assessor's Map	Tax Lot	Date of Dwelling on Property
1	21-35-18-00	912	1965; RLID
2	21-35-18-00	908	1954; RLID
3	21-35-18-00	904	1965; RLID
4	21-35-18-00	910	1974; RLID
5	21-35-18-00	913	1990; RLID; BP80-02322

For the reasons explained above, staff find the proposal satisfies LC 16.211(5)(c).

(d) Approval of a dwelling or manufactured dwelling shall comply with the requirements in LC 16.211(5)(d)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

Finding 4: All of the provisions of LC 16.211(5)(d)(i) through (iv) apply since the subject property is larger than ten acres. Lane County Assessment and Taxation will receive notice of this decision. Conditions of approval have been established to ensure that the owner plants a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules. As conditioned, the owner must submit to Lane County Assessment and Taxation a stocking survey report for the subject property, prepared by a qualified forester. A copy of the stocking survey report with evidence of receipt by Lane County Assessment and Taxation must be submitted to Lane County Land Management Division as part of the Verification of Conditions application process. The proposal meets this criterion as conditioned.

(e) Prior to land use clearance of a building permit for the dwelling, when the lot or parcel on which the dwelling will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(7), "Exhibit A," shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

Finding 5: The subject tract consists of the subject parcel with no contiguous property under common ownership remaining. As such, the above criterion, does not apply. Staff note that the referenced OAR was renumbered under House Bill 2225 and is now implemented in OAR 660-06-027(6)(a).

(f) Land use approval of a permit described in LC 16.211(5) above shall be valid for four years from the date of the approval.

Finding 6: This approval will be valid for four years from the final date of approval indicated on the Notice of Decision. This has been made part of **Condition #1** of **Exhibit A**.

(g) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Finding 7: As a condition of approval to ensure compliance with the above criterion, the applicant must record a Farm and Forest Management Practices Agreement with Lane County Deeds and Records office and submit a copy of the recorded agreement to Land Management Division as part of the Verification of Conditions application. This requirement must be satisfied prior to the issuance of a building permit for a single family dwelling or a placement permit for a manufactured home.

E. Conformity with Lane Code 16.211(8):

Siting Standards for Dwellings, Structures, and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h), (2) (j), and (2)(o), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

Finding 8: The applicant's site plan identifies a 100-foot by 200-foot home site area set back 130 feet from the south property line and 335 feet from the east and west property lines (**Exhibit C**). The subject property is near numerous dwellings, including dwellings within the Westfir UGB to the north and south of the Oakridge Airport. The nearest dwelling to the proposed home site appears to be approximately 600 feet to the south. The proposed home site is roughly 100 feet to the south of the existing private roadway that runs along the BPA easement, and as near to other nearby roads as other locations within the tract. The entire property is comprised of soils suitable for forestry use. Staff conclude that the portion of the property that lies south of the BPA easement where the home site is proposed is the least suitable for forestry use, due to its proximity to the BPA transmission

lines, existing roadway, and greater height limitations due to higher elevations and proximity to the airport. See **Finding 28**.

Specific to slopes, April 16, 2020 comments from LandWatch Lane County (LWLC) contend that that onsite slopes are greater than indicated by the applicant (**Exhibit F**). The applicant indicates that the home site is proposed within the most level area of the tract, that slopes within the home site do not exceed six percent, and that the home site is not within 200 feet of slopes 40 percent or greater. The submitted County LiDAR and 20-foot contour data suggest that slopes within the vicinity of the home site are greater than indicated by the applicant. As evidenced by the submitted slope data and other available County GIS LiDAR and contour data layers (**Exhibit K**), the home site is at the north and west end of the most level part of the property, predominately consists of slopes greater than six percent with significantly steeper slopes in the north part of the home site, with slopes indicated be 40 percent or greater in the northeast corner of the home site and within 30 feet of the home site's north boundary. The data do not indicate that the proposed 100 x 200 foot home site meets the above standard, but do indicate that a reduced 70 x 110-foot home site, with the northern 30 feet and western 90 feet eliminated, would comply with the above standards and allow sufficient area for home site development.

For the reasons explained above, staff find that proposal meets the above standard subject to the condition that the home site be reduced as described and indicated on the approved preliminary site plan in **Exhibit C**.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

Finding 9: The applicant indicates that the proposed home site is located in a forested area that was clear cut several years ago and is in a mostly open area with only a few scattered underbrush and replanted fir trees. For the reasons explained under **Finding 8** staff find that part of the site south of the BPA easement where the home site is proposed is the least suitable part of the site for forestry. The available slope evidence addressed under **Finding 8** and the fuel break requirements addressed under **Finding 14**, indicate that construction of a dwelling within the north part of the proposed 100 x 200-foot home site would necessitate the maximum additional safety zone downslopes to the north and northeast of the home site, with the possibility of both primary and secondary fuel breaks extending north of the BPA easement. Reducing the home site area to 70 x 110 feet as indicated on the approved preliminary site plan in **Exhibit C**, would necessitate less extensive fuel breaks and more fully accommodate required fuel breaks within the south part of the site. The home site, as reduced, is found to sufficiently minimize intrusion into forest areas. As conditioned, the proposal meets this standard.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

Finding 10: The subject property abuts only F-2 and AO zoned property. The proposed home site is set back at least 100 feet from the nearest property boundary in accordance with this standard.

(iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met; and

Finding 11: The property does not contain and is not near a designated Class 1 stream. The above standards do not apply.

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 30 feet from all property lines other than those described in LC 16.211(8)(a)(v)(aa) above; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

Finding 12: The subject property does not front a road subject to compliance with subsection (v)(aa). Otherwise, the proposed home site is located more than 30 feet from all property lines in accordance with subsection (v)(bb). **Findings 8 through 12 and Finding 13 through 17** address compliance with the remaining standards of LC 16.211(8)(a) through (d), and are incorporated here as demonstration of compliance with (cc) above. The above standard is met.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

Finding 13: As further explained under **Finding 8** and **9**, the reduced home site area is to be sited near an existing access roadway and BPA access easement in a location where fuel breaks will be minimized. As conditioned, the proposal meets this standard.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:

(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50

20	30	75
25	30	100
40	30	150

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

Finding 14: The applicant indicates that slopes within 30 feet of the home site range from three to six percent and, accordingly, the applicant's site plan shows the standard 30 foot fuel break and a secondary 100 foot fuel break on lands controlled by the owner. However, the applicants slope evidence includes County GIS LiDAR and 20-foot contour data that indicate down slopes within 30 feet of the home site are greater than assumed. See **Finding 8**. Currently available County GIS LiDAR and 1-foot contour interval data also indicates the slopes are greater than assumed (**Exhibit K**). These slope data would dictate a 30-foot primary fuel break with an additional 150-foot additional safety zone down slope to the north and northwest of the proposed 100 by 200-foot home site. While it appears that this primary fuel break and additional 100-foot secondary fuel break could be accommodated in accordance with fuel break requirements, staff do not find the proposed home site's placement in proximity to the downslopes meets the siting standards at LC 16.211(8)(a) and (b) and has conditioned approval on the reduced 110 by 70-foot home site area shown on the approved preliminary site plan in **Exhibit C**. As reduced, it appears that the downslopes within 30 feet of the home site may exceed 25 percent near the northeast corner and require an additional safety zone down slope of up to 100 feet. In any case, the evidence indicates that the required primary and secondary fuel breaks can be fully accommodated on the subject property without need for consideration of the extent abutting properties might be under common control. Compliance with fuel break has been made a condition of approval, and will be field verified as part of the Verification of Conditions application review. As conditioned, the required fuel breaks must be maintained in perpetuity and must be accurately depicted on the final site plan.

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. If the dwelling or manufactured dwelling are not within a FPD, the applicant shall provide evidence that the applicant has submitted a written request for a long term services contract with the nearest FPD and to be annexed into the FPD boundaries. If the FPD and the Planning Director determine that inclusion within a FPD or contracting for residential fire protection is impracticable, the Planning Director shall require as a condition of approval for the dwelling or manufactured dwelling that the property owner implement and maintain a Fire Protection Plan as an alternative means for protecting the dwelling or manufactured dwelling from fire hazards, consistent with the following standards:

Finding 15: The subject property is located within the Hazeldell Rural Fire Protection District. This standard is satisfied without need for a Structural Fire Protection Plan.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the

State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

Finding 16: As a condition of approval, the applicant must provide evidence that the building plans meet this requirement. This requirement will also be field verified by Lane County staff.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

Finding 17: The applicant indicates that the proposed dwelling will be served by a future on site well and has submitted well reports for several properties in the vicinity to demonstrate feasibility. Per the Lane County Hearings Official' findings in Planning Action File No. 509-PA18-05804, to verify compliance with this standard, the well must comply with ORS 537.545(1)(d) and Lane Manual 9.160. ORS 537.545(1)(d) provides that the use of the well for single or group domestic purposes in an amount not exceeding 15,000 gallons a day does not require a water use permit. As conditioned to ensure compliance with this standard, the applicant will be required to provide a well log or well constructor's report that conforms with Lane Manual 9.160 and ORS 537.545(1)(d), as applicable.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than

one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Finding 18: Home site access is proposed via a 40-foot wide shared access easement road and driveway loop off the private road. The applicant proposes to establish a shared access easement between the Airport Road terminus and driveway loop adjacent to the home site. The proposed shared access easement is to be established over Tax Lot 843, Tax Lot 103, and the subject property and allow for the improvement of the existing roadway to be improved to the road and driveway standards of LC 16.211(8)(e). Currently, the existing roadway appears to be devoted to commercial forestry and BPA use, is largely contained within the BPA easement north of the Airport, and clips the southwest corner of the Oakridge Airport. As proposed, the access will be adjusted such that it is entirely outside of the Airport property. The proposed driveway loop appears to be existing and outside of the BPA easement.

The application materials detail the route of access from the Fire station to the home site. The file record includes publically available information indicating that the Hazeldell Rural Fire Protection District contracts with the Oakridge Fire Department to provide service and the equipment used by the District.

April 16, 2020 LWLC comments cite several concerns regarding the adequacy of the submitted documentation with respect to grades, road turnarounds, and BPAs easement limitations. As further addressed under **Finding 19 through 26** below, and with consideration of **Finding 26 and 27** addressing Lane Code Chapter 15 and BPA requirements, staff find that the evidence is sufficient to demonstrate it is feasible for the road access and driveway to meet the standards of LC 16.211(8)(e). Compliance with Lane Code 16.211(8)(e) and field verification by staff has been made a condition of approval. Also, written verification of compliance from an Oregon Registered Professional Engineer or the fire district providing residential fire protection service must be provided. All road and driveway improvements, including turnarounds, turnouts, and culverts, and all easement locations must be shown on the final site plans.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

Finding 19: The applicant proposes to improve the proposed shared access easement road and driveway as necessary to comply with the above standards and further confirms that the shared access easement will be improved to road standards with a minimum 20-foot unobstructed width and a 16-foot wide gravel surface and the driveway will be improved to driveway standards with a 12-foot wide gravel surface. Staff note that the application materials provide conflicting information regarding the extent to which the Road and Driveway surfaces are already improved to standard, although it appears from aerial photos and other communications that the roadway and driveway has been established to, or near to, the widths required. Compliance with this standard is required and will be field verified as part of the Verification of Conditions application process.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not more than 500 feet. Turnarounds shall comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(dd) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Finding 20: Staff find that compliance with the above standards is feasible. The proposed dwelling is to be accessed from Airport Road via a private shared access easement road. The private road does not appear to exit onto any other roads and is therefore considered to be a dead-end road necessitating turnarounds. Notwithstanding that the application materials provide conflicting statements regarding whether turnarounds or turnouts are proposed or required along the shared access road, staff understands that the applicant proposes turnarounds spaced not more than 500 feet and maintains that these can be accommodated along the existing roadway and may also propose a turnaround at the home site. The roadway is already established, crosses other properties that appear to be in common control, if not ownership, and it appears that these turnarounds can be accommodated within the proposed shared access easement either within or outside of the proposed shared access easement can accommodate the turnarounds either within or outside of the existing BPA easement area. Given that the roadway is found to otherwise comply with the applicable standards and criteria addressed elsewhere in this report, staff find the submitted evidence is sufficient to demonstrate the required turnarounds along the roadway are feasible. Compliance with LC 16.211(8)(e) has been made a condition of approval. The above standard will be field verified by staff during the Verification of Conditions.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Finding 21: The applicant does not propose any bridges or culverts as a part of the proposed development, In the event that a bridge or culvert becomes necessary during construction of the access, it must be constructed to meet the above standard. General compliance with the applicable standards of LC 16.211(8)(e) has been made a condition of approval. As conditioned, written verification of compliance from an Oregon Registered Professional Engineer or the fire district providing residential fire protection service must be provided for any bridges or culverts within the constructed access.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon

demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.

Finding 22: Materials submitted by the applicant, including current County GIS LiDAR, aerial photo, and 20-foot contour data, and clinometer readings from Brinks Land Improvement submitted on November 23, 2020 (**Exhibit J**), evidence that the road and driveway are existing and slopes do not exceed 16 percent. Brinks Land Improvement indicate that the clinometer readings indicate no area in excess of 10%, most grades measured 3-6 percent, and no presence of inclines that would exceed 15 percent. Compliance with has been made a condition of approval with field verification by staff as part of the Verification of Conditions application process. Since the road and driveway grades exceed eight percent, the fire district or a licensed engineer must certify that the road and driveway grades are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment, and water supply.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

Finding 23: Lane County Transportation Planning has not indicated that road naming is required for the proposed dwelling. As an advisory condition, staff note that road naming is subject to the provisions of LC 15.305 through 15.335.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

Finding 24: Based on the applicant's site plan and site access plan, the looped driveway between the shared access road and home site exceed 200 feet. Therefore, turnouts spaced 400 feet or less are required along the driveway. Compliance with the above standard has been made a condition of approval.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.

Finding 25: No modification of road standards has been requested with this application or appears to be required. Any modifications or alternatives that may prove necessary or preferred, will be subject to review and approval of a new Type II dwelling application or Modification of Approval application as set forth in Lane Code Chapter 14.090.

F. Compliance with Other Development Standards

Lane Code 16.095: Compliance with LC Chapter 15, Roads

Finding 26: Access to the home site from Airport Road is proposed via a proposed 40-foot wide shared access easement road over Tax Lot 843, Tax Lot 133, and a driveway loop of the road.

See **Exhibit E** for Lane County Transportation Planning (LCTP) comments dated April 2 2020 and incorporated herein by reference. In summary, LCTP comments confirm Airport Road is Rural Local Road under the jurisdiction

and maintenance of Lane County and that Facility permit approval will be required to ensure the existing approach is adequate to support a shared approach to multiple properties and dwellings in accordance with applicable Chapter 15 requirements. LCTP staff further confirm that the private access easements serving the proposed dwelling must meet the minimum private access easement requirements of LC 15.055 (4), (5), and (7). Given that the ownerships traversed by the proposed easement appear to be represented by the same individual, Ed King, staff find that establishment and improvement of the shared access and utility easement compliance with LC 15.055 appears feasible and has been made a condition of approval along with field verification by staff as part of the Verifications of Conditions process. See Also **Finding 27**.

Bonneville Power Association (BPA) Easement

Finding 27: The subject property is traversed by an east-west Bonneville Power Administration easement that partially coincides with the proposed private road access.

LWLC suggests that the expired 2010 approval for the proposed template dwelling home site (509-PA10-05484) did not require compliance with BPA concerns and question whether BPA was notified of the subject application.

Staff note that the applicant's submittal includes December 8, 2010 correspondence in support of the feasibility of an identical access proposal for expired template dwelling approvals on Tax Lot 2900 and Tax Lot 2800 that have been resubmitted for new approvals under 509-PA20-05064 and 509-PA20-05066). The letter notes that tax lots 2800 and 2900 are encumbered by an easement for high-voltage transmission lines and an access road easements that grant certain rights to BPA and limit the landowner's use within the easement area, and necessitate review and approval by BPA for all activities planned within the BPA easement prior to their occurrence. The letter confirmed that the BPA would like to work with the landowner to locate the dwelling so it doesn't interfere with BPA's use of the access road and asked that the dwelling land use decision make note of the BPA restrictions. The expired template dwelling approvals included the advisory statements requested by BPA and an updated statement has been added as an advisory condition for the subject application.

BPA referral comments and communications with the applicant specific to the subject confirm that BPA approval will be required for use and improvement of the proposed shared access easement within the BPA easement area (**Exhibit G**). Via phone, BPA staff indicated that BPA cannot directly confirm feasibility outside of the formal BPA review process. BPA communications with the applicant indicate that additional details regarding turnaround locations, the method of improvement, and possibly a road survey by the property owner will be needed for BPA review and approval so that BPA can work with the property owner to assure safe and secure joint access to the road in the future. BPA also advised the applicant that BPA application review may be delayed due to COVID-19 work restrictions.

On September 29, 2020, the applicant submitted a revised access proposal and home site location to address BPA issues and other considerations. Staff advised the applicant that staff consideration of these application materials appeared to require an application modification if not a new application submittal according to Lane Code Chapter 14. Moreover, staff's review of the BPA communication in the record did not appear to establish that improvement of the existing access road was infeasible and, accordingly, that new construction of a 4,000 foot long shared access easement road segment adjacent to the existing roadway used by BPA would minimize impacts to forest lands as required to comply with LC 16.211(8)(a) and (b). Subsequently, the applicant has directed staff to proceed with review of the initial proposal and has provided additional evidence regarding the slope of the existing roadway.

While the BPA has not directly stated that use of the roadway is conceptually acceptable, the BPA indicates a willingness to work with the applicant to assure safe and secure joint access of the road via BPA's review process. Also, the available information appears to indicate options exist to accommodate any necessary improvements to

the existing roadway within and outside the transmission line easement area. Use of the existing roadway for access appears feasible. Verification of legal use and improvement of the existing roadway has been made a condition of approval.

Lane Code 16.246, Airport Safety Combining Zone (/AS):

(3) Use Limitations. In a/AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

Finding 28: The proposed home site is located within the Transitional Surface of the Oakridge Airport. Per LC 16.246(5)(e), the Transitional Surface extends upward and outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of seven horizontal feet to one vertical foot to the intersection with the Horizontal Surface, a horizontal plane 150 feet above the airport runway.

The application includes 2010 documentation stamped by a surveyor demonstrating that a 50-foot high structure could be developed at a specific location in the north half of the reduced 70 x 110-foot home site boundary in accordance with the above standard. Staff further note that the Primary Surface as delineated on the applicant's September 29, 2020 maps measures approximately 301 from the center of the south home site boundary and approximately 371 feet from the center of north site boundary. Per LC 16.246(2)(d), the elevation of the Oakridge runway is 1419 feet above sea level. Using the 7:1 ratio to determine the height limit at the southern home site boundary, staff calculate the Transitional Surface to be approximately 1464 MSL (301/7=43; 43+1419=1462). The surveyor documentation indicates the elevation at a high point near the center of the south home site boundary is 1435 feet above sea level. This would allow for construction of a home that is 27 feet above grade at the southern border of the home site (1462-1435=27) and increasing to height of 50 feet or more as documented in the record. Given that single-story homes are generally between 14 and 28 feet above grade, compliance with the above requirement appears feasible and has been made a condition of approval to be satisfied as part of the building permit submittal process.

Referral comments from Oregon Department of Aviation (ODA) indicate that pursuant to OAR 738-070-0060, the applicant must submit FAA Form 7460-1 documents to the ODA and receive a Letters of Determination for the proposed construction prior to issuance of any building permits for the template dwelling and provide information

about additional ODA and Federal Aviation Administration (FAA) requirements (**Exhibit H**). As conditioned to ensure compliance with the above standards, the applicant must submit a copy of the FAA Form and Letter of Determination at the time of building permit. The applicant is advised that the ODA will also require post construction documentation.

Lane Code Chapter 16.005(2) - Use of a Development - Landslide Hazards

Finding 29: April 16, 2020 LWLC comments note that the home site and a portion of the access road appear to be within areas mapped by DOGAMI as having high susceptibility for landslides. Per available County GIS DOGAMI map data added to the file record, the subject property contains areas of "Moderate" and "High" landslide susceptibility areas according to DOGAMI landslide hazard maps. Depending on the location of the dwelling within the dwelling site area, these designations will or may require a geotechnical report with submittal of a building permit.

The areas mapped by DOGAMI as moderate and high landslide risk areas generally are divided along the BPA easement boundary, which bisects the north and south part of the property. The easement is developed with transmission lines and the existing roadway, which meander within and outside the south part of the easement. The mapped high landslide risk area to the north corresponds with the steepest portion of the property, where over 20 percent predominate. The moderate susceptibility area generally corresponds with the moderate slopes to the south where the home site is proposed. Contrary to LWLC's assertion, the home site is within the Moderate susceptibility area. Otherwise, the roadway generally follows the boundary between the mapped landslide risk designations, with portions in each. Based on the pixilation, staff interprets the mapped boundary to be generalized. Otherwise, driveway and roadway are within areas or follow contours where slopes are less than 16 percent according to available contour data and LiDAR data in the file record. Clinometer readings reported by Brinks Land Improvement indicate no inclines above 15 percent, if not 10 percent. With consideration of these data and the fact that the access is already constructed, and in the absence of evidence to the contrary, staff do not find that landslide hazard makes the development unfeasible or warrants additional measures beyond those that will be addressed as part of the building permit review process for dwelling construction.

The general requirements at LC 16.005 remain applicable and provide that excessive grading, excavation and clearing shall be avoided when detrimental to soil stability and erosion control. This requirement has been made an advisory condition of approval. The applicant also is advised to consult with Building Department staff to verify related geotechnical requirements that may be required due to the DOGAMI risk designation and slope and soil conditions. This has been made an advisory condition of approval.

House Bill 2225

Finding 30: Approval of this request is subject to compliance with the provisions House Bill (HB) 2225, as implemented in OAR 660-06-027(6)(a). Consistent with these provisions, the subject property has not been reconfigured/property line adjusted since January 1, 2019 in order to meet the template test or to qualify for dwelling. The remaining requirements of HB 2225 have been addressed in this report, as applicable.

IV. DECISION

Based upon the findings above, the application for a forest template dwelling meets the criteria of Lane Code 16.211(5), 16.211(8), and other applicable criteria. Therefore, **APPROVAL** is granted, subject to the conditions stated in **Exhibit A** of this staff report.

MAPPING & DECISION INSTRUCTIONS

509-PA20-05064

MAP NO. 21-35-07-30-02900

ADDITIONAL OWNERSHIP:

APPLICANT:
EDWARD KING

30414 LEBLEU RD
EUGENE, OR 97401

OWNER:
E J K INVESTMENTS LLC

30414 LE BLEU RD
EUGENE, OR 97405

AGENT:
KIM O'DEA - LAW OFFICE OF BILL KLOOS
375 W 4TH AVE STE 204
EUGENE, OR 97401

BASE ZONE: F2

COMBINING ZONE: /AS/NONE

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral	Decision		Referral	Decision	
☐	☐	Building	☒	☐	State Fish & Wildlife (ODFW): Valley
☐	☐	Sanitation	☐	☐	State Highway (ODOT)
☐	☐	Final Legal Lot	☒	☐	State Forestry: East
☐	☐	Rural Addressing	☐	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	☐	Flood Management	☐	☐	Dept. Land Conservation & Development (DLCD)
☐	☐	Easement Review	☐	☐	Lane Regional Air Protection Agency (LRAPA)
☐	☐	Compliance	☐	☐	Dept. of Environmental Quality (DEQ)
☐	☐	Surveyors	☐	☒	Dept. of Environmental Quality (DEQ) 1200-C
☒	☒	Transportation Planning	☐	☐	Oregon Health Division
☒	☒	County Road Maintenance	☐	☐	Water Master
☐	☐	Water Quantity/Quality	☐	☐	Division of State Lands (DSL)
☐	☒	Assessment &Taxation	☐	☐	State Parks (Certified mail)
☒	☒	State Fire Marshal	☒	☐	Dept. of Aeronautics
☐	☐	Community Organization NONE	☐	☐	CenturyLink
☒	☐	Watershed Council Middle Fork Willamette Watershe	☐	☐	Northwest Natural Gas
☒	☐	Land Watch	☐	☐	Port of Siuslaw
☐	☐	School District OAKRIDGE	☐	☐	Power Company Lane Electric
☐	☐	Water District	☐	☐	US Army Corps. of Engineers (ACOE)
☒	☒	Fire District Hazeldell Rural Fire District	☒	☐	US Fish & Wildlife (USF&W)
☒	☐	City Area of Interest (20-day notice) Westfir	☐	☐	Confederated Tribes
☐	☐	METRO Area of Interest NONE	☐	☐	State Historic Preservation Office (SHPO)
☐	☐	Environmental Health	☒	☒	Other IPs below

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:
- ☒ **Vicinity Map**
- ☒ **Site Plan**
- ☐ **Flagged Applicant's Material**

Copy and Attach Materials to Referral Notices as Instructed Above and Below:

Comments submitted by: ; JAY & GRETCHEN ANTHONY PO Box 1507 Gold Beach Or 97444?; BPA (Janai Soto, asoto@bpa.gov); ODA 3040 25TH STREET SE, SALEM, OR 97302 seth.thompson@aviation.state.or.us; MAX BAKER, PO BOX 490, LOWELL, OR 97452 (Public Water Notification Area)

Also notify: Max Baker, PO Box 490, LOWELL, OR 97452 (Public Water Notification Area)

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING
3040 N DELTA HIGHWAY | EUGENE, OR 97408

April 2, 2020

LMD FILE:	509-PA20-05064
APPLICANT:	Edward King
OWNER:	E J K Investments LLC
AGENT:	Kim O'Dea – Law Office of Bill Kloos
MAP & TAX LOT(S):	21-35-07-30-02900
ZONING:	Impacted Forest Lands Zone (/F-2)
PROPOSAL:	**A REQUEST FOR DIRECTOR APPROVAL OF A DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2), IN ACCORDANCE WITH THE 'TEMPLATE TEST' PROVISIONS OF LANE CODE 16.211(5) AND (8).**

Thank you for the opportunity to review and comment on this proposal. Please accept the following comments from Lane County Transportation Planning:

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

CONDITIONS

- Any private access easements serving the subject property must meet the requirements of Lane Code 15.055(2), (4), (5), and (7).

- Facility Permit approval will be required to ensure the existing access is adequate to support a shared approach to multiple properties/dwellings as proposed in the written statement. For more information about Facility Permits, please call 541.682.6902 or visit: https://lanecounty.org/government/county_departments/public_works/right-of-way_permits/facility_permits/

- As an informational item, stormwater runoff from the subject property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

FINDINGS

Based on the site plan, the subject property "property" is proposed to take access via an existing driveway off Airport Road. The existing access will extend to the proposed dwelling as a private access easement. Airport Road is owned and maintained by Lane County and is functionally classified as a Rural Local road. For the purpose of establishing development setbacks, the minimum right-of-way (ROW) width of Rural Local roads is 50 feet (Lane Code [LC] 15.070(1)(c)(gg)). Proposed development as conceptually shown meets this requirement.

Lane Code 15.055: Minimum Requirements for Private Access Easements

(2) When a Private Access Easement is used to provide access to a vacant lot or parcel where development is proposed, prior to land use and zoning authorization for the proposed development the following shall apply:

EXHIBIT E

(c) **The requirements specified above in LC 15.055(2)(a) through (b) shall apply only to lands outside of a County-designated Forest zone. Lands within a Forest zone shall be governed by the siting and development standards of the applicable zoning district.**

Pursuant to Lane Code 15.055(2)(c), transportation Planning defers to Land Management Division to ensure the private access easement meets the applicable siting and development standards of the Impacted Forest Lands Zone (F-2).

(4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

(5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of the grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

Compliance with LC 15.055(4), (5), and (7) must be demonstrated.

Lane Code 15.205: Facility Permits

Facility Permits are required for the placement of facilities and development within Lane County right-of-way. Facilities and development include, but are not limited to: road improvements; sidewalks; new or reconstructed driveway or road approach intersections; utility placements; excavation; clearing; grading; culvert placement or replacement; stormwater facilities; or any other facility, thing, or appurtenance [Lane Code 15.205(1)].

A review of Lane County Facility Permit records indicates that there is no record of a Facility Permit for the existing access off Airport Road.

Lane Manual 15.515: Drainage

Stormwater runoff from new private development must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches (Lane Manual 15.515). Accordingly, levels of stormwater directed off-site post-construction of the improvements must match pre-development flows. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by the roadways themselves.

ADAMS Shawna L

From: lsv1953@gmail.com
Sent: Thursday, April 16, 2020 12:37 PM
To: ADAMS Shawna L; BAUDER Jared W
Subject: King/Crown Prop. Template applications - PA20-05064, -05065, -05066

[EXTERNAL ⚠]

Shawna and Jared,

Please confirm receipt and please send Notice of Decision for the three applications noted above.

Thank you.

Lauri Segel
LWLC

- The applicant relies on the 2010 application materials for all three 2020 applications; in PA 20-05065, the application says a rectangular template map will not be used; however, the 2010 application and decision for tax lot 843 relied on a rectangular template that did not appear to be aligned with the road; that decision did not discuss the actual alignment of the rectangular template nor whether at least one of the required dwellings was on the same side of the road as the proposed dwelling

- The 2010 decisions did not require proof of slopes, and the applicant's assertions about the slopes at the time appear to understate the area of tax lots 843 and 2900 having slopes greater than 10%

- It does not appear the 2010 decisions required compliance with the BPA concerns regarding their easement that the applicant intends to use to access the three proposed dwellings; it also does not appear that BPA was sent referral notice for the 2020 planning actions

- Tax lot 2900 is within an area designated by DOGAMI mapping as having a high susceptibility for landslides; that area appears to coincide with the proposed dwelling site on tax lot 2900, and a portion of the long access easement roadway that is between tax lot 843 and 2900

- The site plans do not identify the required turnarounds with the applicable spacing

- All the parcel/dwelling count lists have errors including but not limited to siting to preliminary LLVs instead of noticed LLVs

EXHIBIT F

ADAMS Shawna L

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 2:28 PM
To: ADAMS Shawna L
Subject: FW: 509-PA20-05064 E.KING Oakridge
Attachments: O-LP-1-A-13R1_file0001_1582.pdf; 71862A-1-2.tif; Application_for_use_of_BPA_Right_of_Way.pdf

[EXTERNAL ⚠]

Hi Shawna,

Kimberly (Ed Kings attorney) emailed us on Friday requesting what's needed for her client. BPA has responded to her request fyi. Thank you~

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Sent: Monday, April 27, 2020 2:12 PM
To: kimodea@landuseoregon.com
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>; Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: RE: 509-PA20-05064 E.KING Oakridge

Kimberly,

Thank You for your inquiry into use of the BPA access road for driveway access to your clients property.

I have attached a copy of the BPA easements and the plan & profile drawing for the area crossing your clients property. BPA's Hills Creek-Lookout Point No. 1, 115 kV transmission line right of way is 100 feet in width. The deeded access road includes portions of the road that are both inside and outside the corridor width. A survey by your client locating the right-of-way boundary may be needed to assist proper siting of structures beyond the boundary.

Also attached, is a copy of BPA's land use application form. A $250.00 non-refundable fee will be required to process the application.

Your email mentioned plans to upgrade the road and bring it up to county standards. As part of the application, BPA would like to know, the equipment that will be used to do the work, what grades and turnouts are planned, what gates may be installed and whether any utilities will be undergrounded in the road. (Distances of road features from transmission structures are especially useful for analysis and can reduce the need for site visits.) This information will allow BPA to do a

EXHIBIT G

thorough analysis of safety hazards that could arise from excavation and grading work in the right-of-way, and to work with your client to assure safe and secure joint access to the road in the future.

Please note that a portion of the BPA access road crosses the airport property as it turns north from the county road. Permission from the Oregon State Board of Aeronautics may be needed to improve and use that portion of the road.

Due to COVID-19 work restrictions, applications can take longer to process than usual. Detailed plans and work descriptions greatly assist in the turnaround time for responses. Email correspondence and application submission is vital to aid response time.

Please contact Myself or Janai if you have further questions or concerns.

Respectfully,

Harley Canaday
Realty Specialist
503-230-5545 office
360-931-0631 mobile
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

Bonneville
POWER ADMINISTRATION

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 7:26 AM
To: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: FW: 509-PA20-05064 E.KING Oakridge

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Friday, April 24, 2020 2:08 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] FW: 509-PA20-05064 E.KING Oakridge

Good afternoon, Janai:

I represent Ed King on the subject properties near Oakridge. Based on our site plans, none of the proposed dwellings are within the BPA right-of-way, which appears to be 80-90'. It is not our intention to propose any dwellings within the BPA easement. In fact, no structures will be built within the BPA easement.

However, we would like to utilize the existing access road. I was under the understanding that it was an old logging road. Regardless, as part of development, it will need to be improved to County standards (16' wide; compacted gravel; 20' of cleared area). This will also benefit BPA and give better access.

Attached is a rough site plan that shows all the parcels and the location of proposed access. It is feasible for us to move the dwelling site on TL 2900 eastward, if that would alleviate your concerns. A couple detailed site plans are also included.

In any case, please let me know what we need to do to obtain permission to use the existing access road, part of which is within the BPA easement?
Further, could you clarify the location and width of the BPA easement so that we can incorporate into our site plans, please?

Thank you much,
Kim

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Tuesday, April 21, 2020 3:41 PM
To: Kimberly O'Dea <kimodea@landuseoregon.com>
Subject: RE: 509-PA20-05064 E.KING

Kim, Sounds good. You may have better luck with Janai than I did, especially if you show her the c. 2010 letter to her.

If you are unable to get something from them that confirms feasibility by Friday and would like me to hold off on the decision until that can be provided, I'll need an extension to enable that.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Kimberly O'Dea [mailto:kimodea@landuseoregon.com]
Sent: Tuesday, April 21, 2020 8:52 AM
To: ADAMS Shawna L
Subject: Re: 509-PA20-05064 E.KING

[EXTERNAL ⚠]

Thanks, Shawna. I will contact her today. Do you need an extension?

Sent from my iPhone

On Apr 20, 2020, at 3:29 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Kim, BPA comment for this template dwelling application are below. I have followed up with Janai to verify whether the situation is similar to that in 2010 where we had sufficient confirmation to make feasibility findings. It sounds like that is not the case this time- they would need more info and an application before they can confirm that use of their access for the proposed purposes is something arrangements can be made for. Please advise how you would prefer we proceed with the review.

Be well,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Monday, April 20, 2020 7:14 AM
To: ADAMS Shawna L
Subject: RE: 509-PA20-05064 E.KING

[EXTERNAL ⚠]

Yes, thank you he needs to submit an application if he plans on using our access roads in case damage is done etc…

Respectfully,

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Thursday, April 16, 2020 6:55 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] RE: 509-PA20-05064 E.KING

Thanks Janai. At this point, we just need to know that the proposed access is feasible, e.g. that BPA is amenable to an arrangement with the applicants. Is the BPA able to confirm that at this stage? If not, is that what might be 12 weeks out or does the applicant need to submit one of your applications to before you would be able to respond?

Thanks much,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Tuesday, April 14, 2020 3:27 PM
To: ADAMS Shawna L
Subject: ref:509-PA20-05064 E.KING

[EXTERNAL ⚠]

My error I apologize this will need to be approved by BPA & has not been submitted as of yet. The existing case file we have is on another E.King parcel in Lane County.

I have attached a map that reflects where our lines are it appears the landowner will need to complete one of our applications for approval before building any dwellings in our easement areas. His parcels are marked by blue dots...
Thank you~

<image001.jpg>

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Soto,Janai A (CONTR) - TERR-ALVEY
Sent: Tuesday, April 14, 2020 12:10 PM
To: 'shawna.adams@co.lane.or.us' <shawna.adams@co.lane.or.us>
Cc: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>; Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: lis case 20200165/your ref:509-PA20-05064 E.KING

Hi Shawna,

BPA currently has received a request for this development & is in the process of review for a Land use permit. Due to the Covid 19 we are currently on a telework status from home. Our current eta on the Land use applications for multiple departments to review may be extended, the normal response time is: 6-12 weeks to process. Thank you for your patience. Have a great day & stay safe.

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

AND RELEASE OF EASEMENT

The Grantor, EDWARD HINES LUMBER CO., a Delaware corporation, for and in consideration of the sum of * * * TWO HUNDRED FIFTY * * * * * * * * * * * * * * Dollars ($ 250.00 * * *), in hand paid by the UNITED STATES OF AMERICA, receipt of which is hereby acknowledged, hereby grants, bargains, sells, and conveys to the UNITED STATES OF AMERICA and its assigns, a perpetual easement and right to enter and erect, maintain, repair, rebuild, operate, and patrol one line of electric power transmission structures and appurtenant signal lines, including the right to erect such poles, transmission structures, wires, cables, and appurtenances as are necessary thereto, in, over, upon and across the following-described parcels of land in the County of Lane, in the State of Oregon, to-wit:

Tract O-LP-R-13

A strip of land 100 feet in width across the S½SE¼ of Section 7, Township 21 South, Range 3 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

Beginning at a point which is N. 41°04'40" W. 3558.3 feet from the southeast corner of Section 12, Township 21 South, Range 2 East, Willamette Meridian; thence S. 47°28' E. 2225.0 feet; thence S. 53°28'00" E. 360.0 feet; thence S. 69°39'00" E. 1141.4 feet; thence S. 88°05'00" E. 1255.5 feet; thence S. 79°16'50" E. 3472.6 feet to a point which is S. 89°14'30" W. 2475.8 feet from the north quarter corner of Section 17, Township 21 South, Range 3 East, Willamette Meridian.

The bearings of said survey line refer to Local Grid.

Tract LO-R-35

A strip of land 100 feet in width through the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

Beginning at a point in said survey line in Section 12, Township 21 South, Range 2 East, Willamette Meridian, said point being N. 41°04'40" W. 3558.3 feet from the southeast corner of said Section 12; thence S. 47°28' E. 2225.0 feet to a point; thence S. 53°28'00" E. 360.0 feet to a point; thence S. 69°39'00" E. 1141.4 feet to a point; thence S. 88° 05'00" E. 1255.5 feet to a point; thence S. 79°16'50" E. 3472.6 feet to a point in said survey line in Section 17, Township 21 South, Range 3 East, Willamette Meridian, said point being S. 89°14'30" W. 2475.8 feet from the north quarter corner of said Section 17.

The bearings of said survey line refer to Local Grid;

together with the present and future right to clear said right of way and keep the same clear of brush, timber, structures, and fire hazards, provided that fire hazards shall not be interpreted to include any growing crops other than trees; and also the present and future right to top, limb or fell all growing [illegible] and snags (collectively called "danger trees") located on land

Tract O-LP-R-13:

Width in Feet	Side of R/W	From	To
85	Northerly	West line Sec. 7, T21S, R3E, WM	Opp. SS 990+80
40	North	Opp. SS 993+15	Opp. SS 994+60
50	Northerly	Opp. SS 997+32	Opp. SS 1001+30
60	Northerly	Opp. SS 1007+20	Opp. SS 1020+00
70	Northerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM	Opp. SS 1030+00
45	South	Opp. SS 987+70	Opp. SS 991+60
40	South	Opp. SS 994+00	Opp. SS 995+00
50	Southerly	Opp. SS 997+32	Opp. SS 1001+80
50	Southerly	Opp. SS 1009+00	Opp. SS 1014+25
50	Southerly	Opp. SS 1017+50	West line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM
40	Southerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7 T21S, R3E, WM	South line Sec. 7, T21S, R3E, WM

Tract LO-R-35:

50	Northeasterly	Opp. SS 969+75	Opp. SS 973+35
85	Northeasterly	Opp. SS 975+70	East line Sec. 12, T21S, R2E, WM

and contiguous to said right of way that (a) are danger trees on the date hereof (hereinafter called "present danger trees"), or (b) become danger trees thereafter (hereinafter called "future danger trees"). The right to top, limb or fell danger trees outside of said strips (hereinafter called "additional danger trees") may only be exercised within 3 years after all present danger trees have been cut, and the UNITED STATES OF AMERICA shall pay the person who is the owner thereof at the date of cutting such additional danger trees the market value prevailing at the date of cutting under authority of the UNITED STATES OF AMERICA, such payment to be made within a reasonable period of time after they have been so cut; and

Grantor also hereby grants, bargains, sells, and conveys unto the UNITED STATES OF AMERICA, and its assigns, a permanent easement and right of way for the construction, operation, use and maintenance of roads approximately 14 feet in width (with such additional widths as are necessary to provide for cuts, fills, and turn-outs and for curves at angle points) on, over, and across the land of the Grantor in portions of the SW¼SE¼, SE¼SW¼ and Government Lot 4 of Section 7, Township 21 South, Range 3 East, and the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, W. M., Lane County, Oregon, for the following purposes, namely: the right to enter and to clear of timber, danger trees, and brush; to build, cut, fill, level, grade, drain, surface, maintain,

Bonneville Power Administration, attached hereto and by this reference, made a part hereof.

The Grantor reserves the right of ingress and egress over and across said roads and the right to pass and repass along and on said roads insofar as the same extend across the lands of the Grantor, said right to be exercised in a manner that will not interfere with the use of the roads by the UNITED STATES OF AMERICA, its employees, contractors, or assigns.

It is understood and agreed that if said roads are damaged by the UNITED STATES OF AMERICA, its employees, contractors, or assigns, the UNITED STATES OF AMERICA, subject to the availability of appropriations, or its assigns, will repair such damage. It is further understood and agreed that the Grantor may erect or maintain fences across such roads, provided adequate gates of not less than ten feet in width are installed, which may be kept locked, provided the UNITED STATES OF AMERICA is also permitted to install its own lock thereon.

TO HAVE AND TO HOLD said easement and rights unto the UNITED STATES OF AMERICA and its assigns, forever.

The Grantor covenants to and with the UNITED STATES OF AMERICA and its assigns that the title to all brush, timber, or structures existing upon the rights of way on the date hereof, and the title to all present danger trees shall vest in the UNITED STATES OF AMERICA on said date; and that title to any additional danger trees shall vest in the UNITED STATES OF AMERICA upon their being cut pursuant to the terms hereof; and that title to all future danger trees cut pursuant to the terms hereof shall remain in the owner thereof at the date of cutting; and that the consideration stated herein is accepted by the Grantor as full compensation for all damages incidental to the exercise of said easement and danger tree rights, except payment for any additional danger trees as defined hereinabove which may be cut under authority of the UNITED STATES OF AMERICA as herein provided.

The Grantor also covenants to and with the UNITED STATES OF AMERICA that Grantor is lawfully seized and possessed of the lands aforesaid; has a good and lawful right and power to sell and convey same; that same are free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

The UNITED STATES OF AMERICA, Department of the Interior, acting by and through the Bonneville Power Administrator, pursuant to the Acts of Congress approved August 20, 1937 (50 Stat. 731, 16 U.S.C. 832a, et seq.), as amended, and June 30, 1949 (63 Stat. 377, 40 U.S.C. 471, et seq.), as amended, and regulations and delegations of authority issued pursuant thereto, and as part of the consideration for the easement rights hereinabove described, does hereby remise, release and quitclaim to the Grantor all that portion of Tract LO-35 as acquired by easement dated October 10, 1960 and recorded in Reel 162 '60 D, File No. 15633, Official Records of Lane County, Oregon, which lies southerly of the above-described Tract Lo-R-35.

IN WITNESS WHEREOF, EDWARD HINES LUMBER CO. has caused this instrument to be signed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed this 18 day of July, 1968.

UNITED STATES OF AMERICA
Department of the Interior
Bonneville Power Administration

By _____
Chief, Branch of Land

EDWARD HINES LUMBER CO.

By _____
Executive Vice President

Attest _____
Asst. Sec'y.

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On this 18th day of July , 1968, before me personally appeared Joseph J. Fitzgerald to me known to be the Exec. Vice President and Estelle D. Koehn of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal the day and year last above written.

Daniel D. Kyle
Notary Public in and for the
State of Illinois
Residing at Chicago

My commission expires:
april 13, 1970

DANIEL D. KYLE NOTARY PUBLIC COOK COUNTY, ILL. (SEAL)

STATE OF OREGON)
) ss:
COUNTY OF MULTNOMAH)

On the 30th day of October , 1969 , personally came before me, a notary public in and for said County and State, the within-named John V. Mulcahy, Chief, Branch of Land, Bonneville Power Administration, to me personally known to be the identical person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

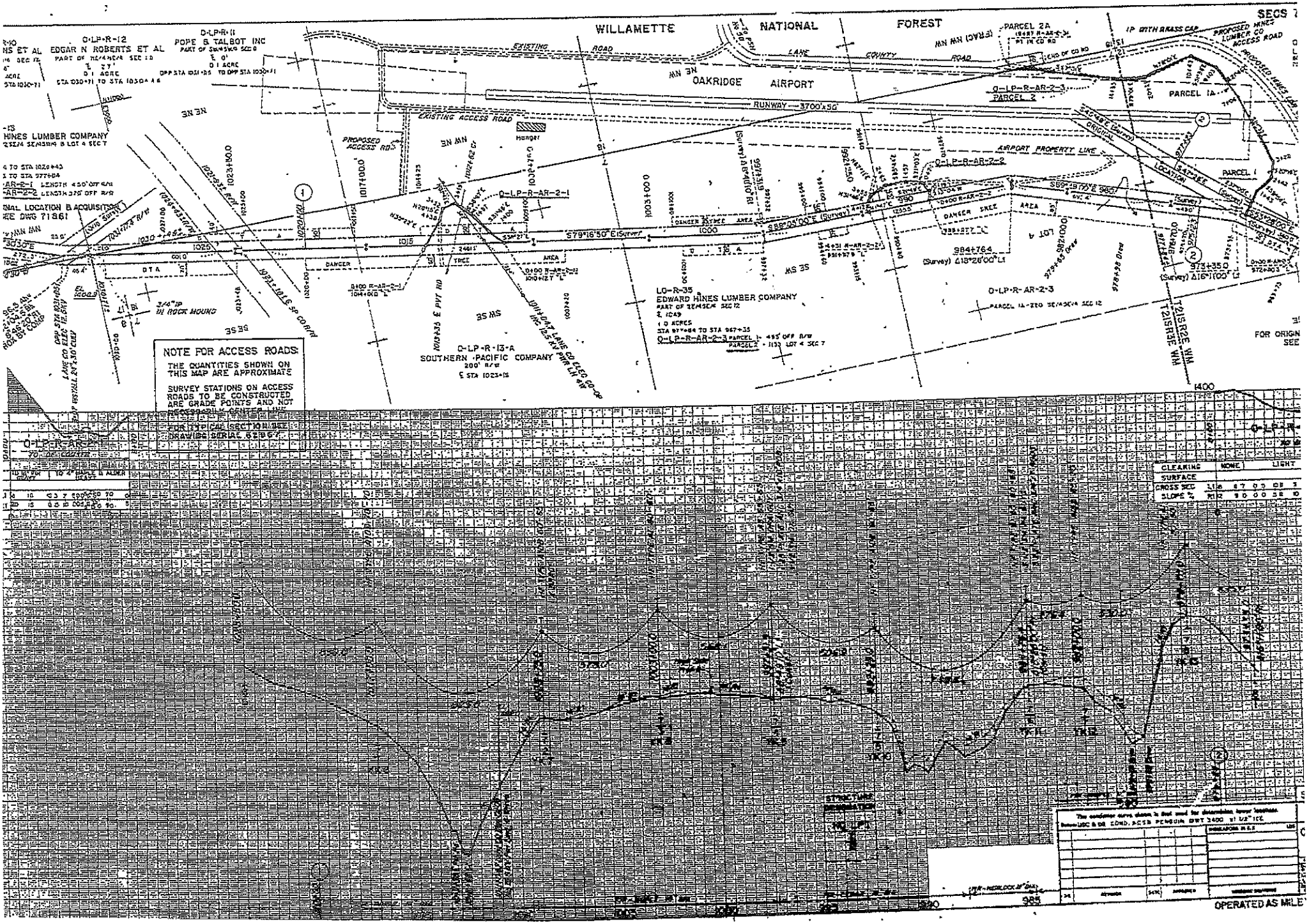
G. E. Hellman
Notary Public in and for the
State of Oregon
Residing at Portland

(SEAL)

My commission expires:
Sept. 20, 1973

The within instrument was received for the record on the day of , 19 , at M., and recorded in book on page , records of County, (State).

By


WILLAMETTE NATIONAL FOREST
OAKRIDGE AIRPORT
RUNWAY — 3700'x50'
EXISTING ROAD
EXISTING ACCESS ROAD
PROPOSED ACCESS RD
AIRPORT PROPERTY LINE
PARCEL 1A
PARCEL 2
PARCEL 2A
O-LP-R-AR-2-3
O-LP-R-AR-2-2
O-LP-R-AR-2-1
O-LP-R-13-A
SOUTHERN PACIFIC COMPANY
200' R/W
LO-R-35
EDWARD HINES LUMBER COMPANY
O-LP-R-12
EDGAR N ROBERTS ET AL
O-LP-R-11
POPE & TALBOT INC
HINES LUMBER COMPANY
PROPOSED MINES LUMBER CO ACCESS ROAD
DANGER TREE AREA
S79°16'50"E (Survey)
S88°05'00"E (Survey)
984+764
(Survey) Δ18°26'00" Lt
973+35.0
(Survey) Δ16°41'00" Lt
NOTE FOR ACCESS ROADS:
THE QUANTITIES SHOWN ON THIS MAP ARE APPROXIMATE
SURVEY STATIONS ON ACCESS ROADS TO BE CONSTRUCTED ARE GRADE POINTS AND NOT HORIZONTAL CENTER LINE
FOR TYPICAL SECTION SEE DRAWING NO. R.E.B.C.
T21S R2E. WM.
T21S R3E. WM.
FOR ORIGIN SEE
OPERATED AS MILE

[redacted] TRANSMISSION LINE AND ACCESS ROAD

AND RELEASE OF EASEMENT

[redacted] PUBLIC POWER LODGE CO.

TO

[redacted] UNITED STATES OF AMERICA

State of Oregon,
County of Lane——ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

1969 OCT 31 PM 4 32 2

Reel 458-R

Lane County OFFICIAL Records.

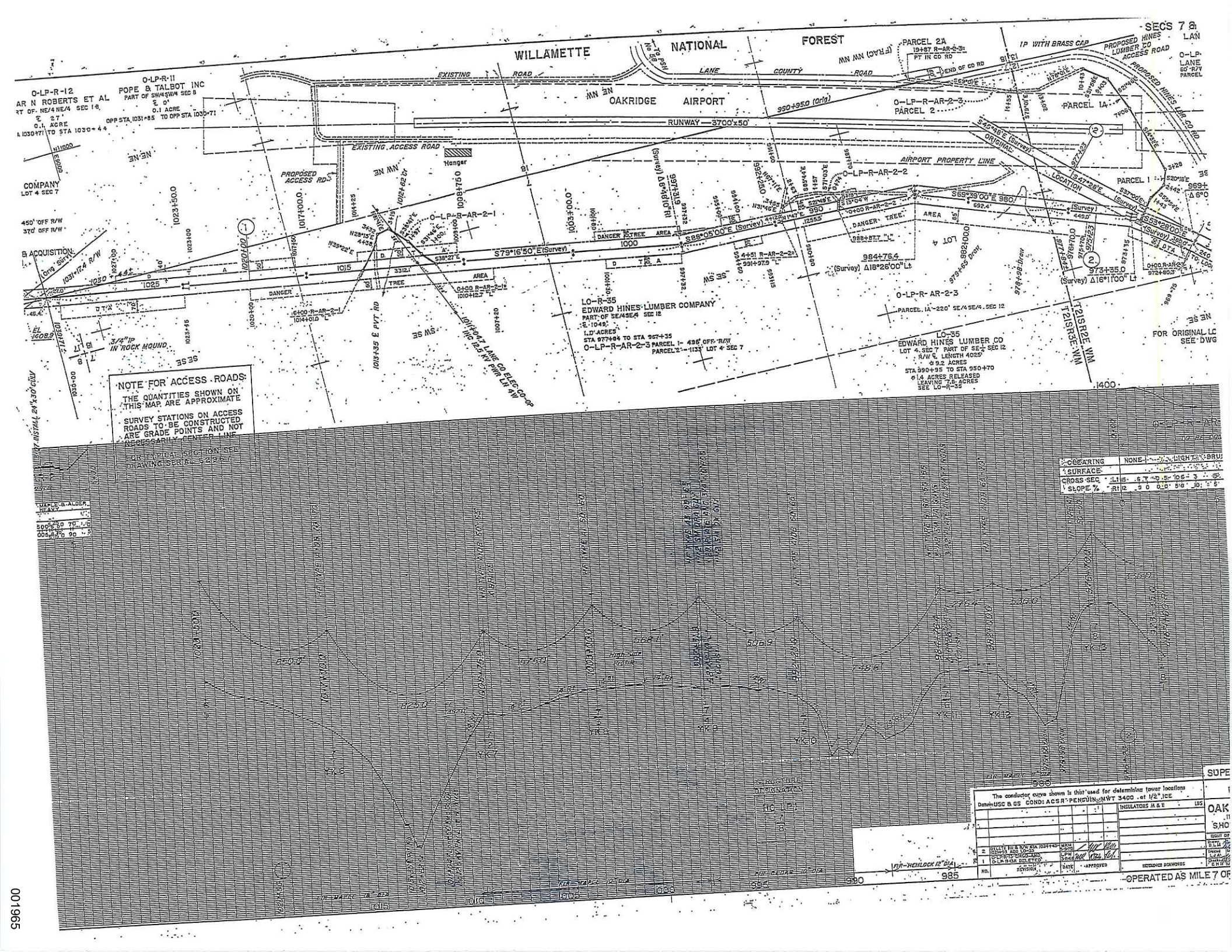
INA RANDOLPH, Director of the Department of Records & Elections.

By _____ Deputy

C29-083-05

[redacted] BONNEVILLE POWER ADMINISTRATION

0001964


WILLAMETTE NATIONAL FOREST
OAKRIDGE AIRPORT
RUNWAY — 3700'x50'
EXISTING ACCESS ROAD
PROPOSED ACCESS RD.
AIRPORT PROPERTY LINE
PROPOSED HINES LUMBER CO ACCESS ROAD
EXISTING ROAD
LANE COUNTY ROAD
O-LP-R-12
AR N ROBERTS ET AL
O-LP-R-11
POPE & TALBOT INC
O-LP-R-AR-2-1
O-LP-R-AR-2-2
O-LP-R-AR-2-3
PARCEL 1A
PARCEL 2
PARCEL 2A
Hanger
COMPANY
LOT 4 SEC 7
B ACQUISITION
450' OFF R/W
370' OFF R/W
DANGER TREE AREA
TREE AREA
DANGER
3/4"IP IN ROCK MOUND
LO-R-35
EDWARD HINES LUMBER COMPANY
PART OF SE/4SE/4 SEC 12
1.0 ACRES
STA 977+84 TO STA 967+35
O-LP-R-AR-2-3 PARCEL 1- 436' OFF R/W
PARCEL 2- 1133' LOT 4 SEC 7
LO-R-35
EDWARD HINES LUMBER CO
LOT 4, SEC 7 PART OF SE¼ SEC 12
R/W ℄ LENGTH 4025'
9.2 ACRES
STA 990+95 TO STA 950+70
1.4 ACRES RELEASED
LEAVING 7.8 ACRES
SEE LO-R-35
1018+47 LANE CO ELEC CO-OP PWR LN 4W
1013+35 ℄ PVT RD
T21SR12E WM
T21SR13E WM
FOR ORIGINAL LC SEE DWG
NOTE FOR ACCESS ROADS:
THE QUANTITIES SHOWN ON THIS MAP ARE APPROXIMATE
SURVEY STATIONS ON ACCESS ROADS TO BE CONSTRUCTED ARE GRADE POINTS AND NOT NECESSARILY CENTER LINE
FOR TYPICAL SECTION SEE DRAWING SERIAL S-2147
CLEARING NONE
SURFACE
CROSS SEC
SLOPE %
DESIGNATION
The conductor curve shown is that used for determining tower locations
Design USC & GS COND: ACSR-PENGUIN, NWT 3400 at 1/2" ICE
INSULATORS M & E
OPERATED AS MILE 7 OF

001965

BPA F 4300.03e
(07-2019)

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION (BPA)
APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

1-800-282-3713

Ask for Real Property Services or a contact person from web site.
www.bpa.gov/goto/LandsCommunity

Date:

Privacy Act Statement
Authority: 42 USC § 7101 and 50 USC § 2401
Purpose: BPA will use this information to assess whether your proposed use of our right-of-way will interfere with BPA's land rights.
Routine Uses: This information is authorized to be maintained in Privacy Act system of records DOE-24, "Land Records System." Other routine uses for which this information may be disclosed are listed in the Privacy Act system of records notice for DOE-24, which is published in the Federal Register.
Disclosure: Voluntary; however, failure to provide complete information may result in a delay or denial of your application.

Applicant is required to complete all of page 1. If not submitting an attached map, plan or sketch, page 2 is required.

Checks will not be accepted. Remit payment to BPA electronically. To make payment using Google Chrome, Firefox, or Edge browser, navigate to https://www.bpa.gov/goto/HowtoPay: select the blue hyperlink MAKE PAYMENT NOW; select the blue CONTINUE TO FORM button; under Purpose of Payment select REALTY APPLICATION FEE and fill out remaining fields with an *; select CONTINUE to submit payment. Please make sure to select the appropriate box below before making your payment. You should receive a confirmation when finished.

☐ NO APPLICATION FEE	☐ $250 APPLICATION FEE	☐ $2500 APPLICATION FEE
For individual landowners requesting personal use of BPA Right-of-Way	For developments or subdivisions. Application fee is non-refundable.	For longitudinal occupancies that require multiple miles of BPA Right-of-Way. Application fee is non-refundable.

Applicant	**Owner** *(Complete only if the applicant is not the owner.)*
1. NAME	4. NAME
2. ADDRESS, CITY, STATE, ZIP	5. ADDRESS, CITY, STATE, ZIP
3. TELEPHONE NO. EMAIL ADDRESS: FAX NO:	6. TELEPHONE NO. EMAIL ADDRESS: FAX NO:

7. LOCATION OF PROPERTY (Legal description of the property. *This information is on your title, insurance policy, courthouse deed, or your tax statement.*)
(PROVIDE A COUNTY ASSESSOR'S MAP SHOWING THE OWNER'S BOUNDARY LINES AND THE LOCATION OF USE.)

QUARTER SECTION(S)	SECTION(S)	TOWNSHIP	RANGE	COUNTY	STATE

8. PURPOSE FOR WHICH BPA RIGHT-OF-WAY/PROPERTY IS TO BE USED. Check all boxes that apply and complete the information on the following page. *(Include a map, plan or sketch if appropriate.) NOTE:* For submission of digital plans please provide a PDF version. BPA will request larger plans, if needed.

☐ **Driveway / Roadway Width**
Width _____
Material _____

PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS.

☐ **Pipelines**
Type: ☐ Gas ☐ Sewer ☐ Water
Diameter _____
Material _____
Buried Depth

☐ **Electric Service Line**
Voltage _____
Underground _____
Overhead _____

☐ **Other Uses:** _____

Narrative: Please describe your intended use in detail. In order to assure safe clearance, please describe any equipment that will be used for applied use *(including equipment intended to construct and maintain the use)*. Space is provided on page 2 for a drawing. ***IF GRADING, PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS***

9. APPLICANT NAME	10. APPLICANT SIGNATURE	11. APPLICANT TITLE

IF APPLICABLE, ATTACH NAME, COMPANY ADDRESS, AND A CONTACT PERSON FOR ALL UTILITIES INVOLVED IN PROJECT.

12. RIGHT-OF-WAY Draw in space provided below the location of the proposed use. (Identify structures and show distances and angles from BPA structures). Diamonds on the line represent BPA structures on the right-of-way. Copy the series of letters and numbers from the lower half of each BPA structure *(see example below)* and enter in "BPA Structure Identification" block. Indicate which direction is "North" in relation to the right-of-way.

BIG E – CHEM 1-81-2
BPA STRUCTURE IDENTIFICATION



PS2 1-2-A
BPA STRUCTURE IDENTIFICATION



Identify structures and show distances and angles from BPA structures

BPA STRUCTURE IDENTIFICATION

BPA STRUCTURE IDENTIFICATION

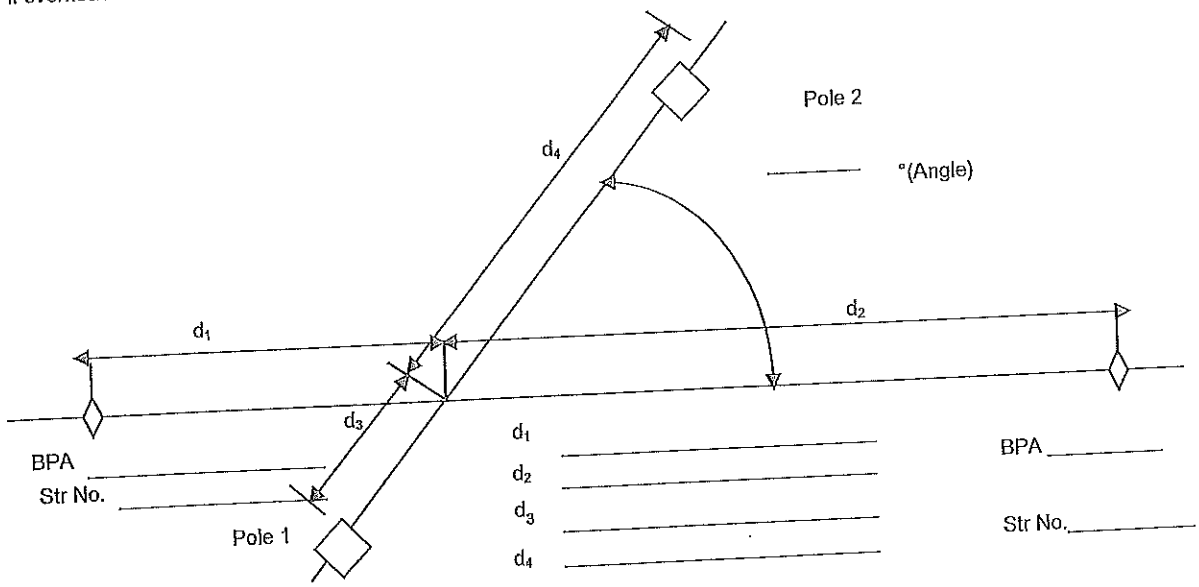
BPA F 4300.03
(07-2019)

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION (BPA)

APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

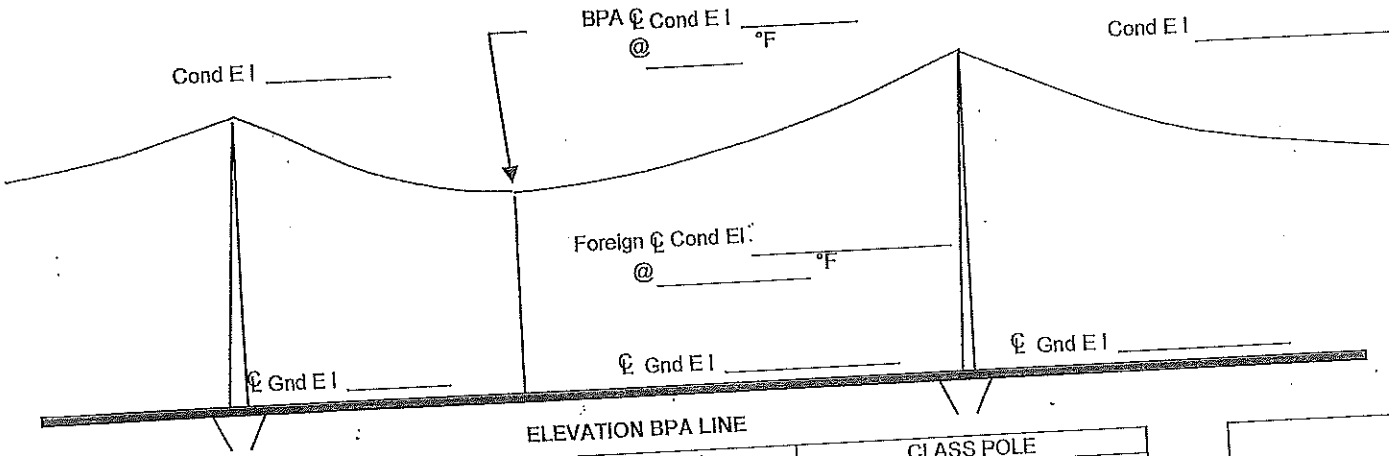
APPLICANT NAME

Complete ONLY if overhead or underground foreign line crosses an overhead BPA line. If the foreign line crosses more than one BPA line use additional sheets.



PLAN

APPLICANT



ELEVATION BPA LINE

POLES	LENGTH	DEPTH SET	CLASS POLE
POLE 1			
POLE 2			

FIXTURES	
SIZE OF CROSSARMS	
MAKE AND CATALOG NUMBER OF INSULATORS	

CONDUCTORS		
NUMBER		SIZE
KIND		VOLTAGE
MWT		LOADING
COMMENTS		

POLE 1

POLE 2

CONFIGURATIONS

BPA F 4300.03e
(07-2019)

U.S. DEPARTMENT OF ENERGY- BONNEVILLE POWER ADMINISTRATION *(BPA)*

APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

Mail your application to the location nearest to your project:

WESTERN WASHINGTON

Location and Address	Phone Number
Snohomish District Office, 914 Ave D, Snohomish, WA 98290	360.563.3640
Covington District Office, PO Box 3621, Portland, OR 97208-3621	253.638.3741
Olympia District Office, 5240 Trosper St SW, Olympia, WA 98512	360.570.4352, 360.570.4333 OR 360.570.4332
Ross Maint. Hdqt. Office, PO Box 3621, Portland, OR 97208-3621	800.836.6691

OREGON

Location and Address	Phone Number
Redmond District Office, 3655 SW Highland Ave., Redmond, OR 97756	541.516.3200
Eugene District Office, 86000 Hwy 99S, Eugene, OR 97405	541.988.7432
Salem District Office, 2715 Tepper Lane, Keizer, OR 97303	503.304.5900
Portland Office, PO Box 3621, Portland, OR 97208-3621	800.836.6619
Hood River, *(see Portland for mailing address)*	
North Bend Area, *(see Portland for mailing address)*	

EASTERN WASHINGTON, IDAHO AND MONTANA

Location and Address	Phone Number
Idaho Falls District Office, *(see Tri-Cities Pasco, WA mailing address)*	509.544.4747
Tri-Cities District Office, *(OR Side)*, 2211 North Commercial Avenue, Pasco, WA 99301	509.544.4747
Tri-Cities *(WA side)*, 2211 North Commercial Avenue, Pasco, WA 99301	503.230.5510
Spokane District Office, 2410 E. Hawthorne Rd., Mead, WA 99021-9594	509.468.3081
Grand Coulee Area, PO Box 24, Grand Coulee, WA 99133	509.378.7447
Ellensburg Area, PO Box 3621, Portland, OR 97208-3621	503.230.5611
Kalispell Maintenance District Office, 2520 US Hwy 2 East, Kalispell, MT 59901	406.751.7824

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Monday, November 9, 2020 2:51 PM
To: BAUDER Jared W
Cc: ADAMS Shawna L; PECK Heather
Subject: RE: ODA Comment: 509-PA20-05065 & 509-PA20-05066

[EXTERNAL ⚠]

Hi Jared,

Great to hear from you and thanks for reaching out. I'm doing well, thank you. I hope you are as well.

Yes, the ODA requests submittal of the FAA Form 7460-1 still be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport.

The applicant must submit FAA Form 7460-1 documents to the ODA and receive Letters of Determination for the proposed construction as required by OAR 738-070-0060, prior to issuance of any building permits for the Template Dwellings.

The applicant should note that a separate FAA Form 7460-1 must be submitted for each Template Dwelling.

Notification to the FAA is also required for each Template Dwelling and is completed through the FAA's online portal:

https://oeaaa.faa.gov/oeaaa/external/portal.jsp

The ODA Letters of Determination will provide recommendations for the proposed construction in regards to aviation and public safety.

I am happy to reach out to the applicant directly if further clarification is needed.

Thanks again and please let me know if you have further questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: BAUDER Jared W <jared.bauder@lanecountyor.gov>
Sent: Monday, November 9, 2020 11:54 AM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Cc: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: FW: ODA Comment: 509-PA20-05065 & 509-PA20-05066

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Hi Seth –

EXHIBIT H

I hope all is well with you. I just want to confirm that the ODA would still like the attached form to be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport?

If so, is their submittal of the form to you all sufficient for the County to issue building permits, or do they need to see the processing of the form through with ODA first?

Thank you much,

Jared Bauder | Planner, CFM
Land Management Division | Lane County Public Works
Customer Service Center
3050 N Delta Hwy. | Eugene, OR 97408
Office: 541.682.6949 | **Fax**: 541.682.3947
Website : www.lanecounty.org/planning

From: THOMPSON Seth [mailto:Seth.THOMPSON@aviation.state.or.us]
Sent: Thursday, March 26, 2020 4:03 PM
To: BAUDER Jared W
Subject: ODA Comment: 509-PA20-05065

[EXTERNAL ⚠]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation (ODA) to comment on Department File: 509-PA20-05065.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Thursday, March 26, 2020 3:50 PM
To: ADAMS Shawna L
Subject: ODA Comment: 509-PA20-05064
Attachments: FAA_Form_7460-1.pdf

[EXTERNAL]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation(ODA) to comment on Department File: 509-PA20-05064.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§ 77.7 Form and time of notice.

(a) If you are required to file notice under §77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the Internet.

(b) You must submit this form at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure that exceeds 2,000 ft. in height above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 45-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) or (b) of this section.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177
Fax: (817) 222-5920

Website: https://oeaaa.faa.gov

INSTRUCTIONS FOR COMPLETING FAA FORM 7460-1

PLEASE TYPE or PRINT

ITEM #1. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #2. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #3. New Construction would be a structure that has not yet been built.

Alteration is a change to an existing structure such as the addition of a side mounted antenna, a change to the marking and lighting, a change to power and/or frequency, or a change to the height. The nature of the alteration shall be included in ITEM #21 "Complete Description of Proposal".

Existing would be a correction to the latitude and/or longitude, a correction to the height, or if filing on an existing structure which has never been studied by the FAA. The reason for the notice shall be included in ITEM #21 "Complete Description of Proposal".

ITEM #4. If Permanent, so indicate. If Temporary, such as a crane or drilling derrick, enters the estimated length of time the temporary structure will be up.

ITEM #5. Enter the date that construction is expected to start and the date that construction should be completed.

ITEM #6. Please indicate the type of structure. DO NOT LEAVE BLANK.

ITEM #7. In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference" DO NOT LEAVE BLANK. NOTE: High Intensity lighting shall be used only for structures over 500' AGL. In the absence of high intensity lighting for structures over 500' AGL, marking is also required.

ITEM #8. If this is an existing tower that has been registered with the FCC, enter the FCC Antenna Structure Registration number here.

ITEM #9 and #10. Latitude and longitude must be geographic coordinates, accurate to within the nearest second or to the nearest hundredth of a second if known. Latitude and longitude derived solely from a hand-held G P S instrument is NOT acceptable. A hand-held GPS is only accurate to within 100 meters (328 feet) 95 percent of the time. This data, when plotted, should match the site depiction submitted under ITEM #20.

ITEM #11. NAD 83 is preferred; however, latitude and longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datum may be used. It is important to know which datum is used. DO NOT LEAVE BLANK.

ITEM #12. Enter the name of the nearest city and state to the site. If the structure is or will be in a city, enter the name of that city and state.

ITEM #13. Enter the full name of the nearest public-use (not private-use) airport or heliport or military airport or heliport to the site.

ITEM #14. Enter the distance from the airport or heliport listed in #13 to the structure.

ITEM #15. Enter the direction from the airport or heliport listed in #13 to the structure.

ITEM #16. Enter the site elevation above mean sea level and expressed in whole feet rounded to the nearest foot (e.g. 17'3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under ITEM #20.

ITEM #17. Enter the total structure height above ground level in whole feet rounded to the next highest foot (e.g. 17'3" rounds to 18'). The total structure height shall include anything mounted on top of the structure, such as antennas, obstruction lights, lightning rods, etc.

ITEM #18. Enter the overall height above mean sea level and expressed in whole feet. This will be the total of ITEM #16 + ITEM #17.

ITEM #19. If an FAA aeronautical study was previously conducted, enter the previous study number.

ITEM #20. Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" x 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-888-275-8747 or via internet at "http://store.usgs.gov". If available, attach a copy of a documented site survey with the surveyor's certification stating the amount of vertical and horizontal accuracy in feet.

ITEM #21.

- For transmitting stations, include maximum effective radiated power (ERP) and all frequencies.
- For antennas, include the type of antenna and center of radiation (Attach the antenna pattern, if available).
- For microwave, include azimuth relative to true north.
- For overhead wires or transmission lines, include size and configuration of wires and their supporting structures (Attach depiction).
- For each pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For buildings, include site orientation, coordinates of each corner, dimensions, and construction materials.
- For alterations, explain the alteration thoroughly.
- For existing structures, thoroughly explain the reason for notifying the FAA (e.g. corrections, no record or previous study, etc.).

Filing this information with the FAA does not relieve the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation's and zoning authorities.

Paperwork Reduction Work Act Statement: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. The OMB control number for this information collection is 2120-0001. Public reporting for this collection of information is estimated to be approximately 19 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory for anyone proposing construction or alteration that meets the criteria contained in 14 CFR 77. This information is collected to evaluate the effect of proposed construction or alteration on air navigation and is not confidential. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

Federal Regulations (14 CFR), part 77 authorizes FAA to collect this information. PURPOSE(S): FAA will use the information provided to administer the Aeronautical Study Process. ROUTINE USE(S): In accordance with DOT's system of records notice, DOT/ALL 16 Mailing Management System and DOT/FAA 826 Petitions for Exemption, Other than Medical Exemption-Public Dockets, the information provided may be disclosed to officials within the Federal government and the public in general.

Form Approved OMB No.2120-0001
Expiration Date: 02/29/2020

Please Type or Print on This Form

U.S. Department of Transportation
Federal Aviation Administration

Failure To Provide All Requested Information May Delay Processing of Your Notice

Notice of Proposed Construction or Alteration

FOR FAA USE ONLY
Aeronautical Study Number

1. Sponsor *(person, company, etc. proposing this action):*
Attn. of
Name:
Address:
City: State: Zip:
Telephone: Fax:

2. Sponsor's Representative *(if other than #1):*
Attn. of
Name:
Address:
City: State: Zip:
Telephone: Fax:

3. Notice of: ☐ New Construction ☐ Alteration ☐ Existing

4. Duration: ☐ Permanent ☐ Temporary (___ months, ____days)

5. Work Schedule: Beginning End

6. Type: ☐ Antenna Tower ☐ Crane ☐ Building ☐ Power Line
☐ Landfill ☐ Water Tank ☐ Other

7. Marking/Painting and/or Lighting Preferred:
☐ Red Lights and Paint
☐ White-Medium Intensity
☐ White -High Intensity
☐ Dual - Red and Medium Intensity
☐ Dual - Red and high Intensity
☐ Other

8. FCC Antenna Structure Registration Number *(if applicable)*:

9. Latitude: ° ' "

10. Longitude: ° ' "

11. Datum: ☐ NAD 83 ☐ NAD 27 ☐ Other

12. Nearest: City: State

13. Nearest *Public-use* *(not private-use)* or Military Airport or Heliport:

14. Distance from #13. to Structure:

15. Direction from #13. to Structure:

16. Site Elevation *(AMSL)*: ft.

17. Total Structure Height *(AGL)*: ft.

18. Overall Height (#16 + #17) *(AMSL)*: ft.

19. Previous FAA Aeronautical Study Number *(if applicable)*:
-OE

20. Description of Location: *(Attach a USGS 7.5 minute Quadrangle Map with the precise site marked and any certified survey)*

21. Complete Description of Proposal:

Frequency/Power (kW)	

Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44718. Persons who knowingly and willingly violate the notice requirements of part 77 are subject to a civil penalty of $1,000 per day until the notice is received, pursuant to 49 U.S.C., Section 46301(a)

I hereby certify that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to mark and/or light the structure in accordance with established marking & lighting standards as necessary.

Date	Typed or Printed Name and Title of Person Filing Notice	Signature

RECEIVED APR 02 2020

Date: 3-30-2020

From: Jay & Gretchen Anthony

21 35 07 30 00100

Regarding Department File: 509-PA20-05064
Applicant: EDWARD KING

Staff: Shawna Adams

Comments:

We support this application.

Gretchen Anthony

Return to: Shawna Adams, Planner
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

EXHIBIT I

Date: March, 2020

From: Neighbors in Westfir

RECEIVED MAR 30 2020

Regarding Department File: 509-PA20-05064
Applicant: EDWARD KING

Staff: Shawna Adams

Comments:

We Know it doesn't matter what we tell you or how we feel about more homes, I'm sure they already have it in the works, We say NO more houses. Progress Sucks!! Keep the Airport Clear of more homes.

Mr. King can build his Castle elsewhere. Keep Westfir Clear of more homes altogether!

Return to: **Shawna Adams, Planner**
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

ADAMS Shawna L

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Monday, November 23, 2020 8:41 AM
To: ADAMS Shawna L; BAUDER Jared W
Cc: tlanfear@pacinfo.com
Subject: King: Oakridge Access Road Grade Statement
Attachments: Brink Color Logo copy.pdf; Untitled attachment 00162.htm

[EXTERNAL ⚠]

See below from Mark Brink. He has measured grade on the existing road with a clinometer.
Please put this email into the record of PA 20-05066, PA 20-05064 and PA 20-05065.
TL 843 should go forward as supplemented, as the revision was slight;
TL 2800 and 2900 can go forward as originally filed (dwelling site and access) per conversations with Shawna.
No portion of the accessway fall within the runway.

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: Mark W. Brink [mailto:mark@brinkslandimprovement.com]
Sent: Monday, November 16, 2020 5:05 PM
To: Thom Lanfear <tlanfear@pacinfo.com>
Cc: Mark W. Brink <mark@brinkslandimprovement.com>
Subject: Oakridge Access Road Grade Statement

Thom,

To whom it may concern , We did an evaluation of the road to access lots 2800 and 2900 next to the Oakridge Airport that need to be used for access, By using a clinometer to measure the percentage of slope at any point in the road. We found no area that exceeded 10% and most areas were 3% - 6% there are no inclines that would exceed 15% on the road areas in question.

Any Questions please let me know.

Thanks,
Mark W. Brink

EXHIBIT J

Pleasant Hill, OR 97455
Cell: 541-554-5803
mark@brinkslandimprovement.com
http://brinkslandimprovement.com/

Additional Information Submitted

Date Stamp

Submitted By: Kim O'Dea

Phone Number: 541-954-0095

Email Address: kimodea@landuseoregon.com

Project Address: _____

Permit Number (BP, PA, SP, SI): _____

Submittal Description: _____

Material Submitted: _____

Please Route to Jared Baud

RECEIVED
SEP 29 2020

Type of Submittal:

☒ Additional Information

☐ Response to Plan Review Comments

☐ Revisions to Approved Plans

☐ Other: _____

☐ Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

☐ Approved ☐ Applicant contacted

How will fess be paid? ☐ In person ☐ Online ☐ By phone

mw 12/26/2018

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.0095
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM

September 25, 2020

Jared Bauder
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: King; Reissue Expired Director's Decision for Template Dwelling; 509-PA 20-05064; Map 21-37-07-30, TL ~~2p00~~ 2900

Jared:

To address BPA easement issues, to better address CAS requirements, and to better comply with required setbacks, we have slightly revised the subject site plans. Exhibits 1 – 6 of attached Exhibit NN. We have also provided supplemental narrative in support. Exhibit NN, part 1 and part 2.

Sincerely,
/s/ *Kimberly JR O'Dea*
Kimberly J.R. O'Dea

Exhibits:

NN: Updated narrative with Exhibits
Part 1: siting standards narrative
Part 2: CAS narrative
Exhibit 1: Site plan
Exhibit 2: Site plan with Lidar
Exhibit 3: Site plan with contour
Exhibit 4: Site plan with aerial
Exhibit 5: Site plan with airport surface info
Exhibit 6: Road access maps 1-4

Applicant's Statement addressing Lane Code Siting Standards for development of a dwelling on Map 21-35-07-30 Taxlot 2900

LC 16.211(8): Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h), (2) (j), and (2)(o), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through (b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

RESPONSE: The above provision requires that the standards of subsections (a) through (b) below be weighed together with the requirements of (c) and (e) below in order to determine the best site.

(a) Setbacks. Residences, dwellings, or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent;

RESPONSE:

Near other dwellings: The dwelling site is located in the southeast portion of the parcel. The area is sparsely settled with dwellings. The proposed dwelling site is located approximately 700 feet from the 4 dwellings located due south on the south side of the Oakridge Airport. The site is as close to dwellings on other tracts as it can be while maximizing proximity to the forest lands to the north.

Near existing roads: The homesite is located immediately adjacent to an existing road running under the BPA power lines to the north. See Exhibits 1 & 4 – Site Plan and Aerial.

On the most level part of the tract. The tract is level on the south side of the power lines and slopes down to the north on the north side of the lines See Exhibits 2 & 3 Based on these materials, the dwelling site is on the most level portion of the tract, especially when this provision is balanced with other provisions, such as setbacks, access, slopes, and minimal intrusion into forested areas.

On the least suitable portion of the tract for forest use: The entire area of the parcel is comprised of Soil Map Unit Nekia (89D & F) with a forest productivity ratings of at least 160 cu.ft./ac/yr. There is no ability to construct the home within an area of less forest productivity. Exhibit F. Soils are not determinative of forestry suitability, but are relevant. When balanced with other standards, the dwelling site is located on the least suitable portion of the tract for forest use.

EXHIBIT N N
Part 1

At least 30 feet from any ravine, ridge or slope greater than 40%. There are no ravines, ridges or slopes greater than 40% within 30 feet of the site. See Exhibit 2 – Detail Site Plan LIDAR.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses;

RESPONSE: Intrusion into forest areas is minimized by the placement of the dwelling in the south portion of the property between the airport and the BPA power lines.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

RESPONSE: The subject property is bordered by property zoned F-2 to the west, north, and east. Property to the south is zoned AO. The dwelling site is setback 100 feet from the east property line and 400 feet and 600 feet from the north and west property lines respectively (the directions of the F-2 properties).

(iv) (iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and

RESPONSE: There are no Class I streams on the subject property

(v) Structures other than a fence or sign cannot be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(bb) 30 feet from all property lines other than those described in LC 16.211(8)(a)(v)(aa) above; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

RESPONSE: The parcel does not border any public road right-of-way. The dwelling site is at least 30 feet from all property lines. See Site Plan. (8)(a) and (b) through (d) are addressed below. See Site Plan.

(b) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

001983

RESPONSE: The site will be accessed from Airport Road by an access road across Map 21-25-12 #843 and Map 21-35-07-40 #133 that also serves as access to the parcel to the east Map 21-35-07-30 #2800. The roadway will be constructed to county standards. Service corridors for utilities will run adjacent to the proposed roadway and driveway. Thus, the use of the proposed shared roadway to serve multiple parcels assures the amount of forestland used to site roads and services will be minimized.

The applicant believes that this standard applies only to structures other than the dwelling, as the relationship between dwellings and forestlands is already addressed under (ii). There are no other proposed structures on the property. However, even if the dwelling site is subject to this analysis, the sites are sited with all other siting standards in mind, thus reducing the amount of forest lands used. The response under (ii) is herein incorporated.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:
(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements. (aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	*Feet of Primary Safety Zone*	*Feet of Additional Safety Zone Down Slope*
0	*30*	*0*
10	*30*	*50*
20	*30*	*75*
25	*30*	*100*
40	*30*	*150*

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent

001984

RESPONSE: The site is level at the proposed homesite. The parcel slopes downward to the north on the north side of the BPS power lines. There are no slopes greater than 10% within 30 feet of the dwelling site. The applicant has provided a 30-foot primary fuel break in all directions. See Exhibit 1 - Site Plan. There are no slopes in excess of 40% within 30 feet of the home site.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

RESPONSE: The proposed dwelling site will have a secondary fuel break that extends to the south property line, east property line, and the BPA easement to the north. The secondary fuel break to the west will be 100 feet.

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district . . .

RESPONSE: The parcel is located within the Hazeldell Rural Fire Protection District.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

RESPONSE: This is instructional.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:
(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or
(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

RESPONSE: Based on well log data for nearby wells, Exhibit KK – Water Resources Report, there is sufficient proof to make a conclusion that there is a feasible domestic water supply available. The subject property is exempt under ORS 537.545, and agrees to submit the required report once the well is complete.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

RESPONSE: The subject property is within a fire district. The route of access from the Fire District located at 47592 Hwy 58 to the property is by way of a State Highway (58) for a distance of 1 mile to Airport Road (County road). Airport Road is paved for the entire ¾ mile length to get to the subject property. The proposed shared road and driveway from Airport Road to the subject property will be improved to the applicable Lane Code 16.211 fire standards See Exhibit 6.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

RESPONSE: Access to the site is from Airport Road via an existing shared easement road and a driveway that will be improved to Lane Code 16.211 standards. Exhibit 6 It is feasible to construct the road and driveway to the above county standards.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not more than 500 feet. Turnarounds shall comply with these design and construction standards:
(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or
(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and
(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

RESPONSE: Turn arounds within the road portion of the shared access are illustrated on Exhibit 6 at intervals of not more than 500 feet. A turn around will be provided at the dwelling,

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from a engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

RESPONSE: No bridges are required or existing. No new culverts are proposed. However, if any are needed, the applicant agrees to install per the above.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

RESPONSE: The proposed shared roadway and driveway can be constructed on slopes not exceeding 16%.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

RESPONSE: This is instructional.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

RESPONSE: The driveway portion of the access is less than 200 feet in length to the home site. See site plan, Exhibit 1, Exhibit 6.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

RESPONSE: Not applicable.

(9) Other Development Standards.
(a) Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian setback area. Maintenance, removal and replacement of indigenous vegetation within the riparian setback area designated for riparian vegetation protection by the comprehensive plan must comply with the provisions of LC 16.253(2) or LC 16.253(6), as applicable.

No removal of riparian vegetation is proposed for development of the dwelling.

(b) Signs.
(i) Signs shall not extend over a public right-of-way or project beyond the property line.
(ii) Signs shall not be illuminated or capable of movement.
(iii) Signs shall be limited to 200 square feet in area.

RESPONSE: No signs are proposed.

Exhibits
1. Site Plan
2. LIDAR Map
3. Contour Map
4. Aerial Photo
5. Airport Surfaces
6. Road Access Map

Applicant's Statements addressing Lane Code 16.246 Airport Safety Combining Zone requirements for development of a dwelling on Map 21-35-07-30 Taxlot 2900

LC 16.246(2) Applicability. The /AS-RCP Zone is applied to those lands adjacent to the Creswell Airport, the Cottage Grove Airport, the McKenzie Airport, the Oakridge Airport and Florence Airport which are encompassed by the surfaces set forth and described in LC 16.246(5) below and diagramed in LC 16.246(9) below. For purposes of this Chapter, the elevations of the five runways are established as follows:

(a) Cottage Grove - 641 feet above sea level.
(b) Creswell - 535 feet above sea level.
(c) Florence - 12 feet above sea level.
(d) Oakridge - 1419 feet above sea level.
(e) McKenzie - 1620 feet above sea level.

The determinations of the height of the various airport surfaces below are based on the established primary surface of the Oakridge Airport runway at an elevation of 1419' MSL.

(3) Use Limitations. In a/AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

The homesite is located underneath the Transitional Surface to the north of the Primary Surface. It is feasible to construct a dwelling on the subject property that does not penetrate the surface as described below. See analysis under the applicable Lane Code 16.246(5)(e) provision.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

It is feasible to meet these requirements when development of the property occurs. The applicant will file a Notice of Construction or Alteration (Form 7460-1) with the Federal Aviation Administration and Oregon Department of Aviation.

(4) Uses Prohibited. The area lying beneath the Approach Surface beginning at the end of the Primary Surface and extending outward a horizontal distance of 1,000 feet shall be considered to be

EXHIBIT N N
PART 2

a clear zone. Within this clear zone, no structure or object, except for fences and navigational aids approved by the airport operator, shall be erected, placed, altered, allowed to grow or be maintained above the surface of the ground.

The subject property is not located beneath the Approach Zone of the Oakridge Airport.

(5) Surface Described.

(a) Approach Surface. A surface longitudinally centered on the runway centerline, extending outward and upward from the ends of the Primary Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge.

The subject property is not located beneath the Approach Zone of the Oakridge Airport.

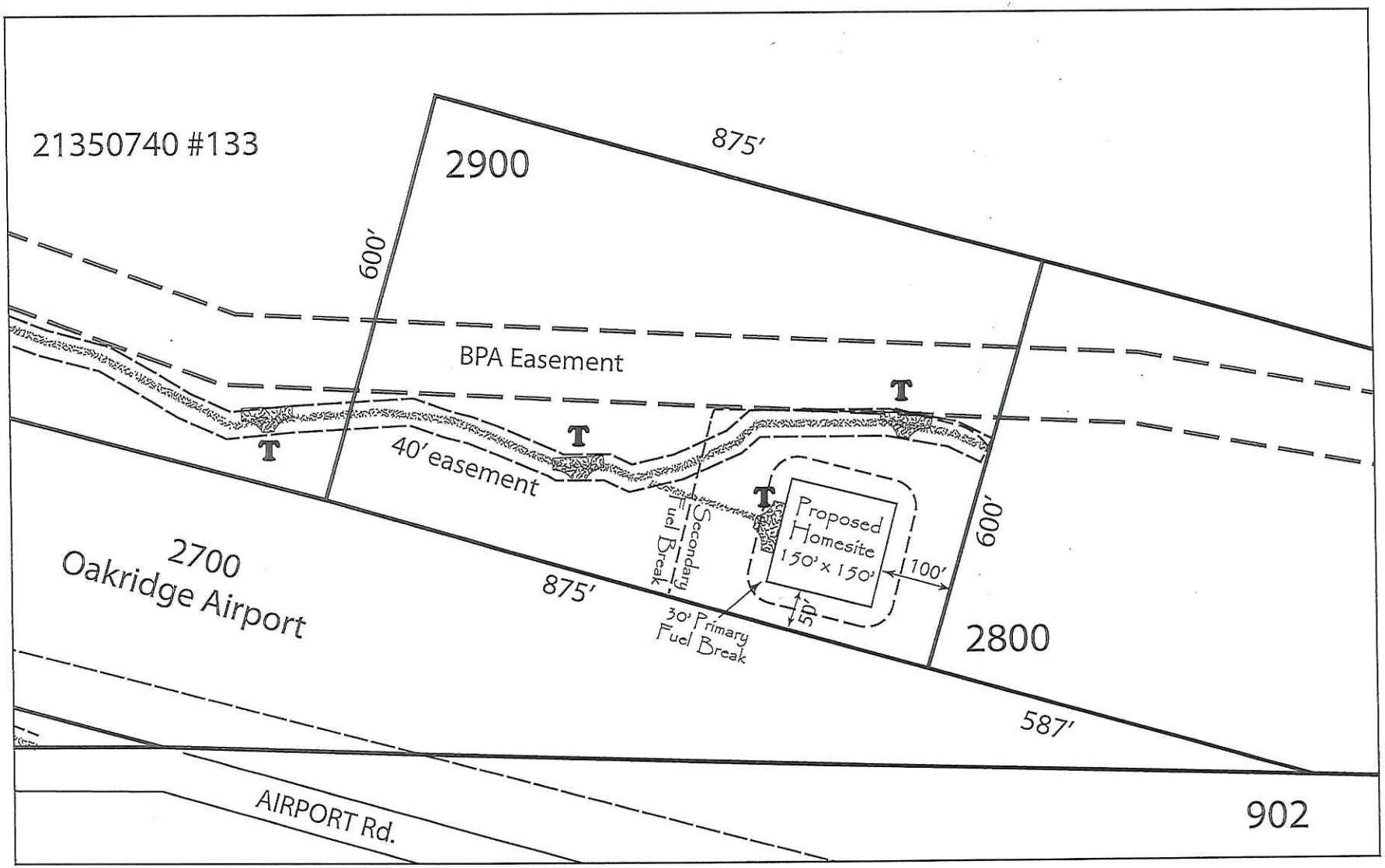
(d) Primary Surface. The Primary Surface is a plane longitudinally centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway surface and having a width of 250 feet. For purposes of this section, the Primary Surface shall be considered as having the same elevation as its respective runway as the same are specified in LC 16.246(2) above.

The proposed homesite is located 230' from the side of the primary surface. The Primary Surface is established at an elevation of 1419' MSL above.

(e) Transitional Surfaces. These surfaces extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the Primary Surface and Approach Surface to the point of intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway.

The southern boundary of the proposed is located 230' from the side of the primary surface when measured perpendicular to the runway centerline. The northern boundary of the proposed homesite is located 380 feet from the side of the primary surface when measured perpendicular to the runway centerline. Using the 7:1 ration to determine the height of the Transitional Surface at the homesite, it can be determined that the Transitional Surface is located at a height of 1451' MSL [230' / 7 = 32.8'; 32 + 1419' = 1451'] at the southern boundary of the proposed homesite. It can also be determined that the Transitional Surface is located at a height of 1473' MSL [380' / 7 = 54.3'; 54 + 1419' = 1473'] at the northern boundary of the proposed homesite. Prior information in the record established the elevation at the level homesite at 1421' MSL. This allows for the construction of a home that is 30 feet in height at the southern border of the homesite (1451' – 1421' = 30') and increasing to a height of 52 feet at the northern boundary of the homesite (1473' – 1421' = 30'). It is feasible to develop a residence in the proposed homesite location within these height limitations.

Site Plan

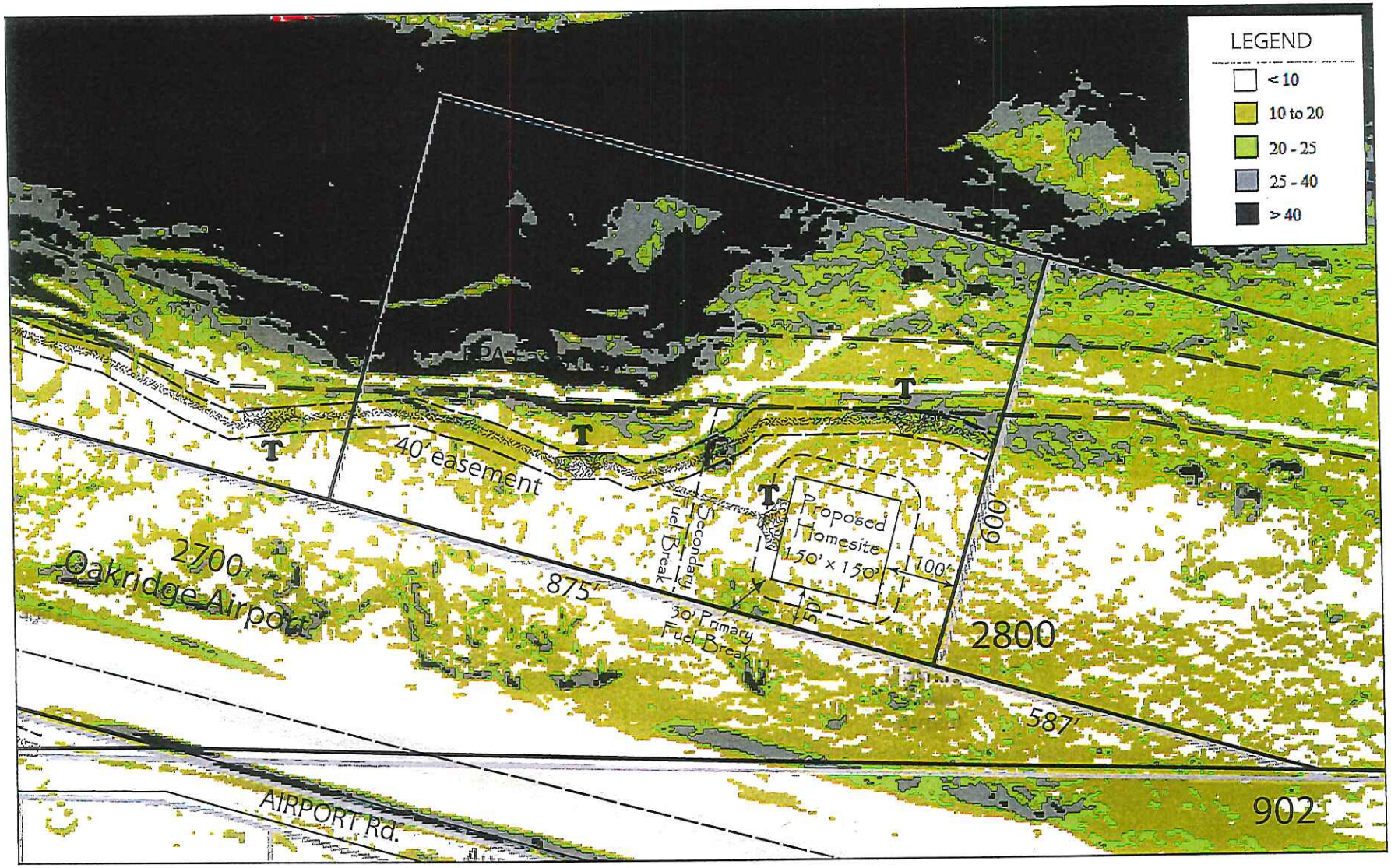


Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 1

Site Plan

LIDAR Data



scale 1" = 200'

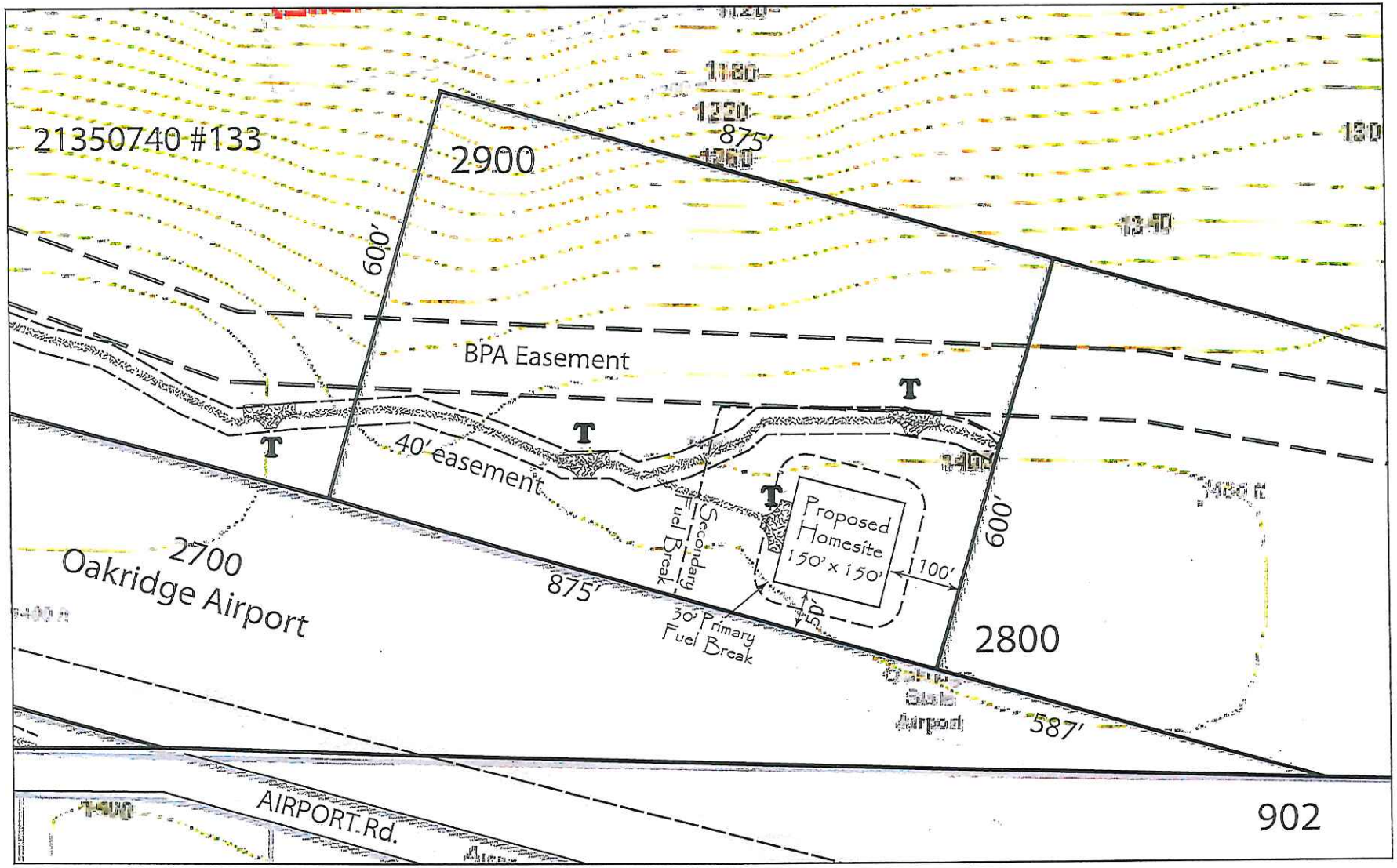
0 50 100 200 Feet

Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 2

Site Plan

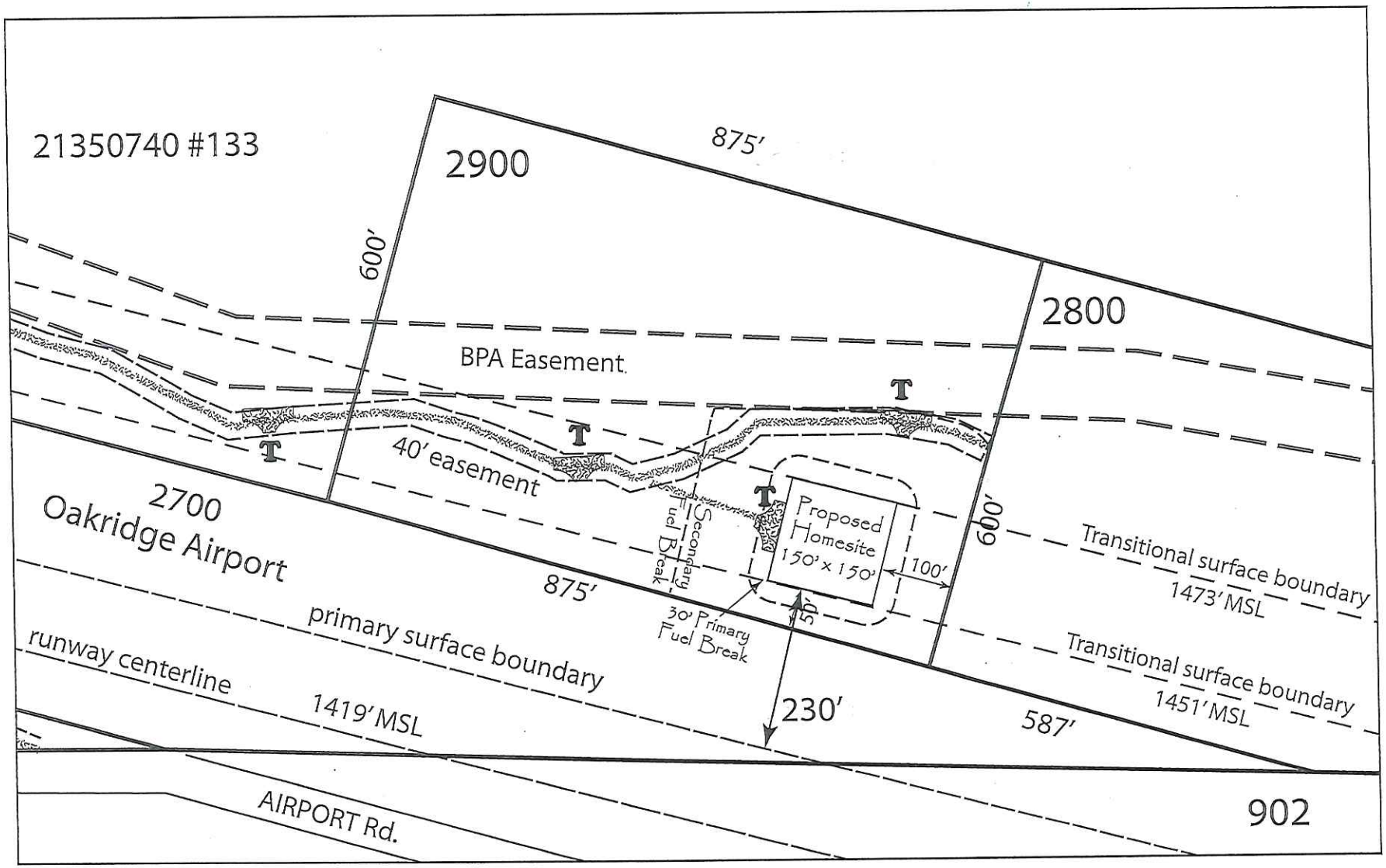
Contours



Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 3

Airport Surfaces

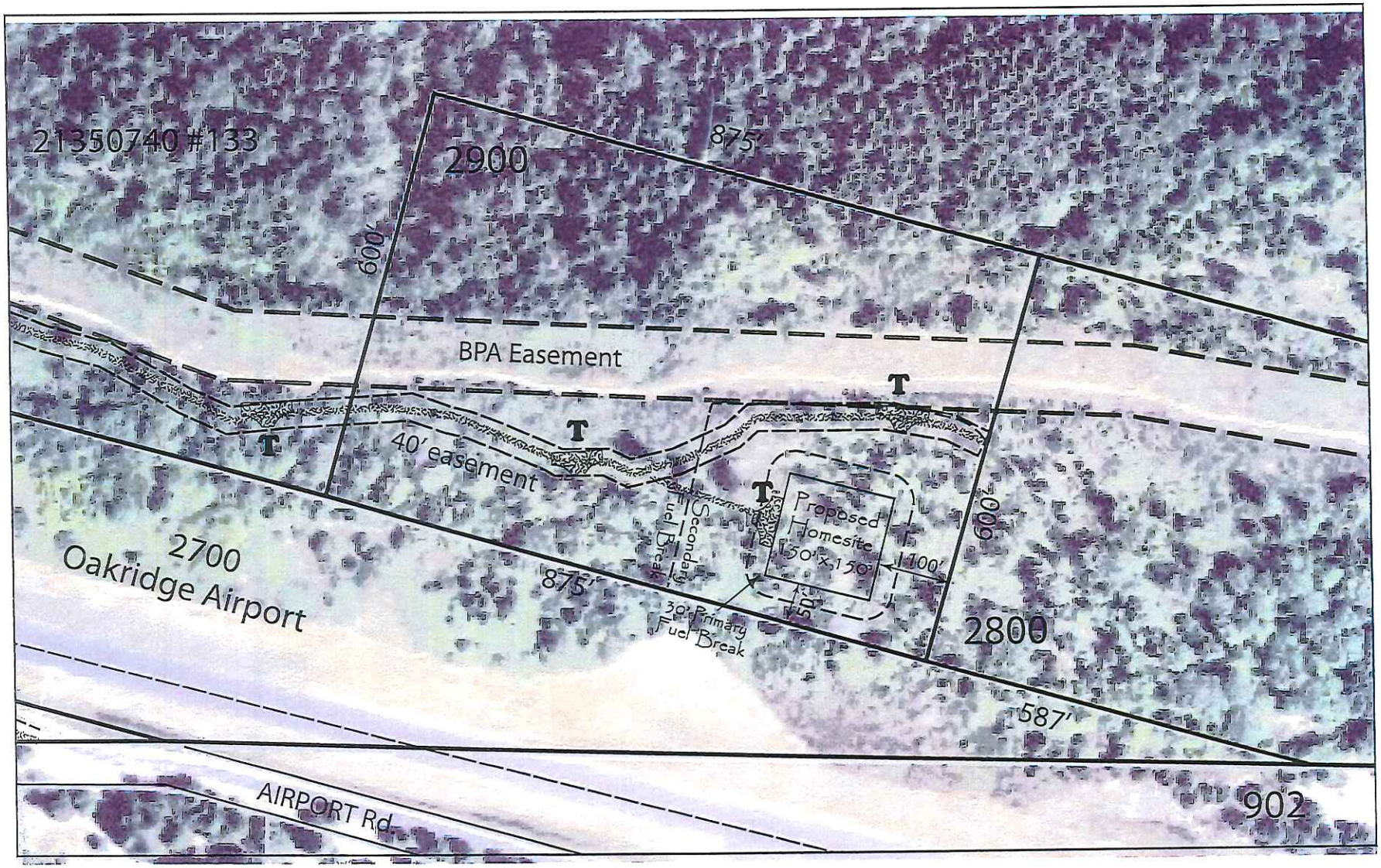


Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 5

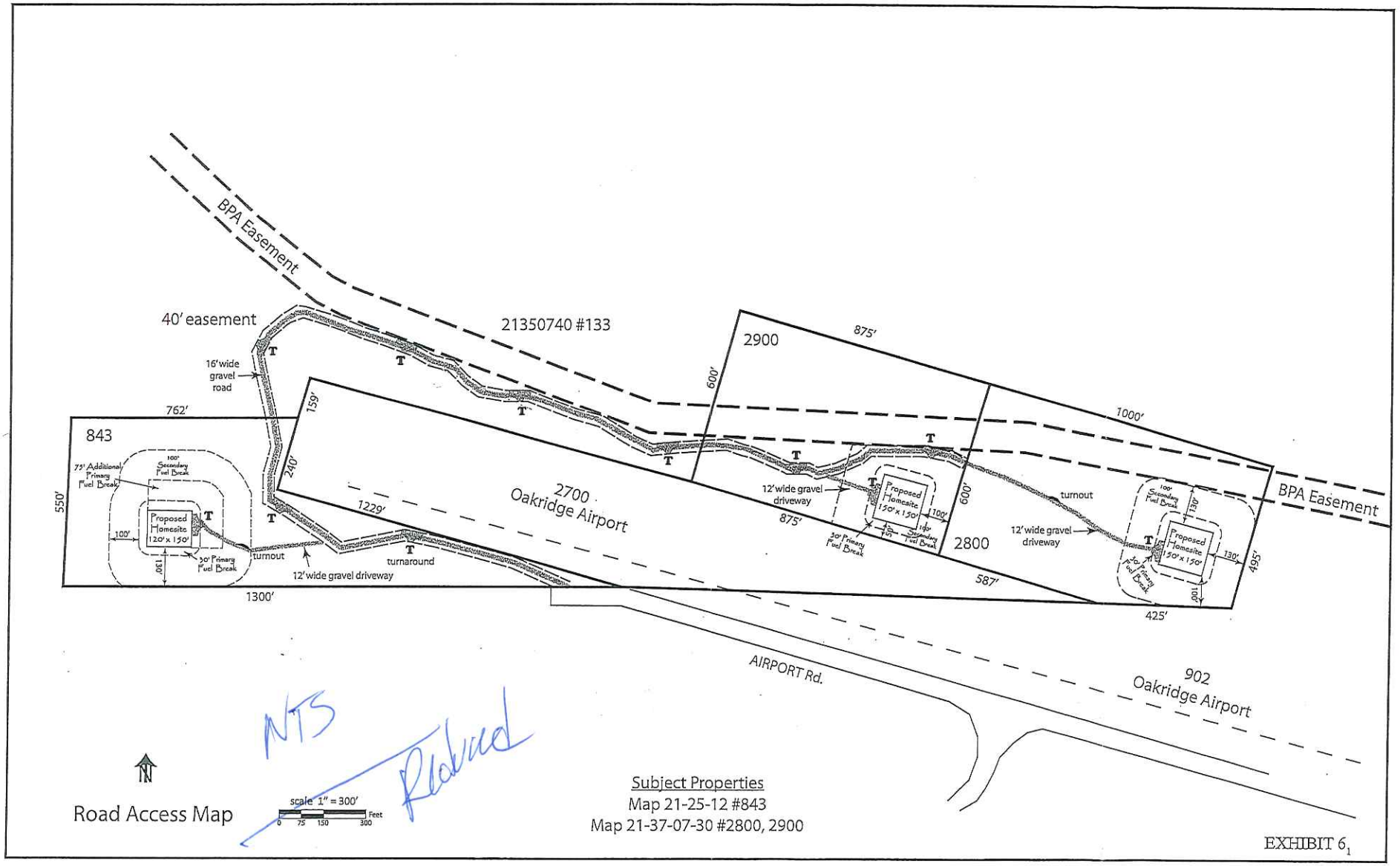
Site Plan

Aerial Photo

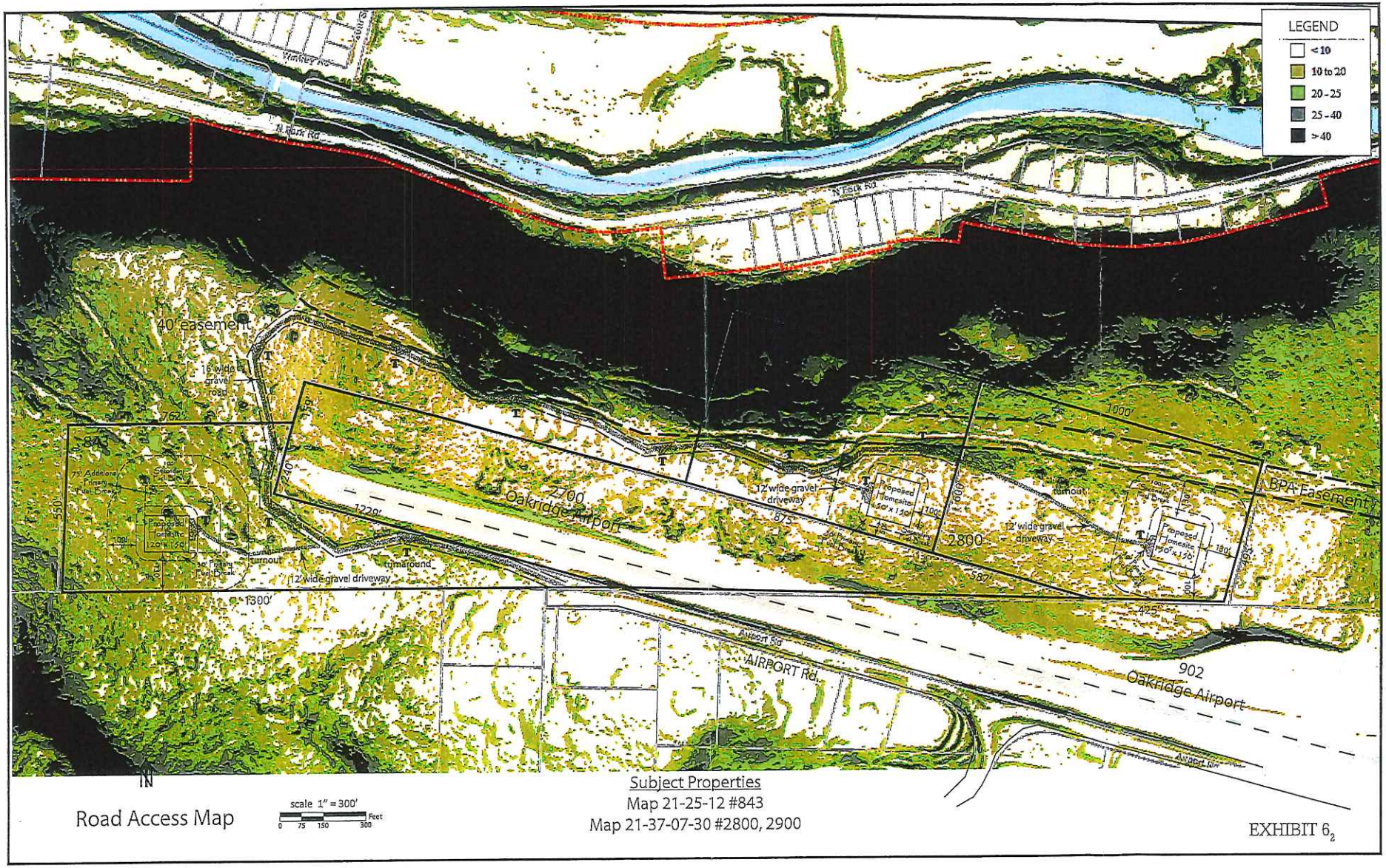


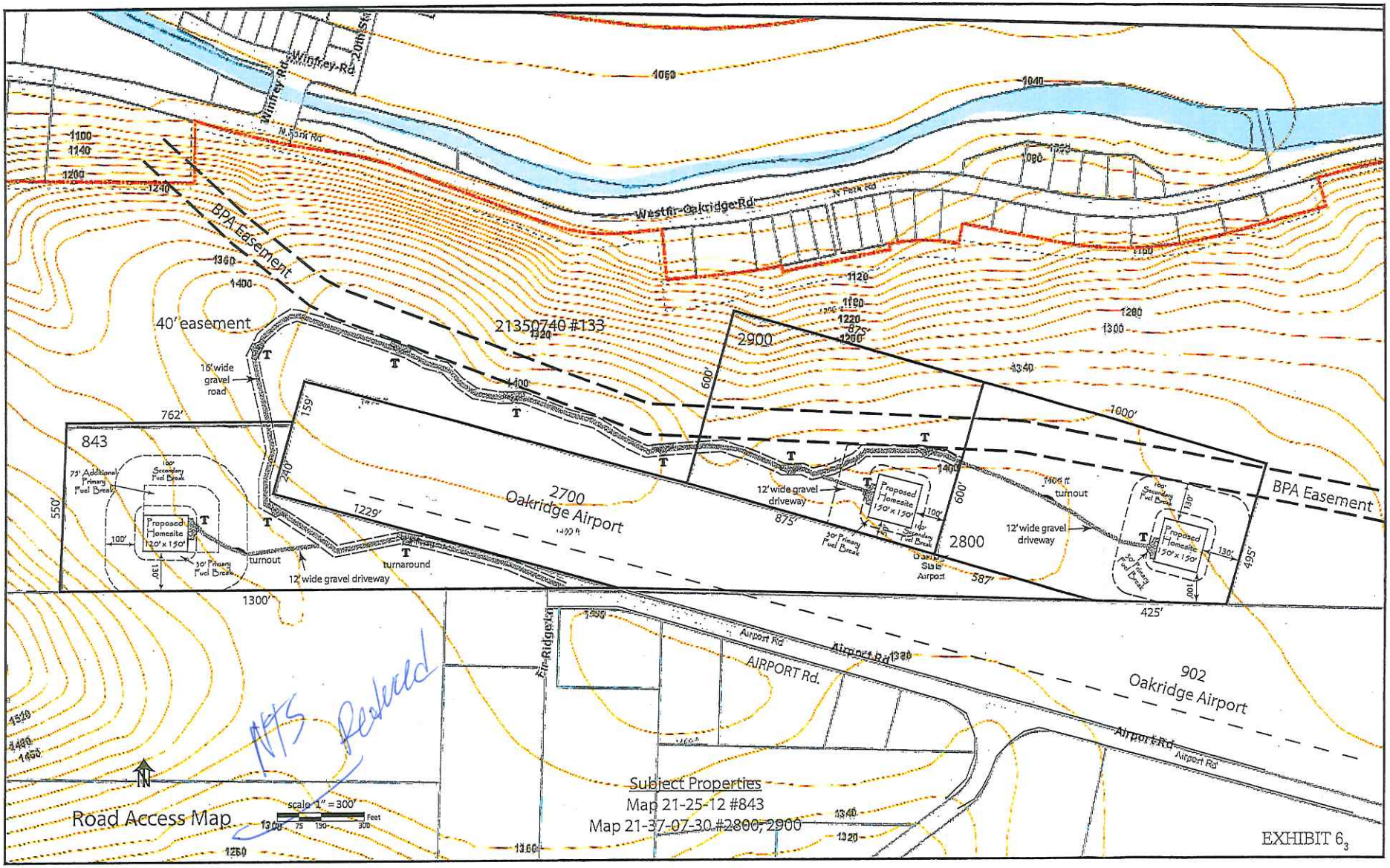
Subject Property Map 21-35-07-30 Taxlot 2900

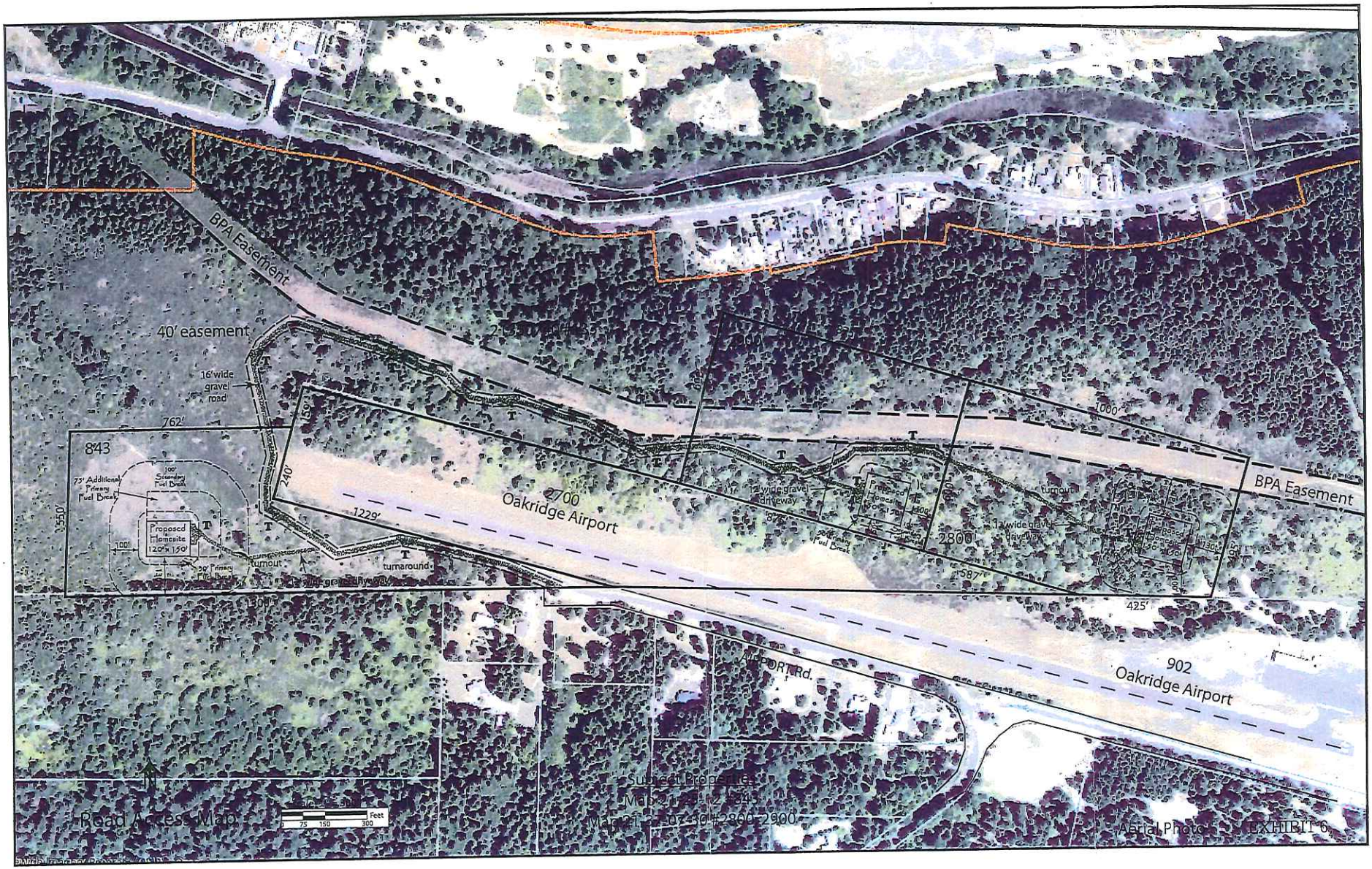
EXHIBIT 4


BPA Easement
40' easement
21350740 #133
16' wide gravel road
762'
843
550'
159'
240'
1229'
1300'
75' Additional Primary Fuel Break
100' Secondary Fuel Break
Proposed Homesite 120' x 150'
100'
130'
30' Primary Fuel Break
turnout
turnaround
12' wide gravel driveway
2700
Oakridge Airport
2900
875'
600'
1000'
12' wide gravel driveway
Proposed Homesite 150' x 150'
100'
30' Primary Fuel Break
30' Secondary Fuel Break
875'
2800
600'
turnout
12' wide gravel driveway
100' Secondary Fuel Break
130'
Proposed Homesite 150' x 150'
30' Primary Fuel Break
100'
495'
587'
425'
BPA Easement
AIRPORT Rd.
902
Oakridge Airport
N
Road Access Map
scale 1" = 300'
0 75 150 300 Feet
NTS
Reduced
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
EXHIBIT 6$_1$

LIDAR Data


LEGEND
< 10
10 to 20
20 - 25
25 - 40
> 40
N Fork Rd
Yankey Rd
40' easement
15' wide gravel road
762'
843
7% Additional Primary Fuel Break
Proposed homesite 120' x 150'
100'
30' Primary Fuel Break
550'
turnout
turnaround
12' wide gravel driveway
1229'
1300'
2700
Oakridge Airport
875'
12' wide gravel driveway
Proposed homesite 120' x 150'
100'
2800
587'
1000'
turnout
Proposed homesite 120' x 150'
180'
600'
BPA Easement
425'
Airport Rd
AIRPORT Rd
902
Oakridge Airport
IN
Road Access Map
scale 1" = 300'
0 75 150 300 Feet
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
EXHIBIT 6$_2$


Wilfrey Rd.
20th St.
N. Park Rd
Westfir-Oakridge Rd.
BPA Easement
40' easement
21350740 #133
2900
2800
2700
902
843
Oakridge Airport
16' wide gravel road
762'
159'
240'
550'
600'
875'
1000'
1229'
1300'
425'
587'
Proposed Homesite 150' x 150'
75' Additional Primary Fuel Break
100' Secondary Fuel Break
30' Primary Fuel Break
turnout
turnaround
12' wide gravel driveway
1406 ft turnout
Oakridge State Airport
Airport Rd
AIRPORT Rd.
Fir Ridge Ln
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
Road Access Map
scale 1" = 300'
Feet
N
NTS Revised
EXHIBIT 6$_3$


BPA Easement
40' easement
16' wide gravel road
762'
843
100' Secondary Fuel Break
75' Additional Primary Fuel Break
Proposed Homesite 120' x 150'
30' Primary Fuel Break
100'
turnout
turnaround
240'
350'
2700
Oakridge Airport
1229'
12' wide gravel driveway
2800
1060'
587'
425'
BPA Easement
AIRPORT Rd.
902
Oakridge Airport
Road Access Map
Feet
0 75 150 300
Subject Property
Map 21-03-12-00-00343
Map 21-03-10-00-02800-02900
Aerial Photo
EXHIBIT 6

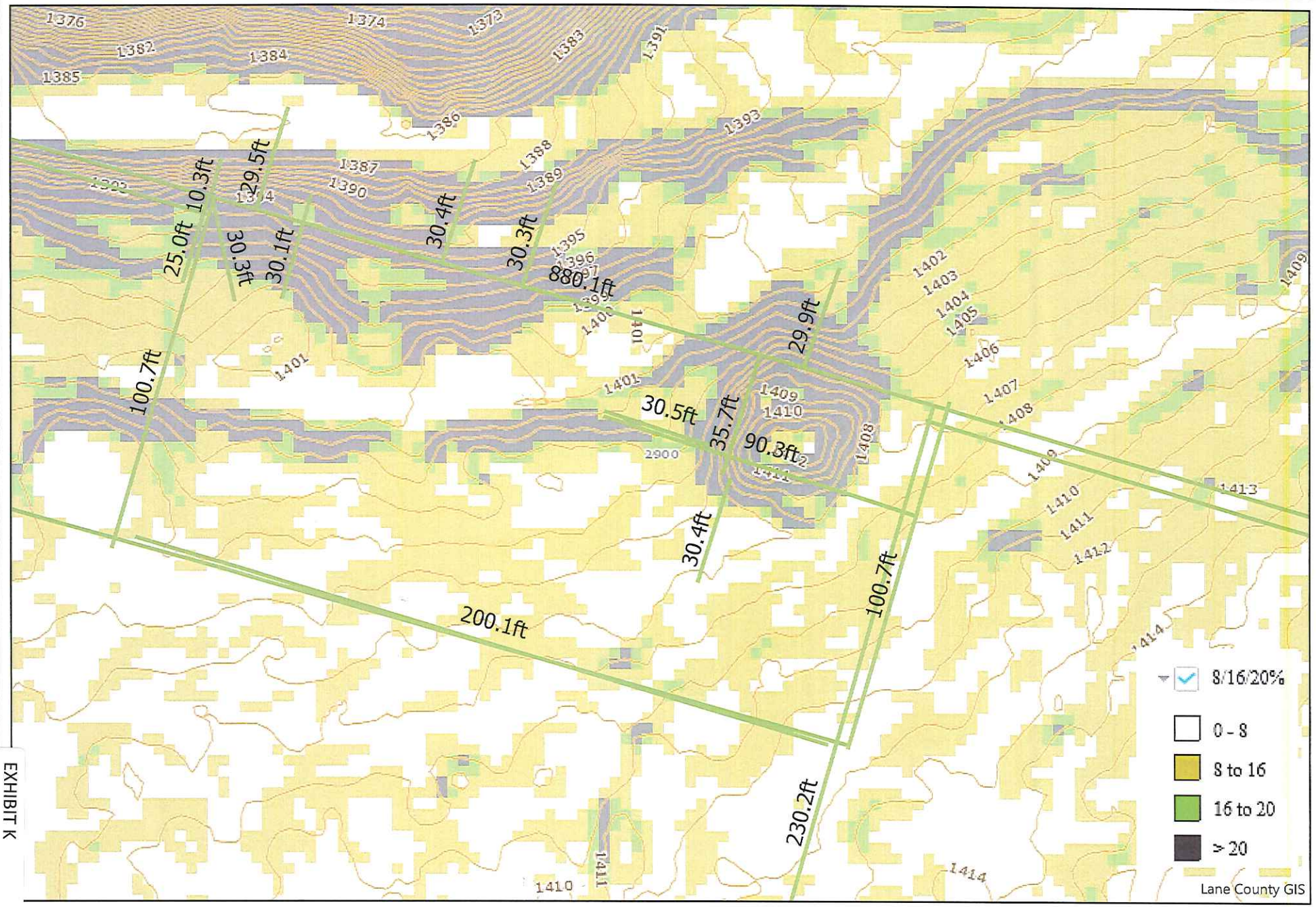


EXHIBIT K

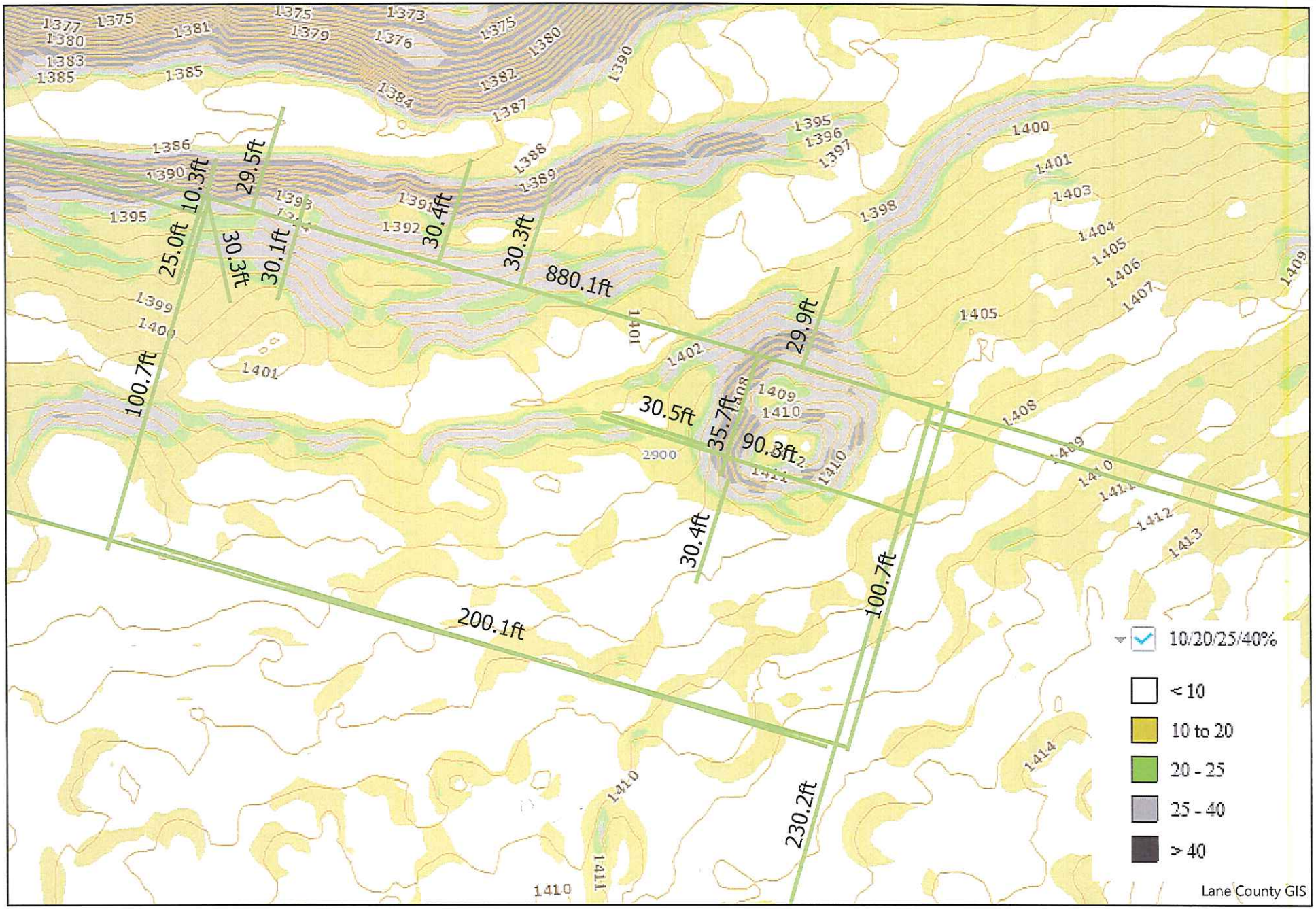
The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 15 30 60 Feet

1-ft Contour & 8/16/20% LiDAR

Lane County, Oregon



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

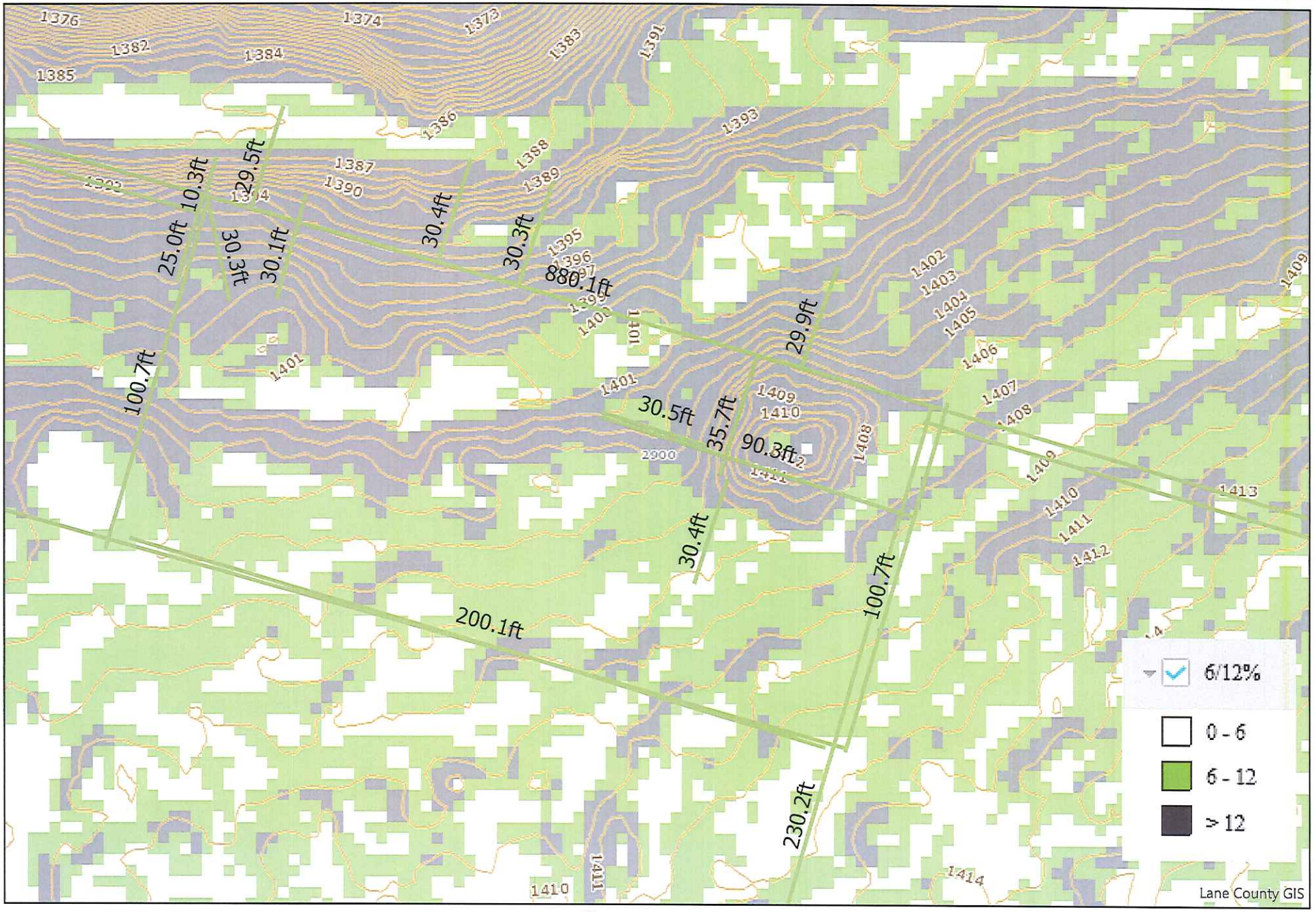
N

0 15 30 60 Feet

1-ft Contour & 10/20/25/40% LiDAR

Lane County, Oregon

002001

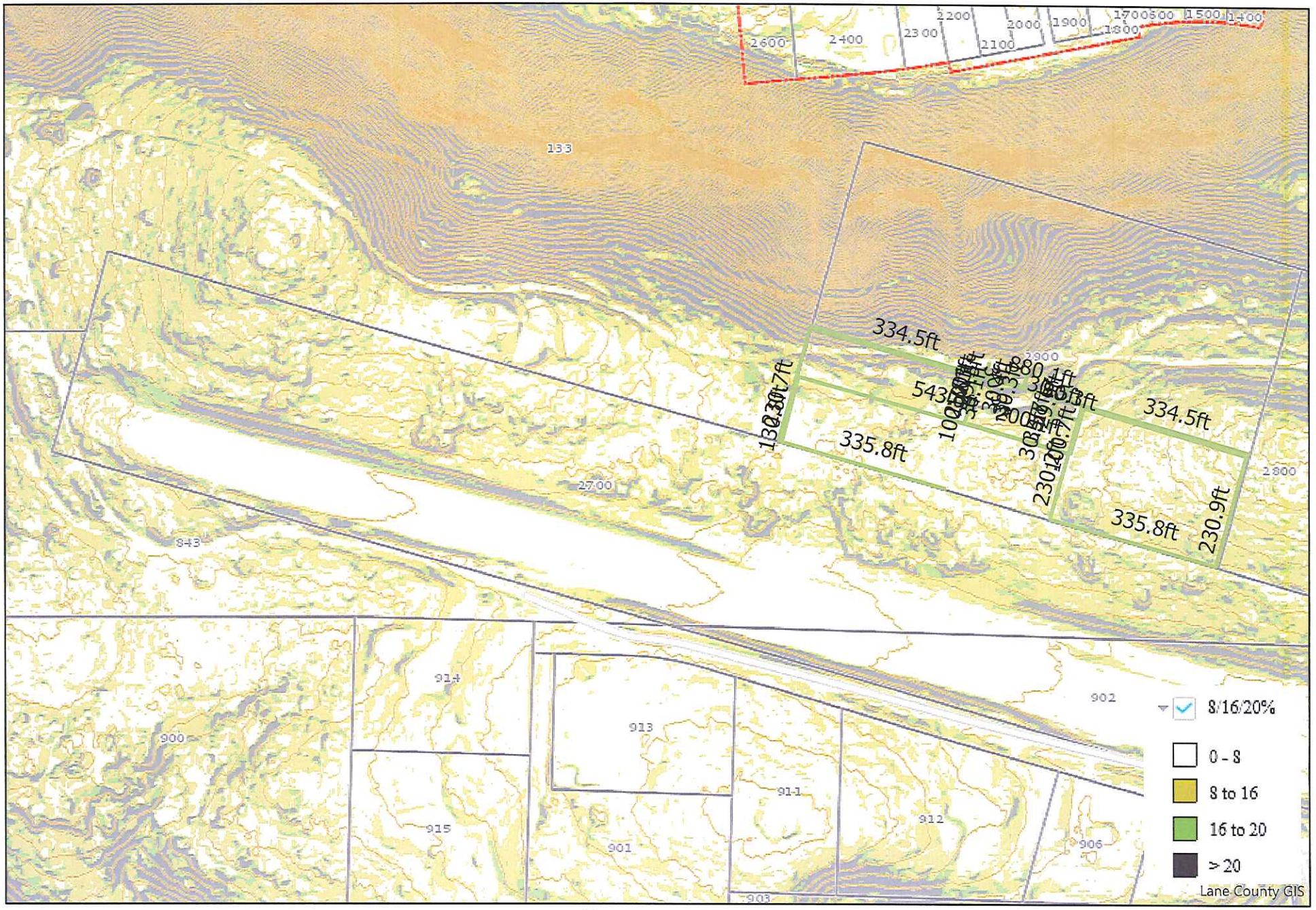


The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

1-ft Contour & 6/12% LiDAR

Lane County, Oregon

002002



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5-ft Contour & 8/16/20% LiDAR

Lane County, Oregon

002003

After Recording Return to:

_____

_____

_____

_____

Recording Label Here

FARM USE AND FOREST MANAGEMENT EASEMENT

Grantor(s)_____

print name(s)

is/are the owner(s) of real property as described on Exhibit "A", attached hereto. In accordance with the conditions set forth in the decision of the Lane County Land Management Division dated _____ approving Planning Action PA # _____, for Assessor's Map and Tax Lot _____ **Grantor(s)** hereby grant(s) to the owner(s), **(Grantees),** of all property zoned for farm or forest use, a perpetual non-exclusive farm use and forest practices management easement as follows:

1. The Grantor(s), the heirs, successors, and assignees acknowledge by the granting of this easement that the above described property is situated in a farm or forest zone in Lane County, Oregon, and may be subjected to conditions resulting from farm use or commercial forests operations on lands zoned for farm or forest use. Such operations may include farm use as defined in ORS 215.203 and management and harvesting of timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and other accepted and customary forest management activities conducted in accordance with Federal and State Laws. Said farm use and forest management activities ordinarily and necessarily produce noise, dust, odors, smoke and other conditions, which may conflict with Grantor's use of Grantor's property for residential purposes, and Grantor(s) hereby give(s) an easement to the property owners of lands zoned for farm or forest use for the resultant impact on Grantors property caused by the farm use or forest management activities on such lands.

2. Grantor(s) shall comply with all restrictions and conditions for maintaining residences in farm and forest zones that may be required by State, Federal, and local land use laws and regulations. Grantor(s) will comply with all fire safety regulations developed by the Oregon Department of Forestry for residential development within a forest zone.

This easement is appurtenant to all property zoned for farm or forest use, and shall bind the heirs, successors, and assignees of Grantor(s), and shall endure for the benefit of the owners of lands zoned for farm or forest use, their heirs, successors, and assignees. The grantees, their heirs, successors, and assignees are hereby expressly granted the right of third party enforcement of this easement.

_____ _____

Grantor Signature Grantor Signature

IN WITNESS WHEREOF, the Grantor(s) has/have executed this easement on _____

(date)

State of OREGON
County of _____

Signed or attested before me on _____, 20____

by_____

(Name of Grantor)

_____

Signature of Notary

My commission expires: _____

REV. 3/2011

MAPPING & DECISION INSTRUCTIONS

509-PA20-05064

MAP NO. 21-35-07-30-02900

ADDITIONAL OWNERSHIP:

APPLICANT:
EDWARD KING

30414 LEBLEU RD
EUGENE, OR 97401

OWNER:
E J K INVESTMENTS LLC

30414 LE BLEU RD
EUGENE, OR 97405

AGENT:
KIM O'DEA - LAW OFFICE OF BILL KLOOS
375 W 4TH AVE STE 204
EUGENE, OR 97401

BASE ZONE: F2

COMBINING ZONE: /AS/NONE

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral	Decision		Referral	Decision	
☐	☐	Building	☒	☐	State Fish & Wildlife (ODFW): Valley
☐	☐	Sanitation	☐	☐	State Highway (ODOT)
☐	☐	Final Legal Lot	☒	☐	State Forestry: East
☐	☐	Rural Addressing	☐	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	☐	Flood Management	☐	☐	Dept. Land Conservation & Development (DLCD)
☐	☐	Easement Review	☐	☐	Lane Regional Air Protection Agency (LRAPA)
☐	☐	Compliance	☐	☐	Dept. of Environmental Quality (DEQ)
☐	☐	Surveyors	☐	☒	Dept. of Environmental Quality (DEQ) 1200-C
☒	☒	Transportation Planning	☐	☐	Oregon Health Division
☒	☒	County Road Maintenance	☐	☐	Water Master
☐	☐	Water Quantity/Quality	☐	☐	Division of State Lands (DSL)
☐	☒	Assessment &Taxation	☐	☐	State Parks (Certified mail)
☒	☒	State Fire Marshal	☒	☐	Dept. of Aeronautics
☐	☐	Community Organization NONE	☐	☐	CenturyLink
☒	☐	Watershed Council Middle Fork Willamette Watershe	☐	☐	Northwest Natural Gas
☒	☐	Land Watch	☐	☐	Port of Siuslaw
☐	☐	School District OAKRIDGE	☐	☐	Power Company Lane Electric
☐	☐	Water District	☐	☐	US Army Corps. of Engineers (ACOE)
☒	☒	Fire District Hazeldell Rural Fire District	☒	☐	US Fish & Wildlife (USF&W)
☒	☐	City Area of Interest (20-day notice) Westfir	☐	☐	Confederated Tribes
☐	☐	METRO Area of Interest NONE	☐	☐	State Historic Preservation Office (SHPO)
☐	☐	Environmental Health	☒	☒	Other IPs below

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:
- ☒ **Vicinity Map**
- ☒ **Site Plan**
- ☐ **Flagged Applicant's Material**

Copy and Attach Materials to Referral Notices as Instructed Above and Below:

Comments submitted by: ; JAY & GRETCHEN ANTHONY PO Box 1507 Gold Beach Or 97444?; BPA (Janai Soto, asoto@bpa.gov); ODA 3040 25TH STREET SE, SALEM, OR 97302 seth.thompson@aviation.state.or.us; MAX BAKER, PO BOX 490, LOWELL, OR 97452 (Public Water Notification Area)

Also notify: Max Baker, PO Box 490, LOWELL, OR 97452 (Public Water Notification Area)

509-PA20-05064/PA20-05066
E J K /KING/O'DEA
01/27/2021

2135073001100
ADAMSON VALERIE M
209 BONVIEW ST
SAN FRANCISCO CA 94110

2135180000902
ALTEMUS MATTHEW
47919 W 2ND ST
OAKRIDGE OR 97463

2135073000100
*ANTHONY JAY
PO BOX 1507
GOLD BEACH OR 97444

2135180000918
CATHEY CHRISTY D & MIKE A
PO BOX 892
OAKRIDGE OR 97463

2135074000100
CROWN PROPERTIES LLC
30414 LE BLEU RD
EUGENE OR 97405

2135073001500
DAMEWOOD JAMES S
47114 WESTFIR RD
WESTFIR OR 97492

2135180000908
DANIELS DAVID L & DEBORAH L
PO BOX 1412
OAKRIDGE OR 97463

2135180000914
DEBOER KENNETH J & BRIDGETT M
46979 AIRPORT RD
OAKRIDGE OR 97463

2135073000800
DEW DEBRA
47222 WESTFIR-OAKRIDGE RD

WESTFIR OR 97492

2135073002900
*E J K INVESTMENTS LLC
30414 LE BLEU RD
EUGENE OR 97405

2135180000922
FLACK KEITH F & JANICE M
PO BOX 434
OAKRIDGE OR 97463

2135073000500
GRAY BETTY J
47171 WESTFIR RD
WESTFIR OR 97492

2135180000911
HANKINS RICHARD P & JANICE I
47070 AIRPORT RD
OAKRIDGE OR 97463

2135180000912
HAYDEN STEVEN EUGENE
10916 FENTON CIR
WESTMINISTER CO 80020

2135073001400
HAYWARD HELEN Y
PO BOX 292
WESTFIR OR 97492

2135073000300
HENDERSON LEON EARL
47155 WESTFIR RD
WESTFIR OR 97492

2135073002800
*KING EDWARD J
30414 LE BLEU RD
EUGENE OR 97405

2135073002100
MIKKOLA CHERYL J
47066 WESTFIR RD
WESTFIR OR 97492

2135180000913

MILLER MARVIN
47022 AIRPORT RD
OAKRIDGE OR 97463

2135073001700
NEIL & SALLY FRIEDMAN JOINT TRUST
47094 WESTFIR RD
WESTFIR OR 97492

2135073000400
NEWLAND INVESTMENTS LLC
3895 VINE MAPLE
EUGENE OR 97405

2135073001000
NIBBLETT NORMAN D & BONNIE J
47198 WESTFIR RD
WESTFIR OR 97492

2135073001300
OLSON BRIAN J
727 W HIGH ST
STAYTON OR 97383

2135073002000
PETERSON ALAN D & JODI M
PO BOX 50245
EUGENE OR 97405

2135073000900
PRZYBYSZ CHRIS P & JAMIE L
47202 WESTFIR RD
WESTFIR OR 97492

2135074000132
RALPH CHRISTENSEN
PO BOX 10667
EUGENE OR 97440

2135180000903
REYNOLDS BERNARD R & C J
76579 AIRPORT RD
OAKRIDGE OR 97463

2135073000200
SHEARER RICHARD A & AMY J
47147 WESTFIR-OAKRIDGE RD
WESTFIR OR 97492

2135073001900
SNYDER WILLIAM J & TERESA A
PO BOX 353
WESTFIR OR 97492

2135073002600
STONE JOEL F & RUTHANNE
PO BOX 361
WESTFIR OR 97492

2135180000906
SULLIVAN FAMILY TRUST
3602 JEFFERSON AVE
REDWOOD CITY CA 94062

2135073001600
TIGER MOUNTAIN TRUST
1381 PARK TERRACE AVE
LAKE HAVASU CITY AZ 86404

2135180000901
TOMLIN LIVING TRUST
47634 TELLER RD
OAKRIDGE OR 97463

2135073002300
WATTERS COLIN B
47054 WESTFIR RD
WESTFIR OR 97492

2135073002200
WEBER STEPHEN H
PO BOX 243
WESTFIR OR 97492

2135073001200
WILLEY JAMES M & BARBARA A
47158 WEST FIR RD
WESTFIR OR 97492

LAW OFFICE OF BILL KLOOS
*KIM O'DEA
375 W 4TH AVE STE 204
EUGENE OR 97401

LANDWATCH LANE COUNTY
PO BOX 5347

EUGENE OR 97405

LANDWATCH LANE COUNTY
BOB EMMONS
40093 LITTLE FALL CREEK RD
FALL CREEK OR 97438

OREGON DEPT OF AERONAUTICS
PLANNING
3040 25TH ST SE
SALEM OR 97310-0100

HAZELDELL RURAL FIRE DISTRICT
PO BOX 717
OAKRIDGE OR 97463

DEPARTMENT OF ENVIRONMENTAL QUALITY
EUGENE ADMINISTRATIVE OFFICE
165 E 7TH AVE STE 100
EUGENE OR 97401

BONNEVILLE POWER ADMINISTRATION
TERR/ALVERY
86000 HWY 99 SOUTH
EUGENE OR 97405

MAX BAKER
PO BOX 490
LOWELL OR 97452

EWEB

TRANSPORTATION PLANNING

COUNTY ROAD MAINTENANCE

STATE FIRE MARSHAL

ADAMS Shawna L

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Monday, November 23, 2020 8:41 AM
To: ADAMS Shawna L; BAUDER Jared W
Cc: tlanfear@pacinfo.com
Subject: King: Oakridge Access Road Grade Statement
Attachments: Brink Color Logo copy.pdf; Untitled attachment 00162.htm

[EXTERNAL ⚠]

See below from Mark Brink. He has measured grade on the existing road with a clinometer.
Please put this email into the record of PA 20-05066, PA 20-05064 and PA 20-05065.
TL 843 should go forward as supplemented, as the revision was slight;
TL 2800 and 2900 can go forward as originally filed (dwelling site and access) per conversations with Shawna.
No portion of the accessway fall within the runway.

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: Mark W. Brink [mailto:mark@brinkslandimprovement.com]
Sent: Monday, November 16, 2020 5:05 PM
To: Thom Lanfear <tlanfear@pacinfo.com>
Cc: Mark W. Brink <mark@brinkslandimprovement.com>
Subject: Oakridge Access Road Grade Statement

Thom,

To whom it may concern , We did an evaluation of the road to access lots 2800 and 2900 next to the Oakridge Airport that need to be used for access, By using a clinometer to measure the percentage of slope at any point in the road. We found no area that exceeded 10% and most areas were 3% - 6% there are no inclines that would exceed 15% on the road areas in question.

Any Questions please let me know.

Thanks,
Mark W. Brink

Pleasant Hill, OR 97455
Cell: 541-554-5803
mark@brinkslandimprovement.com
http://brinkslandimprovement.com/

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Monday, November 9, 2020 2:51 PM
To: BAUDER Jared W
Cc: ADAMS Shawna L; PECK Heather
Subject: RE: ODA Comment: 509-PA20-05065 & 509-PA20-05066

[EXTERNAL ⚠]

Hi Jared,

Great to hear from you and thanks for reaching out. I'm doing well, thank you. I hope you are as well.

Yes, the ODA requests submittal of the FAA Form 7460-1 still be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport.

The applicant must submit FAA Form 7460-1 documents to the ODA and receive Letters of Determination for the proposed construction as required by OAR 738-070-0060, prior to issuance of any building permits for the Template Dwellings.

The applicant should note that a separate FAA Form 7460-1 must be submitted for each Template Dwelling.

Notification to the FAA is also required for each Template Dwelling and is completed through the FAA's online portal:

https://oeaaa.faa.gov/oeaaa/external/portal.jsp

The ODA Letters of Determination will provide recommendations for the proposed construction in regards to aviation and public safety.

I am happy to reach out to the applicant directly if further clarification is needed.

Thanks again and please let me know if you have further questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

From: BAUDER Jared W <jared.bauder@lanecountyor.gov>
Sent: Monday, November 9, 2020 11:54 AM
To: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Cc: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Subject: FW: ODA Comment: 509-PA20-05065 & 509-PA20-05066

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Hi Seth –

I hope all is well with you. I just want to confirm that the ODA would still like the attached form to be a required condition of approval for the King/O'Dea Template Dwellings near the Oakridge Airport?

If so, is their submittal of the form to you all sufficient for the County to issue building permits, or do they need to see the processing of the form through with ODA first?

Thank you much,

Jared Bauder | Planner, CFM
Land Management Division | Lane County Public Works
Customer Service Center
3050 N Delta Hwy. | Eugene, OR 97408
Office: 541.682.6949 | **Fax**: 541.682.3947
Website : www.lanecounty.org/planning

From: THOMPSON Seth [mailto:Seth.THOMPSON@aviation.state.or.us]
Sent: Thursday, March 26, 2020 4:03 PM
To: BAUDER Jared W
Subject: ODA Comment: 509-PA20-05065

[EXTERNAL ⚠]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation (ODA) to comment on Department File: 509-PA20-05065.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

ADAMS Shawna L

From: THOMPSON Seth <Seth.THOMPSON@aviation.state.or.us>
Sent: Thursday, March 26, 2020 3:50 PM
To: ADAMS Shawna L
Subject: ODA Comment: 509-PA20-05064
Attachments: FAA_Form_7460-1.pdf

[EXTERNAL ⚠]

Good afternoon,

Thank you for providing the opportunity for the Oregon Department of Aviation(ODA) to comment on Department File: 509-PA20-05064.

The ODA has determined that a FAA FORM 7460-1 will need to be completed by the applicant for the proposed construction.

The completed FAA FORM 7460-1 must be submitted to the ODA and FAA prior to final approval of building permits or land use decisions.

I have attached a FAA FORM 7460-1 for reference.

Please let me know if you have any questions.

Best regards,

Seth Thompson
OREGON DEPARTMENT OF AVIATION
AVIATION PLANNER

OFFICE 503-378-2529 **CELL** 503-507-6965
EMAIL seth.thompson@aviation.state.or.us
3040 25TH STREET SE, SALEM, OR 97302
WWW.OREGON.GOV/AVIATION

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§ 77.7 Form and time of notice.

(a) If you are required to file notice under §77.9, you must submit to the FAA a completed FAA Form 7460–1, Notice of Proposed Construction or Alteration. FAA Form 7460–1 is available at FAA regional offices and on the Internet.

(b) You must submit this form at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest.

(c) If you propose construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), you must submit notice to the FAA on or before the date that the application is filed with the FCC.

(d) If you propose construction or alteration to an existing structure that exceeds 2,000 ft. in height above ground level (AGL), the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. You must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(e) The 45-day advance notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. You may provide notice to the FAA by any available, expeditious means. You must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA. Outside normal business hours, the nearest flight service station will accept emergency notices.

§ 77.9 Construction or alteration requiring notice.

If requested by the FAA, or if you propose any of the following types of construction or alteration, you must file notice with the FAA of:

(a) Any construction or alteration that is more than 200 ft. AGL at its site.

(b) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(1) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(2) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(3) 25 to 1 for a horizontal distance of 5,000 ft. from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(c) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraph (a) or (b) of this section.

(d) Any construction or alteration on any of the following airports and heliports:

(1) A public use airport listed in the Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement of the U.S. Government Flight Information Publications;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

(e) You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
10101 Hillwood Parkway
Fort Worth, TX 76177
Fax: (817) 222-5920

Website: https://oeaaa.faa.gov

INSTRUCTIONS FOR COMPLETING FAA FORM 7460-1

PLEASE TYPE or PRINT

ITEM #1. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #2. Please include the name, address and phone number of a personal contact point as well as the company name.

ITEM #3. New Construction would be a structure that has not yet been built.

Alteration is a change to an existing structure such as the addition of a side mounted antenna, a change to the marking and lighting, a change to power and/or frequency, or a change to the height. The nature of the alteration shall be included in ITEM #21 "Complete Description of Proposal".

Existing would be a correction to the latitude and/or longitude, a correction to the height, or if filing on an existing structure which has never been studied by the FAA. The reason for the notice shall be included in ITEM #21 "Complete Description of Proposal".

ITEM #4. If Permanent, so indicate. If Temporary, such as a crane or drilling derrick, enters the estimated length of time the temporary structure will be up.

ITEM #5. Enter the date that construction is expected to start and the date that construction should be completed.

ITEM #6. Please indicate the type of structure. DO NOT LEAVE BLANK.

ITEM #7. In the event that obstruction marking and lighting is required, please indicate type desired. If no preference, check "other" and indicate "no preference" DO NOT LEAVE BLANK. NOTE: High Intensity lighting shall be used only for structures over 500' AGL. In the absence of high intensity lighting for structures over 500' AGL, marking is also required.

ITEM #8. If this is an existing tower that has been registered with the FCC, enter the FCC Antenna Structure Registration number here.

ITEM #9 and #10. Latitude and longitude must be geographic coordinates, accurate to within the nearest second or to the nearest hundredth of a second if known. Latitude and longitude derived solely from a hand-held G P S instrument is NOT acceptable. A hand-held GPS is only accurate to within 100 meters (328 feet) 95 percent of the time. This data, when plotted, should match the site depiction submitted under ITEM #20.

ITEM #11. NAD 83 is preferred; however, latitude and longitude may be submitted in NAD 27. Also, in some geographic areas where NAD 27 and NAD 83 are not available other datum may be used. It is important to know which datum is used. DO NOT LEAVE BLANK.
ITEM #12. Enter the name of the nearest city and state to the site. If the structure is or will be in a city, enter the name of that city and state.

ITEM #13. Enter the full name of the nearest public-use (not private-use) airport or heliport or military airport or heliport to the site.

ITEM #14. Enter the distance from the airport or heliport listed in #13 to the structure.

ITEM #15. Enter the direction from the airport or heliport listed in #13 to the structure.

ITEM #16. Enter the site elevation above mean sea level and expressed in whole feet rounded to the nearest foot (e.g. 17'3" rounds to 17', 17'6" rounds to 18'). This data should match the ground contour elevations for site depiction submitted under ITEM #20.
ITEM #17. Enter the total structure height above ground level in whole feet rounded to the next highest foot (e.g. 17'3" rounds to 18'). The total structure height shall include anything mounted on top of the structure, such as antennas, obstruction lights, lightning rods, etc.

ITEM #18. Enter the overall height above mean sea level and expressed in whole feet. This will be the total of ITEM #16 + ITEM #17.

ITEM #19. If an FAA aeronautical study was previously conducted, enter the previous study number.

ITEM #20. Enter the relationship of the structure to roads, airports, prominent terrain, existing structures, etc. Attach an 8-1/2" x 11" non-reduced copy of the appropriate 7.5 minute U.S. Geological Survey (USGS) Quadrangle Map MARKED WITH A PRECISE INDICATION OF THE SITE LOCATION. To obtain maps, contact USGS at 1-888-275-8747 or via internet at "http://store.usgs.gov". If available, attach a copy of a documented site survey with the surveyor's certification stating the amount of vertical and horizontal accuracy in feet.

ITEM #21.

- For transmitting stations, include maximum effective radiated power (ERP) and all frequencies.
- For antennas, include the type of antenna and center of radiation (Attach the antenna pattern, if available).
- For microwave, include azimuth relative to true north.
- For overhead wires or transmission lines, include size and configuration of wires and their supporting structures (Attach depiction).
- For each pole/support, include coordinates, site elevation, and structure height above ground level or water.
- For buildings, include site orientation, coordinates of each corner, dimensions, and construction materials.
- For alterations, explain the alteration thoroughly.
- For existing structures, thoroughly explain the reason for notifying the FAA (e.g. corrections, no record or previous study, etc.).

Filing this information with the FAA does not relieve the sponsor of this construction or alteration from complying with any other federal, state or local rules or regulations. If you are not sure what other rules or regulations apply to your proposal, contact local/state aviation's and zoning authorities.

Paperwork Reduction Work Act Statement: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number. The OMB control number for this information collection is 2120-0001. Public reporting for this collection of information is estimated to be approximately 19 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory for anyone proposing construction or alteration that meets the criteria contained in 14 CFR 77. This information is collected to evaluate the effect of proposed construction or alteration on air navigation and is not confidential. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

Federal Regulations (14 CFR), part 77 authorizes FAA to collect this information. PURPOSE(S): FAA will use the information provided to administer the Aeronautical Study Process. ROUTINE USE(S): In accordance with DOT's system of records notice, DOT/ALL 16 Mailing Management System and DOT/FAA 826 Petitions for Exemption, Other than Medical Exemption-Public Dockets, the information provided may be disclosed to officials within the Federal government and the public in general.

Form Approved OMB No.2120-0001
Expiration Date: 02/29/2020

Please Type or Print on This Form

U.S. Department of Transportation
Federal Aviation Administration

Failure To Provide All Requested Information May Delay Processing of Your Notice

Notice of Proposed Construction or Alteration

FOR FAA USE ONLY
Aeronautical Study Number

1. **Sponsor** *(person, company, etc. proposing this action):*
Attn. of
Name: _____
Address: _____
_____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____

2. **Sponsor's Representative** *(if other than #1):*
Attn. of
Name: _____
Address: _____
_____
City: _____ State: _____ Zip: _____
Telephone: _____ Fax: _____

3. **Notice of:** ☐ New Construction ☐ Alteration ☐ Existing

4. **Duration:** ☐ Permanent ☐ Temporary (___ months, ____days)

5. **Work Schedule:** Beginning _____ End _____

6. **Type:** ☐ Antenna Tower ☐ Crane ☐ Building ☐ Power Line
☐ Landfill ☐ Water Tank ☐ Other _____

7. **Marking/Painting and/or Lighting Preferred:**
☐ Red Lights and Paint ☐ Dual - Red and Medium Intensity
☐ White-Medium Intensity ☐ Dual - Red and high Intensity
☐ White -High Intensity ☐ Other

8. **FCC Antenna Structure Registration Number** *(if applicable)*:

9. **Latitude:** ____ ° ____ ' ____ . ____ "

10. **Longitude:** ____ ° ____ ' ____ . ____ "

11. **Datum:** ☐ NAD 83 ☐ NAD 27 ☐ Other

12. **Nearest:** City: _____ State _____

13. **Nearest *Public-use*** *(not private-use)* or Military Airport or Heliport:

14. **Distance from #13.** to Structure: _____

15. **Direction from #13.** to Structure: _____

16. **Site Elevation** *(AMSL)*: _____ ft.

17. **Total Structure Height** *(AGL)*: _____ ft.

18. **Overall Height** (#16 + #17) *(AMSL)*: _____ ft.

19. **Previous FAA Aeronautical Study Number** *(if applicable)*:
_____-OE

20. **Description of Location:** *(Attach a USGS 7.5 minute Quadrangle Map with the precise site marked and any certified survey)*

21. **Complete Description of Proposal:**

Frequency/Power (kW)	

Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44718. Persons who knowingly and willingly violate the notice requirements of part 77 are subject to a civil penalty of $1,000 per day until the notice is received, pursuant to 49 U.S.C., Section 46301(a)

I hereby certify that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to mark and/or light the structure in accordance with established marking & lighting standards as necessary.

Date	Typed or Printed Name and Title of Person Filing Notice	Signature

FAA Form 7460-1 (02/20) Supersedes Previous Edition

NSN: 0052-00-012-0009

Additional Information Submitted

Date Stamp

Submitted By: Kim O'Dea

Phone Number: 541-954-0095

Email Address: kimodea@landuseoregon.com

Project Address: _____

LANE COUNTY OREGON

RECEIVED
SEP 29 2020

Permit Number (BP, PA, SP, SI): _____

Submittal Description: _____

Material Submitted: _____

Please Route to Jared Bauder

Type of Submittal:

- [X] Additional Information
- [ ] Response to Plan Review Comments
- [ ] Revisions to Approved Plans
- [ ] Other: _____
- [ ] Deferred Submittal

$ _____ Value of deferred work:

Office Use Only: Route to: _____ Amount Due: _____

- [ ] Approved
- [ ] Applicant contacted

How will fess be paid? [ ] In person [ ] Online [ ] By phone

smw 12/26/2018

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.0095
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM

September 25, 2020

Jared Bauder
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: King; Reissue Expired Director's Decision for Template Dwelling; 509-PA 20-05064; Map 21-37-07-30, TL ~~2p00~~ 2900

Jared:

To address BPA easement issues, to better address CAS requirements, and to better comply with required setbacks, we have slightly revised the subject site plans. Exhibits 1 – 6 of attached Exhibit NN. We have also provided supplemental narrative in support. Exhibit NN, part 1 and part 2.

Sincerely,
/s/ *Kimberly JR O'Dea*
Kimberly J.R. O'Dea

Exhibits:

NN: Updated narrative with Exhibits
Part 1: siting standards narrative
Part 2: CAS narrative
Exhibit 1: Site plan
Exhibit 2: Site plan with Lidar
Exhibit 3: Site plan with contour
Exhibit 4: Site plan with aerial
Exhibit 5: Site plan with airport surface info
Exhibit 6: Road access maps 1-4

Applicant's Statement addressing Lane Code Siting Standards for development of a dwelling on Map 21-35-07-30 Taxlot 2900

LC 16.211(8): Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h), (2) (j), and (2)(o), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through (b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

RESPONSE: The above provision requires that the standards of subsections (a) through (b) below be weighed together with the requirements of (c) and (e) below in order to determine the best site.

(a) Setbacks. Residences, dwellings, or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent;

RESPONSE:

Near other dwellings: The dwelling site is located in the southeast portion of the parcel. The area is sparsely settled with dwellings. The proposed dwelling site is located approximately 700 feet from the 4 dwellings located due south on the south side of the Oakridge Airport. The site is as close to dwellings on other tracts as it can be while maximizing proximity to the forest lands to the north.

Near existing roads: The homesite is located immediately adjacent to an existing road running under the BPA power lines to the north. See Exhibits 1 & 4 – Site Plan and Aerial.

On the most level part of the tract. The tract is level on the south side of the power lines and slopes down to the north on the north side of the lines See Exhibits 2 & 3 Based on these materials, the dwelling site is on the most level portion of the tract, especially when this provision is balanced with other provisions, such as setbacks, access, slopes, and minimal intrusion into forested areas.

On the least suitable portion of the tract for forest use: The entire area of the parcel is comprised of Soil Map Unit Nekia (89D & F) with a forest productivity ratings of at least 160 cu.ft./ac/yr. There is no ability to construct the home within an area of less forest productivity. Exhibit F. Soils are not determinative of forestry suitability, but are relevant. When balanced with other standards, the dwelling site is located on the least suitable portion of the tract for forest use.

EXHIBIT N N
PART 1

At least 30 feet from any ravine, ridge or slope greater than 40%. There are no ravines, ridges or slopes greater than 40% within 30 feet of the site. See Exhibit 2 – Detail Site Plan LIDAR.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses;

RESPONSE: Intrusion into forest areas is minimized by the placement of the dwelling in the south portion of the property between the airport and the BPA power lines.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

RESPONSE: The subject property is bordered by property zoned F-2 to the west, north, and east. Property to the south is zoned AO. The dwelling site is setback 100 feet from the east property line and 400 feet and 600 feet from the north and west property lines respectively (the directions of the F-2 properties).

(iv) (iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and

RESPONSE: There are no Class I streams on the subject property

(v) Structures other than a fence or sign cannot be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(bb) 30 feet from all property lines other than those described in LC 16.211(8)(a)(v)(aa) above; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

RESPONSE: The parcel does not border any public road right-of-way. The dwelling site is at least 30 feet from all property lines. See Site Plan. (8)(a) and (b) through (d) are addressed below. See Site Plan.

(b) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

RESPONSE: The site will be accessed from Airport Road by an access road across Map 21-25-12 #843 and Map 21-35-07-40 #133 that also serves as access to the parcel to the east Map 21-35-07-30 #2800. The roadway will be constructed to county standards. Service corridors for utilities will run adjacent to the proposed roadway and driveway. Thus, the use of the proposed shared roadway to serve multiple parcels assures the amount of forestland used to site roads and services will be minimized.

The applicant believes that this standard applies only to structures other than the dwelling, as the relationship between dwellings and forestlands is already addressed under (ii). There are no other proposed structures on the property. However, even if the dwelling site is subject to this analysis, the sites are sited with all other siting standards in mind, thus reducing the amount of forest lands used. The response under (ii) is herein incorporated.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:
(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements. (aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	*Feet of Primary Safety Zone*	*Feet of Additional Safety Zone Down Slope*
0	*30*	*0*
10	*30*	*50*
20	*30*	*75*
25	*30*	*100*
40	*30*	*150*

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent

RESPONSE: The site is level at the proposed homesite. The parcel slopes downward to the north on the north side of the BPS power lines. There are no slopes greater than 10% within 30 feet of the dwelling site. The applicant has provided a 30-foot primary fuel break in all directions. See Exhibit 1 - Site Plan. There are no slopes in excess of 40% within 30 feet of the home site.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

RESPONSE: The proposed dwelling site will have a secondary fuel break that extends to the south property line, east property line, and the BPA easement to the north. The secondary fuel break to the west will be 100 feet.

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district . . .

RESPONSE: The parcel is located within the Hazeldell Rural Fire Protection District.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

RESPONSE: This is instructional.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:
(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or
(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

RESPONSE: Based on well log data for nearby wells, Exhibit KK – Water Resources Report, there is sufficient proof to make a conclusion that there is a feasible domestic water supply available. The subject property is exempt under ORS 537.545, and agrees to submit the required report once the well is complete.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

RESPONSE: The subject property is within a fire district. The route of access from the Fire District located at 47592 Hwy 58 to the property is by way of a State Highway (58) for a distance of 1 mile to Airport Road (County road). Airport Road is paved for the entire ¾ mile length to get to the subject property. The proposed shared road and driveway from Airport Road to the subject property will be improved to the applicable Lane Code 16.211 fire standards See Exhibit 6.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

RESPONSE: Access to the site is from Airport Road via an existing shared easement road and a driveway that will be improved to Lane Code 16.211 standards. Exhibit 6 It is feasible to construct the road and driveway to the above county standards.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not more than 500 feet. Turnarounds shall comply with these design and construction standards:
(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or
(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and
(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

RESPONSE: Turn arounds within the road portion of the shared access are illustrated on Exhibit 6 at intervals of not more than 500 feet. A turn around will be provided at the dwelling,

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from a engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

RESPONSE: No bridges are required or existing. No new culverts are proposed. However, if any are needed, the applicant agrees to install per the above.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

RESPONSE: The proposed shared roadway and driveway can be constructed on slopes not exceeding 16%.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

RESPONSE: This is instructional.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

RESPONSE: The driveway portion of the access is less than 200 feet in length to the home site. See site plan, Exhibit 1, Exhibit 6.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

RESPONSE: Not applicable.

(9) Other Development Standards.
(a) Maintenance, Removal and Replacement of Indigenous Vegetation within the Riparian setback area. Maintenance, removal and replacement of indigenous vegetation within the riparian setback area designated for riparian vegetation protection by the comprehensive plan must comply with the provisions of LC 16.253(2) or LC 16.253(6), as applicable.

No removal of riparian vegetation is proposed for development of the dwelling.

(b) Signs.
(i) Signs shall not extend over a public right-of-way or project beyond the property line.
(ii) Signs shall not be illuminated or capable of movement.
(iii) Signs shall be limited to 200 square feet in area.

RESPONSE: No signs are proposed.

Exhibits
1. Site Plan
2. LIDAR Map
3. Contour Map
4. Aerial Photo
5. Airport Surfaces
6. Road Access Map

Applicant's Statements addressing Lane Code 16.246 Airport Safety Combining Zone requirements for development of a dwelling on Map 21-35-07-30 Taxlot 2900

LC 16.246(2) Applicability. The /AS-RCP Zone is applied to those lands adjacent to the Creswell Airport, the Cottage Grove Airport, the McKenzie Airport, the Oakridge Airport and Florence Airport which are encompassed by the surfaces set forth and described in LC 16.246(5) below and diagramed in LC 16.246(9) below. For purposes of this Chapter, the elevations of the five runways are established as follows:

(a) Cottage Grove - 641 feet above sea level.
(b) Creswell - 535 feet above sea level.
(c) Florence - 12 feet above sea level.
(d) Oakridge - 1419 feet above sea level.
(e) McKenzie - 1620 feet above sea level.

The determinations of the height of the various airport surfaces below are based on the established primary surface of the Oakridge Airport runway at an elevation of 1419' MSL.

(3) Use Limitations. In a/AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

(a) The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

The homesite is located underneath the Transitional Surface to the north of the Primary Surface. It is feasible to construct a dwelling on the subject property that does not penetrate the surface as described below. See analysis under the applicable Lane Code 16.246(5)(e) provision.

(b) All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.
(c) All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

It is feasible to meet these requirements when development of the property occurs. The applicant will file a Notice of Construction or Alteration (Form 7460-1) with the Federal Aviation Administration and Oregon Department of Aviation.

(4) Uses Prohibited. The area lying beneath the Approach Surface beginning at the end of the Primary Surface and extending outward a horizontal distance of 1,000 feet shall be considered to be

EXHIBIT N N
PART 2

a clear zone. Within this clear zone, no structure or object, except for fences and navigational aids approved by the airport operator, shall be erected, placed, altered, allowed to grow or be maintained above the surface of the ground.

The subject property is not located beneath the Approach Zone of the Oakridge Airport.

(5) Surface Described.

(a) Approach Surface. A surface longitudinally centered on the runway centerline, extending outward and upward from the ends of the Primary Surface at a slope of 20 horizontal feet to one vertical foot for a horizontal distance of 5,000 feet and widening from the width of 250 feet to 1,250 feet at its outer edge.

The subject property is not located beneath the Approach Zone of the Oakridge Airport.

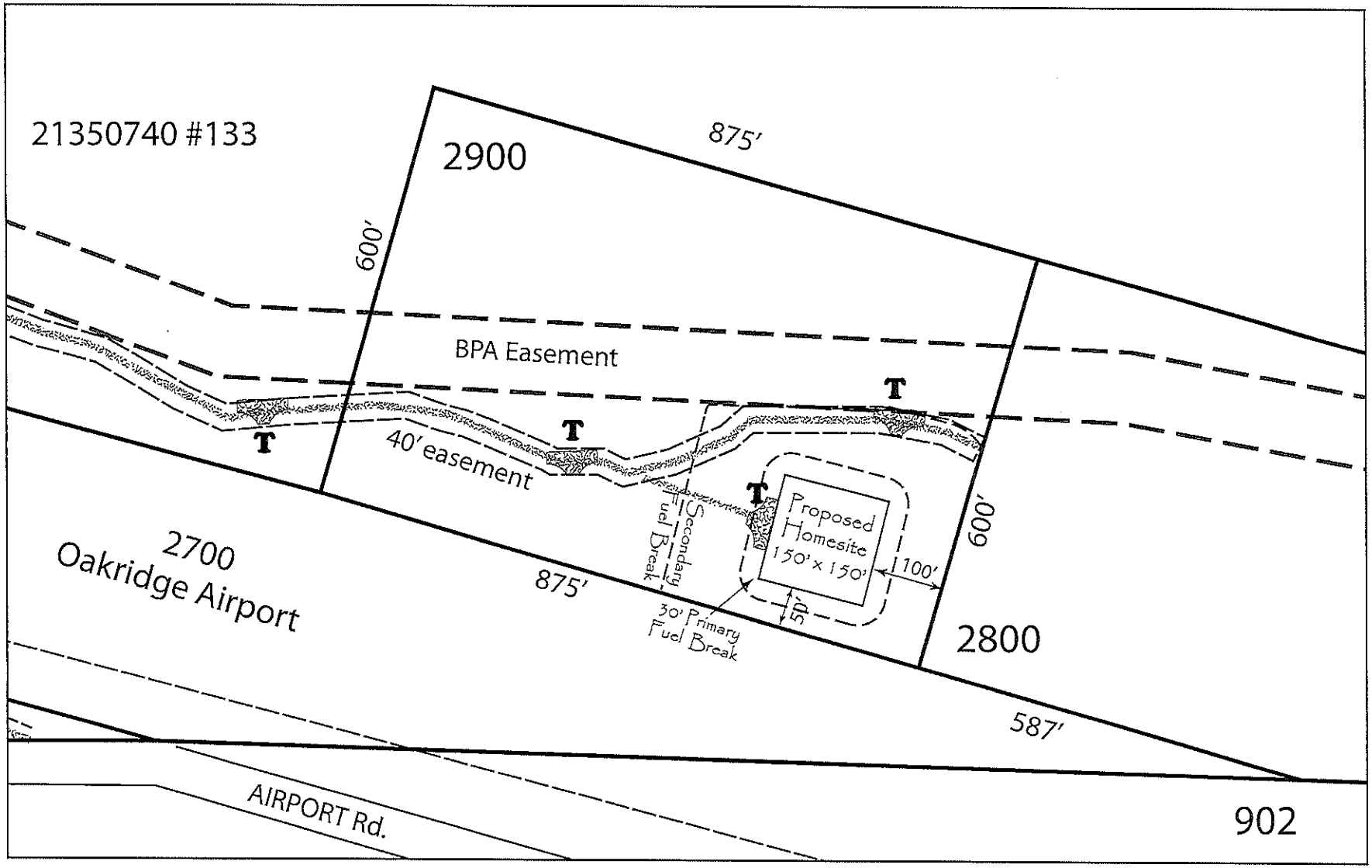
(d) Primary Surface. The Primary Surface is a plane longitudinally centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway surface and having a width of 250 feet. For purposes of this section, the Primary Surface shall be considered as having the same elevation as its respective runway as the same are specified in LC 16.246(2) above.

The proposed homesite is located 230' from the side of the primary surface. The Primary Surface is established at an elevation of 1419' MSL above.

(e) Transitional Surfaces. These surfaces extend upward and outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the Primary Surface and Approach Surface to the point of intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway.

The southern boundary of the proposed is located 230' from the side of the primary surface when measured perpendicular to the runway centerline. The northern boundary of the proposed homesite is located 380 feet from the side of the primary surface when measured perpendicular to the runway centerline. Using the 7:1 ration to determine the height of the Transitional Surface at the homesite, it can be determined that the Transitional Surface is located at a height of 1451' MSL [230' / 7 = 32.8'; 32 + 1419' = 1451'] at the southern boundary of the proposed homesite. It can also be determined that the Transitional Surface is located at a height of 1473' MSL [380' / 7 = 54.3'; 54 + 1419' = 1473'] at the northern boundary of the proposed homesite. Prior information in the record established the elevation at the level homesite at 1421' MSL. This allows for the construction of a home that is 30 feet in height at the southern border of the homesite (1451' – 1421' = 30') and increasing to a height of 52 feet at the northern boundary of the homesite (1473' – 1421' = 30'). It is feasible to develop a residence in the proposed homesite location within these height limitations.

Site Plan

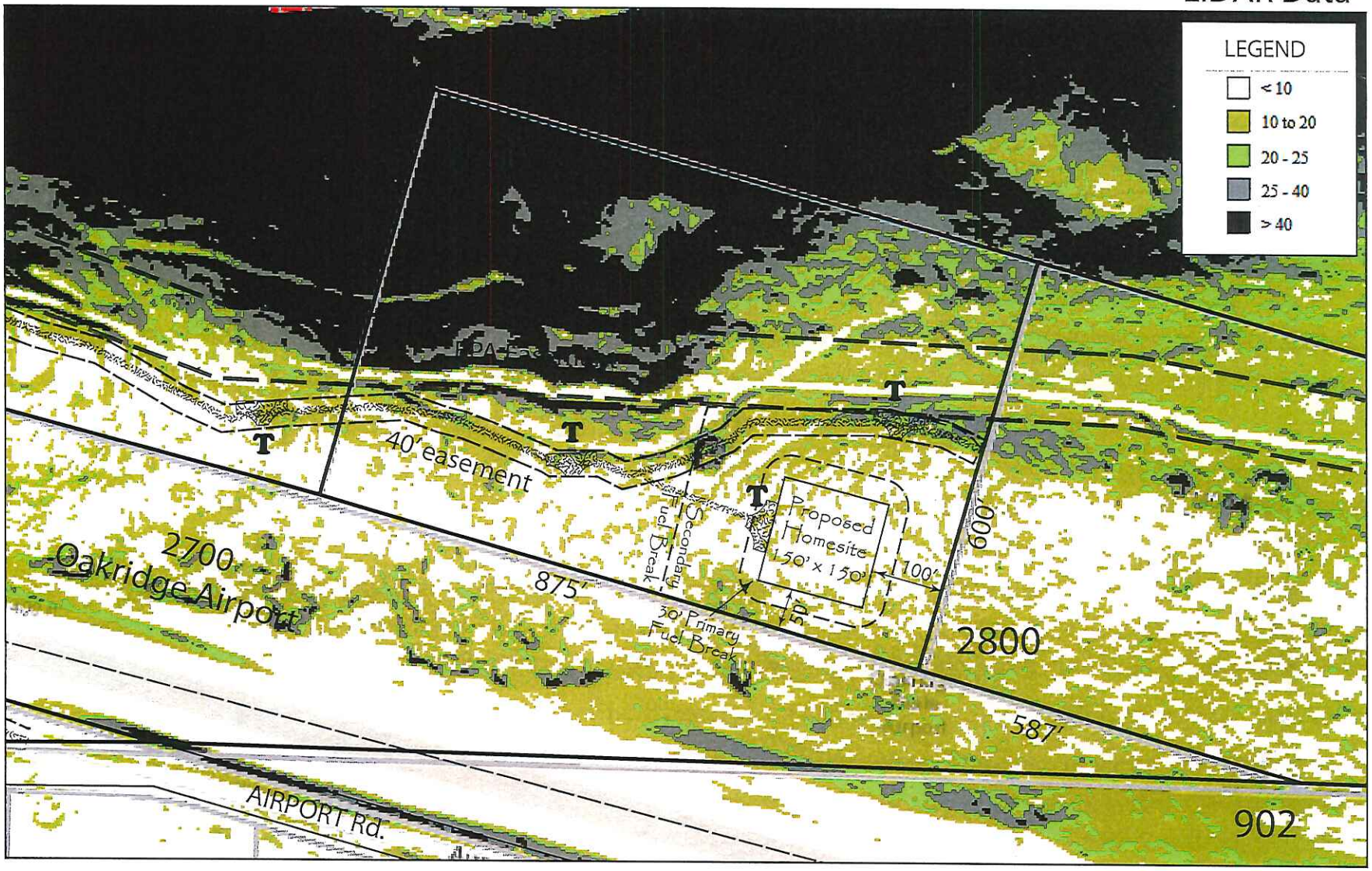


Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 1

Site Plan

LIDAR Data



scale 1" = 200'

0 50 100 200 Feet

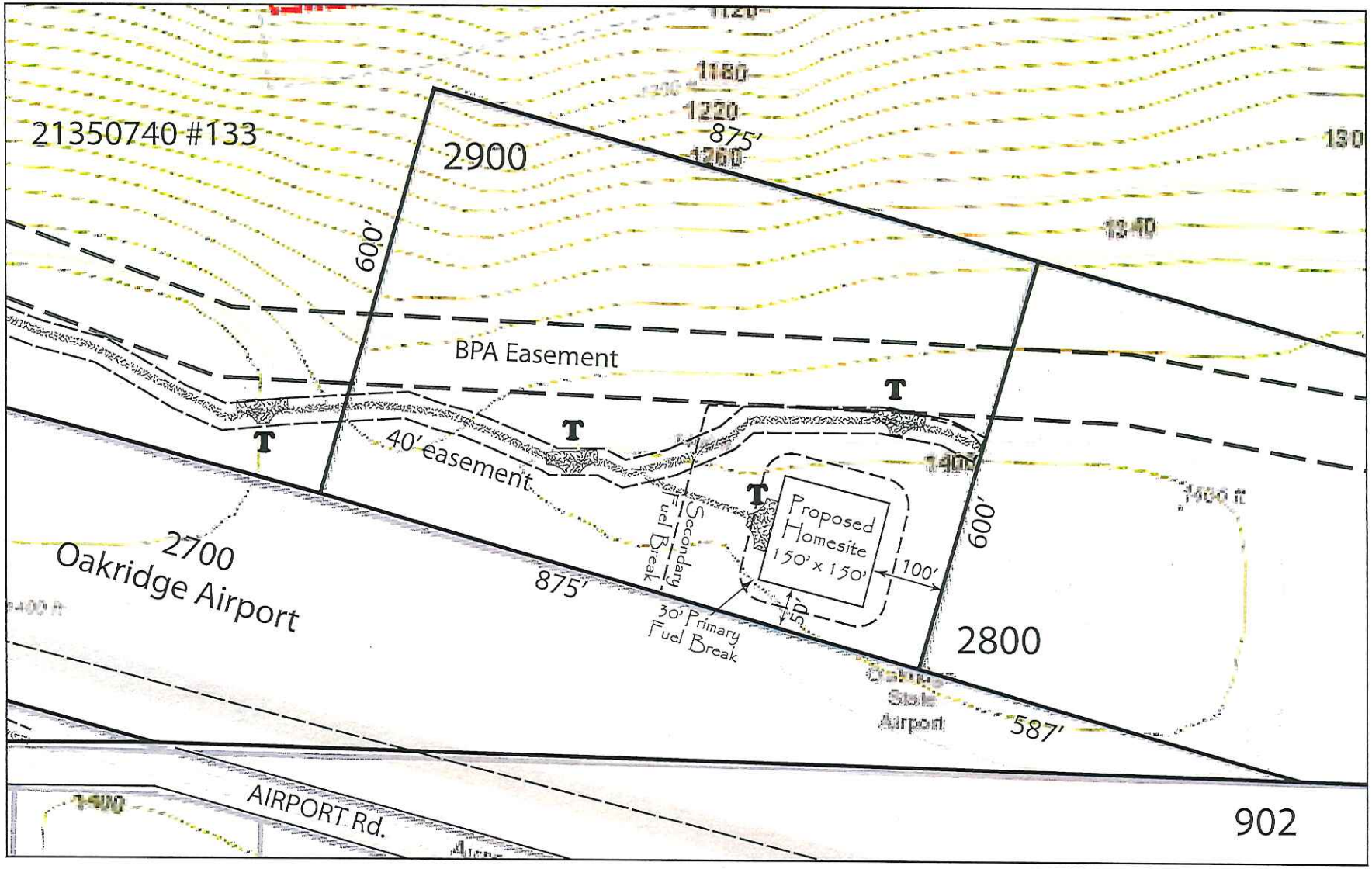
N

Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 2

Site Plan

Contours



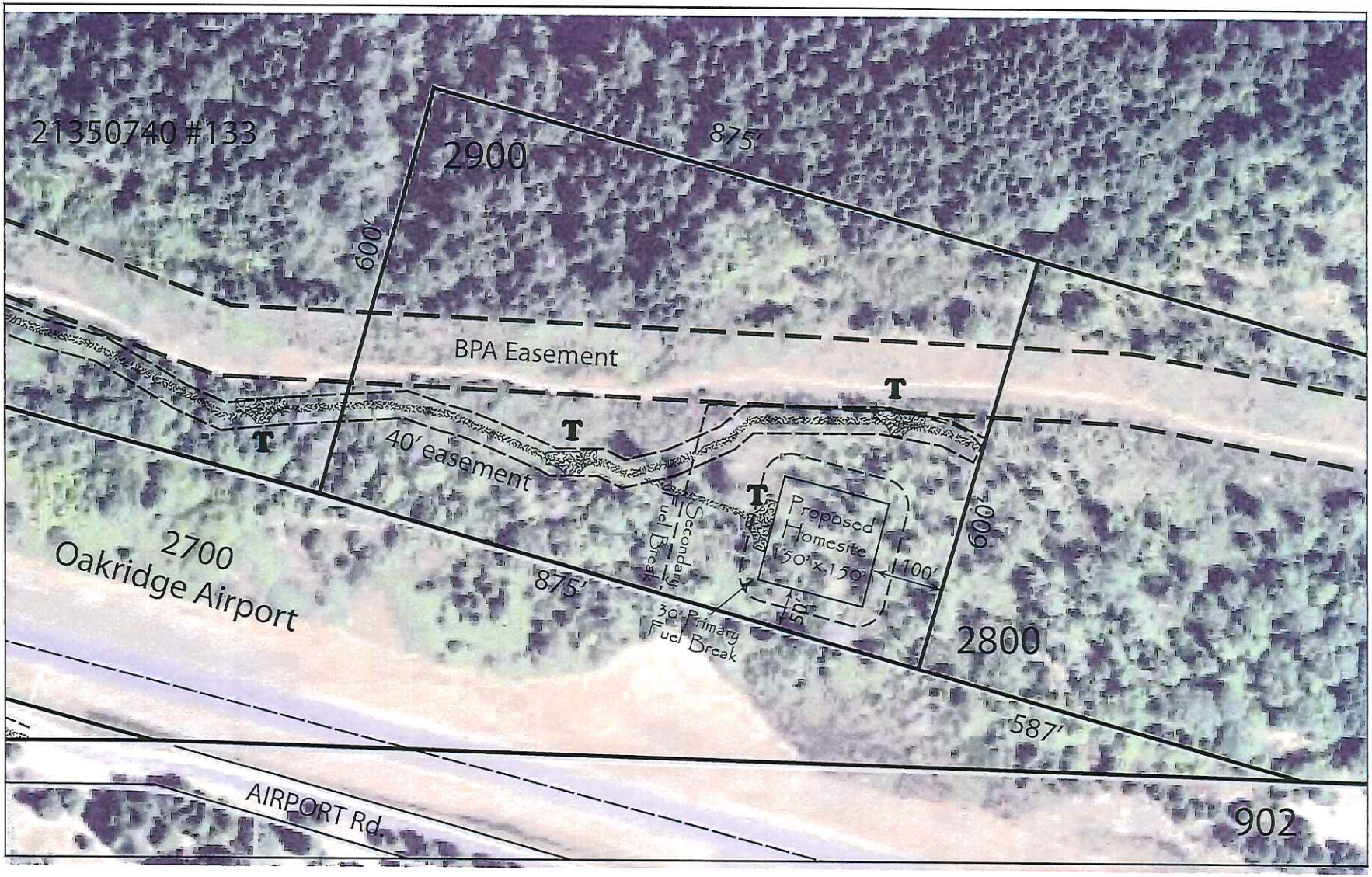
Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 3

002032

Site Plan

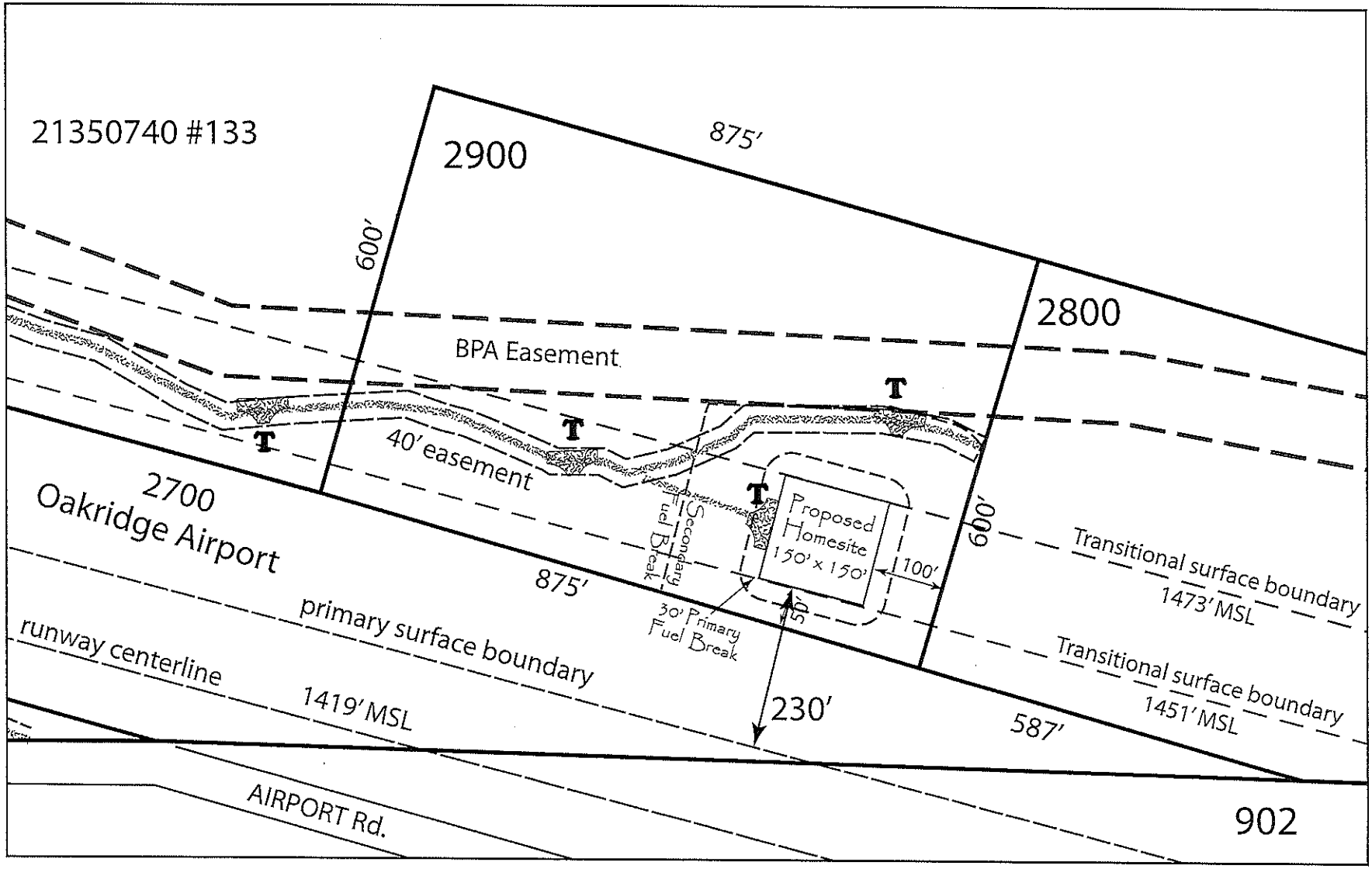
Aerial Photo



Subject Property Map 21-35-07-30 Taxlot 2900

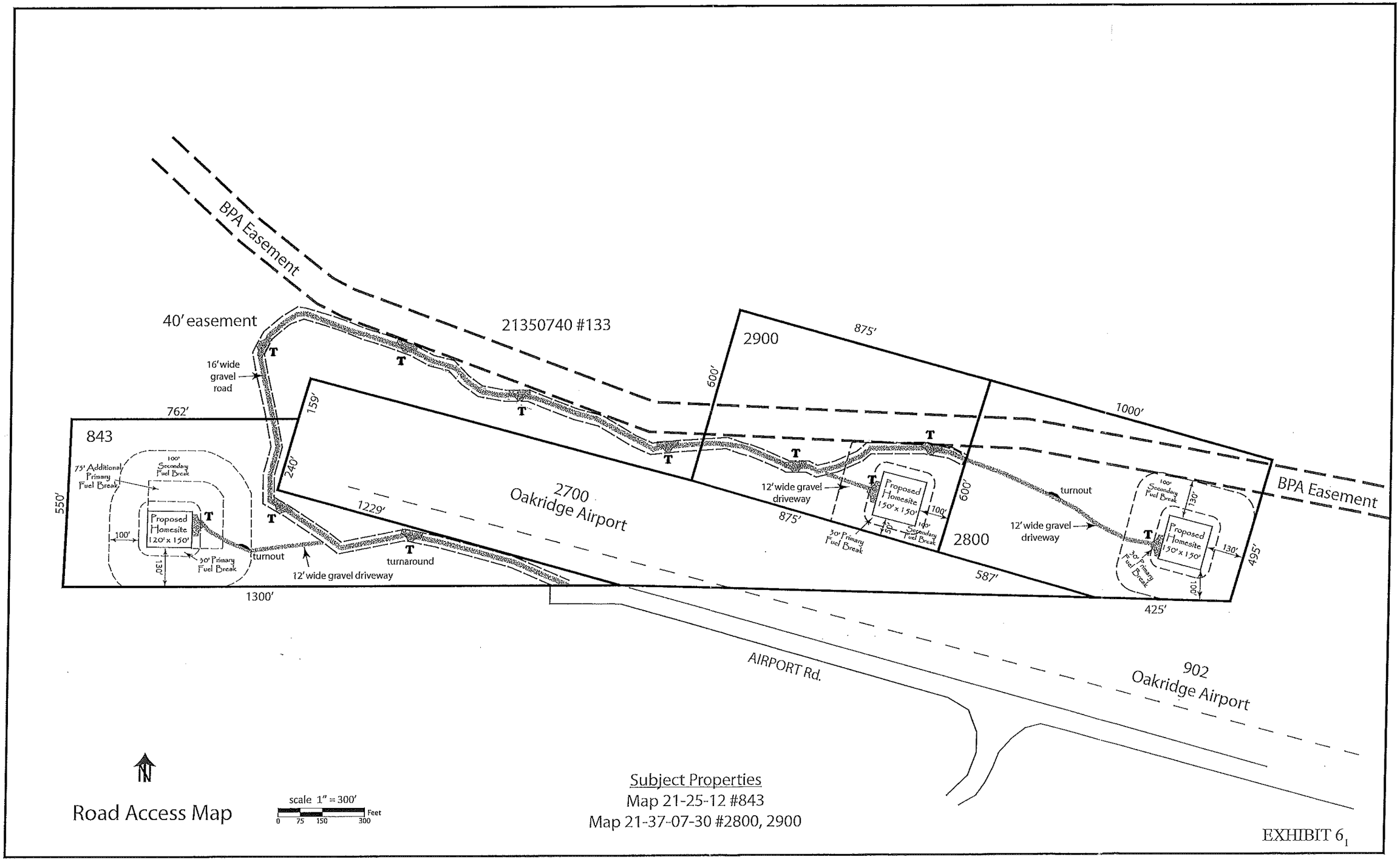
EXHIBIT 4

Airport Surfaces

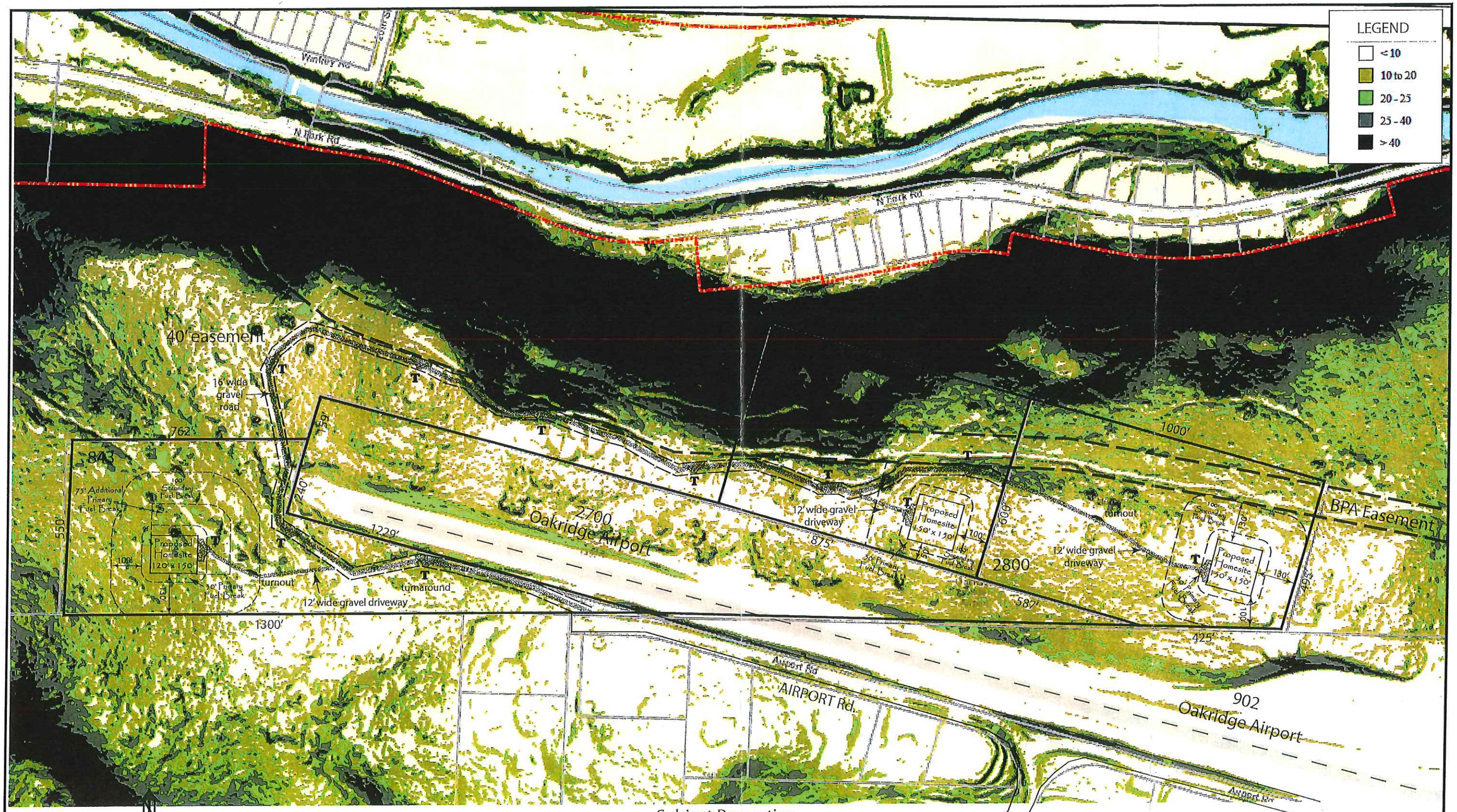


Subject Property Map 21-35-07-30 Taxlot 2900

EXHIBIT 5


BPA Easement
40' easement
21350740 #133
16' wide gravel road
762'
159'
843
75' Additional Primary Fuel Break
100' Secondary Fuel Break
Proposed Homesite 120' x 150'
100'
130'
30' Primary Fuel Break
turnout
12' wide gravel driveway
turnaround
550'
1300'
240'
1229'
2700 Oakridge Airport
600'
875'
2900
1000'
12' wide gravel driveway
Proposed Homesite 150' x 150'
100'
10' Secondary Fuel Break
30' Primary Fuel Break
587'
2800
turnout
12' wide gravel driveway
130'
495'
425'
BPA Easement
AIRPORT Rd.
902 Oakridge Airport
N
Road Access Map
scale 1" = 300'
0 75 150 300 Feet
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
EXHIBIT 6$_1$

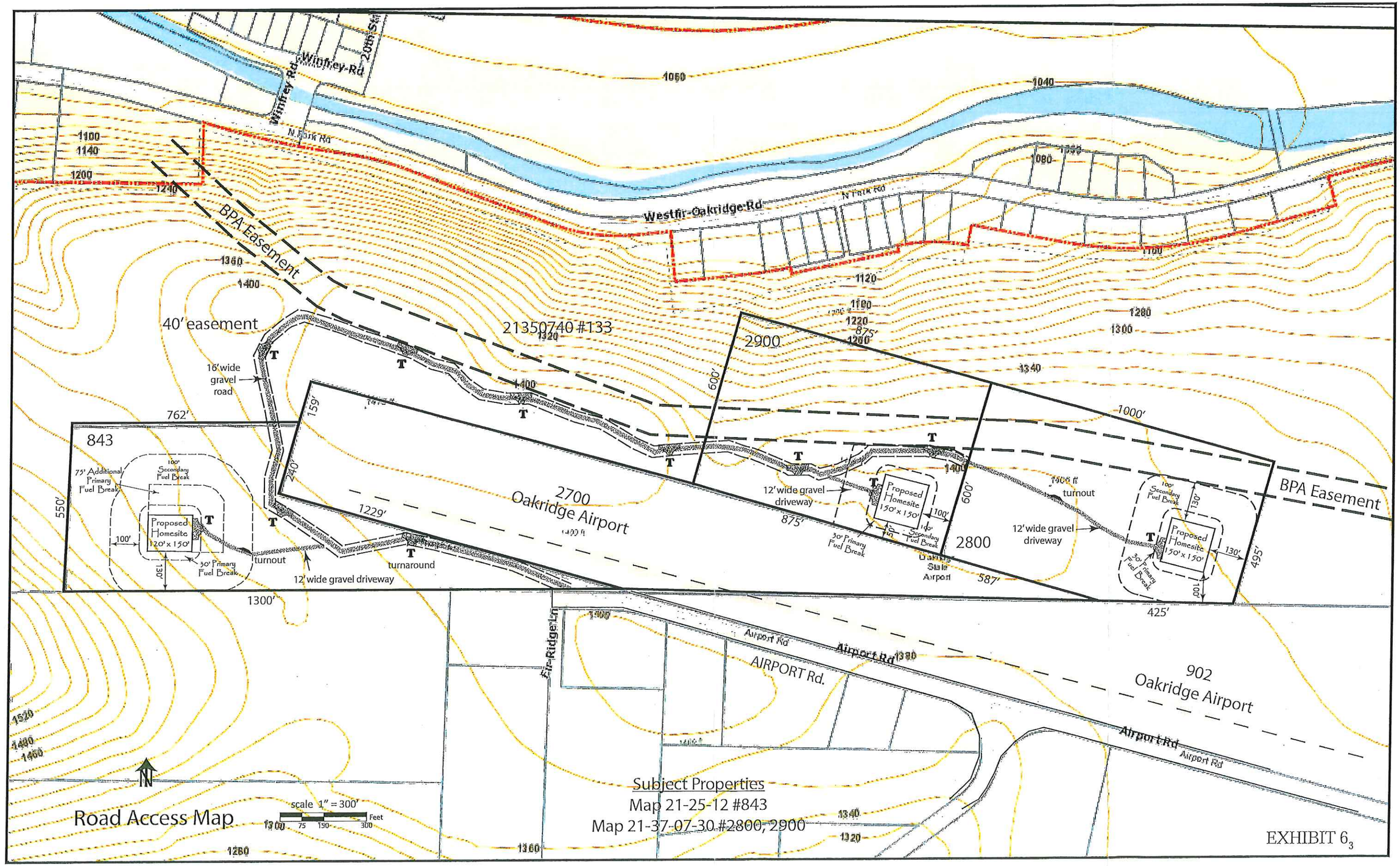
LIDAR Data

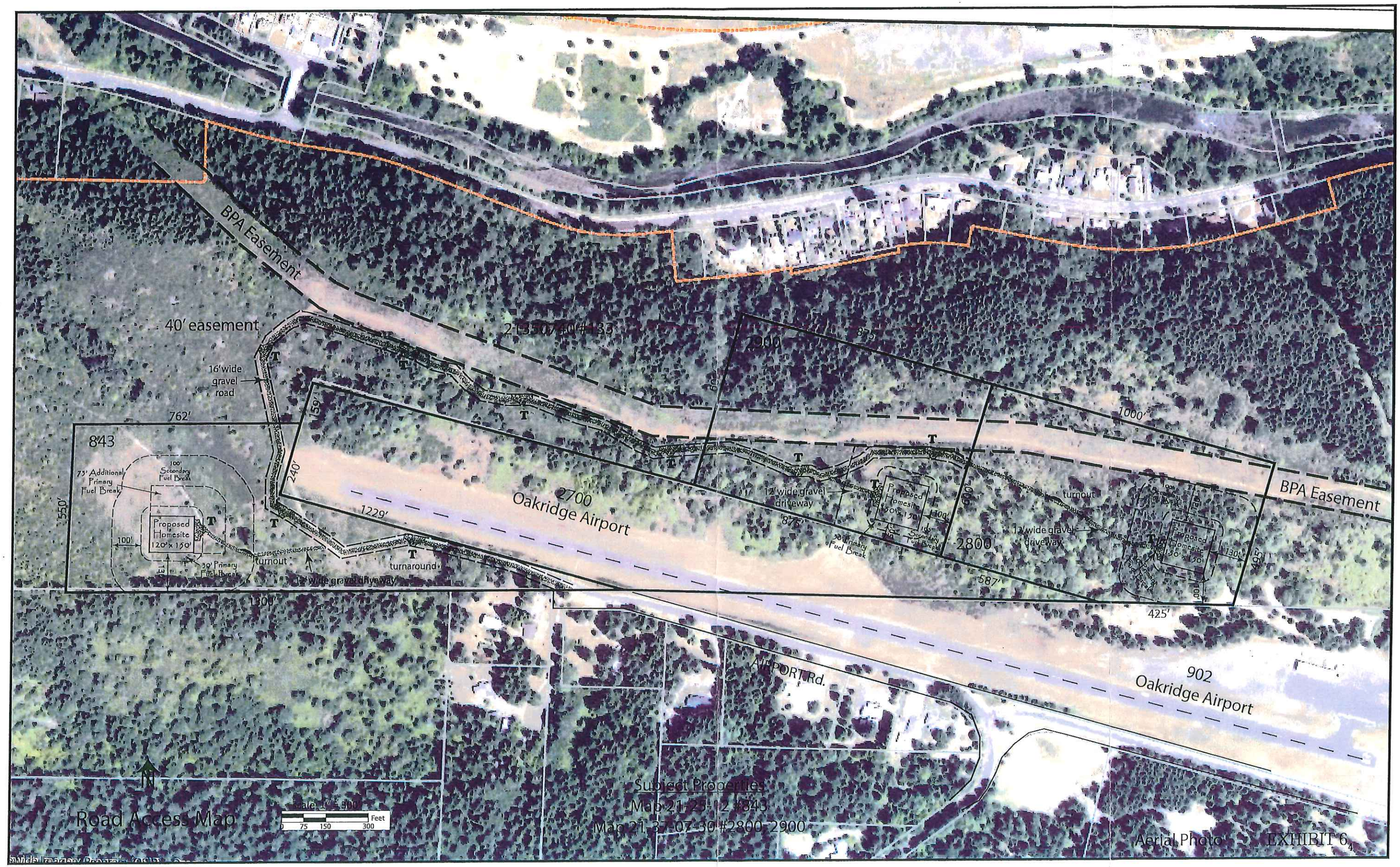


Road Access Map

Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900

EXHIBIT 6_2


Winfrey Rd
Winfrey Rd
20th St
N Fork Rd
Westfir-Oakridge Rd
N Fork Rd
BPA Easement
40' easement
21350740 #133
2900
16' wide gravel road
762'
843
159'
240'
550'
100' Secondary Fuel Break
75' Additional Primary Fuel Break
Proposed Homesite 120' x 150'
100'
130'
30' Primary Fuel Break
turnout
12' wide gravel driveway
turnaround
1300'
2700
Oakridge Airport
1229'
600'
875'
12' wide gravel driveway
Proposed Homesite 150' x 150'
100'
30' Primary Fuel Break
Oakridge State Airport
587'
2800
160' ± turnout
12' wide gravel driveway
Proposed Homesite 150' x 150'
130'
495'
425'
BPA Easement
1000'
Fir Ridge Ln
Airport Rd
AIRPORT Rd.
902
Oakridge Airport
Road Access Map
scale 1" = 300'
Feet
0 75 150 300
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
EXHIBIT 6$_3$


BPA Easement
40' easement
16' wide gravel road
762'
843
73' Additional Primary Fuel Break
100' Secondary Fuel Break
Proposed Homesite 120' x 150'
100'
550'
30' Primary Fuel Break
turnout
turnaround
12' wide gravel driveway
130'
240'
1229'
2700
Oakridge Airport
135'
875'
2900
1000'
12' wide gravel driveway
Proposed Homesite 120' x 150'
100'
130'
30' Primary Fuel Break
turnout
2800
587'
425'
495'
BPA Easement
AIRPORT Rd.
902
Oakridge Airport
Road Access Map
Scale 1" = 300'
0 75 150 300 Feet
Subject Properties
Map 21-25-12 #843
Map 21-37-07-30 #2800, 2900
Aerial Photo
EXHIBIT 6

ADAMS Shawna L

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 2:28 PM
To: ADAMS Shawna L
Subject: FW: 509-PA20-05064 E.KING Oakridge
Attachments: O-LP-1-A-13R1_file0001_1582.pdf; 71862A-1-2.tif; Application_for_use_of_BPA_Right_of_Way.pdf

[EXTERNAL ⚠]

Hi Shawna,

Kimberly (Ed Kings attorney) emailed us on Friday requesting what's needed for her client. BPA has responded to her request fyi. Thank you~

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Sent: Monday, April 27, 2020 2:12 PM
To: kimodea@landuseoregon.com
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>; Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: RE: 509-PA20-05064 E.KING Oakridge

Kimberly,

Thank You for your inquiry into use of the BPA access road for driveway access to your clients property.

I have attached a copy of the BPA easements and the plan & profile drawing for the area crossing your clients property. BPA's Hills Creek-Lookout Point No. 1, 115 kV transmission line right of way is 100 feet in width. The deeded access road includes portions of the road that are both inside and outside the corridor width. A survey by your client locating the right-of-way boundary may be needed to assist proper siting of structures beyond the boundary.

Also attached, is a copy of BPA's land use application form. A $250.00 non-refundable fee will be required to process the application.

Your email mentioned plans to upgrade the road and bring it up to county standards. As part of the application, BPA would like to know, the equipment that will be used to do the work, what grades and turnouts are planned, what gates may be installed and whether any utilities will be undergrounded in the road. (Distances of road features from transmission structures are especially useful for analysis and can reduce the need for site visits.) This information will allow BPA to do a

thorough analysis of safety hazards that could arise from excavation and grading work in the right-of-way, and to work with your client to assure safe and secure joint access to the road in the future.

Please note that a portion of the BPA access road crosses the airport property as it turns north from the county road. Permission from the Oregon State Board of Aeronautics may be needed to improve and use that portion of the road.

Due to COVID-19 work restrictions, applications can take longer to process than usual. Detailed plans and work descriptions greatly assist in the turnaround time for responses. Email correspondence and application submission is vital to aid response time.

Please contact Myself or Janai if you have further questions or concerns.

Respectfully,

Harley Canaday
Realty Specialist
503-230-5545 office
360-931-0631 mobile
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

Bonneville
POWER ADMINISTRATION

From: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Sent: Monday, April 27, 2020 7:26 AM
To: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>
Cc: Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: FW: 509-PA20-05064 E.KING Oakridge

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Kimberly O'Dea <kimodea@landuseoregon.com>
Sent: Friday, April 24, 2020 2:08 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] FW: 509-PA20-05064 E.KING Oakridge

Good afternoon, Janai:

I represent Ed King on the subject properties near Oakridge. Based on our site plans, none of the proposed dwellings are within the BPA right-of-way, which appears to be 80-90'. It is not our intention to propose any dwellings within the BPA easement. In fact, no structures will be built within the BPA easement.

However, we would like to utilize the existing access road. I was under the understanding that it was an old logging road. Regardless, as part of development, it will need to be improved to County standards (16' wide; compacted gravel; 20' of cleared area). This will also benefit BPA and give better access.

Attached is a rough site plan that shows all the parcels and the location of proposed access. It is feasible for us to move the dwelling site on TL 2900 eastward, if that would alleviate your concerns. A couple detailed site plans are also included.

In any case, please let me know what we need to do to obtain permission to use the existing access road, part of which is within the BPA easement?
Further, could you clarify the location and width of the BPA easement so that we can incorporate into our site plans, please?

Thank you much,
Kim

Kimberly Joy-Ritterbush O'Dea, Attorney At Law

Law Office of Bill Kloos, PC, 375 West 4th Street, Suite 204, Eugene, OR 97401
(541) 954-0095 (office/cell), e-mail: KimODea@landuseoregon.com, Web: www.landuseoregon.com

Please do not read, copy or disseminate this communication unless you are the intended addressee. This e-mail communication may contain confidential and/or privileged information intended only for the addressee. If you have received this e-mail in error, please call immediately at 541-954-0095. Also, please notify me by e-mail. Thank you.

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Tuesday, April 21, 2020 3:41 PM
To: Kimberly O'Dea <kimodea@landuseoregon.com>
Subject: RE: 509-PA20-05064 E.KING

Kim, Sounds good. You may have better luck with Janai than I did, especially if you show her the c. 2010 letter to her.

If you are unable to get something from them that confirms feasibility by Friday and would like me to hold off on the decision until that can be provided, I'll need an extension to enable that.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Kimberly O'Dea [mailto:kimodea@landuseoregon.com]
Sent: Tuesday, April 21, 2020 8:52 AM
To: ADAMS Shawna L
Subject: Re: 509-PA20-05064 E.KING

[EXTERNAL ⚠]

Thanks, Shawna. I will contact her today. Do you need an extension?

Sent from my iPhone

On Apr 20, 2020, at 3:29 PM, ADAMS Shawna L <shawna.adams@lanecountyor.gov> wrote:

Kim, BPA comment for this template dwelling application are below. I have followed up with Janai to verify whether the situation is similar to that in 2010 where we had sufficient confirmation to make feasibility findings. It sounds like that is not the case this time- they would need more info and an application before they can confirm that use of their access for the proposed purposes is something arrangements can be made for. Please advise how you would prefer we proceed with the review.

Be well,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Monday, April 20, 2020 7:14 AM
To: ADAMS Shawna L
Subject: RE: 509-PA20-05064 E.KING

[EXTERNAL ⚠]

Yes, thank you he needs to submit an application if he plans on using our access roads in case damage is done etc…

Respectfully,

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: ADAMS Shawna L <shawna.adams@lanecountyor.gov>
Sent: Thursday, April 16, 2020 6:55 PM
To: Soto,Janai A (CONTR) - TERR-ALVEY <jasoto@bpa.gov>
Subject: [EXTERNAL] RE: 509-PA20-05064 E.KING

Thanks Janai. At this point, we just need to know that the proposed access is feasible, e.g. that BPA is amenable to an arrangement with the applicants. Is the BPA able to confirm that at this stage? If not, is that what might be 12 weeks out or does the applicant need to submit one of your applications to before you would be able to respond?

Thanks much,

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

From: Soto,Janai A (CONTR) - TERR-ALVEY [mailto:jasoto@bpa.gov]
Sent: Tuesday, April 14, 2020 3:27 PM
To: ADAMS Shawna L
Subject: ref:509-PA20-05064 E.KING

EXTERNAL ⚠

My error I apologize this will need to be approved by BPA & has not been submitted as of yet. The existing case file we have is on another E.King parcel in Lane County.

I have attached a map that reflects where our lines are it appears the landowner will need to complete one of our applications for approval before building any dwellings in our easement areas. His parcels are marked by blue dots...
Thank you~

<image001.jpg>

Janai Soto
Flux Resources, LLC

Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

From: Soto,Janai A (CONTR) - TERR-ALVEY
Sent: Tuesday, April 14, 2020 12:10 PM
To: 'shawna.adams@co.lane.or.us' <shawna.adams@co.lane.or.us>
Cc: Canaday,Harley E (BPA) - TERR-3 <hecanaday@bpa.gov>; Wenzl,Nicholas J (BPA) - TFEF-ALVEY <njwenzl@bpa.gov>
Subject: lis case 20200165/your ref:509-PA20-05064 E.KING

Hi Shawna,

BPA currently has received a request for this development & is in the process of review for a Land use permit. Due to the Covid 19 we are currently on a telework status from home. Our current eta on the Land use applications for multiple departments to review may be extended, the normal response time is: 6-12 weeks to process. Thank you for your patience. Have a great day & stay safe.

Respectfully,

Janai Soto
Flux Resources, LLC
Realty Technician II
Real Property Field Services, TERR/Alvey Bonneville Power Administration
Direct: 541-988-7409
Cell: 541-214-6984
E-mail: jasoto@bpa.gov
https://www.bpa.gov/PublicInvolvement/LandsCommunity/Pages/default.aspx

AND RELEASE OF EASEMENT

The Grantor, EDWARD HINES LUMBER CO., a Delaware corporation, for and in consideration of the sum of * * * TWO HUNDRED FIFTY * * * * * * * * * * * * * * Dollars ($ 250.00 * * *), in hand paid by the UNITED STATES OF AMERICA, receipt of which is hereby acknowledged, hereby grants, bargains, sells, and conveys to the UNITED STATES OF AMERICA and its assigns, a perpetual easement and right to enter and erect, maintain, repair, rebuild, operate, and patrol one line of electric power transmission structures and appurtenant signal lines, including the right to erect such poles, transmission structures, wires, cables, and appurtenances as are necessary thereto, in, over, upon and across the following-described parcels of land in the County of Lane, in the State of Oregon, to-wit:

Tract O-LP-R-13

A strip of land 100 feet in width across the S½SW¼ of Section 7, Township 21 South, Range 3 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

Beginning at a point which is N. 41°04'40" W. 3558.3 feet from the southeast corner of Section 12, Township 21 South, Range 2 East, Willamette Meridian; thence S. 47°28' E. 2225.0 feet; thence S. 53°28'00" E. 360.0 feet; thence S. 69°39'00" E. 1141.4 feet; thence S. 88°05'00" E. 1255.5 feet; thence S. 79°16'50" E. 3472.6 feet to a point which is S. 89°14'30" W. 2475.8 feet from the north quarter corner of Section 17, Township 21 South, Range 3 East, Willamette Meridian.

The bearings of said survey line refer to Local Grid.

Tract LO-R-35

A strip of land 100 feet in width through the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, Willamette Meridian, Lane County, Oregon. The boundaries of said strip of land lie 50 feet on each side of and parallel with the survey line of the United States of America for its Bonneville Power Administration's Oakridge-Lookout Point Line, said survey line being described as follows:

Beginning at a point in said survey line in Section 12, Township 21 South, Range 2 East, Willamette Meridian, said point being N. 41°04'40" W. 3558.3 feet from the southeast corner of said Section 12; thence S. 47°28' E. 2225.0 feet to a point; thence S. 53°28'00" E. 360.0 feet to a point; thence S. 69°39'00" E. 1141.4 feet to a point; thence S. 88° 05'00" E. 1255.5 feet to a point; thence S. 79°16'50" E. 3472.6 feet to a point in said survey line in Section 17, Township 21 South, Range 3 East, Willamette Meridian, said point being S. 89°14'30" W. 2475.8 feet from the north quarter corner of said Section 17.

The bearings of said survey line refer to Local Grid;

together with the present and future right to clear said right of way and keep the same clear of brush, timber, structures, and fire hazards, provided that fire hazards shall not be interpreted to include any growing crops other than trees; and also the present and future right to top, limb or fell all growing [illegible] trees and snags (collectively called "danger trees") located on land

002045

Tract O-LP-R-13:

Width in Feet	Side of R/W	From	To
85	Northerly	West line Sec. 7, T21S, R3E, WM	Opp. SS 990+80
40	North	Opp. SS 993+15	Opp. SS 994+60
50	Northerly	Opp. SS 997+32	Opp. SS 1001+30
60	Northerly	Opp. SS 1007+20	Opp. SS 1020+00
70	Northerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM	Opp. SS 1030+00
45	South	Opp. SS 987+70	Opp. SS 991+60
40	South	Opp. SS 994+00	Opp. SS 995+00
50	Southerly	Opp. SS 997+32	Opp. SS 1001+80
50	Southerly	Opp. SS 1009+00	Opp. SS 1014+25
50	Southerly	Opp. SS 1017+50	West line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7, T21S, R3E, WM
40	Southerly	East line Southern Pac. Co. r/w in SE¼SE¼ Sec. 7 T21S, R3E, WM	South line Sec. 7, T21S, R3E, WM

Tract LO-R-35:

50	Northeasterly	Opp. SS 969+75	Opp. SS 973+35
85	Northeasterly	Opp. SS 975+70	East line Sec. 12, T21S, R2E, WM

and contiguous to said right of way that (a) are danger trees on the date hereof (hereinafter called "present danger trees"), or (b) become danger trees thereafter (hereinafter called "future danger trees"). The right to top, limb or fell danger trees outside of said strips (hereinafter called "additional danger trees") may only be exercised within 3 years after all present danger trees have been cut, and the UNITED STATES OF AMERICA shall pay the person who is the owner thereof at the date of cutting such additional danger trees the market value prevailing at the date of cutting under authority of the UNITED STATES OF AMERICA, such payment to be made within a reasonable period of time after they have been so cut; and

Grantor also hereby grants, bargains, sells, and conveys unto the UNITED STATES OF AMERICA, and its assigns, a permanent easement and right of way for the construction, operation, use and maintenance of roads approximately 14 feet in width (with such additional widths as are necessary to provide for cuts, fills, and turn-outs and for curves at angle points) on, over, and across the land of the Grantor in portions of the SW¼SE¼, SE¼SW¼ and Government Lot 4 of Section 7, Township 21 South, Range 3 East, and the SE¼SE¼ of Section 12, Township 21 South, Range 2 East, W. M., Lane County, Oregon, for the following purposes, namely: the right to enter and to clear of timber, danger trees, and brush; to build, cut, fill, level, grade, drain, surface, maintain,

Bonneville Power Administration, attached hereto and by this reference, made a part hereof.

The Grantor reserves the right of ingress and egress over and across said roads and the right to pass and repass along and on said roads insofar as the same extend across the lands of the Grantor, said right to be exercised in a manner that will not interfere with the use of the roads by the UNITED STATES OF AMERICA, its employees, contractors, or assigns.

It is understood and agreed that if said roads are damaged by the UNITED STATES OF AMERICA, its employees, contractors, or assigns, the UNITED STATES OF AMERICA, subject to the availability of appropriations, or its assigns, will repair such damage. It is further understood and agreed that the Grantor may erect or maintain fences across such roads, provided adequate gates of not less than ten feet in width are installed, which may be kept locked, provided the UNITED STATES OF AMERICA is also permitted to install its own lock thereon.

TO HAVE AND TO HOLD said easement and rights unto the UNITED STATES OF AMERICA and its assigns, forever.

The Grantor covenants to and with the UNITED STATES OF AMERICA and its assigns that the title to all brush, timber, or structures existing upon the rights of way on the date hereof, and the title to all present danger trees shall vest in the UNITED STATES OF AMERICA on said date; and that title to any additional danger trees shall vest in the UNITED STATES OF AMERICA upon their being cut pursuant to the terms hereof; and that title to all future danger trees cut pursuant to the terms hereof shall remain in the owner thereof at the date of cutting; and that the consideration stated herein is accepted by the Grantor as full compensation for all damages incidental to the exercise of said easement and danger tree rights, except payment for any additional danger trees as defined hereinabove which may be cut under authority of the UNITED STATES OF AMERICA as herein provided.

The Grantor also covenants to and with the UNITED STATES OF AMERICA that Grantor is lawfully seized and possessed of the lands aforesaid; has a good and lawful right and power to sell and convey same; that same are free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

The UNITED STATES OF AMERICA, Department of the Interior, acting by and through the Bonneville Power Administrator, pursuant to the Acts of Congress approved August 20, 1937 (50 Stat. 731, 16 U.S.C. 832a, et seq.), as amended, and June 30, 1949 (63 Stat. 377, 40 U.S.C. 471, et seq.), as amended, and regulations and delegations of authority issued pursuant thereto, and as part of the consideration for the easement rights hereinabove described, does hereby remise, release and quitclaim to the Grantor all that portion of Tract LO-35 as acquired by easement dated October 10, 1960 and recorded in Reel 162 '60 D, File No. 15633, Official Records of Lane County, Oregon, which lies southerly of the above-described Tract Lo-R-35.

IN WITNESS WHEREOF, EDWARD HINES LUMBER CO. has caused this instrument to be signed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed this 18 day of July, 1968.

UNITED STATES OF AMERICA
Department of the Interior
Bonneville Power Administration

By _____
Chief, Branch of Land

EDWARD HINES LUMBER CO.

By _____
Executive Vice President

Attest _____
Asst. Sec'y.

002047

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On this 18th day of July, 1968, before me personally appeared Joseph J. Fitzgerald and Estelle D. Koehn to me known to be the Exec. Vice President and Asst. Secretary of the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal the day and year last above written.

Daniel G. Kyle
Notary Public in and for the
State of Illinois
Residing at Chicago

My commission expires:
april 13, 1970

DANIEL G. KYLE NOTARY PUBLIC COOK COUNTY, ILL. (SEAL)

STATE OF OREGON)
) ss:
COUNTY OF MULTNOMAH)

On the 30th day of October, 1969, personally came before me, a notary public in and for said County and State, the within-named John V. Mulcahy, Chief, Branch of Land, Bonneville Power Administration, to me personally known to be the identical person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

G. E. Hebner
Notary Public in and for the
State of Oregon
Residing at Portland

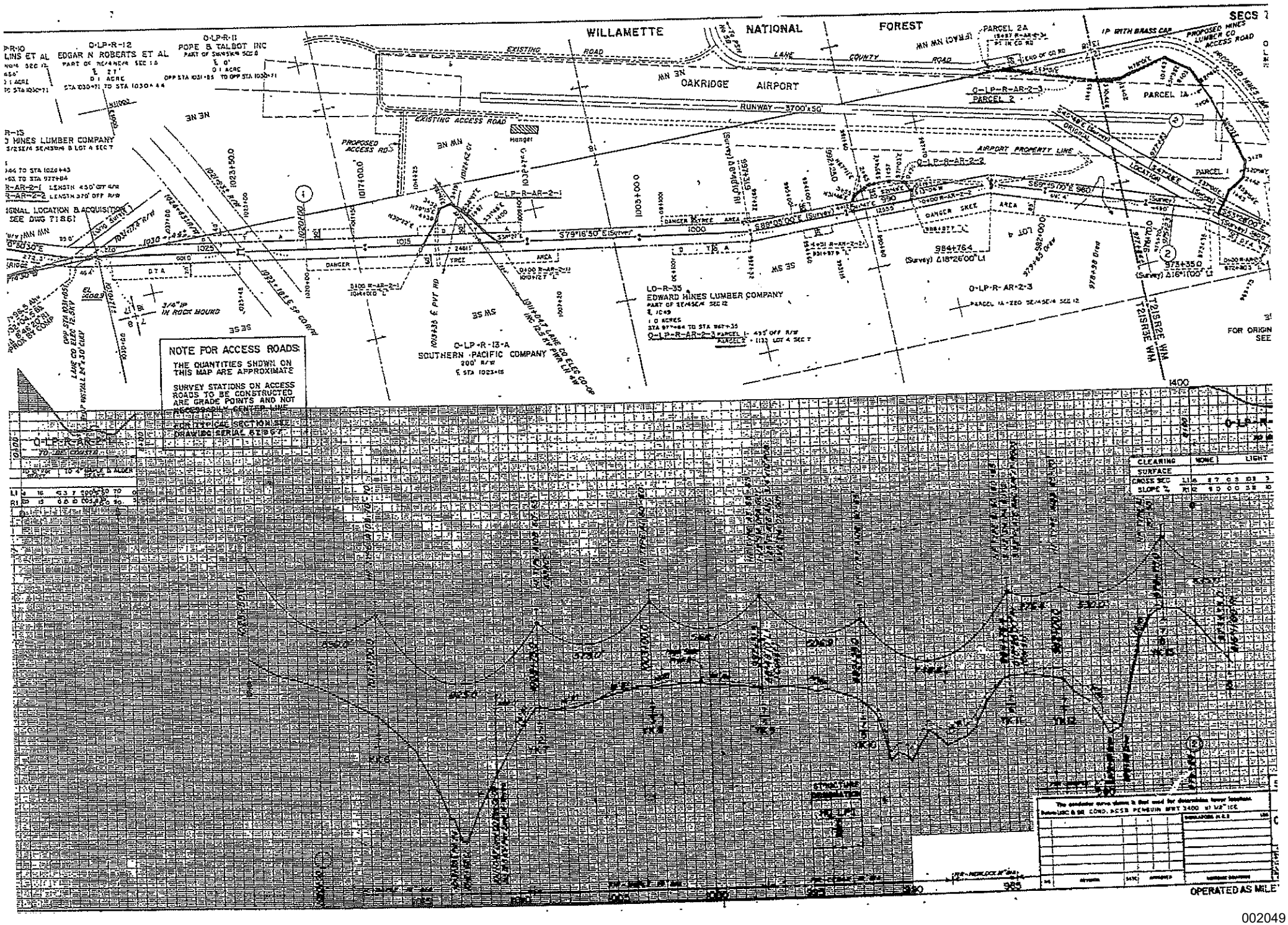
(SEAL)

My commission expires:
Sept. 20, 1973

The within instrument was received for the record on the day of , 19 , at M., and recorded in book on page , records of County, (State).

By

002048


WILLAMETTE NATIONAL FOREST
OAKRIDGE AIRPORT
RUNWAY — 3700'x50'
EXISTING ACCESS ROAD
PROPOSED ACCESS RD.
EXISTING LANE COUNTY ROAD
PROPOSED MINES LUMBER CO ACCESS ROAD
AIRPORT PROPERTY LINE
PARCEL 1
PARCEL 1A
PARCEL 2
PARCEL 2A
O-LP-R-AR-2-1
O-LP-R-AR-2-2
O-LP-R-AR-2-3
O-LP-R-12
EDGAR N ROBERTS ET AL
O-LP-R-11
POPE & TALBOT INC
LO-R-35
EDWARD HINES LUMBER COMPANY
O-LP-R-13-A
SOUTHERN PACIFIC COMPANY
200' R/W
SIGNAL LOCATION & ACQUISITION SEE DWG 71861
NOTE FOR ACCESS ROADS:
THE QUANTITIES SHOWN ON THIS MAP ARE APPROXIMATE
SURVEY STATIONS ON ACCESS ROADS TO BE CONSTRUCTED ARE GRADE POINTS AND NOT NECESSARILY CENTER LINE
FOR TYPICAL SECTION SEE DRAWING SERIAL 61867
3/4" IP IN ROCK MOUND
DANGER TREE AREA
FOR ORIGIN SEE
OPERATED AS MILE

002049

(1322)

TRANSMISSION LINE AND ACCESS ROAD

EASEMENT

AND RELEASE OF EASEMENT

4117 - BOARD RIVER LUMBER CO.

TO

4-1 - UNITED STATES OF AMERICA

State of Oregon,
County of Lane —ss.

I, Ina Randolph, Director of the Department of Records and Elections, in and for the said County, do hereby certify that the within instrument was received for record at

1969 OCT 31 PM 4 32 2

Reel 458-R

Lane County OFFICIAL Records.

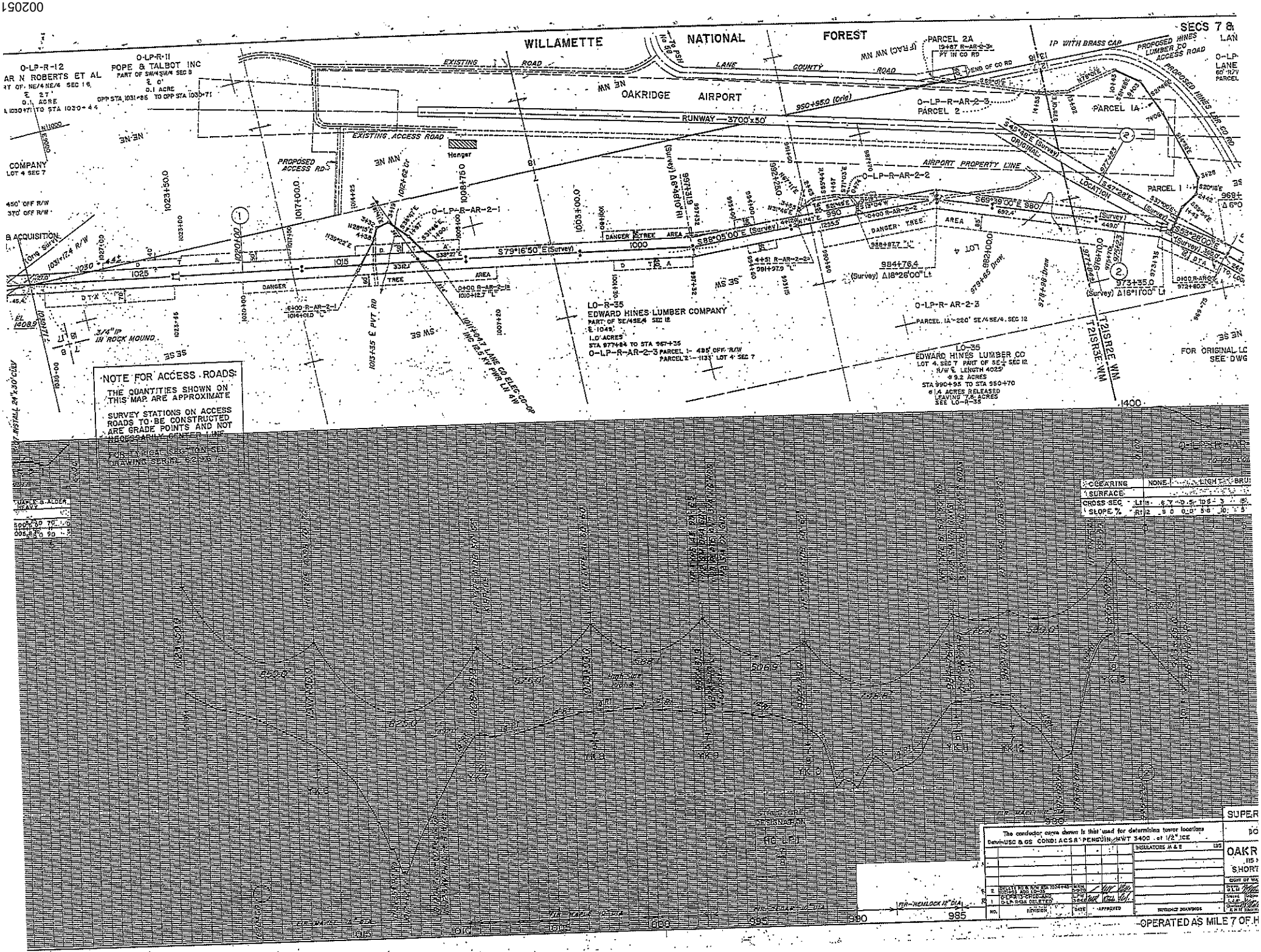
INA RANDOLPH, Director of the Department of Records & Elections.

By _____ Deputy

C29-083-05

BONNEVILLE POWER ADMINISTRATION

002050


WILLAMETTE NATIONAL FOREST
OAKRIDGE AIRPORT
RUNWAY — 3700'x50'
EXISTING ACCESS ROAD
PROPOSED ACCESS RD
EXISTING COUNTY ROAD
PROPOSED HINES LBR CO RD ACCESS ROAD
AIRPORT PROPERTY LINE
Hanger
O-LP-R-12
AR N ROBERTS ET AL
O-LP-R-11
POPE & TALBOT INC
O-LP-R-AR-2-1
O-LP-R-AR-2-2
O-LP-R-AR-2-3
PARCEL 1
PARCEL 1A
PARCEL 2
PARCEL 2A
LO-R-35
EDWARD HINES LUMBER COMPANY
EDWARD HINES LUMBER CO
DANGER TREE AREA
TREE AREA
3/4" IP IN ROCK MOUND
IP WITH BRASS CAP
T21S R2E WM
T21S R3E WM
NOTE FOR ACCESS ROADS:
THE QUANTITIES SHOWN ON THIS MAP ARE APPROXIMATE
SURVEY STATIONS ON ACCESS ROADS TO BE CONSTRUCTED ARE GRADE POINTS AND NOT NECESSARILY CENTER LINE
SECS 7 &
FOR ORIGINAL LO
SEE DWG
OPERATED AS MILE 7 OF H

BPA F 4300.03e
(07-2019)

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION *(BPA)*
APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

1-800-282-3713

Ask for Real Property Services or a contact person from web site. www.bpa.gov/goto/LandsCommunity	**Date:**

Privacy Act Statement
Authority: 42 USC § 7101 and 50 USC § 2401
Purpose: BPA will use this information to assess whether your proposed use of our right-of-way will interfere with BPA's land rights.
Routine Uses: This information is authorized to be maintained in Privacy Act system of records DOE-24, "Land Records System." Other routine uses for which this information may be disclosed are listed in the Privacy Act system of records notice for DOE-24, which is published in the Federal Register.
Disclosure: Voluntary; however, failure to provide complete information may result in a delay or denial of your application.

Applicant is required to complete all of page 1. If not submitting an attached map, plan or sketch, page 2 is required.

Checks will not be accepted. Remit payment to BPA electronically. To make payment using Google Chrome, Firefox, or Edge browser, navigate to https://www.bpa.gov/goto/HowtoPay: select the blue hyperlink MAKE PAYMENT NOW; select the blue CONTINUE TO FORM button; under Purpose of Payment select REALTY APPLICATION FEE and fill out remaining fields with an *; select CONTINUE to submit payment. Please make sure to select the appropriate box below before making your payment. You should receive a confirmation when finished.

☐ NO APPLICATION FEE	☐ $250 APPLICATION FEE	☐ $2500 APPLICATION FEE
For individual landowners requesting personal use of BPA Right-of-Way	For developments or subdivisions. Application fee is non-refundable.	For longitudinal occupancies that require multiple miles of BPA Right-of-Way. Application fee is non-refundable.

Applicant	**Owner** *(Complete only if the applicant is not the owner.)*
1. NAME	4. NAME
2. ADDRESS, CITY, STATE, ZIP	5. ADDRESS, CITY, STATE, ZIP
3. TELEPHONE NO. EMAIL ADDRESS: FAX NO:	6. TELEPHONE NO. EMAIL ADDRESS: FAX NO:

7. LOCATION OF PROPERTY (Legal description of the property. *This information is on your title, insurance policy, courthouse deed, or your tax statement.*)
(PROVIDE A COUNTY ASSESSOR'S MAP SHOWING THE OWNER'S BOUNDARY LINES AND THE LOCATION OF USE.)

QUARTER SECTION(S)	SECTION(S)	TOWNSHIP	RANGE	COUNTY	STATE

8. PURPOSE FOR WHICH BPA RIGHT-OF-WAY/PROPERTY IS TO BE USED. Check all boxes that apply and complete the information on the following page. *(Include a map, plan or sketch if appropriate.) NOTE:* For submission of digital plans please provide a PDF version. BPA will request larger plans, if needed.

☐ Driveway / Roadway Width	☐ Pipelines				☐ Electric Service Line
Width _____	Type:	☐ Gas	☐ Sewer	☐ Water	Voltage _____
Material _____	Diameter				Underground _____
PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS.	Material				Overhead _____
	Buried Depth				

☐ Other Uses: _____

Narrative: Please describe your intended use in detail. In order to assure safe clearance, please describe any equipment that will be used for applied use *(including equipment intended to construct and maintain the use)*. Space is provided on page 2 for a drawing. ***IF GRADING, PLEASE ATTACH EXISTING AND PROPOSED GRADING PLANS***

9. APPLICANT NAME	10. APPLICANT SIGNATURE	11. APPLICANT TITLE

IF APPLICABLE, ATTACH NAME, COMPANY ADDRESS, AND A CONTACT PERSON FOR ALL UTILITIES INVOLVED IN PROJECT.

12. RIGHT-OF-WAY Draw in space provided below the location of the proposed use. **(Identify structures and show distances and angles from BPA structures).** Diamonds on the line represent BPA structures on the right-of-way. Copy the series of letters and numbers from the lower half of each BPA structure *(see example below)* and enter in "BPA Structure Identification" block. Indicate which direction is "North" in relation to the right-of-way.

BIG E – CHEM 1-81-2
BPA STRUCTURE IDENTIFICATION



PS2 1-2-A
BPA STRUCTURE IDENTIFICATION



Identify structures and show distances and angles from BPA structures

BPA STRUCTURE IDENTIFICATION _____ BPA STRUCTURE IDENTIFICATION _____

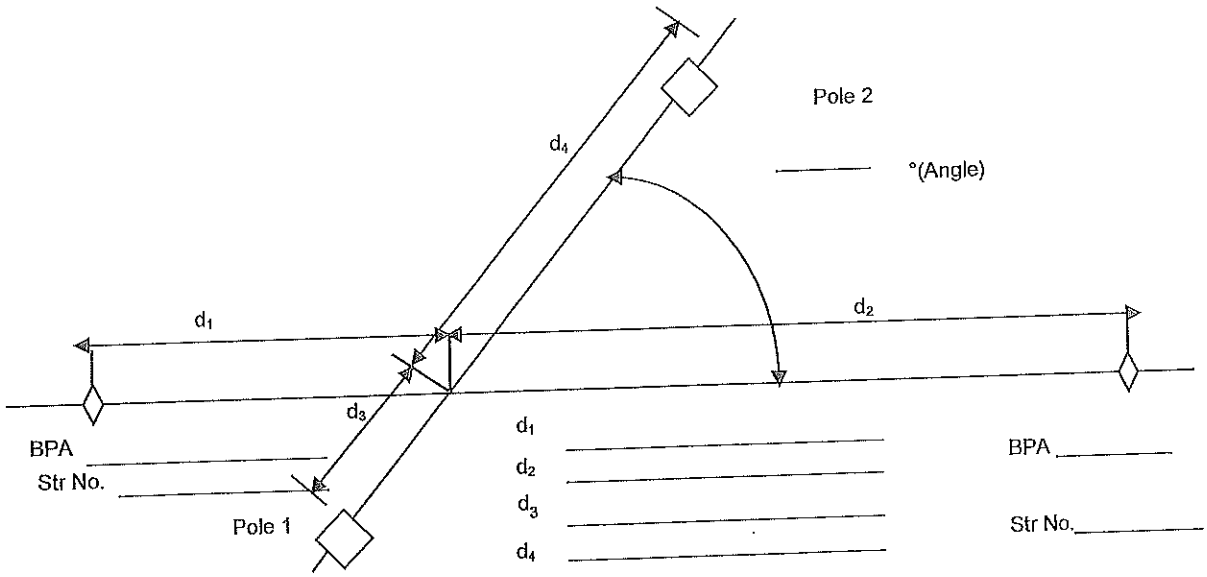
BPA F 4300.03
(07-2019)

U.S. DEPARTMENT OF ENERGY - BONNEVILLE POWER ADMINISTRATION *(BPA)*

APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

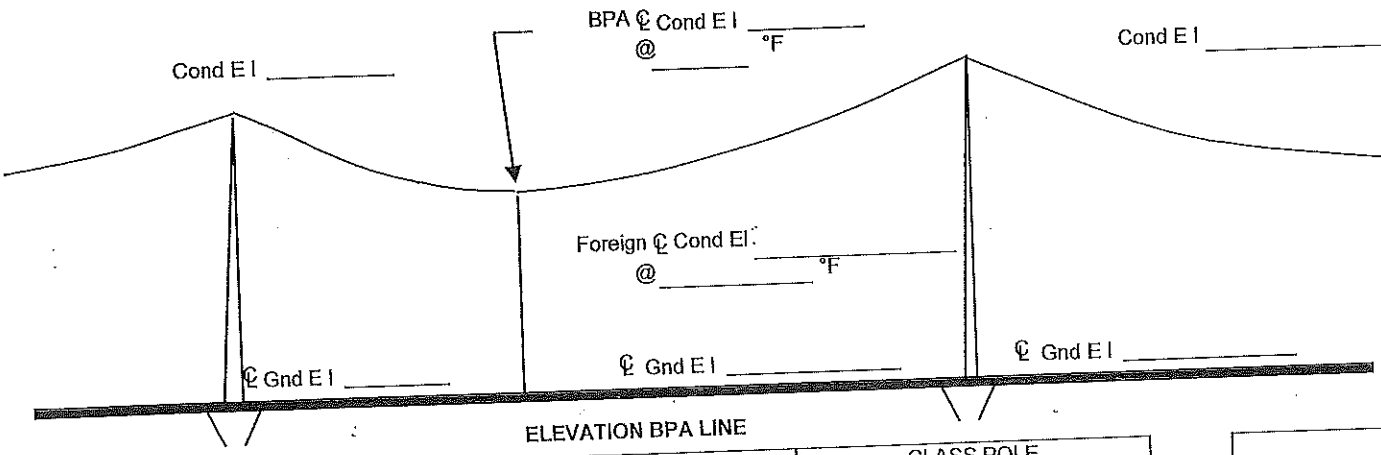
APPLICANT NAME

Complete **ONLY** if overhead or underground foreign line crosses an overhead BPA line. If the foreign line crosses more than one BPA line use additional sheets.



PLAN

APPLICANT



ELEVATION BPA LINE

POLES	LENGTH	DEPTH SET	CLASS POLE
POLE 1			
POLE 2			

FIXTURES	SIZE OF CROSSARMS	
	MAKE AND CATALOG NUMBER OF INSULATORS	
CONDUCTORS	NUMBER	SIZE
	KIND	VOLTAGE
	MWT	LOADING
	COMMENTS	

POLE 1

POLE 2

CONFIGURATIONS

BPA F 4300.03e
(07-2019)

U.S. DEPARTMENT OF ENERGY- BONNEVILLE POWER ADMINISTRATION *(BPA)*

APPLICATION FOR PROPOSED USE OF BPA RIGHT-OF-WAY

Mail your application to the location nearest to your project:

WESTERN WASHINGTON

Location and Address	Phone Number
Snohomish District Office, 914 Ave D, Snohomish, WA 98290	360.563.3640
Covington District Office, PO Box 3621, Portland, OR 97208-3621	253.638.3741
Olympia District Office, 5240 Trosper St SW, Olympia, WA 98512	360.570.4352, 360.570.4333 OR 360.570.4332
Ross Maint. Hdqt. Office, PO Box 3621, Portland, OR 97208-3621	800.836.6691

OREGON

Location and Address	Phone Number
Redmond District Office, 3655 SW Highland Ave., Redmond, OR 97756	541.516.3200
Eugene District Office, 86000 Hwy 99S, Eugene, OR 97405	541.988.7432
Salem District Office, 2715 Tepper Lane, Keizer, OR 97303	503.304.5900
Portland Office, PO Box 3621, Portland, OR 97208-3621	800.836.6619
Hood River, *(see Portland for mailing address)*	
North Bend Area, *(see Portland for mailing address)*	

EASTERN WASHINGTON, IDAHO AND MONTANA

Location and Address	Phone Number
Idaho Falls District Office, *(see Tri-Cities Pasco, WA mailing address)*	509.544.4747
Tri-Cities District Office, *(OR Side)*, 2211 North Commercial Avenue, Pasco, WA 99301	509.544.4747
Tri-Cities *(WA side)*, 2211 North Commercial Avenue, Pasco, WA 99301	503.230.5510
Spokane District Office, 2410 E. Hawthorne Rd., Mead, WA 99021-9594	509.468.3081
Grand Coulee Area, PO Box 24, Grand Coulee, WA 99133	509.378.7447
Ellensburg Area, PO Box 3621, Portland, OR 97208-3621	503.230.5611
Kalispell Maintenance District Office, 2520 US Hwy 2 East, Kalispell, MT 59901	406.751.7824

BAUDER Jared W

From: lsv1953@gmail.com
Sent: Thursday, April 16, 2020 12:37 PM
To: ADAMS Shawna L; BAUDER Jared W
Subject: King/Crown Prop. Template applications - PA20-05064, -05065, -05066

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Yellow Category, Green Category, Red Category

[EXTERNAL ☐]

Shawna and Jared,

Please confirm receipt and please send Notice of Decision for the three applications noted above.

Thank you.

Lauri Segel
LWLC

- The applicant relies on the 2010 application materials for all three 2020 applications; in PA 20-05065, the application says a rectangular template map will not be used; however, the 2010 application and decision for tax lot 843 relied on a rectangular template that did not appear to be aligned with the road; that decision did not discuss the actual alignment of the rectangular template nor whether at least one of the required dwellings was on the same side of the road as the proposed dwelling

- The 2010 decisions did not require proof of slopes, and the applicant's assertions about the slopes at the time appear to understate the area of tax lots 843 and 2900 having slopes greater than 10%

- It does not appear the 2010 decisions required compliance with the BPA concerns regarding their easement that the applicant intends to use to access the three proposed dwellings; it also does not appear that BPA was sent referral notice for the 2020 planning actions

- Tax lot 2900 is within an area designated by DOGAMI mapping as having a high susceptibility for landslides; that area appears to coincide with the proposed dwelling site on tax lot 2900, and a portion of the long access easement roadway that is between tax lot 843 and 2900

- The site plans do not identify the required turnarounds with the applicable spacing

- All the parcel/dwelling count lists have errors including but not limited to siting to preliminary LLVs instead of noticed LLVs

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING
3040 N DELTA HIGHWAY | EUGENE, OR 97408

April 2, 2020

LMD FILE:	509-PA20-05064
APPLICANT:	Edward King
OWNER:	E J K Investments LLC
AGENT:	Kim O'Dea – Law Office of Bill Kloos
MAP & TAX LOT(S):	21-35-07-30-02900
ZONING:	Impacted Forest Lands Zone (/F-2)
PROPOSAL:	**A REQUEST FOR DIRECTOR APPROVAL OF A DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2), IN ACCORDANCE WITH THE 'TEMPLATE TEST' PROVISIONS OF LANE CODE 16.211(5) AND (8).**

Thank you for the opportunity to review and comment on this proposal. Please accept the following comments from Lane County Transportation Planning:

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

CONDITIONS

- Any private access easements serving the subject property must meet the requirements of Lane Code 15.055(2), (4), (5), and (7).

- Facility Permit approval will be required to ensure the existing access is adequate to support a shared approach to multiple properties/dwellings as proposed in the written statement. For more information about Facility Permits, please call 541.682.6902 or visit: https://lanecounty.org/government/county_departments/public_works/right-of-way_permits/facility_permits/

- As an informational item, stormwater runoff from the subject property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches.

FINDINGS

Based on the site plan, the subject property "property" is proposed to take access via an existing driveway off Airport Road. The existing access will extend to the proposed dwelling as a private access easement. Airport Road is owned and maintained by Lane County and is functionally classified as a Rural Local road. For the purpose of establishing development setbacks, the minimum right-of-way (ROW) width of Rural Local roads is 50 feet (Lane Code [LC] 15.070(1)(c)(gg)). Proposed development as conceptually shown meets this requirement.

Lane Code 15.055: Minimum Requirements for Private Access Easements

(2) When a Private Access Easement is used to provide access to a vacant lot or parcel where development is proposed, prior to land use and zoning authorization for the proposed development the following shall apply:

(c) **The requirements specified above in LC 15.055(2)(a) through (b) shall apply only to lands outside of a County-designated Forest zone. Lands within a Forest zone shall be governed by the siting and development standards of the applicable zoning district.**

Pursuant to Lane Code 15.055(2)(c), transportation Planning defers to Land Management Division to ensure the private access easement meets the applicable siting and development standards of the Impacted Forest Lands Zone (F-2).

(4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

(5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of the grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

Compliance with LC 15.055(4), (5), and (7) must be demonstrated.

Lane Code 15.205: Facility Permits

Facility Permits are required for the placement of facilities and development within Lane County right-of-way. Facilities and development include, but are not limited to: road improvements; sidewalks; new or reconstructed driveway or road approach intersections; utility placements; excavation; clearing; grading; culvert placement or replacement; stormwater facilities; or any other facility, thing, or appurtenance [Lane Code 15.205(1)].

A review of Lane County Facility Permit records indicates that there is no record of a Facility Permit for the existing access off Airport Road.

Lane Manual 15.515: Drainage

Stormwater runoff from new private development must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches (Lane Manual 15.515). Accordingly, levels of stormwater directed off-site post-construction of the improvements must match pre-development flows. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by the roadways themselves.

RECEIVED APR 02 2020

Date: 3-30-2020

From: Jay & Gretchen Anthony

21 35 07 30 00100

Regarding Department File: 509-PA20-05064
Applicant: EDWARD KING

Staff: Shawna Adams

Comments:

We support this application.

Gretchen Anthony

Return to: **Shawna Adams, Planner**
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

Referral Notice and Opportunity to Comment
On a Land Use Application for a Development

LAND MANAGEMENT DIVISION
http://www.lanecounty.org

Date: MAR 2 3 2020

Department File: 509-PA20-05064
Applicant: EDWARD KING
Owner: E J K INVESTMENTS LLC
Agent: KIM O'DEA - LAW OFFICE OF BILL KLOOS
Assessor's Map & Taxlot: 21-35-07-30-02900
Base Zone: IMPACTED FOREST LANDS ZONE (/F-2)
Combining Zone: AIRPORT SAFETY (/AS)

Proposal: A request for Director approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(5) and (8).

The purpose of this notice is to acquaint you with the proposed development, to gather information you may have about the project, and provide an opportunity to comment and express concerns related to the approval criteria, prior to the Planning Director's decision to approve or deny the proposal.

The application and related materials are available for inspection at the Lane County Land Management Division at no cost and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact concerning this application is Shawna Adams, 541-682-8904, or Shawna.ADAMS@lanecountyor.gov.

Approval criteria are found in the section(s) of Lane Code cited above. The criteria may be obtained or viewed at the Land Management Division or at the internet address below. You may submit information in the spaces provided on the last page and return this document to the attention of Shawna Adams, Lane County Land Management Division, 3050 N. Delta Hwy., Eugene, OR 97408, Fax to ATTN: Shawna Adams, (541) 682-3947, or email to Shawna.ADAMS@lanecountyor.gov. Please be sure to reference the department file number shown above, and submit your comments by **4:00 P.M.** on APR 0 7 2020.

Concerns/comments submitted in writing will be considered in making the decision as they relate to the criteria under which the proposal must be evaluated.

Your comments are important and will greatly improve the decision making process, but please note that you will not receive an individual response to information submitted. By law, comments received that are not related to the approval criteria may not be considered. General planning information is available by calling 541/682-3577, or by visiting the Public Works Customer Service Center at 3050 N. Delta Hwy. weekdays between 9 a.m. and 4:00 p.m.

Links to applicable law are available through our Planning homepage:

http://www.lanecounty.org/Departments/PW/LMD/LandUse/Pages/default.aspx

Mailed copies of the approval criteria are also available, at cost, by calling Land Management Division Staff at 541/682-6917. Please allow one week for mailing.

Date: March, 2020

From: Neighbors in Westfir

RECEIVED MAR 30 2020

Regarding Department File: 509-PA20-05064
Applicant: EDWARD KING

Staff: Shawna Adams

Comments:

We know it doesn't matter what we tell you or how we feel about more homes, I'm sure they already have it in the works, We say NO more houses. Progress Sucks!! Keep the Airport Clear of more homes.

Mr. King can build his Castle elsewhere. Keep Westfir Clear of more homes altogether!

Return to: **Shawna Adams, Planner**
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

Referral Notice and Opportunity to Comment
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ADAMS Shawna L

From: lsv1953@gmail.com
Sent: Friday, March 27, 2020 1:26 PM
To: ADAMS Shawna L
Subject: KING template - PA2005064

[EXTERNAL]

Shawna,

I'm sorry to bother you.

The application for King template proposal PA2005064 has not been scanned but referral Notice has been sent.

Please let me know if there will be anyone available to scan applications next week; this is not the only one.

Thank you for your help.

Lauri Segel
LWLC

ADAMS Shawna L

From: ADAMS Shawna L
Sent: Friday, March 27, 2020 5:23 PM
To: 'lsv1953@gmail.com'
Cc: BAUDER Jared W; ADAMS Rachel E
Subject: RE: KING template - PA2005064

Lauri, We are backlogged for scanning, but I do believe this one is in the queue to be scanned next week. It was just recently deemed complete, along with two others assigned to Jared so we can make adjustments on the comment period. I would note that all three proposals are similar to ones that were previously approved on the properties. I believe the same site plan is proposed.

Shawna Adams | Senior Planner
Lane County | Land Management Division
3050 North Delta Hwy | Eugene, OR 97408
Office: 541-682-8904 | Fax: 541-682-3947
shawna.adams@lanecountyor.gov | www.lanecounty.org/planning

Messages to and from this e-mail address may be available to the public under Oregon Public Records Law

---

From: lsv1953@gmail.com [mailto:lsv1953@gmail.com]
Sent: Friday, March 27, 2020 1:26 PM
To: ADAMS Shawna L
Subject: KING template - PA2005064

[EXTERNAL ☐]

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Thank you for your help.

Lauri Segel
LWLC

Oakridge Fire Department

Please Sign In



Dec	January 2021					Feb
Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

Useful Links:

Oakridge City Website

Lane County Fire Defense Board

Oregon Volunteer Firefighters

Lane Regional Air Polution Authority

e-AIRS Firecad

Homeland Security

FEMA

Citizen Corps Councils

Welcome to Oakridge Fire & EMS!

Supporting Fire and EMS Services through Community Involvement

The City of Oakridge is dedicated to providing life saving paramedic and fire services to the citizens of the community. Ensuring that lives, as well as structures, can be saved in an emergency is a critical service that ensures prosperity, growth, and the well being of the general public.



Oakridge is nestled in Eastern Lane County off of Oregon Route 58, also known as Willamette Highway 18. Oakridge is a small community with a population of 3,500. Oakridge Fire & EMS is a Fire Department governed under the City of Oakridge. The Fire Department is a combination department consisting of full-time career staff under IAFF Local 851, part-time staff and volunteers that operate under a non-profit 501 (c)3. Oakridge Fire & EMS operates 2 full-time medic units and a 3rd out when available. Our Ambulance Service Area (ASA) is 2,200 square miles, the largest in the county, with mostly rural forested area. Our Fire Service area is Oakridge city limits. We also work under an Intergovernmental Agreement (IGA) with with both Hazeldell Rural Fire District and the City of Westfir to respond for all emergency calls. We respond to all types of emergency calls as far East as Willamette Pass Ski area, mp 61, as far west as mp 17 bordering Dexter Rural Fire District. Oakridge Fire & EMS responds to over 800 calls per year, with more than 87% of those being ambulance calls. The United States Forest Service, along with various independent contractors, control fires in the surrounding National Forest.

Service Agreement

For technical support with FireCTR, send e-mail to support@FireCTR.com
Copyright © 2010 Perpetua Technologies LLC. All Rights Reserved.

Information about Fire-CTR

SamariteamWeb - Version[2.6.0.0]

Oakridge Fire Department

Please Sign In



Dec	January 2021					Feb
Sun	Mon	Tue	Wed	Thu	Fri	Sat
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

Apparatus

Description

Created By: Hansen, Mike on: 11/07/2015 Last Updated By: Hansen, Mike on: 11/07/2015

Photos

First 1 Last Total Photos: 11 Photos per page: 16 Slideshow Back to Galleries

IMG_1670.jpeg



IMG_1670.jpeg



IMG_1108.JPG



IMG_1114.JPG



IMG_1113.JPG



IMG_1112.JPG



IMG_1110.JPG



IMG_1118.JPG



IMG_1117.JPG

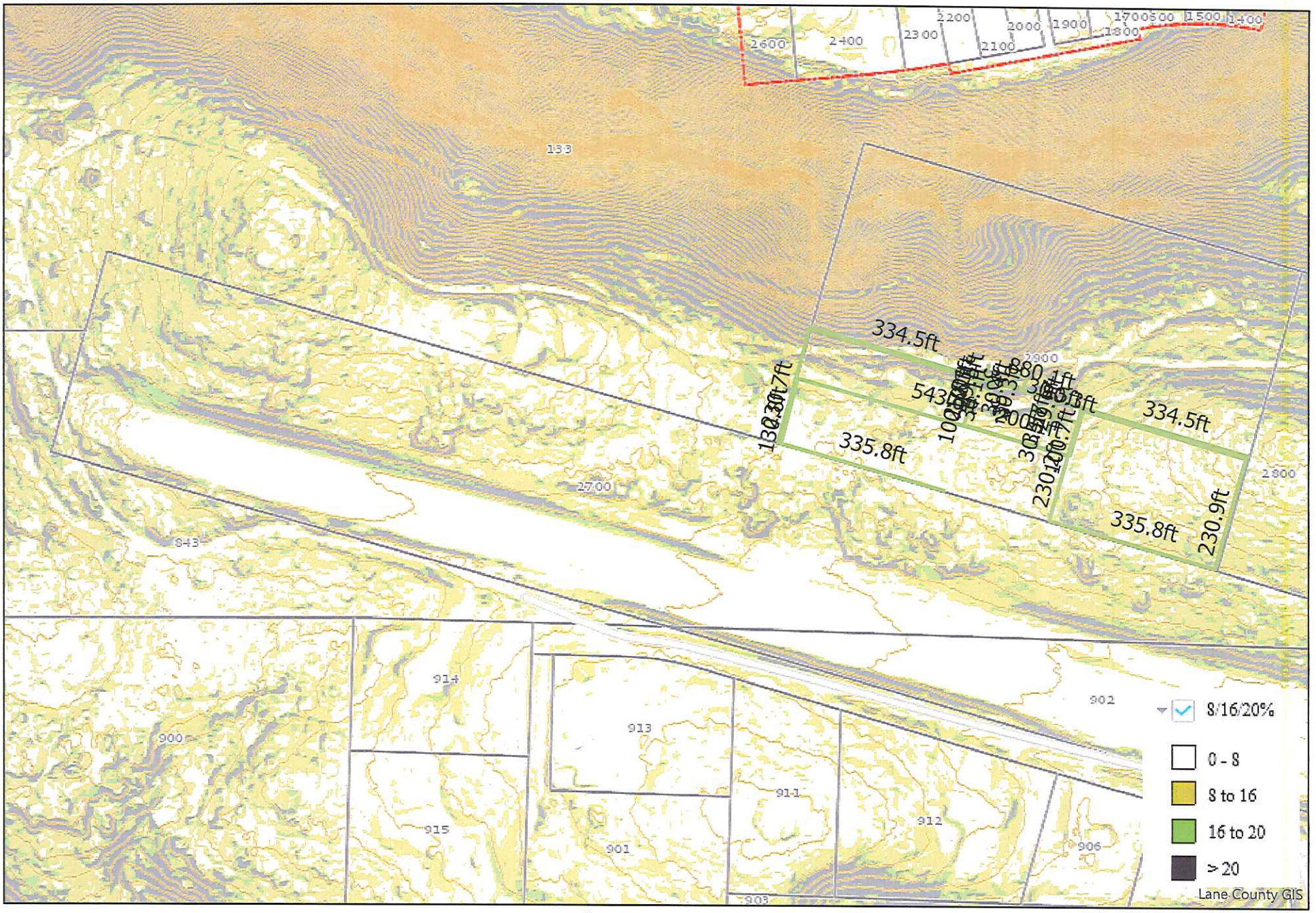


IMG_1116.JPG



IMG_1119.JPG





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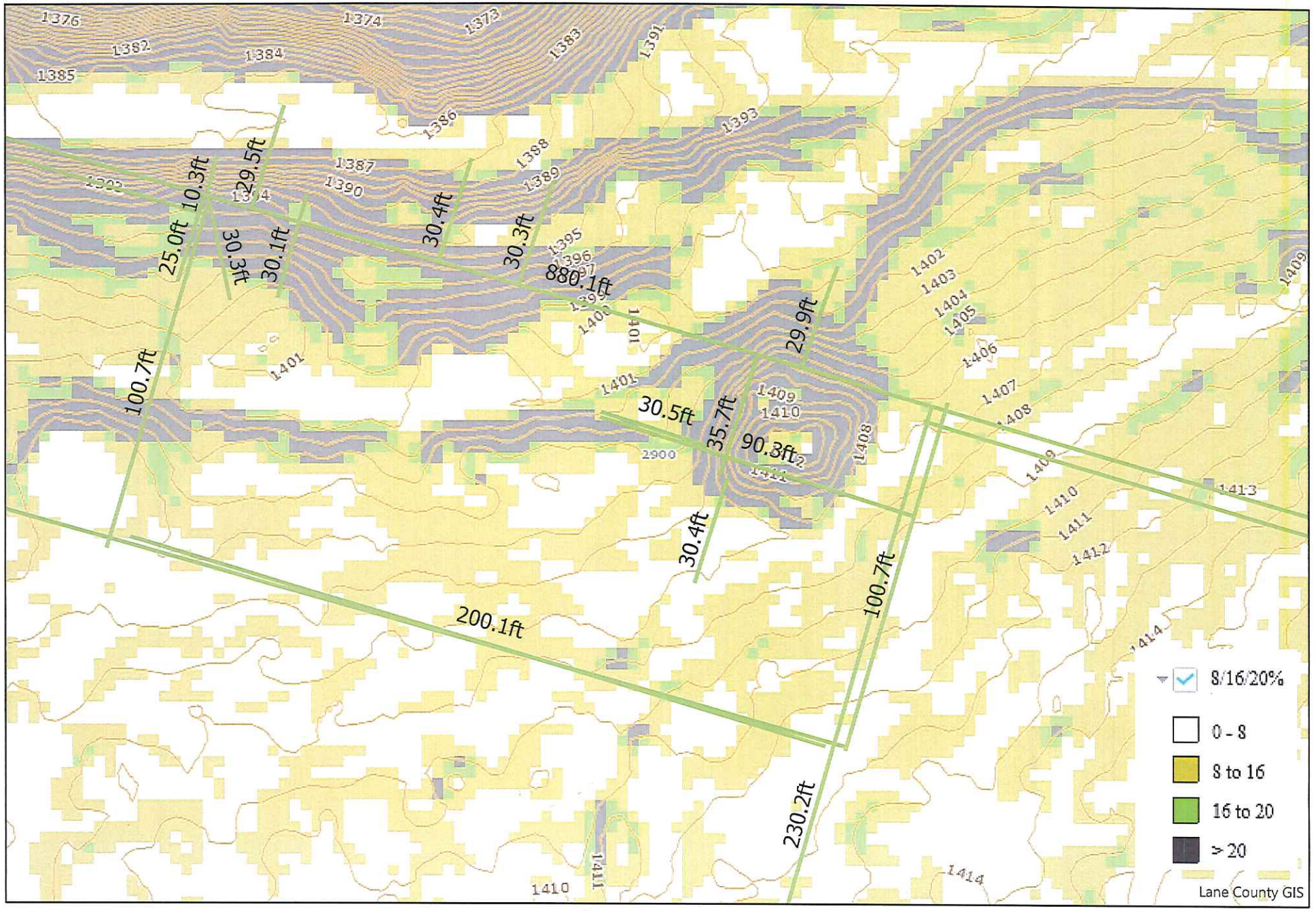
N

0 120 240 480 Feet

5-ft Contour & 8/16/20% LiDAR

Lane County, Oregon

002067



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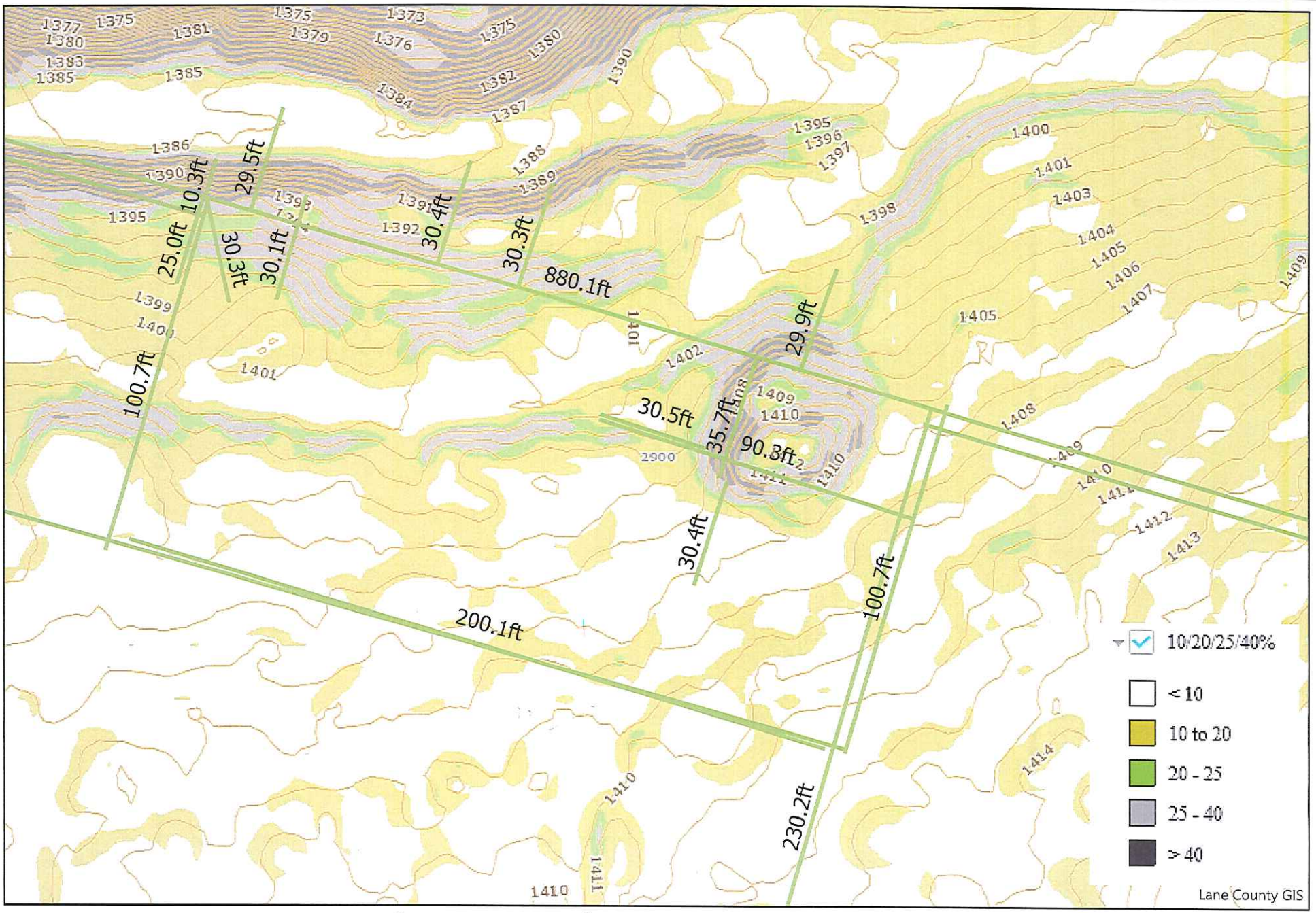
N

0 15 30 60 Feet

1-ft Contour & 8/16/20% LiDAR

Lane County, Oregon

002068



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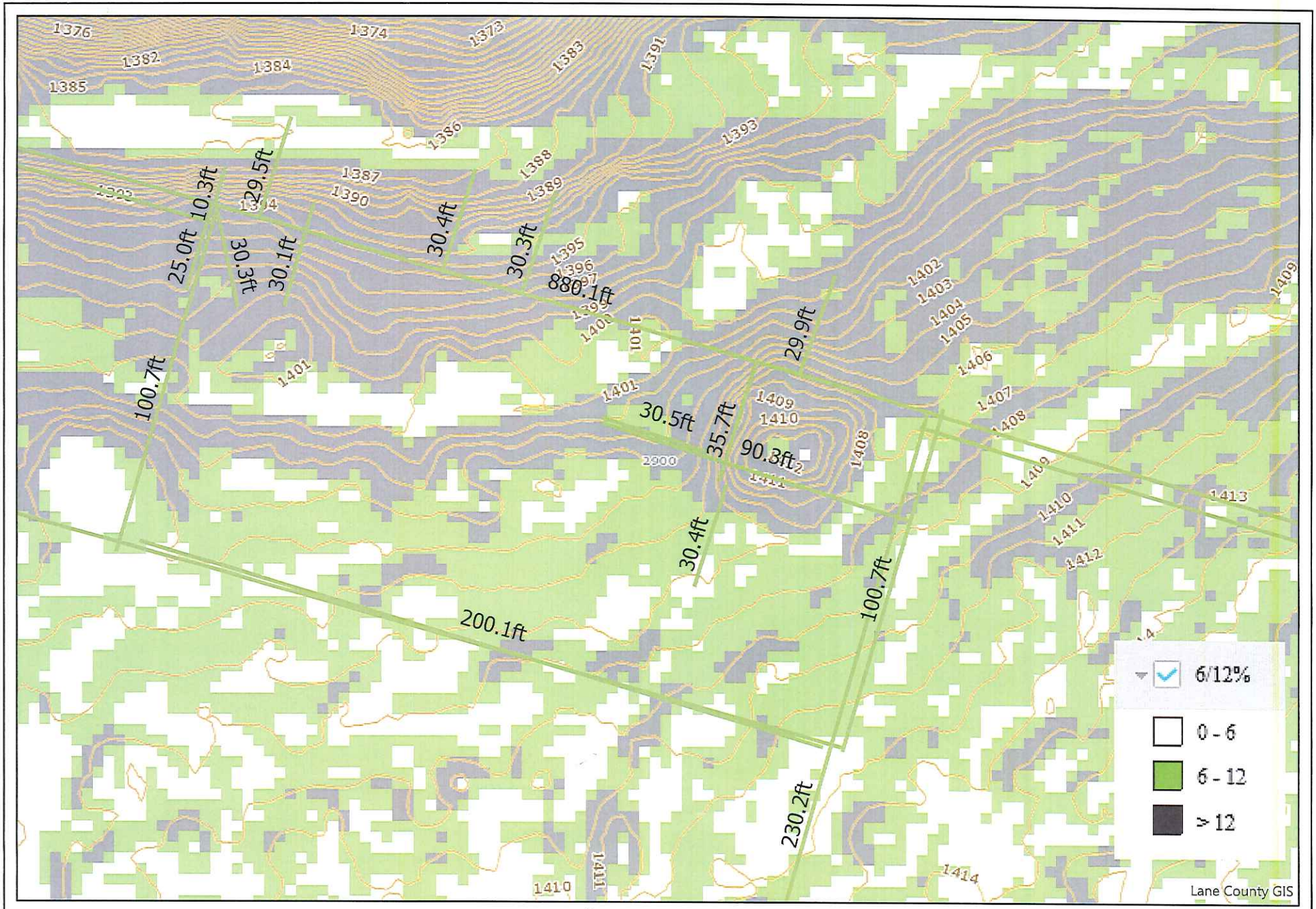
N

0 15 30 60 Feet

1-ft Contour & 10/20/25/40% LiDAR

Lane County, Oregon

002069



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N

0 15 30 60 Feet

1-ft Contour & 6/12% LiDAR

Lane County, Oregon

002070

DO NOT SEPARATE PACKET

140

CERTIFICATE OF MAILING

509-PA20-05064
E J K INVESTMENTS/KING/O'DEA
03/23/2020

This is to certify that I, Amber Wolles, mailed Notification of

Referral Notice

To the person(s) shown on the attached copy of mailing label &/or attached letter & delivered said information to the authorized for the US Post Office in Springfield, Oregon on

Date Mailed: MAR 2 3 2020

End of Comment Period: APR 0 7 2020

Appeal Deadline: _____

Hearing Date: _____

AMBER WOLLES

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.060(4)(a)(iv). If a tax lot appears on the notice list & there are no corresponding addresses than the tax records have not been updated; therefore, these property owners were not notified.

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED FEB 05 2020

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

SCANNED
Date: 3/27/2020
Initials: RA

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only: FILE # 509-PA20-05064 FEE $3445.00

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: see below

Agent (print name): Kim O'Dea, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-0095 Email: kimodea@landuseoregon.com

Agent Signature: _____

Land Owner (print name): E.J.K. Investments

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: EJK for EJK Invest. LLC

LOCATION

21-35-07-30 Taxlot 2900

Assessor's Map and Taxlot Number

Airport Road (no address assigned)

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

Version 2/2019

Referral Notice and Opportunity to Comment On a Land Use Application for a Development

LAND MANAGEMENT DIVISION
http://www.lanecounty.org

Date: MAR 2 3 2020

Department File: 509-PA20-05064
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Agent: KIM O'DEA - LAW OFFICE OF BILL KLOOS
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Date: _____

From: _____

_____

_____

Regarding Department File: 509-PA20-05064
Applicant: EDWARD KING

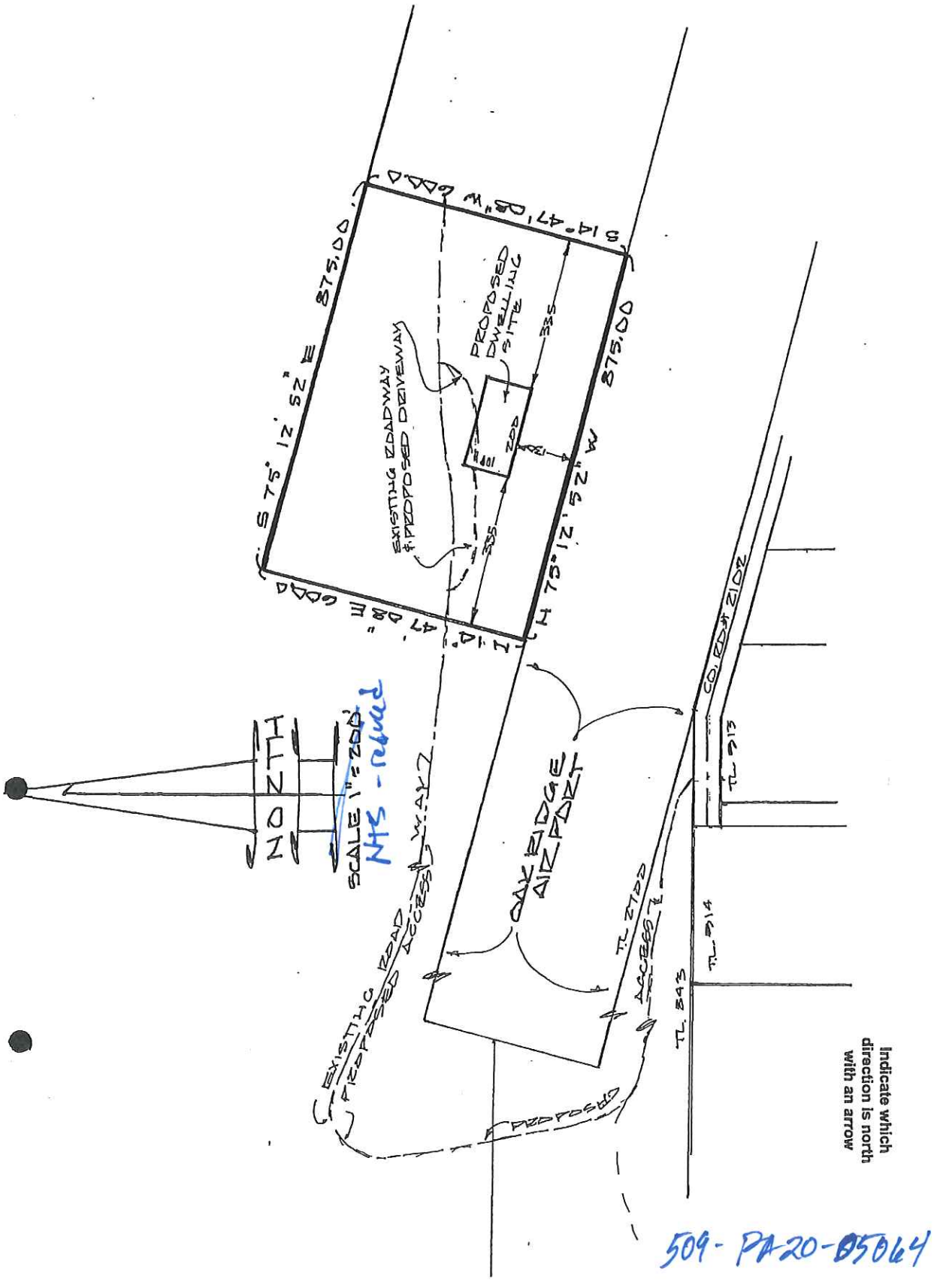
Staff: Shawna Adams

Comments:

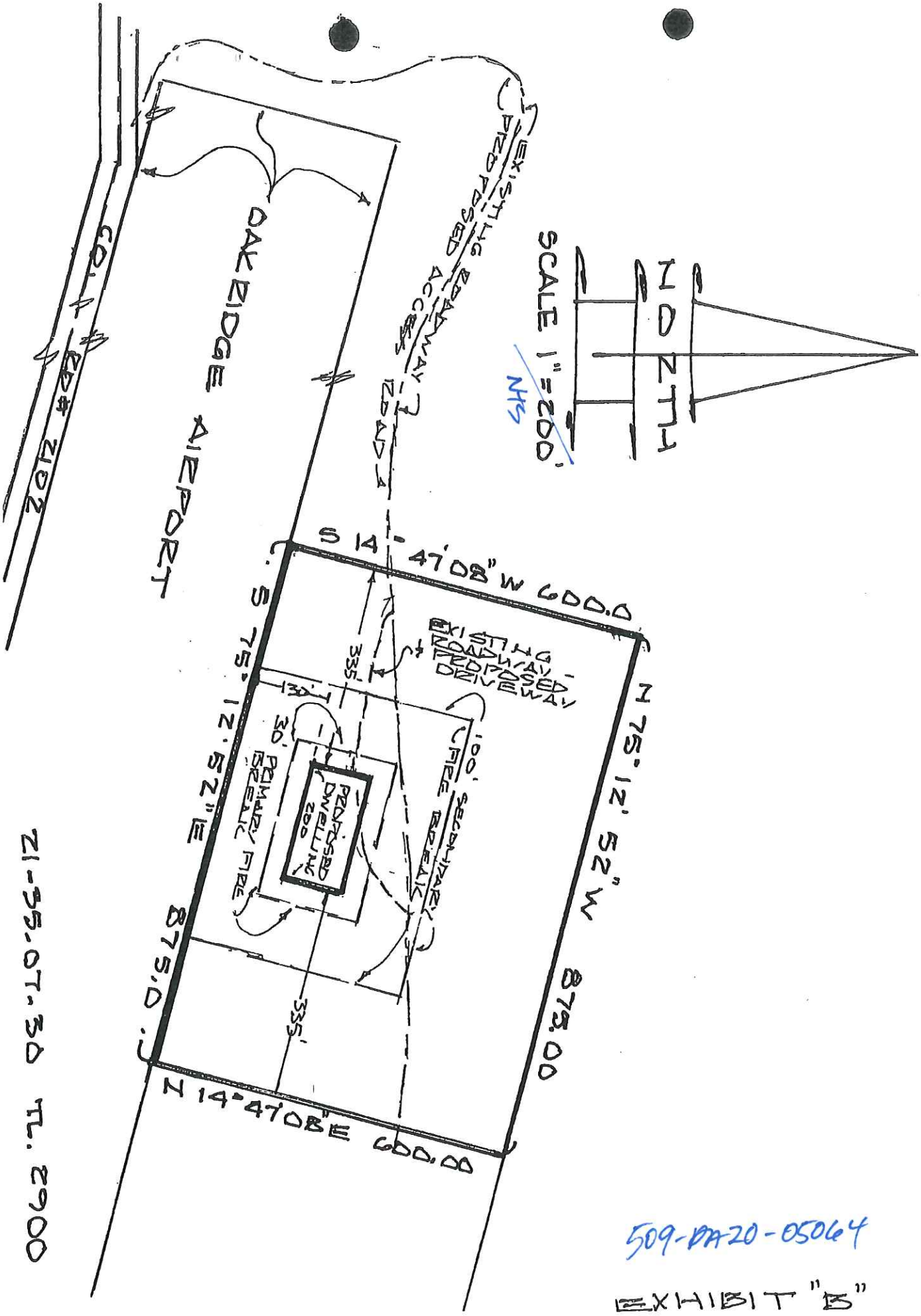
Return to: **Shawna Adams, Planner**
LANE COUNTY LAND MANAGEMENT DIVISION
3050 N. Delta Hwy
Eugene, OR 97408

SITE PLAN SUBMITTAL FORM

OWNER NAME: EJK. INVESTMENT	Map and Taxlot #: 21-35-07-30 TL 2900	APPLICANT NAME: NICKELL LAND SURVEYING
PHONE #		PHONE # 541-968-2905
ADDRESS: 30414 LEBLEU ROAD EUGENE, OR, 97405	Scale: 1" = 200'	ADDRESS: 33725 CRAIG LOOP COTTAGE GROVE, OR 97424

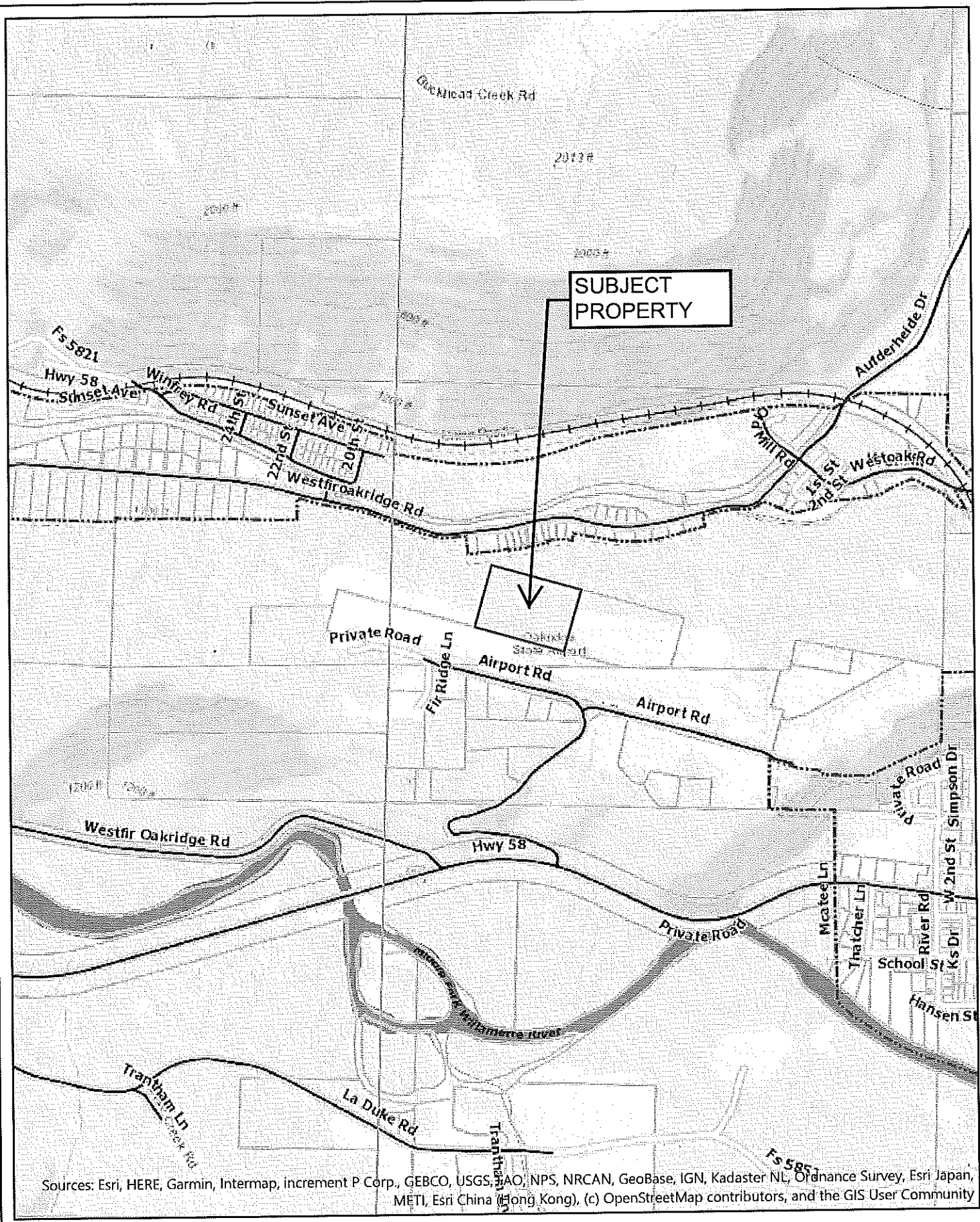


509-PA20-05064



509-DA20-05064

EXHIBIT "B"



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

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N

0 300 600 1,200 Feet

VICINITY MAP: PA20-05064

Lane County, Oregon

002077

509-PA20-05064
E J K INVESTMENTS/KING/O'DEA
03/23/2020

2135073001100
ADAMSON VALERIE M
209 BONVIEW ST
SAN FRANCISCO CA 94110

2135180000902
ALTEMUS MATTHEW
47919 W 2ND ST
OAKRIDGE OR 97463

2135073000100
ANTHONY JAY
PO BOX 1507
GOLD BEACH OR 97444

2135180000918
CATHEY CHRISTY D & MIKE A
PO BOX 892
OAKRIDGE OR 97463

2135074000100
CROWN PROPERTIES LLC
30414 LE BLEU RD
EUGENE OR 97405

2135073001500
DAMEWOOD JAMES S
47114 WESTFIR RD
WESTFIR OR 97492

2135180000908
DANIELS DAVID L & DEBORAH L
PO BOX 1412
OAKRIDGE OR 97463

2135180000914
DEBOER KENNETH J & BRIDGETT M
46979 AIRPORT RD
OAKRIDGE OR 97463

2135073002900
E J K INVESTMENTS LLC
30414 LE BLEU RD

EUGENE OR 97405

2135073000500
GRAY BETTY J
47171 WESTFIR RD
WESTFIR OR 97492

2135180000911
HANKINS RICHARD P & JANICE I
47070 AIRPORT RD
OAKRIDGE OR 97463

2135180000912
HAYDEN STEVEN EUGENE
10916 FENTON CIR
WESTMINISTER CO 80020

2135073001400
HAYWARD HELEN Y
PO BOX 292
WESTFIR OR 97492

2135073000300
HENDERSON LEON EARL
47155 WESTFIR RD
WESTFIR OR 97492

2135073002800
KING EDWARD J
30414 LE BLEU RD
EUGENE OR 97405

2135073002100
MIKKOLA CHERYL J
47066 WESTFIR RD
WESTFIR OR 97492

2135180000913
MILLER MARVIN
47022 AIRPORT RD
OAKRIDGE OR 97463

2135073001700
NEIL & SALLY FRIEDMAN JOINT TRUST
47094 WESTFIR RD
WESTFIR OR 97492

2135073000400

NEWLAND INVESTMENTS LLC
3895 VINE MAPLE
EUGENE OR 97405

2135073001000
NIBBLETT NORMAN D & BONNIE J
47198 WESTFIR RD
WESTFIR OR 97492

2135073001300
OLSON BRIAN J
727 W HIGH ST
STAYTON OR 97383

2135073002000
PETERSON ALAN D & JODI M
PO BOX 50245
EUGENE OR 97405

2135074000132
RALPH CHRISTENSEN
PO BOX 10667
EUGENE OR 97440

2135180000903
REYNOLDS BERNARD R & C J
76579 AIRPORT RD
OAKRIDGE OR 97463

2135073000200
SHEARER RICHARD A & AMY J
47147 WESTFIR-OAKRIDGE RD
WESTFIR OR 97492

2135073001900
SNYDER WILLIAM J & TERESA A
PO BOX 353
WESTFIR OR 97492

2135073002600
STONE JOEL F & RUTHANNE
PO BOX 361
WESTFIR OR 97492

2135180000906
SULLIVAN FAMILY TRUST
3602 JEFFERSON AVE
REDWOOD CITY CA 94062

2135073001600
TIGER MOUNTAIN TRUST
1381 PARK TERRACE AVE
LAKE HAVASU CITY AZ 86404

2135180000901
TOMLIN LIVING TRUST
47634 TELLER RD
OAKRIDGE OR 97463

2135073002300
WATTERS COLIN B
47054 WESTFIR RD
WESTFIR OR 97492

2135073002200
WEBER STEPHEN H
PO BOX 243
WESTFIR OR 97492

2135073001200
WILLEY JAMES M & BARBARA A
47158 WEST FIR RD
WESTFIR OR 97492

LAW OFFICE OF BILL KLOOS
KIM O'DEA
375 W 4TH AVE STE 204
EUGENE OR 97401

LANDWATCH LANE COUNTY
PO BOX 5347
EUGENE OR 97405

LANDWATCH LANE COUNTY
BOB EMMONS
40093 LITTLE FALL CREEK RD
FALL CREEK OR 97438

US FISH & WILDLIFE
KEMFER MCMASTER
2600 SE 98TH AVE SUITE 100
PORTLAND OR 97266

OREGON DEPT OF AERONAUTICS
PLANNING

3040 25TH ST SE
SALEM OR 97310-0100

STATE DEPT OF FORESTRY
EASTERN LANE DISTRICT OFFICE
3150 MAIN STREET
SPRINGFIELD OR 97478-5808

OREGON DEPARTMENT OF FISH AND WILDLIFE
4034 FAIRVIEW INDUSTRIAL DRIVE SE
SALEM OR 97302

CITY RECORDER
CITY OF WESTFIR
PO BOX 296
WESTFIR OR 97492-9999

CITY ADMINISTRATOR
CITY OF OAKRIDGE
PO BOX 1410
OAKRIDGE OR 97463

HAZELDELL RURAL FIRE DISTRICT
PO BOX 717
OAKRIDGE OR 97463

MIDDLE FORK WILLAMETTE WATERSHED COUNCIL
ATTN SARAH DYRDAHL
PO BOX 27
LOWELL OR 97452

BONNEVILLE POWER ADMINISTRATION
TERR/ALVERY
86000 HWY 99 SOUTH
EUGENE OR 97405

MAX BAKER
PO BOX 490
LOWELL OR 97452

EWEB

TRANSPORTATION PLANNING

COUNTY ROAD MAINTENANCE

STATE FIRE MARSHAL

MAPPING & REFERRAL INSTRUCTIONS

509-PA20-05064

MAP NO. 21-35-07-30-02900

ADDITIONAL OWNERSHIP:

APPLICANT:
EDWARD KING
30414 LEBLEU RD
EUGENE, OR 97401

OWNER:
E J K INVESTMENTS LLC
30414 LE BLEU RD
EUGENE, OR 97405

AGENT:
KIM O'DEA - LAW OFFICE OF BILLKLOOS
375 W 4TH AVE STE 204
EUGENE, OR 97401

BASE ZONE: IMPACTED FOREST LANDS (F2) 750'

COMBINING ZONE: AIRPORT SAFETY (/AS)

Clerical: Please prepare a notice list of surrounding property owners and send a copy of the Referral Notice and the attached materials to each of those owners and the Agencies identified below.

AGENCIES

Referral		Referral	
☐	Building	☒	State Fish & Wildlife (ODFW): Valley
☐	Sanitation	☐	State Highway (ODOT)
☐	Final Legal Lot	☒	State Forestry: East
☐	Rural Addressing	☐	Dept. Geology & Mineral Industries (DOGAMI)
☐	Flood Management	☐	Dept. Land Conservation & Development (DLCD)
☐	Easement Review	☐	Lane Regional Air Protection Agency (LRAPA)
☐	Compliance	☐	Dept. of Environmental Quality (DEQ)
☐	Surveyors	☐	Dept. of Environmental Quality (DEQ) 1200-C
☒	Transportation Planning	☐	Oregon Health Division
☒	County Road Maintenance	☐	Water Master
☐	Water Quantity/Quality	☐	Division of State Lands (DSL)
☐	Assessment &Taxation	☐	State Parks (Certified mail)
☒	State Fire Marshal	☒	Dept. of Aeronautics
☐	Community Organization NONE	☐	CenturyLink
☒	Watershed Council Middle Fork Willamette Watershe	☐	Northwest Natural Gas
☒	Land Watch	☐	Port of Siuslaw
☐	School District OAKRIDGE	☐	Power Company Lane Electric
☐	Water District	☐	US Army Corps. of Engineers (ACOE)
☒	Fire District Hazeldell Rural Fire District	☒	US Fish & Wildlife (USF&W)
☒	City Area of Interest (20-day notice) Westfir & Oakridge	☐	Confederated Tribes
☐	METRO Area of Interest NONE	☐	State Historic Preservation Office (SHPO)
☐	Environmental Health	☒	Other *** e-EWEB

*** (1) BPA (2) MAX BAKER, PO BOX 490, LOWELL, OR 97452 (Public Water Notification Area)

INSTRUCTIONS FOR ATTACHED MATERIALS

Copy and attach to all Referral Notices:
- ☒ **Vicinity Map**
- ☒ **Site Plan**
- ☐ **Flagged Applicant's Material**

Copy and Attach Materials to Referral Notices as Instructed Above and Below:

_____

_____

Lane County
LAND MANAGEMENT DIVISION
3050 NORTH DELTA HIGHWAY
EUGENE, OREGON 97408
PHONE: 541-682-4065
WEB: www.lanecounty.org/lmd

March 6, 2020

Notice of Complete Land Use Application

Agent:
Kim O'Dea
Law Office of Bill Kloos
375 W. 4th, Suite 204
Eugene, OR 97401

Applicant:
Edward J. King
30414 Lebleu Road
Eugene, OR 97405

Owner:
E.J.K. Investments
30414 Lebleu Road
Eugene, OR 97405

File No. 509-PA20-05064 (21-35-07-30-02900)
Submitted on February 5, 2020
Date Deemed Complete: March 6, 2020

Proposal: A request for Director Approval of a dwelling in the Impacted Forest Lands Zone (F-2), in accordance with the 'template test' provisions of Lane Code 16.211(5) and (8).

The land use application(s) referenced above has/have been deemed complete and accepted for processing pursuant to Lane Code (LC) 14.050(1). Acceptance as a complete application does not involve determining if the application is approvable based on the applicable approval criteria. It is the responsibility of the applicant to demonstrate that the application meets the approval criteria. The information provided by the applicant may or may not be adequate for this purpose.

Staff are required by LC 14.050(1)(d) to mail this written notice to the applicant when an application is deemed complete. Staff will process your application according to LC Chapter 14 Type II procedures. A referral notice will be sent to the applicant, agent, agencies and surrounding property owners allowing a minimum 15 day comment period. Following the comment period, staff will process your application and evaluate whether the approval criteria are met. A land use decision with findings of fact and conditions of approval will then be mailed to the applicant, parties of record and surrounding property owners. Absent an appeal and upon expiration of the 12 day appeal period, your land use decision becomes final.

I am the staff contact for this application unless notice is provided otherwise. If you have any questions concerning this letter or your application, please feel free to contact me, at 541-682-8904 or shawna.adams@co.lane.or.us.

Sincerely,

Shawna Adams, Associate Planner

LAND MANAGEMENT DIVISION

Date Received:
RECEIVED FEB 05 2020

TYPE II APPLICATION -
Forest Dwelling: Template Dwelling

PUBLIC WORKS DEPARTMENT 3050 N. DELTA HWY, EUGENE OR 97404 Planning: 682-3577

For Office Use Only: FILE # 509-PA20-05064 FEE: $3445.00

Applicant (print name): Edward J. King

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Applicant Signature: see below

Agent (print name): Kim O'Dea, Law Office of Bill Kloos

Mailing address: 375 West 4th St. Suite 204, Eugene, OR 97401

Phone: 541-954-0095 Email: kimodea@landuseoregon.com

Agent Signature: _____

Land Owner (print name): E.J.K. Investments

Mailing address: 30414 Lebleu Road, Eugene, OR 97405

Phone: _____ Email: _____

Through applying for this application I authorize the Lane County Planning Director, designee, or Hearings Official to enter upon the property subject of the application to conduct a site visit necessary for processing the requested application. Lane County shall contact the Land Owner prior to the site visit to arrange an appropriate time for the site visit.

Land Owner Signature: Ed King for EJK Invest. LLC

LOCATION

21-35-07-30 Taxlot 2900

Assessor's Map and Taxlot Number

Airport Road (no address assigned)

Site address

PROPOSAL: A request for Type II determination for a Template dwelling in the Impacted Forest Lands (F-2) Zone, pursuant to the provisions of Lane Code 16.211(2)-2.4.

Version 2/2019

REQUIRED SUBMITTALS (Also reference the Application Standards handout)

Lane Code 14.020 (3)(b) Electronic Materials.

(i) When application or appeal materials submitted in hard copy format are over five pages in length, an applicant or appellant must provide an identical electronic version of the submitted materials in addition to a hard copy. Any other party submitting written materials into the record that are over five pages is also encouraged to submit an identical electronic copy. Any electronic materials must be in a format acceptable to the Director. This provision should not be interpreted to prohibit electronic submittals of materials less than five pages in length. The County will scan submitted materials upon request for fee. The County cannot be held responsible for electronic submittals that are not received by the Director or not confirmed by the Director to have been received.

(ii) When electronic materials over five pages in length are submitted by any party for inclusion in an application record, an identical hard copy of the materials must also be submitted unless this requirement is waived by the Director.

Lane Code 14.040 Application Requirements

(1) Minimum Submittal Requirements. Applications for a Type I through Type IV procedure must be submitted on a form provided by the Director, address all applicable standards and criteria, and include the following materials and information:

(a) Applications must include at least one hard copy of all application materials, no larger than 11 inch x 17 inch in size;

(b) All applicable information requested on the application form;

(c) Required filing fee, except that the required filing fee may not be required when Lane County initiates an application;

(d) Signature of each applicant;

(e) Signature of a property owner or property owner's authorized representative;

(f) Proof of property ownership by providing a certified or recorded copy of a deed, or land sale contract, or Lane County Tax Assessor's records;

(g) Assessor's map and tax lot number of the subject property;

(h) A site plan drawn to a standard engineer's scale, and conforming to the County's site plan submittal standards;

A site plan must be included. Refer to the handout entitled "How to prepare your plot plan." Identify nearby driveways. Driveways spacing standards are contained in Lane Code 15.138.

(i) Information demonstrating compliance with any applicable prior decisions and conditions of approval for the subject property;

(j) A written narrative clearly indicating what action is requested and addressing all applicable standards and criteria;

(k) Supporting information required to evaluate the application and address the applicable standards and criteria;

(l) A written statement indicating whether a railroad-highway crossing provides or will provide the only access to land that is the subject of an application; and

Does a railroad-highway crossing provide the only access to the subject property?

Yes ___ No X

(m) **Additional information needed to evaluate applicable standards and criteria.**

(2) **Fees Required. In addition to any other applicable approval criteria, an approvable Type II or III application must be accompanied by the appropriate filing fee unless the Director authorizes a waiver or reduction to filing fees pursuant to Lane Manual Chapter 60.850.**

(3) **Determination of Application Requirements. The Director may waive any of the requirements of subsection (1) above if deemed to be inapplicable to the application.**

(4) **Applicant's Burden. It is the applicant's responsibility to provide evidence demonstrating that the application complies with all applicable standards and criteria.**

ADDITIONAL INFORMATION REQUESTED FOR THIS APPLICATION:

ZONING F-2 **ACREAGE:** 12.05 acres

DESCRIBE THE ACCESS TO THE PROPERTY (circle the answer):

State Hwy County Rd Public Rd (Private Easement)

Road name: Easement from Airport Road across Map 21-25-12 #843 and Map 21-35-07-40 #133

NUMBER OF EXISTING DWELLINGS ON PARCEL: None

EXISTING IMPROVEMENTS: What structures or improvements does the property contain (i.e., outbuildings, roads, driveways, wells, septic tanks, drainfields)? Will any structure or improvement be removed/demolished?

None

PHYSICAL FEATURES: Describe the site.

- The Vegetation on the property: See attached application dated 1/4/11, incorporated herein by this reference..
- The Topography of the property: See attached application dated 1/4/11, incorporated herein by this reference...
- Any Significant Features of the property (steep slopes, water bodies, etc.): See attached application dated 1/4/11, incorporated herein by this reference....

APPROVAL CRITERIA

Lane Code 16.211(2) contains the Impacted Forest Lands (F-2) Zone Table of Permitted Uses. Use 2.4, the template dwelling, is subject to (3)(c), (3)(q), (3)(r), (5), and (6).

(3) Use Standards

(c) A single family "template" dwelling authorized on a lot or parcel located within a forest zone pursuant to the following:

The subject property must be a lawfully established unit of land:

- Was the property created by a partition or subdivision? List plat number _____
- If not, a final legal lot verification is required prior to submittal of this application. What is the file number for the legal lot verification?

LLV PA08-6332 Notice PA08-6329

(i) If the lot or parcel is predominantly composed of soils that are:

The minimum number of parcels within the template depends on the productivity of the soil type. At least 51% of the acreage of the parcel is composed of soils capable of producing:

____ (1) Less than 50 cubic feet per acre per year: See subsection (aa)

____ (2) 50 to 85 cubic feet per acre per year: See subsection (bb)

X (3) More than 85 cubic feet per acre per year: See subsection (cc)

Soil Type	(Cubic ft/acre/yr)	% of Parcel
Total (must equal 100 %)		

(aa) Capable of producing zero to 49 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>three</u> other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(bb) Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>seven</u> other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

(cc) Capable of producing more than 85 cubic feet per acre per year of wood fiber if:

(A) All or part of at least <u>11</u> other lots or parcels that existed on January 1, 1993, are within a 160 acre square centered on the center of the subject tract; and

(B) At least three dwellings existed on January 1, 1993 and continue to exist on the other lots or parcels.

Include a scaled map and the template used to verify the requirements in (aa), (bb), or (cc) showing the 1993 configuration of the parcels.

How many lots or parcels existed on January 1, 1993? 17

How many dwellings existed on January 1, 1993 and continue to exist? 5

Complete the following table to support your answers on the previous page.

	map and tax lot	deed & date	dwelling date
1.			
2.			
3.			
4.			
5.	See attached application dated 1/4/11, incorporated herein by this reference.		
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			

Include property description cards, which you can obtain from Lane County Assessment & Taxation.

If necessary, see the Planner on Duty for prior partitions/subdivision/legal lot status of surrounding properties. If a property was created via a partition or subdivision, please list that above in the deed/date column. If a legal lot verification was completed on a property, please include the PA# along with the year of creation.

If the dwelling is a manufactured dwelling, provide evidence it was placed on the property prior to January 1, 1993.

(ii) Lots or parcels within urban growth boundaries cannot be used to satisfy the eligibility requirements of subsection (i) above;

(iii) A dwelling, as used in subsection (i) above, is considered to be in the 160-acre template if any part of the parcel is in the 160-acre template;

(iv) Except as provided by subsection (v) below, if the subject tract abuts a road that existed on January 1, 1993, the measurement required in (i) above may be made by creating a 160 acre rectangle that is one mile long and 1/4 mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(v) The following applies where a tract 60 acres or larger abuts a road or perennial stream:

(aa) The measurement must be made in accordance with paragraph (iv). However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:

(A) Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or

(B) Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160 acre rectangle, and on the same side of the road or stream as the tract;

(bb) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings must be on the same side of the road as the proposed dwelling;

Will you be using the 160 acre rectangle template aligned with the road? Yes ___ No X

If yes, is least one of the dwellings used in the dwelling count located on the same side of the road as the proposed dwelling? Yes ___ No ___ (If no, you cannot use the rectangle template)

(vi) A proposed "template" dwelling under this section is not allowed:

(aa) Unless no dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under paragraph (3)(c)(vii) for the other lots or parcels that make up the tract are met; or

(bb) If the tract on which the dwelling will be sited includes a dwelling;

Does the tract contain any other dwellings? Yes ___ No X

(vii) Where other lots or parcels that make up a tract in Subsection (vi):

(aa) The applicant must provide evidence that the covenants, conditions, and restrictions form adopted as "Exhibit A" in OAR chapter 660, division 6 has been recorded with the county clerk of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(bb) The covenants, conditions, and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions, and restrictions is located;

(viii) The Director shall maintain a copy of the covenants, conditions, and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions, and

restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(q) For single-family dwellings, the landowner must sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

If this application is approved, this will be made a condition of approval.

(r) For single-family dwellings, the approval is valid for four years from the date of approval, unless otherwise specified in the approval or by other provisions of Lane Code. Notwithstanding the requirements of LC Chapter 14, an application for a two year extension of the timelines for the permit approval can be made and approved pursuant to LC Chapter 14.

Pursuant to ORS 215.417, this application, if approved, will be valid for four years from the date of approval and one two year extension of the timelines can be made. This will be made a condition of approval.

SITING CRITERIA

(5) Siting Standards for Uses, Activities, and Structures

The following siting criteria apply to all new uses, activities, and structures allowed by LC 16.211. These criteria are designed to make such uses compatible with forest operations, to minimize wildfire hazards and risks and to conserve values found on forest lands. The Director must consider the criteria in this section together with the requirements of Section (6) to identify the building site.

(a) Residences, dwellings, and structures must be sited as follows:

(i) Near dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet from any ravine, ridge or slope greater than 40 percent (40%);

Explain the reason for the proposed location. You must address the following issues:

- How is the new dwelling close to other dwellings on adjacent property? Explain.

  See attached application dated 1/4/11, incorporated herein by this reference.

- How is the dwelling near existing roads?

  See attached application dated 1/4/11, incorporated herein by this reference.

- Will a new driveway be constructed or will an existing driveway be extended?

  See attached application dated 1/4/11, incorporated herein by this reference.

- What is the most level part of the property?

  See attached application dated 1/4/11, incorporated herein by this reference.

- What is the area that is least suitable for forest use based on the soil productivity, forest management and forest harvesting practices?

  See attached application dated 1/4/11, incorporated herein by this reference.

- Is there a ravine, ridge or slope greater than 40% within 30 feet of the new dwelling?

  See attached application dated 1/4/11, incorporated herein by this reference.

(ii) With minimal intrusion into forest areas undeveloped by nonforest uses;

Will the dwelling encroach into a forested area? Or will it be located in an existing developed or open area? Explain how the dwelling location will cause minimal intrusion to forested areas:

See attached application dated 1/4/11, incorporated herein by this reference.

(iii) Where possible, when considering LC 16.210(5)(a)(i) and (ii) and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and

Is the dwelling within 500 feet of adjoining property zoned F-1? Yes ___ No X

If yes, explain:

See attached application dated 1/4/11, incorporated herein by this reference.

Is the dwelling within 100 feet of adjoining property zoned F-2 or EFU? Yes ___ No X

If yes, explain:

See attached application dated 1/4/11, incorporated herein by this reference.

(iv) The amount of forest lands used to site access roads, service corridors, and structures must be minimized.

Explain how the location of the dwelling and driveway minimize intrusion into the forest. Attach additional pages if necessary.

See attached application dated 1/4/11, incorporated herein by this reference.

(b) Setbacks. Structures other than a fence or sign cannot be located closer than:

(i) 20 feet from the right-of-way of a state road, County road, or a local access public road specified in LC Chapter 15.

(ii) 30 feet from all property lines other than those described in Section (5)(b)(i).

(iii) **The minimum distance necessary to comply Sections (5)(a) and (6).**

Does the property front County Right-of-way? Yes ___ No X

If yes, what is the distance from the proposed dwelling to the County Right-of-way? _____ Feet

How far is the proposed dwelling from the northern property line? 375 Feet

How far is the proposed dwelling from the eastern property line? 335 Feet

How far is the proposed dwelling from the southern property line? 130 Feet

How far is the proposed dwelling from the western property line? 335 Feet

Are these setbacks at least the minimum distance to comply with (5)(a) and (6)?

Yes

(iv) **Riparian Setback Area. A riparian setback area applies to the area (iv) between a line that is 100 feet from and parallel to the ordinary high water of a Class I stream designated in the Rural Comprehensive Plan. No structure other than a fence may be located closer than 100 feet from the ordinary high water of a Class I stream unless a riparian modification application is approved in accordance with LC 16.253(3). Vegetation maintenance, removal, and replacement standards and exceptions to these setbacks are found in LC 16.253.**

Is there a designated Class 1 stream on the property? Yes ___ No X

If yes, how far will the dwelling be from the Class 1 stream? _____ Feet

(c) **Domestic Water Supplies. For new dwellings and non-farm structures on vacant land, evidence must be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant must provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(5)(c) above, evidence of domestic water supply means:**

(i) **Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;**

(ii) **A water use permit issued by the Water Resources Department for the use described in the application; or**

(iii) **Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant must submit the well constructor's report to the Director upon completion of the well.**

What is your proposed water source (check the answer):

Private Well X Community System ___ Public system ___

Describe: Existing wells on nearby properties show adequate supply of water available for parcel. See attached Exhibit.

For a community or public system, do you have written verification the provider can serve your dwelling?

Yes ___ No ___ If yes, include a copy with this application.

Do you have a water use permit (well log) for an existing well, issued by the Water Resources Department? Yes ___ No X

If yes, include a copy with this application. Copies can be obtained by searching for groundwater data at the following website: https://www.oregon.gov/OWRD/pages/index.aspx

(d) **As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant must provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.**

(e) **Approval of a dwelling is subject to the following requirements:**

(i) **Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules.**

(ii) **The Director must notify the County Assessor of the above condition at the time the dwelling is approved.**

(iii) **Stocking survey report:**

(aa) **If the lot or parcel is more than ten acres, the property owner must submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and**

(bb) **Upon notification by the Assessor, the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If the Department of Forestry determines that the tract does not meet those requirements, that department will notify the owner and the Assessor that the land is not being managed as forest land. The Assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax.**

If this proposal is approved, (d) and (e) above will be made conditions of approval.

(6) Fire-Siting Standards for Dwellings and Structures

The following fire-siting standards or their equivalent apply to new residences, dwellings, manufactured dwellings, or structures allowed in Lane Code 16.211:

(a) **The dwelling must be located upon a parcel within a fire protection district or must be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant must provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the dwelling must comply with the following fire safety plan requirements:**

Is the property within a fire district? Yes X No ___ If yes, go to (b) below.

If the property is not within a fire district, you have two options (choose one):

____ (A) Submit evidence of a long term services contract with the nearest fire district and request annexation into the fire district, or

____ (B) Develop a Fire Protection Plan. It must comply with standards in (i) - (v) below. The Fire Protection Plan will be verified as a Condition of Approval, but it is recommended that you submit the plan with this application.

(i) **The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions;**

(ii) **If a water supply is required for fire protection, it must be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year round flow of at least one cubic foot per second;**

(iii) **The applicant must provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use;**

(iv) **Road access must be provided to within 15 feet of the water's edge for firefighting pumping units. The road access must accommodate the turnaround of firefighting equipment during the fire season. Permanent signs must be posted along the access route to indicate the location of the emergency water source; and**

(v) **A 100-foot wide primary safety zone and a 100-foot wide secondary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures must be provided and maintained in perpetuity in compliance with the standards in (6)(c).**

(b) Fire Safety Design Standards for Roads and Driveways.

(i) Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for firefighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways must comply with the standards specified below. Evidence of compliance with the standards specified in (6)(b) should include objective information about the firefighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

Attach to this application objective information demonstrating compliance or feasibility of compliance with Lane Code 16.211(6)(b)(i), including:

X Itemized list of firefighting equipment. Obtain from the fire district (if applicable).

X Description and evidence of physical nature of access or driveway route. Topography maps, photos, or other evidence may be included in the application.

See attached application dated 1/4/11, incorporated herein by this reference.

X Description of proposed improvements to access or driveway route. Design drawings may be included in the application.

See attached application dated 1/4/11, incorporated herein by this reference.

In addition to the above items, the application may also include:

____ A preliminary written verification of compliance from the agency providing fire protection, or a preliminary written certification of compliance from an Oregon Registered Professional Engineer. However, please note that such certification will also be made a condition of approval to verify final access and/or driveway construction.

The standards below will be a condition of approval and will be verified by staff.

(ii) **Road and Driveway Surfaces. Roads must have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways must have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and must have a vertical clearance of 13 feet 6 inches.**

Will an existing driveway be extended to serve the new dwelling? Yes ___ No X

Will there be a new driveway in a new location? Yes X No ___

(iii) **Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County must meet these standards for turnarounds. Dead-end roads must have turnarounds spaced at intervals of not more than 500 feet. Turnarounds must comply with these design and construction standards:**

(aa) **Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) must intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They must be constructed to the standards for driveways in LC 16.211(6)(b)(i) above and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or**

(bb) **Cul-de-sac Turnarounds. Cul-de-sac turnarounds must have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and must be marked and signed by the applicant as "NO PARKING." Such signs must be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and**

(cc) **No cul-de-sacs or hammerhead turnarounds must be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.**

Are you proposing a dead-end road? Yes X No ___

Is it over 200 feet long? Yes X No ___

If yes, it must contain turnouts. Explain: a turnout wil be provided every 500 feet.
See attached application dated 1/4/11, incorporated herein by this reference.

(iv) **Bridges and Culverts. Bridges and culverts must be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width**

surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Will the new driveway or extension of the driveway contain any culverts or bridges? Yes ___ No X

If yes, explain: _____

_____

(v) **Road and Driveway Grades. Road and driveway grades cannot exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the firefighting equipment of the agency providing fire protection to access the use, firefighting equipment and water supply.**

Will the road or driveway contain any slopes in excess of 8%? Yes ___ No X

If yes, explain: _____

_____

(vi) **Identification. Roads must be named and addressed in compliance with LC 15.305 through 15.335.**

Please be advised that staff will evaluate the route of the road serving your dwelling, from the homesite back to the public road to which it connects. Staff will determine if the road is to be named, per LC 15.312 and LM 15.015(3).

(vii) **Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet must provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.**

The driveway must be 12 feet wide. How wide is the driveway? 12'

Is it over 200 feet long? Yes ___ No X

If yes, it must contain turnouts. Turnouts are not required if the driveway is 16 feet wide.

Will the driveway have turnouts? Yes ___ No X

Will the driveway be 16 feet wide? Yes ___ No X

(viii) **Modifications and Alternatives. The standards in (6)(b)(i) through (6)(b)(vii) above may be modified by the approval authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for firefighting equipment from its point of origination to its point of destination.**

Are you proposing any modifications or alternatives to the road or driveway standards? If yes, explain. Attach additional pages of necessary.

None.

(c) **Fuel-Free Breaks. The owners of dwellings and structures must maintain a primary safety zone surrounding all structures and clear and maintain a secondary safety zone on land surrounding the dwelling that is owned or controlled by the owner in compliance with these requirements.**

(i) **Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures, unless otherwise specifically stated in LC 16.211. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees must be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation must be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) must be placed next to the house.**

(aa) **As slope increases, the primary safety zone must increase away from the house, parallel to the slope and down the slope, as shown in the table and figure below:**

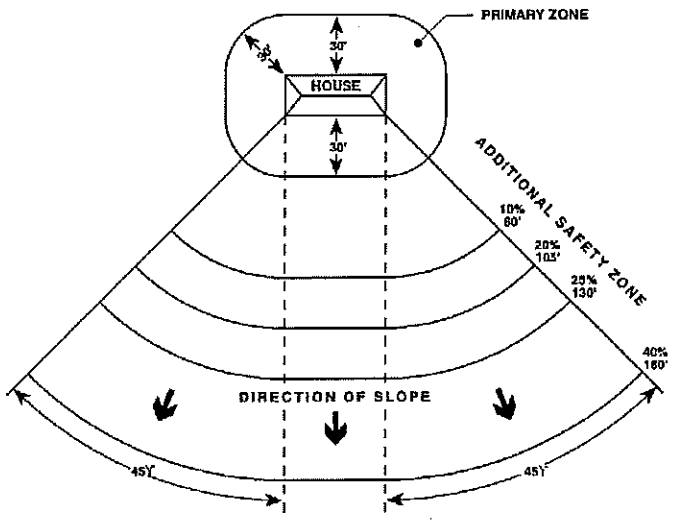
The new dwelling must be surrounded by a 30 foot primary safety zone. If the dwelling is on a slope, the safety zone will increase, as shown in the table.

Table 16.211-2 Minimum Primary Safety Zone

Slope	Feet of Primary Safety Zone	Feet of Additional Primary Safety Zone Down Slope
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

Figure 16.211-1

EXAMPLE OF SAFETY ZONE SHAPE



(ii) Secondary Safety Zone. The secondary safety zone is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary safety zone is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary safety zone must be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees must be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels must be removed.

The secondary fuel break must be established an additional 100 feet from the primary safety zone, but only on property you own.

* Show the fuel breaks on the site plan. If approved, the primary safety zone and the secondary fuel break will be verified as a condition of approval. Contact staff (541-682-3577) or visit the Planning website (www.lanecounty.org/planning) for details regarding fire break standards.

* The establishment and maintenance of fuel breaks within the Riparian Setback Area must comply with the applicable requirements of Lane Code 16.253.

(d) The dwelling must have a fire retardant roof.

(e) Dwellings or manufactured dwellings must be sited at least 30 feet away from a ravine, ridge, or any slope greater than 40 percent slope.

Substantial evidence may need to be submitted with the application to determine slope. This could include photos, slope calculations, and/or evidence from a private engineer or surveyor such as a stamped site plan. What is the slope of the land within 30 feet of the dwelling? 3% - 6%

(f) If the dwelling has a chimney or chimneys, each chimney must have a spark arrester.

If the proposal is approved, (d) and (f) above will be made conditions of approval and will be verified by staff.

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.343.8596
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM
TEL: 541.954.0095

May 3, 2019
COMPLETENESS LETTER

Keir Miller
Planning Director
LMD
3050 N. Delta Hwy
Eugene, OR 97405

RE: Template Dwelling Reissuance; PA _____; Map 21-35-07-30, TL 2900

Completeness issues are limited to the submittal requirements listed in the code under LC 14.040. Substantive review requirements (i.e., approval criteria) cannot be evaluated as part of completeness. With regard to approval criteria, all that is required is that the applicant address each relevant criterion and provide supporting evidence, if needed. The adequacy of the applicant's findings and evidence is evaluated after the application is deemed complete during the substantive review process.

The applicant has submitted a complete application based on the following:

14.040 Application Requirements

(1) Minimum Submittal Requirements. Applications for a Type I through Type IV procedure must:

☐ ***Be submitted on a form provided by the Director;***

See attached. A completed form has been provided.

☐ ***Address all applicable standards and criteria, and;***

See narrative, attached, and also included as Exhibit AA. That narrative addresses all approval criteria.

☐ ***Include the following materials and information:***
☐ ***Applications must include at least one hard copy of all application materials, no larger than 11 inch x 17 inch in size, and an electronic copy if required by LC 14.020(3)(b);***

The attached materials are not larger than 11x17 and an electronic copy is included on CD. See attached.

☐ ***All applicable information requested on the application form;***

As stated above, a completed county form is attached.

☐ ***Required filing fee, except that the required filing fee may not be required when Lane County initiates an application;***

The required filing fee has been submitted.

☐ ***Signature of each applicant;***

The applicant signature is on the application form, attached.

☐ ***Signature of a property owner or property owner's authorized representative;***

The property owner's signature is on the application form, attached. Also attached is an Authorized Representative" form.

☐ ***Proof of property ownership by providing a certified or recorded copy of a deed, or land sale contract, or Lane County Tax Assessor's records;***

Provided as part of Exhibit AA-A and Exhibit CC.

Assessor's map and tax lot number of the subject property;

Provided as part of Exhibit AA and FF. This information can also be found on the application form.

☐ ***A site plan drawn to a standard engineer's scale, and conforming to the County's site plan submittal standards;***

Provided as Exhibit AA-B and Exhibit M.

☐ **Information demonstrating compliance with any applicable prior decisions and conditions of approval for the subject property;**

This requirement is not applicable. The subject property is vacant.

☐ **A written narrative clearly indicating what action is requested and addressing all applicable standards and criteria;**

See narrative attached, and also narrative included as Exhibit A.

☐ ***Supporting information required to evaluate the application and address the applicable standards and criteria;***

Supporting information is provided as Exhibits AA through MM. This evidence is applied to approval standards via the attached narratives.

☐ ***A written statement indicating whether a railroad-highway crossing provides or will provide the only access to land that is the subject of an application; and***

Access to the subject property does not include a railroad crossing. See also attached narrative.

☐ ***Additional information needed to evaluate applicable standards and criteria.***

Provided as Exhibits AA through MM.

Sincerely,

Kim O'Dea

LAW OFFICE OF BILL KLOOS PC

OREGON LAND USE LAW
375 W. 4TH AVENUE, SUITE 204
EUGENE, OR 97401
TEL: 541.954.0095
WEB: WWW.LANDUSEOREGON.COM

KIM O'DEA
KIMODEA@LANDUSEOREGON.COM

May 3, 2019

Keir Miller, Planning Director
Lane County Land Management
3050 N. Delta Hwy.
Eugene, OR 97401

Re: EJK Inv.; Reissue Expired Director's Decision for Template Dwelling; 509-PA_____ (OLD PA 10-5484); Map 21-35-07-30, TL 2900

Dear Mr. Miller:

The applicant is requesting a Reissuance of Planning Director Approval for Template Dwelling approval PA 10-5484 (approved in 2011). The original approval and application are attached as Exhibit AA. The remainder of the County file for PA 10-5484 is incorporated herein by this reference. The County approval criteria relating to template dwellings has not changed since the approval was issued in 2011.

The following additional information is submitted:

- Adjacent ownership: There continues to be no adjacent property in common ownership. Exhibit DD.
- Subject Property: The subject property remains in the template approved configuration. Exhibit FF – current A&T map.
- Template parcels: The parcels counted toward the template test still fall within the template. Exhibit FF compared to Exhibit AA-G.
- Dwellings: The dwellings counted toward the template test still exist as counted or have been lawfully replaced. Exhibit EE.
- Additional materials as set out in the list of exhibits below.

Supplemental findings:

The dwelling has access via Airport Road, a county road. Access from Airport road is via an existing 40-easement and roadway. The roadway is already graded to 20 feet in width and graveled to 16-20 feet. See aerial. There is sufficient room within the easement to provide turn-arounds every 500 feet. Much of the roadway is within the cleared BPA ROW. There are no grades on the driveway more than 16%. See Lidar. The applicant is providing a loop driveway to the homesite, which benefits fire and emergency services. A turn-around will be provided at the homesite. A railroad-highway crossing will not provide access, as no railroads cross the subject property. Exhibit II.

Sincerely,

Kimberly J.R. O'Dea

Exhibits:

AA. Original application
  a. Deed
  b. Site Plan
  c. Overly Zone study
  d. Legal Lot Verification
  e. Legal Lot Verification Notice
  f. RLID
  g. Template Map
  h. Template Parcel Data
  i. Template Dwelling Data

BB. County Decision
CC. Updated Ownership information
DD. Updated Contiguous Ownership information
EE. Updated Dwelling Information
FF. Current A&T Maps
GG. Soils map
HH. USGS Topo and Lidar Topo
II. Aerial photo
JJ. Zoning map
KK. Water resource well records
LL. Natural Resources Map
MM. Airport Overlay Map

LAND MANAGEMENT DIVISION

LAND USE APPLICATION
F2 Template Dwelling

PUBLIC WORKS DEPARTMENT *125 E 8th AVENUE, EUGENE OR 97401 PLANNING: 682-3807*

For Office Use Only. *FILE #* 105484 *CODE:* **DAF2DW** *FEE:* ~~$2660~~ 2660 JW

Applicant (print name): *NICKELL LAND SURVEYING & PLANNING, LLC*

Mailing address: *33225 Craig Loop* City: *Cottage Grove, Oregon 97424*

Phone: *541-968-2905* Email: *nickell2u@msn.com*

Applicant Signature:

Agent (print name): _____

Mailing address: _____

Phone: _____ Email: _____

Agent Signature: _____

Land Owner (print name): *E.J. K. INVESTMENTS, LLC*

Mailing address: *30414 Lebleu Road* City: *Eugene, Oregon 97405*

Phone: _____ Email: _____

Land Owner Signature:

LOCATION

T.21S. R.3E. Section 07 SW 1/4 TL 2900 *21-35-07-30-02900 (new)* *21-35-07-40 TL 100 (old)*

Township Range Section Taxlot

vacant parcel of land

Site address

PROPOSAL: A request for Director Approval of a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the "template test" provisions of Lane Code 16.211(5).

Exhibits: A: Deed
B: Site Plan
C: Overlay Zone Analysis
D: LLV
E: LLV Notice
F: RLID DATA
G: Template MAP
H: Template DATA
I: Dwelling DATA

Version 10-06

EXHIBIT A A

ADJOINING OWNERSHIP Is any adjacent property under the same ownership as the subject property? List the map and tax lot(s).

No the owner does not own any adjacent parcel of land, see EXHIBIT "A" for ownership deed.

SITE PLAN A site plan must be included. Refer to the handout entitled "How to prepare your plot plan". Identify nearby driveways. Driveways spacing standards are contained in Lane Code 15.138.

The plot plan is shown on EXHIBIT "B" and EXHIBIT "C" at the end of this form.

ZONING *F-2 zone*

ACREAGE: *12.05 acres more or less*

DESCRIBE THE ACCESS TO THE PROPERTY (circle the answer):

X Private Road Easement

GENERAL ACCESS REQUIREMENTS

Access to the home site must comply with Lane Code Chapter 15. All lots, parcels, or building sites shall have reasonably safe and usable vehicular access either directly to a Public Road, County Road, State Road or an approved Private Access Easement. The access to the homesite must past a two part test. First, the homesite must have legal access. Second, that access must be reasonably safe and useable.

First: A lot or parcel shall be considered as having legal access for the purposes of development when the lot or parcel: (check the one that applies)

_____ (A) Was created in an approved and recorded land division; or

_____ (B) Is part of an unrecorded subdivision filed with the County as a survey recorded prior to January 1, 1955, and the roads in the unrecorded subdivision were dedicated to the County but may not have been accepted as Public Roads as defined in LC 15.010(35); or

___ (C) Is adjacent to a Public Road or County Road, and meets the frontage requirements of LC 15.120

__X_ (D) Is served by a Private Access Easement meeting the requirements of LC 15.055; or

_____ (E) Is adjacent to a state road and meets any applicable state access and permit requirements.

Second: A lot or parcel shall be considered as having reasonably safe and usable vehicular access for purposes of development if the road providing access to the lot or parcel is: (check the one that applies)

____ (A) a County-maintained road or State-maintained road; or

__X___ (B) a Public Road, Local Access Road, or Private Access Easement physically constructed and maintained to the requirements specified in this chapter; and any applicable dedication and improvement requirements of this chapter are met.

EXISTING IMPROVEMENTS Does the property contain any roads, structures, etc.?

The parcel is vacant and contains several existing traveled roadway. The existing roadway is a gravel roadway that goes off County Road No. 2102 and travels westward for approximately 1225 feet before the roadway splits. The northwesterly split is what the owner will be using for the access roadway. The other portion of the split, going westerly, will be used as a driveway to a proposed dwelling site to Tax Lot 843. The northwesterly existing traveled roadway goes northerly and than easterly and is going to be used by 3 other landowners for an access route to their proposed dwellings. A 40 foot wide private road easement will have to be drafted after a private land surveyor locates the existing roadway. This northwesterly access roadway is approximately 12 feet to 14 feet in width and will have to by improved to Lane Code Chapter 16.211 (8) (e) access standards. This northwesterly access traveled roadway has been used by the landowner for forest management and by BPA for an access roadway to maintain there power lines. There is another existing traveled roadway that goes southeasterly from the west property line southeasterly threw the middle of Tax Lot 2900, then loop back to the existing traveled access road. This roadway is approximately 10 feet wide gravel roadway that will be used as a driveway to the proposed dwelling site of Tax Lot 2900. This existing traveled roadway that will be used as the proposed driveway will have to be brought up to Lane Code Chapter 16.2111 (8) driveway standards. Since the proposed driveway is a loop there will be no need for a turnaround. The owner will work with the Fire Department on the access and driveway roadway to make sure that the improvements will meet there requirements for thier type of fire and safety equipment.

PHYSICAL FEATURES: Describe the site. Identify any steep slopes, water bodies (creeks, ponds, etc.) or other significant features. Include additional pages if necessary.

For this particular parcel the proposed dwelling is on a nearly flat portion of the parcel. The proposed dwelling site is 200 feet, east and west by 100 feet north and south, in size and is proposed at approximately 335 feet from the west property line; 370 feet from the north property line; 130 feet from the south property line; and 335 feet from the east property line. The slope on the 200 foot by 100 foot proposed dwelling site is on a 3% to 5% on a northerly downhill slope. The area from the proposed dwelling site to the property lines to the west, east and south consist of a varying slope of 3% to 6% on a northerly downhill slope. The area from the proposed dwelling site going northerly consists of a varying slope. The first 150 feet is a 3% to 6% northerly downhill slope, then the slope changes from 6% to 40% northerly downhill slope. The overall parcel has been clear cut within the last 5 years and has been re-planted. Therefore the existing vegetation consist of small fir trees with some very scattered underbrush with a few oaks and maple trees scattered in for good measure. The soils on this parcel is 77% Class 89D-Nekia Silty Clary Loam, 2% to 12% slopes, the area for the proposed dwelling is on the Class 89D soils but the proposed site will be on a varying slope of 3% to 5%. The Soil Conservation Service for soils classification states that a home site development should be on a flatter portion of the parcel. The proposed dwelling site does not contain any body of water. The northerly portion of the parcel does contain some very steep slopes and the owner is making every effect not to affect the portion of the parcel. That is why the proposed dwelling site is located in the flattest portion of the parcel.

APPROVAL CRITERIA

Lane Code 16.211(5) Template Dwelling.

One single-family dwelling or manufactured dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) The tract upon which the dwelling or manufactured dwelling will be located has no other dwellings or manufactured dwellings on it. As used in LC 16.211(5), "tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

Does the tract, as defined in this section, contain any other dwellings? _X_ No

(b) The lot or parcel upon which the dwelling or manufactured dwelling will be located was lawfully created. (check the one that applies)

____ (1) If the land has been partitioned or subdivided, identify the partition or subdivision plat number:

_X_ (2) If the land has not been partitioned or subdivided, a legal lot verification is required prior to submittal of this application. What is the PA# for the legal lot verification of this tract: *The preliminary legal lot was completed in 2008, see Lane County Planning Department legal lot verification on PA# 08-6332 (for a copy of the preliminary legal lot verification see EXHIBIT "D"), the notice of the preliminary legal lot was done in 2008, see PA# 08-6329, and since there was no appeals the preliminary legal lot became final on December 2, 2008 (for a copy of the notice see EXHIBIT "E").*

(c) The lot or parcel upon which the dwelling or manufactured dwelling will be located:

The minimum number of parcels within the template depends on the productivity of the soil type. At least 51% of the acreage of the parcel is capable of producing:

—— (1) Less than 50 cubic feet per acre per year: Go to Section (i)

____ (2) 50 to 85 cubic feet per acre per year: Go to Section (ii)

_X_ (3) More than 85 cubic feet per acre per year: Go to Section (iii)

_X_ (4) If there are more than 11 parcels within the template, no soil data is required. Go to Section (iii).

See EXHIBIT "F" for a copy of the Rlid printout

Section (iii) More than 85 cubic feet

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and

Include the map and the template used to verify the requirements in (aa) and (bb).

(aa) All or part of at least eleven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(iii)(aa) above.

How many lots or parcels existed on January 1, 1993? *17*

(bb) At least three dwellings or manufactured dwellings existed on January 1, 1993, on the other lots or parcels described in LC 16.211(5)(c)(iii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(iii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings or manufactured dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle.

How many dwellings or manufactured homes existed on January 1, 1993? *9*

(d) Approval of a dwelling or manufactured dwelling shall comply with the requirements in LC 16.211(5)(d)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

If your application is approved, it will include a condition of approval that requires a stocking report if the tract contains 10 acres or more. This will be required before a building permit is issued.

(e) Prior to land use clearance of a building permit for the dwelling or manufactured dwelling, when the lot or parcel on which the dwelling or manufactured dwelling will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(6), "Exhibit A," shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

(i) Shall be irrevocable, unless a statement of release is signed by the Director;

(ii) May be enforced by the Department of Land Conservation and Development or by Lane County;

(iii) Shall, together with a map or other record depicting any tract which does not qualify for a dwelling, be maintained in the Department records and be readily available to the public; and

(iv) *The failure to follow the requirements of LC 16.211(5)(e) above shall not affect the* validity of the transfer of property or the legal remedies available to the buyers of the property which is the subject of the covenants, conditions and restrictions required by LC 16.211(5)(e) above.

If your application is approved and your property is comprised of more than one parcel, this will be a condition of approval.

(f) Land use approval of a permit described in LC 16.211(5) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and *(iii), an application for a two year extension of the timelines for the permit approval described* in LC 16.211(5)(f) above may be made and approved pursuant to LC 14.700(2).

If this application is approved, you have four years to complete the conditions of approval and submit a building permit for the dwelling. If you are unable to submit a building permit within that time, you may request a time extension of two more years. This requires a "Time Extension" application and fee. The time extension must be submitted prior to the expiration date.

(g) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

If your application is approved, you will need to sign and record a "Farm and Forest Management Agreement". This document will be included in the packet that is mailed to you with the application approval.

	map and tax lot	deed & date	dwelling date
1.	21-35-07-40 TL 100 TL 133	Legal lot Verif. PA# 06-7360 Book 293 Page 420 (1945)	vacant
2. ✓	21-35-07-30 TL 2700	Reel 360-D/96687 (1972)	vacant
3.	21-25-12-00 TL 843	Legal Lot Verif. PA# 06-6078 Book 103 Page 122 (1913)	vacant
4. ✓	21-35-18-00 TL 914	Partition MP# 463-79 P-1 Reel 1210-R/8227205 (1982)	1994
5.	21-35-18-00 TL 915	Partition MP# 3201-86 P-1 Reel 1437-R/8653099 (1986)	1986
6. ✓	21-35-18-00 TL 913	Partition MP# 463-79 P-2 M36-78 P-3 Reel 1077-R/8028874 (1980)	1980
7.	21-35-18-00 TL 901	Partition MP# 3201-86 P-2 Reel 283-D/40157 (1966)	vacant
8.	21-35-18-00 TL 910	Partition MP# 174-78 P-2 Reel 967-R/3590 (1978)	1974
9. ✓	21-35-18-00 TL 911	~~Partition MP# 86-78 P-2~~ M36-78 P-2 Reel 1020-R/53579 (1980)	2002
10. ✓	21-35-18-00 TL 912	~~Partition MP# 86-78 P-1~~ M36-78 P-1 Reel 1075-R/8026885 (1980)	1965
11. ✓	21-35-18-00 TL 906	Reel 465-D/95859 (1969)	1991
12. ✓	21-35-18-00 TL 908	Reel 484-D/10186 (1969)	1954
13. ✓	21-35-18-00 TL 903	Legal Lot Verif. PA# 2870-87 Reel 477-D/3455 (1968)	vacant
14. ✓	21-35-18-00 TL 904	Reel 423-D/52735 (1968)	1965
15.	21-35-18-00 TL 918	Partition MP# 2253-83 P-2 Reel 1962-R/9444817 (1194)	1995
16. ✓	21-35-18-00 TL 900	Partition MP# 2253-83 P-1 Doc.# 2005-020017 (2005)	1985
17. ✓	21-35-18-00 TL 902	Reel 382-D/16860 (1962)	1962
18.			

EXHIBIT "G" for template map

EXHIBIT "H" for copies of A&T description cards

EXHIBIT "I" for copies of rlid, showing date of existing dwellings

Include description cards.

If necessary, see the Planner on Duty for prior partitions/subdivision/legal lot status of surrounding properties.

SITING CRITERIA

Lane Code 16.211(8)

These standards are designed to make the proposed dwelling compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands.

The standards in LC 16.211(8)(a)-(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

On the site plan, identify:

- The most level part of the property.
- The area that is least suitable for forest use based on the soil productivity, forest management and forest harvesting practices.

Explain the reason for the proposed location. You must address the following issues:

- How close is the new dwelling to other dwellings on adjacent property?
- Will a new driveway need to be constructed?
- Will an existing driveway be extended?
- Is there a ravine, ridge or slope greater than 40% within 30 feet of the new dwelling?

The proposed dwelling site is approximately 600 feet from the TL 912, being the closest adjacent dwelling. The existing Oakridge Airport runway is an intervening ownership. The topographic conditions and configuration of the parcel would not allow a dwelling any closer to another adjacent dwelling. The proposed dwelling site is on the most level portion of the parcel, being on a 3% to 6% northerly downhill slope. The existing traveled roadway, will be the access road for this parcel, stares from the county road, then goes northerly then easterly threw several other parcels, before the access roadway goes threw TL 2900. The existing traveled access roadway has been history used as a forest management roadway, as well as an access and maintains roadway for the BPA for the power lines. The other existing roadway, going southeasterly threw TL 2900 will be used as a proposed driveway. Both the access and driveway will have to be upgraded to Lane Code Chapter 16.211 (8) access and driveway standards. There is not a ravine, ridge, or slope greater than 40% within 200 feet from the new proposed dwelling. As stated above the proposed dwelling site is on the flattest portion of the parcel, and given the soil type the any location within the Class 89D a dwelling would be allowable on the flatter portion of the soil type.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

Will the dwelling encroach into a forested area or be located in an existing open area? Explain:

The proposed dwelling site is in a forested area that was clear cut several years ago, therefore is in a mostly open area with only a few scattered underbrush and replanted fir trees.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 and at least 30 feet from the adjoining lines of property zoned F-2 or EFU; and

On the site plan, show the new dwelling and the property lines.

Is the dwelling within 500 feet of adjoining property zoned F-1? *No, the adjacent zone is AO and F-2*

Is the dwelling within 130 feet of adjoining property zoned F-2 or EFU? No

The distance from the north, east and west property lines to the proposed dwelling site is proposed at 335 feet or greater distance. The F-2 zoned parcels are to the north, east and west side of the parcel. The parcels to the south is zoned AO.

(iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and

Is there a water body on the property? *No*

If so, it must be indicated on the site plan. The dwelling must be at least 100 feet from the ordinary high water mark of a Class I stream. The location of the ordinary high water mark is determined by planning staff. A "Riparian Declaration" application is required if the dwelling is within 125 feet of the ordinary high water mark. You will be notified if a riparian declaration is required.

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 30 feet from all other property lines; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

The new dwelling must be at least 30 feet from any property line, and 20 feet from the right-of-way of a state road, County road or a local access public road. Some roads have additional setback requirements. Refer to Lane Code Chapter 15 for additional road setbacks.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

Explain how the location of the dwelling and driveway minimize intrusion into the forest. Attach additional pages if necessary.

The proposed dwelling is to be located on the flattest portion of the parcel, and the proposed dwelling site is in a clear cut area, that has very little underbrush and marketable trees, the area was clear cut several years ago. The existing forest traveled roadway will be used as an access roadway has been used for prior forest management and for access to the BPA power lines, therefore will have no major impact to the intrusion of the parcel. The other portion of the existing roadway, being the loop portion going threw TL 2900, will be used as the driveway for TL 2900.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:

(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house.

As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope		
% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent.

What is the slope of the land within 30 feet of the dwelling? *3% to 6%*

The new dwelling must be surrounded by a 30' primary safety zone. If the dwelling is on a slope, the safety zone will increase, as shown in the table. The safety zone must be established prior to submittal of a building permit.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

The secondary fuel break must be established an additional 100 feet from the primary safety zone, but only on property you own. This will be a condition of approval and must be verified by planning staff prior to submittal of a building permit.

Once you have established the safety zone and the fuel break, submit the "Request for Verification of Conditions". Planning staff will visit the site to verify the construction

meets the standards of the code. Contact Don Nickel (682-3989) for details regarding fire break standards.

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. If the dwelling or manufactured dwelling are not within a FPD, the applicant shall provide evidence that the applicant has submitted a written request for a long term services contract with the nearest FPD and to be annexed into the FPD boundaries. If the FPD and the Planning Director determine that inclusion within a FPD or contracting for residential fire protection is impracticable, the Planning Director shall require as a condition of approval for the dwelling or manufactured dwelling that the property owner implement and maintain a Fire Protection Plan as an alternative means for protecting the dwelling or manufactured dwelling from fire hazards, consistent with the following standards:

Is the property within a fire district?(circle the answer) *Yes*

Name of fire district: *Hazeldell Rural Fire District*

(aa) Implementation and maintenance in perpetuity of a 100-foot wide primary safety zone surrounding the perimeter of the dwelling or manufactured dwelling structures in compliance with the standards in LC 16.211(c)(i)(aa) above; and

(bb) An external, fire protection system as a component to the equivalent Fire Protection Plan to mitigate the threat to the dwelling and residential structures by a seasonal wildfire or the threat to the forest resource base from a fire originating on the parcel in compliance with the following standards:

(A) Provide a minimum of two all-weather, one-inch valve, fire hydrants and two fire hose reels with sufficient length of fire suppression hose at each hydrant to reach around fifty percent of the exterior of the dwelling and residential accessory structures. The hose reels shall be installed between 50-75 feet from the structure foundations. The minimum fire hose interior diameter shall be one-inch;

(B) Provide a fire nozzle with each fire hose with multiple settings to allow stream, spray and fog applications of water on the exterior of the structures and landscape;

(C) Provide and annually maintain a water supply and pumping system connected to the fire hydrants in compliance with the following minimum requirements: a swimming pool, pond, lake or similar body of water that at all times contains a minimum of 4,000 gallons of water; or a stream that has a continuous year-round flow of at least one cubic foot per second; or a 1,500-gallon storage tank, e.g., concrete septic tank connected to an operating groundwater well for refilling; or a high-yield groundwater well with a minimum yield of 30 gallons per minute for one hour; and a pump system capable of maintaining 80 psi line pressure to the two fire hydrants.

(cc) The property owner shall provide verification from the Water Resources Department that any permits or registrations required for water diversions have been

obtained or that such permits or registrations are not required under state law for the use; and

(dd) Road or driveway access to within 15 feet of the water supply shall be provided for pumping units. The road or driveway access shall accommodate the turnaround of fire fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

These construction standards will be a condition of approval and will be verified by staff.

(d) Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:

What is your water source (check the answer):

_X_ Private Well

Describe: *The owner will drill a well after the approval of the Special Use Permit and prior to the Verification of Conditions. Which should be one of the conditions of approval.*

(i) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

For a community or public system, do you have written verification the provider can serve your dwelling? *Not actable*

(ii) A water use permit issued by the Water Resources Department for the use described in the application; or

(iii) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.

Do you have a water use permit (well log) for an existing well, issued by the Water Resources Department? *No*

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

These construction standards will be a condition of approval and will be verified by staff. In addition, refer to the "General Access Requirements" on page 2 of this form.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not less than 500 feet. Turnarounds shall comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Are you proposing a dead-end road? *No*

Is it over 200 feet long? *No*

The proposed dwelling site will be on approximately 3600 feet from the county road, the majority of the traveled roadway is an access roadway and that surface will be brought up to Lane Code Chapter 16.211 (8) access standards, which is a 16 feet width. The driveway will be a 12 foot wide traveled surface, but will be a loop configuration therefore no turnaround will be required. But the owner will be working with the local fire department to make sure that the access and driveway meets their concerns about fire and safety standards, and meets Lane Code Chapter 16.211 (8) access and driveway fire and safety standards.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from a engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Will the driveway or road contain any culverts or bridges? *No*

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

Will the road or driveway contain any slopes in excess of 8% or 16%? *No*

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

Will the road provide access to more than three dwellings? *Yes*

If yes, the road must be named. This will be a condition of approval and a road name application will be included with the packet that is sent to you.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

The driveway must be 12 feet wide. How wide is the driveway? *The existing traveled roadway varies from 10 feet to 12 feet wide. The owner will re-grade the existing roadway to meet or exceed Lane Code Chapter 16.211 (8) driveway standards.*

Is it over 200 feet long? *Yes*

If yes, it must contain turnouts. Turnouts are not required if the driveway is 16 feet wide.

Will the driveway have turnouts? *No*

Will the driveway be 16 feet wide? *No*

Since the proposed driveway is going to be a loop configuration and is going to be less than 400 feet in length, turnouts and a turnaround is not required.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

Are you proposing any modifications or alternatives to the road or driveway standards?
No

FORM No. 961 – BARGAIN AND SALE DEED – STATUTORY FORM STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR www.stevensness.com

EOB NO PART OF ANY STEVENS-NESS FORM MAY BE REPRODUCED IN ANY FORM OR BY ANY ELECTRONIC OR MECHANICAL MEANS.

CROWN PROPERTIES LLC
30414 LEBLEU ROAD
EUGENE, OR. 97405
Grantor's Name and Address

E. J. K. INVESTMENTS
30414 LEBLEU ROAD
EUGENE, OR 97405
Grantee's Name and Address

After recording, return to (Name, Address, Zip):
EJK INVESTMENTS LLC
30414 LEBLEU ROAD
EUGENE, OR 97405

Until requested otherwise, send all tax statements to (Name, Address, Zip):
SAME AS ABOVE

Division of Chief Deputy Clerk
Lane County Deeds and Records

2009-018701

$31.00

01064792200900187010020028

04/10/2009 03:32:11 PM

RPR-DEED Cnt=1 Stn=6 CASHIER 07
$10.00 $11.00 $10.00

SPACE RE: FOR RECORDER'S USE NO. _____, Records of this County.

Witness my hand and seal of County affixed.

NAME TITLE

By _____, Deputy.

BARGAIN AND SALE DEED – STATUTORY FORM

CROWN PROPERTIES, LLC, Grantor,

conveys to E.J.K. INVESTMENTS, LLC, Grantee,

the following real property situated in _____ County, Oregon, to-wit:

SEE EXHIBIT "A"

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE)

The true consideration for this conveyance is $_____. (Here, comply with the requirements of ORS 93.030.)

OTHER VALUE CONSIDERATIONS

DATED _____; if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

E.J.K., member
for Crown Properties LLC

STATE OF OREGON, County of Lane ss.

This instrument was acknowledged before me on April 10, 2009,

by Ed King

This instrument was acknowledged before me on _____,

by _____

as _____

of _____

OFFICIAL SEAL
NOTARY PUBLIC - OREGON
COMMISSION NO. 406994
MY COMMISSION EXPIRES AUG. 23, 2010

Notary Public for Oregon

My commission expires August 23, 2010

PUBLISHER'S NOTE: If using this form to convey real property subject to ORS 92.027, include the required reference.

EXHIBIT "A"

MAP & TAX LOT

002121

EXHIBIT "A"

Beginning at the Southeast Corner of Section 7 of Township 21 South Range 3 East of the Willamette Meridian, in Lane County Oregon, Thence along the East Line of said Section 7, North 0* 36' 50" East 46.61 feet; Thence leaving the East Line of said Section 7, North 79* 46' 22" West 1402.58 feet; Thence South 10* 12' 06" West 287.10 feet more or less to the South Line of said Section 7; Thence along the South Line of said Section 7, North 89* 28' 35" West 1119.68 feet; Thence leaving the South Line of said Section 7, North 14* 47' 08" East 495.14 feet; Thence North 75* 12' 52" West 1000.00 feet to the TRUE POINT OF BEGINNING; Thence North 75* 12'52" West 875.00 feet; Thence South 14* 47' 08" West 600.00 feet more or less to the North Line of a parcel of land that was conveyed by deed to the Oakridge Airport as recorded on Reel 360-R/ 96687, within the Lane County Oregon Deeds and Records; Thence along the North Line of said Oakridge Airport parcel South 75* 12' 52" East 875.00 feet; Thence leaving the North Line of said Oakridge Airport parcel North 14* 47' 08" East 600.00 feet to the TRUE POINT OF BEGINNING, all in Lane County Oregon.

Being Approximately 12.05 acres in size.

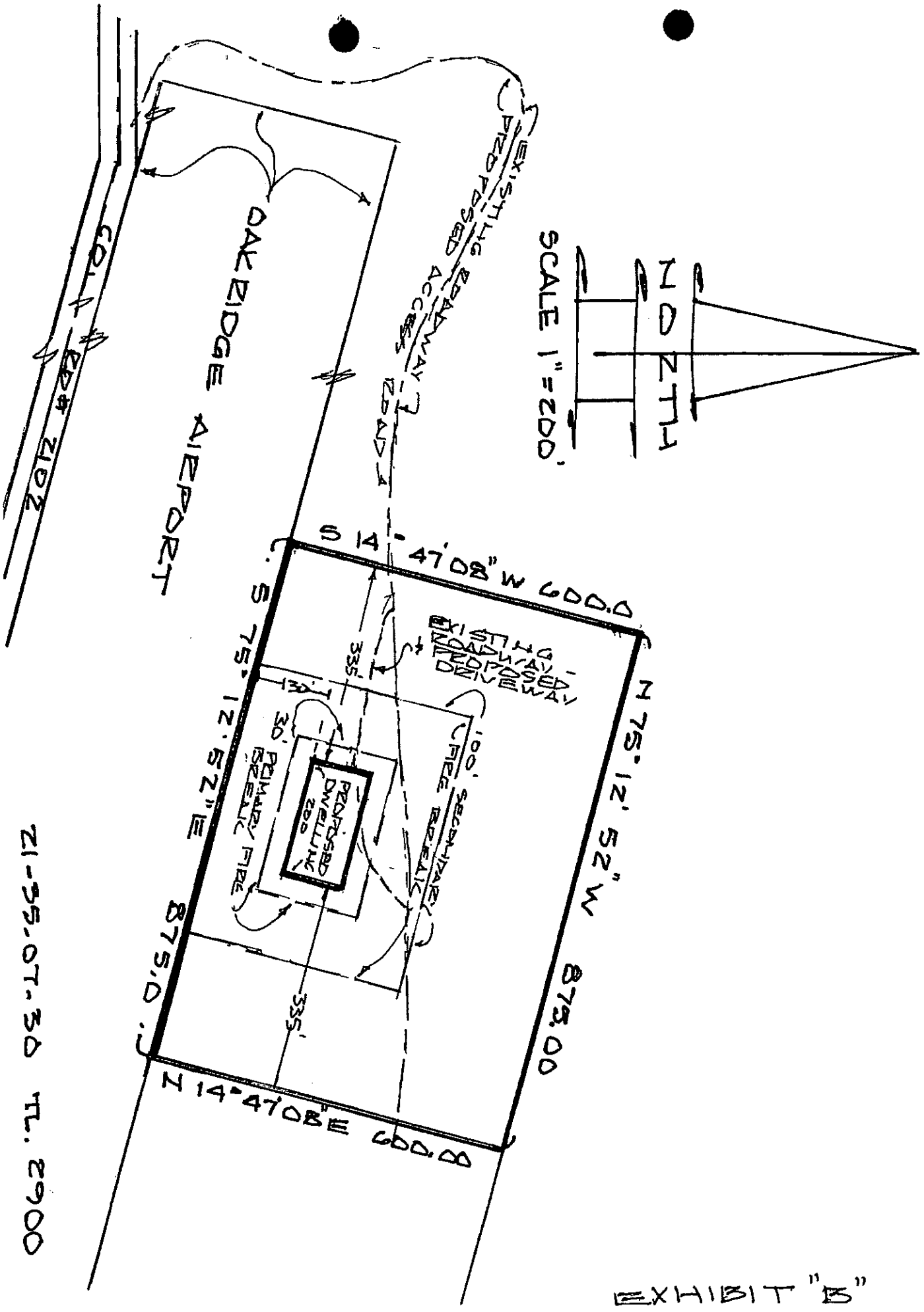
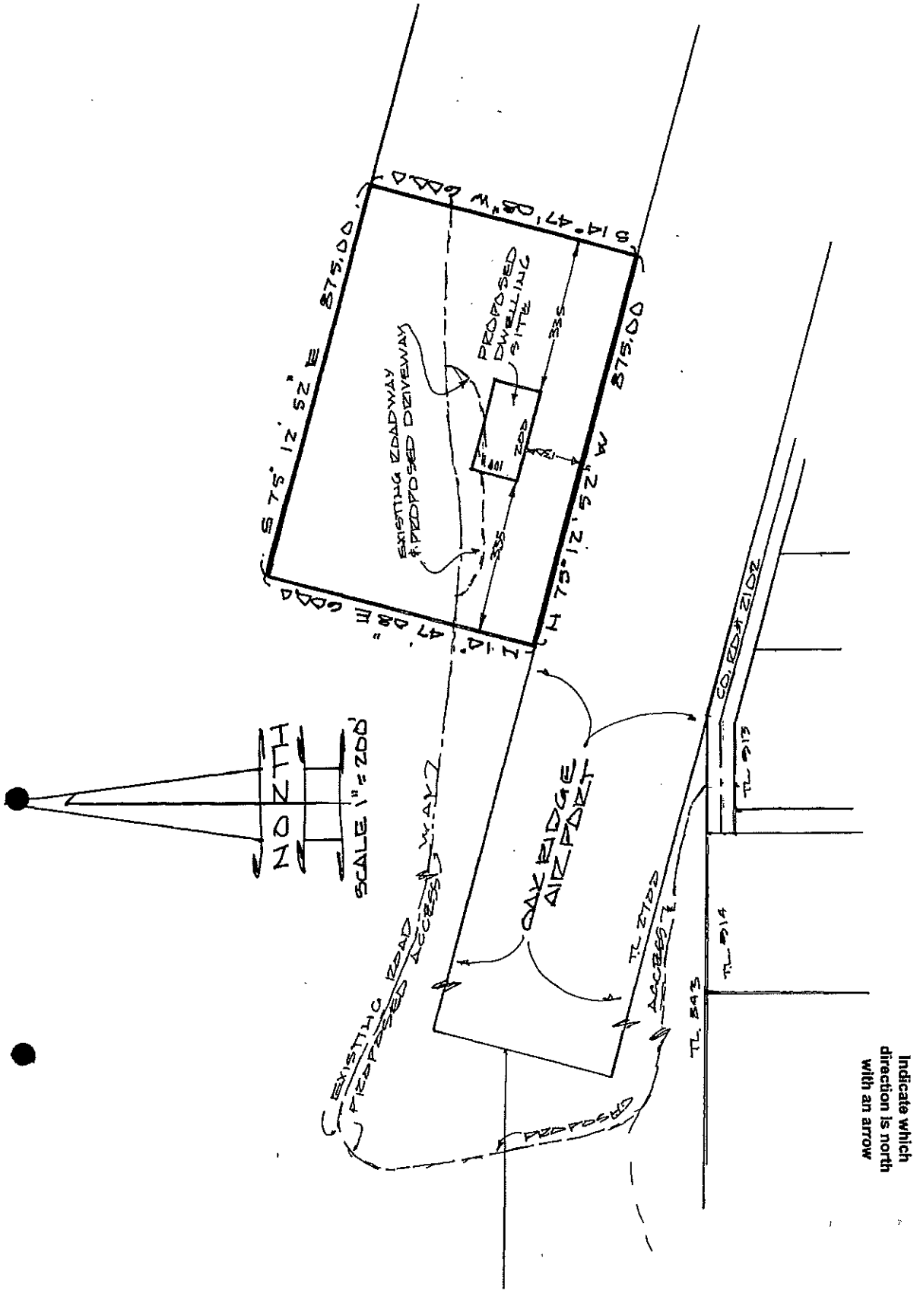

OAK RIDGE AIRPORT
COUNTY ROAD 202
EXISTING PAVED ROADWAY ACCESS
SCALE 1" = 200'
NORTH
S 14°-47'08" W 600.0
N 14°-47'08" E 600.8
S 75° 12' 52" E 875.0
N 75° 12' 52" W 873.00
EXISTING ROADWAY - PROPOSED DRIVEWAY
335'
130'
30'
100'
PROPOSED DWELLING 28'0
PRIMARY FIRE BREAK
SECONDARY FIRE BREAK
335'
21-35-07-30 TL 2900

EXHIBIT "B"

002124

SITE PLAN SUBMITTAL FORM

OWNER NAME: EJK. INVESTMENT **PHONE #** _____ **ADDRESS:** 30414 LEBLEU ROAD EUGENE, OR, 97405	**Map and Taxlot #:** 21-35-07-30 TL 2900 **Scale:** 1" = 200'	**APPLICANT NAME:** NICKELL LAND SURVEYING **PHONE #** 541-513-2905 **ADDRESS:** 35225 CIZAN LOOP COTTAGE GROVE, OR 97424



Indicate which direction is north with an arrow

A# 10-5484



NICKELL LAND SURVEYING AND PLANNING
33225 Craig Loop
Cottage Grove, Oregon 97424
Phone Number 541-968-2905

Jerry Kendall
Associate Planner
Lane County Planning Department

Re: Items that need to be submitted to complete the SUP, address the Oakridge Airport overlay zone, see Lane Code 16.246 (3)(a)-(c), for Tax Lot 2900 of Tax Map 21-35-07-30.

Dear Jerry:
I have complete the necessary field work to address the county's planning department concerns about the proposed dwelling site in relationship to the Oakridge Airport overlay zone. Lane Code 16.246 (3)(a)-(c) discuss the concerns about the (a) the height of the proposed structure (b) to create electric interference with navigation signals or radio communication between the airport and aircraft or (c) all structures shall be designed to limit the structure height, light, glare producing surfaces, radio interference, smoke, and or other hazards to flight air navigation or public health, safety and welfare. It appears that all most all of the issues that are of concerns within Lane Code 16.246(3)(a)-(c) are issues that will need to be addressed at the time of applying for a building permit. The lighting, smoke, radio interference and other related issues are building permit limitations. The only real issue that can be addressed at the SUP application is the height of the proposed dwelling in relationship to the zone limitation on height. The airport overlay zone can be broken down into 3 major parts. I will address each of the 3 parts as follows:

1) The most restrictive is the Primary Surface, which is a longitudinally plane centered on the runway centerline and extending 200 feet beyond the ends of the prepared runway and having a width of 250 feet. For this particular parcel the primary surface is extending out 125 feet at perpendicular right angle from the centerline of the existing runway. Since the proposed dwelling site is 490 feet at right angle from the centerline of the airport this is not an issue;
2) The next is the Transitional Surface, which starts at the end of the primary surface and then extends outward at 90 degree angle from the side of the primary surface and approach surface at a slope of 1 horizontal foot to seven vertical feet, to their intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet. For this particular parcel if the slope is 7 foot vertical to 1 foot horizontal than

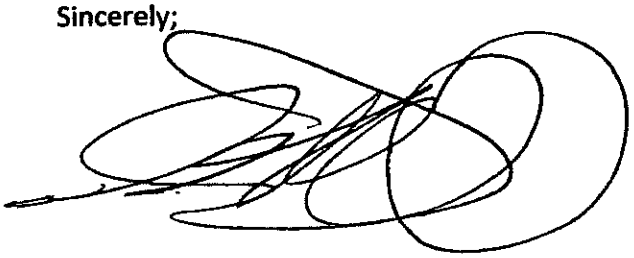
the width of the transitional surface is only approximately 22 feet wide, therefore from the centerline of the runway at right angles to the existing runway surface the total for both the primary and transitional surfaces is only 147 feet. Since the proposed dwelling site is 490 feet from the runway centerline this again is not an issue;

3) The next is the Horizontal Surface, which is a horizontal plan 150 feet above the airport runway, and extending out 5000 feet from the center of the airport runway. Now this appears to be the only issue that we have. I have run elevations on the runway center line and elevations on the site of the proposed dwelling. The results are the runway elevation is 1407.8, the site elevation is 1421 and the horizontal surface elevation is 1557.8, therefore the proposed dwelling site can be 136.8 feet in height. The owners can easily put in a 2 story building and have room to spare. I discussed the height issue with Lane County Building Department and they indicated that a 10 foot ceiling double story house most likely would have total height of 35 foot, therefore using the elevations 1421 plus 35 equals 1454 which is allows a 100 foot Clarence.

I am submitting a cross section of my findings with my stamp. I am also submitting a aerial phone of the parcel to show the distance to the different Surfaces in relationship to the proposed dwelling site.

If you have any questions please contact me at the above address or phone number or by e-mail at nickell2u@msn.com.

Sincerely;

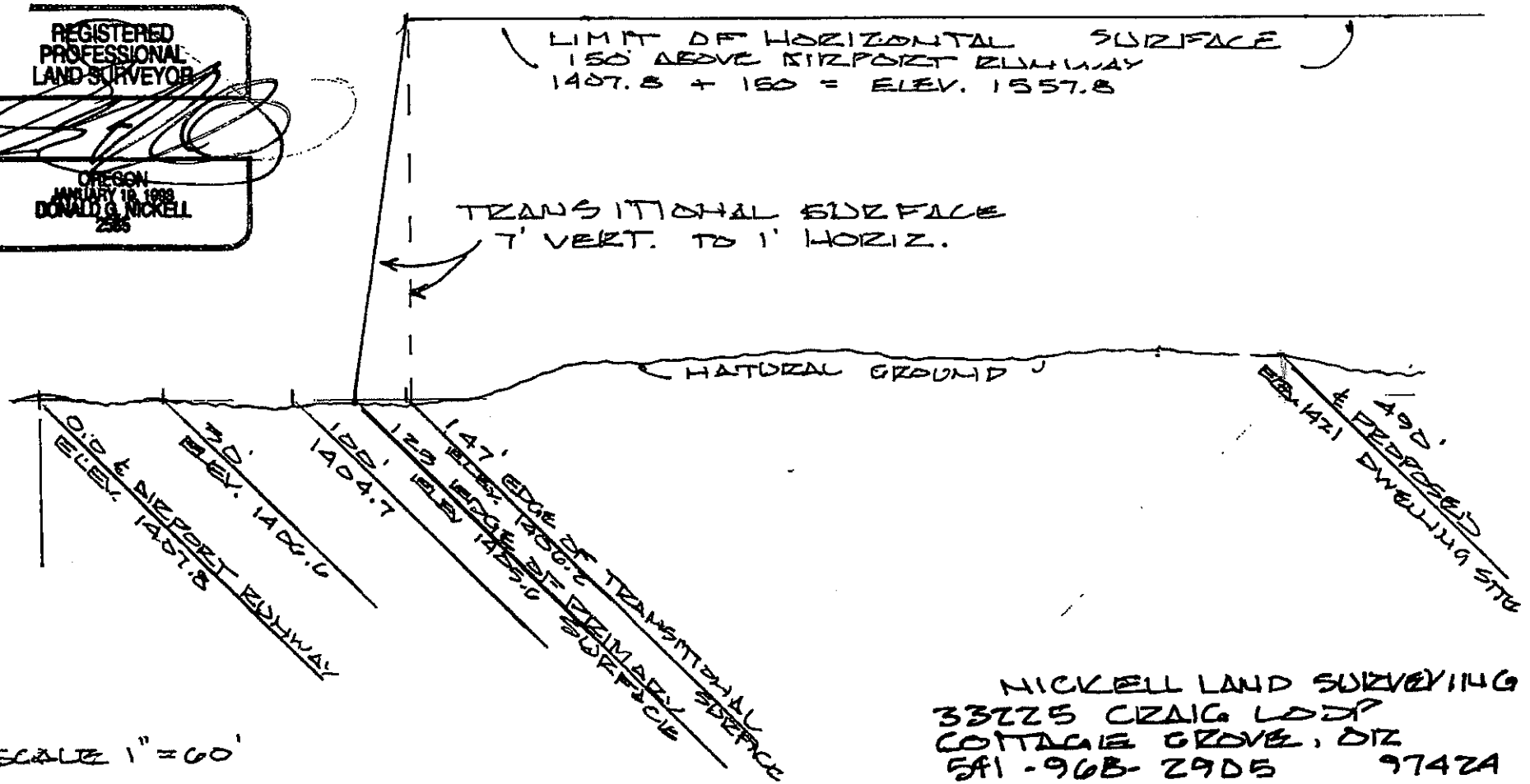


DONALD NICKELL

CROSS SECTION OF NATURAL GROUND TO OAKRIDGE AIRPORT OVERLAY ZONE FOR LANE CODE 16.246

21-35-07-30 TL 2900
PA# 10-5484

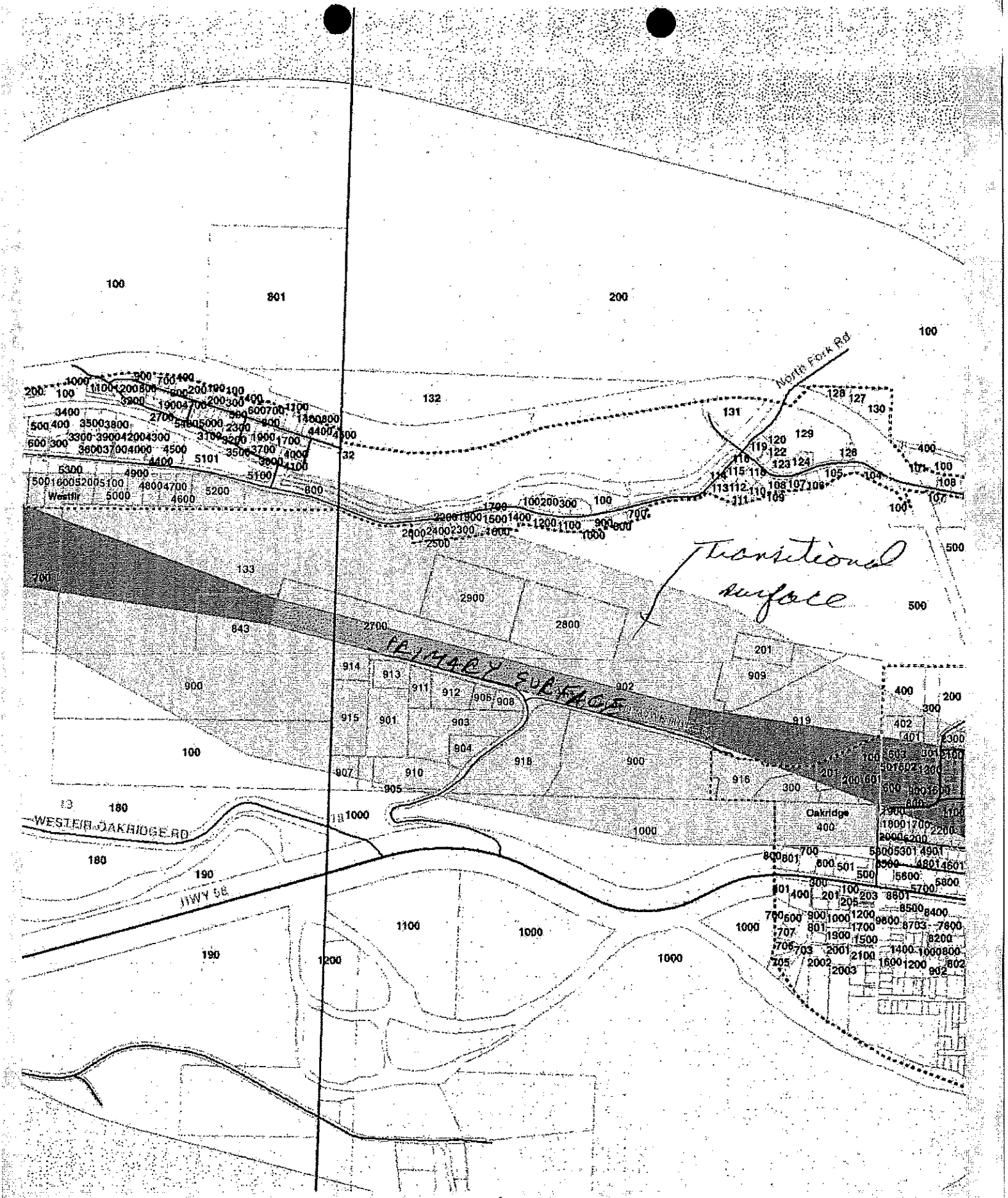
REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JANUARY 18, 1983
DONALD G. NICKELL
2385



SCALE 1" = 60'

NICKELL LAND SURVEYING
33225 CRAIG LOOP
COTTAGE GROVE, OR
541-968-2905 97424


SCALE 1" = 200'
APPROXIMATE SITE AREA
APPROXIMATE SITE AREA



PA 10-5484

IA & ZLC 16-246

LAND MANAGEMENT DIVISION

LEGAL LOT VERIFICATION REPORT

PUBLIC WORKS DEPARTMENT *125 E 8th AVENUE, EUGENE OR 97401 PLANNING: 682-3807*

Date: 11/19/2008

Applicant: Nickell Land Surveying & Planning, LLC
33225 Craig Lp.
Cottage Grove, Or. 97424

Owner: Crown Properties, LLC
30414 LeBleu Rd.
Eugene, Or. 97405

RE: Report and Verification of a Legal Lot, PA08-6332
Tax Map and Lot Number: 21-25-12-00-00800 (Revised 12.05 acres)
More exactly described: Declaration of Property Line Adjustment 2008-059425 P-2 dated 10/07/2008

This legal lot verification report is based upon information provided by the applicant and County records on the above referenced property. Based upon our findings, this unit of land **conformed** to applicable regulations that existed at the time it was created.

Findings (Refer to Lane Code 13.010 for the definition of a legal lot, lot and parcel)

1. The unit of land was created before being reconfigured as a separate parcel on or before 02/09/1901. Information on the instrument(s) from and by which this unit of land was reconfigured is as follows:

   a) Information on the instrument from which the unit of land was divided or separately described: Deed Book 51 Page 627 dated 02/09/1901 (See LLV PA06-7362)

   b) Information by which the subject property was reconfigured: Declarations of Property Line Adjustment 2008-059421, 2008-059424, & 2008-059425 P-2 dated 10/07/2008 (See LLV's PA08-6330 & PA08-6334 for the other affected parcels, being P-1 & P-4)

2. Based upon the above information, the creation of this unit of land as a separate parcel **complied** with all effective land division laws and zoning regulations for size and shape and therefore meets the criteria for a legal lot:

   a) Land division regulations:
   When the unit of land was created, there were no land division laws regulating its creation. Lane County adopted applicable land division regulations on March 26, 1975. This unit of land **complied** with land division laws because the unit of land was created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances. The unit of land was reconfigured by the adjustment of the common property line which is authorized by ORS 92. The adjustment is limited to the relocation of a common boundary between two lawfully created units of land where an additional unit of land is not created.

   b) Zoning regulations:
   When the unit of land was created, there were no zoning laws regulating its creation. Lane County adopted applicable zoning regulations on 08/29/1978, however the reconfiguration fell under the current F-2 zoning which was adopted on 02/29/1984. This unit of land **complied** with this zoning because the adjustment of common property lines is authorized by ORS 92. The adjustment is limited to the relocation of a common boundary where the existing unit of land reduced in size by the adjustment complies with applicable zoning ordinances.

EXHIBIT "D"

Notes:
Tax Lot 800 (Revised 12.05 acres), Map 21-25-12, as described in Declaration of Property Line Adjustment 2008-059425 P-2 dated 10/07/2008, as depicted on the enclosed map complies with applicable land division and zoning requirements.

FOR INFORMATIONAL PURPOSES ONLY: This unit of land does not appear to have legal access.

PLEASE NOTE: THIS IS A PRELIMINARY LEGAL LOT DETERMINATION AND IS NOT A FINAL LEGAL LOT DETERMINATION.

Legal Lot Information:

A. A legal lot verification by the Director is considered final when it is made and noticed and shall occur when:
   1. Submit an application: An application is submitted and reviewed for a legal lot verification on a lot or parcel resulting from a property line adjustment; or
   2. Notice is sent: If notice is requested by the property owner for any legal lot verification, upon submitting an application for review

PLEASE NOTE: Please be aware that if the boundary of this preliminary legal lot changes by the time a permit or application requiring a legal lot is submitted, a new Legal Lot Verification will be required.

B. If your land is found to be a legal lot, then:
   1. Ownership in this property may be conveyed with the assurance that it will not require approval by Lane County under its land division regulations; and
   2. Lane County will recognize this property as a legally separate unit of land for the purposes of development. Nevertheless, development will still be subject to applicable zoning, sanitation, access, and building regulations.

PLEASE NOTE: A Legal Lot Determination and Decision affirms the legal creation of this unit of land, it does not create a new unit of land and is not used with the intention of extinguishing written or unwritten real estate rights. Furthermore, Lane County makes no claim as to the property's ownership, title or boundary location. Additionally, legal lot verification does not approve development or improvement

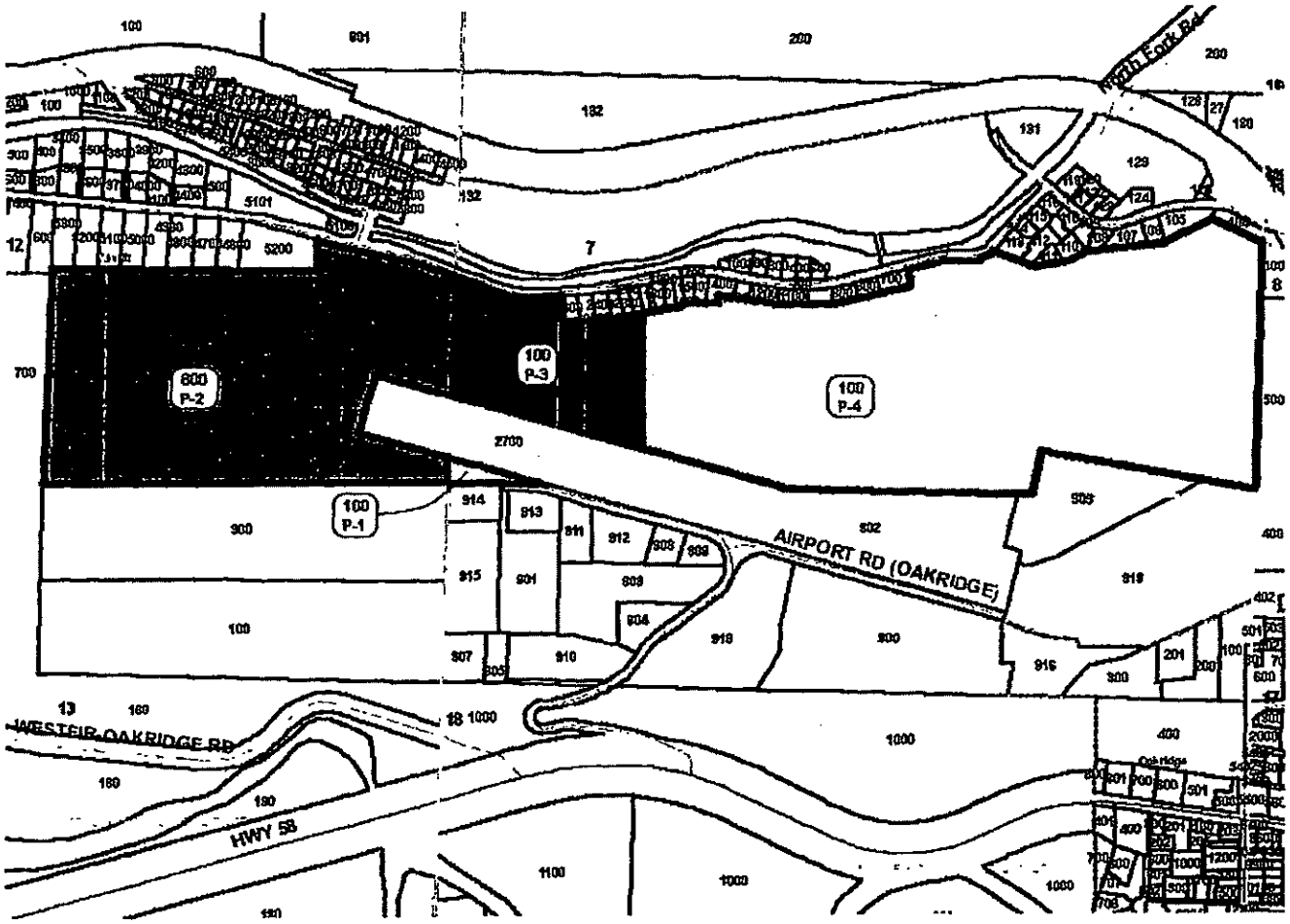
Sincerely,

Brandon J. Callister

Brandon J. Callister
Engineering Tech. 2
541-682-4650

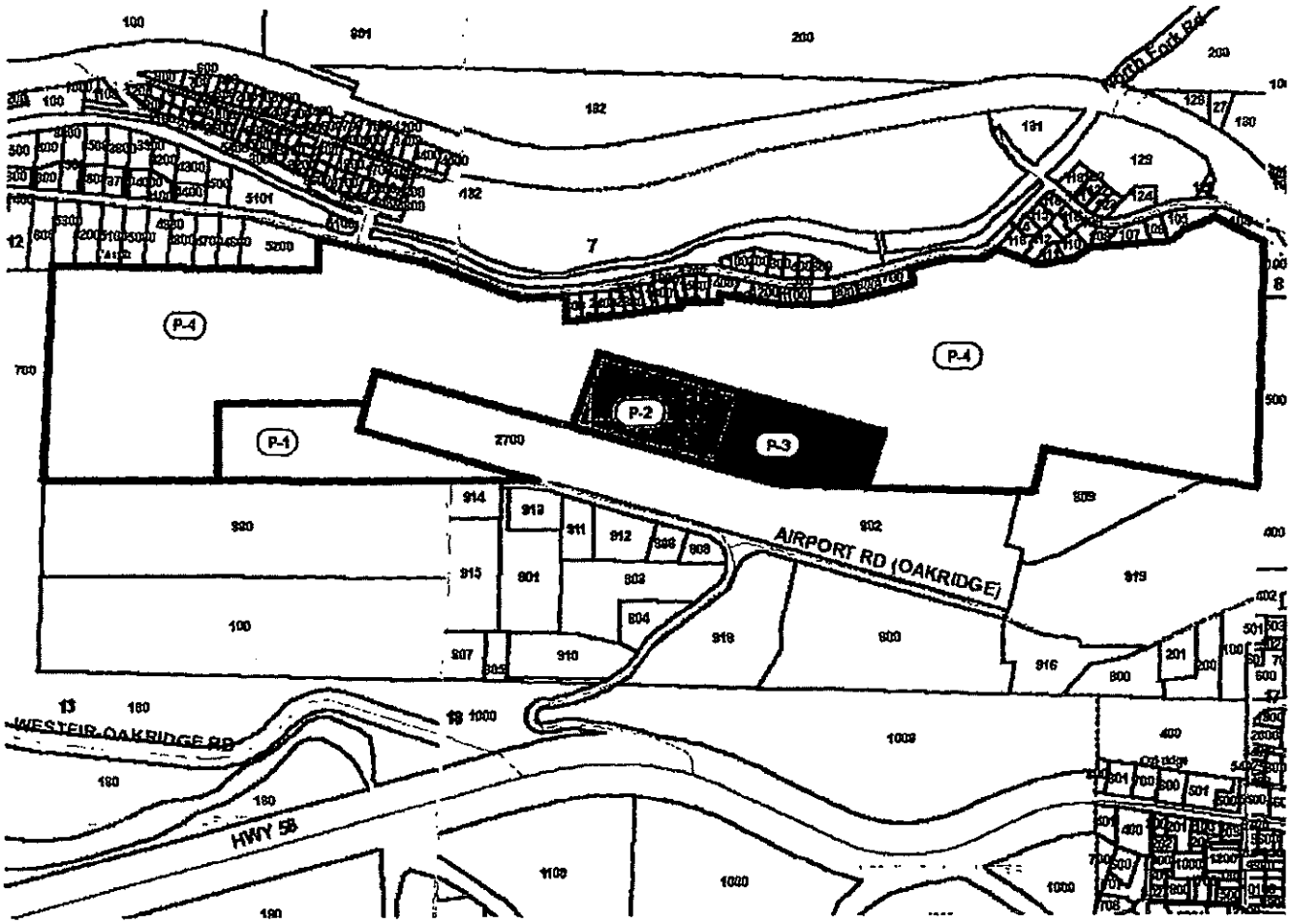
ATTACHMENTS: Map & Deeds
CC: TRS File and DocView

PARCEL CONFIGURATION PRIOR TO ADJUSTMENT



** Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

PARCEL CONFIGURATION AFTER ADJUSTMENT



** Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

Preliminary Legal Lot Verification

NOTICE OF A LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR

Mailing Date: 11/20/2008

Department Files: PA08-6329 (Notice)
PA08-6330 (Legal Lot Verification TL 100 Revised 13.29 acres)
PA08-6332 (Legal Lot Verification TL 800 Revised 12.05 acres)
PA08-6333 (Legal Lot Verification TL 100 Revised 13.28 acres)
PA08-6344 (Legal Lot Verification TL 100 Revised 184.28 acres)

Property Owner: Crown Properties, LLC
Applicant: Nickell Land Surveying & Planning, LLC
Assessor's Map & Tax Lot: 21-25-12-00-00800 & 21-35-07-40-00100
Contiguous Ownership: NONE

You own or occupy property near the above referenced property which is the subject of a land use application and pending decision for conditional **Approval** by the Lane County Planning Director.

PROPOSAL: To make the Director's Legal Lot Verification final and granting this unit legal lot status in accordance with Lane Code Chapter 13.020.

PLEASE NOTE: An approval of this proposal does not create a new unit of land and is not used with the intention of extinguishing written or unwritten real estate rights. Furthermore, Lane County makes no claim as to the property's ownership, title or boundary location. Additionally, this legal lot decision does not approve development or improvement of the subject unit of land beyond what is allowed by current zoning.

Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals. You may receive more information, including requirements to appeal this pending decision, by the Director to the Lane County Hearings Official.

Attached to this Notice are a Staff Report and a Legal Lot Verification. The application, the Lane County Planning Director's report, all documents provided by the applicant, and any applicable criteria used to make the determination are available for inspection at the Lane County Land Management Division. The Lane County Land Management Division representative is **Brandon J. Callister** who can be contacted at **541-682-4650**. Other Information can be obtained through the Lane County Web Site at **http://www.lanecounty.org/Planning/**.

ATTENTION: **Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.**

EXHIBIT "E"

NOTICE OF A LAND USE DECISION
BY THE LANE COUNTY PLANNING DIRECTOR

Enclosed is a vicinity map of the subject property and surrounding properties.

This decision will become final at 5 P.M. on 12/2/2008 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: Brandon Callister **Date:** 11/19/2008
Brandon J. Callister, Engineering Tech. 2

Authorized by: _____ **Date:** 11·19·2008
for Kent Howe, Planning Director

PLANNING DIRECTOR REVIEW OF A LEGAL LOT VERIFICATION

Staff Report

Report Date:	November 19, 2008
Department Files:	**PA08-6329 (Notice)** **PA08-6330 (Legal Lot Verification TL 100 Revised 13.29 acres)** **PA08-6332 (Legal Lot Verification TL 800 Revised 12.05 acres)** **PA08-6333 (Legal Lot Verification TL 100 Revised 13.28 acres)** **PA08-6344 (Legal Lot Verification TL 100 Revised 184.28 acres)**
Property Owner:	Crown Properties, LLC
Applicant:	Nickell Land Surveying & Planning, LLC
Tax map and lot:	21-25-12-00-00800 & 21-38-07-40-00100
Acreage:	13.29 acres (TL 100, P-1); 12.05 acres (TL 800, P-2); 13.28 acres (TL 100, P-3); 184.28 acres (TL 100, P-4)
Property Location:	vacant
Staff:	Brandon J. Callister, Eng. Tech. 2, 682-4650

I. PROPOSAL

Applications requesting Legal Lot Verification on one or more units of land were made. In accordance with Lane Code 13.020, the purpose of these applications was to determine if the identified units of land complied with the state and county laws that were in effect when it was created.

II. BACKGROUND INFORMATION

On 11/06/2008, applications for legal lot verifications were submitted to Lane County Land Management Division. The applications were reviewed and accepted as complete on 11/19/2008.

III. LOCATION AND DESCRIPTION

The subject properties are in the F-2 zone with the minimum parcel size being 80 acres. The locations of these properties are as identified above along with the corresponding acreages.

IV. APPROVAL CRITERIA & FINDINGS OF FACT

The identified units of land are legal lots in accordance with LC 13.020. Additionally, the following criteria apply:

- The units of land were created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances.
- The adjustment was limited to the relocation of a common boundary between lawfully created units of land where no additional units of land were created and the existing unit of land reduced in size complied with applicable zoning ordinances. All units of land complied.

V. DECISION

These units of land were created in conformance with applicable land division and zoning regulations and are legal lots in accordance with Lane Code 13.020.

VI. ATTACHMENTS

Legal Lot Verification information with Map

LAND MANAGEMENT DIVISION

LEGAL LOT VERIFICATION REPORT

PUBLIC WORKS DEPARTMENT *125 E 8th AVENUE, EUGENE OR 97401 PLANNING: 682-3807*

DATE: November 19, 2008
STAFF: Brandon J. Callister

Notice: PA08-6329
1) Unit 1 Legal Lot verification Report: PA08-6330
Tax Map and Lot Number: 21-35-07-40-00100 (P-1)
2) Unit 2 Legal lot Verification Report: PA08-6332
Tax Map and Lot Number: 21-25-12-00-00800 (P-2)
3) Unit 3 Legal Lot verification Report: PA08-6333
Tax Map and Lot Number: 21-35-07-40-00100 (P-3)
4) Unit 4 Legal lot Verification Report: PA08-6334
Tax Map and Lot Number: 21-35-07-40-00100 (P-4)

These legal lot verification reports are based upon information provided by the applicant and County records on the above referenced properties. Based upon our findings, these units of land conformed to applicable regulations that existed at the time they were created. Please refer to Lane Code 13.010 (4) for the definition of a legal lot or parcel.

A legal lot is a unit of land (lot or parcel) that conforms to the applicable regulations that existed at the time the parcel or lot was first created. It remains a legal lot unless the parcel or lot lines are changed, the lot lines are vacated, or the unit of land is further divided as provided by law LC 13.010

FINDINGS

A. Land Division information
1) Unit 1: The unit of land was created as a separate parcel on 07/14/1913
- Instrument from which the unit of land was divided or separately described: DEED Book 1103 Page 122 dated 07/14/1913
- The unit of land was reconfigured on 10/07/2008
Documentation: Declaration of Property Line Adjustment 2008-059421 dated 10/07/2008

2) Unit 2: The unit of land was created as a separate parcel on 02/09/1901
- Instrument from which the unit of land was divided or separately described: DEED Book 51 Page 627 dated 02/09/1901
- The unit of land was reconfigured on 10/07/2008
Documentation: Declarations of Property Line Adjustment 2008-059421, 2008-059424, & 2008-059425

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

3) Unit 3: The unit of land was created as a separate parcel on 07/14/1913
- Instrument from which the unit of land was divided or separately described: DEED Book 103 Page 122 dated 07/14/1913
- The unit of land was reconfigured on 10/07/2008
  Documentation: Declarations of Property Line Adjustment 2008-059422 & 2008-059423

4) Unit 4: The unit of land was created as a separate parcel on 08/01/1945
- Instrument from which the unit of land was divided or separately described: DEED Book 293 Page 240 dated 08/01/1945
- The unit of land was reconfigured on 10/07/2008
  Documentation: Declarations of Property Line Adjustment 2008-059422, 2008-059423, 2008-059424, & 2008-059425

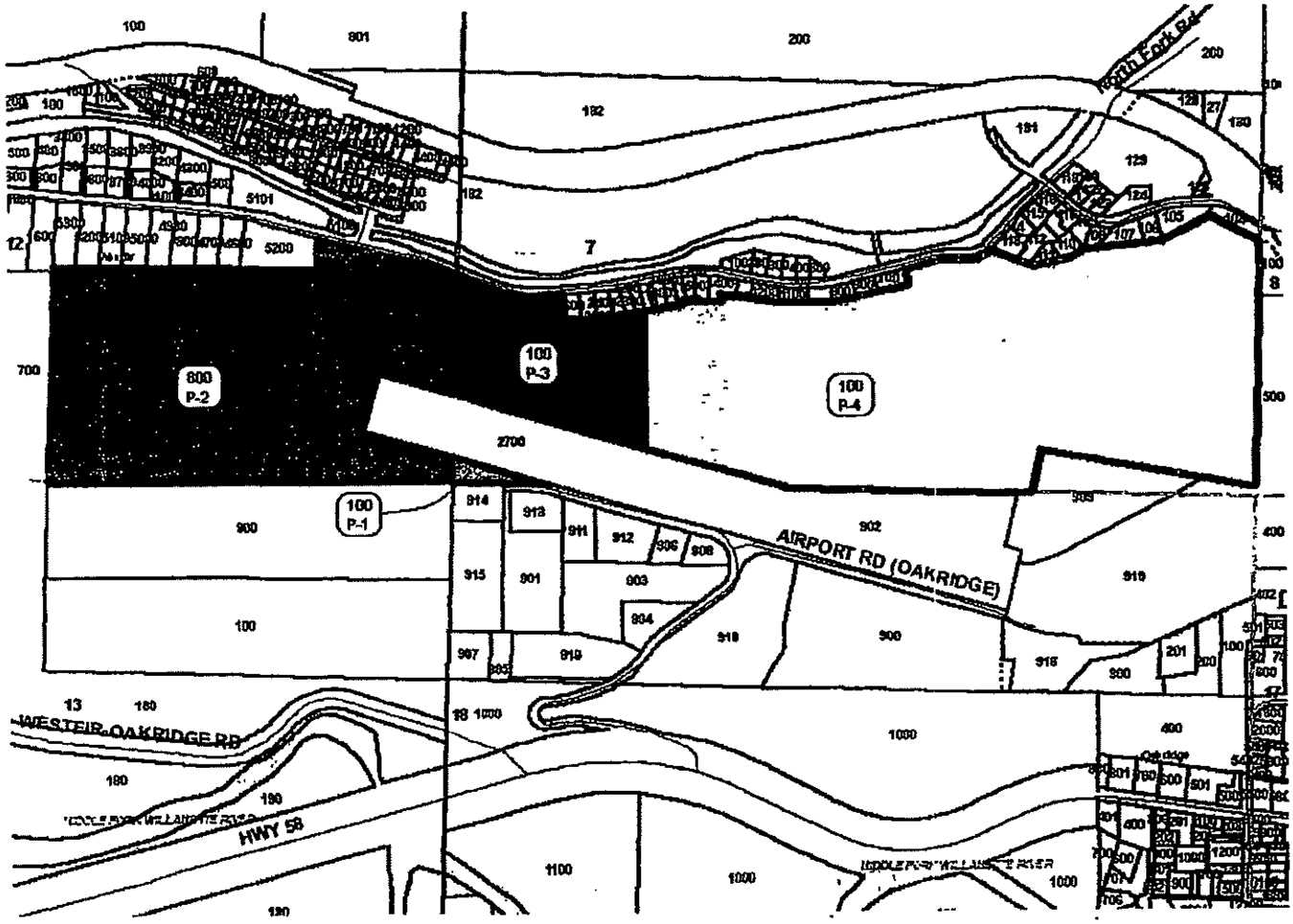
B. Zoning and Land Division information

Land division laws effective on: ☐ May 2, 1962 ☐ June 4, 1970 ☒ March 26, 1975
Criteria: The units of land were created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances. The adjustment was limited to the relocation of a common boundary between lawfully created units of land where no additional units of land were created and the existing unit of land reduced in size complied with applicable zoning ordinances. All units of land complied.

Original zoning ordinance date: 08/29/1978 & 08/22/1979 Zoning effective on 02/29/1984
Criteria: The units of land were created by deed signed prior to any applicable zoning, partitioning or subdivision ordinances. The adjustment was limited to the relocation of a common boundary between lawfully created units of land where no additional units of land were created and the existing unit of land reduced in size complied with applicable zoning ordinances. All units of land complied.

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

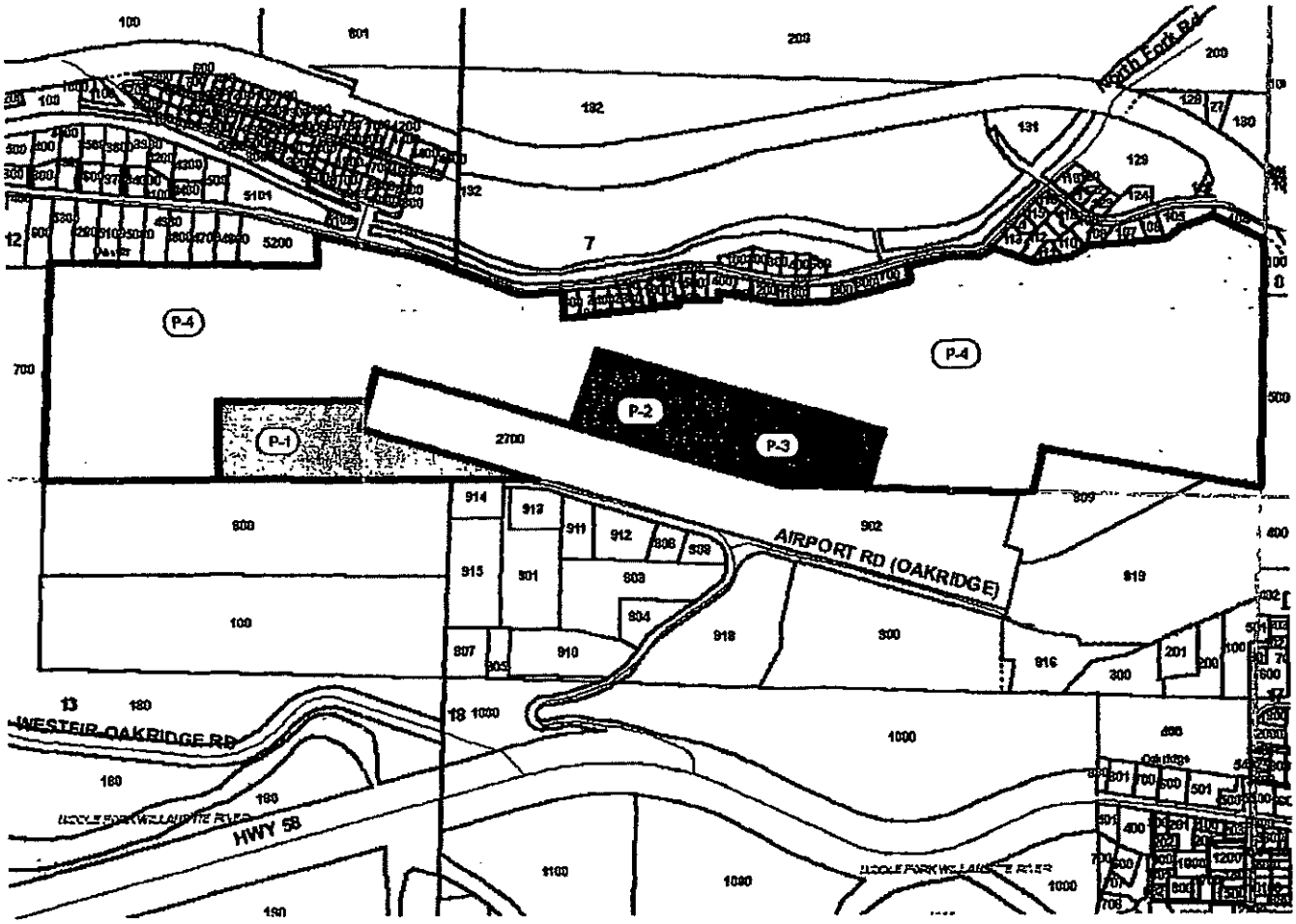
DIAGRAM OF THE UNIT OF LAND PRIOR TO ADJUSTMENT



** Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

DIAGRAM OF THE UNIT OF LAND AFTER ADJUSTMENT



**Note: This is only a graphical representation to aid in locating the approximate location of the subject property. It is not intended to depict the actual location of the boundary nor is it the result of a survey. Information shown is based upon information provided by the Applicant.*

This legal lot verification does not approve any development. In accordance with LC 13.010 and LC 13.020, a legal lot verification is "A determination that a unit of land was created in conformance with the Lane Code and other applicable law." This legal lot verification identifies a unit of land that was created in conformance with the applicable county and state laws.

Integrated Resources for Lane County, Oregon

Property Search
Advanced Search
Deeds & Records
Taxes Balance Due
Comparable Sales»»»
Taxmap Search
Other Applications»»»
Log Off

Detailed Property Report

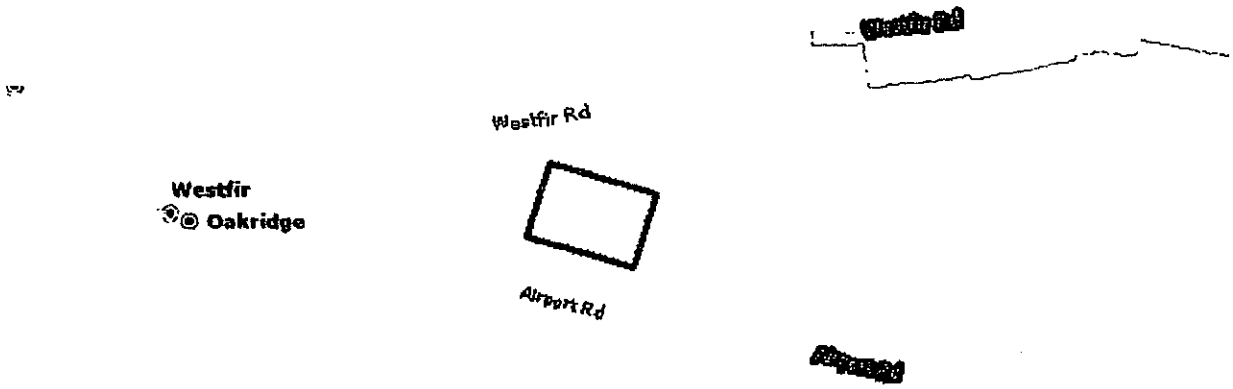
Site Address N/A
Map & Taxlot # 2135073002900
SIC N/A
Tax Account # 1829686

Property Owner 1
E J K INVESTMENTS LLC
30414 LE BLEU RD
EUGENE, OR 97405

Approx. taxlot acreage 12.05
Tax account acreage 12.05

Maps

Map & Taxlot # 2135073002900



View Larger Map

Improvements

Site Address Information

General Taxlot Characteristics

Geographic Coordinates

State Plane (X-Y)			
X	4391597	**Y**	767193
Latitude/Longitude			
Latitude	44.0417	**Longitude**	-123.1082

Zoning

Zoning Jurisdiction	Lane County	
Parent Zone	F2	IMPACTED FOREST
Overlay	AS	Airport Safety

Taxlot Characteristics

Incorporated City Limits	none
Urban Growth Boundary	none
Year Annexed	N/A
Annexation #	N/A
Approximate Taxlot Acreage	12.05
Approx Taxlot Sq Footage	524,898

EXHIBIT "F"

	Combining Zon	**2000 Census Tract**	**1500**
		2000 Census Block Group	**1**
Land Use		**Plan Designation**	FOREST
General Land Use Code		**Eugene Neighborhood**	N/A
Description			
Detailed Land Use Code		**Metro Area Nodal Dev Area**	No
Description		**Eugene Historic Property Name**	N/A
		Historical Landmark?	No
		National Historical Register?	No

Service Providers

Fire Protection Provider	Hazeldell Rural Fire District
Ambulance Provider	Oakridge Fire & Ambulance Dept
Ambulance District	SE
Ambulance Service Area	South/East
LTD Service Area?	No
LTD Ride Source?	No
Soil Water Cons. Dist/Zone	UPPER WILLAMETTE / 0
Emerald People's Utility District	N/A

Environmental Data

FEMA Flood Hazard Zone(s)

Code	Description
X	Areas determined to be outside of 500-year flood.

FIRM Map Number	41039C2194 F (tif | pdf)
Community Number	data not available
Post-FIRM Date	data not available
Panel Printed?	Yes

Soils

Soil Map Unit Number	Soil Type Description	% of Taxlot	Ag Class 1	Hydric
63C	JORY SILTY CLAY LOAM, 2 TO 12 PERCENT SLOPES	0%	2	No
89D	NEKIA SILTY CLAY LOAM, 12 TO 20 PERCENT SLOPES	77%	3	No
89F	NEKIA SILTY CLAY LOAM, 30 TO 50 PERCENT SLOPES	23%	6	No

Schools

School	Code	Name
School District	76	**OAKRIDGE**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**

High School 602 **Oakridge**

Political Districts

Election Precinct	100119	**State Representative District**	7
City Council Ward	N/A		
City Councilor	N/A	**State Representative**	**Bruce Hanna**
County Commissioner District	5 East	**State Senate District**	4
		State Senator	**Floyd Prozanski**
County Commissioner	**Faye Stewart**		
EWEB Commissioner	N/A		
LCC Board Zone	4		

Liens

Building Permits

Land Use Applications

Petitions

Tax Statements (current and previous tax years)

ACCOUNT#: 1829686
View tax statement(s) for:
2009
2008

Owner/Taxpayer

Owners

Owner	Address	City/State/Zip
E J K INVESTMENTS LLC	30414 LE BLEU RD	EUGENE, OR 97405

Taxpayer

Party Name	Address	City/State/Zip
E J K INVESTMENTS LLC	30414 LE BLEU RD	EUGENE, OR 97405

Data source Lane County Assessment and Taxation

Account Status

Status Active Account Current Tax Year

Account Status	none
Remarks	Potential Additional Tax
Special Assessment Program	Forest Deferral

Data source Lane County Assessment and Taxation

General Tax Account Information

Tax Account Acreage	12.05
Fire Acres	12.05
Property Class	640 FOREST, UNZONED FARM LAND, VACANT
Statistical Class	N/A
Neighborhood Code	764500
Category	Land and Improvements

Data source Lane County Assessment and Taxation

Township-Range-Section / Subdivision Data

Subdivision Type	N/A	**Subdivision Name**	N/A	**Subdivision Number**	N/A
Phase	N/A	**Lot/Tract/Unit #**	TL 02900	**Recording Number**	N/A

Data source Lane County Assessment and Taxation

Property Values & Taxes

The values shown are the values certified in October unless a value change has been processed on the property. Value changes typically occur as a result of appeals, clerical errors and omitted property. The tax shown is the amount certified in October. This is the full amount of tax for the year indicated and does not include any discounts offered, payments made, interest owing or previous years owing. It also does not reflect any value changes.

Real Market Value (RMV)				**Total Assessed Value**	**Tax**
Year	**Land**	**Improvement**	**Total**		
2009	$108,478	$0	$108,478	$30,805	$ 295.81
2008	$0	$0	$0	$0	$ 0.00

Current Year Assessed Value	$30,805
Less Exemption Amount *	N/A
Taxable Value	$30,805
Frozen Assessed Value *	

Data source Lane County Assessment and Taxation

Tax Code Area & Taxing Districts

2009-2010 Lane County Assessment & Taxation Billing Rate Document

Tax Code Area (Levy Code) for current tax year 07601

Taxing Districts for TCA 07601

OAKRIDGE SCHOOL DISTRICT 76
LANE EDUCATION SERVICE DISTRICT
LANE COUNTY
LANE COMMUNITY COLLEGE

Data source Lane County Assessment and Taxation

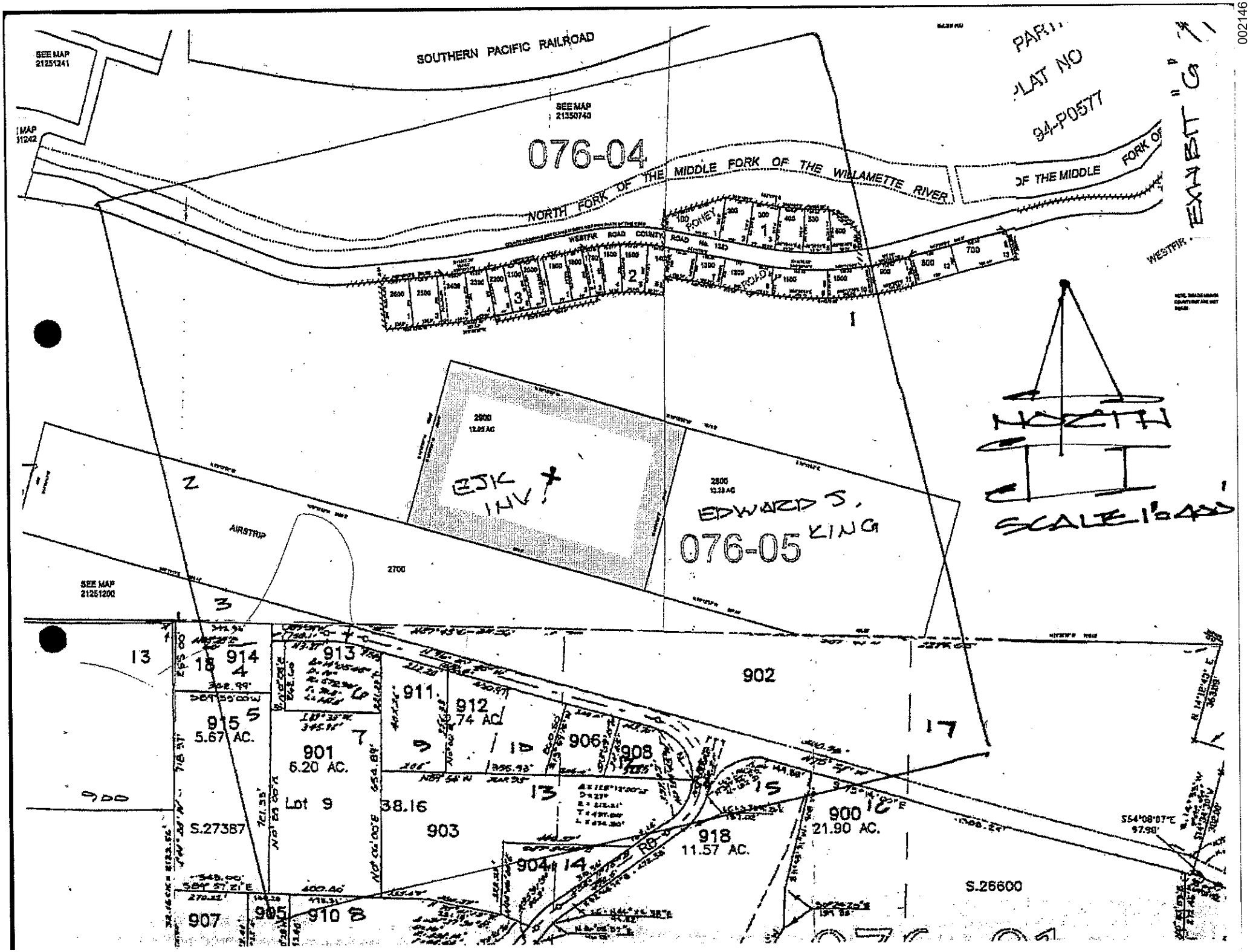
Sales & Ownership Changes

Sale Date	**Sale**	**Doc #**	**Image**	**Analysis**	**Multiple**	**Grantor(s)**	**Grantee(s)**

	Price			Code	Accts?		
04/10/2009	$0	2009-18701		8	No	CROWN PROPERTIES LLC	E J K INVESTMENTS LLC

Data source Lane County Assessment and Taxation

Generated by Nickell Land Surveying and Planning, LLC on May 21, 2010 at 6:07pm using RLID, http://www.rlid.org/


SOUTHERN PACIFIC RAILROAD
SEE MAP 21251241
SEE MAP 21350740
076-04
NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE RIVER
OF THE MIDDLE FORK OF
WESTFIR ROAD COUNTY ROAD
PONEY
WESTFIR
PARTITION PLAT NO 94-P0577
EXHIBIT "C"
NORTH
SCALE 1"=400'
EDWARD S. KING
076-05
EJK INV?
AIRSTRIP
SEE MAP 21251200
902
914
913
911
912
915
5.67 AC.
901
6.20 AC.
Lot 9
S.27387
903
38.16
906
908
918
11.57 AC.
900
21.90 AC.
904
907
905
910
S.26600

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

21 35 300 #1902 (Sec 7 TL 2) — OLD NUMBER

947 323 — ACCOUNT NUMBER

TAX LOT | MAP NO. 21 35 07 4 | PARCEL NO. 100 | SECTION 7 | TOWNSHIP 21 S. | RANGE 3E W.M.

INDENT EACH NEW COURSE TO THIS POINT — LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
E 1/2 SW 1/4; Lots 3 & 4 except 22.97 acres to Southern Pacific Company; SE 1/4 except 11.33 acres to Oregon Eastern Railway Co.	1979	V186/354 (1941)	
ALSO: All that certain piece or parcel of land situate, lying and being in the SE 1/4 of Sec 7, T 21 S, R 3E, W B & M described as follows: Beginning at a point where the section line common to Sections 7 and 18, said Township and Range, intersect the originally located "L" centerline of the Central Pacific Railway Company, at or near Engineer Station "L" 2359+70.8 of said centerline, said point of beginning being distant Westerly 650.6 ft measured along the South line of said Sec 7 from the SE corner of said Section; thence		V293/417 (1946) R865/60189* (1978)	
Northwesterly 1364.00 ft, more or less, along said centerline of said Railway to a point of compoundrun curve to the left, (tangent of said curve at its point of beginning is last described line) having the following radii and arc distances:			

Radii	Arc Distances
22918.32 ft	30.00 ft
11459.47 ft	30.00 ft
7639.45 ft	30.00 ft
5729.60 ft	30.00 ft
4583.68 ft	30.00 ft
3819.75 ft	30.00 ft
3274.08 ft	30.00 ft
2864.83 ft	30.00 ft
2546.52 ft	30.00 ft
2291.88 ft	30.00 ft
2083.53 ft	30.00 ft
1909.91 ft	30.00 ft
1763.01 ft	30.00 ft
11637.01 ft	30.00 ft
1527.96 ft	30.00 ft
1432.47 ft	197.00 ft, more

or less, to a point where said "L" line intersects the

*does not read as the above, but is included therein

(1)

EXHIBIT "H"

002147

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

1 059 177
ACCOUNT NUMBER

TAX LOT
MAP NO. 21 35 07 3 | PARCEL NO. 2700 | SECTION 7 | TOWNSHIP 21 S. | RANGE 3 E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Edward Hines Lumber Co Property in Sec 7, T 21 S, R 3 E and Sec 12, T 21 S, R 2 E of the WM, Lane County, Oregon; Beginning at a point formed by the intersections of the centerline of the proposed Oakridge Airport Runway and the South line of Sec 7, T 21 S, R 3 E of the WM, Lane County, Oregon, said poin being 1409.92 ft S 89*43' E from the SW corner of said Sec 7; thence S 89*re' E 811.56 ft along the South line of said SEc 7; thence N 75*27' W 2802.12 ft; thence S 14*33' W 400.00 ft; thence S 75*27' E 1229.04 ft to the South line of said Sec 7; thence S 89*43' E along the South line of said Sec 7, 811.56 ft to the plact of beginning. All the bearings above referred to are based on true bearings as obtained from solar observations.	1979	R360/96687 (1973)	
	eont m/1			18.51

(2)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

21 35 300 #1902 (Sec 7 TL 2) — OLD NUMBER

947 323 — ACCOUNT NUMBER

TAX LOT | MAP NO. 21 35 07 4 | PARCEL NO. 100 | SECTION 7 | TOWNSHIP 21 S. | RANGE 3E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	E 1/2 SW 1/4; Lots 3 & 4 except 22.97 acres to Southern Pacific Company; SE 1/4 except 11.33 acres to Oregon Eastern Railway Co.	1979	V186/354 (1941)	
	ALSO: All that certain piece or parcel of land situate, lying and being in the SE 1/4 of Sec 7, T 21 S, R 3E, W B & M described as follows: Beginning at a point where the section line common to Sections 7 and 18, said Township and Range, intersect the originally located "L" centerline of the Central Pacific Railway Company, at or near Engineer Station "L" 2359+70.8 of said centerline, said point of beginning being distant Westerly 650.6 ft measured along the South line of said Sec 7 from the SE corner of said Section; thence Northwesterly 1364.00 ft, more or less, along said centerline of said Railway to a point of compoundxxx curve to the left, (tangent of said curve at its point of beginning is last described line) having the following radii and arc distances:		V293/417 (1946) R865/60189* (1978)	

Radii	Arc Distances
22918.32 ft	30.00 ft
11459.47 ft	30.00 ft
7639.45 ft	30.00 ft
5729.60 ft	30.00 ft
4583.68 ft	30.00 ft
3819.75 ft	30.00 ft
3274.08 ft	30.00 ft
2864.83 ft	30.00 ft
2546.52 ft	30.00 ft
2291.88 ft	30.00 ft
2083.53 ft	30.00 ft
1909.91 ft	30.00 ft
1763.01 ft	30.00 ft
11637.01 ft	30.00 ft
1527.96 ft	30.00 ft
1432.47 ft	1977.00 ft, more

or less, to a point where said "L" line intersects the

*does not read as the above, but is included therein

(B)

002149

21.35.18.0.0 00914

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

1. 393 360

OLD NUMBER _____ ACCOUNT NUMBER _____

TAX LOT		SECTION	TOWNSHIP	RANGE
MAP NO. 21.35.18.0.0	PARCEL NO. 914	18	21 S.	35 W

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	(Out of 901) Beginning at the section corner common to Sections 12 and 13, Township 21 South, Range 2 East, Willamette Meridian and Sections 7 and 18, Township 21 South, Range 3 East, Willamette Meridian, thence	1983 1983 1985 1986	1210/82-27205 1210/82-27206 1307/84-30279 1392/86-08714	
	North 89.54.00 East a distance of 342.96 feet, thence	1993wd	R1911/9401756	
	South 00.28.00 West a distance of 252.94 feet, thence	1997DC wd	R2300/973689 973689	
	South 89.33.00 West a distance of 342.99 feet, to a point on the Section line of said Section 18, Township 21 South, Range 3 East, thence	1997wd	R2386/981090	
	Northerly along said Section line	1999wd	R2580/99070859	
	North 00.28.00 East a distance of 255.00 feet to the Point of Beginning.	2004dc	2004-089145	
	Containing more or less.			2.00
		2005wd	2005-65805	

(4) 9

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

1417 920
ACCOUNT NUMBER

TAX LOT

MAP NO. 21 35 18 | PARCEL NO. 915 | SECTION _____ | TOWNSHIP _____ S. | RANGE _____ W.M.

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION

DEED RECORD: DATE OF ENTRY | DEED NUMBER

ACRES REMAINING

(out of 901)

A portion of the NW 1/4 of Section 18, T 21 S, R 3 E of the WM, Lane County, Oregon, described as follows:

Commencing at the NW corner of Section 18; thenc S 00°28'00" W along the WEst line of said Section 18 255.00 ft to the TRUE POINT OF BEGINNING of the tract to be described, said point also being the SW corner of a tract of land described by instrument recorded September 13, 1982, R1210, Reception #82-27205, Official Records of Lane County, Oregon; thence continue

S 00°28'00" W along said West Section line 718.37 ft, more or less, to the most WNW corner of the tract of land described by instrument recorded April 5, 1979, Reel 984, Reception #79 19449, Official Records Lane County, Oregon; thence

S 89°57'21" E along the North line of said tract a distance of 343.00 ft, more or less, to a 5/8 inch iron rod; thence

N 00°28'00" E 721.33 ft, more or less, to the SE corner of a tract of land described by instrument recorded September 13, 1982, R1210, Reception #82-27205, Official Records Lane County, Oregon; thence

S 89°33'00" W along the South line of said tract 342.99 ft to the true point of beginning, all in Lane County, Oregon.

DEED RECORD: DATE OF ENTRY	DEED NUMBER	ACRES REMAINING
1987wd	R1437/8653099	
1995wd	R2096/9557643	
1987wd	R1437/8653998	
1997wd	R2268/9712364	

cont m/l

5.67

(5)

(10)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

201 310 299
ACCOUNT NUMBER

TAX LOT				
MAP NO. 21-35-18	PARCEL NO. 913	SECTION 18	TOWNSHIP 21 S.	RANGE 3 E W.M

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION

Beginning at the section corner common to Sections 12 and 13, Township 21 South, Range 2 East, Willamette Meridian and Sections 7 and 18, Township 21 South, Range 3 East, Willamette Meridian; thence
N 89° 54' 00" E 385.00 feet; thence
S 00° 28' 00" W 60.00 feet; thence
N 89° 54' 00" E 7.10 feet to the TRUE POINT OF BEGINNING; thence continuing
N 89° 54' 00" E 113.87 feet; thence following a 542.96 foot radius curve right a distance of 133.57 feet, the chord of which bears
S 83° 03' 22 1/2" E 133.24 feet; thence
S 76° 00' 45" E 97.45 feet; thence
S 00° 06' 00" W 221.23 feet; thence
S 89° 33' 00" W 345.96 feet; thence
N 00° 28' 00" E 262.60 feet to the TRUE POINT OF BEGINNING in Lane County, Oregon
Containing more or less

DEED RECORD		ACRES REMAINING
DATE OF ENTRY	DEED NUMBER	
1980	R1077/8028874	
1986	R1392/8608714	
1980	R1077/8028875	
1988	R1502/8807839	
1987	R1432/8648759	
1988	R1502/8807838	
1993WD	R1909/93 86608	
2006WD	2006-005672	
		1.99

(6)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 965 150

MAP NO. 21-35-18 ACCOUNT NUMBER	TAX LOT NO. 901	SECTION 18	TOWNSHIP 21 S.	RANGE 3E W.M

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	A parcel of land lying in the N½ NW¼ of section 18, Twp.21S, R3E, W.M. said parcel being described as follows: Beginning at the section corner, which is an 1½" galvanized iron pipe, common to section 12 and 13, Twp.21S, R2E, W.M. and sections 7 and 8, Twp.21S, R3E, W.M, thence	1967	R283/40157	
	N00°28'W a distance of 1287.65 feet to the North 1/16 section corner between section 13, Twp.21S, R2E, W.M. and section 18, Twp.21S, R3E, W.M., thence			
	S89°52'E a distance of 1077.0 feet, more or less, along the South boundary of the N½ NW¼, section 18,Twp.21S, R3E, W.M. to the westerly line of a 60.0 foot right-of-way, thence following the westerly and southerly edge of the above said right-of-way, the centerline of the above said right-of-way being described as follows: Beginning at a point			
	S89°52'E a distance of 1082.0 feet from the above said 1/16 corner, thence along a tangent			
	N57°10'30"E a distance of 131.5 feet, thence along a 16° curve left(radius 358.10 feet) a distance of 135.4 feet, thence along a tangent			
	N35°31'30"E a distance of 95.3 feet, thence along a 16° curve right (radius 358.10 feet)			
	a distance of 135.4 feet, thence along a tangent			
	N35°31'30"E a distance of 95.3 feet, thence along a 16° curve right (radius 358.10 feet) a distance of 104.2 feet, thence along a tangent			
	N52°11'15"E a distance of 472.5 feet, thence along a 27° curve left (radius 212.71 feet) a distance of 474.8 feet, thence along a tangent			
	N76°00'45"W a distance of 1080.0 feet, thence along a 10° curve left (radius 572.96 feet) a distance of 138.9 feet, thence along a tangent			
	S89°54'W a distance of 158.2 feet to a point, said point being the end of the described centerline, thence			
	N00°28'E a distance of 60.0 feet from the southerly right-of-way of the above described centerline to the Section line between sections 7 and 18, Twp.21S, R3E, W.M., thence following said section line			
	S89°52'W a distance of 385.0 feet, more or less, to the point of beginning Cont. 41.2 ac.			
	Containing more or less (OVER)		(7)	41.20

CANCELLED CANCELLED CANCELLED CANCELLED CANCELLED

1 B

002153

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

201 274 529

OLD NUMBER

ACCOUNT NUMBER

TAX LOT

MAP NO. 21 35 18 | PARCEL NO. 910 | SECTION 18 | TOWNSHIP 21 S. | RANGE 3E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Beginning at a point 30.0 Ft North 00°28'00" East from a point 415.50 Ft South 89°52'00" East from the SOuthwest corner of the Northwest 1/4 of the Northwest 1/4 of Section 18, township 21 South, Range 3 East of the Willamette Meridian; thence South 89°52'00" East 639.04 Ft to the Westerly right of way line of County Road; thence along said right of way line North 57°10'30" East 140.76 Ft along the arc of a curve to the left(the chord of whichbears North 46°21'00" East 123.30 Ft) a distance of 123.98 Ft and North 35°31'30" East 31.10 Ft; and thence leaving said right of way line North 66°12'15" West 117.90 Ft; thence North 78°01'15" West 281.15 Ft; thence North 89°52'00" West 478.81 Ft; thence South 00°28'00" West 292.40 Ft to the point of beginning, in Lane County, Oregon.	1979	R967/3590	
	Containing more or less			4.99

(8)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

1 302 395

ACCOUNT NUMBER

TAX LOT

MAP NO. 21 35 18 | PARCEL NO. 911 | SECTION 18 | TOWNSHIP 21 S. | RANGE 3 E W.M

INDENT EACH NEW COURSE TO THIS POINT

LEGAL DESCRIPTION

Beginning at the section corner common to Secs 12 and 13 T 21 S, R 2 E, WM, and Sections 7 and 18, T 21 S, R 3 E, WM; thence N 89°54'00" E a distance of 385 ft; thence

S 00°28'00" W a distance of 60.0 ft; thence

N 89°54'00" E a distance of 120.97 ft; thence following a 542.96 ft radius curve right a distance of 133.57 f, the chord of which bears S 83°03'22 1/2E a distance of 133.24 ft; thence S76°00'45" E a distanc of 97.45 ft to the TRUE POINT OF BEGINNING thence

S 00"06'54'00" E a distance of 206.00 ft; thence

N 00°06'00" E a distance of 356.33 ft thence

N 76°00'45" W a distance of 212.20 ft to the true point of beginning, in Lane County, Oregon.

by DMD cont m/l

DEED RECORD		ACRES REMAINING
DATE OF ENTRY	DEED NUMBER	
1980	R1020/53579	
	R1020/53580	
1982	R1189/82-11442	
1986	R1392/86-08714	
1988	R1513/8818115	
1989	R1573/8921245	
		1.81

9

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER

201 309 085
ACCOUNT NUMBER

TAX LOT
MAP NO. 21-35-18 | PARCEL NO. 912 | SECTION 18 | TOWNSHIP 21 S. | RANGE 3 E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Beginning at the Section corner common to Sections 12 and 13, Township 21 South, Range 2 East, Willamette Meridian, and Sections 7 and 18, Township 21 South, Range 3 EAst, Willamette Meridian; thence N 89°54" E 385.00 ft; thence S 00°28 W 60.00 ft; thence N 89°54' E 195.40 ft; thence S 76°00'45"E 607.30 ft to the TRUE POINT OF BEGINNING; thence S 76°00'45" E 200.00 ft; thence S 13°59'15" W 260.50 ft; thence N 89°54'00" W 206.10 ft N 13°59'15" E 310.00 ft to the point of beginning, all in Lane County, Oregon. Containing more or less	1980	R1075/8026385	1.31
	A parcel of land in the NW 1/4 of Section 18 T 21 S, R 3 E of the WM, described as follows: Beginning at the section corner common to Sections 12 and 13, T 21 S, R 2 E WM, and Sections 7 and 18, T 21 S, R 3 E, WM; thence N 89°54'00" E a distance of 385.00 ft; thence S 00°28'00" W a distance of 60.00 ft; thence N 89°54'00" E a distance of 120.97 ft; thence following a 542.96 ft radius curve right a distance of 133.57 ft, the chord of which bears S 83°03'22 1/2" E a distance of 133.24 ft; thence S 76°00'45" E a distnace of 309.65 ft to the TRUE POINT OF BEGINNING: said point also being the NE corner of that tract of land described by Instrument recorded September 6, 1979, R1020, Recepition #79-53579, Official Records of Lane County, Oregon; thence continuing S 76°00'45" E a distance of 430.97 ft to the NW corner of that tract of land described by Instrument recorded August 29, 1985, R1364, Reception #85-30761, Official Records of Lane County, Oregon; thence S 13°59'15" W along the WEst line of said tract 260.50 ft; thence N 89°54'00" W 355.93 ft to the SE corner of tha tract of land described by Instrument recorded September 6, 1979, R 1020, Reception #79-53579, Official Records of Lane County, Oregon; thence	1988 2005 WA	R1409/8625709 2005-015735	

(19)

002156

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 977 627

MAP NO. 21.35.18	TAX LOT NO. 906	SECTION 18	TOWNSHIP 21 S.	RANGE 3E W.M
ACCOUNT NUMBER				

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD		ACRES REMAINING
		DATE OF ENTRY	DEED NUMBER	
	Beginning at the Sec. corner common to Sec. 17 and 13, T21S, R2E, WM, and Sec. 7 and 18, T21S, R3E WM, thence N.89°54'E. a distance of 385.0 feet thence S.00°28'W. a distance of 60.0 feet, thence N.89°54'E. a distance of 195.4 feet, thence S.76°00'45"E. a distance of 807.3 feet to the true point of beginning, thence	1979	R469/95859	
		1986	1364/85-30760	
		1986	1364/85-30761	
		1990wd	R1643/9033774	
		1995wd	R2095/9551282	
	S.76°00'45"E. a distance of 200.0 feet thence			
	S.13°59'15"W. a distance of 211.1 feet thence			
	N.89°54'00"W. a distance of 235.0 feet, thence			
	N.13°59'15"W. a distance of 260.5 feet to the point of beginning, all lying in Lane County, Oregon.			
	Containing more or less			1.08

(15)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER -8- 270

MAP NO. 21 35 18 ACCOUNT NUMBER	TAX LOT NO. 908	SECTION 18	TOWNSHIP 21 S.	RANGE 3E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	Beg. at the Sec. cor. common to Secs. 12 & 13, T21S., R2E WM., and Secs. 7 & 8, T21S., R3E., WM., th N89°54'E a dist. of 385.0 ft., th S00°28'W a dist. of 60.0 ft., th N89°54'E a dist. of 195.4 ft., th S76°00' 45"E a dist. of 1007.3 ft. to the true POB, th	1970	R484/10186	
		1987	R1437/8652701	
		1991dc	R1727/9154709	
	S13°59'15"W a dist. of 211.05 ft., th S89°54'E a dist. of 328.5 ft. to the W'ly r/w ln. of a 60.0 ft. r/w., th fol. alg. sd. r/w ln. in a NW'ly direction alg. a 212.21 ft. ctln. Rad. curve Left a dist. of 276.7 ft. (the long chord of which bears N38°58'30"W a dist. of 219.5 ft.), th N76°00'45"W a dist. of 143.7 ft. to the true POB, LCO. D M D Cont. m/l	1993wd	R1849/9330156	
		1999 BS	R2548/9904146	
		2000 BS	2000-051050	
		2002	2002-034251 TD	
		2002 WD	2002-048621	1.12

(12)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 965 176

MAP NO. 21 35 18 | TAX LOT NO. 903 | ACCOUNT NUMBER | SECTION 18 | TOWNSHIP 21 S. | RANGE 3E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Beg. at the Sec. corner, which is a 1 3/4" galvanized iron pipe, common to Sec's 12 & 13,T21S,R2E WM. & Sec's 7,8,(18)T21S,R3E WM. thence N.89°54'00"E. 385.0 ft., thence S.0328°00"W. 60.0 ft.thence N.89°54' 00"E 120.97 ft,thence following a 542.96 ft. radius curve right 133.57 ft. the chord of which bears S.83°03'22½"E. 133.24 ft,thence S.76°00'45"E. 940.62 ft to the POB. thence S.13°59'15"W. 211.05 ft. thence N.89°54'00"W. 767.93 ft. " S.00°06'00"W. 469.51 ft " S.89°52'00"E. 155.59 ft. " S.78°01'15"E. 262.37 ft. " N.00°06'00"E. 273.22 ft. " S.89°54'00"E. 486.37 ft. " N.52°11'15"E. 162.14 ft. thence following a 182.21 ft. radius curve left,a dist. of 407.69 ft. the chord of which bears N.11°54'45"W. 327.82 ft. thence N.76°00'45"W. 143.10 ft. m/l to the true POB. cont. 9.12 ac. m/l all in TCO.	1968 1970	"Filed Contract" R477/3455	
	Cont. m/l			9.12
	EXCEPT: 1.12 ac. to TL 908 by WD R480/10186, 1970 cont. m/l			8.00
	Beg. at the Sec. corner, which is a 1 3/4" galvanized iron pipe, common to Sec's. 12 & 13, T21S. R2EWM., & Sec's. 7 & 18, T21S.,R3EWM., thence N89°54' 00"E. 385.0 ft., thence S0°28'00"W. 60.00 ft., thence N89°54'00"E. 120.97 ft., thence following the S'ly right-of-way line of an 572.96 (542.96) ft. centerline radius curve right (concave South) a dist. of 133.57 feet, the chord of which bears S83°08'22 1/2"E. 133.24 feet, thence S76°00'45"E. 940.62 ft. thence S13°59'15" West 211.05 ft. to the True Point of Beginning; thence N89°54'00"W. 767.93 ft; thence S00°06'00"W. 469.51 ft; thence S89°52'00"E. 155.59 ft. thence S78°01'15"E. 262.37 ft. thence N00°06'00"E. 273.22 ft. thence S89°54'00"E. 486.37 ft. thence N52°11'15"E. 162.14 ft. thence following the (OVER)	1976 1978 1988 1991de	R758/38051 R871/70102 R1490/8753655 R1732/9159339	

CANCELLED

CANCELLED 1976

(13)

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

OLD NUMBER 965 184

MAP NO. 21 35 18 | TAX LOT NO. 904 | ACCOUNT NUMBER | SECTION 18 | TOWNSHIP 21 S. | RANGE 3E W.M.

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD: DATE OF ENTRY	DEED RECORD: DEED NUMBER	ACRES REMAINING
	Beg. at the Sec. corner which is on a 3/4" galvanized iron pipe, common to Sec's 12 & 13,T.21S,R. 2E,WM. & Sec's 7 & 8,21S,R.3E,WM. thence N.89°54'00"E. 385.0 ft. thence S.00°28'00"W. 60.0 ft. " N.89°54'00"E. 120.97 ft. thence following a 542.96 ft. radius curve right 133.57 ft. the chord of which bears S.83°03'22½"E. 133.24 ft. thence S.76°00'45"E. 1084.32 ft. thence following a 182.21 ft. radius curve right 407.69 ft. the chord of which bears S.11°54'45"E. 327.82 ft. thence S.52°11'45"W. 162.14 ft to the true POB. thence S.52°11'45"W. 310.36 ft. thence following a 388.10 ft. radius curve left 112.87 ft.,the chord of which bears S.43°51'22½"E. 112.47 ft. thence S.35°31'30"W. 64.20 ft. " N.66°12'15"W. 117.90 ft. " N.78°01'15"W 18.78 ft. " N.00°06'00"E. 273.22 ft. " S.89°54'00"E. 486.37 ft. m/l to the true POB; all in LCO.	1969 1998 wd 2002 WD	R423/52735 R2435/9850332 2002-074024	
	Cont. m/l			2.06

(14)

PARCEL RECORD - Cartographic Unit

201 573 250 Page 1 of (11)

Code Area	Township	Range	Section	1/4	1/16	Parcel Number	Type	Number
	21	35	18	0	0	00918		

Map Number

Tax Lot Number

Special Interest

Formerly part of 21 35 18 00 00900

History of Parcel Prior to Re-mapping

Previous Account Number	Previous Tax Lot Number

History of Parcel

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
new parcel	1997 bs	1962	9444817	10.40
ALSO: from TL 900 EXH '2'	1997 ba	2009	9477996	11.60
AC CORR'N by Survey 26600	1997 wd	2047	9515039	11.57
	1998 bs	R2469	9878292	

Remarks

150-303-050 (3-87)

002161

0965143
1697299

PARCEL RECORD - Cartographic Unit

Page (19) of

Code Area	Township	Range	Section	¼	⅛	Parcel Number	Type	Number
	21	35	18	0	0	00900		

Map Number

Tax Lot Number

Special Interest

Formerly part of _____

History of Parcel Prior to Re-mapping

Previous Account Number: 2316-B

Previous Tax Lot Number: ~~2369-2~~

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIE 21 35 18

900 OFFICE OF COUNTY ASSESSOR, LANE COUNTY OREGON 900

YEAR | TAX C° ~~965-127~~ 965 143 | DEED RECORD VOL. PAGE | ACRES REMAINING

No. 7-2 SECTION 18 TOWNSHIP 21 S RANGE E 3 OR W W M.

YEAR	BEARING	DISTANCE	BEARING REFERENCE OR LEGAL SUBDIVISION		
				437 198	
1952			The N½ of the NE¼ and the N½ of the		
1960			NW¼ of Section 18, T21S, R3E, WM,	R142 81704	
1962			Lane County, Oregon, excepting the following:	R166/ 22421	
			Beginning at the ¼ corner common to Sections 17 and 18, T21S, R3E, WM, and running thence N0°11'W 1312.8 ft to the SE corner of the N½ of the N½ of said section 18, which point is the true point of beginning; thence		
	N89°49½'W	1214.36 ft	thence		
	N40°11½'E	270.33 ft	thence		
	N77°55½'E	227.88 ft	thence		
	N63°49.7'E	908.00 ft	to the East line of the N½ of the N½ of said section 18; thence		
	S0°11'E	658.41 ft	to the point of beginning. Subject to a right of way for an electric line crossing.		
			Containing more or less		140.31
			CORRECTION IN ACREAGE (4.06 A out of (8) and 141.28 acres out of tax lot 7)		145.34
			Except: 41.20 ac. to T.L. 901 per R283/40157 for (1967)		
			Containing more or less		104.14
			~~Exc. 1.82 ac. to Lane County for Rd.~~ per R345/84096. (1967)		
			Cont. m/l		102.32
			Exc: 26.82 ac. to T.L.(902) per R382/16860. (1968)		
			Cont. m/l		75.50
			EXCEPT: 13.10 acre to Tax Lot 909 by Filed Contract for 1970. Containing more or less		62.40
			EXCEPT: 4.98 acres out to Public Road for 1978 by R878/80868.		
			Containing more or less		57.42

Remarks

~~read as above but~~ l therein

OVER

Exceptions/Additions	Date of Entry/ Acquisition	Deed Record Volume	Deed Record Page	Acres Remaining
AKA on reverse	2005 BS	2005-	020017	21.90a

002162

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR, LANE COUNTY, OREGON

965 168

TOWNSHIP	RANGE	SECTION	TAX LOT NUMBER	ACRES
17	2W	18		

LEGAL DESCRIPTION	DATE	FEE NUMBER	ACRES
Edgar Roberts property in Sec.18,T.17S.,R. 2W.,W.M. LCO. Beg. at a point formed by the centerline of the proposed Oakridge Airport Runway intersecting with the North line of Sec.18, T.17S.,R.2W.,W.M. LCO. said point being 1409.02 ft. S.89°43'E. of the NW. corner of said Sec.18; thence S.89°43'E. 2274.55 ft. along the North line of Sec.18; thence S.14°33'W. 369.54 ft. thence S.75°27'E. 120.00 ft. " S.14°33'W. 400.00 ft. to a point 12.0 ft S.14°33'W. of the centerline of the Bonneville Power Line, thence N.75°27'W. 3110.96 ft. parallel with the Bonneville Power Line to the North line of Sec.18, thence S.89°43'E. 811.56 ft. to the POB. Cont 27.21 ac m/l. All the bearings referred to in the above desc. are based on true bearings as obtained from solar observations. Cont. m/l	1968	8382/16060	26.82

(17)

002163

PROPERTY REPORT - LANE COUNTY

Account # 0947323 **Map, Tax Lot, & SIC # 21-35-07-40-00100**

Site Address:	
Owner Name & Address: **Crown Properties Llc** **30414 Leblieu Rd** **Eugene , OR 97405**	Taxpayer Name & Address: **Crown Properties Llc** **30414 Leblieu Rd** **Eugene , OR 97405**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	5.88 256,133'	Subdivision Name:		School District:	Oakridge
Inc City:	Westfir	Phase:		Elem	Oakridge
UGB:	Westfir	Lot #	TL 00100	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	PRO	
Statistical Class:		
Land Use:	8310	Timberlands
Property Class:	640	Forest, Unzoned Farm Land, Vacant

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$463,403**	**$0**	**$463,403**	**$47,865**
2007	$144,864	$0	$144,864	$46,471

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 47,865	**$612.50**	**07601**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
06-01-2006	$3,731,000	Murphy Company	Crown Properties Llc	20-06-038355
02-11-2001	$500,000	Mitchell Gibb	Murphy Company	20-01-017787

Residential Building # 0 (of 0) Characteristics

Year Built:	
Bedrooms	
Full Baths	
Half Baths	
% Improvmt Complete	

Square feet	Base	Finished
Basement		
First		
Second		
Attic		
Total		

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(1)

EXHIBIT "I"

PROPERTY REPORT - LANE COUNTY

Account # 1696861 **Map, Tax Lot, & SIC # 21-35-07-30-02700**

Site Address:	
Owner Name & Address: **Oregon State Board Of Aeronautic** **3040 25th Ave Se** **Salem , OR 97310**	Taxpayer Name & Address: **Oregon State Board Of Aeronautic** **3040 25th Ave Se** **Salem , OR 97310**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC: 1059177	

Approximate Tax Lot Acres	18.30 797,148'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 02700	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	AO/AS	
Statistical Class:		
Land Use:	9100	Vacant, Unused, Undeveloped Land
Property Class:	201	Commercial, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$121,806**	**$0**	**$121,806**	**$36,907**
2007	$99,841	$0	$99,841	$35,832

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 0	**$0.00**	**07601**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #

Residential Building # 0 (of 0) Characteristics

Year Built:	
Bedrooms	
Full Baths	
Half Baths	
% Improvmt Complete	

Square feet	Base	Finished
Basement		
First		
Second		
Attic		
Total		

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(2)

PROPERTY REPORT - LANE COUNTY

Account # 0947323 **Map, Tax Lot, & SIC # 21-35-07-40-00100**

Site Address:	
Owner Name & Address: **Crown Properties Llc** **30414 Leblieu Rd** **Eugene , OR 97405**	Taxpayer Name & Address: **Crown Properties Llc** **30414 Leblieu Rd** **Eugene , OR 97405**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	5.88 256,133'	Subdivision Name:		School District.	Oakridge
Inc City:	Westfir	Phase		Elem	Oakridge
UGB:	Westfir	Lot #	TL 00100	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	PRO	
Statistical Class:		
Land Use:	8310	Timberlands
Property Class:	640	Forest, Unzoned Farm Land, Vacant

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$463,403**	**$0**	**$463,403**	**$47,865**
2007	$144,864	$0	$144,864	$46,471

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 47,865	**$612.50**	**07601**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
06-01-2006	$3,731,000	Murphy Company	Crown Properties Llc	20-06-038355
02-11-2001	$500,000	Mitchell Gibb	Murphy Company	20-01-017787

Residential Building # 0 (of 0) Characteristics

		Square feet	Base	Finished
Year Built:		Basement		
Bedrooms		First		
Full Baths		Second		
Half Baths		Attic		
% Improvmt Complete		Total		

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(3)

PROPERTY REPORT - LANE COUNTY

Account # 1393360 **Map, Tax Lot, & SIC # 21-35-18-00-00914**

Site Address: **46979 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Deboer Kenneth J & Bridgett M** **46979 Airport Rd** **Oakridge , OR 97463**	Taxpayer Name & Address. **Deboer Kenneth J & Bridgett M** **46979 Airport Rd** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	2 01 87,556'	Subdivision Name:		School District:	Oakridge
Inc City		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00914	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5/AS	
Statistical Class:	130	Class 3 Single Family Home
Land Use.	1111	Single Family Housing
Property Class:	401	Tract, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$87,000**	**$121,600**	**$208,600**	**$147,578**
2007	$89,062	$150,130	$239,192	$143,280

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 147,578	**$1,855.96**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
10-17-2008	$255,000	Herscher John & Lynne M	Deboer Kenneth J & Bridgett M	20-08-057875
04-11-2004	$0	Heggen Henry Russell	Whom	20-04-089145

Residential Building # 1 (of 1) Characteristics 31 stat 130

		Square feet	Base	Finished
Year Built:	1994	Basement		
Bedrooms	2	First	1260	1260
Full Baths	2	Second		
Half Baths		Attic		
% Improvmt Complete	100	Total	1260	1260

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

PROPERTY REPORT - LANE COUNTY

Account # 4162812 **Map, Tax Lot, & SIC # 21-35-18-00-00915**

Site Address	
Owner Name & Address **Swanson Family Trust** **PO Box 646** **Oakridge , OR 97463**	Taxpayer Name & Address: **Swanson Gustav A Te** **PO Box 646** **Oakridge , OR 97463**
Multiple Owners? Yes *	
Additional Account Numbers for this Tax Lot & SIC: 1417920, 1697315	

Approximate Tax Lot Acres	5.64 245,678'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #		Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5/AS	
Statistical Class.	190	Manufactured Home On Real Property
Land Use:	9100	Vacant, Unused, Undeveloped Land
Property Class:	409	Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$0**	**$51,260**	**$51,260**	**$37,238**
2007	$0	$40,820	$40,820	$36,153

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 37,238	**$445.07**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #

Manufactured Structure

Model Year	1986	Make:	Stratford
Serial Number:	34090	Plate Number:	X196837
Length:	56	Width:	24
Model:			

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(5)

PROPERTY REPORT - LANE COUNTY

Account # 4136055 **Map, Tax Lot, & SIC # 21-35-18-00-00913**

Site Address:	
Owner Name & Address: **Black Christel Charlotte** **47022 Airport Rd** **Oakridge , OR 97463**	Taxpayer Name & Address: **Black James Mcallister** **47022 Airport Rd** **Oakridge , OR 97463**
Multiple Owners? Yes.*	
Additional Account Numbers for this Tax Lot & SIC: 1310299	

Approximate Tax Lot Acres	2.02 87,991'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #		Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5/AS	
Statistical Class:	190	Manufactured Home On Real Property
Land Use:	1150	Mobile Home - Not In Mobile Home Park
Property Class:	409	Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$0**	**$63,910**	**$63,910**	**$39,686**
2007	$0	$38,530	$38,530	$38,530

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 39,686	**$474.33**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #

Manufactured Structure

Model Year:	1980	Make:	Sunnybrook
Serial Number:	04173	Plate Number:	X172252
Length:	66	Width:	37
Model:			

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(6)

PROPERTY REPORT - LANE COUNTY

Account # 0965150 **Map, Tax Lot, & SIC # 21-35-18-00-00901**

Site Address: **76676 FIR RIDGE LN OAKRIDGE OR 97463**	
Owner Name & Address: **Tomlin Audrey C Te** **47634 Teller Rd** **Oakridge , OR 97463**	Taxpayer Name & Address: **Tomlin Eugene S Te** **47634 Teller Rd** **Oakridge , OR 97463**
Multiple Owners? Yes.*	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	6.12 266,587'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00901	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5/AS	
Statistical Class:		
Land Use:	1111	Single Family Housing
Property Class:	640	Forest, Unzoned Farm Land, Vacant

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$101,636**	**$0**	**$101,636**	**$2,148**
2007	$110,065	$0	$110,065	$2,086

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 2,148	**$40.49**	**07601**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
05-23-1995	$0	Tomlin, Eugene S & Audrey C H&w		95-05164300

Residential Building # 0 (of 0) Characteristics

		Square feet	Base	Finished		
Year Built		Basement			Bsmt Garage Sqft	
Bedrooms		First			Att Garage Sqft	
Full Baths		Second			Det Garage Sqft	
Half Baths		Attic			Att Carport Sqft	
% Improvmt Complete		Total				

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

PROPERTY REPORT - LANE COUNTY

Account # 4073225

Map, Tax Lot, & SIC # 21-35-18-00-00910

Site Address:	
Owner Name & Address: **Reynolds Bernard R & C J** **76579 Airport Rd** **Oakridge , OR 97463**	Taxpayer Name & Address: **Reynolds Bernard R & C J** **76579 Airport Rd** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC: 1274529	

Approximate Tax Lot Acres	4.87 212,137'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #		Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5	
Statistical Class:	190	Manufactured Home On Real Property
Land Use:		
Property Class:	409	Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2007	**$0**	**$18,740**	**$18,740**	**$18,740**
2006	$0	$17,680	$17,680	$17,680

2007 Taxable Value	2007 Taxes	Tax Code Area
$ 18,740	**$204.48**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #

Manufactured Structure

Model Year:	1974	Make:	Broadmore
Serial Number:	03318	Plate Number:	
Length:	60	Width:	24
Model:			

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Prop

PROPERTY REPORT - LANE COUNTY

Account # 1302395 **Map, Tax Lot, & SIC # 21-35-18-00-00911**

Site Address: **47070 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Hankins Richard P & Janice I** **47070 Airport Rd** **Oakridge , OR 97463**	Taxpayer Name & Address: **Hankins Richard P & Janice I** **47070 Airport Rd** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	1.82 79,279'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00911	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5/AS	
Statistical Class:	140	Class 4 Single Family Home
Land Use:	1111	Single Family Housing
Property Class:	401	Tract, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$90,531**	**$215,490**	**$306,021**	**$197,483**
2007	$82,198	$260,670	$342,868	$191,731

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 197,483	**$2,452.43**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
02-22-1989	$10	Shields, Richard & Darcilyn H&w		89-02124500
04-30-1988	$10	Hankins, Richard P & Janice I H&w		88-01811500

Residential Building # 1 (of 1) Characteristics 41 stat 140

Year Built:	2002
Bedrooms	3
Full Baths	2
Half Baths	
% Improvmt Complete	100

Square feet	Base	Finished
Basement		
First	1862	1862
Second		
Attic		
Total	1862	1862

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

PROPERTY REPORT - LANE COUNTY

Account # 1309085 **Map, Tax Lot, & SIC # 21-35-18-00-00912**

Site Address: **47100 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Boyce Carolyn A** **PO Box 386** **Oakridge , OR 97463**	Taxpayer Name & Address: **Boyce Carolyn A** **PO Box 386** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	2.75 119,790'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00912	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5	
Statistical Class:	140	Class 4 Single Family Home
Land Use:	1111	Single Family Housing
Property Class:	401	Tract, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2007	**$96,767**	**$174,010**	**$270,777**	**$154,945**
2006	$84,146	$145,010	$229,156	$150,432

2007 Taxable Value	**2007 Taxes**	**Tax Code Area**
$ 139,495	**$1,670.78**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
03-02-2005	$0	Boyce Kenneth D & Carolyn A	Boyce Carolyn A	20-05-015735

Residential Building # 1 (of 1) Characteristics 41 stat 140

Year Built:	1965
Bedrooms	3
Full Baths	3
Half Baths	
% Improvmt Complete	100

Square feet	Base	Finished
Basement		
First	1576	1576
Second		
Attic		
Total	1576	1576

Bsmt Garage Sqft	
Att Garage Sqft	984
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(10)

PROPERTY REPORT - LANE COUNTY

Account # 4182885

Map, Tax Lot, & SIC # 21-35-18-00-00906

Site Address:	
Owner Name & Address: **Wight Dorothy Ann Te** **47116 Airport Rd** **Oakridge , OR 97463**	Taxpayer Name & Address: **Wight James Ronald Te** **47116 Airport Rd** **Oakridge , OR 97463**
Multiple Owners? Yes.*	
Additional Account Numbers for this Tax Lot & SIC: 0977627	

Approximate Tax Lot Acres	1.08 47,045'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #		Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5	
Statistical Class:	190	Manufactured Home On Real Property
Land Use:		
Property Class:	409	Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Assessed
2007	**$0**	**$96,400**	**$96,400**	**$81,968**
2006	$0	$90,940	$90,940	$79,581

2007 Taxable Value	**2007 Taxes**	**Tax Code Area**
$ 81,968	**$948.85**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #

Manufactured Structure

Model Year:	1991	Make:	Fleetwood
Serial Number:	09376	Plate Number:	
Length:	66	Width:	39
Model:			

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(11)

PROPERTY REPORT - LANE COUNTY

Account # 0982270 **Map, Tax Lot, & SIC # 21-35-18-00-00908**

Site Address: **47130 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Daniels David L & Deborah L** **PO Box 1412** **Oakridge , OR 97463**	Taxpayer Name & Address: **Daniels David L & Deborah L** **PO Box 1412** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	1.07 46,609'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00908	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5	
Statistical Class:	140	Class 4 Single Family Home
Land Use:	1111	Single Family Housing
Property Class:	401	Tract, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2007	**$84,533**	**$188,500**	**$273,033**	**$154,290**
2006	$73,507	$157,080	$230,587	$149,796

2007 Taxable Value	**2007 Taxes**	**Tax Code Area**
$ 154,290	**$1,842.05**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
04-17-2002	$94,588	Northwest Trustee Services Llc	Altegra Credit Co	20-02-034251
03-13-2002	$123,000	Altegra Credit Co	Daniels David L & Deborah L	20-02-048621

Residential Building # 1 (of 1) Characteristics 41 stat 140

Year Built:	1954
Bedrooms	3
Full Baths	1
Half Baths	1
% Improvmt Complete	100

Square feet	Base	Finished
Basement		
First	2207	2207
Second		
Attic		
Total	2207	2207

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	759
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(12)

PROPERTY REPORT - LANE COUNTY

Account # 1697307 **Map, Tax Lot, & SIC # 21-35-18-00-00903**

Site Address:	
Owner Name & Address: **Reynolds Bernard R & C J** **76579 Airport Rd** **Oakridge , OR 97463**	Taxpayer Name & Address: **Reynolds Bernard R & C J** **76579 Airport Rd** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC: 0965176	

Approximate Tax Lot Acres	7.96 346,738'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00903	Middle	Oakridge
Census Tr/BlkGrp:	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5/AS	
Statistical Class:		
Land Use:	9100	Vacant, Unused, Undeveloped Land
Property Class:	401	Tract, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2008	**$40,950**	**$0**	**$40,950**	**$15,812**
2007	$16,171	$0	$16,171	$15,351

2008 Taxable Value	2008 Taxes	Tax Code Area
$ 15,812	**$238.22**	**07601**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #

Residential Building # 0 (of 0) Characteristics

		Square feet	Base	Finished		
Year Built:		Basement			Bsmt Garage Sqft	
Bedrooms		First			Att Garage Sqft	
Full Baths		Second			Det Garage Sqft	
Half Baths		Attic			Att Carport Sqft	
% Improvmt Complete		Total				

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(13)

PROPERTY REPORT - LANE COUNTY

Account # 0965184 **Map, Tax Lot, & SIC # 21-35-18-00-00904**

Site Address: **76601 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Fink Janet L & Howard M** **9433 Svl Box** **Victorville , CA 92392**	Taxpayer Name & Address: **Fink Janet L & Howard M** **9433 Svl Box** **Victorville , CA 92392**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	2.06 89,734'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00904	Middle	Oakridge
Census Tr/BlkGrp:	1500/3	Recording #		High	Oakridge

Zoning: Parent/Overlay	RR5	
Statistical Class:	130	Class 3 Single Family Home
Land Use:	1111	Single Family Housing
Property Class:	401	Tract, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Assessed
2007	**$100,290**	**$136,790**	**$237,080**	**$137,958**
2006	$87,209	$113,990	$201,199	$133,940

2007 Taxable Value	**2007 Taxes**	**Tax Code Area**
$ 137,958	**$1,652.99**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
09-19-2002	$150,000	Dick Harold E & Miesen Dona L & Dick	Fink Janet L & Howard M	20-02-074024
06-29-1998	$0	Dick, Harold E		98-05033200

Residential Building # 1 (of 1) Characteristics 31 stat 130

Year Built:	1965
Bedrooms	3
Full Baths	1
Half Baths	1
% Improvmt Complete	100

Square feet	Base	Finished
Basement		
First	1156	1156
Second		
Attic		
Total	1156	1156

Bsmt Garage Sqft	
Att Garage Sqft	484
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(14)

PROPERTY REPORT - LANE COUNTY

Account # 1573250 **Map, Tax Lot, & SIC # 21-35-18-00-00918**

Site Address: **47166 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Cathey Christy D & Mike A** **PO Box 892** **Oakridge , OR 97463**	Taxpayer Name & Address: **Cathey Christy D & Mike A** **PO Box 892** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC: 1697323	

Approximate Tax Lot Acres	11.96 520,978'	Subdivision Name:		School District:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00918	Middle	Oakridge
Census Tr/BlkGrp:	1500/3	Recording #		High	Oakridge

Zoning: Parent/Overlay	F2	
Statistical Class:	190	Manufactured Home On Real Property
Land Use:	1150	Mobile Home - Not In Mobile Home Park
Property Class:	409	Tract, Manufactured Structure

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2007	**$115,014**	**$56,520**	**$171,534**	**$87,656**
2006	$100,013	$53,320	$153,333	$85,103

2007 Taxable Value	**2007 Taxes**	**Tax Code Area**
$ 87,656	**$1,014.70**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
09-25-1998	$0	Cathey, Christy Dee		98-07829200
06-14-1994	$0	Roberts, Edgar N		94-04481700

Residential Building # 1 (of 1) Characteristics 11 manufactured structure

			Square feet	Base	Finished		
Year Built:		Basement			Bsmt Garage Sqft	
Bedrooms		First			Att Garage Sqft	
Full Baths		Second			Det Garage Sqft	
Half Baths		Attic			Att Carport Sqft	
% Improvmt Complete	100	Total				

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

15

PROPERTY REPORT - LANE COUNTY

Account # 0965143 **Map, Tax Lot, & SIC # 21-35-18-00-00900**

Site Address: **47312 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Roberts Family Trust** **PO Box 696** **Oakridge , OR 97463**	Taxpayer Name & Address: **Roberts Edgar N & F Dolores** **PO Box 696** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC: 1697299	

Approximate Tax Lot Acres	21.83 950,915'	Subdivision Name:		School Distnct:	Oakridge
Inc City:		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00900	Middle	Oakridge
Census Tr/BlkGrp:	1500/3	Recording #		High	Oakridge

Zoning: Parent/Overlay	F2	
Statistical Class:	140	Class 4 Single Family Home
Land Use:	1111	Single Family Housing
Property Class:	401	Tract, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2007	**$126,038**	**$230,540**	**$356,578**	**$121,573**
2006	$109,599	$192,120	$301,719	$118,032

2007 Taxable Value	**2007 Taxes**	**Tax Code Area**
$ 121,573	**$1,407.32**	**07605**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
01-28-2005	$0	Roberts Edgar & Fauna D	Roberts Family Trust	20-05-020017
10-31-1994	$0	Roberts, Edgar N		94-07799600

Residential Building # 1 (of 1) Characteristics 41 stat 140

Year Built:	1985
Bedrooms	2
Full Baths	2
Half Baths	
% Improvmt Complete	100

Square feet	Base	Finished
Basement		
First	2591	2591
Second		
Attic		
Total	2591	2591

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(16)

PROPERTY REPORT - LANE COUNTY

Account # 1355435 **Map, Tax Lot, & SIC # 21-35-18-00-00902 -902**

Site Address: **47385 AIRPORT RD OAKRIDGE OR 97463**	
Owner Name & Address: **Kelly John** **PO Box 817** **Oakridge , OR 97463**	Taxpayer Name & Address: **Kelly John** **PO Box 817** **Oakridge , OR 97463**
Multiple Owners? No.	
Additional Account Numbers for this Tax Lot & SIC:	

Approximate Tax Lot Acres	27.22 1,185,703'	Subdivision Name:		School District:	Oakridge
Inc City		Phase:		Elem	Oakridge
UGB:		Lot #	TL 00902-902	Middle	Oakridge
Census Tr/BlkGrp.	1500/1	Recording #		High	Oakridge

Zoning: Parent/Overlay	AO	
Statistical Class:	499	Not Otherwise Specified
Land Use:	4311	Airport & Flying Field Landing/Takeoff F
Property Class:	201	Commercial, Improved

Property Value and Taxes

	Land Value Real Market	Improvement Value Real Market	Total Value Real Market	Total Value Assessed
2007	**$0**	**$35,800**	**$35,800**	**$24,809**
2006	$0	$30,600	$30,600	$24,086

2007 Taxable Value	2007 Taxes	Tax Code Area
$ 24,809	**$219.92**	**07601**

Two Most Recent Sales

Date	Price	Grantor	Grantee	Instrument #
06-09-2008	$0	Kelley Albert	Kelly John	Un-recorded

Residential Building # 0 (of 0) Characteristics

Year Built:	
Bedrooms	
Full Baths	
Half Baths	
% Improvmt Complete	

Square feet	Base	Finished
Basement		
First		
Second		
Attic		
Total		

Bsmt Garage Sqft	
Att Garage Sqft	
Det Garage Sqft	
Att Carport Sqft	

Comments:

*This report extracts commonly used information from the Detailed Property Report. Click here for the full Detailed Property Report.

(17)

SCANNED
Date: 3/27/2020
Initials: PA

Notice of Pending Land Use Decision
By The Lane County Planning Director

LANE COUNTY OREGON

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Mailing Date:	12/22/2010
Department File:	PA 10-5484
Property Owner:	E.J.K. Investments, LLC
Applicant:	Nickell Land Surveying & Planning, LLC
Assessor's Map & Tax Lot:	21-35-07-30-02900
Address or Location:	Airport Road, Oakridge, OR
Acreage:	12.05 acres
Base Zone:	Impacted Forest Lands (F-2, RCP)
Combining Zone(s):	Airport Safety Combining Zone (/AS-RCP)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for conditional **Approval** of this application by the Lane County Planning Director. **The conditions of approval are contained in the attached Exhibit A.**

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: Request for Director approval of a dwelling in the Impacted Forest Lands Zone (F-2, RCP) pursuant to the "Template Dwelling" provisions of Lane Code 16.211(5) and Lane Code 16.211(8).

Enclosed is a site plan of the subject property.

The proposed use that could be authorized by approval of the land use application is: One Dwelling

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact is **Sarah Wilkinson** and the telephone number where more information can be obtained is **541-682-4054**.

This decision will become final at 5 P.M. on 1/3/11 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is

submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above-mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: Sarah Wilkinson, Planner **Date:** 12/20/2010

Authorized by: for Kent Howe, Planning Director **Date:** 12/20/2010

EXHIBITS

Exhibit A: Conditions of Approval
Exhibit B: Vicinity Map
Exhibit C: Approved Site Plan

Exhibits below are mailed to the Owner and Applicant only. Copies are available upon request. Please contact Chris at 541-682-3347.

Exhibit D: Staff Report
Exhibit E: Referral Response: Lane County Transportation Planning (d. 12/06/2010)
Exhibit F: Referral Response: Neil Friedman (d. 12/06/2010)
Exhibit G: Referral Response: Stephen and Penny Weber (d. 12/09/2010)
Exhibit H: Referral Response: Department of Energy, Bonneville Power Administration (d. 12/09/2010)

EXHIBIT A

CONDITIONS OF APPROVAL
PA 10-5484

All of the following conditions are binding on the applicant or successive owner(s) of the parcel or successive applicant(s) who exercise this approval action.

1. Approval of PA 10-5484 is valid for a **four-year** period from the final date of approval. Lane County may grant an initial extension period of **two years** if:

   a. An applicant makes a written request with the required fee for an extension of the development approval period;
   b. The request is submitted to the county prior to the expiration of the development approval period;
   c. The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period;
   d. The county determines that the applicant was unable to begin or continue development during the approval period for reasons which the applicant was not responsible; and
   e. The criteria and standards under which this proposal was granted have not changed.

Approval of an extension granted under this rule is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.

The following conditions shall be met prior to the expiration date in condition #1 and prior to approval of a building or placement permit for a dwelling, septic system, or accessory structure. Failure to meet conditions of approval as specified prior to the expiration date, and if no extension has been granted prior to that date, shall invalidate this approval, and the development rights conditionally allowed by this planning action shall cease:

1. Submit to Lane County Assessment and Taxation a stocking survey report for the subject property, prepared by a qualified forester. A copy of the stocking survey report shall be submitted to Lane County Land Management Division with evidence of receipt by Lane County Assessment and Taxation.

2. Complete, notarize and record a Farm and Forest Management Practices Easement for the subject property (Attachment 1). Attach to the easement an "Exhibit A" depicting the legal description of the property. The easement is to be submitted to and recorded by Lane County Deeds and Records. A copy of the signed, notarized and recorded Farm and Forest Management Practices Easement shall be submitted to Lane County Land Management Division.

3. Physically establish primary and secondary fuel breaks. The minimum primary fuel break shall extend 30 feet in all directions around the dwelling. The secondary fuel break shall extend 100 feet in all directions around the primary fuel break. All fuel breaks must be maintained in perpetuity. Please contact 541-682-3989 for more information about fuel break requirements.

4. Submit evidence that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629.

5. Construct the length of the private road and driveway, from the Airport Road right-of-way to the proposed dwelling, to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director. Please contact 541-682-3989 for more information about the requirements of LC 16.211(8)(e).

6. Staff recommends that, prior to making any access improvements, an engineer evaluate the existing road and drainage patterns to determine if and what measures need to taken to control runoff (e.g., installation of culverts).

7. Submit written documentation from the Hazeldell RFD that states that the roads and driveway leading from the fire station to the home site are adequate for their fire fighting equipment to access the use, fire fighting equipment and water supply.

   - OR -

   Submit written documentation from an Oregon Registered Professional Engineer that states that the roads and driveway leading from the fire station to the home site meet the requirements of LC 16.211(8)(e).

8. Obtain approval of a road name for the private road (Attachment 2). The road name should not duplicate existing road names, or be similar sounding, or confusing. Upon approval of the road name, a road name sign shall be installed at the intersection of the private road and Airport Road (Attachment 3). The road name shall be noted on the Site Plan. Addressing requirements shall be addressed as part of the building permit process. Please contact 541-682-4196 for more information about road naming and/or signage.

9. No structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface. In regard to the subject property, the Transitional Surface is limited to a height of 150 feet above the runway (Elev. 1419 feet above sea level), which is equivalent to 1569 feet above sea level (1419 + 150 = 1569). The applicant documented that the elevation of the proposed home site is 1421 feet above sea level. Accordingly, the height of structures or objects within the home site shall not exceed 148 feet (1569 – 1421 = 148).

10. A private access easement, at least 30 feet in width, shall be established over Tax Lot No. 843, 133 and 2900 to the western boundary of Tax Lot No. 2800. The applicable requirements in LC 15.055 shall be met:

    (4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

    (5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(6) Development on a lot or parcel taking access over a railroad or limited access road right-of-way may require documentation that permanent or long term access over the railroad or limited access road meeting the requirements of this section has been granted.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

(8) The County may require that at the entrance to a Private Access Easement road a sign be posted at private expense stating the name of the private road and the words "Private Road, Not Dedicated for Public Use or Maintained by Lane County."

11. A Facility Permit is required for placement of facilities within the right-of-way of Airport Road (Attachment 4). Facilities and development include, but are not limited to, road improvements, sidewalks, new or reconstructed driveway or road approach intersections, utility placements, excavation, clearing, grading, culvert placement or replacement, storm water facilities, or any other facility, thing, or appurtenance [LC 15.205(1)]. **A facility permit is required for the existing private road approach connection to Airport Road.**

12. Storm water runoff from the subject property shall **not** be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate roadway storm water runoff.

13. Upon completion of conditions no.2 through no.12, complete and submit a Land Use Application for the Verification of Conditions for PA 10-5484, with the applicable fee (Attachment 5). **Attach to this application:**

    ☐ Copy of the stocking survey report with evidence of receipt by Lane County Assessment and Taxation;

    ☐ Copy of signed, notarized and recorded Farm Use and Forest Management Agreement;

    ☐ Copy of a well constructor's report or a water use permit from the Water Resources Department;

    ☐ Copy of recorded private access easement;

    ☐ Copy of facility permit;

    ☐ Copy of letter from the **Hazeldell RFD** regarding adequacy of roads and driveway; and

    ☐ Copy of the approved Site Plan that conforms with the approved plans, drawn to scale, including the same information, and meeting other minimum standards of the Land Management Division. The Site Plan shall show the primary and secondary fuel breaks, the BPA easement that traverses the property, and the approved name for the private road.

14. As part of the Verification of Conditions process, the road, driveway and fuel breaks shall be field inspected by Land Management Division staff to verify the requirements stated in conditions no.3, 5

and 7 have been met. At the discretion of the Planning Director, failure to meet, upon first inspection, the minimum fuel break and/or driveway and/or grade standards as in LC 16.211(8)(c) and (e), may require the owner to submit an application for Fuel Break Verification and Road Inspection, with the applicable fee.

15. Upon completion of the Verification of Conditions, submit a building or placement permit application for the proposed dwelling. To schedule a Permit Review Meeting, during which application for a building permit is submitted, please call 541-682-3577 or visit the Planner on Duty in the Land Management Division located in the Public Service Building at 125 E. 8th Ave., Eugene, OR. Please contact the Building Department at 541-682-3823 and the On-Site Sewage Department at 541-682-3754 with questions regarding building and sanitation requirements.

16. In the building or placement permit application submittal, submit a Site Plan that demonstrates the parcel configuration, proposed dwelling, driveway, and septic system, are located as on the approved Site Plan, unless modified by the Planning Director. The Site Plan shall show the primary and secondary fuel breaks, the BPA easement that traverses the property, and the approved name for the private road. At the discretion of the Planning Director, any deviation from the approved Site Plan may require an application for the Modification of Conditions.

The following condition shall be met prior to approval for legal occupancy of the proposed dwelling.

17. The proposed dwelling shall meet the following requirements, to be verified by the Lane County Building Official:

    a. All buildings or structures with chimneys shall have a spark arrester on all chimneys.

    b. Wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs.

    (Please contact a Lane County plans examiner at 541-682-3823 for more information about building code requirements)

The following conditions are provided for informational purposes and shall be fulfilled as they apply to the proposed development:

18. All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

19. All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating

structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

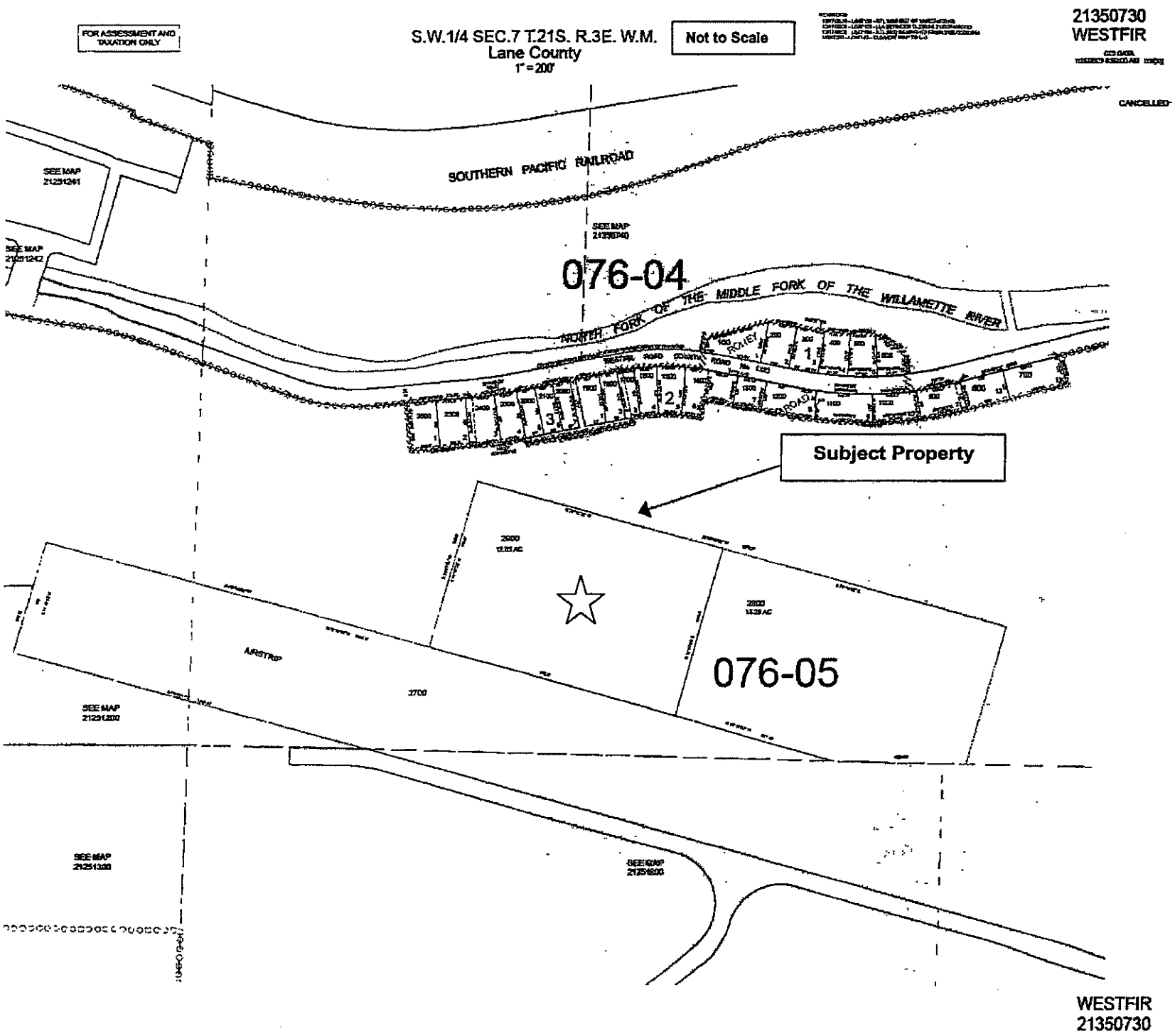
20. Per referral response from the Department of Energy, Bonneville Power Administration:

Portions of tax lots 2800 & 2900 are encumbered by an easement for high-voltage transmission lines and an access road easement. These easements grant certain rights to BPA and limit the landowner's use within the easement area. A portion of BPA's rights include the right of ingress and egress, and the right to keep the easements free and clear of vegetation and buildings, sheds, fences, roads or any other type of structure. All activities planned within the BPA easement need to be reviewed by BPA prior to their occurrence. Do not build, dig or plant within the easement area without first contacting BPA. Requests for information regarding the process for reviewing proposed uses of the easement may be addressed to Bonneville Power Administration, Real Estate Field Services, 86000 Highway 99 South, Eugene, OR 97405

21. The following is provided for informational purposes as an **Advisory Notice**: Section 93.040(1) of the Oregon Revised Statutes requires the following statement to be included in the body of any instrument transferring or contracting to transfer fee title to real property:

> "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

This Oregon Law disclosure requirement serves a constructive purpose. Approval of a residence for this property is contingent upon compliance with the conditions of the special use permit, and any future owners of the subject property need to understand and adhere to these conditions. This disclosure statement should alert the cautious and potential purchaser to inquire with the Lane County Land Management Division about the conditions of this special use permit.



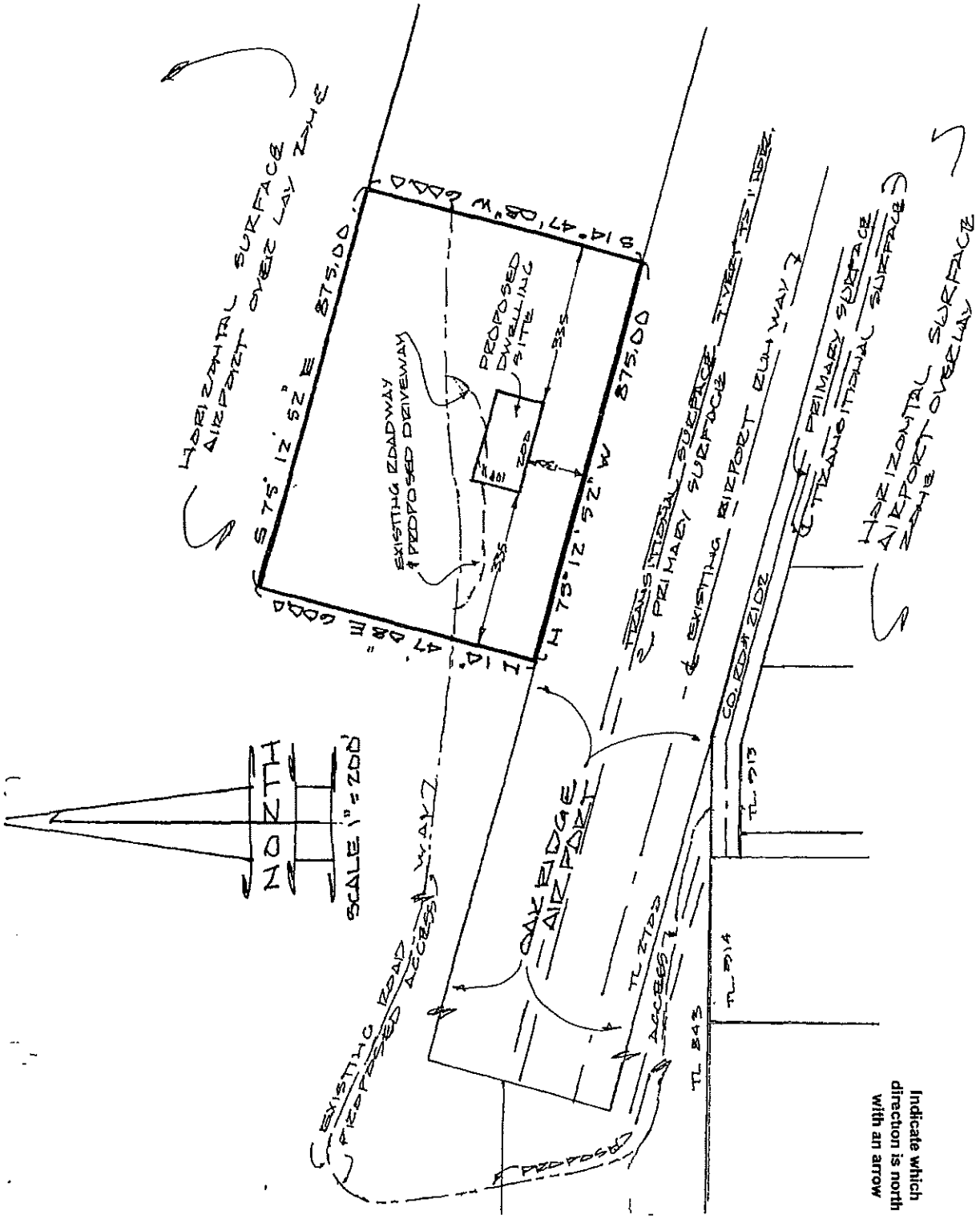
Vicinity Map (Not to Scale)

EXHIBIT B

002189

SITE PLAN SUBMITTAL FORM

OWNER NAME: E.S.V. INVESTMENT PHONE # ADDRESS: 30414 LOBLEY ROAD EUGENE, OR 97405	Map and Taxlot #: 21-35-07-30 TL 2900 Scale: 1" = 200'	APPLICANT NAME: HICKWELL LAND SURVEYING PHONE # 541-915-2905 ADDRESS: 33225 CRAIG LOOP COTTAGE GROVE, OR 97424



Site Plan (Not to Scale)

EXHIBIT C

EXHIBIT D

Planning Director Approval of a Land Use Application

Staff Report

Department File:	PA 10-5484
Property Owner:	E.J.K. Investments, LLC
Applicant:	Nickell Land Surveying & Planning , LLC
Assessor's Map & Tax Lot:	21-35-07-30-02900
Address or Location:	Airport Road, Oakridge, OR
Acreage:	12.05 acres
Base Zone:	Impacted Forest Lands (F-2, RCP)
Combining Zone(s):	Airport Safety Combining Zone (/AS-RCP)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)
Staff Planner:	Sarah Wilkinson, 541-682-4054

I. PROPOSAL

Request for Director approval of a dwelling in the Impacted Forest Lands Zone (F-2, RCP) pursuant to the "Template Dwelling" provisions of Lane Code 16.211(5) and Lane Code 16.211(8).

II. BACKGROUND

On June 25, 2010, the applicant submitted to Lane County Land Management an application for a "Template Dwelling." On July 20, 2010, staff reviewed and deemed the application incomplete pending submittal of evidence of compliance with Lane Code 16.246. On November 17, 2010, the applicant submitted the required materials and staff accepted the application as complete. On November 29, 2010, staff solicited referral responses from affected agencies, service providers and surrounding property owners. Referral responses, applicable to the approval criteria, are incorporated in the findings and decision below. Copies of all written responses are included in the application file for this proposal.

III. PROPERTY AND PROJECT DESCRIPTION

a. **LOCATION:** The subject property is identified as Tax Lot No. 2900 on Lane County Tax Assessor's Map 21-35-07-30. The property is located immediately north of the Oakridge Airport and is a legal lot, verified by PA 08-6332 and noticed by PA 08-6329.

b. **ZONING:** The subject property is designated Forest (F) in the Lane County Rural Comprehensive Plan, is zoned Impacted Forest Lands (F-2, RCP) and is within the Airport Safety Combining Zone (/AS-RCP).

c. **SITE DESCRIPTION AND SURROUNDING USES:** The subject property is 12.05 acres in size, vacant and traversed east-west by easement for the Bonneville Power Administration. The property slopes upward from the south to the north and contains open and forested areas. The

property is bordered to the south by the Oakridge Airport and is surrounded to the north, east and west by land zoned Impacted Forest Lands (F-2, RCP), and to the south by land zoned Airport Operations (AO-RCP).

d. **PROJECT:** The applicant proposes to construct a dwelling on the subject property. The proposed 200-foot wide by 100-foot deep home site is located 370 feet south of the north property line, 130 feet north of the south property line, 335 feet west of the east property line, and 335 east of the west property line. The proposed dwelling is to be accessed from Airport Road, a County road, by an existing private road.

IV. APPLICABLE CRITERIA AND FINDINGS OF FACT

This application is evaluated pursuant to the applicable criteria found in Lane Code 16.211(5) and Lane Code 16.211(8). The code language is in **boldface** type, followed by the findings of fact.

A. Conformity with Lane Code 16.211(5):

One single-family dwelling or manufactured dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(5)(a) through (f) and LC 16.211(8) below.

(a) The tract upon which the dwelling or manufactured dwelling will be located has no other dwellings or manufactured dwellings on it. As used in LC 16.211(5), "tract" means one or more contiguous lots or parcels in the same ownership. A tract shall not be considered to consist of less than the required acreage because it is crossed by a public road or waterway.

Finding 1: Staff finds the subject proposal meets this criterion. The subject tract consists of only one parcel in the ownership of "EJK Investments LLC" (Assessor's Map & Tax Lot: 21-35-07-30-02900). The tract contains no other dwellings or manufactured dwellings.

(b) The lot or parcel upon which the dwelling or manufactured dwelling will be located was lawfully created.

Finding 2: Staff finds the subject proposal meets this criterion. The property is a legal lot, verified by PA 08-6332 and noticed by PA 08-6329.

(c) The lot or parcel upon which the dwelling or manufactured dwelling will be located:

(iii) Is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber; and

(aa) All or part of at least eleven other lots or parcels that existed on January 1,1993, are within a 160 acre square centered on the center of the subject tract measured and counted as follows:

(A) If the subject tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road;

(B) If the subject tract is 60 acres or larger and abuts a road or perennial stream, the measurement shall be made by using a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract that is to the maximum extent possible, aligned with the road or stream;

(C) Lots or parcels within urban growth boundaries shall not be used to satisfy the eligibility requirements in LC 16.211(5)(c)(iii)(aa) above.

Finding 3: Staff finds the subject proposal meets this criterion. The subject property is composed of soils that are capable of producing at least 85 cubic feet per acre per year of wood fiber. The applicant documented the presence of at least 11 other lots or parcels that existed on January 1, 1993, within a 160-acre square centered on the subject property. Lots or parcels within urban growth boundaries were not used to satisfy the eligibility requirements in LC 16.211(5)(c). The applicant documented 11 qualifying lots or parcels:

- Map 21-35-07-30, Tax Lot No. 2700
- Map 21-35-18, Tax Lot No. 913, 914, 911, 912, 906, 908, 903, 904, 902, 900

The verification of the status of the 11 lots or parcels referenced above was preliminary and does not constitute a determination of legal lot status.

(bb) At least three dwellings or permanent manufactured dwellings existed on January 1, 1993, on the other lots or parcels described in LC 16.211(5)(c)(iii)(aa) above. If the measurement is made pursuant to LC 16.211(5)(c)(iii)(aa)(B) above and if a road crosses the subject tract, then at least one of the three required dwellings or permanent manufactured dwellings shall be located:

(A) On the same side of the road as the proposed residence; and

(B) On the same side of the road or stream as the subject tract and located within a 160-acre rectangle that is one mile long and one-fourth mile wide centered on the center on the subject tract that is to the maximum extent possible aligned with the road or stream and within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle.

Finding 4: Staff finds the subject proposal meets this criterion. The applicant documented at least three dwellings or manufactured dwellings that existed on January 1, 1993 on the lots or parcels listed in Finding 3. The applicant documented four qualifying dwellings:

- Map 21-35-18, Tax Lot No. 912, 908, 904, 900

(d) Approval of a dwelling or manufactured dwelling shall comply with the requirements in LC 16.211(5)(d)(i) through (iv) below:

(i) The owner of the tract shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

(ii) The Director shall notify the County Assessor of the above condition at the time the dwelling is approved;

(iii) If the lot or parcel is more than ten acres, the property owner shall submit a stocking survey report to the County Assessor and the Assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules; and

(iv) If the Department of Forestry determines that the tract does not meet those requirements and notifies the owner and the Assessor that the land is not being managed as forest land, the Assessor will remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

Finding 4: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, a stocking survey report for the subject property, prepared by a qualified forester, shall be submitted to Lane County Assessment and Taxation. A copy of the stocking survey report with evidence of receipt by Lane County Assessment and Taxation shall be submitted to Lane County Land Management Division.***

(e) Prior to land use clearance of a building permit for the dwelling or manufactured dwelling, when the lot or parcel on which the dwelling or manufactured dwelling will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(6), "Exhibit A," shall be completed and recorded with Lane County Deeds and Records. The covenants, conditions and restrictions in the deed restriction:

Finding 5: This criterion does not apply to the subject proposal. The subject property is the only contiguous parcel in the ownership of "EJK Investments LLC."

(f) Land use approval of a permit described in LC 16.211(5) above shall be valid for four years from the date of the approval. Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(5)(f) above may be made and approved pursuant to LC 14.700(2).

Finding 6: Approval of the subject proposal shall be valid for four years from the final date of approval as indicated in the Conditions of Approval (Exhibit A). Notwithstanding the requirements in LC 14.700(2)(d)(ii) and (iii), an application for a two year extension of the timelines for the permit approval described in LC 16.211(5)(f) above may be made and approved pursuant to LC 14.700(2).

(g) The Director shall require as a condition of approval that the landowner for the dwelling sign and record in the Lane County deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

Finding 7: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, a Farm and Forest Management Practices Easement for the subject property shall be submitted to and recorded by Lane County Deeds and Records. A legal description of the property shall be attached to the easement as "Exhibit A." A copy of the recorded Farm and Forest Management Practices Easement shall be submitted to Lane County Land Management Division.***

B. Conformity with Lane Code 16.211(8):

The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h) and (j), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

Finding 8: Staff finds the subject proposal meets this criterion:

a. **Near dwellings or manufactured dwellings on other tracts.** The proposed dwelling is to be sited approximately 600 feet north of the nearest dwelling located to the south on Tax Lot No. 912, as identified on Lane County Tax Assessor's Map 21-35-18.

b. **Near existing roads.** The proposed dwelling is to be located adjacent an existing private road.

c. **Most level part of the tract.** The applicant stated that the proposed dwelling is to be sited on a level part of the subject property in an area containing slopes of 3 – 6 percent.

d. **Least suitable portion of the tract for forest use.** The proposed dwelling is to be sited in an open area, adjacent an existing private road.

e. **30 feet away from any ravine, ridge or slope greater than 40 percent.** The applicant stated that the proposed dwelling is to be sited at least 30 feet away from any ravine, ridge or slope greater than 40 percent.

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

Finding 9: Staff finds the subject proposal meets this criterion. The proposed dwelling is to be sited in an open area, adjacent an existing private road.

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 and at least 30 feet from the adjoining lines of property zoned F-2 or EFU; and

Finding 10: Staff finds the subject proposal meets this criterion. The subject property is not adjacent to property zoned F-1 or EFU. The proposed dwelling is to be sited at least 130 feet from adjoining property zoned F-2.

(iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) are met; and

Finding 11: This criterion does not apply to the subject proposal. The subject property neither contains nor is adjacent to a Class I stream.

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 30 feet from all other property lines; and

(cc)The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.

Finding 12: Staff finds the subject proposal meets this criterion. The proposed dwelling is to be sited at least 20 feet from Airport Road, the nearest right-of-way of a County road, and at least 30 feet from all other property lines. The location of the proposed dwelling complies with LC 16.211(8)(a), as discussed above, and 16.211(8)(b) through (d), as discussed below.

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

Finding 13: Staff finds the subject proposal meets this criterion. The proposed dwelling is to be accessed from an existing private road and driveway minimizing the amount of forest land used to site access roads. The dwelling is to be sited in an open, sparsely vegetated area minimizing the amount of forest land used site structures.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:

(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crowns and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house. As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope

% Slope	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush

growing underneath larger trees shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

Finding 14: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be located in a level area that contains slopes of less than 10-percent within 30 feet of the dwelling. There is sufficient area surrounding the dwelling to establish the required primary and secondary fuel breaks in all directions around the dwelling. ***As a condition of approval, primary and secondary fuel breaks shall be established and maintained. The minimum primary fuel break shall extend 30 feet in all directions around the dwelling. The minimum secondary fuel break shall extend 100 feet in all directions around the dwelling. All fuel breaks must be maintained in perpetuity.***

(ii) Structural Fire Protection. The dwelling or manufactured dwelling shall be located upon a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. If the dwelling or manufactured dwelling are not within a FPD, the applicant shall provide evidence that the applicant has submitted a written request for a long term services contract with the nearest FPD and to be annexed into the FPD boundaries. If the FPD and the Planning Director determine that inclusion within a FPD or contracting for residential fire protection is impracticable, the Planning Director shall require as a condition of approval for the dwelling or manufactured dwelling that the property owner implement and maintain a Fire Protection Plan as an alternative means for protecting the dwelling or manufactured dwelling from fire hazards, consistent with the following standards:

Finding 15: Staff finds the subject proposal meets this criterion. The subject property is located within the Hazeldell Rural Fire District.

(iii) Chimneys and Roofs. Dwellings, manufactured dwellings or structures with any chimneys shall have a spark arrestor on the chimneys. All habitable roofed structures shall be regulated by the State of Oregon Structural Specialty Code or the State of Oregon One and Two Family Specialty Code. Roofing for dwellings and manufactured dwellings shall be asphalt shingles in accordance with Section 903, slate shingles in accordance with Section 904, metal roofing in accordance with Section 905, tile, clay or concrete shingles in accordance with Section 907 and other approved roofing which is deemed to be equivalent to Class C rated roof covering. Wood shingles and shake roofs are not permitted. When 50 percent or more of the roof covering of any one or two family dwelling or manufactured dwelling is repaired or replaced in one year, the roof covering shall be made to comply with this section.

Finding 16: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, wood shingles, wood shakes, or shingles made from wood products for use as roof covering materials for dwellings and accessory structures are prohibited. Such use is a violation of ORS 215.730(1)(b)(A) and subject to civil penalties as contained in Chapter 5, Lane Code. This provision applies to new roofs, reinstallation of roofs, and repair of roofs. Building plans for the proposed dwelling shall meet this requirement. Compliance with this requirement shall be field verified by Land Management Division staff.***

(d) **Domestic Water Supplies. Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. For purposes of LC 16.211(8)(d) above, evidence of domestic water supply means:**

(i) **Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**

(ii) **A water use permit issued by the Water Resources Department for the use described in the application; or**

(iii) **Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the Department upon completion of the well.**

Finding 17: Staff finds that it is feasible for the subject proposal to meet this criterion. The applicant stated that domestic water supply is to be provided by a new well. ***As a condition of approval, evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629.***

(e) **Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.**

(i) **Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at**

least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

Finding 18: Staff finds that it is feasible for the subject proposal to meet this criterion. The subject property is accessed from Airport Road by an existing private road and driveway. ***As a condition of approval, the length of the private road and driveway, from the Airport Road right-of-way to the proposed dwelling, shall be constructed to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director.***

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not more than 500 feet. Turnarounds shall comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

Finding 19: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be accessed from Airport Road by a private road. The private road does not appear to exit onto any other roads and is therefore considered to be a dead-end road. ***As a condition of approval, the length of the private road and driveway, from the Airport Road right-of-way to the proposed dwelling, shall be constructed to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director.***

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to

verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

Finding 20: This criterion does not apply to the subject proposal. The existing private road and driveway do not contain bridges or culverts. No bridges and culverts are proposed. A neighboring property owner commented that improvements are needed to control runoff from the existing private road. Staff recommends that, prior to making any access improvements, an engineer evaluate the existing road and drainage patterns to determine if and what measures need to taken to control runoff (e.g., installation of culverts).

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

Finding 21: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, information shall be provided from the Hazeldell Rural Fire District demonstrating that the roads and driveway leading from the fire station to the dwelling are adequate for fire fighting equipment to access the use, fire fighting equipment and water supply; or written documentation from an Oregon Registered Professional Engineer shall be submitted that states the roads and driveway meet the requirements of LC 16.211(8)(e)***

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

Finding 22: Staff finds that it is feasible for the subject proposal to meet this criterion. The proposed dwelling is to be accessed from an existing unnamed private road that provides access to more than three parcels. It is County policy to require the naming of a private road when more than three uses/parcels are served. ***As a condition of approval, the private road is required to be named. The road name should not duplicate existing road names, or be similar sounding, or confusing. Upon approval of the road name, a road name sign shall be installed at the intersection of the private road and Airport Road. The road name shall be stated on the site plan. Addressing requirements shall be addressed as part of the building permit process.***

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

Finding 23: Staff finds that it is feasible for the subject proposal to meet this criterion. The subject property is accessed from Airport Road by an existing private road and driveway, which exceeds 200 feet in length. ***As a condition of approval, the length of the private road and driveway, from the Airport***

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Road right-of-way to the proposed dwelling, shall be constructed to the minimum standards of Lane Code 16.211(8)(e). Written certification of compliance from an Oregon Registered Professional Engineer may be required at the discretion of the Planning Director.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

Finding 24: This criterion does not apply to the subject proposal. The applicant did not request modification of the standards in LC 16.211(8)(e)(i) through (vi).

VI. OTHER DEVELOPMENT STANDARDS

Lane Code 16.246, Airport Safety Combining Zone:

3. Use Limitations. In a /AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

a. The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

Finding 25: Staff finds that it is feasible for the subject proposal to meet this criterion. The subject property is located within the Transitional Surface (LC 16.246(5)(e)):

These surfaces extend outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of one horizontal foot to seven vertical feet to their intersection with the Horizontal Surface. This surface extends to a height of 150 feet above the runway.

The southern boundary of the proposed building site is located approximately 300 feet north of the Primary Surface of the Oakridge Airport. Using a ratio of one horizontal foot to seven vertical feet, staff determined the height of the dwelling is limited to 2100 feet above sea level. The Transitional Surface, however, is limited to a height of 150 feet above the runway. Per LC 16.246(2)(d), the elevation of the Oakridge runway is 1419 feet above sea level. The Transitional Surface extends to a height of 1569 feet above sea level (1419 + 150 = 1569). The applicant documented that the elevation of the proposed building site is 1421 feet above sea level. Accordingly, the height of the dwelling shall not exceed 148 feet (1569 – 1421 = 148), a height much greater than the 35 feet proposed by the applicant. ***As a condition of approval, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface.***

b. All structures and uses within the /AS-RCP Zone shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor. No use may be made of land or water in such a manner as to create electrical interference with navigation signals or radio

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communication between the airport and aircraft, making it difficult for pilots to distinguish between airport lights and others, resulting in glare in the eyes of pilots using the airport, impairing visibility in the vicinity of the airport, or otherwise in any way endangering the landing, take off or maneuvering of aircraft intending to use the airport.

c. All structures and uses within this combining district shall conform to the requirements of Federal Aviation Regulations, Part 77 or successor, and to other Federal and State laws as supplemented by Lane County ordinances, particularly Lane County Ordinance No. 105, or successor, regulating structure height, lights, glare producing surfaces, radio interference, smoke, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

Finding 26: Staff finds that it is feasible for the subject proposal to meet this criterion. ***As a condition of approval, all structures and uses shall comply with LC 16.246(3)(b) and (c).***

Lane Code Chapter 15, Access Requirements:

Per referral response from Lane County Transportation Planning (Exhibit E):

Access to the proposed dwelling is from Airport Road via a private access easement across Map 21-35-07-40 Tax lot 133, and Map 21-25-12-00 Tax Lot 843.

Airport Road is a Lane County maintained rural road (LCR). It is functionally classified as a Local road having a minimum right-of-way width of 50 feet for development setback purposes [LC 15.070(1)(c)(i)(gg)].

LC 15.055 - Minimum Requirements for Private Access Easements

(4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

(5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(6) Development on a lot or parcel taking access over a railroad or limited access road right-of-way may require documentation that permanent or long term access over the railroad or limited access road meeting the requirements of this section has been granted.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

(8) The County may require that at the entrance to a Private Access Easement road a sign be posted at private expense stating the name of the private road and the words "Private Road, Not Dedicated for Public Use or Maintained by Lane County."

LC 15.055(2)(c), "...lands within a Forest Zone shall be governed by the siting and development standards of the applicable zoning district."

Transportation Planning defers to Land Management to ensure that the easement meets Forest Zone requirements from Airport Road to the proposed dwelling.

In accordance with Lane Manual Chapter 15.515, storm water run off from private property shall not be directed to the Lane County road right-of-way, or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate roadway storm water run off.

A facility permit could not be found for the easement approach connection to Airport Road. A facility permit is required for the easement approach connection.

LANE COUNTY FACILITY PERMIT
A Facility Permit shall be required for placement of facilities within the right-of-way of Airport Road. Facilities and development includes, but is not limited to, road improvements, sidewalks, new or reconstructed driveway or road approach intersections, utility placements, excavation, clearing, grading, culvert placement or replacement, storm water facilities, or any other facility, thing, or appurtenance [LC 15.205(1)].

VII. DECISION

Based upon the findings above and the required conditions of approval, staff finds the applicant's request for approval of a dwelling in the Impacted Forest Lands Zone (F-2, RCP) to be consistent with applicable requirements of Lane Code 16.211(5) and 16.211(8). The applicant's request is **approved** subject to the Conditions of Approval stated in Exhibit A.

WILKINSON Sarah W

From: MCKINNEY Lydia
Sent: Monday, December 06, 2010 3:43 PM
To: WILKINSON Sarah W
Cc: PETSCH John S; PARKER Laurie M; PAUGH Jennifer A; BOURLAND John R; BARRY Celia; BAJRACHARYA Shashi; FIELDS Phil
Subject: PA 10-5484 (EJK Investments, LLC) (Airport Road, Oakridge)

TP File: 10100
File No: PA 10-5484
Applicant: Nickell Land Surveying & Planning, LLC
Owner: Edward J. King
Location: Airport Road, Oakridge, OR
TRS: 21-35-07-30
Tax Lot: 2900

Proposal: Template Dwelling approval in the Impacted forest Lands Zone (F-2, RCP)

Comments from Lane County Transportation Planning:
Access to the proposed dwelling is from Airport Road via a private access easement across Map 21-35-07-40 Tax lot 133, and Map 21-25-12-00 Tax Lot 843.

Airport Road is a Lane County maintained rural road (LCR). It is functionally classified as a Local road having a minimum right-of-way width of 50 feet for development setback purposes [LC 15.070(1)(c)(i)(gg)].

LC 15.055 - Minimum Requirements for Private Access Easements

(4) The minimum width for private access easement shall be of a width determined by the County suitable for the intended use, but in no case less than 30 feet. Notwithstanding this requirement, a pre-existing easement of at least 20 feet in width and serving a lot or parcel created in its present configuration prior to April 28, 2004 is allowable provided it complies with other requirements of this chapter.

(5) All approved documents creating a private access easement shall provide for the installation, construction and maintenance thereof of all utilities and facilities which are now or may in the future be needed for the area abutting the road and the surrounding area.

(6) Development on a lot or parcel taking access over a railroad or limited access road right-of-way may require documentation that permanent or long term access over the railroad or limited access road meeting the requirements of this section has been granted.

(7) Any easement approved as a private access easement shall be an affirmative, perpetual easement appurtenant to the property that will be served by the easement, and contain at a minimum the names of grantor and grantee, the description of the land covered by the easement, a description of the lot(s) or parcel(s) to be served by the easement, a description of the intent or purpose of the easement and a statement of maintenance responsibility. All approved easements shall be recorded.

(8) The County may require that at the entrance to a Private Access Easement road a sign be posted at private expense stating the name of the private road and the words "Private Road, Not Dedicated for Public Use or Maintained by Lane County."

LC 15.055(2)(c), "...lands within a Forest Zone shall be governed by the siting and development standards of the applicable zoning district."

EXHIBIT E

Transportation Planning defers to Land Management to ensure that the easement meets Forest Zone requirements from Airport Road to the proposed dwelling.

In accordance with Lane Manual Chapter 15.515, storm water run off from private property shall not be directed to the Lane County road right-of-way, nor into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate roadway storm water run off.

A facility permit could not be found for the easement approach connection to Airport Road. A facility permit is required for the easement approach connection.

LANE COUNTY FACILITY PERMIT

A Facility Permit shall be required for placement of facilities within the right-of-way of Airport Road. Facilities and development includes, but is not limited to, road improvements, sidewalks, new or reconstructed driveway or road approach intersections, utility placements, excavation, clearing, grading, culvert placement or replacement, storm water facilities, or any other facility, thing, or appurtenance [LC 15.205(1)].

Please contact 541-682-6902 or visit http://www.lanecounty.org/Departments/PW/Engr/RightofWay/Pages/rowpermits.aspx for information about facility permits.

Lydia McKinney
Senior Transportation Planner
Lane County Public Works
(541) 682-6930

REC'D DEC 0 9 2010

Department of Energy
Bonneville Power Administration
86000 Highway 99 South
Eugene, OR 97405

December 8, 2010

In reply refer to: TERR-Alvey

Tract No. O-LP-R-13; O-LP-AR-2; O-LP-AR-3R1
Line: Oakridge-Lookout Point (operated as Hills Creek-Lookout Point No. 1)
ADNO: 7355; Structures: 7/7 – 7/2
Stationing: 982+00 – 1008+75

Lane County Land Management Division, Public Service Building
Attn: Sarah Wilkinson
125 East 8th Avenue
Eugene, OR 97401
Fax: 541-682-3947

RE: PA 10-5486 & PA 10-5484

Dear Ms. Wilkinson:

The Bonneville Power Administration (BPA) has reviewed the dwelling proposal and its relationship to the BPA transmission line easement and access road easements that this proposal impacts. PA 10-5484 makes use of the BPA access road for the driveway and while there is no objection to this use **BPA would like to work with the landowner to locate the dwelling so it does not interfere with BPA's use of the access road**. BPA would like the following statement included on the final decision to help ensure public safety and reliable operation of BPA's facilities:

> Portions of tax lots 2800 & 2900 are encumbered by an easement for high-voltage transmission lines and an access road easement. These easements grant certain rights to BPA and limit the landowner's use within the easement area. A portion of BPA's rights include the right of ingress and egress, and the right to keep the easements free and clear of vegetation and buildings, sheds, fences, roads or any other type of structure. All activities planned within the BPA easement need to be reviewed by BPA prior to their occurrence. Do not build, dig or plant within the easement area without first contacting BPA. Requests for information regarding the process for reviewing proposed uses of the easement may be addressed to Bonneville Power Administration, Real Estate Field Services, 86000 Highway 99 South, Eugene, OR 97405.

EXHIBIT H

Applications must be submitted to BPA for any use proposed within the rights-of-way. BPA would like to stress that **no dwellings or portions of dwellings are allowed within the transmission line and access road easement areas**. Please be sure the dwelling applicant and landowner are aware of this information and receive a copy of the above statement. Your cooperation in this matter is greatly appreciated and helps minimize later disputes or unnecessary strained relationships with the public when incompatible activities have to be modified or removed from the easement. If you have questions regarding this request or need additional information please feel free to contact me.

You may direct any communication to this office, at the address in the letterhead, by telephoning 541-988-7432 or 1-800-282-3713 for more information.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Dustin Smith

Dustin Smith
Realty Specialist

Yellow

DO NOT SEPARATE PACKET

CERTIFICATE OF MAILING

PA10-5484
NICKELL/EJK
12-22-2010

This is to certify that I, Chris Rogers, mailed Notification of

Land Use Decision

To the person(s) shown on the attached copy of mailing labels &/or attached letter, and delivered said information to the authorized agent for the us Post Office in Eugene, Oregon on

DATE MAILED: 12/22/10

END OF COMMENT PERIOD: _____

APPEAL DEADLINE: 1/3/11

Chris Rogers
CHRIS ROGERS

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.300(3)(d). If a tax lot appears on the notice list & there are no corresponding addresses then the tax records have not been updated; therefore, these property owners were not notified.

DO NOT SEPARATE PACKET

CERTIFICATE OF MAILING

PA10-5484
NICKELL/EJK
1-4-2011

This is to certify that I, Chris Rogers, mailed Notification of

Decision
Notice of revision of land use

To the person(s) shown on the attached copy of mailing labels &/or attached letter, and delivered said information to the authorized agent for the us Post Office in Eugene, Oregon on

DATE MAILED: 1-4-11

END OF COMMENT PERIOD: _____

APPEAL DEADLINE: 1-18-11

CHRIS ROGERS

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.300(3)(d). If a tax lot appears on the notice list & there are no corresponding addresses then the tax records have not been updated; therefore, these property owners were not notified.

Notice of REVISION of Land Use Decision
By The Lane County Planning Director

LAND MANAGEMENT DIVISION
http //www LaneCounty org/PW_LMD/

Mailing Date:	1-4-11
Department File:	PA 10-5484
Property Owner:	E.J.K. Investments, LLC
Applicant:	Nickell Land Surveying & Planning, LLC
Assessor's Map & Tax Lot:	21-35-07-30-02900
Address or Location:	Airport Road, Oakridge, OR
Acreage:	12 05 acres
Base Zone:	Impacted Forest Lands (F-2, RCP)
Combining Zone(s):	Airport Safety Combining Zone (/AS-RCP)
Comprehensive Plan:	Lane County Rural Comprehensive Plan (/RCP)

You own or occupy property near the above referenced property that is the subject of a revision to a conditional approval of a land use application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

PROPOSAL: On December 22, 2011, the Planning Director conditionally approved the subject application that requested Director approval of a dwelling in the Impacted Forest Lands Zone (F-2, RCP) pursuant to the "Template Dwelling" provisions of Lane Code 16.211(5) and Lane Code 16.211(8). On January 3, 2011, at 5:00 P.M., the decision became final. It was brought to staff's attention that Condition of Approval No. 9 of the decision is inaccurate as it is based upon Lane Code 16.246(5)(e), which contains a typographical error. Accordingly, staff revised Finding No. 25 of the Staff Report and Condition of Approval No 9, as detailed below. Deletions of the text are indicated with ~~strikethrough~~. Additions to the text are indicated with **bold underlined**. All other Conditions of Approval contained in the decision issued December 22, 2010, continue to apply. Please note that as the conditional approval of the subject application is a final decision, only the revisions contained in this notice may be appealed.

Finding No. 25 is revised as follows:

(The code language is in boldface type, followed by the finding of fact.)

Lane Code 16.246, Airport Safety Combining Zone:

3. Use Limitations. In a /AS-RCP Zone, the following limitations and standards shall apply to all uses permitted, allowed conditionally or allowed as special uses by the primary zone with which the /AS-RCP Zone is combined.

a. The height of structures or objects shall not exceed the maximum height of the primary zone with which the /AS-RCP Zone is combined. Furthermore, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the surfaces described in LC 16.246(5) below. Areas located in more than one of the described surfaces shall be subject to the most restrictive (i.e., lowest) surface.

Finding 25: Staff finds that it is feasible for the subject proposal to meet this criterion. The subject property is located within the Transitional Surface (LC 16.246(5)(e)):

These surfaces extend outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of one horizontal foot to seven vertical feet to their intersection with the Horizontal Surface. This surface extends to a height of 150 feet above the runway.

~~The southern boundary of the proposed building site is located approximately 300 feet north of the Primary Surface of the Oakridge Airport. Using a ratio of one horizontal foot to seven vertical feet, staff determined the height of the dwelling is limited to 2100 feet above sea level. The Transitional Surface, however, is limited to a height of 150 feet above the runway. Per LC 16.246(2)(d), the elevation of the Oakridge runway is 1419 feet above sea level. The Transitional Surface extends to a height of 1569 feet above sea level (1419 + 150 = 1569). The applicant documented that the elevation of the proposed building site is 1421 feet above sea level. Accordingly, the height of the dwelling shall not exceed 148 feet (1569 – 1421 = 148), a height much greater than the 35 feet proposed by the applicant.~~

LC 16.246(5)(e) contains a typographical error. Per LC 16.246(9) and OAR 660-013-0070(1)(a), the Transitional Surface extends outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of seven horizontal feet to one vertical foot to the intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway. The applicant documented that the proposed dwelling is to be located 365 feet from the edge of the Primary Surface. Accordingly, the height of the dwelling is not to penetrate 1471 feet above sea level, which is equivalent to 52 feet (365 ÷ 7 = 52) above the elevation of the Primary Surface (1419 feet above sea level). The applicant documented that the elevation of the proposed dwelling site is 1421 feet above sea level. Accordingly, the height of the dwelling shall not exceed 50 feet (1471 – 1421 = 50). As a condition of approval, no structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface.

Condition of Approval No. 9 is revised as follows:

9. No structure or object shall be erected, altered, allowed to grow or be maintained in such a manner as to penetrate the Transitional Surface. ~~In regard to the subject property, the Transitional Surface is limited to a height of 150 feet above the runway (Elev. 1419 feet above sea level), which is equivalent to 1569 feet above sea level (1419 + 150 = 1569). The applicant documented that the elevation of the proposed home site is 1421 feet above sea level. Accordingly, the height of the structures or objects within the home site shall not exceed 148 feet (1569 – 1421 = 148).~~ **Per LC 16.246(5)(e) and 16.246(9), the Transitional Surface extends outward at 90 degree angles from the sides of the Primary Surface and Approach Surface at a slope of seven horizontal feet to one vertical foot to the intersection with the Horizontal Surface. The Transitional Surface extends to a height of 150 feet above the runway. The applicant documented that the proposed dwelling is to be located 365 feet from the edge of the Primary Surface. Accordingly, the height of the dwelling is not to penetrate 1471 feet above sea level, which is equivalent to 52 feet (365 ÷ 7 = 52) above the elevation of the Primary Surface (1419 feet above sea level). The applicant documented that the elevation of the proposed dwelling site is 1421 feet above sea level. Accordingly, the height of the dwelling shall not exceed 50 feet (1471 – 1421 = 50).**

Enclosed is a site plan of the subject property.

The proposed use that could be authorized by approval of this land use decision: Revision to Finding No. 25 and Condition of Approval No. 9 of PA 10-5484.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact is **Sarah Wilkinson** and the telephone number where more information can be obtained is **541-682-4054**.

This decision will become final at 5 P.M. on 1-18-11 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above-mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: Sarah Wilkinson, Planner **Date:** 1/4/2011

Authorized by: Kent Howe, Planning Director **Date:** 4 Jan 11

EXHIBITS

Exhibit A: Vicinity Map
Exhibit B: Approved Site Plan

Standard Property Search Results

1 data row(s). Click the "Refine Search" button if property of interest is not found.

Current search parameters: Map = 21350730; Lot = 02900;

Maplot	SIC	Account #	Site Address	Mail City	Zip	Owner	City Limits	UGB
21-35-07-30-02900		1829686				E J K Investments LLC		

Log Off

Generated by Law Office of Bill Kloos, PC on May 2, 2019 at 12:10pm using Regional Land Information Database, https://www.rlid.org/

EXHIBIT C

Ownership of Parcels Contiguous to:

Map 21-35-07-30 Taxlot 2900 - EJK Investments LLC			
Map	**Taxlot**	**Direction**	**Owner**
21-35-07-3	2700	South	Oregon State Board of Aeronautics
21-35-07-4	133	Northwest	Crown Properties LLC
21-35-07-3	2800	East	Edward J. King

EXHIBIT D D

Summary Property Report

Site Address	N/A
Map & Taxlot#	21-35-07-30-02900
SIC	N/A
Tax Account#	1829686

image not available

Property Owner 1	**Taxpayer**
E J K INVESTMENTS LLC	E J K INVESTMENTS LLC
30414 LE BLEU RD	30414 LE BLEU RD
EUGENE, OR 97405	EUGENE, OR 97405

Neighborhood Code 764500 / Oakridge Rural

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	12.05 / 524,898
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	TL 02900
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	F2/AS
Land Use	8310-Timberlands
Property Class	640 Forest, deferral by application, vacant
Statistical Class	N/A

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$78,008	$0	$78,008	$54,644
2017	$76,789	$0	$76,789	$53,817

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$54,644	$ 466.26	07601

Two Most Recent Sales/Ownership Transfers

Date	**Price**	**Grantor (first listed)**	**Grantee (first listed)**	**Instrument #**	**Image**
04/10/09	$0	CROWN PROPERTIES LLC	E J K INVESTMENTS LLC	2009-18701	

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 9, 2019 at 2:26pm using Regional Land Information Database, https://www.rlid.org/

Summary Property Report

Site Address	N/A	image not available
Map & Taxlot#	21-35-07-30-02700	
SIC	N/A	
Tax Account#	1059177	

Property Owner 1	**Taxpayer**
OREGON STATE BOARD OF AERONAUTIC	OREGON STATE BOARD OF AERONAUTIC
3040 25TH AVE SE	3040 25TH AVE SE
SALEM, OR 97310	SALEM, OR 97310

Neighborhood Code 87600 / Oakridge

Code Split - Other land tax account(s) associated with this taxlot 1696861

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	18.30 / 797,148
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	TL 02700
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	AO/AS
Land Use	4311-Airport & Flying Field Landing/Takeoff Fields
Property Class	201 Commercial, improved
Statistical Class	468 Airport

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$22,820	$220,059	$242,879	$226,980
2017	$23,286	$224,550	$247,836	$220,369

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$0	$ 0.00	07605

Two Most Recent Sales/Ownership Transfers

No ownership transfers on record

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 9, 2019 at 2:26pm using Regional Land Information Database, https://www.rlid.org/

Summary Property Report

Site Address	N/A	image not available
Map & Taxlot#	21-35-07-40-00133	
SIC	N/A	
Tax Account#	1829702	

Property Owner 1	**Taxpayer**
CROWN PROPERTIES LLC	CROWN PROPERTIES LLC
30414 LE BLEU RD	30414 LE BLEU RD
EUGENE, OR 97405	EUGENE, OR 97405

Neighborhood Code 764500 / Oakridge Rural

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	184.24 / 8,025,494
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	TL 00133
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	F2/AS
Land Use	8310-Timberlands
Property Class	640 Forest, deferral by application, vacant
Statistical Class	N/A

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$377,405	$0	$377,405	$101,049
2017	$371,509	$0	$371,509	$65,613

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$101,049	$2,662.36	07601

Two Most Recent Sales/Ownership Transfers

No ownership transfers on record

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 9, 2019 at 2:27pm using Regional Land Information Database, https://www.rlid.org/

Summary Property Report

Site Address	N/A	image not available
Map & Taxlot#	21-35-07-30-02800	
SIC	N/A	
Tax Account#	1829694	

Property Owner 1 KING EDWARD J
30414 LE BLEU RD
EUGENE, OR 97405

Taxpayer KING EDWARD J
30414 LE BLEU RD
EUGENE, OR 97405

Neighborhood Code 764500 / Oakridge Rural

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	13.28 / 578,477
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	TL 02800
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	F2/AS
Land Use	8310-Timberlands
Property Class	400 Tract, vacant
Statistical Class	N/A

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$80,760	$0	$80,760	$80,760
2017	$79,498	$0	$79,498	$79,498

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$80,760	$ 674.39	07601

Two Most Recent Sales/Ownership Transfers

Date	**Price**	**Grantor (first listed)**	**Grantee (first listed)**	**Instrument #**	**Image**
04/10/09	$0	CROWN PROPERTIES LLC	KING EDWARD J	2009-18702	

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 9, 2019 at 2:26pm using Regional Land Information Database, https://www.rlid.org/

Summary Property Report

Site Address	76601 AIRPORT RD Oakridge, OR 97463-9765	image not available
Map & Taxlot#	21-35-18-00-00904	
SIC	N/A	
Tax Account#	0965184	

Property Owner 1	**Taxpayer**
GROOVY GRANNY TEA LLC	GROOVY GRANNY TEA LLC
76601 AIRPORT RD	76601 AIRPORT RD
OAKRIDGE, OR 97463	OAKRIDGE, OR 97463

Neighborhood Code 764500 / Oakridge Rural

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	1.92 / 83,635
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	TL 00904
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	RR5/AS
Land Use	1111 Single Family Housing
Property Class	401 Tract, improved
Statistical Class	130 Class 3 single family dwelling

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$76,466	$137,961	$214,427	$173,406
2017	$66,748	$119,381	$186,129	$168,355

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$173,406	$2,056.22	07605

Two Most Recent Sales/Ownership Transfers

Date	**Price**	**Grantor (first listed)**	**Grantee (first listed)**	**Instrument #**	**Image**
03/11/18	$37,000	FINK JANET L & HOWARD M	GROOVY GRANNY TEA LLC	2018-11500	
09/19/02	$150,000	DICK HAROLD E & MIESEN DONA L & DICK	FINK JANET L & HOWARD M	2002-74024	

Dwelling #1 of 1 / Building Type » Class 3 dwelling

			Base Sq Ft	**Finished Sq Ft**		
Year Built	1965				Heating	Radiant - ceiling
Bedrooms	3	1st Floor	1156	1156	Roof Style/Cover	Gable/Comp shingle medium
Full Baths	1	**Total Sq Ft**	**1156**	**1156**	Bsmt Gar Sq Ft	N/A
Half Baths	1				Att Gar Sq Ft	484
Percent Complete as of Jan 1st	100%				Det Gar Sq Ft	N/A
Masonry Fireplace (s)	Yes				Att Carport Sq Ft	N/A

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 2, 2019 at 4:57pm using Regional Land Information Database, https://www.rlid.org/

EXHIBIT E E

Summary Property Report

Site Address	47130 AIRPORT RD Oakridge, OR 97463-9470	image not available
Map & Taxlot#	21-35-18-00-00908	
SIC	N/A	
Tax Account#	0982270	

Property Owner 1	**Taxpayer**
DANIELS DAVID L & DEBORAH L	DANIELS DAVID L & DEBORAH L
PO BOX 1412	PO BOX 1412
OAKRIDGE, OR 97463	OAKRIDGE, OR 97463

Neighborhood Code 764500 / Oakridge Rural

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	1.07 / 46,609
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	TL 00908
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	RR5/AS
Land Use	1111 Single Family Housing
Property Class	401 Tract, improved
Statistical Class	140 Class 4 single family dwelling

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$66,321	$186,849	$253,170	$213,576
2017	$58,689	$165,152	$223,841	$207,355

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$213,576	$2,517.21	07605

Two Most Recent Sales/Ownership Transfers

Date	**Price**	**Grantor (first listed)**	**Grantee (first listed)**	**Instrument #**	**Image**
04/17/02	$94,588	NORTHWEST TRUSTEE SERVICES LLC	ALTEGRA CREDIT CO	2002-34251	
03/13/02	$123,000	ALTEGRA CREDIT CO	DANIELS DAVID L & DEBORAH L	2002-48621	

Dwelling #1 of 1 / Building Type » Class 4 dwelling

			Base Sq Ft	**Finished Sq Ft**		
Year Built	1954				Heating	Heat pump
Bedrooms	3	1st Floor	2207	2207	Roof Style/Cover	Hip/Cedar shake med
Full Baths	1	**Total Sq Ft**	**2207**	**2207**	Bsmt Gar Sq Ft	N/A
Half Baths	1				Att Gar Sq Ft	N/A
Percent Complete as of Jan 1st	100%				Det Gar Sq Ft	759
					Att Carport Sq Ft	N/A
Masonry Fireplace (s)	Yes					

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 2, 2019 at 4:57pm using Regional Land Information Database, https://www.rlid.org/

Summary Property Report

Site Address	47100 AIRPORT RD Oakridge, OR 97463-9470	image not available
Map & Taxlot#	21-35-18-00-00912	
SIC	N/A	
Tax Account#	1309085	

Property Owner 1	**Taxpayer**
HAYDEN STEVEN EUGENE	HAYDEN STEVEN EUGENE
10916 FENTON CIR	10916 FENTON CIR
WESTMINISTER, CO 80020	WESTMINISTER, CO 80020

Neighborhood Code 764500 / Oakridge Rural

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	2.75 / 119,790
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	TL 00912
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	RR5/AS
Land Use	1111 Single Family Housing
Property Class	401 Tract, improved
Statistical Class	140 Class 4 single family dwelling

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$75,433	$181,108	$256,541	$210,393
2017	$67,658	$157,356	$225,014	$204,265

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$210,393	$2,480.68	07605

Two Most Recent Sales/Ownership Transfers

Date	**Price**	**Grantor (first listed)**	**Grantee (first listed)**	**Instrument #**	**Image**
05/04/17	$300,000	BOYCE CAROLYN A	HAYDEN STEVEN EUGENE	2017-21909	
03/02/05	$0	BOYCE KENNETH D & CAROLYN A	BOYCE CAROLYN A	2005-15735	

Dwelling #1 of 1 / Building Type » Class 4 dwelling

			Base Sq Ft	**Finished Sq Ft**		
Year Built	1965				Heating	Forced hot air
Bedrooms	3	1st Floor	1576	1576	Roof Style/Cover	Gable/Comp shingle medium
Full Baths	3	**Total Sq Ft**	**1576**	**1576**	Bsmt Gar Sq Ft	N/A
Half Baths	0				Att Gar Sq Ft	984
Percent Complete as of Jan 1st	100%				Det Gar Sq Ft	N/A
					Att Carport Sq Ft	N/A
Masonry Fireplace (s)	No					

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 2, 2019 at 4:57pm using Regional Land Information Database, https://www.rlid.org/

Summary Property Report

Site Address	47116 AIRPORT RD Oakridge, OR 97463-9470	image not available
Map & Taxlot#	21-35-18-00-00906	
SIC	N/A	
Tax Account#	4182885	

Property Owner 1	**Taxpayer**
2003 SULLIVAN FAMILY TRUST	2003 SULLIVAN FAMILY TRUST
3602 JEFFERSON AVE	3602 JEFFERSON AVE
REDWOOD CITY, CA 94062	REDWOOD CITY, CA 94062

Neighborhood Code 764500 / Oakridge Rural

Related Accts 977627

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	1.08 / 47,045
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	N/A
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	RR5/AS
Land Use	1150 Mobile Home - Not In Mobile Home Park
Property Class	409 Tract, manufactured structure
Statistical Class	190 MS on real property

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$0	$99,566	$99,566	$90,805
2017	$0	$87,119	$87,119	$87,119

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$90,805	$1,025.52	07605

Two Most Recent Sales/Ownership Transfers

Date	**Price**	**Grantor (first listed)**	**Grantee (first listed)**	**Instrument #**	**Image**
11/17/16	$0	WIGHT FAMILY TRUST	2003 SULLIVAN FAMILY TRUST		

Dwelling #1 of 1 / Building Type » Manufactured structure

Model Year:	1991	**Make**	FLEETWOOD
Serial #:	09376	**Plate #**	X189663
Length	66	**Width**	39
Model	data not available	**LOIS #**	L247813

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 2, 2019 at 5:00pm using Regional Land Information Database, https://www.rlid.org/

GG 8-27

LMD AUTHORIZATION FORM

Land Management Division 125 E. 8th Ave. Eugene, OR 97401

PERMIT # 2787-90

REQUEST FOR: MOBILE HOME REPLACEMENT

ADDRESSING ☑ VALID ☐ NEW
DATE 8-24-90 LEVY CODE 26-01

TOWNSHIP	RANGE	SECTION	1/4 SECTION	TAX LOT	SUBDIVISION / PARTITION	LOT / PARCEL	BLOCK
21	35	18		906			

LOCATION ADDRESS: 47116 Airport Rd., Oakridge 97465

STRUCTURES NOW ON PROPERTY: None

PROPOSED USE	SEPTIC INSTALLED	WATER INSTALLED	NO. OF STORIES	NO. OF EMPLOYEES	CONSTRUCTION COST/VALUE
Resid.	Yes				

DESCRIPTION OF PROPOSED WORK: To place 1990 Barrington, 40' x 66' — NO. OF BEDROOMS: 3

DIRECTIONS TO SITE FROM COURTHOUSE: Hwy 58 to Oakridge Airport Rd.; Turn left; go to top of hill; Turn left; ~~xxxx~~ just past first house.

APPLICANT NAME & ADDRESS: Jack Buker/ Harrison Homes, 1740 Prairie Rd., Eugene — PHONE: 689-2991

OWNERS NAME & ADDRESS: Jim Wright, 47116 Airport Rd., Oakridge — PHONE: 782-4965

CONTRACTOR NAME: Harrison Homes — OSN LICENSE #: 61964 — PHONE:

MAIL PERMIT TO: PLEASE CALL JACK BUKER AT 689-2991
NAME ADDRESS

I have carefully read BOTH sides of this application and hereby certify that all information is true and correct

Jack Buker — Jack O Buker — DATE
PRINT NAME Signature

PLANNING/ZONING

READ CAREFULLY! Your Authorization Is Based On The Following Conditions

ZONE	F.P.?	LEGAL LOT?	MINIMUM SETBACKS	FRONT LOT LINE	CAL RIVER	INTERIOR	REAR	RIPARIAN
RR5/AS/RCP	—			20' AMEN PER		10'	10'	

COMMENTS: replace MH - allowed use per LC 16.231(2)(a), AS requirements attached.

APPROVED BY: C. E. Thompson DATE 8/24/90

SANITATION

O.I. #	P.P.#	INST. REC/BK/PG	TANK SIZE	DR. FT. D.F.	MAX. TRN DEPTH
	2050-87	F-31-87	450 gals		

☑ INSTALL DWLG. SYSTEM PER APPROVED PLOT PLAN, DATED
☐ THE SYSTEM APPEARS TO BE WORKING RIGHT. IF SYSTEM FAILS, YOU MUST APPLY FOR A REPAIR PERMIT
☐ HOOK TO EXISTING SYSTEM INSTALLED PER PERMIT NUMBER

Soil 1.0 - 5

COMMENTS: Mobile home may be connected to the existing S.E.S. installed under permit # 2050-87. Reserve Brookfield replacement area.

APPROVED BY: [signature] DATE 9-6-90

BUILDING

TYPE	GROUP	USE
—	—	MH

COMMENTS:

DATE 9/10/90

FEES DUE: $ 125.00 APPROVED BY: [signature] DATE 9/10/90

CALL FOR INSPECTIONS (SEE BACK OF FORM FOR INSTRUCTIONS) 687-4065
SEPTIC permits are good for one year. ALL other permits expire after 180 days unless inspections are current.

Paid 9/18/90

002223

Summary Property Report

Site Address	47022 AIRPORT RD Oakridge, OR 97463-9715
Map & Taxlot#	21-35-18-00-00913
SIC	N/A
Tax Account#	4136055

Property Owner 1	**Taxpayer**
MILLER MARVIN	MILLER MARVIN
47022 AIRPORT RD	47022 AIRPORT RD
OAKRIDGE, OR 97463	OAKRIDGE, OR 97463



Click to enlarge photo

Neighborhood Code 764500 / Oakridge Rural

Related Accts 1310299

Boundary / Land Use Data

Mapped Taxlot Acreage / Sq Ft	2.02 / 87,991
Incorporated City Limits	none
Urban Growth Boundary	none
Census Tract/Block	1500/1
Subdivision Name	N/A
Lot/Tract/Unit	N/A
Phase	N/A
Recording Number	N/A

School	**Code**	**Name**
School District	76	**Oakridge**
Elementary School	600	**Oakridge**
Middle School	601	**Oakridge**
High School	602	**Oakridge**

Zoning Parent/Overlay	RR5/AS
Land Use	1150 Mobile Home - Not In Mobile Home Park
Property Class	409 Tract, manufactured structure
Statistical Class	190 MS on real property

Property Values & Taxes

	Real Market Value (RMV)			Total Assessed Value
Year	**Land**	**Improvement**	**Total**	
2018	$0	$37,516	$37,516	$37,516
2017	$0	$32,851	$32,851	$32,851

2018 Taxable Value	2018 Tax	2018 Tax Code Area
$37,516	$ 405.60	07605

Two Most Recent Sales/Ownership Transfers

Date	**Price**	**Grantor (first listed)**	**Grantee (first listed)**	**Instrument #**	**Image**
04/07/14	$157,500	TRUST AGREEMENT DATED JANUARY 19, 20	MILLER MARVIN	2014-12793	

Dwelling #1 of 1 / Building Type » Manufactured structure

Model Year:	1980	**Make**	SUNNYBROOK
Serial #:	SB4173A & B & C	**Plate #**	X172252
Length	66	**Width**	37
Model	data not available	**LOIS #**	L234338

This report extracts commonly used information from the Detailed Property Report (DPR).

Generated by Law Office of Bill Kloos, PC on Apr 2, 2019 at 5:02pm using Regional Land Information Database, https://www.rlid.org/

LANE COUNTY BUILDING PERMIT

lane county

POST THIS PERMIT ON MAIN BUILDING AT SITE

CONSTRUCTION PERMIT # LC 2322-80 (MH)

JOB ADDRESS: 47022 Airport Road, Oakridge

TRS, TL: 21-35-18 TLN # 901 Now #913

SUBDIVISION: N/A

CONSTRUCTION APPROVED BY THIS PERMIT: Double wide mobile home 1980 Sunnybrook 28 x 66 and install Sewage Disposal System

CONDITIONS OF APPROVAL: Minimum Structural Setbacks: center line of road, front-50', interior property lines-15', rear property lines-20'

Footings and piers to comply with State foundation requirements for mobile homes or as recommended by the manufacturer. Provide skirting per enclosure, skirting shall be installed and ready for inspection within at least 30 days of occupancy.

Maintain 100' setback (minimum) from drainlines and well; Septic tank must be 50' from well. Install in area shown on plot plan (approved 9/15/80). Use equal distribution.

PERMITTEE: Gloria Nelson

DATE ISSUED: September 22, 1980

BY: Carol Dyal/John Smeed/Colleen Allison

DIRECTIONS TO SITE: See Don Stewart, this application was taken in the field.

Setbacks - Subsurface Sewage Disposal

From:	Septic Tank	Drainfield
Interior property lines	10'	10'
Edge of road right-of-way	10'	10'
Building foundation	5'	10'
Wells, other water sources	50'	100'

Existing or new SDS specifications:

1000 gal. min. tank;

450 feet of drainfield

24-30" max. depth of trenches

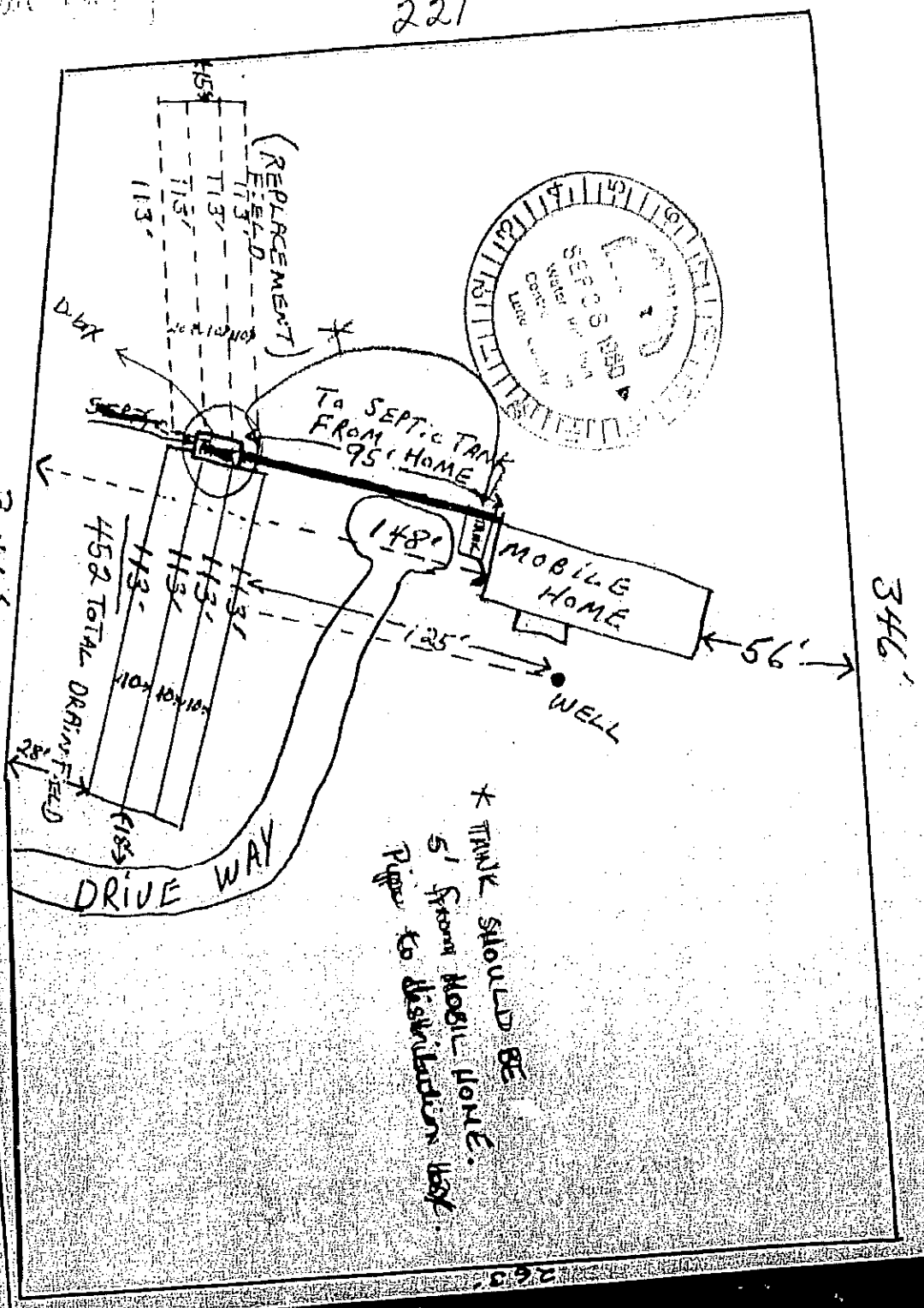
********** SETBACKS AND OTHER CONDITIONS OF APPROVAL MUST BE STRICTLY OBSERVED. VIOLATION CAN RESULT IN REVOCATION OF THIS PERMIT, CITATION UNDER PROVISIONS OF LANE COUNTY'S INFRACTION ORDINANCE, AND/OR OTHER REMEDIES ALLOWED BY LAW.

WHEN READY FOR INSPECTION (see reverse side) call 687-4065. Have the following information ready: Permit number, job address, type of inspection, when it will be ready, your name and phone number, and any special directions to site.

Environmental Management Department
125 East 8th Avenue / Eugene, Oregon 97401

Section 12 + 13
Township 21
South Range
2 East Willamette Meridian
(Yolo County)

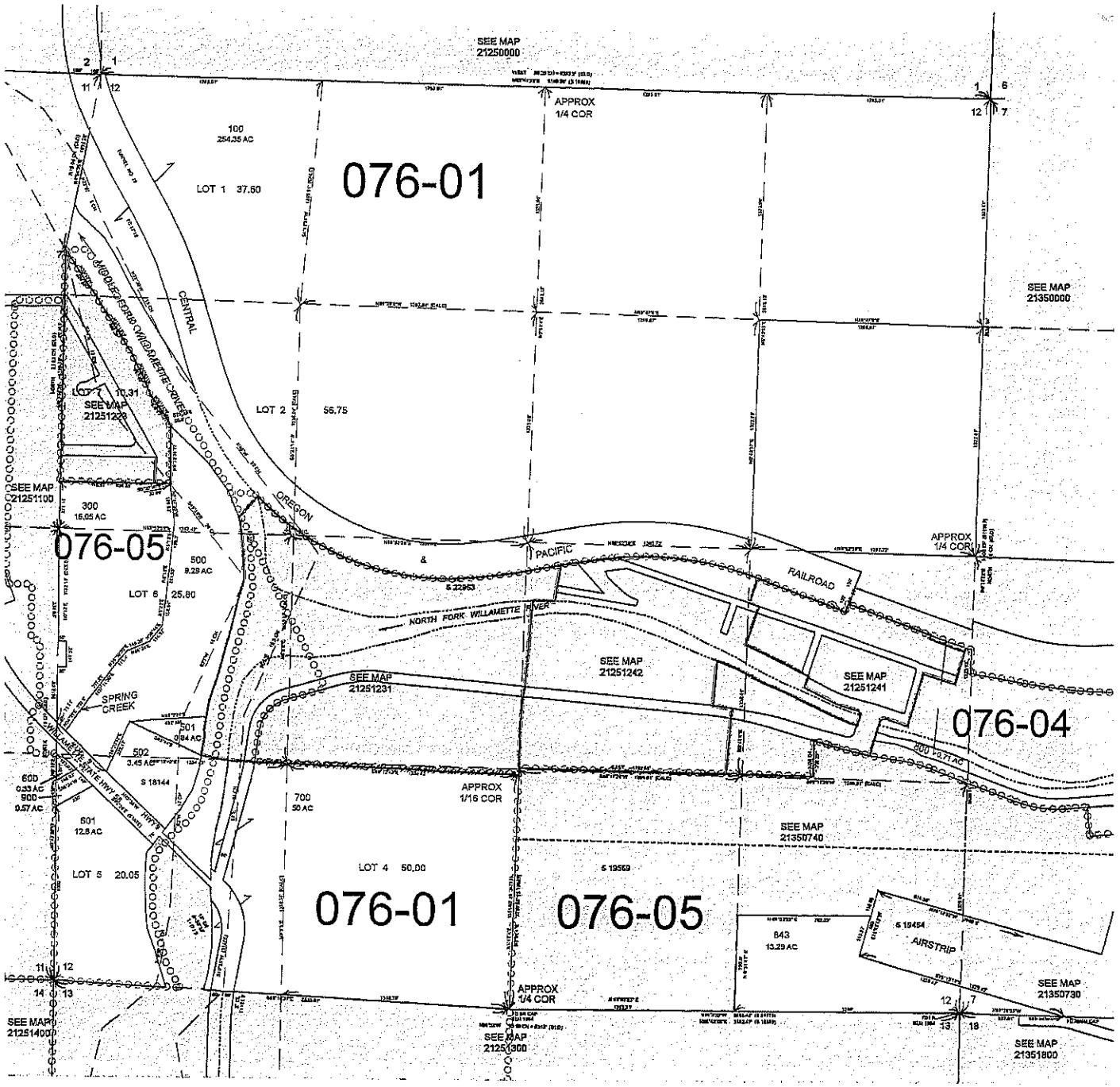
Approved
Callison
9-15-80



FOR ASSESSMENT AND TAXATION ONLY

SECTION 12 T.21S. R.2E. W.M.
Lane County
1" = 400'

21251200
WESTFIR



GIS DATA
12/16/2009 3:44:08 PM : tcaldwe

CANCELLED:
100
843
844
822
807
823
837
824
825
838
826
808
827
839
840
828
841
829
842
809
810
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831
811
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814
832
802
803
804
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806
815
816
817
818
819
820
821
833
834
835
836

REVISIONS:
11/22/2006 - LCAT152 - CONVERT MAP TO GIS
12/17/2008 - LCAT155 - RTL 843 OUT OF 600 & 21250740000100
12/17/2008 - LCAT155 - RTL 844 OUT OF 600
12/17/2008 - LCAT155 - LUA BETWEEN TL 844 & 21250740000100
12/17/2008 - LCAT155 - REMAP TL 844 TO 21250750052600
12/08/2008 - LCAT113 - CORR TL 600 SNDRY

WESTFIR
21251200

EXHIBIT F

FOR ASSESSMENT AND TAXATION ONLY

S.W.1/4 SEC. 7 T.21S. R.3E. W.M.
Lane County
1" = 200'

REVISIONS
12/17/2008 - LCAT153 - NTL 2500 OUT OF 21350740000100
12/17/2008 - LCAT153 - LLA BCTY-CON TL 2500 & 21S3E7 02900 03
12/17/2008 - LCAT153 - NTL 2500 REMAPPED FROM 21S3120000844
01/26/2009 - LCAT153 - CONVERT MAP TO GIS
04/15/2013 - LCAT153 - CANC 2500 IMPD 2495

21350730
WESTFIR
lcat|xg - 2013-04-10 11:52

CANCELLED
2500

SOUTHERN PACIFIC RAILROAD

SEE MAP
21251241

SEE MAP
21251242

SEE MAP
21350740

076-04

NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE RIVER

WESTFIR ROAD COUNTY ROAD NO. 1323

PIONEER ROAD

2400
0.79 AC

2900
12.05 AC

2800
13.28 AC

076-05

AIRSTRIP

2700

SEE MAP
21251200

SEE MAP
21251300

SEE MAP
21351800

WESTFIR
21350730

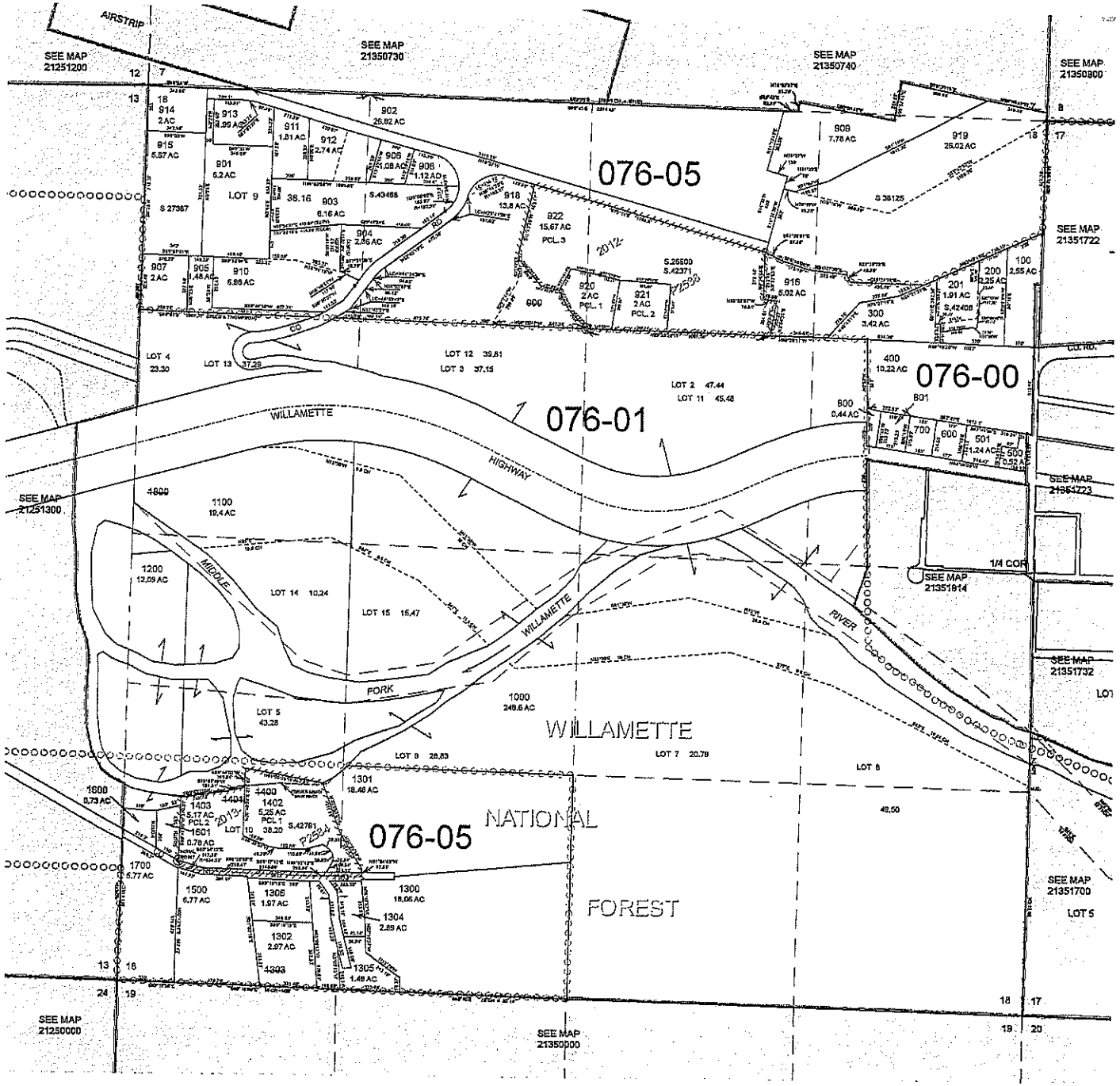
002228

FOR ASSESSMENT AND TAXATION ONLY

SECTION 18 T.21S. R.3E. W.M.
Lane County
1" = 400'

21351800
OAKRIDGE

LCATJCG - 2015-01-29 09:21



CANCELLED
1303
1400
1800
900
1401

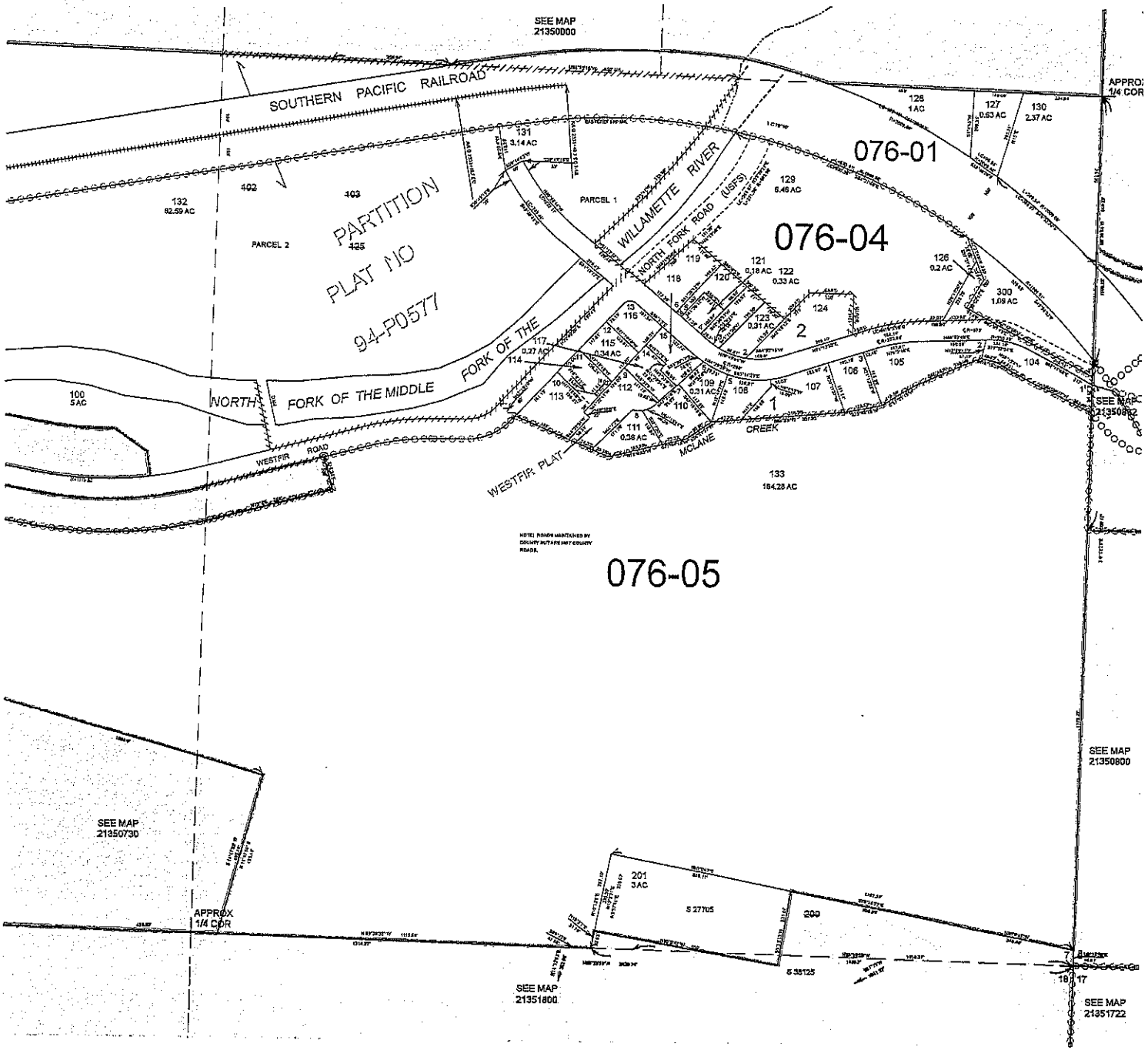
REVISIONS
09/17/2008 - LCAT115 - CONVERT MAP TO CIS
01/31/2012 - LCAT115 - ADDED HISTORIC LINE TO TL 300
09/19/2012 - LCAT155 - PTN TL 900 INTO 2013-P2535
09/19/2012 - LCAT155 - LLA BETWEEN 800 & 916, CANC 800
10/30/2013 - LCAT115 - CANC TL 1401 INTO 2013-P2584
07/23/2014 - LCAT110 - LLA BETWEEN TLS 200 & 201
01/13/2016 - LCAT174 - LLA BETWEEN TL 903 & TL 919

OAKRIDGE
21351800

FOR ASSESSMENT AND TAXATION ONLY

S.E.1/4 SEC. 7 T.21S. R.3E. W.M.
Lane County
1" = 200'

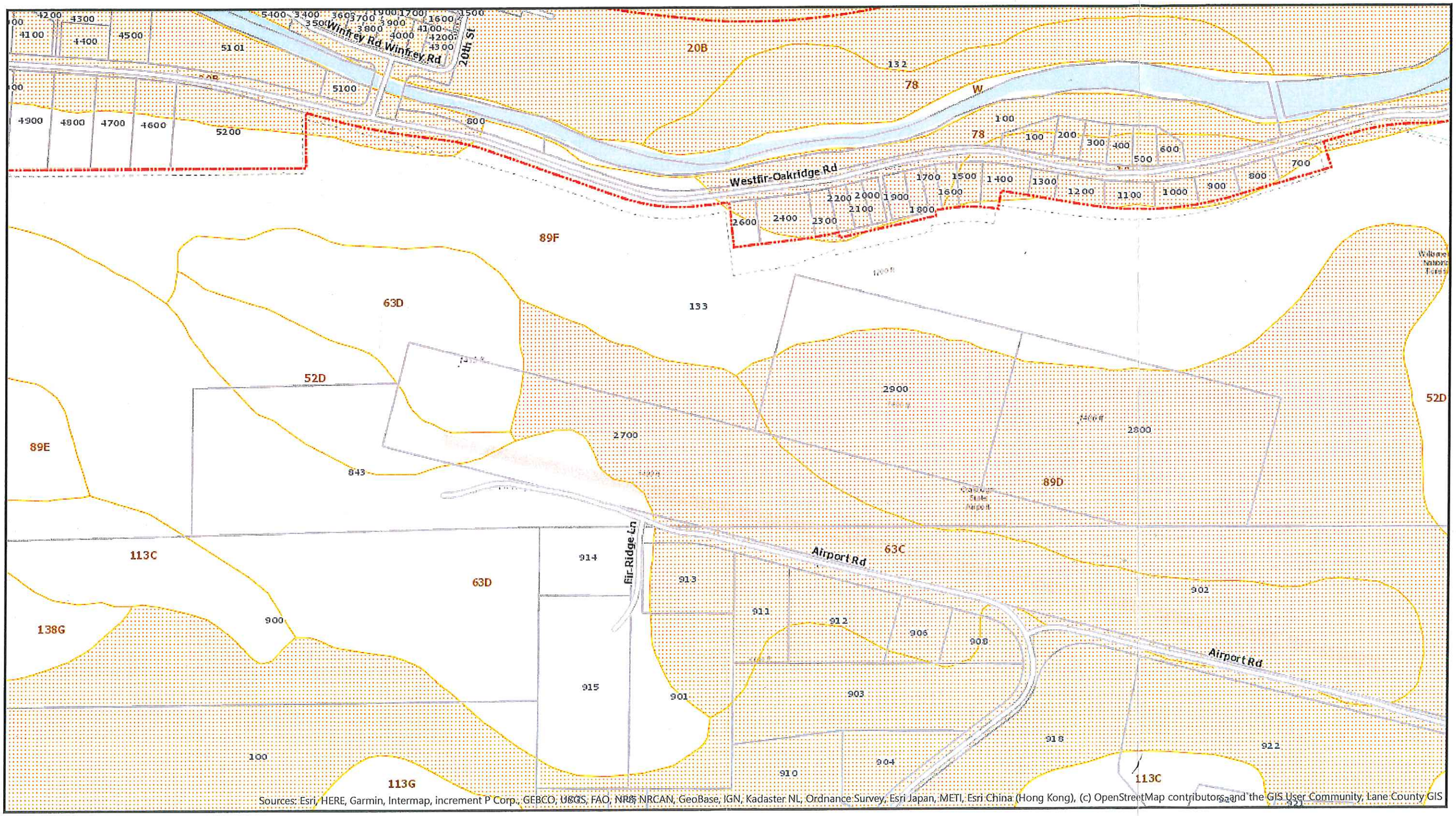
21350740
WESTFIR



LCAT.CG - 2018-10-30 11:43

CANCELLED
102
103
200
100
133
125

WESTFIR
21350740



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Lane County GIS

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

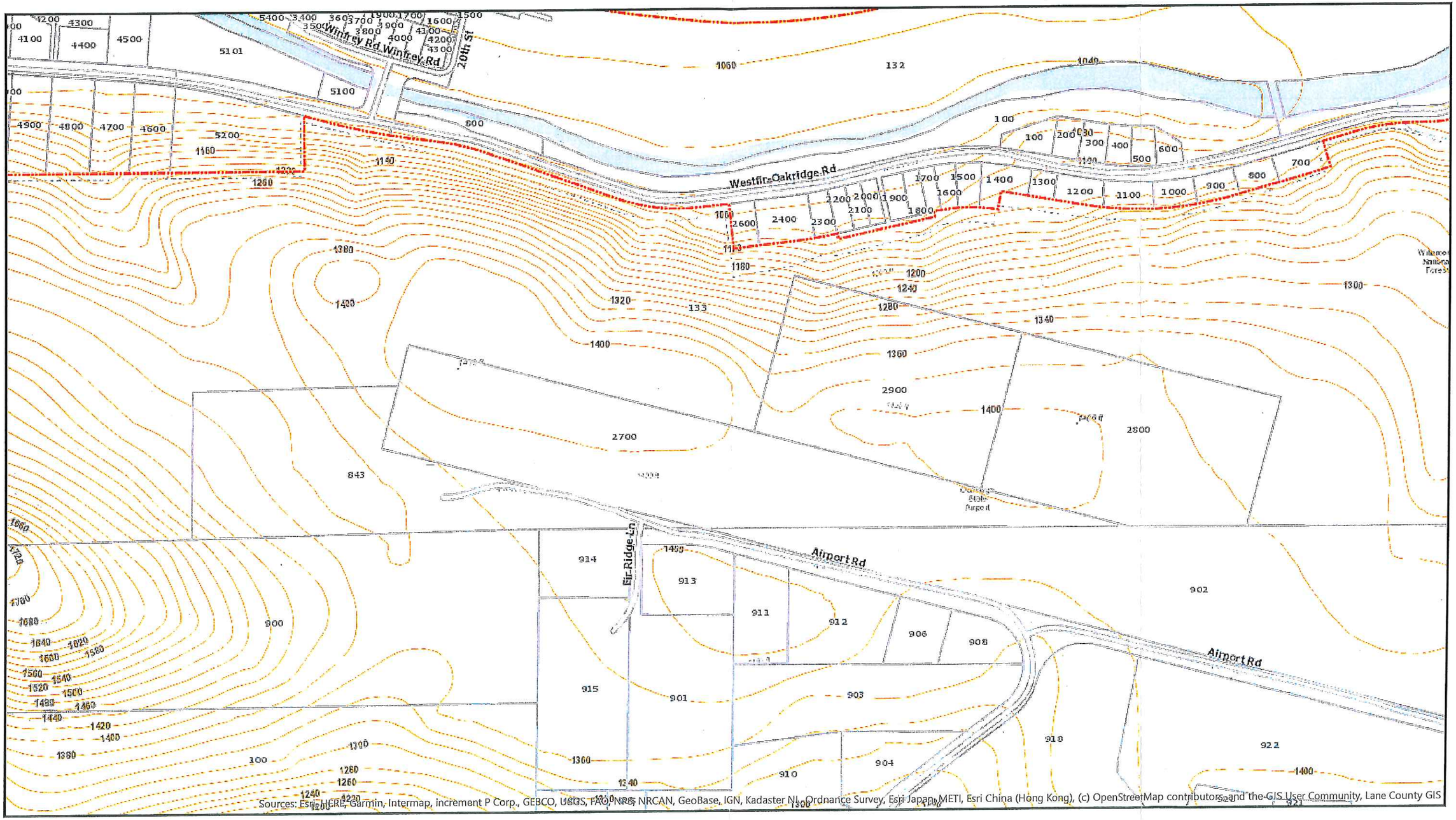
0 245 490 980 Feet

Lane County, Oregon

soils

EXHIBIT G6

002231



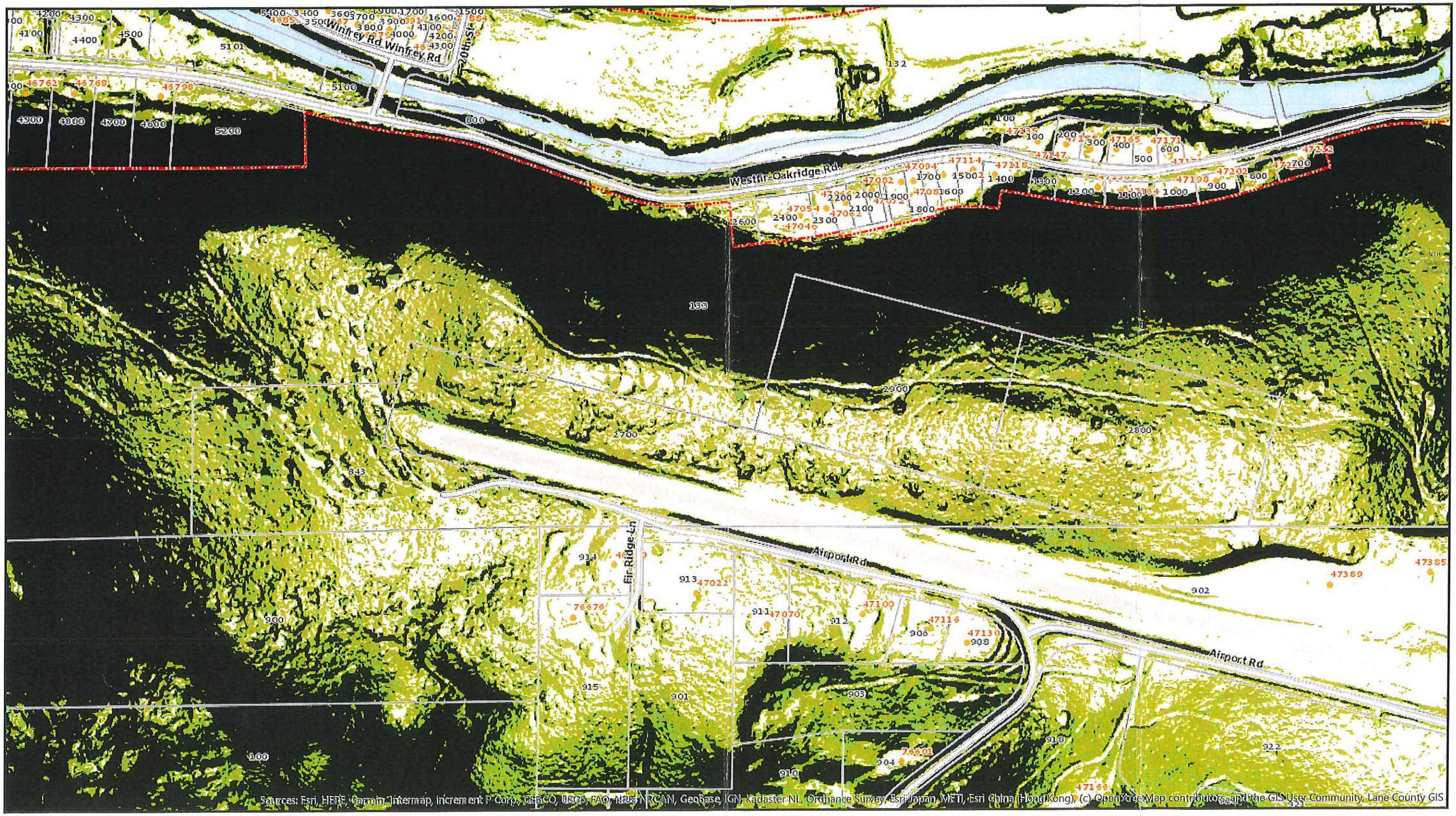
The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 245 490 980 Feet

Topo

Lane County, Oregon



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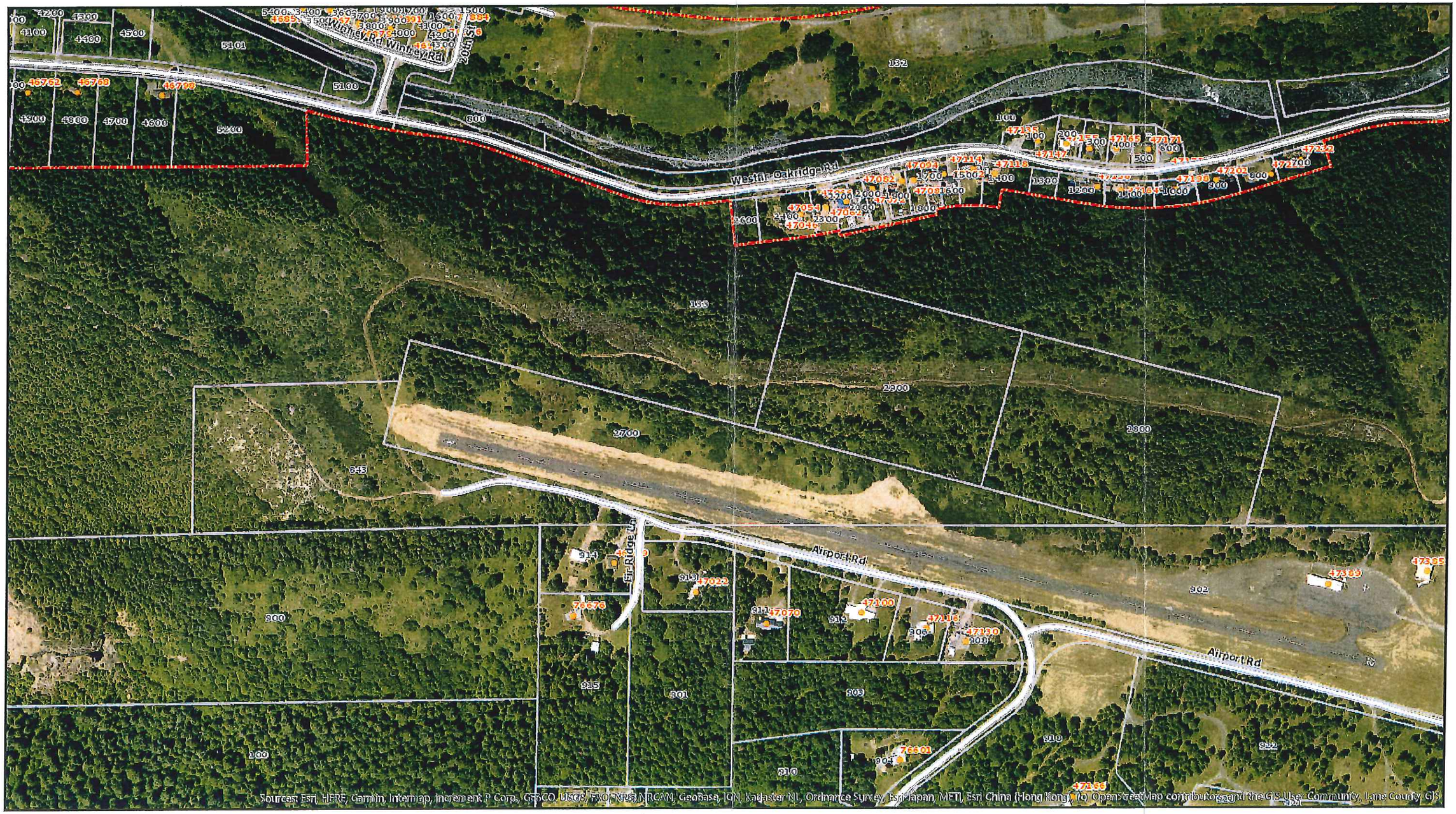
N

0 245 490 980 Feet

Lane County, Oregon

Lydar

EXHIBIT HH



The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

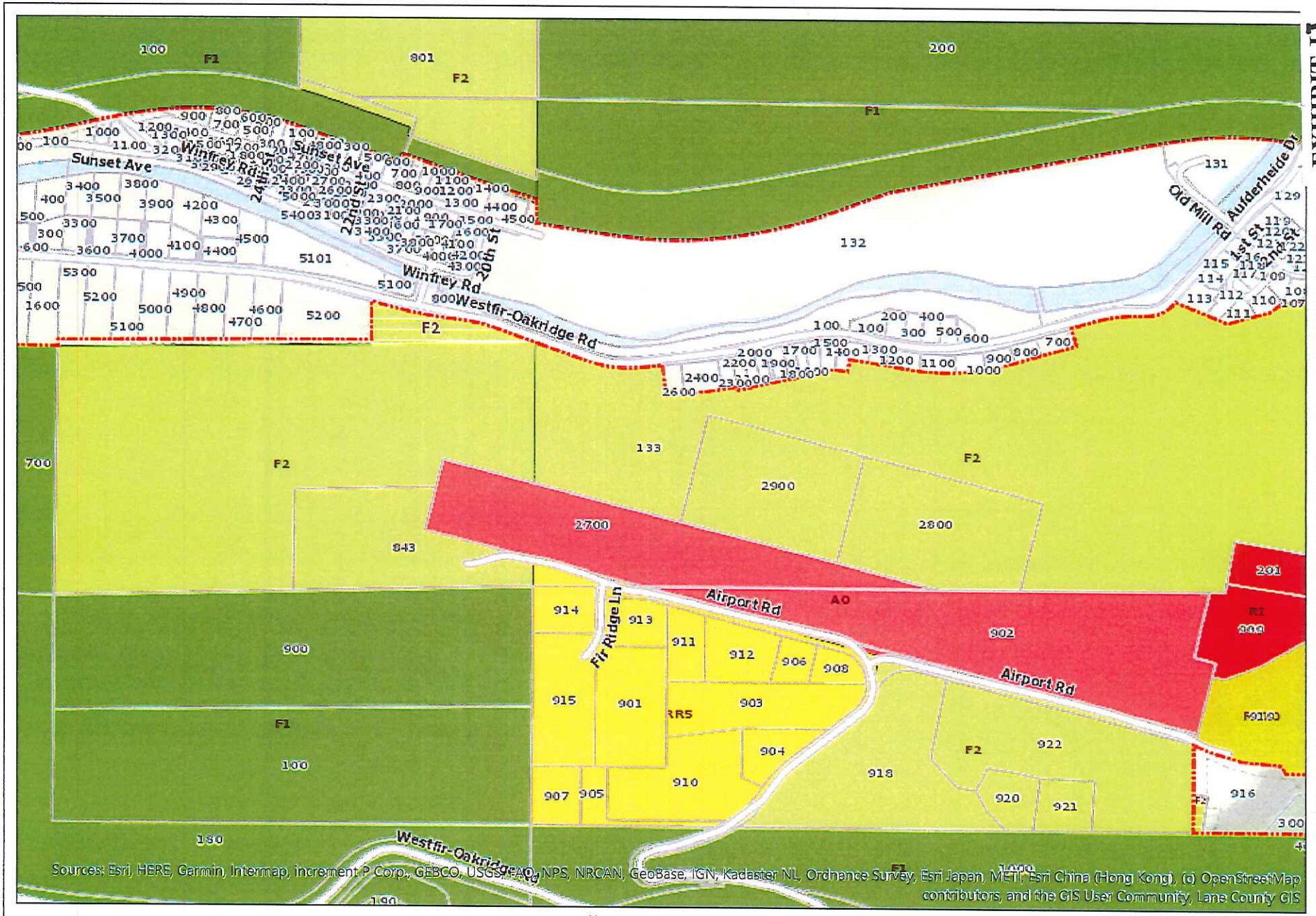
0 245 490 980 Feet

Lane County, Oregon

Aerial 2018

EXHIBIT I

EXHIBIT JJ



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N

0 475 950 1,900 Feet

zoning

Lane County, Oregon

RECEIVED

STATE OF OREGON JAN 31 1994

WATER WELL REPORT

(as required by ORS 537.765) WATER RESOURCES DEPT. SALEM, OREGON

LANE 2467

21S/3E/18ba

(START CARD) # W61685

(1) OWNER:

Well Number #1

Name Wesley R. Boyson

Address P.O. Box 565

City Oakridge State OR Zip 97463

(2) TYPE OF WORK:

XX New Well ☐ Deepen ☐ Recondition ☐ Abandon

RECEIVED

(3) DRILL METHOD:

XX Rotary Air ☐ Rotary Mud ☐ Cable

☐ Other

MAR - 7 1994

(4) PROPOSED USE:

WATER RESOURCES DEPT. SALEM, OREGON

XX Domestic ☐ Community ☐ Industrial ☐ Irrigation

☐ Thermal ☐ Injection ☐ Other

(5) BORE HOLE CONSTRUCTION:

Special Construction approval ☐ Yes XX No Depth of Completed Well 355 ft.

Explosives used ☐ Yes ☒ No Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Amount sacks or pounds
10"	0	38'	Cement	0	38'	15 sacks
6"	38'	355'				

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E

☐ Other

Backfill placed from ft. to ft. Material

Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+2'	38'	.250	☒	☐	XX	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:	4½"	0	355'	PVC	☐	☒	☒	☐
					☐	☐	☐	☐

Final location of shoe(s) 38'

(7) PERFORATIONS/SCREENS:

☒ Perforations Method SAW

☐ Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
215'	235'	1/8x2	200	4½"		☐	☒
275'	295'	1/8x2	200	4½"		☐	☒
335'	355'	1/8x2	200	4½"		☐	☒
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
9 3/4	305'	355'	1 hr.
Could flucuate			

Temperature of Water 56° Depth Artesian Flow Found

Was a water analysis done? ☐ Yes By whom not tested

Did any strata contain water not suitable for intended use? ☐ Too little

☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other

Depth of strata:

(9) LOCATION OF WELL by legal description:

County Lane Latitude Longitude

Township 21S N or S, Range 3E E or W, WM.

Section 18 NE ¼ NW ¼

Tax Lot 914 Lot Block Subdivision

Street Address of Well (or nearest address) End of Airport Rd. Oakridge, OR

(10) STATIC WATER LEVEL:

50 ft. below land surface. Date 12-22-93

Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:

Depth at which water was first found 169'

From	To	Estimated Flow Rate	SWL
169'	170'	2 gpm	50'
277'	278'	3 gpm	50'
289'	290'	4 3/4 gpm	50'

(12) WELL LOG:

Ground elevation

Material	From	To	SWL
Topsoil	0	3'	
Brown clay	3'	32'	
Brown white conglomerate	32'	128'	
White, brown conglomerate	128'	153'	
Gray, white conglomerate	153'	293'	50'
Gray, white sandstone	293'	355'	

Date started 12-20-93 Completed 12-22-93

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my best knowledge and belief.

WWC Number 1617

Signed John P. James Date 12-22-93

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 1541

Signed Casey D. James Jr. Date 12-22-93

ORIGINAL & FIRST COPY - WATER RESOURCES DEPARTMENT SECOND COPY - CONSTRUCTOR THIRD COPY

EXHIBIT KK

002236

STATE OF OREGON

WATER WELL REPORT

(as required by ORS 537.765)

SEP 25 1987

WATER RESOURCES DEPT.
SALEM, OREGON

LANE 023724 21s/3E-18

(1) OWNER:

Well Number

Name GUS SWANSON

Address 76676 FIR RIDGE LANE

City OAKRIDGE State OR Zip 97463

(2) TYPE OF WORK:

☒ New Well ☐ Deepen ☐ Recondition ☐ Abandon

(3) DRILL METHOD

☒ Rotary Air ☐ Rotary Mud ☐ Cable

☐ Other

(4) PROPOSED USE:

☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation

☐ Thermal ☐ Injection ☐ Other

BORE HOLE CONSTRUCTION:

Special Construction approval Yes ☐ No ☐ Depth of Completed Well 260 ft.

Explosives used Yes ☐ No ☐ Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Amount sacks or pounds
10	0	52	cement	0	52	14
6	52	260				

How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E

☐ Other

Backfill placed from ft. to ft. Material

Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6	+1	52	250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:					☐	☐	☐	☐
					☐	☐	☐	☐

location of shoe(s)

(7) PERFORATIONS/SCREENS:

☐ Perforations Method

☐ Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
						☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
6		260	1 hr.

Temperature of water Depth Artesian Flow Found

Was a water analysis done? ☐ Yes By whom

Did any strata contain water not suitable for intended use? ☐ Too little

☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other

Depth of strata:

(9) LOCATION OF WELL by legal description:

County LANE Latitude Longitude

Township 21 N or S, Range 3E E or W, WM.

Section 18 ¼ ¼

Tax Lot 901 Lot Block Subdivision PA3201-86

Street Address of Well (or nearest address)

(10) STATIC WATER LEVEL:

50 ft. below land surface. Date 8/3/87

Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:

Depth at which water was first found

From	To	Estimated Flow Rate	SWL

(12) WELL LOG:

Ground elevation

Material	From	To	SWL
brown clay	0	12	
yellow clay	12	47	
red rock	47	70	
yellow rock	70	95	
gray rock	95	165	
blue rock	165	215	
gray rock	215	260	50

Date started 7/31/87 Completed 8/28/87

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon well construction standards. Materials used and information reported above are true to my best knowledge and belief.

WWC Number

Signed Date

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. all work performed during this time is in compliance with Oregon well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 1276

Signed James J. Cook Date 9/23/87

WHITE COPIES - WATER RESOURCES DEPARTMENT YELLOW COPY - CONSTRUCTOR PINK COPY - CUSTOMER 9809C 10/86

002237

LANE 52317

Well ID# LO8932

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)

(START CARD) # 94628

Instructions for completing this report are on the last page of this form.

(1) OWNER: Well Number 1

Name Eric Rassmussen

Address 47379 Airport Rd.

City Oakridge, State OR Zip 97443

(2) TYPE OF WORK

[X] New Well [ ] Deepening [ ] Alteration (repair/recondition) [ ] Abandonment

(3) DRILL METHOD:

[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger

[ ] Other

(4) PROPOSED USE:

[X] Domestic [ ] Community [ ] Industrial [ ] Irrigation

[ ] Thermal [ ] Injection [ ] Livestock [ ] Other

(5) BORE HOLE CONSTRUCTION:

Special Construction approval [ ] Yes [X] No Depth of Completed Well 300 ft.

Explosives used [ ] Yes [X] No Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Sacks or pounds
10"	0	48	cement	0	48	19 sacks
6"	50	300				

How was seal placed: Method [ ] A [ ] B [X] C [ ] D [ ] E

[ ] Other

Backfill placed from ft. to ft. Material

Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+3	111	.250	[X]	[ ]	[X]	[ ]
					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]
Liner:					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]

Final location of shoe(s) 111'

(7) PERFORATIONS/SCREENS:

[ ] Perforations Method

[ ] Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]

(8) WELL TESTS: Minimum testing time is 1 hour

[ ] Pump [ ] Bailer [X] Air [ ] Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
5	211	300	1 hr.

Temperature of water 56 Depth Artesian Flow Found

Was a water analysis done? [X] Yes By whom Analytical Lab

Did any strata contain water not suitable for intended use? [ ] Too little

[ ] Salty [ ] Muddy [ ] Odor [ ] Colored [ ] Other

Depth of strata:

(9) LOCATION OF WELL by legal description:

County Lane Latitude Longitude

Township 21S N or S Range 3E E or W. WM.

Section 18 NE 1/4 NE 1/4

Tax Lot 900 Lot Block Subdivision

Street Address of Well (or nearest address) same

(10) STATIC WATER LEVEL:

89 ft. below land surface. Date 4-23-97

Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:

Depth at which water was first found 177 ft.

From	To	Estimated Flow Rate	SWL
177	179	5	89

(12) WELL LOG:

Ground Elevation

Material	From	To	SWL
top soil	0	2	
red brown clay	2	10	
wood	10	14	
red brown clay	14	34	
blue green clay	34	42	
brown sandstone	42	105	
blue green sandstone	105	129	
brown sandstone	129	136	
blue green sandstone	136	168	
brown sandstone	168	181	89
blue green white sandstone	181	276	
red gray green claystone	276	300	

MAY - 6 1997

WATER RESOURCES DEPT.
SALEM, OREGON

Date started 4-21-97 Completed 4-23-97

(unbonded) Water Well Constructor Certification:

I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

WWC Number 1617

Signed Date 4-23-97

(bonded) Water Well Constructor Certification:

I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

WWC Number 1541

Signed Date 4-23-97

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002238

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MAY 1 6 2000

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)
Instructions for completing this report are on the last page of this form.

Lane 58136

WATER RESOURCES DEPT.
SALEM, OREGON

WELL I.D. # L 34376
START CARD # 120831

(1) OWNER: Well Number
Name Gerald Rice
Address PO Box 933
City Oakridge State OR Zip 97463

(2) TYPE OF WORK
☒ New Well ☐ Deepening ☐ Alteration (repair/recondition) ☐ Abandonment

(3) DRILL METHOD:
☒ Rotary Air ☐ Rotary Mud ☐ Cable ☐ Auger
☐ Other

(4) PROPOSED USE:
☒ Domestic ☐ Community ☐ Industrial ☐ Irrigation
☐ Thermal ☐ Injection ☐ Livestock ☐ Other

(5) BORE HOLE CONSTRUCTION:
Special Construction approval ☐ Yes ☒ No Depth of Completed Well 513 ft.
Explosives used ☐ Yes ☒ No Type Amount

HOLE Diameter	From	To	SEAL Material	From	To	Sacks or pounds
10"	0	38	Bentonite	38	0	13 sacks
6"	38	513				

How was seal placed: Method ☐A ☐B ☐C ☐D ☐E
☒ Other Bentonite Poured DRY!
Backfill placed from ft. to ft. Material
Gravel placed from ft. to ft. Size of gravel

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+2	38	250	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐
Liner:	4"	0	513	cl. 160	☐	☒	☐	☐
					☐	☐	☐	☐

Final location of shoe(s) N/A

(7) PERFORATIONS/SCREENS:
☒ Perforations Method SKILSAW
☐ Screens Type Material

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
33'	513'	4"	288	1/8"	4"	☐	☒
						☐	☐
						☐	☐
						☐	☐

(8) WELL TESTS: Minimum testing time is 1 hour

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
9		513'	1 hr.

Temperature of water 59° Depth Artesian Flow Found
Was a water analysis done? ☐ Yes By whom
Did any strata contain water not suitable for intended use? ☐ Too little
☐ Salty ☐ Muddy ☐ Odor ☐ Colored ☐ Other
Depth of strata:

(9) LOCATION OF WELL by legal description:
County Lane Latitude Longitude
Township 21 N or (S) Range 03 (E) or W. WM.
Section 18 NW 1/4 NW 1/4
Tax Lot 905 Lot Block Subdivision
Street Address of Well (or nearest address) 76558 Airport Rd
Oakridge, OR 97463

(10) STATIC WATER LEVEL:
71 ft. below land surface. Date 4/15/00
Artesian pressure lb. per square inch. Date

(11) WATER BEARING ZONES:
Depth at which water was first found 71'

From	To	Estimated Flow Rate	SWL
71'	74'	5 1/2 GPM	71'
281'	285'	1 1/2 GPM	71'
442'	445'	2 GPM	71'

(12) WELL LOG:
Ground Elevation

Material	From	To	SWL
Topsoil	0	2	
Red-Brown Clay	2	17	
Hard Brown Sandstone	17	24	
Gray, Green Brown Cong.	24	42	
Gray Green Cong.	42	65	
Gray Green Brown Cong.	65	74	71'
Gray Green Cong.	74	124	
Brown Gray Cong.	124	134	
Brown White Cong.	134	168	
White Green Cong.	168	193	
Basalt Gray	193	198	
Gray Green Cong.	198	238	
Gray Basalt	238	266	
Softer Gray White Cong.	266	272	
Gray Green Brown Cong.	272	372	71'
Purple Sandstone	372	385	
Gray Green Brown Cong.	385	409	
Basalt Gray	409	426	
Gray Green Brown Cong.	426	513	71'

Date started 4/10/00 Completed 4/15/00

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.
WWC Number
Signed Date

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.
WWC Number 1562
Signed Sean Oldham Date 5/15/00

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002239

RECEIVED LANE 58808

OCT 1 1 2000

WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765)

Instructions for completing this report are on the back of this form.

WELL I.D. # L 36043
START CARD # US 12588

(1) OWNER: Well Number L 36043
Name DICK HANKINS
Address 92379 RATTLESNAKE RD
City DEXTER State ORE Zip 97431

(2) TYPE OF WORK
[X] New Well [ ] Deepening [ ] Alteration (repair/recondition) [ ] Abandonment

(3) DRILL METHOD:
[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger
[ ] Other

(4) PROPOSED USE:
[X] Domestic [ ] Community [ ] Industrial [ ] Irrigation
[ ] Thermal [ ] Injection [ ] Livestock [ ] Other

(5) BORE HOLE CONSTRUCTION:
Special Construction approval [ ] Yes [X] No Depth of Completed Well 320 ft.
Explosives used [ ] Yes [X] No Type ____ Amount ____

HOLE Diameter	From	To	SEAL Material	From	To	Sacks or pounds
10"	0	43	BENTONITE	0	43	15 SACKS
6"	43	320				

How was seal placed: Method [ ]A [ ]B [ ]C [ ]D [ ]E
[X] Other POURED + TAMPED
Backfill placed from ____ ft. to ____ ft. Material ____
Gravel placed from ____ ft. to ____ ft. Size of gravel ____

(6) CASING/LINER:

	Diameter	From	To	Gauge	Steel	Plastic	Welded	Threaded
Casing:	6"	+18	43	.25	[X]	[ ]	[X]	[ ]
					[ ]	[ ]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]
Liner:	4½	-4	320	#160	[ ]	[X]	[ ]	[ ]
					[ ]	[ ]	[ ]	[ ]

Final location of shoe(s) ____

(7) PERFORATIONS/SCREENS:
[X] Perforations Method SKILL SAW
[ ] Screens Type ____ Material ____

From	To	Slot size	Number	Diameter	Tele/pipe size	Casing	Liner
-40'	320	1/8	546	4½	#160	[ ]	[X]
						[ ]	[ ]
						[ ]	[ ]
						[ ]	[ ]

(8) WELL TESTS: Minimum testing time is 1 hour
[ ] Pump [ ] Bailer [X] Air [ ] Flowing Artesian

Yield gal/min	Drawdown	Drill stem at	Time
5 GPM	320'	320'	1 hr.

Temperature of water 52° Depth Artesian Flow Found ____
Was a water analysis done? [ ] Yes By whom ____
Did any strata contain water not suitable for intended use? [ ] Too little
[ ] Salty [ ] Muddy [ ] Odor [ ] Colored [ ] Other ____
Depth of strata: ____

(9) LOCATION OF WELL by legal description:
County LANE Latitude ____ Longitude ____
Township 21-S N or S Range 03-E E or W. WM.
Section 18 NW 1/4 NW 1/4
Tax Lot 911 Lot ____ Block ____ Subdivision 47100
Street Address of Well (or nearest address) ADJ TO AIRPORT RD. OAK RIDGE ORE 97463

(10) STATIC WATER LEVEL:
58 ft. below land surface. Date 10-7-00
Artesian pressure ____ lb. per square inch. Date ____

(11) WATER BEARING ZONES:
Depth at which water was first found 130

From	To	Estimated Flow Rate	SWL
130	290'	5 GPM	58

(12) WELL LOG:
Ground Elevation ____

Material	From	To	SWL
TOP SOIL BROWN	0	3	
CLAY BROWN	3	36	
SANDSTONE GREY	36	70	
CLAY STONE BROWN	70	170	58'
CLAY STONE GREY	170	290	
BASALT GREY	290	320	

Date started 10-4-00 Completed 10-6-00

(unbonded) Water Well Constructor Certification:
I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.
WWC Number ____
Signed ____ Date ____

(bonded) Water Well Constructor Certification:
I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.
WWC Number 1249
Signed Glen Nebute Date 10-9-00

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002240

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765 & OAR 690-205-0210)

LANE 72335

3/13/2013

WELL I.D. LABEL# L 110877
START CARD # 208851
ORIGINAL LOG #

(1) LAND OWNER

Owner Well I.D.
First Name EDDIE Last Name ROBERTS
Company
Address PO BOX 696
City OAKRIDGE State OR Zip 97463

(2) TYPE OF WORK

[X] New Well [ ] Deepening [ ] Conversion [ ] Alteration (complete 2a & 10) [ ] Abandonment(complete 5a)

(2a) PRE-ALTERATION

	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
Casing:									

	Material	From	To	Amt	sacks/lbs
Seal:					

(3) DRILL METHOD

[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger [ ] Cable Mud
[ ] Reverse Rotary [ ] Other

(4) PROPOSED USE

[X] Domestic [ ] Irrigation [ ] Community
[ ] Industrial/ Commericial [ ] Livestock [ ] Dewatering
[ ] Thermal [ ] Injection [ ] Other

(5) BORE HOLE CONSTRUCTION

Special Standard [ ] (Attach copy)
Depth of Completed Well 205.00 ft.

BORE HOLE Dia	From	To	SEAL Material	From	To	Amt	sacks/ lbs
10	0	58	Bentonite	0	58	27	S
6	58	205					

How was seal placed: Method [ ] A [ ] B [ ] C [ ] D [ ] E
[X] Other POURED AND TAMPED
Backfill placed from ft. to ft. Material
Filter pack from ft. to ft. Material Size
Explosives used: [ ] Yes Type Amount

(5a) ABANDONMENT USING UNHYDRATED BENTONITE

Proposed Amount Actual Amount

(6) CASING/LINER

Casing	Liner	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
◉	○	6	[X]	2	58	.250	◉	○	[X]	
○	◉	4.5	[ ]	5	205	sdr26	○	◉	[X]	
○	○		[ ]				○	○		
○	○		[ ]				○	○		
○	○		[ ]				○	○		

Shoe [ ] Inside [X] Outside [ ] Other Location of shoe(s) 58
Temp casing [ ] Yes Dia From To

(7) PERFORATIONS/SCREENS

Perforations Method saw
Screens Type Material

Perf/ Screen	Casing/ Screen Liner	Dia	From	To	Scrn/slot width	Slot length	# of slots	Tele/ pipe size
Perf	Liner		145	205	.125	2	600	

(8) WELL TESTS: Minimum testing time is 1 hour

○ Pump ○ Bailer ◉ Air ○ Flowing Artesian

Yield gal/min	Drawdown	Drill stem/Pump depth	Duration (hr)
7		205	1

Temperature 56 °F Lab analysis [ ] Yes By
Water quality concerns? [ ] Yes (describe below) TDS amount

From	To	Description	Amount	Units

(9) LOCATION OF WELL (legal description)

County LANE Twp 21.00 S N/S Range 3.00 E E/W WM
Sec 18 NW 1/4 of the NE 1/4 Tax Lot 921
Tax Map Number Lot
Lat ° ' " or DMS or DD
Long ° ' " or DMS or DD
○ Street address of well ◉ Nearest address
NEXT TO 47312 AIRPORT ROAD OAKRIDGE

(10) STATIC WATER LEVEL

	Date	SWL(psi)	+	SWL(ft)
Existing Well / Pre-Alteration				
Completed Well	3/11/2013			75

Flowing Artesian? [ ] Dry Hole? [ ]

WATER BEARING ZONES Depth water was first found 97.00

SWL Date	From	To	Est Flow	SWL(psi)	+	SWL(ft)
3/11/2013	97	98	2			75
3/11/2013	161	162	5			75

(11) WELL LOG

Ground Elevation

Material	From	To
topsoil	0	1
red brown clay	1	21
yellow clay	21	52
yellow claystone	52	78
gray brown green conglomerate	78	205

Date Started 3/11/2013 Complete 3/11/2013

(unbonded) Water Well Constructor Certification

I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

License Number 1344 Date 3/12/2013

Signed ROBERT J MURPHY (E-filed)

(bonded) Water Well Constructor Certification

I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

License Number 1541 Date 3/13/2013

Signed CASEY JONES JR (E-filed)

Contact Info (optional) Casey Jones Well Drilling Co., Inc. 541-747-2920

ORIGINAL - WATER RESOURCES DEPARTMENT

THIS REPORT MUST BE SUBMITTED TO THE WATER RESOURCES DEPARTMENT WITHIN 30 DAYS OF COMPLETION OF WORK Form Version:

002241

STATE OF OREGON
WATER SUPPLY WELL REPORT
(as required by ORS 537.765 & OAR 690-205-0210)

LANE 72118

12/5/2012

WELL I.D. LABEL# L 109921
START CARD # 208844
ORIGINAL LOG #

(1) LAND OWNER

Owner Well I.D.
First Name EDDIE Last Name ROBERTS
Company
Address PO BOX 696
City OAKRIDGE State OR Zip 97463

(2) TYPE OF WORK

[X] New Well [ ] Deepening [ ] Conversion [ ] Alteration (complete 2a & 10) [ ] Abandonment(complete 5a)

(2a) PRE-ALTERATION

	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
Casing:									

	Material	From	To	Amt	sacks/lbs
Seal:					

(3) DRILL METHOD

[X] Rotary Air [ ] Rotary Mud [ ] Cable [ ] Auger [ ] Cable Mud
[ ] Reverse Rotary [ ] Other

(4) PROPOSED USE

[X] Domestic [ ] Irrigation [ ] Community
[ ] Industrial/ Commericial [ ] Livestock [ ] Dewatering
[ ] Thermal [ ] Injection [ ] Other

(5) BORE HOLE CONSTRUCTION

Special Standard [ ] (Attach copy)
Depth of Completed Well 202.00 ft.

BORE HOLE Dia	From	To	SEAL Material	From	To	Amt	sacks/ lbs
10	0	84	Bentonite	0	50	41	S
6	84	202					

How was seal placed: Method [ ] A [ ] B [ ] C [ ] D [ ] E
[X] Other POURED AND TAMPED
Backfill placed from 50 ft. to 84 ft. Material BENTONITE
Filter pack from ft. to ft. Material Size
Explosives used: [ ] Yes Type Amount

(5a) ABANDONMENT USING UNHYDRATED BENTONITE

Proposed Amount Actual Amount

(6) CASING/LINER

Casing	Liner	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
●	○	6	X	2	84	.250	●	○	X	
○	●	4.5		2	202	sdr26	○	●	X	
○	○						○	○		
○	○						○	○		
○	○						○	○		

Shoe [ ] Inside [ ] Outside [ ] Other Location of shoe(s)
Temp casing [ ] Yes Dia From To

(7) PERFORATIONS/SCREENS

Perforations Method saw
Screens Type Material

Perf/ Screen	Casing/ Screen Liner	Dia	From	To	Scrn/slot width	Slot length	# of slots	Tele/ pipe size
Perf	Liner		142	202	.125	2	600	4.5

(8) WELL TESTS: Minimum testing time is 1 hour

○ Pump ○ Bailer ◉ Air ○ Flowing Artesian

Yield gal/min	Drawdown	Drill stem/Pump depth	Duration (hr)
15		202	1

Temperature 59 °F Lab analysis [ ] Yes By
Water quality concerns? [ ] Yes (describe below) TDS amount

From	To	Description	Amount	Units

(9) LOCATION OF WELL (legal description)

County LANE Twp 21.00 S N/S Range 3.00 E E/W WM
Sec 18 NE 1/4 of the NW 1/4 Tax Lot 922
Tax Map Number Lot
Lat ° ' " or DMS or DD
Long ° ' " or DMS or DD
◉ Street address of well ○ Nearest address
47312 AIRPORT ROAD OAKRIDGE

(10) STATIC WATER LEVEL

	Date	SWL(psi)	+	SWL(ft)
Existing Well / Pre-Alteration				
Completed Well	12/4/2012			63

Flowing Artesian? [ ] Dry Hole? [ ]

WATER BEARING ZONES Depth water was first found 56.00

SWL Date	From	To	Est Flow	SWL(psi)	+	SWL(ft)
12/3/2012	56	57	1			50
12/4/2012	180	195	15			63

(11) WELL LOG

Ground Elevation

Material	From	To
topsoil	0	1
brown clay	1	38
gray brown conglomerate	38	90
gray sandstone	90	118
gray brown conglomerate	118	180
brown gray claystone	180	202

Date Started 12/3/2012 Complete 12/4/2012

(unbonded) Water Well Constructor Certification

I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

License Number Date

Signed

(bonded) Water Well Constructor Certification

I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

License Number 1541 Date 12/5/2012

Signed CASEY JONES JR (E-filed)

Contact Info (optional) Casey Jones Well Drilling Co., Inc. 541-347-2920

ORIGINAL - WATER RESOURCES DEPARTMENT

THIS REPORT MUST BE SUBMITTED TO THE WATER RESOURCES DEPARTMENT WITHIN 30 DAYS OF COMPLETION OF WORK. Form Version:

002242

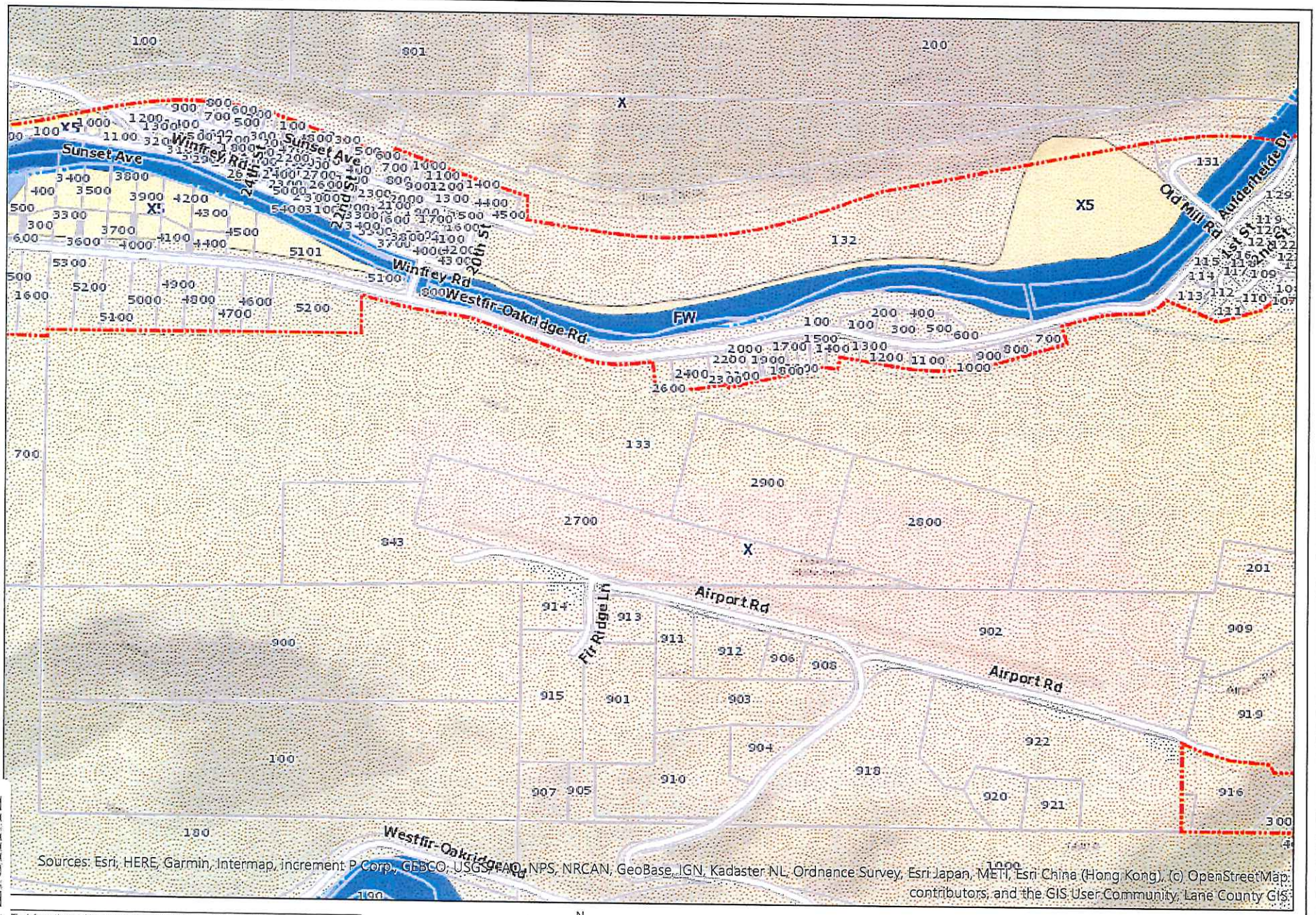


EXHIBIT L7

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 475 950 1,900 Feet

Flood hazard; Class I; Wetland

Lane County, Oregon

002243

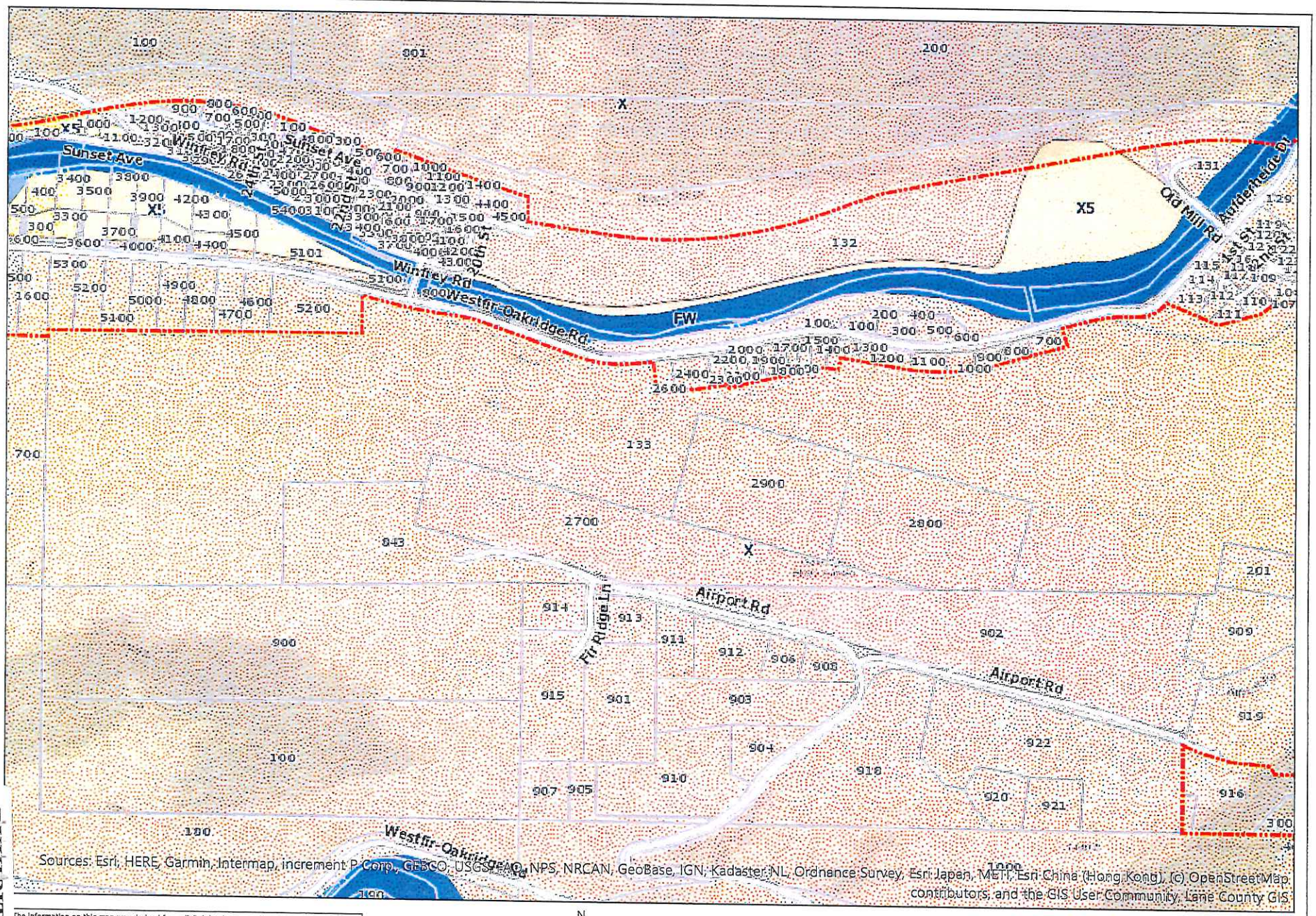


EXHIBIT MW

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

N

0 475 950 1,900 Feet

Airport Overlay

Lane County, Oregon

002244

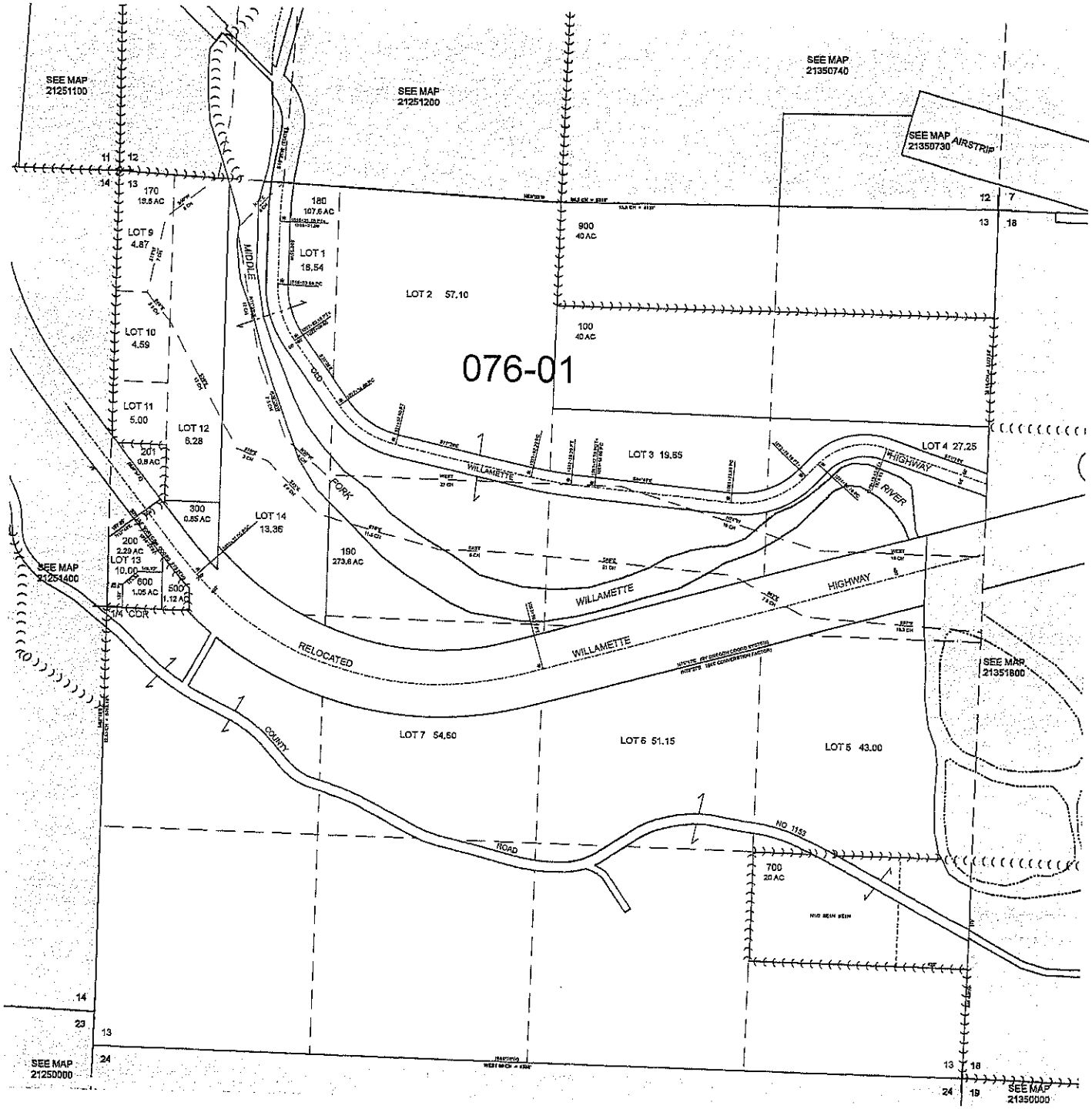
FOR ASSESSMENT AND TAXATION ONLY

SECTION 13 T.21S. R.2E. W.M.
Lane County
1" = 400'

21251300

GIS DATA
10/2/2009 1:45:46 PM : leslie

CANCELLED:



REVISIONS:
8/6/2009 - LCA7115 - CONVERT MAP TO CIS
10/2/2009 - LCA7167 - CLAIS BETWEEN TL 200/600

21251300

ADAMS Shawna L

From:	Thom Lanfear <tlanfear@pacinfo.com>
Sent:	Monday, November 16, 2020 2:50 PM
To:	ADAMS Shawna L
Cc:	'Kimberly O'Dea'
Subject:	King Oakridge
Attachments:	Extension PA20-05064-111620.pdf; Extension PA20-05066-111620.pdf

[EXTERNAL ⚠]

Shawna,

Here are two 14-day extensions for taxlots 2800 & 2900. We will have road grade information for you in a day or two.

Thom

LAND MANAGEMENT DIVISION

Waiver/Extension of Statutory Timeline Requirements

Instructions: To waive or extend the statutory timeline requirements applicable to your land use application, please complete all applicable fields, sign, date, and return this form to the address listed below.

I, Kim O'Dea, Law Office of Bill Kloos, as owner or authorized representative of the owner of
Applicant (Print Name)
the property known as Assessor's Map and Tax Lot(s) 21-35-07-30 #2900 that is the subject of the land use application Department File Number 509-PA20-05064 and is the subject of this request, do hereby voluntarily **(Check Only One Box)**:

☐ **Waive** the statutory timeline requirements of ORS 215.427, including any rights to a refund as provided for by ORS 215.427(8), and the associated right to seek mandamus as provided for by ORS 215.429(1). Furthermore, I hereby voluntarily request that the County delay processing of the application until

_____.
(Enter M/D/Y or "/NA" If No Delay Requested)

☒ **Extend** the statutory timeline requirements of ORS 215.427 for 14 days[1] in order to submit
(Enter # Calendar Days)
additional information. Furthermore, I do hereby voluntarily request that the County delay processing of the application for the same number of days. **(check box):** ☒ **Yes** ☐ **No**

It is the County's position that:

1) By signing this form, I am making an irrevocable decision to extend/waive the statutory timeline requirements of ORS 215.427. I may not change my mind later except by withdrawing my application, filing a new application, and paying the associated fees.
2) This statutory timeline waiver/extension is given freely and without compulsion by the County, and is not conditioned on any County action apart from granting the delay requested for processing the application, if any.
3) I may request that the County resume processing my application at any time and understand that any such request has no effect on the statutory timeline extension/waiver granted.
4) Lane County is not obligated to accept this statutory timeline waiver/extension request.

_____ 11/16/20

Signature (Authorized Representative/Owner) **Date Signed**

Return to: **Lane County – Public Works**
Land Management Division
3050 N. Delta Hwy.
Eugene, OR 97408

[1] Per ORS 215.427(5), the total period of time an application can be put on hold and final action timeline extended by an applicant may not exceed 215 days, except as provided in ORS 215.427(10). Additionally, unless a hold on processing the application is expressly requested in conjunction with a timeline waiver/extension request and accepted by County staff, the County reserves the right to resume processing the application at any time.

(Version 4/20)

LAND MANAGEMENT DIVISION

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(Enter M/D/Y or "/NA" If No Delay Requested)

☒ **Extend** the statutory timeline requirements of ORS 215.427 for 45 days[1] in order to submit
(Enter # Calendar Days)
additional information. Furthermore, I do hereby voluntarily request that the County delay processing of the application for the same number of days. **(check box):** ☒ **Yes** ☐ **No**

It is the County's position that:

1) By signing this form, I am making an irrevocable decision to extend/waive the statutory timeline requirements of ORS 215.427. I may not change my mind later except by withdrawing my application, filing a new application, and paying the associated fees.
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3) I may request that the County resume processing my application at any time and understand that any such request has no effect on the statutory timeline extension/waiver granted.
4) Lane County is not obligated to accept this statutory timeline waiver/extension request.

_____ 8/18/20

Signature (Authorized Representative/Owner) **Date Signed**

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Eugene, OR 97408

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(Version 4/20)

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☐ **Waive** the statutory timeline requirements of ORS 215.427, including any rights to a refund as provided for by ORS 215.427(8), and the associated right to seek mandamus as provided for by ORS 215.429(1). Furthermore, I hereby voluntarily request that the County delay processing of the application until

_____.
(Enter M/D/Y or "/NA" If No Delay Requested)

☒ **Extend** the statutory timeline requirements of ORS 215.427 for 60 days[1] in order to submit
(Enter # Calendar Days)
additional information. Furthermore, I do hereby voluntarily request that the County delay processing of the application for the same number of days. **(check box):** ☒ **Yes** ☐ **No**

It is the County's position that:

1) By signing this form, I am making an irrevocable decision to extend/waive the statutory timeline requirements of ORS 215.427. I may not change my mind later except by withdrawing my application, filing a new application, and paying the associated fees.
2) This statutory timeline waiver/extension is given freely and without compulsion by the County, and is not conditioned on any County action apart from granting the delay requested for processing the application, if any.
3) I may request that the County resume processing my application at any time and understand that any such request has no effect on the statutory timeline extension/waiver granted.
4) Lane County is not obligated to accept this statutory timeline waiver/extension request.

_____ 6/25/20
Signature (Authorized Representative/Owner) **Date Signed**

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Land Management Division
3050 N. Delta Hwy.
Eugene, OR 97408

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(Version 4/20)

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the property known as Assessor's Map and Tax Lot(s) 21-35-07-30 #2900

that is the subject of the land use application Department File Number 509-PA20-05064

and is the subject of this request, do hereby voluntarily waive or extend **(Check Only One Box):**

☐ the statutory timeline requirements of ORS 215.427 and the associated right to seek mandamus as provided for by ORS 215.429(1) are hereby **waived**.

☒ the statutory timeline requirements of ORS 215.427 are **extended** for

60 days[1] in order to submit additional information.

(Enter Number of Calendar Days)

Signature (Applicant/Owner) 4/22/20 **Date Signed**

Return to: **Lane County – Public Works**
Land Management Division
3050 N. Delta Hwy.
Eugene, OR 97408

[1] Per ORS 215.427(5), the total period of time an application can be put on hold and final action timeline extended by an applicant may not exceed 215 days.

(Version 3/2013)

002250

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date indicated below, I filed the enclosed original of the **RECORD OF PROCEEDING UNDER REVIEW and LANE COUNTY HEARINGS OFFICIAL AUDIO** in electronic format by delivering two complete copies of the record on optical disk, with documents recorded in a searchable PDF format, to:

LAND USE BOARD OF APPEALS
775 Summer Street, NE, Suite 330
Salem, OR 97301-1265

by first class mail, postage prepaid, deposited with the United States Postal Service.

On the same date, I served a true and correct copy of the same document in electronic format to attorneys for Petitioner and Respondent-Intervenors as follows:

Bill Kloos
Law Office of Bill Kloos, PC
375 W. 4th Street, Suite 204
Eugene, OR 97401
Attorney for Petitioner

Sean Malone
Attorney at Law
295 E. 5th Ave, Suite 200-C
Eugene, OR 97401
Attorney for Intervenor-Respondent

Dated this 14th day of June, 2021.

LANE COUNTY OFFICE OF LEGAL COUNSEL

By: _____
H. ANDREW CLARK, OSB #881818
Of Attorneys for Respondent Lane County